

RESOLUTION NO. 2019-37

**A RESOLUTION AUTHORIZING THE PORT OF COLUMBIA COUNTY
TO ENTER INTO A NEW GROUND LEASE (“Ground Lease”) WITH NEXT
RENEWABLE FUELS, OREGON, LLC.**

WHEREAS, Port staff has been working with Next Renewable Fuels, Oregon, LLC to enter into a Ground Lease for 90 acres of bare land owned by the Port at Port Westward, Columbia County, Oregon; and

WHEREAS, Next Renewable Fuels use of the site shall be limited to permitting, construction and operation of a 50,000 barrels per day (“bpd”) capacity renewable fuels bio-refinery, along with associated support infrastructure including tanks, piping, roads and rail improvements, as more specifically outlined in Section 1.1 of the Ground Lease entitled “Use of the Premises,” and

WHEREAS, the Ground Lease will become effective as of the Project Approval Decision Date, with rent payments beginning on the Commercial Operations Date (COD), and the term for a period of thirty (30) years beginning on the COD, including yearly rent adjustments for Consumer Price Index (CPI) and five (5) potential lease extensions of ten (10) years for each extension, and

BE IT RESOLVED that the Board authorizes the Board president to execute a new Ground Lease with Next Renewable Fuels, Oregon, LLC as described above.

PASSED AND ADOPTED this ____ day of _____, 2019 by the following vote:

Ayes: _____

Nays: _____

PORT OF COLUMBIA COUNTY

By _____
President

ATTESTED BY:

Secretary

GROUND LEASE

BETWEEN

PORT OF COLUMBIA COUNTY

AND

NEXT RENEWABLE FUELS, OREGON, LLC

Draft

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LEASE

This LEASE (the "**Lease**"), entered into this ____ day of _____, 2019 (the "**Lease Date**") by and between THE PORT OF COLUMBIA COUNTY, a Municipal corporation of the State of Oregon (the "**Port**"), and NEXT Renewable Fuels, Oregon, LLC, a limited liability company, ("**Lessee**").

1. AGREEMENT TO LEASE; DESCRIPTION OF PREMISES

Subject to the terms and conditions of the Site Development and Option Agreement ("**SDOA**") dated September 12, 2018 between the Port and Lessee, and this Lease, the Port hereby leases to Lessee, and Lessee leases from the Port the real property located at Port Westward, Columbia County, Oregon as shown on **Exhibit A** (the "**Premises**").

1.1 Use of the Premises

Lessee's use of the Premises shall be limited to permitting, construction and operation of a 50,000 barrels per day ("bpd") nameplate capacity renewable fuels bio-refinery, along with associated support infrastructure including tanks, piping, roads and rail improvements ("**the Project**"). The Project will be limited to processing only renewable feedstocks, received by ocean-going vessels, limited to manifest rail as agreed between the Port and Lessee, and no unit trains to include: used cooking oils; animal fats and tallows; yellow, white and brown greases; and virgin seed and vegetable oils. Expected products from the Project include approximately 47,500 bpd of renewable diesel, 4,500 bpd of renewable propane (propane to be retained and used on-site as process gas), and 3,500 bpd of renewable naphtha. Construction and operations of the Project as outlined in Section 1.1, and other purposes directly related thereto, are the "**Allowed Use**" of the Premises. Allowed Use of renewable feedstock is subject to the restrictions outlined in Section 6.4.1. No use other than the Allowed Use may be made of the Premises without the prior written approval of the Port, which approval shall be given or denied in the sole discretion of the Port. No Hazardous Substances (as that term is defined in Section 6.1.2) may be used, stored, or otherwise handled on or near the Premises, except as permitted under Section 6.4 of this Lease. Lessee will comply strictly with all present and future rules and regulations of all federal, state, and local governmental bodies having jurisdiction over Lessee's activities occurring within the Premises.

1.2 Compliance with the Law

Lessee's use of the Premises must comply with all applicable laws, ordinances, rules and regulations of the State of Oregon and the United States, and all city, county or other public government authorities or agencies, including, but not limited to, building permit requirements, local fire code, and zoning and occupancy codes. Lessee shall also comply with all Port rules, as amended and updated from time to time, a copy of which the Port shall provide Lessee. Lessee shall promptly provide to the Port copies of all written communications (including electronic communications) from any such government entities which relate to Lessee's noncompliance or alleged noncompliance with any law or other government requirements. In no event shall Lessee be permitted to seek or obtain approval to rezone, change the use of, or obtain other land use or land division approvals for, the Premises without the Port's prior written approval, which may be granted, conditioned or denied at in the Port's sole discretion.

2. TERM

2.1 Lease Effective Date

From the Lease Date and until the Lessee makes an affirmative decision to proceed with the Project in accordance with Section 5.f of the SDOA (“the **Project Approval Decision Period**”), this Lease is subject to cancellation by the Lessee by Lessee providing written notice of cancellation to the Port. The “**Effective Date**” of this Lease shall be the date Lessee notifies the Port of a positive decision to proceed in accordance with Section 5.f of the SDOA. The period from the Effective Date through the first day of commercial operations of the project (the “**Commercial Operations Date**” or “**COD**”) shall be known as the “**Development Period**”. During the Development Period the SDOA and the terms of this Lease shall be in effect.

2.2 Initial Lease Term

The initial term of this Lease (“**Initial Term**” or “**Initial Lease Term**”) shall commence on the COD of the Project and shall continue till the end of the calendar month thirty (30) years from the COD (“**Expiration Date**”) unless sooner terminated or extended pursuant to the terms of this Lease.

2.3 Lease Year

As used in this Lease, “**Lease Year**” shall mean, in the case of the first Lease Year, the period beginning on the Commercial Operations Date and ending June 30 of that year, and thereafter, each successive twelve (12) month period beginning July 1 and ending June 30 during the Initial or any Extension Term. Lease Years do not affect the Initial Term or any Extension Terms of the Lease.

2.4 Extension Options

So long as no uncured Event of Default (defined in Section 10) exists under this Lease, Lessee shall have options to extend (“**Extension Options**”) the Expiration Date of this Lease for five (5) successive terms (each an “**Extension Term**”). Each Extension Term shall be for ten (10) years.

2.4.1 Lessee's Notice of Intent to Extend

Lessee must notify the Port in writing of Lessee’s intent to exercise any Extension Option, subject only to Lessee's acceptance of: (i) the Port's proposed new Basic Rent (as defined in Section 3.1.2 and pursuant to Section 3.2); (ii) any proposed Extension Amendments (defined in Section 2.4.2); and (iii) any proposed adjustment to the Security Deposit pursuant to Section 3.7. Such notice by Lessee must be given not more than three hundred sixty (360) days and not less than one hundred eighty (180) days prior to expiration of the then current Lease Term or Extension Term, as applicable. Failure of Lessee to deliver such notice to the Port as provided in this Section 2.4.1 shall automatically extinguish upon the then applicable Extension Option and any remaining Extension Options.

2.4.2 Conditions of Extension

The terms and conditions of the Lease for each Extension Term shall be the same as those for the initial Lease Term except that: (a) Basic Rent shall be increased at the beginning of each Extension Term in accordance with the formula set forth in Section 3.2; (b) the Security Deposit will be adjusted to reflect adjustment in Basic Rent or Additional Rent as provided in

Section 3; (c) insurance provisions will be updated, subject to the provisions of Section 7.5; (d) environmental provisions will be updated, as necessary, to comply with then current Environmental Laws, Environmental Audit requirements and Best Management Practices as those terms are defined in Section 6; and (e) the Port will require any modifications or changes legally required to bring the Lease into compliance with then current law, government regulations or government mandates (except that any improvements the use or design of which are grandfathered or otherwise permitted under then existing law or regulations need not be modified or upgraded) (collectively, items (c) through (e) in Section 2.4.2 are the "**Extension Amendments**"). Upon receipt of Lessee's notice of intent to extend pursuant to Section 2.4.1, the Port shall have sixty (60) days thereafter to notify Lessee, in writing, of the proposed Basic Rent, any proposed adjustments to the Security Deposit, including the basis for the adjustment, and any Extension Amendments required by the Port as a condition of granting the then applicable Extension Option, together with a proposed Amendment to the Lease ("**Amendment Form**") (collectively, "**Notice of Amendments and Proposed Rent**"). Lessee shall have sixty (60) days from receipt of the Notice of Amendments and Proposed Rent to notify the Port in writing of Lessee's disapproval of any term thereof. If Lessee fails to deliver written notice of Lessee's disapproval of any term in the Notice of Amendments and Proposed Rent, then Lessee shall be deemed to have approved the Extension Amendments, Base Rent and adjusted Security Deposit and shall be obligated for the Extension Term. Lessee shall be responsible for completing all general maintenance, repair and clean-up requirements set forth in Section 4.10, on or before the first day of any Extension Term.

2.5 Holdover

If Lessee does not vacate the Premises at the time required (upon expiration or termination of the Lease), the Port shall have the option to treat Lessee as a tenant from month to month and Lessee shall pay Rent at an increased rate of 150% above the then-applicable Rent as outlined in Section 3, subject to all the provisions of this Lease except the provisions for term. The Holdover Rent Increase shall take effect immediately on the first day of the month after the expiration or termination of the Lease. The holdover tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than 30 days prior to the termination date, which shall be specified in the notice. Lessee waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

3. RENT

3.1 Basic Rent, Rent, and Additional Rent

3.1.1 Development Period Rent

During the initial twenty-four (24) months of the Development Period Lessee shall continue to make payments to the Port at the same rate as the most current Option Payment established under the SDOA.

3.1.2 Initial Term Rent

Commencing of the earlier of twenty-four (24) months from the Effective Date or the Commercial Operations Date, Lessee shall pay to the Port a monthly "**Basic Rent**" calculated as follows (the "**Rental Rate**"): the total number of square feet of the land established and agreed by the Port and Lessee during the Development Phase (estimated to be 3,920,000 square feet) multiplied by a price of thirty-three cent (\$.33) per year divided by 12 and rounded to the closest dollar amount for an estimated total rent of \$107,800.00 per month. If Lessee is found to be

occupying area different than the square footage provided in this Section 3.1, Lessee's monthly Basic Rent shall be adjusted to reflect the actual square footage occupied using the then current rate per square foot. In no case shall Basic Rent be less than the initial Basic Rent per month established during the Development Period, except as provided under Section 3.4. Basic Rent for any partial month shall be pro-rated accordingly. All other sums which become payable by Lessee under this Lease shall be considered "**Additional Rent**".

3.2 Rent Adjustment

Except as provided below, on the first day of first full Lease Year following the Commercial Operations Date and for each successive Lease Year subsequent to the Commercial Operations Date, the amount of Basic Rent for each such Lease Year period will be adjusted to reflect the effect which inflation has had on the purchasing power of the dollar, but, in no event will said rent be less than the Basic Rent paid per month during the immediately preceding Lease Year. This adjustment will be based upon the change, if any, from the CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (excluding food and energy), as published by the U.S. Bureau of Labor as of the date nearest the Commercial Operations Date, as compared with the same Consumer Price Index published as of the period preceding the expiration of the preceding year of this Lease (the "CPI Rate"). Should an Adjusted Basic Rent be applicable the CPI Rate shall be cumulatively applied to the Adjusted Basic Rent from the date of the last rent adjustment ("**Adjustment Date**").

3.2.1 Effective Date of Adjustment; Payment of Adjustments

Lessee acknowledges that adjustments to the Basic Rent will be effective as of the Adjustment Date, even though the new rate may not be able to be calculated until after the Adjustment Date. Lessee agrees to (i) begin paying the increased Basic Rent upon notification by the Port; and (ii) pay any difference between the Basic Rent actually paid to the Port after the Adjustment Date and the adjusted Basic Rent due for such period within thirty (30) days of notification by the Port.

3.3 Rent Payments

3.3.1 Due Dates

Lessee shall make payment of the Basic Rent commencing on the Commercial Operations Date and on or before the first (1st) day of each and every calendar month thereafter during the Lease Term and any Extension Terms ("Due Date"). In the event that proration of Basic Rent is required under this Lease, Basic Rent shall be prorated on a thirty (30)-day month. All other Additional Rent shall be paid within thirty (30) days of the issuance by the Port of an invoice submitted to Lessee or within the time period otherwise expressly provided in this Lease. Payment of Rent shall be made without demand, notice, offset, abatement, or deduction of any kind, to the Port at the following address or such other address as the Port may later designate as provided herein, or by direct deposit to an account specified by the Port:

Port of Columbia County
PO Box 190
100 E. Street
Columbia City, OR 97018

3.4 Delinquency Charge

All Rent and other amounts not paid when due shall bear a "**Delinquency Charge**" of eighteen percent (18%) per annum, if rent remains unpaid for five (5) or more days following its due date. Such interest shall be charged from the date due until the Rent or other amount is paid in full. This Delinquency Charge is subject to periodic change, subject to any limitation on the maximum rate of interest allowed by law, at the Port's sole discretion. No change shall occur, however, without at least thirty (30) calendar days prior written notice to Lessee. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port for failure to timely pay Rent.

3.5 Returned Checks

If Lessee's check for payment of Rent due under this Lease is returned to the Port for any reason, the payment shall be considered not to have been made and shall be delinquent. In addition to the Delinquency Charge set forth in Section 3.4, the Port may charge Lessee a returned check fee of Twenty-Five Dollars (\$25.00), per returned check, which Lessee agrees is a reasonable fee for the additional administrative time and expense incurred by the Port in having to deal with the returned check. The returned check fee is subject to periodic change by the Port. No change shall occur, however, without at least thirty (30) days prior written notice to Lessee. The Delinquency Charge shall continue to accrue until the returned check fee is paid, the check can be cashed, and the Port receives all funds due.

3.6 Acceptance of Rent

The Port's acceptance of a late or partial payment of Rent and/or a Delinquency Charge shall not constitute a waiver of any Event of Default nor shall it prevent the Port from exercising any of its other rights and remedies granted to the Port under this Lease or by law. Any endorsements or statements on checks of waiver, compromise, payment in full or any other similar restrictive endorsement shall have no legal effect. Lessee shall remain in violation of this Lease and obligated to pay all Rent due even if the Port has accepted a partial or late payment of Rent.

3.7 Security Deposit

On or before the Effective Date Lessee shall deposit with the Port the sum of Forty-Five Thousand Dollars and no/100 (\$45,00.00) as Security Deposit. On or before the Commercial Operations Date the Security Deposit shall be increased to equal three months initial Basic Rent as calculated under 3.1.2 above, plus one years estimated real property taxes on the land covered by the Lease. The Security Deposit shall be in the form of cash or letter of credit in favor of the Port without penalty and without approval of Lessee, in a form and bank acceptable to the Port. The Security Deposit shall secure Lessee's full and faithful performance and observance of all of Lessee's obligations under this Lease and under any other written agreement between Lessee and the Port. The Security Deposit shall not be considered to be held in trust by the Port for the benefit of Lessee and shall not be considered an advance payment of Rent or a measure of the Port's damages in the case of an Event of Default by Lessee. The Port may, but shall not be obligated

to, draw upon and apply the Security Deposit to: (a) pay any Rent or any other sums due to the Port by Lessee and not paid on or before the date it is due and the Port shall not be required to give notice or opportunity to cure before drawing on the Security Deposit; or (b) to pay attorney fees and costs for any legal work which has been requested by Lessee as outlined in Section 3.7.1; or (c) to remedy any other Event of Default of this Lease, after Lessee has received notice and opportunity to cure, if such notice and opportunity to cure is required under this Lease. If the Port applies any of the Security Deposit to any of the above, Lessee shall, immediately upon demand, replenish the Security Deposit to its full amount. If Lessee fully performs all of its obligations under this Lease, the Security Deposit, or any balance remaining, will be released within thirty (30) days from the Expiration Date or termination of this Lease and delivery of the Premises to the Port. However, if any question exists concerning Lessee's full compliance with the Lease or if there is any obligation under this Lease to be performed after the Expiration Date or earlier termination of this Lease, the Port shall be entitled to require that the Security Deposit remain in place until the Port is fully satisfied that there has been no Default of the Lease and all obligations due under this Lease have been fully performed. In addition to any other remedy provided in this Lease or at law, the Port shall have the option but not the obligation to use the Security Deposit or a portion thereof to offset any costs or damages incurred as a result of Lessee's failure to perform its obligations at the termination or expiration of the Lease. The Security Deposit will be adjusted at every Extension Term to be equal to three (3) months-worth of the then Basic Rent plus one (1) year worth of the estimated real property taxes (if required) for the Property, or if available, the then current real property taxes for the Property, but in no event less than the most recent adjusted Security Deposit. Notwithstanding the above provisions of Section 3.7, the Port shall have the right at any time during the Lease Term or any Extension Term to require Lessee to deposit an additional Security Deposit with the Port and/or provide additional financial assurance reasonably acceptable to the Port, in an amount or amounts reasonably determined by the Port to be commensurate with any increased risk associated with any of the following events: (i) as a condition of Port approval, as provided in Section 6.4, of Lessee's or any Sublessee's use, storage, handling, processing, manufacturing or recycling of Hazardous Substances not authorized under the first two sentences of Section 6.4.1; or (ii) if the Port has given notice of violation of any provision of this Lease more than three (3) times during any consecutive twelve (12) month period.

3.7.1 Attorney Fees to be Paid by Lessee During Term of Lease

Lessee hereby acknowledges and agrees that, in the event Lessee requests that the Port incur attorney fees for legal work which is solely the result of Lessee requesting that such legal work be completed, then Lessee shall bear the responsibility to pay for any and all Port legal costs associated with such a request made by Lessee. Prior to the commencement of any legal work, Lessee agrees to sign an Agreement to Pay Costs for Attorney's Fees (**attached example as Exhibit B, incorporated by reference**). Under this arrangement, if the funds are unavailable or the Port chooses not to withdraw the funds directly from the Security Deposit pursuant to Section 3.7, Lessee will pay a deposit to the Port prior to commencement of any legal work. The Port General Counsel or other Port legal representative ("Port Attorney") will then bill against the deposited funds at an hourly rate established by the Port Attorney. If the deposited funds are exhausted or are otherwise unavailable to be withdrawn from the Security Deposit, Port Attorney may cease legal work until such time as Lessee makes an additional deposit for legal costs as determined by Port in consultation with Port Attorney. Any such additional deposit(s) shall be paid immediately by Lessee in order for any legal work to continue. In the event any legal costs remain unpaid by Lessee after legal work is completed and such funds cannot be withdrawn from

the Security Deposit, Lessee shall pay all such additional legal costs in full to Port within 30 days after receiving notice from the Port. If there are funds remaining upon completion of the legal work, any remaining balance will be returned to Lessee at the sole discretion of Port. Port will provide an itemized billing summary upon request by Lessee.

3.8 Taxes

Lessee shall pay all taxes and assessments of any public authority levied against the Premises or upon any taxable interest of Lessee acquired pursuant to this Lease or any taxable possessory right Lessee may have in or to the Premises or the improvements located thereon, as well as all taxes on all taxable Premises, real or personal, owned by Lessee in or about the Premises, including any other tax or charge levied wholly or partly in lieu thereof (together, the “**Taxes**”). Lessee shall make all payments on or before the date payment is due. Lessee shall supply the Port with proof that Taxes have been timely paid. Lessee shall be permitted to pay Taxes in installments, as allowed by the tax assessing authority. In the event that the Port is billed directly for the Taxes by the tax assessing authority or Lessee fails to pay Taxes on or before their due date, then, in addition to all other remedies set forth in Section 10.2, the Port shall automatically have the right, but not the obligation, to pay the Taxes and any interest and penalties due thereon, with no notice to Lessee, and Lessee shall immediately reimburse the Port for any sums so paid upon receipt from the Port of: (i) written notice that the Port has paid the Taxes; and (ii) documentation of such payment. Notwithstanding the foregoing, Lessee shall also be allowed to contest the validity of any assessment on the Premises without the Port stepping in and paying Taxes on Lessee's behalf as long as monies sufficient to pay the Taxes and interest are placed in escrow with an escrow agent approved by the Port, with irrevocable escrow instructions to pay the Port the funds immediately upon demand by the Port (which demand shall not be made until the earlier of: (a) the conclusion of such contest and exhaustion of appeals; or (b) the termination of this Lease. In any case, all Taxes must be paid prior to any foreclosure proceeding by a taxing authority being instituted or before the Port incurs any liability as a result of such failure to pay the Taxes. Lessee understands that should this Lease expire, or be terminated prior to the end of any given fiscal tax year ("**Tax Year**") that Lessee will nonetheless be responsible to pay real Premises taxes assessed for the entire Tax Year. The Tax Year for Columbia County is currently July 1 through June 30.

3.9 Non-Remonstrance

Lessee waives any right to remonstrate against and shall support local improvement districts or similar shared funding mechanisms to fund future utility and roadway improvements pertaining to the Premises, should such mechanisms be used. Lessee and the Port shall cooperate in working with the city, county and/or state on the allocation of costs among the benefited properties and Lessee shall promptly sign the necessary waiver forms requested by the city, county and/or state.

4. LESSEE'S OTHER OBLIGATIONS

4.1 Ownership of Improvements

The Port shall be the sole owner of Improvements made or paid for by the Port (“**Port Improvements**”) and Lessee shall not take depreciation or any other form of tax deduction, based on any Port Improvements. The Lessee shall be the sole owner of Improvements made or paid for by the Lessee (“**Lessee Improvements**”). In the event that (a) Lessee requests and the Port agrees

to construct a specific improvement on the Premises for Lessee's use; (b) Lessee reimburses the Port in full for such improvement; and (c) the parties agree in writing prior to such construction that Lessee shall become the owner of the improvement upon the Port's completion and Lessee's reimbursement to the Port for such improvement, then upon completion such improvement shall be considered Lessee Improvements owned by Lessee, subject to the Port's reversionary rights as set out in Section 9.

4.2 Wetlands Prevention

Lessee shall not create any "wetlands" (as defined under any federal, state, regional or local jurisdiction) on the Premises during the term of this Lease or extension thereof, or on any adjacent Port-owned or non-Port owned premises. Lessee shall also manage the Premises so that no wetlands are allowed to form on the Premises and so that Lessee's development and use of the Premises does not cause the formation of wetlands on any adjacent Port owned or non-Port owned Premises. If the Port believes that wetlands are likely to form on the Premises and Lessee has not taken corrective action, the Port shall have the right, but not the obligation, upon ten (10) days prior written notice to Lessee (except in the case of an emergency), to enter onto the Premises to correct the situation and charge Lessee for such work. Lessee shall reimburse the Port for such work within thirty (30) days of receipt of invoice from the Port. Lessee shall cooperate with and perform any obligations required under any wetlands corrective or remediation plan.

4.3 Signs

Lessee shall contact the Port in order to place any signage in front of the industrial park. Lessee shall not erect, install, nor permit upon the Premises any sign or other advertising device without first obtaining the Port's written consent, which the Port may withhold or condition in its sole discretion. Lessee shall remove all signs and sign hardware upon termination or expiration of this Lease and restore the sign location to its former state, unless the Port elects to retain all or any portion of the signage.

4.4 No Liens

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent to the Premises. Lessee shall not suffer or permit any liens to attach to all or any part of the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or anyone occupying or holding an interest of Lessee in all or any part of the improvements through or under Lessee. If any lien is filed against the Premises which Lessee wishes to protest, then Lessee shall promptly deposit cash with the Port, or procure a bond acceptable to the Port, in an amount sufficient to cover the cost of removing the lien from the Premises or file a bond or deposit money and cause the Premises to be freed of the lien pursuant to ORS 87.076 et. seq. Notwithstanding any notice and cure periods provided in Section 10.1, failure to remove the lien or furnish the cash or bond acceptable to the Port or to cause the Premises to be freed of the lien pursuant to ORS 87.076 et. seq. within thirty (30) days of receipt of notice of the lien shall constitute an Event of Default under this Lease and the Port shall automatically have the right, but not the obligation, to pay the lien off with no further notice to Lessee and Lessee shall immediately reimburse the Port for any sums so paid to remove any such lien. Except as provided herein, Lessee shall not encumber the Premises or any Lessee Improvements thereon without prior written approval of the Port, which may be withheld or conditioned in the Port's sole discretion.

4.5 Utilities and Services

The Port makes no representations or warranties regarding the availability and/or quality of utilities and other services available to the Property beyond of those provided under the specifications. Lessee shall have the opportunity to do a walkthrough and inspect the land. Lessee is responsible for verifying, obtaining and paying for all utility installations and connections and all utility services necessary for Lessee's operation. Lessee shall be responsible for paying all fees and charges imposed by the various utilities furnishing those services, including those paid for and apportioned by the Port. Fees shall include, but are not limited to, all installation and connection fees and charges and monthly or periodic fees and assessments charged by the utilities and by any governmental agencies having jurisdiction over the Premises. Before Lessee installs any other utility lines on, under, or above the Premises, Lessee must first obtain the Port's written approval to do so. Before approval is granted Lessee must provide the Port with a detailed survey showing the exact location of such lines, along with a precise metes and bounds description of the same. In no event shall the Port be obligated to use any of its powers to acquire easement or utility access for Lessee.

4.6 Safety Requirements

Lessee shall conduct its operations, activities and duties under this Lease in a safe manner and shall comply with all safety standards imposed by applicable Laws. Lessee shall ensure compliance with the same by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee pursuant to this Lease. Lessee shall comply with any safety rules adopted by the Port after thirty (30) days' notice of such adopted rules to Lessee, unless exigent circumstances require immediate compliance therewith.

4.7 Fire Safety

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and, to that end, shall provide and maintain such fire suppression and other fire protection equipment as may be required or appropriate for Lessee's use of the Premises pursuant to applicable Laws and the Port's fire insurance carrier for the purpose of protecting the Premises and restricting the spread of any fire from the Premises. Lessee shall comply with any fire safety rules adopted by the Port after thirty (30) days' notice of such adopted rules to Lessee, unless exigent circumstances require immediate compliance therewith.

4.8 Security

Lessee shall be fully responsible for security of the Premises and the Port shall have no responsibility or liability under this Lease for security of the Premises.

4.9 Waste, Removal and Demolition

Lessee shall not cause or permit any waste or damage, disfigurement or injury to the Premises or the Port Improvements. Subject to Section 8, Lessee shall not remove or demolish, in whole or in part, any Port Improvements on the Premises without the prior written approval of the Port, which the Port may condition upon the obligation of Lessee to replace the same by an equal or better Port Improvement or other improvement specified in such approval.

4.10 Maintenance

Lessee shall keep and maintain the Premises (including any buildings, all improvements, Lessee Improvements, systems, utilities and equipment) in good condition and shall carry out

preventive maintenance, repairs, and replacements necessary and appropriate to maintain such condition. The Port shall not be responsible for any maintenance of the Premises.

4.11 Conduct of Business

At all times during the Lease Term and any Extension Terms, Lessee shall be registered and in good standing to do business in Oregon. Lessee shall notify the Port of any cessation in operations that are expected to last more than eight (8) weeks and must continuously secure and maintain the Premises at all times during the Lease Term and any Extension Terms. In the event Lessee's cessation in operations lasts longer than eight (8) weeks, the Port shall have the right, but not the obligation, to terminate this Lease.

4.12 Local Contractor Consideration

In making any type of Port Improvements or Lessee Improvements, Lessee shall use best efforts to provide notice in the local area of such work, and to provide an equal opportunity for local businesses with appropriate certifications and qualifications to compete for such business opportunities or participate as a subcontractor in such work.

4.13 Quarterly Updates to Port Commission

Lessee agrees to provide quarterly updates to the Port of Columbia County Commission, to be mutually scheduled between the parties, beginning in November 2019 and continuing throughout the term of the Lease thereafter.

4.14 Cultural Resource Protection

Lessee shall not cause or permit any damage, disfigurement or injury to cultural resources at the Premises or the Port Improvements in violation of applicable law.

4.15 Construction Reclamation Bond

On or before the Project Approval Decision date, subject to Port staff review and approval, Lessee will establish a reclamation bond or other form of financial protection for financial reimbursement to re-establish the Premises to the pre-construction condition or such other condition acceptable to the Port. ("Construction Reclamation Bond"). Failure to establish the Construction Reclamation Bond will be considered an Event of Default by Lessee under this Lease.

Port and Lessee will cooperate to review the risk and adjust the Construction Reclamation Bond based on continuing construction and site improvement through the COD, at which point this requirement terminates.

4.16 Commercial Operations Reclamation Bond

On or before the COD, subject to Port staff review and approval, Lessee will establish a reclamation bond or other form of financial protection for financial reimbursement to re-establish the Premises to a condition acceptable to the Port. ("Commercial Operations Reclamation Bond") Failure to establish the Commercial Operations Reclamation Bond will be considered an Event of Default by Lessee under this Lease.

Port and Lessee will cooperate to review the risk and adjust the Commercial Operations Reclamation Bond. The Commercial Operations Reclamation Bond must provide continuous protection to the Port without lapse during the term of this Lease.

5. PORT AUTHORITY AND OBLIGATIONS

5.1 Quiet Enjoyment

Subject to Lessee performing all of Lessee's obligations under this Lease and subject to the Port's rights under this Lease and its rights of condemnation under Oregon law, Lessee's possession and quiet enjoyment of the Premises will otherwise not be disturbed by the Port or its officers, commissioners, agents, employees and contractors.

5.2 Delivery of Premises

Lessee shall have the right to possession of the Premises on the Effective Date. The Port shall have no liability to Lessee for any delay in delivering possession; however, all of Lessee's monetary obligations hereunder, including without limitation Lessee's obligation to pay Development Period or Basic Rent, will be abated, delayed and forever excused until possession is actually delivered to Lessee. Lessee shall have a right to terminate this Lease if possession is not delivered by Effective Date.

5.3 Condition of Premises

The Port makes no warranties, guarantees or averments regarding the condition of the Premises, including, without limitation, the suitability of the Premises for Lessee's intended uses or the availability of accessible utilities or roadways needed for Lessee's intended purposes, or zoning, development, or occupancy requirements. Lessee confirms that the Port or any agent of the Port has made no representation or warranty as to the Premises except as provided in this Lease. Prior to the Effective Date Lessee shall inspect the Premises and accept the Premises in "AS IS" condition, with all defects and conditions known and unknown, upon taking possession, including the United States Army Corps of Engineers 2014 Phase 1 Levee System Evaluation for National Flood Insurance Program Accreditation ("USACE Report"). The Port shall have no liability to Lessee and Lessee shall have no claim against the Port for any damage or injury caused by any condition of the Premises. Unless otherwise agreed to, in writing, by the Port, the Port shall have no responsibility to bring the Premises into compliance with any laws, including, without limitation, any building or occupancy codes. Lessee shall be solely responsible for thoroughly inspecting the Premises and ensuring that it is in compliance with all laws.

5.4 Port Construction and Repair Obligation on Premises

The Port shall have no responsibility for the repair or maintenance of the Premises or for construction of any roadways, utilities or any other improvements on or off of the Premises unless otherwise specifically provided in this Lease. Should the Port undertake any repair or maintenance work on the Premises, the Port shall have no liability for interference with Lessee's use of the Premises which might result from the Port's repair and maintenance efforts and no such efforts shall be construed as a constructive eviction or other eviction of Lessee. Notwithstanding the foregoing and to the extent allowed by law, the Port will be responsible to Lessee for any actual damages caused by the gross negligence or willful misconduct of the Port or any agent, employee or contractor of the Port who performs work which damages Lessee's Premises (but in no event for lost profits or consequential damages). Any repair of damage caused by negligence or breach of this Lease by Lessee, employees, agents, contractors or invitees, shall be Lessee's responsibility and shall be made at Lessee's sole expense.

5.5 Port and Third-Party Access

The Port shall have the right to enter upon the Premises for the purposes of: (a) confirming the performance by Lessee of all obligations under this Lease; and (b) doing any other act which the Port may be obligated or has the right to perform under this Lease. Such entry shall be made with reasonable advance written notice of at least twenty-four (24) hours and during normal business hours to Lessee, pursuant to the notice provisions of Section 18.4 except in cases of emergency. In an emergency, the Port shall have the right to use any and all means which the Port may deem reasonable to obtain entry onto the Premises or into any building located on the Premises without liability to Lessee. Lessee may have its representative, if such a representative is reasonably available, accompany the Port. If prior notice of an inspection is not provided under the circumstances set forth in this Section 5.5, the Port shall notify Lessee of the scope and findings of the inspection as soon as practicable after it occurs.

6. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE

6.1 Definitions

For the purposes of this Lease, the following definitions shall apply:

6.1.1 Environmental Laws

"**Environmental Laws**" shall include any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, ordinances and guidance documents now or hereafter in effect, as the same may be amended or recodified from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, pollutants, water, storm water, ground water, wellfield and wellhead protection, animals or plants, noise, or products and relate to the protection of health, natural resources, or the environment.

6.1.2 Hazardous Substance

"**Hazardous Substance**" shall include any and all substances defined or designated as hazardous, toxic, radioactive, dangerous wastes or materials or any other similar term in or under any applicable Environmental Laws. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum-derived products.

6.1.3 Environmental Audit

"**Environmental Audit**" means an environmental site assessment or compliance audit conducted of the Premises consistent with CERCLA Section 9601(35)(B), 42 U.S.C., 40 C.F.R. part 312, ORS 465.255(6), and any other applicable or relevant and appropriate assessment or auditing standard, including ASTM Standard E2107-00 Standard Practice for Environmental Regulatory Compliance Audits, or its successor, as the same may be amended or recodified from time to time.

6.1.3.1 Initial Environmental Audit

Lessee will have at its own cost the option of conducting an Environmental Audit assessment and work before the Effective Date. The Environmental Audit ("**Initial Audit**"), shall document the onsite environmental condition of the Premises as of the Effective Date. Lessee and the Port acknowledge that the Initial Audit may establish a presumption of conditions as of the Effective Date ("Baseline Conditions") and may be used to determine (but shall not be

completely determinative of Lessee's environmental liability or lack thereof in connection with the Premises.

6.1.3.2 Special Environmental Audit

If the Port, at any time during the term of the Lease or any extension thereof, has reason to suspect that there has been a Hazardous Substance Release or there is an imminent threat of a Hazardous Substance Release caused by Lessee, Lessee's employees, agents, contractors, licensees, or invitees (including occurring in connection with their occupancy, possession or use of the Premises), the Port may, after written communication of those reasons to Lessee, without limiting its other rights and remedies, conduct an Environmental Audit of the Premises ("**Special Audit**"). If the Special Audit confirms a Hazardous Substance Release which Lessee, Lessee's employees, agents, contractors, licensees, or invitees caused (including occurring in connection with their occupancy, possession or use of the Premises), then Lessee will be required to reimburse the Port for the reasonable costs of the Special Audit as an Environmental Cost. If no Material Violation is found, the Port will pay for the Special Audit.

6.1.3.3 Exit Environmental Audit

At the expiration or termination of this Lease, the Lessee will conduct, at Lessee's expense, an Environmental Audit ("**Exit Audit**") of the Premises and related property to determine: (i) the environmental condition of the Premises; (ii) whether any Hazardous Substance Release which Lessee, Lessee's employees, agents, contractors, licensees, or invitees caused (including occurring in connection with their occupancy, possession or use of the Premises) has occurred or exists on or about the Premises; and (iii) whether there is evidence of any violation of Environmental Laws or the environmental provisions of this Lease which Lessee, Lessee's employees, agents, contractors, licensees, or invitees caused (including occurring in connection with their occupancy, possession or use of the Premises). If Lessee fails to conduct an Exit Audit as required, Port has the option to conduct such Exit Audit at Lessee's expense. The Exit Audit shall be performed not more than sixty (60) days after the later of, (i) the Expiration Date of this Lease or (ii) the completion of the removal of any Lessee Improvements as required under this Lease. A complete copy of the results of the Exit Audit shall be provided to each party no later than 45 days after the Exit Audit is performed unless approved in writing by Port staff. In the event this Lease is terminated prior to the scheduled Expiration Date for any reason, Lessee may complete the Exit Audit within sixty (60) days of such actual termination date of this Lease. The Port shall have the right to approve the scope of and consultant for the Exit Audit, though such approval shall not be unreasonably withheld.

6.2 Environmental Inspection

The Port reserves the right, at any time and from time to time, after reasonable advance written notice to Lessee, of two (2) Business Days (as defined in this Section) or more (except that no notice to Lessee shall be required in the event the Port reasonably believes that there exists a condition constituting an imminent and substantial endangerment to human health or the environment) to inspect the Premises and Lessee's operations on and use of the Premises: (i) for the presence of or Lessee's management of Hazardous Substances not allowed under this Lease; (ii) for the purpose of sampling Lessee's storm water discharge; (iii) for compliance with Environmental Laws or the environmental provisions of this Lease; and (iv) to facilitate the Port's environmental management, permitting and analysis related to the Premises or any other premises of the Port. Lessee shall use commercially reasonable efforts to arrange these inspections on behalf

of the Port. The Port agrees to use commercially reasonable efforts to conduct such inspections in a manner that will minimize disruption to Lessee's use of the Premises. Lessee may have its representative, if such a representative is reasonably available; accompany the Port during an inspection authorized by Section 6.2. The Port shall notify Lessee of the scope and findings of the inspection as soon as practical after it occurs.

6.2.1 Environmental Cost

"**Environmental Cost**" shall include, but is not limited to, costs and damages arising from or relating to: (a) any actual or claimed violation of or noncompliance with any applicable Environmental Laws; (b) claims for damages, response costs, any audit costs, fines, fees or other relief relating to matters addressed in any applicable Environmental Laws; (c) injunctive relief relating to matters addressed in any applicable Environmental Laws; (d) Hazardous Substance Releases; and (e) violations of any environmental provisions of this Lease. "**Environmental Cost**" as used in this Section 6 and elsewhere in this Lease shall include but not be limited to: (i) costs of preliminary assessment, evaluation, testing, analysis, remedial investigation, feasibility study, removal, remedial action, disposal, monitoring and maintenance, natural resources injury assessment, restoration and compensation; (ii) the cost of decommissioning and removing any underground or aboveground storage tank(s); (iii) Port, Oregon Department of Environmental Quality ("**DEQ**"), United States Environmental Protection Agency ("**EPA**") and Natural Resource Trustees oversight costs related to violations of environmental laws; (iv) fees of attorneys, engineers, consultants, experts, and Port employees and costs, whether or not taxable as costs, incurred at, before or after trial, on appeal or petition for review, or in any bankruptcy or administrative proceedings; (v) lost revenue; and (vi) diminution of value, loss, or restriction on use of Premises, including diminution of value resulting from the residual risk associated with a risk based cleanup.

6.2.2 Hazardous Substance Release

"**Hazardous Substance Release**" shall include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters. However, Hazardous Substance Release excludes a release specifically authorized by a valid permit or authorization or a de minimis release of Hazardous Substances on an impervious surface that does not and will not likely, either individually or cumulatively with other releases of Hazardous Substances, come in contact with surface water contained in a river water body, or with groundwater, that is appropriately responded to under Environmental Laws and that is promptly reported to the Port under Section 6.8.

6.2.3 Best Management Practices

"**Best Management Practices**" shall mean those environmental or operational standards which are either: (a) applicable to a particular business or industry group as a matter of common and accepted practices; (b) adopted or articulated by any of the following: trade associations or professional associations for the particular business or industry group; the business or industry group's own standard operating procedures; or (c) practices specifically defined or identified for a particular business operation or industry group by regulatory agency guidelines.

6.2.4 UST Facility

"**UST Facility**" shall include underground storage tanks, underground piping, dispensers, related underground and aboveground structures and equipment, including without

limitation spill containment features and oil water separators, and the surrounding area used in connection with the operation, activity or purpose for which the entire system is designed, including without limitation the fueling of motor vehicles and the containment of Hazardous Substances or other materials. A UST Facility shall not include piping that is placed underground solely for purposes of a road crossing, railroad crossing, or similar crossing.

6.2.5 AST Facility

"**AST Facility**" shall include mobile storage tanks and aboveground storage tanks, aboveground piping, dispensers, related underground and aboveground structures and equipment, including without limitation spill containment features and oil water separators, and the surrounding area used in connection with the operation, activity or purpose for which the entire system is designed, including without limitation the fueling of motor vehicles and the containment of Hazardous Substances or other materials.

6.3 General Environmental Obligations of Lessee

Lessee shall manage and conduct all of its activities on or relating to the Premises: (a) in compliance with all applicable Environmental Laws and the environmental provisions of this Lease; (b) in reasonable cooperation with the Port (but at no significant additional cost to Lessee) in the Port's efforts to comply with applicable laws and regulations; and (c) in compliance with Best Management Practices applicable to Lessee's use of the Premises. Lessee shall manage and, as appropriate, secure the Premises and Lessee's occupation or use of the Premises so as to prevent any violation of law and regulations by any party.

6.4 Hazardous Substances Use on Premises

Lessee shall not use, store, handle, manage, generate, manufacture, dispose of, recycle, or process on the Premises any Hazardous Substances ("**Hazardous Substance Use**") except as provided in Section 6. Lessee shall maintain Safety Data Sheets ("**SDS Materials**") for each and every Hazardous Substance Use by Lessee, Lessee's agents, employees, contractors, licensees, invitees, to the extent required under Environmental Laws. In order to ensure that the SDS Materials are available to the Port in the event of a spill or other emergency, the SDS Materials shall be kept current at all times and a copy of the SDS Materials shall be kept in a place known to and easily accessible to the Port. Lessee shall dispose of all Hazardous Substances according to applicable Environmental Laws. Except as specifically allowed by state or federal discharge permits, Lessee shall not dispose of any Hazardous Substance, regardless of the quantity or concentration, into any storm or sanitary sewer systems within the Premises or on other Premises of the Port, to the ground, into surface water or groundwater. Whenever appropriate, Lessee shall strive to minimize Hazardous Substance Use and identify and use non-hazardous alternatives in Lessee's operations.

6.4.1 Permitted Use of Hazardous Substances

In accordance with Section 1.1 above, Lessee's permitted use of the Premises involves use, processing and production of Hazardous Substances. Lessee shall be permitted to store, handle, or use such quantities of Hazardous Substances as are necessary for the Lessee to conduct ongoing operations in accordance with, and as allowed under, all permits held by Lessee for use of Hazardous Substances. All storage and use of Hazardous Substances shall be in compliance with any Environmental Law and shall be limited to quantities necessary for the Lessee to conduct its business and operations (each such use a "**Permitted Use of Hazardous**

Substances"). Such Permitted Use of Hazardous Substances shall include the following: (a) Renewable fuel feedstocks including, but not limited to, used cooking oils, animal fats, animal tallows, white and yellow greases, trap and brown greases, virgin seed and vegetable oils and other feedstocks approved for use in renewable fuels by federal, state and local regulations (currently virgin palm oil is not an approved use); (b) renewable fuels produced from the renewable feedstocks including renewable diesel, renewable green jet fuel, renewable naphtha, and renewable liquid petroleum products; (c) chemicals and caustics used in the production and manufacturing process of the renewable fuels listed in 6.4.1(b); (d) Hazardous Substances contained in office, janitorial and landscape supplies and cleaning fluids of types and quantities ordinarily used for maintenance of the Premises; (e) petroleum products and lubricants fully contained in equipment, machinery and vehicles on the Premises; and (f) Hazardous Substances contained in equipment, machinery and materials used in the construction and installation of any improvements on the Premises, excluding any stockpiling of Hazardous Substances in connection with such construction or of Off-Site Waste-Like Materials (defined in Section 6.5) containing any Hazardous Substances.

Lessee's proposed Hazardous Substance Use falls into one or more of the following categories, (a) a conditionally exempt small quantity generator or small quantity generator of hazardous waste under the Resources Conservation and Recovery Act ("**RCRA**"); (b) requires an Operating Permit under either federal or state Clean Air laws; (c) requires a National Pollution Discharge Elimination System (NPDES) permit; (d) requires response planning or reporting under the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001-11050; (e) materials regulated under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA); and (f) other uses that could create a material risk to human health or the environment, including, but not limited to, uses that may result in explosion, evacuation, or imminent threat to the waterways, groundwater, land, or air (each such use under items (a) through (f) of this Section is an "**Approved Hazardous Substance Use**").

6.4.2 Port Review of Lessee's Proposed Hazardous Substance Use

Prior to the Commercial Operations Date, Lessee shall submit to the Port for Port staff review and approval, the following information, to include: (a) quantities and list of any Hazardous Substances proposed to be stored or used, along with the ability but not the requirement by Port staff or a designated consultant to sample or test any proposed Hazardous Substances; (b) SDS Materials on all the Hazardous Substances; (c) a description of the intended Hazardous Substance Use; and (d) a copy of any spill and containment plans, and/or management plans for the Hazardous Substance Use required by any local, regional, state or federal agencies under any applicable law ("**Lessee's Submittals**"). The Port shall notify Lessee of the Port's decision within twenty (20) Business Days of receipt of Lessee's Submittals. If any testing or sampling is necessary, the parties agree to work in good faith to complete the testing or sampling as quickly as possible. The Port review of the proposed Hazardous Substance Use shall consist of verifying that it is a Permitted Use of Hazardous Substances under Section 6.4.1 or is acceptable to the Port with conditions.

6.4.3 Port Review of Changes in Lessee's Proposed Hazardous Substance Use

If the Lessee proposes to make any material changes in its use of Hazardous Substances on the Premises, Lessee shall provide the Port updates to the information provided in

6.4.2 above in sufficient detail to allow Port staff to conduct a review and approve the proposed changes. The Port staff shall notify Lessee of the Port staff's decision within twenty (20) Business Days of receipt of Lessee's submittal of the additional information ("**Other HSU Notice**") and the rest of the provisions in this Section 6.4 shall apply. If the Port requests additional information or the proposed Hazardous Substance Use is complex, in the Port's reasonable opinion, the review period shall be extended by an additional ten (10) Business Days after the requested information has been provided. If the Port, in its reasonable discretion, deems it necessary to hire outside consultants to complete the review process due to the complexity of the proposed Hazardous Substance Use or lack of sufficient information for evaluation of the proposed use, Lessee shall bear the expense of such consultants and the time frame for review may be extended as the Port, in its reasonable discretion, deems necessary due to the complexity of the proposed use. If the Port fails to give Lessee such Other HSU Notice in writing within the time period, together with any applicable extensions, as provided under this Section, Lessee shall notify the Port in writing and the Port shall have an additional seven (7) days to send Lessee the Port's decision on the proposed Hazardous Substance Use. If the Port fails to provide such Other HSU Notice to Lessee within such additional seven (7) day period, the proposed Hazardous Substance Use shall be deemed acceptable to the Port, provided, however, in no event shall the Port's failure to respond constitute an approval of any term that violates Environmental Laws or other applicable laws and regulations or any provision of this Lease.

6.4.4 Conditions of Hazardous Substance Use Approval

If Port approval is required under this Lease for a proposed Hazardous Substance Use, the conditions of Port approval for such proposed Hazardous Substance Use may include, but not be limited to, requiring Lessee to do one or more of the following: (a) secure additional or increased pollution control insurance or meet other insurance requirements; (b) accept limits or restrictions on the Hazardous Substance Use to assure compatibility with area uses or with any AST or MST Tank Agreement; (c) prepare and submit for Port approval a Spill Prevention, Control and Countermeasures Plan for the Hazardous Substance Use; and (d) submit to the Port copies of any reports or notifications to any regulatory agency relating to the Hazardous Substance Use prior to or at the beginning of the Hazardous Substance Use and periodically throughout the Lease Term.

6.4.5 Discharge and Treatment of Industrial Wastewater

No industrial wastewater discharge shall be made by Lessee into the ground, any surface waters, other body of water, or any Port-owned conveyance or storage system unless such discharge meets the requirements of all applicable laws and regulations. The Port shall have the right, but not the duty, in its sole discretion, to review and approve or disapprove any industrial wastewater management, treatment or discharge system constructed or modified by or on behalf of Lessee on the Premises during the term of this Lease.

6.5 Off-Site Waste-Like Materials

Lessee shall not allow any person to store, manage, treat, deposit, place or dispose of slag, debris, recycled concrete, recycled asphalt, construction or demolition debris, wood waste, dredged material, Hazardous Substance-contaminated material, or other wastes from off of the Premises ("**Off-Site Waste-Like Materials**") on the Premises without the prior written approval of the Port, which approval may be granted, conditioned or denied in the Port's sole discretion. In the event that the Port in its sole discretion is not satisfied with the origin and likely contents of such Off-Site Waste-Like Materials, the Port may require Lessee, at Lessee's cost, to test such

materials to ensure that, in the Port's sole opinion, such materials contain no unacceptable levels of Hazardous Substances.

6.6 Lessee's Liability

6.6.1 Hazardous Substance Releases

Except as provided in Section 6.6.2, Lessee shall be responsible for any Hazardous Substance Release occurring on the Premises or emanating and originating from the Premises onto or into other properties, or in the air or in adjacent or nearby waterways (including ground water) and any Environmental Cost resulting therefrom, which results from or occurs in connection with Lessee's occupancy, use or possession of the Premises (including acts of uninvited third parties who cause a Hazardous Substance Release to occur on the Premises) (a) occurring at any time during the Lease Term or extension thereof; (b) occurring at any time during any holdover period; or (c) occurring during the Lease Term or extension thereof and continuing after the Lease Term or extension thereof (the "**Triggering Environmental Event**").

6.6.2 Limitation of Lessee's Liability

Notwithstanding anything to the contrary provided in Section 6.6 of this Lease, Lessee shall have no responsibility or liability for any Triggering Environmental Event that: (a) existed on the Premises prior to the Effective Date of this Lease (except if caused by Lessee or Lessee's agents, employees or contractors); (b) is caused by the Port or its agents, employees or contractors after the Effective Date of this Lease; (c) results exclusively from a Hazardous Substance Release that constitutes a contiguous properties situation, as defined in 42 U.S.C.A. § 9607(q) or similar state law, involving a release that occurred from an off-site location not owned, operated, leased or otherwise controlled by Lessee, and migrated onto the Premises; or (d) first occurred after Lessee's vacation of the Premises. The Port shall be responsible, to the extent required by law, for any Triggering Environmental Event caused by the Port, its agents, employees, contractors, or other tenants whether occurring before or after the Effective Date of this Lease.

6.7 Environmental Remediation

6.7.1 Immediate Response

In the event of a violation of applicable Environmental Laws for which Lessee is responsible under this Lease, a violation of an environmental provision of this Lease for which Lessee is responsible under this Lease, a Hazardous Substance Release for which Lessee is responsible under this Lease, or the threat of or reasonable suspicion of a Hazardous Substance Release for which Lessee is responsible under this Lease, Lessee shall immediately undertake and diligently pursue all acts necessary or appropriate to do the following: (a) eliminate the threat or reasonable suspicion of such Hazardous Substance Release; (b) correct the violation of Environmental Laws or of environmental provisions of this Lease; and/or (c) investigate, contain, stop, and accomplish source control (if the source is on the Premises) for, Hazardous Substance Releases for which Lessee is responsible under this Lease and remove such Hazardous Substance Releases to the extent required by Environmental Laws and consistent with the permanent remediation requirements of Section 6.7.2. If the source is off the Premises, Lessee will immediately notify the Port upon becoming aware of the Hazardous Substance Release.

6.7.2 Remediation

Lessee shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release for which Lessee is responsible under this Lease is permanently remediated and that any violation of any applicable Environmental Laws for which Lessee is responsible under this Lease or any violation by Lessee of an environmental provision of this Lease is corrected. In addition, with respect to any Hazardous Substance Release for which Lessee is responsible under this Lease, Lessee shall restore the Premises or other affected Premises or water to such condition that: (a) a determination of "**No Further Action**" which may include conditions, has been obtained from the Oregon DEQ or other pertinent authority such as the EPA, or site closure acceptable to the Port in its sole discretion; (b) no ongoing monitoring of Hazardous Substances on the Premises is required under applicable Environmental Laws unless approved by the Port and at the sole cost of Lessee; (c) no Hazardous Substances are left in place and capped with either soil or other material; and (d) there are no restrictions or institutional controls under applicable Environmental Laws on the use or development of the Premises other than those consistent with current and reasonably anticipated future land uses at the Premises and surrounding properties. Nothing in Section 6.7.2 shall require Lessee to remediate any Hazardous Substance Release for which Lessee is not responsible under Section 6.6.1 or for which Lessee's liability is limited as provided in Section 6.6.2.

6.7.3 Natural Resources Damages Assessment and Restoration

Lessee shall promptly undertake, at Lessee's sole expense, all actions necessary to ensure that any natural resources and damages associated with the violation of Environmental Laws on or associated with the Premises for which Lessee is responsible under this Lease, and the environmental provisions of this Lease or any Hazardous Substance Release by Lessee, contractors, invitees, agents, or employees, is investigated, determined, quantified, assessed, and permanently restored and compensated for, such that a final resolution, settlement, or "No Further Action" determination is obtained from all involved natural resources trustees with jurisdiction over the Hazardous Substance Release.

6.7.4 Report to the Port

Within thirty (30) days following completion of any assessment, investigation, feasibility study, containment, removal, or remedial action required by this Lease, Lessee shall provide the Port with a written report outlining, in detail, what has been done and the results thereof.

6.7.5 Port's Approval Rights

Except in the case of an emergency or an agency order requiring immediate action, Lessee shall give the Port advance notice before beginning any investigatory, remediation or removal procedures. The Port shall have the right to approve or disapprove (which approval shall not be unreasonably withheld, conditioned or delayed) the proposed investigatory, remediation and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Lease or by applicable Environmental Laws, whether on the Premises or on any affected Premises or water. The Port will have the right to require Lessee to request oversight from the DEQ or other pertinent authority such as the EPA or to require Lessee to participate under an agreement in DEQ's voluntary cleanup program, if applicable, regarding any

investigatory, containment, remediation and removal activities or require Lessee to seek a formal determination from DEQ of No Further Action or site closure.

6.8 Notice

Lessee shall promptly notify the Port upon becoming aware of: (a) a violation or alleged violation of any applicable Environmental Laws related to the Premises or to Lessee's occupation or use of the Premises or any environmental provision of this Lease; and (b) any Hazardous Substance Release on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same. If Lessee fails to notify the Port of a matter as required in Section 6.8, and if the Port does not otherwise acquire knowledge of the matter, Lessee shall be liable for any aggravation of a Hazardous Substance Release that could reasonably have been avoided if such notification by Lessee had been provided.

6.9 Split Sampling

Except in the case of an emergency or an agency order requiring immediate action, Lessee shall notify the Port at least forty-eight (48) hours in advance of any proposed sampling associated with a Hazardous Substance Release in order to allow the Port to be present or to collect duplicate (or "split") samples so that the Port may conduct its own analysis. Lessee shall provide the Port with copies of any sampling results and associated chain-of-custody and quality assurance and quality control information within ten (10) days of request by the Port.

6.10 Port's Right to Perform on Behalf of Lessee

In the event Lessee is in default of any of its obligations under this Section 6 or any Environmental Laws, the Port shall have the right, after written notice to Lessee and a period of thirty (30) Business Days provided for Lessee to cure and to perform such obligations and charge Lessee all resulting Environmental Cost, together with interest at the Delinquency Rate, from the date the expense is incurred by the Port until the date paid. The Port may not commence performance on behalf of Lessee under Section 6.10 if, during the thirty (30) day period, Lessee promptly begins and diligently pursues to completion the performance of the obligations set forth in the Port's notice. Notwithstanding the foregoing, in the event the Port determines that an emergency exists and Lessee is either unwilling or unavailable to take immediate and appropriate action, the Port may take commercially reasonable action, and charge Lessee all resulting Environmental Cost from the date the expense is incurred by the Port until the date paid. If such Environmental Cost is not reimbursed within thirty (30) days of written demand, the Delinquency Charge will be imposed retroactive to the date the Environmental Cost was incurred. The Port agrees to make a good faith effort to attempt to notify Lessee before beginning any clean-up operation.

7. INDEMNITY, INSURANCE

7.1 Lessee's General Indemnity; Reimbursement of Damages

Lessee agrees to defend (using legal counsel reasonably acceptable to the Port), indemnify, and hold harmless the Port from and against and reimburse the Port for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, Environmental Cost and/or penalties (collectively "Costs") which may be imposed upon, claimed against or incurred or suffered by the Port and which, in whole or in part, directly or indirectly, arise from the following, unless exclusively

resulting from the Port's gross negligence or willful misconduct: (a) any act, omission or negligence of Lessee; (b) any use, occupation, management or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not the resulting damage occurs on the Premises; (c) any condition created in or on the Premises by any party (other than the Port), including without limitation any accident, injury or damage occurring in or on the Premises after the Effective Date; (d) any Triggering Environmental Event for which Lessee is responsible under this Lease, including without limitation any injury or damage occurring therefrom; and (e) any breach, violation or nonperformance of any of Lessee's obligations under this Lease. For purposes of this Section 7.1 (a) through (e), Lessee shall be deemed to include Lessee and Lessee's partners, officers, directors, employees, agents, invitees, suppliers, subcontractors and contractors, and the Port shall mean the Port, its commissioners, directors, agents, employees and volunteers. Neither Lessee's partners, officers, directors, employees, and agents nor the Port's commissioners, directors, agents and employees shall be held personally liable under the provisions of this Section 7.1.

7.2 Insurance Requirements

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements:

7.2.1 Certificates; Notice of Cancellation

Prior to the Effective Date/Project Approval Decision Date, and at all times thereafter during the Lease Term (and any extension thereof), but in any event and all times prior to Lessee being allowed on the Premises, Lessee shall provide the Port with current certificates of insurance, including a copy of the additional insured endorsement required in Section 7.2.2, executed by a duly authorized representative of each insurer, evidencing the existence of all insurance policies required under Section 7. The Port shall receive at least thirty (30) days' written notice prior to cancellation, non-renewal, or material change in any policy required under Section 7. Insurance must be maintained without any lapse in coverage during the Lease Term. The Port shall also be given copies of Lessee's policies of insurance, upon request. Failure of the Port to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Port to identify any deficiency or noncompliance with coverage requirements shall not be construed as a waiver of Lessee's obligation to maintain the insurance required by this Lease.

7.2.2 Additional Insured; Separation of Insureds

The Port shall be named as an additional insured in each general liability policy, other than employer's liability. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices ("ISO") or a successor organization.

7.2.3 Primary Coverage

The required policies shall provide that the coverage is primary and will not seek any contribution from any insurance or self-insurance carried by the Port.

7.2.4 Company Ratings

All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent. The Port may, upon ninety (90) days' written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A-" rating.

7.2.5 Deductibles and Retentions

Any deductible or self-insured retention of the per-occurrence or per-accident limit of a required policy in excess of the following is subject to approval by the Port: three percent (3%) of the insured value for earthquake with ONE HUNDRED THOUSAND DOLLARS (\$100,000) minimum per occurrence; ONE HUNDRED THOUSAND DOLLARS (\$100,000) for flood and pollution; and FIFTY THOUSAND DOLLARS (\$50,000) for any other coverage required in Section 7.

7.3 Required Insurance

On or before the Project Approval Decision, but in any event and at all times prior to Lessee being allowed on the Premises, Lessee shall provide and maintain the following types of coverage:

7.3.1 General Liability Insurance

Lessee shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence.

7.3.2 Property Insurance

Lessee shall throughout the Lease Term keep the Premises and all other structures and buildings which are owned by Lessee on the Premises insured against loss by fire and other hazards by such policies as determined by the Port. The amount of the insurance shall be equal to the full insurable replacement cost of the structures and buildings and all other Improvements located on the Premises. If the coverage is available and commercially appropriate, the policy or policies must insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any applicable requirements requiring the upgrading, demolition, reconstruction, or replacement of any portion of the Property as the result of a covered loss. Lessee shall bear the expense of any insurance insuring the property of Lessee on the Premises against such risks.

7.3.3 Automobile Liability Insurance

In the event that automobiles are used in connection with Lessee's business or operations at the Premises, Lessee shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to Premises, including loss of use thereof, and occurring in any way related to the use, loading or unloading of any of Lessee's automobiles (including owned, hired and non-owned vehicles) on and around the Premises. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) each accident.

7.3.4 Workers' Compensation Insurance

Lessee, Lessee's contractors and subcontractors shall all maintain in force Workers' Compensation insurance in accordance with all requirements of Oregon law. Lessee shall also maintain employer's liability coverage in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) per accident and ONE MILLION DOLLARS (\$1,000,000) per employee for disease. In lieu of such insurance, Lessee may maintain a self-insurance program meeting the requirements of the State of Oregon and a policy of excess workers' compensation and employer's liability insurance.

7.3.5 Pollution Liability Insurance

Lessee shall provide and maintain Pollution Liability Insurance for bodily injury and property damage carrying limits of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence or per claim, and in the aggregate.

7.3.6 Personal Property Insurance

Lessee will be responsible to insure all Lessee's own Personal Property on the Premises.

7.3.7 Lessee's Risks

Lessee shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) personal property, and/or (b) automobile physical damage and/or theft. In no event shall the Port be liable for any: (i) business interruption or other consequential loss sustained by Lessee; (ii) damage to, or loss of, personal property; or (iii) damage to, or loss of, an automobile, whether or not such loss is insured, even if such loss is caused by the negligence of the Port.

7.4 Waiver of Subrogation

Lessee waives any right of action that it and/or its insurance carrier(s) might have against the Port (including the Port's commissioners, employees and agents) for any loss, cost, damage, or expense (collectively "Loss") covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Lease. Lessee also waives any right of action it and/or its insurance carrier(s) might have against the Port (including the Port's commissioners, employees and agents) for any Loss to the extent such Loss is a property loss covered under any applicable automobile liability policy or policies required by this Lease. If any of Lessee's applicable insurance policies does not allow the insured to waive the insurer's rights of recovery prior to a Loss, Lessee shall cause such policies to be endorsed to allow the waivers of subrogation required by Section 7.4.

7.5 Periodic Review

The Port shall have the right to periodically review, including at the beginning of each Extension Term, the types, minimum coverage, limits and terms of insurance coverage for consistency with then current types, minimum coverage, limits and terms of insurance coverage for similar operations. If the Port determines that certain types of insurance are not generally available in the marketplace at reasonable terms and pricing for similar operations, Lessee shall not be required to carry such insurance until such insurance becomes available for similar operations. In the event the Port reasonably determines that such types, minimum coverage, limits,

and/or terms should be changed to be consistent with then current types, minimum coverage, limits and terms of insurance coverage generally available in the marketplace at reasonable terms and pricing for similar operations, the Port will give Lessee a minimum of ninety (90) days' notice of such determination and Lessee shall modify its coverage to comply with the new insurance requirements of the Port. Lessee shall also provide the Port with proof of such compliance by giving the Port an updated certificate of insurance within fifteen (15) calendar days of Lessee's receipt of such updates. Lessee shall have the right to periodically request the Port to conduct a review of the then current types, minimum coverage, limits and terms of insurance coverage generally available in the marketplace at reasonable terms and pricing for similar operations if Lessee believes the current types, minimum coverage, limits and terms of insurance coverage generally available in the marketplace at reasonable terms and pricing for similar operations have changed. The Port shall reasonably consider such request to determine if Lessee's current coverage comports with what is generally available in the marketplace at reasonable terms and pricing for similar operations and make changes to the insurance requirements under this Lease accordingly.

7.6 Survival of Indemnities

The indemnity agreements set forth in this Section 7 shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

8 DAMAGE AND DESTRUCTION

8.1 General

Lessee shall promptly notify the Port of damage or destruction to any Port or Lessee Improvements located on the Premises ("**Casualty**"). The Port reserves the right to make proof of loss to the insurance carrier in the event Lessee fails to do so within thirty (30) days of any Casualty. Lessee shall fully cooperate with the Port and the Port's insurance carrier in connection with any Casualty.

8.2 Restoration

In the event of any Casualty, Lessee shall cooperate with the Port in the restoration and/or replacement of the damaged Port or Lessee Improvements and damage to the Premises. If Lessee intends not to operate on the Premises for any period of time following a Casualty, Lessee must take appropriate measures to secure the Premises during any period of such non-use and to prevent unauthorized parking or other unauthorized uses on the Premises.

8.3 Termination of Lease Following Casualty

8.3.1 Right to Terminate

In lieu of repairing, restoring or replacing damaged Improvements or damage to the Premises and allowing this Lease to continue, Lessee may elect to terminate this Lease in the event of a Casualty in which over 50 % of the Premises are destroyed by written notice to the Port given within ninety (90) days after the date of the Casualty, provided that prior to such termination Lessee must first remove and properly dispose of damaged Improvements and other Improvements as provided in Section 9; restore the Premises by thoroughly removing all debris and surface Improvements; regrade the Premises to a rough grade condition and plant with grass or other ground cover acceptable to the Port; remove all foundations, vaults, tanks and other underground Improvements; remove all utilities; and remediate any environmental damage for which Lessee is responsible under this Lease in accordance with the standard provided in Section 6.7, and

otherwise meet with all termination requirements under this Lease including without limitation the requirements in Section 9. All removal and restoration provided in this Section and all other termination obligations under this Lease shall be completed no later than three-hundred sixty (360) days from the termination date set forth in Lessee's written termination notice to the Port of Lessee's election to terminate. Notwithstanding the foregoing, if Lessee reasonably requires additional time to perform the requirements of the preceding sentence, Lessee shall notify the Port and, provided that Lessee has been diligently pursuing the restoration following the date of Casualty and can demonstrate that such additional time is reasonably required, the termination date shall be extended by a time period determined by the Port in its reasonable discretion, but in no event shall such termination date as extended exceed the earlier of (a) five-hundred forty (540) days after the date of the Casualty; or (b) the Expiration Date. If Lessee does not elect to terminate under the provisions of this Section, Lessee shall be obligated to rebuild the Improvements. In such event, the Port will oversee the reconstruction of the Port Improvements and expend the insurance proceeds to complete any such restoration, and Lessee will oversee the rebuild of the Lessee Improvements, provided that Lessee agrees to safeguards reasonably required by the Port to assure that the work is completed in a timely fashion and according to plans approved by the Port.

8.3.2 Effect of Election to Terminate

In the event that Lessee elects to terminate under this Section, this Lease shall terminate as soon as Lessee has removed all liens and encumbrances affecting the Premises (other than those created by the Port or already existing at the Effective Day of this Lease) and has satisfied all obligations arising upon expiration or termination of this Lease, including but not limited to the obligations set forth in this Section and in Section 9. In the event of such termination, Lessee shall be responsible for payment of all Taxes due and owing through the end of the then-current Tax Year.

8.3.3 No Election to Terminate

If Lessee does not give the Port notice of its election to terminate this Lease under this Section within the required time period, Lessee will be conclusively deemed to have elected to promptly restore and/or replace the Improvements and this Lease will remain in full force and effect.

8.4 Funds to Restore; Restoration Standards

If Lessee elects to restore or replace the damaged Premises in lieu of terminating the Lease, insurance proceeds shall be used by Lessee to promptly restore the damaged Premises. All costs and expenses of restoration of the Premises shall be paid by Lessee, whether or not the insurance proceeds are sufficient to accomplish such restoration. Any restoration, rebuilding, repair and cleanup shall be at Lessee's expense and shall comply with all provisions of this Lease.

If any building or structure should be totally destroyed by fire, earthquake or other casualty, or if it should be so damaged thereby that rebuilding or repairs cannot in the Lessee's estimation be completed within two (2) years after the date upon which the Port is notified by Lessee of such damage, this Lease shall terminate, at Lessee's option, and the Basic Rent shall be abated during the unexpired portion of this Lease, effective upon the date of the occurrence of such damage. The Lessee shall give notice to Port in writing of its determination to complete the restoration or terminate this Lease within ninety (90) days following the date of the occurrence of such damage.

If Lessee elects to restore or replace the Improvements, then the Basic Rent shall continue during the restore and rebuild period.

9 TERMINATION

9.1 Duties of Termination

Upon the Expiration Date or earlier termination of this Lease for any reason, Lessee shall complete all of Lessee's obligations under this Lease, including, but not limited to, meeting all of Lessee's environmental requirements under Section 6 (including without limitation the payment of all Environmental Costs for which Lessee is responsible under this Lease), delivering to the Port all keys and all manuals, warranties and other information in Lessee's possession relating to any of the improvements and surrendering the Premises and all improvements in good clean condition, reasonable wear and tear excepted (subject to the requirement to remove the improvements as set forth in this Lease). All Lessee Improvements shall, at the Port's sole option, be deemed Port Premises (including any buildings constructed on the Premises) and shall not be removed unless the Port directs Lessee to remove such Lessee Improvements, in which case Lessee shall remove the Lessee Improvements and then restore the Premises. All repairs or removals for which Lessee is responsible shall be completed at Lessee's cost within two (2) years from the date of termination. Except in the event of early termination pursuant to the terms of this Lease, the Port shall give Lessee written notice not later than one-hundred eighty (180) days prior to the end of the initial Lease Term or the then current Extension Term ("**Removal Notice**") of the Port's election to have Lessee remove some or all of the Lessee Improvements. If the Port fails to timely provide such Removal Notice, such failure shall not be deemed a Default under this Lease and Lessee's obligation to remove the Lessee Improvements, if desired by the Port, shall not be extinguished; however, the date upon which the Lessee Improvements must be removed and any damage to the Premises repaired by Lessee shall be extended by the number of days the Removal Notice was late. If the Lessee Improvements are damaged after the Port has indicated in its Removal Notice that the improvements could remain, the Port may elect, in its sole discretion, to require Lessee to remove the Lessee Improvements and restore the Premises.

10 DEFAULT

10.1 Event of Default

The occurrence of any of the following shall constitute an "**Event of Default**" (also referred to as a "**Default**").

10.1.1 Default of Monetary Obligations

An Event of Default shall occur if Lessee fails to pay any monetary obligation required under this Lease and such failure to pay is not cured within ten (10) days after written notice to Lessee by the Port, except that a failure to pay Basic Rent must be cured within ten (10) days of its due date without notice from the Port. Any default by either party under the terms of the SDOA will also be considered an Event of Default under this Lease.

10.1.2 Default in Covenants

An Event of Default shall occur if Lessee violates any term, covenant or condition of this Lease or the SDOA (other than as provided in Sections 10.1.1 and 10.2.3) and such violation is not cured within thirty (30) days after written notice to Lessee by the Port describing the nature

of the violation. If the violation is of such a nature that it cannot be completely cured within the thirty (30) day period, this provision shall be complied with if Lessee begins diligent correction of the violation within such thirty (30) day period and, thereafter, proceeds in good faith and with all due diligence to effect the cure as soon as reasonably possible. If Lessee violates the same provision of this Lease more than three (3) times in any calendar year, then the Port may declare an immediate Event of Default for which no opportunity to cure need be given, except as provided in Section 10.2.1.

10.1.3 Bankruptcy/Insolvency

The Insolvency of Lessee shall be an immediate Event of Default for which no notice or opportunity to cure need be given. For the purposes of this Lease, and to the extent permitted by the United States Bankruptcy Code, "**Insolvency**" shall mean: (a) an assignment by Lessee for the benefit of creditors; (b) the filing by Lessee of a voluntary petition in bankruptcy; (c) dissolution of Lessee; (d) the appointment of a receiver of the properties of Lessee and failure of Lessee to secure discharge of the receiver within ninety (90) days; (e) the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within ninety (90) days after filing; and (f) attachment of, or the levying of execution on, the leasehold interest and failure of Lessee to secure discharge of the attachment, or release of the levy of execution, within ninety (90) days.

10.2 Remedies on Event of Default

Immediately upon the occurrence of an Event of Default, the Port may, at its option, exercise any of the following rights and remedies, in addition to any other rights and remedies provided elsewhere in this Lease or otherwise at law or in equity.

10.2.1 Termination of Lease

The Port may terminate this Lease and Lessee's right to possession of the Premises. However, the Port shall provide Lessee with an additional ninety (90) days' prior written notice of the Port's intention to terminate this Lease for an Event of Default, during which time period Lessee shall have another opportunity to fully cure the Default and avoid termination even though an Event of Default has already occurred. If Lessee fails to fully cure the Default within ninety (90) day notice period, provided under this Section 10.2.1, the Port may automatically terminate this Lease and Lessee's right to possession of the Premises with no additional notice. No other extensions of time will be granted, and no partial cure shall be accepted.

10.2.2 Re-Entry

Either with or without terminating this Lease or accepting surrender, the Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or as otherwise permitted by applicable law, without being liable for indictment, prosecution or damages therefor, and may repossess the Premises and remove any person or Premises therefrom, to the end that the Port may have, hold and enjoy the Premises.

10.2.3 Reletting

Following such re-entry either with or without acceptance of surrender, the Port may relet the whole or any part of the Premises from time to time, either in the name of the Port or otherwise, to such Lessees, for such terms ending before, on or after the Expiration Date of this Lease and upon such conditions as the Port may determine to be appropriate. Acts of

maintenance, preservation or efforts to relet the Premises, or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease, shall not constitute a termination of the Lease or an acceptance of surrender of the Lease. The Port, at its option, may make such physical changes to the Premises as the Port, in its discretion, considers advisable and necessary in connection with any such reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.

10.2.4 Right to Sue More than Once

The Port may sue periodically to recover damages and no action for damages shall bar a later action for damages subsequently accruing.

10.3 No Waiver of Default

No failure by the Port to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, shall be waived, altered, or modified, except by a written instrument executed by the Port. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

10.4 Remedies Cumulative and Nonexclusive

Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease, or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

10.5 Curing Lessee's Default

If Lessee fails to perform any of Lessee's obligations under this Lease, and such failure becomes an Event of Default, the Port, without waiving such failure, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, with whatever notice is reasonably possible, if any, in a case of emergency, and in any other cases, only if such failure to begin cure or diligently pursue cure continues after the expiration of thirty (30) days from the date the Port gives Lessee notice of the failure. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port except to the extent caused by the gross negligence or willful misconduct of the Port, its agents, employees and contractors (but in no event for lost profits or consequential damages). Lessee agrees to reimburse the Port, upon demand, any amounts the Port spends in curing Lessee's Default.

10.6 Administrative Costs

If the Port gives Lessee one (1) written notice of a violation of a specific provision of this Lease and Lessee violates the same provision again during any twelve (12) month period of the Lease Term, in addition to all other rights and remedies set forth herein, Lessee agrees to reimburse the Port for its reasonable administrative costs incurred as a result of any notice of any subsequent violation. Failure by Lessee to pay such costs shall be deemed an Event of Default.

10.7 Default by Port

In the event of any Default by the Port, prior to being entitled to maintain any action, Lessee shall give the Port written notice specifying such Default with particularity, and the Port shall have thirty (30) days within which to cure any such Default, or if such Default is non-monetary and cannot reasonably be cured within thirty (30) days, the Port shall then be deemed in compliance with this provision so long as it begins the cure within the thirty (30) day period and diligently pursues the cure to completion. Unless and until the Port fails to so cure such Default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of the Port hereunder shall be construed as covenants, not conditions, and all such obligations shall be binding upon the Port only during the period of its ownership of the Premises and not thereafter.

11 TRANSFER BY THE PORT

At any time after the Effective Date of this Lease, the Port shall have the right to transfer its interest in the Premises or in this Lease. In the event of such a transfer, Lessee shall attorn to said transferee and recognize transferee as the new lessor under the Lease. Thereafter, the Port shall be relieved, upon notification to Lessee of the name and address of the Port's successor, of any obligations accruing from and after the date of the transfer so long as the transferee agrees to assume all obligations of the Port under this Lease.

12 TRANSFERS BY LESSEE

12.1 Transfers to Affiliate: Port Staff Review and Approval

Lessee may transfer all or any parts of this Lease or the Lessee Improvements (“**Leasehold Estate**”) to any entity that Lessee controls, directly or indirectly, is under common control with, or is controlled by the Lessee (“**Affiliate**”) by providing prior written notice to the Port for review and approval by Port staff. Lessee shall promptly notify Port of any such proposed transfer and take no further action until such time as Port staff complete their review and approval process, such approval not to be unreasonably denied or withheld. Any such review is not required to be taken before the Port of Columbia County Commission. Any such Affiliate shall assume all obligations and liabilities of the Lessee under this Lease. From and after Lessee’s assignment of this Lease and assumption of this Lease by Affiliate, Lessee shall be relieved, released and discharged from any obligation or liability under this Lease accruing after the date of such Transfer. If Lessee transfers this Lease, then as between Port and Lessee, Lessee shall be deemed to have transferred to the Affiliate all claims against Port then existing, together with all liabilities and obligations of Lessee then existing or thereafter arising under this Lease (except as otherwise expressly provided in this Lease).

12.2 Change of Control Transfers: Port Commission Review and Approval

Lessee may transfer all or any parts of the Leasehold Estate to any non-affiliated entity (“**Change of Control**”) by providing prior written notice to the Port for Port staff review and approval. “**Change of Control**” means a transfer of control to a person, entity or group of persons or entities acting in concert which has acquired, directly or indirectly, control over all or any parts of the Leasehold Estate and such person, entity or group of persons or entities was not already the ultimate controlling party (“**Transferee**”). Lessee shall promptly notify Port of

any such proposed Change of Control and take no further action until such time as the Port of Columbia County Commission approves the Change of Control by majority vote at a regularly scheduled meeting. From and after Lessee's assignment of this Lease and assumption of this Lease by the Transferee, Lessee shall be relieved, released and discharged from any obligation or liability under this Lease accruing after the date of such transfer. If Lessee transfers this Lease after approval by majority vote of the Port of Columbia County Commission, then as between the Port and Lessee, any such Transferee shall assume all obligations and liabilities of the Lessee under this Lease. Lessee shall be deemed to have transferred to the Transferee all claims against Port then existing, together with all liabilities and obligations of Lessee then existing or thereafter arising under this Lease (except as otherwise expressly provided in this Lease).

Any transfer made to a Transferee without the consent by majority vote of the Port of Columbia County Commission as outlined herein shall be null, void, and of no valid legal force or effect.

13. LEASEHOLD MORTGAGES

13.1 Leasehold Mortgages: Port Commission Review and Approval

Notwithstanding anything in this Lease to the contrary, Lessee shall have the absolute and unconditional right, with Port's review and approval by a majority vote of the Port of Columbia County Commission, at any time and from time to time during the Term, to: (1) execute and deliver one or more Leasehold Mortgage(s) ("Leasehold Mortgage") encumbering the Leasehold Estate; (2) assign the Leasehold Estate to a Leasehold Mortgagee as collateral security; and (3) assign any or all of Lessee's rights under this Lease, including any options, to any Leasehold Mortgagee as collateral security. Lessee shall promptly notify Port of any such proposed Leasehold Mortgage and take no further action until such time as the Port of Columbia County Commission approves the Leasehold Mortgage by majority vote at a regularly scheduled meeting. There shall be no limit on the amount or nature of any obligation secured by a Leasehold Mortgage; the purpose for which the proceeds of any such financing may be applied; the nature or character of any Leasehold Mortgagee; the subsequent assignment, transfer, or hypothecation of any Leasehold Mortgage; or the creation of participation or syndication interests in or to any Leasehold Mortgage. Leasehold Mortgages may secure construction, permanent, purchase-money, multi-property, general corporate, or any other financing or obligations of any kind.

13.2 Required Provisions Leasehold Mortgages

Each Leasehold Mortgage shall contain, and shall be deemed to contain, the following provisions or their substantial equivalent. Such provisions reflect the definitions contained in this Lease. All such terms shall be deemed modified in the Leasehold Mortgage as appropriate to reflect the definitions in such Leasehold Mortgage:

- 1) This Leasehold Mortgage attaches solely to the Leasehold Estate and does not encumber the Port Estate. This Leasehold Mortgage is subject to all the terms and conditions of the Lease. Notwithstanding anything to the contrary in this Leasehold Mortgage, Leasehold Mortgagee shall have no right to receive any loss proceeds except to the extent (and

under the conditions) payable to Lessee or Leasehold Mortgagee under the Lease. No successor tenant shall have any rights under the Lease unless and until such successor tenant has executed, acknowledged, and delivered to Port an instrument, in recordable form, by which successor tenant assumes all obligations under the Lease (except as otherwise provided in the Lease), subject to all terms of the Lease, including terms that limit the liability of any tenant.

13.3 Port Holds Senior Position to Any Leasehold Mortgagee.

The parties agree and acknowledge that Port will continue to hold a senior position with respect to its rights under the Lease and will not, by virtue of this Section or any other provision of this Lease, subordinate its right under the Lease to those of any Leasehold Mortgagee or any other party. In other words, the rights of the Port will have priority and will prevail over those of any Leasehold Mortgagee in the event of a final and absolute default.

13.4 Property Damage.

With respect to property removed from the Leasehold Estate by any Leasehold Mortgagee, any such Leasehold Mortgagee shall repair all damage caused by the initial installation of, presence of, or removal of such property to either the Port Improvements, the Lessee Improvements, or the Leasehold Estate.

13.5 Effect of Leasehold Mortgages

Lessee's making of a Leasehold Mortgage shall not be deemed to constitute a Transfer of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under this Lease, be deemed to be an assignee, transferee, or mortgagee in possession of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume or otherwise be obligated to perform any of Lessee's obligations under this Sublease except when, and then only for so long as, such Leasehold Mortgagee has acquired ownership and possession of the Leasehold Estate subject to majority vote approval by the Port of Columbia County Commission at a regularly scheduled meeting, and, pursuant to a foreclosure under its Leasehold Mortgage (as distinct from its exercise of Leasehold Mortgagee's cure rights).

13.6 Modifications Required by Leasehold Mortgagees

If any actual or prospective Leasehold Mortgagee requires any reasonable, good faith modification(s) of this Lease, after majority vote approval by the Port of Columbia County Commission at a regularly scheduled meeting, then Port shall after such approval, promptly execute and deliver to Lessee such instruments in recordable form effecting such modification(s) as such actual or prospective Leasehold Mortgagee shall require, provided that such modification(s) do not modify the Rent, the Term, security or any other terms required to be provided under this Lease, and do not otherwise materially adversely affect Port's rights or materially increase Port's obligations under this Lease.

13.7 Further Assurances

Upon request by Lessee or by any existing or prospective Leasehold Mortgagee, Port shall deliver to the requesting party such documents and agreements as the requesting party shall reasonably request to further effectuate the intentions of the parties as set forth in this Lease, including a separate written instrument in recordable form signed and acknowledged by Port setting forth and confirming, directly for the benefit of specified Leasehold Mortgagee(s), any or all rights of Leasehold Mortgagees.

13.8 Foreclosure

Notwithstanding anything to the contrary in this Lease, any foreclosure under any Leasehold Mortgage, or any exercise of rights or remedies under or pursuant to any Leasehold Mortgage, including the appointment of a receiver, shall not in and of itself be deemed to violate this Lease or, in and of itself, entitle Port to exercise any rights or remedies, but the foregoing shall not limit Port's rights and remedies under this Lease in any respect.

13.9 Notice of Leasehold Mortgages

If Lessee enters into any Leasehold Mortgage that complies with the definition of such term, then the Leasehold Mortgagee under such Leasehold Mortgage shall be entitled to all mortgagee protections set forth in this Lease (as against both Port and any successor holder of the Port Estate) from and after such date as Lessee or the Leasehold Mortgagee has given Port Notice of such Leasehold Mortgage and Leasehold Mortgagee, accompanied by a copy of the Leasehold Mortgage, recorded or unrecorded. No change of address of such Leasehold Mortgagee, or assignment of such Leasehold Mortgage, shall be effective against Port unless and until such Leasehold Mortgagee shall have given Port Notice of such change or assignment.

13.10 Termination of Leasehold Mortgagee's Rights

If a Leasehold Mortgagee is entitled to mortgagee protections, then such entitlement shall not terminate unless and until such time, if any, as either (i) the Leasehold Mortgage shall have been satisfied and discharged of record, except through a foreclosure, (ii) such Leasehold Mortgagee has consented in writing to the termination of its mortgagee protections; or (iii) after Port has complied with all mortgagee protections, Port has validly terminated this Lease and no Leasehold Mortgagee has validly requested (and is entitled to) a New Lease, and the New Lease Option Period has expired, but the foregoing shall not limit Port's rights and remedies under this Lease in any respect.

13.11 Port's Acknowledgment of Leasehold Mortgagee's Rights

Subject to majority vote approval by the Port of Columbia County Commission as stated herein, Port shall, upon written request, acknowledge receipt of the name and address of any Leasehold Mortgagee (or proposed Leasehold Mortgagee) and confirm to such party that such party is or would be, upon closing of its loan to Lessee or its acquisition of an existing Leasehold Mortgage: (1) a Leasehold Mortgagee (in compliance with the definition of such term, including all applicable conditions and requirements set forth in such definition) entitled to all mortgagee protections and (2) an institutional lender, if applicable. Such acknowledgment shall, if

requested, be in recordable form, and may be recorded. If Port reasonably determines that any such acknowledgment requested by Lessee or any (proposed) Leasehold Mortgagee would be inaccurate, then Port shall promptly give Notice of such determination to Lessee and the (prospective) Leasehold Mortgagee or assignee, which Notice shall specify the reasonable basis for Port's determination.

13.12 Leasehold Mortgagee's Right to a New Lease

If, as the result of a condemnation, this Lease terminates before its stated expiration date (including renewal terms, except to the extent that Lessee, with Leasehold Mortgagee's consent, elects in accordance with this Lease not to exercise renewal options) for any reason (including a default or rejection in a bankruptcy proceeding affecting Lessee), but excluding a casualty termination or a termination, with Leasehold Mortgagee's consent, then (in addition to any other or previous Notice required to be given by Port to a Leasehold Mortgagee) Port shall, within thirty (30) Business Days, give Notice of such termination to each Leasehold Mortgagee. Upon a Leasehold Mortgagee's request given within the New Lease Option Period, Port shall enter into a New Lease with New Tenant, provided that such Leasehold Mortgagee shall, prior to the delivery of the New Lease: (1) pay to PORT any and all sums then due under this Lease as if this Lease had not been terminated; and (2) agree to cure all then-uncured nonmonetary defaults (other than Personal Defaults), prior to the delivery of the New Lease.

13.13 Leasehold Mortgagee's Requests

If requested by Lessee, subject to majority vote approval by the Port of Columbia County Commission at a regularly scheduled meeting, Port shall, within thirty (30) days of such Port approval, acknowledge in writing the recognition of any Leasehold Mortgagee including, without limitation, agreeing to (a) give notice of any default to the Leasehold Mortgagee, (b) accept performance by the Leasehold Mortgagee as if the same had been performed by Lessee, (c) permit the Leasehold Mortgagee to enter upon the Premises, or Dock for performance of Lessee's obligations and the exercise of the Leasehold Mortgagee's rights, (d) permit the Leasehold Mortgagee (or other acquirer of Lessee's interests) in the event of foreclosure of the Leasehold Mortgage, assignment in lieu of foreclosure or other means, to be the substituted Lessee with the express consent of Port, which consent shall not be unreasonably withheld under this Lease, (e) permit insurance proceeds resulting from a casualty and any award in connection with a condemnation or exercise of rights under eminent domain to be used first to repair or restore the damaged Improvements and the remainder to pay the debt owed to the Leasehold Mortgagee, (f) not amend this Lease or accept surrender of the Premises or Dock from Lessee without the prior written consent of the Leasehold Mortgagee and (g) any other provisions reasonably requested by the Leasehold Mortgagee so long as the provisions do not encumber Port's interest in this Lease or the Premises or the Dock but the foregoing shall not limit Port's rights and remedies under this Lease in any respect.

14 ASSIGNMENT OF INTEREST OR RIGHTS

Except for Transfers to Affiliates or Non-Affiliates as outlined herein, Lessee shall not sell, sublease, assign, or otherwise transfer its interest in this Lease, the Port Improvements, the Lessee Improvements and or/the Premises, either voluntarily or by operation of law, without the prior

written consent of the Port, which shall not be unreasonably withheld, but may be reasonably conditioned to the extent necessary or appropriate to protect Port's interest in the Premises. Any such transfer or assignment, or attempted assignment, subletting or attempted subletting, without such consent, shall be absolutely null and void and shall, at the option of the Port, terminate all rights of the Lessee under or by virtue of this Lease. Lessee's interests, in whole or in part, cannot be taken by operation of law, nor under or by virtue of any execution or legal process, attachment, or proceeding instituted against the Lessee, or under or by virtue of any bankruptcy or insolvency proceedings had in regard to the Lessee, or in any other manner except as above mentioned. The Port may, in its discretion, consent to an assignment or sublease provided the following conditions are satisfied: a) A fee of \$300.00 is prepaid to cover administrative costs; b) Lessee has satisfied all condition of the Lease precedent to assignment or sublease; c) Lessee and its assignee have completed a standard assignment form provided by the Port and assured the Port that the assignee the capacity to perform on the Lease; d) The Port has determined that such assignment or sublease is in the best interest of the Port.

15 PORT CONTROL AND SERVICES

It is understood that the Port, as a municipal corporation created as a Port District under the laws of the State of Oregon, has certain legislative control and authority over all of its properties and within its geographical boundaries. None of such legislative authority is hereby ceded, delegated or diminished. It is expressly recognized by the parties that the Port shall have authority to determine rules regulating the use and conduct upon such Premises, penalties therefore and other matters not involving the direct management and operation of the facility. Nothing herein contained shall be deemed to constitute the Lessee an agent, employee or other representative of the Port; the status of Lessee with respect to the Port is strictly that of independent contractor and the Port reserves no power to control or direct Lessee in the manner of performance of its duties and obligation, other than through its legislative authority and its right to enforce the provisions of this Lease.

16 CONDEMNATION

16.1 General

In the event any public or private entity having the power of eminent domain exercises its right or power of eminent domain, the parties' rights and obligations shall be governed by the common law of the State of Oregon, the applicable Oregon statutes, and this Lease. To the extent allowed by law, in the event of conflict among the statute, common law and this Lease, this Lease shall prevail. If the condemning authority is the Port, Lessee agrees that it will not contest the Port's right to condemn the Premises, or any portion thereof, for whatever purpose the Port deems necessary, but Lessee may contest the value payable to Lessee due to such condemnation. In cases where the condemning authority is an entity other than the Port, Lessee and the Port agree to cooperate, in good faith, to resolve any issues relating to value and/or authority to condemn.

16.2 Definitions

As used in this Lease, the following definitions shall apply:

16.2.1 Partial Taking

"**Partial Taking**" means the taking by right of eminent domain or other authority of law, or a voluntary transfer under the threat of the exercise of the right of eminent domain or other authority, of any portion of the Premises which does not constitute a Total Taking.

16.2.2 Total Taking

"**Total Taking**" means the taking by right of eminent domain or other authority of law, or a voluntary transfer under the threat of the exercise of the right of eminent domain or other authority, of so much of the Premises as is necessary for Lessee's occupancy that the Premises, after the taking, is no longer suitable for Lessee's intended use.

16.2.3 Taking

"**Taking**" refers to either a Partial Taking or a Total Taking.

16.2.4 Date of Taking

"**Date of Taking**" means: (i) the date on which the condemning authority takes legal ownership or actual physical possession of the Premises being condemned; (ii) the date given in a written notice from the condemning authority as the date that it is deemed to have taken possession or is granted possession by a court; or (iii) such date as is agreed to, in writing, in the event of a sale in lieu of condemnation.

16.2.5 Premises Award

The "**Premises Award**" shall mean the Fair Market Value of the Premises (as defined in this Section, including the Premises and all infrastructure improvements made to the Premises by any party and including the Port's Reversionary Interest in Lessee Improvements (defined in Section 16.2.7), but excluding the Leasehold Award, described in Section 16.2.6, which Lessee shall be entitled to claim. The Premises Award shall also include any consequential damages to any part of the Premises that may not be taken. The Premises Award is payable solely to the Port.

16.2.6 Leasehold Award

The "**Leasehold Award**" shall mean the sum of: (i) the present value, determined as of the Date of Taking, of Lessee's Improvements; (ii) the present value, determined as of the Date of Taking, of Lessee's interest in the leasehold estate, including any claim for reimbursement of any prepaid Rent including prepaid Basic Rent; and (iii) provided the Lease is not terminated, any consequential damages such as the cost of any alterations, modifications, or repairs which may be reasonably required by Lessee in order to place the remaining portion of the Premises not taken in a suitable condition for the continuance of Lessee's occupancy. The Leasehold Award is payable solely to Lessee. No portion of the value attributable to the Premises or improvements owned, made by or paid for by the Port or other government authority, or any infrastructure improvements, or the Port's residual interest in other improvements, shall be considered a part of the Leasehold Award.

16.2.7 Port's Reversionary Interest

The "**Port's Reversionary Interest**" shall mean the present value, determined as of the Date of Taking, of any right of the Port under this Lease to receive the taken Lessee Improvements at the end of the Lease Term.

16.2.8 Distribution of Takings Award

The Port shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, the entire Premises Award. Lessee shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, the entire Leasehold Award. It is the intent of the parties that the Premises Award and the Leasehold Award will equal the total amount of the award paid as a result of a Taking of the Premises.

16.3 Total Taking

If a Total Taking occurs during the Lease Term, this Lease will terminate as of the Date of Taking.

16.4 Partial Taking

If a Partial Taking occurs during the Lease Term, this Lease shall terminate as of the Date of Taking as to the portion of the Premises taken. The Lease will continue in full force and effect as to the remainder of the Premises unless Lessee reasonably determines that the remaining portion of the Premises is inadequate for Lessee's purposes, in which event Lessee may elect to terminate the Lease within thirty (30) days of the date of the Taking by providing the Port written notice of termination, to be given in accordance with this Section. If notice of termination is not received by the Port within thirty (30) days of the Partial Taking, the Lease will continue in full force and effect as to the remainder of the Premises. Unless the Taking is by the Port, there shall be no refund of any prepaid Basic Rent by the Port to Lessee, but Lessee may make a claim for such prepaid Rent against the condemning authority, as part of the Leasehold Award. Lessee shall promptly make, at Lessee's sole expense, all necessary repairs or alterations to restore the remaining Premises after a Partial Taking.

16.5 Claims Against Condemning Authority

In any case where the Port is not the condemning authority, Lessee and the Port agree to work together, in good faith, in making their respective claims against the condemning authority, in accordance with the provisions of this Section. The Port also agrees to work together, in good faith, with any of Lessee's Permitted Leasehold Mortgagees, in making their respective claims against the condemning authority, in accordance with the provisions of this Section. Each party shall be responsible for making its own claim for court costs and attorney fees incurred in the condemnation proceedings.

16.6 Adjustment of Award

To the extent that the court does not distribute the Takings award in accordance with the distribution rights set forth in this Section, the parties agree, upon receipt of the award, to promptly pay to the other any amount of the award belonging to the other in accordance with the distribution set forth in this Section. If the parties cannot agree upon the distribution within twenty (20) days of the date the judgment or decree is entered in the condemnation proceedings, the controversy shall be resolved in the same court as the condemnation action was brought. The cost of resolving any such controversy, including the prevailing party's attorney fees, shall be paid by the losing party, as determined by the court. The award allocation may also be resolved by mediation or arbitration if the Port and Lessee both agree to submit the issue to mediation or arbitration.

16.7 Effect of Termination

If this Lease is terminated pursuant to the provisions of this Section, then all charges payable by Lessee to the Port under this Lease, if applicable, will be paid up to the Date of Taking. In the event of termination as a result of a Total Taking, the Port and Lessee will then be released from all further liability under this Lease or, in the event of a Partial Taking, from all further liability under this Lease with respect to the portion of the Premises so taken, except such liability which survives termination.

16.8 Notice of Taking

Either party receiving any notice of intended taking, any service of legal process relating to condemnation, or any other notification in connection with any taking, condemnation, or sale or transfer in lieu of condemnation, shall promptly give the other party notice of such receipt. No sale, transfer, agreement, or settlement with the condemning authority shall be made without the written consent of the Port and Lessee.

17 PORT CONDEMNATION RIGHTS

Nothing in this Lease shall in any way limit the powers and rights of the Port to exercise its governmental rights and powers, including its powers of condemnation and eminent domain. Lessee hereby agrees to waive any right it may have to contest the Port's right or authority to condemn, or its rights of condemnation based on a qualifying public purpose. Lessee agrees that it shall limit any contest with the Port relating to the Port's condemnation/eminent domain rights or authority only to the issue of Lessee's interest in the value of the Premises and Lessee Improvements being condemned. Lessee hereby agrees that the Port will have the full right and authority to condemn this Leasehold interest as long as Lessee is paid for its value as provided in Section 16.

18 GENERAL PROVISIONS

18.1 Covenants, Conditions, and Restrictions

This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, rights of way, and any other matters of record imposed upon the Premises and to any applicable land use or zoning laws or regulations. This Lease is also subject to the Port's right to grant, in the future, underground utility easements through the portions of the Premises not covered by buildings or other structures. Lessee shall, upon request of the Port, execute and deliver agreements of subordination in the form requested by the Port respecting matters covered by this Section. The Port agrees to make reasonable attempts to minimize any disturbance to Lessee that may result from installation of any underground utility lines and will be responsible for prompt restoration of the Premises.

18.2 Governing Law

This Lease shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Venue shall be in Columbia County.

18.3 No Implied Warranty

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to,

acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. In no event shall the Port be deemed liable therefor. Lessee shall be solely responsible for such matters.

18.4 Notices

All notices required or desired to be given under this Lease shall be in writing and may be delivered by hand delivery, by electronic mail, by facsimile but only in those instances specifically called out in this Lease where notice by facsimile is allowed, or by placement in the U.S. mail, postage prepaid, as certified mail, return receipt requested, addressed to the Port at:

Port Property Manager
The Port of Columbia County
if by overnight delivery: 100 E Street, Columbia City, OR 97018
if by US mail: P.O. Box 190, Columbia City, OR 97018
Facsimile No.: (503) 397-6924

and to Lessee at:

Next Energy Group, Inc.
11767 Katy Freeway, Suite 705
Houston, TX 77079
Attention: Lou Soumas
LSoumas@nextrenewables.com
Facsimile #:

Any notice delivered by hand delivery shall be conclusively deemed received by the addressee upon actual delivery; any notice delivered by facsimile shall be conclusively deemed received by the addressee upon receipt of a confirmation of facsimile by the party sending the notice; any notice delivered by electronic mail shall be conclusively deemed received by the addressee upon acknowledgement by return electronic mail; any notice delivered by certified mail as set forth herein shall be conclusively deemed received by the addressee on the third Business Day after deposit in the United States mail. The addresses and facsimile numbers to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision.

18.5 Time of the Essence

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

18.6 Non-Waiver

Waiver by the Port or Lessee of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's or Lessee's right to require strict performance of the same provision in the future or of any other provision.

18.7 Survival

Any covenant or condition (including, but not limited to, indemnification agreements), set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by its terms is to survive,

shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

18.8 Partial Invalidity

If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

18.9 Limitation of Liability

Notwithstanding anything to the contrary contained herein, the parties acknowledge that it is in their mutual interests to limit their liability to each other, and expressly bargain for and agree to the following:

(a) The Port shall have no liability to Lessee for loss, damage or injury suffered by Lessee on account of theft or any act or omission of any third party (other than Port commissioners, employees, agents, and contractors), including other lessees. References in this Section (a) to the Port's agents shall be limited solely to those agents acting within the authority of their agency relationship with the Port, and references in this Section (a) to Port contractors shall be limited solely to those contractors acting on the Premises and within the express scope of their contract with the Port.

(b) Although this Lease gives the Port certain rights of inspection, such rights shall impose no obligation on the Port to make any inspections, nor impose liability on the Port if the Port fails to make such inspections, or makes inspection, but fails to disclose or require correction of any defect.

(c) With respect to any liability of the Port under this Lease, the Port shall only be liable for any injury or damage to Lessee to the extent of actual damages and only to the extent allowed by law, and shall not be liable for consequential damages (including without limitation lost profits).

(d) With respect to any liability of Lessee under this Lease, Lessee shall only be liable for any injury or damage to the Port to the extent of actual damages and only to the extent allowed by law and shall not be liable for consequential damages (including without limitation lost profits).

(e) With respect to claims made by entities or persons who are not parties to this Lease, the Port and Lessee, as between them, shall retain all rights to common law indemnity and statutory contribution available under applicable Oregon law. This Section is not intended to confer any benefit or right to any entity or person who is not a party to this Lease.

18.10 Headings, Table of Contents and Table of Definitions

The article and section headings, table of contents and table of definitions contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provision of this Lease.

18.11 Exhibits Incorporated by Reference

All Exhibits attached to this Lease are incorporated by reference in this Lease for all purposes.

18.12 Modification

This Lease may not be modified except by a writing signed by the Port and Lessee.

18.13 Provisions Applicable to Others

All provisions of this Lease governing Lessee's use of the Premises and Lessee's activities and conduct on, about or from the Premises shall apply to Lessee's officers, agents, employees, invitees, contractors, and assignees.

18.14 Interpretation of Lease; Status of Parties

This Lease is the result of arms-length negotiations between the Port and Lessee and shall not be construed against either the Port or Lessee by reason of such party's preparation of or revisions to this Lease. Nothing contained in this Lease, including the construction of improvements on the Premises, shall be deemed or construed as creating the relationship of principal and agent, partners, joint venture, or any other similar such relationship, between the parties hereto. The Port and Lessee shall continue an open dialogue concerning any major issues regarding the terms of this lease.

18.15 Calculation of Time

All periods of time referred to in this Lease shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or Legal Holiday. "Legal Holiday" shall mean any holiday observed by the Federal Government. As used in this Lease, "Business Days" shall exclude Saturdays, Sundays, Legal Holidays and the week between December 25 and January 1. Unless specifically identified as Business Days, all references to days shall be calendar days.

18.16 Absence of Brokers

Lessee and the Port each represent to one another that no commission is owed to any agent or broker in connection with this Lease. If a commission is claimed, the party who the broker claims requested the representation shall pay any commission owed and shall defend, indemnify and hold the other party harmless from any such claim.

18.17 Attorney Fees

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Lease requires Lessee to defend the Port, it is agreed that such defense shall be by legal counsel acceptable to the Port.

18.18 Right of Parties and Successors in Interest

The rights, liabilities and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words 'Port' and 'Lessee' and their accompanying verbs or pronouns,

wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

18.19 Joint and Several Obligations

The named Lessee consists of one entity. If, in the future, Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

18.20 Defined Terms

Capitalized terms shall have the meanings given them in the text of this Lease.

18.21 Execution of Multiple Counterparts

This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

18.22 Estoppel Certificates

Each party (the "**Certifying Party**") agrees to execute and deliver to the other (the "**Requesting Party**"), at any time within thirty (30) days after written request, a statement certifying, among other things: (a) that this Lease is unmodified and is in full force and effect (or, if there have been modifications, stating the modifications), (b) the dates to which Rent has been paid; (c) to the best of the Certifying Party's knowledge, whether or not the Requesting Party is in Default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such Default; and (d) to the best of the Certifying Party's knowledge, whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute a Default by the Requesting Party and, if so, specifying the nature of each such event (referred to herein as an "**Estoppel Certificate**"). The parties agree that any statement delivered pursuant to this Section may be relied upon by the Requesting Party and by potential or actual purchasers and/or lenders with whom the parties may be dealing, regardless of independent investigation. The Requesting Party agrees to pay to the Certifying Party any administrative and legal costs related to providing such Estoppel Certificate.

18.23 Force Majeure Event

If the performance by Lessee of its obligations under Section 8.2 of this Lease (excluding monetary obligations, including, but not limited to taxes and insurance) is delayed or prevented by any extraordinary acts of nature (including floods, explosions, earthquakes), or fires, epidemic, war, terrorism, labor strikes, material shortages, riots, orders of restraint by governmental authority which prevent Lessee from meeting such obligations under this Lease, or other extraordinary casualty which is not reasonably within Lessee's control, and is not due to the fault or negligence of Lessee, one or more of which is defined as a "**Force Majeure Event**", then Lessee shall be temporarily excused from performance to the extent that performance is delayed by any of the foregoing, without liability under this Lease. Lessee agrees, however, to proceed with all reasonable dispatch to perform such obligations under this Lease after the Force Majeure Event preventing Lessee from carrying out such obligations under this Lease ceases to exist.

18.24 Mediation

Should any dispute arise between the parties to this Lease related to matters set forth in Section 6.10 of this Lease, then it is agreed that such dispute will be submitted to non-binding

mediation prior to any litigation. The provisions of this Section shall also apply to any non-binding mediation with respect to matters covered under this Section if the parties have agreed to such mediation as provided in this Section. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Columbia County, Oregon, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this Section through the mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Columbia County Circuit Court upon the request of either party. The parties agree that mediation shall occur on an expedited schedule and that they will not attempt to delay mediation, the scheduling of the mediation or continue the mediation once it has been set. The parties shall retain all rights at law or in equity with respect to any dispute not covered by this Section and also with respect to those disputes covered by this Section after mediation has been completed. In no event shall the provisions of this Section limit the Port's right to seek immediate injunction relief following an Event of Default to stop an activity or use on the Premises prohibited under this Lease. Nothing in this Section shall be deemed to prevent the Port from taking immediate injunctive or other action in response to an emergency or in response to third-party acts or omissions that pose an imminent threat to the environment or to the health, safety, or security of Port Lessees or of the public.

18.25 Entire Agreement

This Lease and the SDOA represent the entire agreements between the Port and Lessee relating to Lessee's leasing and development of the Premises. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees has made any representations or promises with respect to this Lease or the making or entry into this Lease, except as expressly set forth in this Lease. No claim for liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, any claimed breach of any representations or promises not expressly set forth in this Lease or the SDOA. All oral agreements with the Port are expressly waived by Lessee. This Lease has been negotiated at arm's length between the parties, with both parties being represented by legal counsel. Therefore, no alleged ambiguity or other drafting issues of the terms of this Lease shall be construed, by nature of the drafting, against either party.

18.26 Capacity to Execute

The Port and Lessee each warrant and represent to one another that this Lease constitutes a legal, valid and binding obligation of that party. The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the entity for whom they purport to be acting.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

NEXT RENEWABLE FUELS, OREGON. LLC

THE PORT OF COLUMBIA COUNTY

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

REVIEWED AS TO LEGAL SUFFICIENCY
FOR THE PORT

By: _____

Print Name: _____

As Its: _____

Draft

EXHIBIT A



The Project site is comprised of a combination of private land and Port leased land as follows:

<u>Property</u>	<u>Landholder</u>	<u>Tax Account</u>	<u>Tax Lot #</u>	<u>Acres</u>	<u>Square Feet</u>
Parcel A	Port of Columbia County	28453	8N4W2200 100	52.68	2,294,678
	Port of Columbia County	28061	8N4W2200 200	30.63	1,334,267
				83.31	3,628,945
		Less: loss to Powerline easements		(5.00)	(217,945)
				78.31	3,411,000
Parcel B	Port of Columbia County	28107	8N4W23B0 700	2.86	124,000
Road Access*	Port of CC/PGE	435398	8N4W23B0 1100	8.83	385,000
				90.00	3,920,000
Private Parcel 1	NEXT Renewables	28062	8N4W2200 300	25.52	1,111,674
Private Parcel 2	NEXT Renewables	28108	8N4W23B0 800	4.41	192,006

*Parcel currently under PGE control. PGE release required to include in final Premise.

EXHIBIT B

**PORT OF COLUMBIA COUNTY
AGREEMENT TO PAY COSTS FOR ATTORNEY FEES**

This Agreement to Pay Costs for Attorney Fees ("Agreement") is entered into on the last signed date indicated below by and between the Port of Columbia County, Oregon (hereinafter the "Port") and _____ (hereinafter the "Lessee") in connection with Lessee's need for the General Counsel of the Port to do legal work for the benefit of Lessee.

RECITALS

WHEREAS, Lessee currently leases property from Port located at [SPECIFICS OF LEASED PROPERTY – "PREMISES"]; and

WHEREAS, [SPECIFICS OF REQUEST BY LESSEE – "LEGAL WORK"].

WHEREAS, the Legal Work requested by Lessee is solely for the benefit of Lessee; and

WHEREAS, the Port of Columbia County Commission is a five-member elected Commission organized under ORS 777 and it is a priority of the Port of Columbia County Commission to have Lessee's pay their fair share of legal costs for work which is solely for the benefit of Lessee,

NOW, THEREFORE, the Premises being generally stated in the foregoing Recitals, Lessee agrees as follows:

1. Lessee agrees to pay Port for any and all legal costs incurred by Port associated with Lessee's Legal Work, based upon the Port General Counsel or other Port Legal Representative's ("Port Attorney") current hourly rate of \$200 per hour. The number of hours required for the Legal Work are in the sole discretion of Port Attorney.
2. Lessee further agrees to immediately pay the Legal Work fee deposit of **\$2,500.00**. Port Attorney will bill against the deposited funds at the rate of \$200 per hour. If the deposited funds are depleted, Port Attorney will cease Legal Work until such time as Lessee makes an additional deposit, with a specific amount to be determined by Port in consultation with Port Attorney. Any such additional deposit shall be paid immediately by Lessee and prior to continuation of an ongoing Legal Work by Port Attorney.
3. In the event any legal costs remain unpaid by Lessee after Legal Work is completed, Lessee shall pay all such additional legal costs in full to Port within 30 days after receiving notice from Port. If there are funds deposited for Legal Work remaining upon completion of the Legal Work, such remaining funds will be returned to Lessee. Port will provide an itemized billing summary upon request by Lessee. All unpaid balances after 30 days shall bear interest at the rate of nine percent (9%) per annum from date of billing.

IT IS SO AGREED.

By: _____ Date: _____
Name:

Title:

STATE OF OREGON)
)
County of Columbia) ss.

On this _____ day of _____, 20____, the above-signed personally appeared before me and acknowledged that this is a free act and deed, for the uses and purposes stated in the above document.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

Notary Public for Oregon
My Commission Expires: _____

Draft