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SUBMERGED AND SUBMERSIBLE LAND LEASE

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ML-1016-S

The parties to this lease are the STATE OF OREGON, acting by and through the Division of State Lands, hereinafter referred to as STATE (Lessor), and APG CO., an Oregon corporation, hereinafter referred to as LESSEE.

STATE leases to LESSEE, on the terms and conditions stated below, the following-described lands:

All submerged land within 50 feet of the line of Ordinary Low Water of Upper Klamath Lake, a navigable lake located in parts of T 36 S, R 6 E; T 36 S, R 7 E; T 37 S, R 8 E; and T 38 S, R 8 E, Klamath County, Oregon, including the outlet of said lake, commonly known as Link River.

I
TERM

This lease shall commence July 1, 1977, and continue through June 30, 2002.

II
ROYALTY

- a. Minimum Advance Royalties. LESSEE, in consideration of the leasing of said leased premises, hereby covenants and agrees to pay the Division therefor minimum advance royalty in the sum of \$3,000 annually in advance on the anniversary date of the lease, such royalty payable to the Division of State Lands in Salem, Oregon. Each advance payment shall be credited against the first royalties due the Division for each lease year. There shall be no carry-over of credits from advance payments from year to year and no refund of unused credits.
- b. Royalties. Effective July 1, 1979, LESSEE shall pay a minimum annual royalty of \$3,000 per year, or a royalty based on gross sales of algae products, whichever is greater. The royalty rate shall be as follows:

Three percent (3%) of the first \$150,000 gross sales, two percent (2%) of the next \$150,000, and one percent (1%) of the gross sales in excess of \$300,000.

III
PURPOSE

The leased lands shall be used by LESSEE for removal and processing of algae and other microbiological materials obtained in the harvesting of such algae (hereinafter collectively called "algae") for commercial purposes and for no other purposes without the written consent of STATE. In the event that third parties claim ownership in or to said algae, STATE will defend, at its expense, against any such claim and, in the event such defense is

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Unsuccessful, LESSEE may thereafter present a claim to STATE for royalties previously paid up to and including the amount LESSEE is held liable to such third parties; provided, however, that by allowing LESSEE to present its claim to STATE, STATE does not thereby admit the validity of or approve such claim, and STATE will honor and pay such claim only if to do so is in accordance with the law prevailing at that time.

IV
LIMITATIONS ON EXCLUSIVE NATURE OF LEASE

STATE and LESSEE agree that LESSEE shall have the exclusive right to remove algae for commercial purposes for the first 10 years of the lease term. After 10 years, the lease shall be nonexclusive.

The parties further agree that STATE may lease to third parties the lands included in this lease under such terms and conditions and for such purposes as do not unreasonably interfere with LESSEE's use of the leased lands under their terms of this lease, and that LESSEE will not unreasonably interfere with such third parties' use of the leased lands.

Furthermore, the parties agree that the exclusive nature of this lease for the first 10 years shall not preclude removal of less than 2,000 pounds of algae by a non-LESSEE, or by a state or federal government agency for a nonprofit purpose.

The parties hereby affirm that STATE has no right to convey any private interest and does not do so hereby, nor does STATE, by this lease, abrogate LESSEE's duty to comply with all applicable laws.

V
PLANT SITE LOCATION

STATE and LESSEE hereby stipulate and agree that the algae removal equipment and attendant processing plant will be located on that certain parcel described on the attachment hereinafter referred to as Exhibit A.

STATE and LESSEE agree that the location and development of subsequent harvesting and processing plant sites will require the prior approval of the Department of Environmental Quality and the Oregon Department of Fish and Wildlife, due to possible adverse effects on water quality and wildlife habitats.

VI
ASSIGNMENT

Except as otherwise provided herein, the leased lands or any part thereof shall not be assigned, mortgaged, or subleased, nor shall any right of use of said lands be conferred on any third person by any other means without the prior written consent of STATE.

STATE may consent to an assignment of lease (novation) provided:

- a. A fee of \$50 is prepaid to cover administrative costs;