

UUC 85948

2010-009731

Klamath County, Oregon



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Fee: \$162.00

AFTER RECORDING RETURN TO:

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August 3, 2010

### MEMORANDUM TO LEASE

The Ground Lease Modification & Restatement and Addendum to Lease attached hereto are a modification to a Lease Agreement dated April 26, 2006, and recorded on May 8, 2006 in the real property records of Klamath County, Oregon at M06-09078, in which Ghost Rock Ranch, LLC leased to Oregon Outback R.F.P.D. and Oregon Outback R.F.P.D. leased from Ghost Rock Ranch, LLC approximately 0.889 acres of certain real property located at 148800 Beal Road, La Pine, Oregon 97739, in the County of Klamath, State of Oregon.

The parties to the Ground Lease Modification & Restatement and Addendum to Lease hereby request that this Memorandum of Lease, and the Ground Lease Modification & Restatement and Addendum to Lease, be recorded in the real property records for the County of Klamath, State of Oregon.

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## Ground Lease Modification & Restatement

THIS GROUND LEASE MODIFICATION & RESTATEMENT (hereinafter the "**Lease**"), made and entered into on 6/10/10, ~~2009~~<sup>2010</sup>, by and between **West Coast Bank**, an Oregon Corporation, (hereinafter "**Landlord**"), and **Oregon Outback R.F.P.D.** (hereinafter "**Tenant**").

### RECITALS

- A. Whereas Cherie L. Appleby is the owner (hereinafter "**Owner**") of certain real property commonly known as 148800 Beal Road, LaPine, Oregon 97739, more particularly described in **Exhibit A** attached hereto (the "**Property**");
- B. Whereas Owner executed a Deed of Trust in favor of Landlord, as beneficiary, covering the Property, dated March 14, 2007, recorded March 21, 2007 in the mortgage records of Klamath County, Oregon, in Book 2007, Page 4930, and modified by instrument recorded March 21, 2008 in Book 2008, Page 3608 in the records of Klamath County, Oregon;
- C. Whereas Ghost Rock Ranch, LLC (hereinafter "**Ghost Rock**") and Tenant entered into a Lease Agreement (hereinafter the "**First Lease Agreement**") on the 26th day of April, 2006 in which Ghost Rock leased to Tenant and Tenant leased from Ghost Rock a 0.889 acre section of the Property, which section is located at 148800 Beal Road, La Pine, Oregon 97739, in the County of Klamath, State of Oregon (hereinafter the "**Premises**");
- D. Whereas Tenant has completed construction of a single building with related improvements for access, water, and septic on the Premises (hereinafter the "**Improvements**") as referenced in the First Lease Agreement;
- E. Whereas Landlord, Tenant, and Ghost Rock entered into a Subordination Agreement, recorded March 21, 2007 in the mortgage records of Klamath County, Oregon, in Book 2007, Page 004929, whereby the Lease Agreement was subordinated to Landlord's Deed of Trust;
- F. Whereas Owner defaulted under the terms of the Deed of Trust, and Landlord notified Owner, Tenant, and Ghost Rock of such default and its right to foreclose the Deed of Trust by advertisement and sale;
- G. Whereas, in the event that Landlord proceeds with such foreclosure sale and purchase of the Property, Landlord will become the owner of the Property, thereby giving rise and legal effect to this Lease, setting forth the terms of the Lease as between Landlord and Tenant.

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Now therefore, in consideration of the mutual covenants contained herein, the parties have agreed as follows:

**1. Consideration**

In consideration for Tenant's execution of this Lease, Landlord has agreed not to foreclose Tenant's interest in the Premises in conjunction with the foreclosure of Ghost Rock's interest in the Property. Tenant's consideration shall include making payments and performing all its obligations contained herein.

**2. Effective Date**

This Lease shall take effect upon execution by the parties. However, Landlord's purchase of the Property is a condition precedent to the rights and obligations arising under this Lease. Unless stated otherwise herein, the rights and obligations of Landlord and Tenant under this agreement shall only arise in the event that Landlord forecloses Owner's interest in the Property and purchases such interest at the advertisement and sale, thereby becoming successor owner of the Property.

**3. Term of Lease**

The term of the Lease shall be Ninety-Nine (99) years from the execution date of the First Lease Agreement, April 10, 2006 (the "*Lease Term*").

**4. Rent Payment**

Tenant agrees to pay to Landlord One Dollar (\$1.00) per year during the Lease Term.

**5. Option to Purchase**

At the expiration of the Lease Term, and provided that Tenant is not then in default under this Lease, Tenant shall have the option to acquire the Premises from Landlord for a total consideration of One Dollar (\$1.00). Tenant may exercise such option by giving Landlord written notice of Tenant's election to exercise the option no fewer than 180 days before the expiration of the Lease Term. The acquisition shall be closed on or before the Lease Term expires.

The title insurance shall be at the expense of Landlord and shall be delivered within a reasonable period of time after the closing of such conveyance. The title insurance policy shall contain only the standard printed exceptions and the exceptions permitted on the deed. Proration of taxes and other customary adjustments shall be made as of the closing of the conveyance. The closing shall be in escrow at a reputable escrow company selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. The escrow fee and closing costs shall be shared equally by the parties.

**6. Option to Partition Premises From Property; Tenant's Purchase**

It is the intent of the Landlord and Tenant to apply for and receive a partition of the Premises, such that the Premises will be severed from the remainder of the Property. Landlord and Tenant shall each have the right to independently and unilaterally initiate the partition process, thereby exercising the option to partition the Premises from the Property (hereinafter "*Option to Partition*"). Upon notice of either party's exercise of the Option to Partition, Landlord and Tenant shall immediately exercise reasonable efforts and diligence, and take all steps that may be practicable under the circumstances for initiation and approval of the partition application, and any other applications necessary for partitioning of the Property. Landlord and Tenant shall execute and deliver all appropriate papers and documents that may be

necessary or proper to permit the local governing body to process the relevant applications. Upon Landlord's exercise of the Option to Partition, the fees and costs associated with partition of the Property shall be divided equally among Landlord and Tenant, such that each party agrees to pay one half (1/2) of all costs associated with the partition, including but not limited to application fees, legal services, survey fees, and engineering fees. However, in no event shall Tenant's liability under this section exceed Ten Thousand Dollars (\$10,000). Upon Tenant's exercise of the Option to Partition, Tenant shall be solely responsible and liable for paying all of the costs associated with the partition, and Tenant shall indemnify Landlord against all liabilities associated with such costs.

Upon completion of the partition process, Tenant shall purchase the Premises from Landlord. Tenant's price for purchase of the Premises shall be One Dollar (\$1.00). Conveyance shall be made by Landlord by means of a bargain and sale deed and shall not provide any warranty as to encumbrances against title. Landlord shall furnish Tenant with a standard owner's title insurance policy issued by a reputable title insurance company, selected by Landlord and approved by Tenant, which approval shall not be unreasonably withheld. Failure of Tenant to close on purchase of the Premises within sixty days of receipt of notice of the completed partition shall constitute default.

## **7. Use**

### **7.1 Permitted Use**

Tenant shall use and occupy the Premises continuously during the Lease Term solely for the operation of a fire district. The Premises may not be used for any other purpose or be the subject of a change in concept without the written consent of Landlord, which consent shall not be unreasonably withheld. Tenant acknowledges that any violation of the foregoing provisions of this section by Tenant constitutes a material breach of this Lease. Tenant expressly agrees that the sole remedy of Tenant in the event of a breach of this provision by Landlord shall be to terminate this Lease on the expiration of sixty (60) days notice to Landlord of Tenant's intent to terminate by reason of such breach.

### **7.2 Use Not Permitted**

Tenant shall not use or occupy, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied: 1) for any unlawful or illegal business, use, or purpose; 2) in any such manner to constitute a nuisance of any kind, or; 3) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including but not limited to Legal Requirements respecting Hazardous Substances, or; 4) for any business, use, or purpose deemed disreputable. The term Hazardous Substance means any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection Legal Requirements, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by the United States Environmental Protection Agency (40 CFR pt 302). Tenant acknowledges that the term Legal Requirements includes but is not limited to all environmental protection laws such as the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §6901 et seq.), the Federal Water Pollution Control Act (33 USC §6901 et seq.), the Federal Water Pollution Control Act (33 USC §1257 et seq.), and the Clean Air Act (42 USC §2001 et seq.).

### **7.3 Existing Uses**

Tenant shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning

variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that now apply to the Premises or that have been granted to or contracted for by Landlord or Tenant in connection with any existing or presently contemplated use of the Premises or the Improvements.

#### **7.4      *Restrictions on Public Use***

Tenant shall not suffer or permit the Premises or the Improvements or any portion to be used by the general public, as such, without restriction or in such manner as might reasonably tend to impair Landlord's title to the Premises or Improvements or any portion, or in such manner as might reasonably make possible a claim or claims of adverse usage, adverse possession, or prescription by the public, as such, or of implied dedication, of the Premises or Improvements or any portion. Tenant acknowledges that Landlord does not consent, expressly or by implication, to the unrestricted use or possession of the whole or any portion of the Premises or Improvements by the public, as such.

#### **7.5      *Public Streets and Services***

Landlord and Tenant agree that if and when any governmental or any other public authority requires the execution and delivery of any instrument to evidence or consummate the dedication of any street adjoining the Premises and/or if and when any governmental or any other public authority or any public utility company requires the execution and delivery of any rights of way, easements, and grants in, over, and along any such streets or in, over, under, or through the Premises (except any that may run under the Improvements) for the purpose of providing water, gas, steam, electricity, telephone, storm and sanitary sewer, or any other necessary or desirable service or facility for the benefit of the Premises or the Improvements, then both parties, without cost to either party, will execute, acknowledge, and deliver any such instrument or document as may be required.

### **8.      *Liens and Encumbrances***

#### **8.1      *Tenant's Representations and Warranties***

Tenant warrants and represents to Landlord that Tenant did not finance construction of the Improvements through use of a trust deed, mortgage, or other debt instrument for which the Improvements or the Premises were used as debt collateral, and that there are no other liens encumbering Landlord's or Tenant's interest in the Improvements or the Premises. Tenant further represents and warrants that it has not received notice of intent to file a lien from any party, and Tenant is not aware of any facts that would give rise to such liens, whether claimed on behalf of a contractor, subcontractor, or otherwise. In the event that any of Tenant's above mentioned representations and warranties are erroneous, Tenant agrees to indemnify and hold Landlord harmless against and from all liabilities, damages, penalties, claims, costs, charges, and expenses arising from the same.

#### **8.2      *Encumbrances on Landlord's Interest Prohibited***

Tenant shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Landlord or on any interest of Landlord in the Premises.

### **8.3     *Improvement Liens Prohibited***

Tenant shall not suffer or permit any liens to attach to the interest of Tenant in all or any part 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, Tenant or anyone occupying or holding an interest in all or any part of the Improvements on the Premises through or under Tenant. If any such lien shall at any time be filed against the Premises, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, by either payment, deposit, or bond.

### **8.4     *Attachment of Improvement Lien to Landlord's Interest Prohibited***

Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Landlord's interest in the Premises or against Landlord's interest, if any, in the Improvements. Tenant is not intended to be an agent of Landlord for the construction of Improvements on the Premises. Landlord shall have the right to post and keep posted at all reasonable times on the Premises and on the Improvements any notices that Landlord shall be required to post for the protection of Landlord and of the Premises and of the Improvements from any such lien. The foregoing shall not be construed to diminish or vitiate any rights of Tenant in this Lease to construct, alter, or add to the Improvements.

## **9.     Taxes and Other Charges**

### **9.1     *Tenant to Obtain Separate Tax Account***

Tenant shall, no later than December 31, 2010, obtain a separate property tax account for the Premises, as approved by the Klamath County Assessor's Office.

### **9.2     *Tenant to Pay Taxes***

Tenant shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental impositions and charges of every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties and regardless of whether the same shall be extraordinary or ordinary, general, or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing which, at any time during the Lease Term, shall be or become due and payable and which:

9.2.1     Shall be levied, assessed, or imposed against the Premises or the Improvements or any interest of Landlord or Tenant under this Lease; or

9.2.2     Shall be or become liens against the Premises or the Improvements or any interest of Landlord or Tenant under this Lease; or

9.2.3 Shall be levied, assessed, or imposed on or against Landlord by reason of any actual or asserted engagement by Landlord or Tenant, directly or indirectly, in any business, occupation, or other activity in connection with the Premises or the Improvements; or

9.2.4 Shall be levied, assessed, or imposed on or in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Premises or the Improvements;

under or by virtue of any present or future Legal Requirement, it being the intention of the parties that, insofar as the same may lawfully be done, Landlord shall be free from all such expenses and all such real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever (all of such taxes, water charges, sewer charges, assessments, and other governmental impositions and charges that Tenant is obligated to pay being collectively called "**Tax**" or "**Taxes**").

### **9.3      *Exceptions***

Nothing contained in this Lease requires Tenant to pay any franchise, estate, inheritance, succession, capital levy, or transfer tax of Landlord, or any income, excess profits, or revenue tax, or any other tax, assessment, charge, or levy on the Rent payable by Tenant under this Lease; provided, however, that if at any time during the Lease Term the methods of taxation prevailing at the commencement of the Lease Term are altered so that in lieu of any Tax under this section there is levied, assessed, or imposed (1) a tax, assessment, levy, imposition, or charge, wholly or partially as a capital license fee measured by the Rent payable by Tenant under this Lease, then all such taxes, assessments, levies, impositions, or charges or the part so measured or based, shall be deemed to be included within the term Tax for the purposes of this Lease, to the extent that such Tax would be payable if the Premises were the only property of Landlord subject to such Tax, and Tenant shall pay and discharge the same as provided in respect to the payment of Taxes.

### **9.4      *Installment Payments***

If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Tenant may, whether or not interest shall accrue on the unpaid balance, pay the same, and any accrued interest on any unpaid balance, in installments as each installment becomes due and payable, but in any event before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.

### **9.5      *Payment of Taxes Relating to Period***

Any Tax relating to a fiscal period of the taxing authority, a part of which is within the Lease Term and a part of which is after the Lease Term, whether or not such Tax shall be assessed, levied, imposed, or become a lien on the Premises or the Improvements, or shall become payable, during the Lease Term, shall be apportioned and adjusted between Landlord and Tenant so that Tenant shall pay only the portions that correspond with the portion of such fiscal periods included within the Lease Term. With respect to any Tax for public improvements or benefits that by law is payable, or at the option of the taxpayer may be paid, in installments, Landlord shall pay the installments that become due and payable after the Lease Term expires,

and Tenant shall pay all such installments which become due and payable at any time during the Lease Term.

#### **9.6      *Tenant to Provide Notice and Proof of Payment***

Tenant shall provide to Landlord a copy of all notices or correspondence from the authority imposing any Tax within fifteen (15) days of Tenant's receipt of such notice or correspondence. Tenant covenants to furnish to Landlord, within thirty (30) days after the last date when any Tax must be paid by Tenant as provided in this section, official receipts, if such receipts are then available to Tenant, of the appropriate taxing authority, or other proof satisfactory to Landlord, evidencing payment.

#### **9.7      *Deferred Payment of Contested Taxes***

Tenant shall have the right at Tenant's expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings. Tenant may defer payment of such contested Tax on condition, however, that if such contested Tax is not paid beforehand and if such legal proceedings shall not operate to prevent the enforcement of the collection of the Tax so contested and shall not prevent the sale of the Premises or the Improvements to satisfy the same, then before instituting any such proceedings Tenant shall furnish to Landlord, if so required by the terms of its mortgage, a surety company bond, cash deposit, or other security reasonably satisfactory to Landlord, as security for the payment of such Tax, in an amount sufficient to pay such Tax, together with all interest and penalties in connection with such Tax and all charges that might be assessed against the Premises or the Improvements in the legal proceedings. Upon termination of such legal proceedings or at any time when Landlord shall determine the security to be insufficient for the purpose, Tenant shall forthwith, on demand, deliver to Landlord additional security as is sufficient and necessary for the purpose, and on failure of Tenant so to do, the security originally deposited shall be applied to the payment, removal, and discharge of the Tax and the interest and penalties in connection with the Tax and the charges and costs accruing in such legal proceedings and the balance, if any, shall be paid to Tenant provided that there is then no uncured default under this Lease. In the event that such security shall be insufficient for this purpose, Tenant shall forthwith pay over to Landlord an amount sufficient, together with the security originally deposited, to pay the same. Tenant shall not be entitled to interest on any money deposited pursuant to this section.

#### **9.8      *Landlord's Involvement in Tenant's Contest of Taxes***

Any contest as to the validity or amount of any Tax, or assessed valuation on which such Tax was computed or based, whether before or after payment, may be made by Tenant in the name of Landlord or of Tenant, or both, as Tenant shall determine, and Landlord agrees that it will, at Tenant's expense, cooperate with Tenant in any such contest to such extent as Tenant may reasonably request, it being understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant covenants to indemnify and save Landlord harmless from any such costs or expenses. Tenant shall be entitled to any refund of any such Tax and penalties or interest that have been paid by Tenant or by Landlord and reimbursed to Landlord by Tenant.

#### **9.9      *Landlord to Receive All Tax Communications***

Prior to Tenant obtaining a separate property tax account for the Premises, the parties shall use reasonable efforts to see that all communications from the governmental authorities



respecting Taxes are sent directly by such authorities to Landlord. Landlord shall forward any and all communications to Tenant within fifteen (15) days of Landlord's receipt. The certificate, advice, receipt, or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Tax or nonpayment of such Tax shall be prima facie evidence that such Tax is due and unpaid or has been paid at the time of the making or issuance of such certificate, advice, receipt, or bill.

Beginning on the date that Tenant obtains a separate property tax account for the Premises, the parties shall use reasonable efforts to see that all communications regarding Taxes are sent directly to Tenant, and Tenant shall provide copies to Landlord as required in Section 9.6 above.

## **10. Insurance**

### ***10.1 Fire and Casualty Insurance***

Tenant, at Tenant's sole cost and expense, shall maintain, for the mutual benefit of Tenant and Landlord, casualty insurance covering loss or damage by fire, and other risks as may be embraced within all-risk insurance insuring the full replacement cost of the Improvements. If all-risk insurance becomes unavailable, then Tenant shall insure the Improvements with such coverage as is customary from time to time for comparable first-class buildings in the area. The amount of such insurance policy shall be increased from time to time as the full replacement cost of the Improvements increases. Any dispute regarding insurance matters shall be arbitrated by the parties.

In the event of any casualty damage to the Improvements, Landlord may make proof of loss if Tenant fails to do so within fifteen (15) days of the casualty and after ten (10) days' written notice from Landlord of its intent to do so. If the insurance proceeds (the "***Proceeds***") of any insurance on the Improvements equal more than 100% of the replacement cost of the Improvements, then all Proceeds shall be paid to a bank trust department (the "***Trustee***") as trustee for the parties. The Trustee shall be selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed. Unless the casualty occurs within five (5) years of the Expiration Date of this Lease, Tenant shall promptly repair or replace the damaged and destroyed Improvements in substantially the form on the date of the casualty or in a manner reasonably satisfactory to Landlord. The Trustee shall pay or reimburse Tenant from the Proceeds for the cost of repair, restoration, or replacement on satisfactory proof of expenditure by Tenant, satisfactory evidence of sufficient progress on the work, and satisfactory evidence of sufficient funds available to complete restoration. The Trustee shall not be liable to the parties except in the event of gross negligence or fraud. The Trustee shall be entitled to deduct a customary and reasonable charge for its services. Any proceeds not used for the repair, restoration, or replacement of the Improvements shall be distributed on the same basis as any condemnation proceeds pursuant to the provisions of Section 19.2 below. If the damage occurs within five (5) years of the Expiration Date of this Lease, then Landlord shall have the option of terminating this Lease and retaining all the Proceeds.

### ***10.2 Public Liability Insurance***

Tenant, at its expense, shall maintain at all times during the Lease Term public liability insurance in respect of the Premises and the Improvements and the conduct or operation of its business, with Landlord as additional insured, with Five Million Dollars (\$5,000,000) minimum combined single-limit coverage, or its equivalent. All casualty insurance policies shall include

contractual liability, severability of interest, and cross-liability endorsements. When Tenant conducts demolition or excavation work, the exclusions now customarily referred to as the X, C, and U exclusions shall be deleted from Tenant's liability insurance. Tenant shall deliver to Landlord and any additional named insured such fully paid-for policies or certificates of insurance, in a form satisfactory to Landlord, issued by the insurance company or its authorized agent, at least ten (10) days before the Commencement Date. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration, and Tenant shall deliver to Landlord and any additional named insured such renewal policy or certificate at least thirty (30) days before the expiration of any existing policy. All insurance policies shall contain provisions whereby: 1) losses shall be payable despite the negligence of any person having an insurable interest in the Improvements; 2) the Proceeds will be paid in accordance with the terms of this Lease; and 3) the policies cannot be cancelled or modified unless Landlord and any additional named insured are given at least twenty (20) days prior written notice of such cancellation or modification.

### ***10.3 Required Terms of Policies***

All insurance policies shall be written as primary policies and shall not be contributing with or be in excess of the coverage that either Landlord or Tenant may carry. All such insurance policies shall be issued in the name of Tenant, with Landlord being included in the insurance policy definition of who is an additional insured, and shall be primary to any insurance available to Landlord.

### ***10.4 Insuring Parties***

All policies of insurance shall be issued by good, responsible companies, reasonably acceptable to Landlord and that are qualified to do business in the State of Oregon. Executed copies of such policies of insurance and certificates shall be delivered to Landlord within thirty (30) days of execution of this Lease and thereafter within thirty (30) days before the expiration of the term of each such policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All policies of insurance must contain a provision that the company writing the policy will give Landlord thirty (30) days written notice in advance of any cancellation, substantial change of coverage, or the effective date of any reduction in amount of insurance.

### ***10.5 Blanket Policies***

The obligations of Tenant to carry the insurance provided for may be brought within the coverage of a so-called blanket policy or policies of insurance; provided, however:

- 10.5.1 That the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance;
- 10.5.2 That the requirements set forth are otherwise satisfied; and
- 10.5.3 That, as to all insurance, Landlord shall be named as additional insured.

### ***10.6 Periodic Increase of Liability Insurance***

Landlord may from time to time, but not more frequently than once every three years, require that the amount of public liability insurance to be maintained by Tenant under Section

10.2 be increased so that the amount adequately protects Landlord's interest based on amounts of coverage required of comparable tenants in comparable buildings.

## **11. Landlord's Right to Perform Tenant's Covenants**

### ***11.1 Self-Help Right***

If Tenant at any time fails to pay any Tax in accordance with the provisions of this Lease or fails to make any other payment or perform any other act on its part to be made or performed, then Landlord, after ten (10) days notice to Tenant (or without notice in case of an emergency) and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease or from any default by Tenant and without waiving Landlord's right to take such action as may be permissible under this Lease as a result of such default, may (but shall be under no obligation to):

11.1.1 Pay any Tax payable by Tenant pursuant to the provisions of this Lease; or

11.1.2 Make any other payment or perform any other act on Tenant's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take all such action, as may be necessary.

### ***11.2 Self-Help Costs***

All sums so paid by Landlord and all costs and expenses incurred by Landlord, including reasonable attorney fees, in connection with the performance of any such act, together with, if Tenant does not pay the same within the thirty (30) day period after notice from Landlord, interest from the date of such payment or incurrence by Landlord of such cost and expense until paid, at the annual rate of eighteen percent (18%), shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

## **12. Compliance with Legal Requirements**

### ***12.1 Tenant to Warrant Compliance with Federal, State, and Local Law***

Tenant represents and warrants that all Improvements, septic systems, wells and other structures located on or serving the Premises on the date of execution of this Lease are in compliance with all federal, state, and local rules, regulations, and laws (herein collectively "**Legal Requirements**") and have obtained the necessary authority and legal right from all affected property owners including, but not limited to, the Union Pacific Railroad and its assigns. If any jurisdiction charged with enforcing such Legal Requirements makes a determination that the Improvements or the Premises are not in full compliance, Tenant shall, at Tenant's own expense, take any action necessary to achieve compliance, including but not limited to, removal and replacement of structures or improvements, payment of fees, or execution and delivery of any necessary documents.

### ***12.2 Tenant to Comply With All Legal Requirements***

Throughout the Lease Term, Tenant shall promptly comply with all Legal Requirements that may apply to the Premises or to the use or manner of uses of the Premises or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or

Improvements, or interfere with the use and enjoyment of the Premises or the Improvements, and whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Lease Term commences. Tenant shall pay all costs of compliance with Legal Requirements.

### ***12.3 Contesting the Validity or Application of a Legal Requirement***

Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Tenant or Landlord or both, without cost or expense to Landlord, the validity or application of any Legal Requirement subject to the following:

12.3.1 If, by the terms of any Legal Requirement, compliance may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge, or liability of any kind against all or any part of the Premises or the Improvements and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure to comply, Tenant may delay compliance until the final determination of such proceeding; or

12.3.2 If any lien, charge, or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest the matter and delay compliance, provided that such delay would not subject Landlord to criminal liability or fine; and Tenant

12.3.2.1 Furnishes to Landlord security, reasonably satisfactory to Landlord; against any loss or injury by reason of such contest or delay, and

12.3.2.2 Prosecutes the contest with due diligence.

### ***12.4 Landlord's Involvement in Tenant's Contest of a Legal Requirement***

Landlord shall execute and deliver any appropriate papers that may be necessary or proper to permit Tenant to contest the validity or application of any Legal Requirement, provided all the requirements of this section have been satisfied by Tenant and Landlord will incur no cost.

## **13. Repairs and Maintenance**

### ***13.1 Landlord Obligations***

Throughout the Lease Term, Landlord shall have no obligations to repair or maintain the Premises or any Improvements located on or serving the Premises, except as otherwise provided herein.

### ***13.2 Tenant Obligations***

Tenant shall maintain, repair, and replace the Premises and the Improvements as necessary to keep them in good order, condition, and repair throughout the entire Lease Term. Tenant's obligations shall extend to both structural and nonstructural items and to all maintenance, repair, and replacement work, including but not limited to unforeseen and extraordinary items. Tenant shall be responsible for all aspects of maintaining the parking area

on the Premises, if any, including but not limited to security patrols, landscaping, cleaning, snow and ice removal, and lighting.

### **13.3 Utilities and Services**

Landlord shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Lease Term, such as, but not limited to, water, steam heat, gas, hot water, electricity, light, and power. Tenant shall be responsible for delivery of and payment for all electricity, potable water, gas, sewer, garbage collection, and other services and utilities consumed on the Premises. Landlord shall in no event be required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to the Premises or the Improvements during the Lease Term.

### **13.4 Third Party Damage to Premises**

Landlord assigns to Tenant, without recourse, such rights, if any, as Landlord may have against any parties causing damage to the Premises or the Improvements on the Premises to sue for and recover amounts expended by Tenant as a result of such damage.

## **14. Alterations, Additions, and New Improvements**

The term Modifications means any demolition, improvement, alteration, change, or addition, of, in, or to all or any part of the Premises or the Improvements. The term Minor Modifications shall mean any Modifications costing less than Twenty Thousand Dollars (\$20,000), and the term Major Modifications shall mean any and all Modifications other than Minor Modifications. Multiple Modifications occurring within a period of 365 days shall be deemed a single Modification for the purposes of applying the provisions contained in this section. At any time during the Lease Term and at Tenant's own cost and expense, Tenant may make or permit to be made any Minor Modifications, provided there is no existing and unremedied default on the part of Tenant, of which Tenant has received notice of default, under any of the terms, covenants, and conditions of this Lease. Major Modifications shall require the prior written consent of the Landlord. All salvage material in connection with any Modification that Tenant is permitted to make shall belong to Tenant.

## **15. Title to Improvements**

Title to Improvements shall be and remain in Tenant until the expiration of the Lease Term, unless this Lease is terminated sooner as provided. Upon such expiration or sooner termination, title to the Improvements shall automatically pass to, vest in, and belong to Landlord without further action on the part of either party and without cost or charge to Landlord. During the Lease Term, Tenant shall be entitled for all taxation purposes to claim cost recovery deductions and the like on the Improvements.

## **16. No Waste**

Tenant shall not do or suffer any waste or damage, disfigurement, or injury to the Premises or the Improvements. Demolition of all or any part of the Improvements done in accordance with the requirements of Section 14 above shall not be considered prohibited by the terms of this section.

## **17. Inspection and Access**

### ***17.1 Access for Inspection and Repairs***

Tenant shall permit Landlord or the authorized representative of Landlord to enter the Premises and the Improvements at all reasonable times during usual business hours for the purposes of inspecting the same and making any repairs or performing any work that Tenant has neglected or refused to make in accordance with the terms, covenants, and conditions of this Lease. Nothing in this Lease shall imply any duty or obligation on the part of Landlord to do any such work or to make any Improvements of any kind whatsoever to the Premises (including, but not limited to, repairs and other restoration work made necessary due to any fire, other casualty, or partial condemnation, irrespective of the sufficiency or availability of any fire or other insurance proceeds, or any award in condemnation, which may be payable).

### ***17.2 Landlord Repairs***

During the progress of any work on the Premises or the Improvements performed by Landlord pursuant to the provisions in this section, Landlord may keep and store on the Premises all necessary materials, tools, supplies, and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of Tenant or any user by reason of making such repairs or performing any such work, or on account of bringing materials, tools, supplies, and equipment onto the Premises or into the Improvements during the course of the work and the obligations of Tenant under this Lease shall not be affected by the work.

### ***17.3 Access for Prospective Purchases***

Landlord shall have the right to enter on the Premises and the Improvements at all reasonable times during usual business hours for the purpose of showing the same to prospective purchasers of Landlord's interest and, at any time within two years before the Lease Term expires, for the purpose of showing the same to prospective Tenants.

### ***17.4 Advanced Notice***

Except in the event of emergency repairs, all entry to the Premises by Landlord shall require at least 24 hours' advance notice to Tenant. In the event of any emergency repairs, Landlord shall use reasonable efforts to give Tenant the earliest possible notice of the same.

## **18. Landlord's Exculpation and Indemnity**

### ***18.1 Exculpation of Landlord by Tenant***

Tenant is and shall be in exclusive control of the Premises and of the Improvements, and Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements or any injury or damage to the Premises or the Improvements or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the Premises or of the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of the Improvements or from any kind of

injury that may arise from any other cause whatsoever on the Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise.

### **18.2 Indemnification of Landlord by Tenant**

Tenant shall indemnify and hold Landlord harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees, that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Lease Term:

- 18.2.1 Any work or thing done in, on, or about all or any part of the Premises or the Improvements by Tenant or any party other than Landlord;
- 18.2.2 Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;
- 18.2.3 Any negligence on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees;
- 18.2.4 Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements; or
- 18.2.5 Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with.

### **18.3 Tenant to Defend Landlord**

In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant upon written notice from Landlord shall, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Landlord in writing, which approval shall not be unreasonably withheld. Landlord shall not make any claim against Tenant with respect to any of such risks as to which Tenant has furnished Landlord with insurance policies or certificates of insurance evidencing coverage of such risks unless and until the insurer fails or refuses to defend and/or pay all or any part of a third-party claim.

## **19. Condemnation**

### **19.1 Total Taking**

If all the Premises and the Improvements are taken or condemned, by right of eminent domain or by purchase in lieu of condemnation, or if such portion of the Premises or the Improvements shall be so taken or condemned that the portion remaining is not sufficient and suitable, in Tenant's sole judgment, to permit the restoration of the Improvements following such taking or condemnation, then this Lease and the Lease Term, at Tenant's option, shall cease and terminate as of the date on which the condemning authority takes possession (any taking or condemnation of the land described in this section being called a "**Total Taking**").

## **19.2 Efforts of Total Taking**

If this Lease expires and terminates as a result of a Total Taking, the rights and interests of the parties shall be determined as follows:

- 19.2.1 The total award or awards for the Total Taking shall be apportioned and paid in the following order of priority:

16.2.1.1 Landlord 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, that portion of the award, which is defined and referred to as the "**Land Award**," and Tenant shall not be entitled to receive any part of the Land Award. The term Land Award shall mean that portion of the award in condemnation or change of grade proceedings that represents the fair market value of the Premises, considered as vacant, unimproved but encumbered by this Lease, the consequential damage to any part of the Premises that may not be taken, the diminution of the assemblage or plottage value of the Premises not so taken and all other elements and factors of damage to the Premises; but in all events such damage or valuation shall take into consideration that the Premises is encumbered by this Lease;

16.2.1.2 Tenant shall have the right to and shall be entitled to receive directly from the condemning authority, that portion of the award referred to as the "**Leasehold Award**." The term Leasehold Award shall mean that portion of the award in condemnation proceedings that represents the fair market value of Tenant's interest in the Improvements and the fair market value of Tenant's leasehold estate as so taken and, provided this Lease is not terminated as a result of such condemnation or taking, the consequential damages to any part of the Improvements.

16.2.1.3 It is the intent of the parties that the Land Award and Leasehold Award will equal the total amount of the awards respecting a total taking.

- 19.2.2 If the court or such other lawful authority as may be authorized to fix and determine the awards fails to fix and determine, separately and apart, the Land Award and the Leasehold Award, such awards shall be determined and fixed by written agreement mutually entered into by and among Landlord and Tenant, and if an agreement is not reached within 20 days after the judgment or decree is entered in the proceedings, the controversy shall be resolved in the same court as the condemnation action is brought, in such proceedings as may be appropriate for adjudicating the controversy; and

## **19.3 Partial Taking**

If, during the Lease Term, there is a taking or condemnation of the Premises or the Improvements that is not a total taking and not a temporary taking of the kind described below, or in the event of the change in the grade of the streets or avenues on which the Premises abuts, this Lease and the Lease Term shall not cease or terminate but shall remain in full force and effect with respect to the portion of the Premises and of the Improvements not taken or condemned (any taking or condemnation or change of grade of the kind described in this section being referred to as a "**Partial Taking**"), and in such event:



19.3.1 The total award or awards for the taking shall be apportioned and paid in the following order of priority:

16.3.1.1 Landlord 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, that portion of the award that equals the Land Award, and Tenant shall not be entitled to receive any part of the award; and

16.3.1.2 Tenant shall have the right to and shall be entitled to receive directly from the condemning authority the balance of the award to be applied as shall be deemed appropriate.

#### **19.4 Temporary Taking**

In the event of a taking of all or a part of the Premises or the Improvements for temporary use, this Lease shall continue without change, as between Landlord and Tenant, and Tenant shall be entitled to the entire award made for such use; provided that Tenant shall be entitled to file and prosecute any claim against the condemnor for damages and to recover the same, for any negligent use, waste, or injury to the Premises or the Improvements throughout the balance of the then-current Lease Term. The amount of damages so recovered shall belong to Tenant.

#### **19.5 Dispute Resolution**

In the event of any dispute between Tenant and Landlord with respect to any issue of fact arising out of a taking mentioned in this section, such dispute shall be resolved by the same court in which the condemnation action is brought, in such proceedings as may be appropriate for the adjudicating the dispute.

### **20. Default; Remedies**

#### **20.1 Default**

The occurrence of any one or more of the following events of default constitutes a breach of this Lease by Tenant:

20.1.1 If Tenant defaults in the payment of Rent due and payable by Tenant, and such default continues for thirty (30) days after Landlord has given Tenant a notice specifying the same; or

20.1.2 If Tenant, whether by action or inaction, is in default of any of its obligations under this Lease (other than a default in the payment of Rent by Tenant) including, but not limited to, a breach of any representation or warranty, and such default continues and is not remedied within sixty (60) days after Landlord has given Tenant a notice specifying the same, or, in the case of a default that can be cured but not within a period of sixty (60) days, if Tenant has not: 1) commenced curing such default within such sixty (60) day period; 2) notified Landlord of Tenant's intention to cure the default; or 3) continuously and diligently completed the cure of the default.

## **20.2 Notice of Breach**

During any twelve (12) month period, Tenant shall be entitled to only one notice pursuant to Section 20.1.

## **20.3 Remedies on Default**

Upon the occurrence of an event of default, Landlord may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

- 20.3.1 Landlord or Landlord's agents and employees may immediately or at any time thereafter reenter the Premises either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises, to the end that Landlord may have, hold, and enjoy the Premises.
- 20.3.2 Landlord may relet the whole or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such Tenants, for such terms ending before, on, or after the expiration date of the Lease Term, at such rentals and on such other conditions (including concessions and free rent) as Landlord may determine to be appropriate. To the extent allowed under Oregon law, Landlord shall have no obligation to relet all or any part of the Premises and shall not be liable for refusal to relet the Premises, or, in the event of such reletting, for refusal or failure to collect any rent due on such reletting; and any action of Landlord shall not operate to relieve Tenant of any liability under this Lease or otherwise affect such liability. Landlord at its option may make such physical changes to the Premises as Landlord, in its sole discretion, considers advisable and necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting Tenant's liability.
- 20.3.3 Whether or not Landlord retakes possession or relets the Premises, Landlord has the right to recover its damages, including without limitation all lost rentals, all legal expenses, all costs incurred by Landlord in restoring the Premises or otherwise preparing the Premises for reletting, and all costs incurred by Landlord in reletting the Premises.
- 20.3.4 To the extent permitted under Oregon law, Landlord may sue periodically for damages as they accrue without barring a later action for further damages.

## **20.4 Non-Waiver**

No failure by Landlord 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 full or 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 Tenant, and no breach by Tenant, shall be waived, altered, or modified except by a written instrument executed by Landlord. 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.

#### **20.5 Remedies Cumulative**

Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

#### **21. Transfer of Interest by Landlord**

Landlord, in its sole discretion, may sell, exchange, assign, transfer, convey, contribute, distribute, or otherwise dispose of all or any part of its interest (called "*Landlord's Interest*") in the Premises or this Lease (including but not limited to Landlord's reversion).

#### **22. Transfer of Interest by Tenant**

Tenant shall not be permitted to sell, assign, sublet, or in any manner transfer this Lease or any interest in this Lease, the Improvements, or the Premises without Landlord's prior written consent. Landlord may refuse to consent to any sale, assignment or sublease that contemplates use of the Improvements or Premises for any purpose other than operation of a fire district.

#### **23. Landlord's Right to Encumber**

Landlord, during the Lease Term, may encumber, mortgage, pledge, or otherwise hypothecate its fee simple interest in the Premises.

#### **24. Nonmerger**

There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons having an interest in this Lease, or in the leasehold estate created by this Lease, shall join in a written instrument effecting such merger and shall duly record the same.

#### **25. Quiet Enjoyment**

Tenant, on paying the Rent and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Lease Term without hindrance or molestation by anyone claiming by, through, or under Landlord as such, subject, however, to the exceptions, reservations, and conditions of this Lease.

## **26. Surrender**

### **26.1 *Surrender of Premises***

Except as otherwise provided, Tenant, on the last day of the Lease Term, shall surrender and deliver up the Premises and all Improvements to the possession and use of Landlord without fraud or delay, free and clear of all lettings and occupancies other than subleases then terminable at the option of Landlord or subleases to which Landlord shall have specifically consented, and free and clear of all liens and encumbrances other than those, if any, presently existing or created or suffered by Landlord, without any payment or allowance whatever by Landlord on account of any Improvements on the Premises.

### **26.2 *Removal of Property***

When furnished by or at the expense of Tenant or any subtenant, furniture, fixtures, and equipment may be removed by Tenant on or before the date this Lease terminates, provided, however, that injury to the Premises or the Improvements caused by the removal shall be repaired by Tenant at Tenant's sole cost and expense.

### **26.3 *Abandoned Property***

Any personal property of Tenant or any subtenant that shall remain on the Premises after the termination of this Lease and the removal of Tenant or such subtenant from the Premises may, at the option of Landlord, be deemed to have been abandoned by Tenant or such subtenant and may either be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, or if Landlord gives written notice to Tenant to such effect, such property shall be removed by Tenant at Tenant's sole cost and expense. If this Lease terminates early for any reason other than the default of Tenant then, anything to the contrary notwithstanding, Tenant or any subtenant shall have a reasonable time thereafter to remove its personal property.

### **26.4 *Loss or Damage to Tenant's Property***

Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any subtenant.

### **26.5 *Survival***

The provisions of this section shall survive any termination of this Lease.

## **27. Invalidity of Particular Provisions**

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

## **28. No Representations**

Tenant acknowledges that it has examined the Premises and the Improvements and that no representations as to the condition of the Premises or Improvements have been made by Landlord or any agent or person acting for Landlord (except as expressly provided in this Lease). Tenant leases the Premises in their condition "AS-IS" under no warranties or representations by Landlord. Landlord shall have no liability because of, or as a result of, the existence of any subsurface or soil condition, either on the Premises or on adjacent land.

## **29. Estoppel Certificate**

Either party, within ten (10) days after a request from time to time made by the other party and without charge, shall give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating: 1) that this Lease is then in full force and effect and unmodified, or if modified, stating the modifications; 2) that as far as the maker of the certificate knows, neither party is in default in the performance or observance of any covenant or condition to be performed or observed under this Lease, or if either party is in default, stating such default; 3) that as far as the maker (if Landlord) of the certificate knows, no event has occurred that authorized, or with the lapse of time will authorize, Tenant to terminate this Lease, or if such event has occurred, stating such event; 4) that as far as the maker of the certificate knows, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; 5) the dates to which Rent and Taxes have been paid; and 6) any other matters that may be reasonably requested by the requesting party.

## **30. Force Majeure**

If the performance by either of the parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any Legal Requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence without liability of any kind.

## **31. Notices**

### ***31.1 Delivery of Notices***

Any notice required or permitted by the terms of this Lease shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:

If to Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other addresses as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request, or other communication shall be deemed to have been given or served on actual receipt.

### **31.2 Copy of Notice to Landlord**

Tenant shall immediately send to Landlord, in the manner prescribed above for giving notice, copies of all notices that it receives with respect to the Premises or Improvements from any government authorities, fire regulatory agencies, and similarly constituted bodies, and copies of its responses to such notices.

### **31.3 Actual Delivery**

Notwithstanding anything in this section to the contrary, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this section shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

## **32. Costs and Attorneys' Fees**

If either party brings an action to recover any sum due or for any breach and obtains a judgment or decree in its favor, the court may award to such prevailing party its reasonable costs and reasonable attorneys' fees, specifically including reasonable attorneys' fees incurred in connection with any appeals (whether or not taxable as such by law).

## **33. Relationship of this Lease with First Lease Agreement**

This Lease is a modification and restatement of the First Lease Agreement between Owner and Tenant. In the event of any conflict between this Lease and the First Lease Agreement, the terms of this Lease shall govern. The terms set forth in this Lease shall govern the rights and obligations of the parties, except that any terms set forth in the First Lease Agreement but not addressed in this Lease shall determine the rights and obligations of the parties with regards to those terms. This Lease and the First Lease Agreement, when read together, contain the entire agreement between the parties. Except as otherwise provided herein, this Lease can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Tenant and Landlord that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease.

## **34. Governing Law and Venue**

The parties hereby submit to jurisdiction in Klamath County, Oregon and agree that any and all disputes arising out of or related to this Lease shall be litigated exclusively in the Circuit Court for Klamath County, Oregon and in no federal court or court of another county or state. Each party to this Lease further agrees that pursuant to such litigation, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for deposition in Klamath County, Oregon.

## **35. Time of Essence**

Time is of the essence of the performance of each of the obligations under this Lease.

**36. Brokerage**

Landlord and Tenant represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other.

**37. Covenants to Bind and Benefit Parties**

The covenants and agreements contained in this Lease shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns.

**38. Captions**

The captions of this Lease are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

**39. Definition of Landlord**

The term Landlord as used in this Lease means only the owner for the time being of the Premises, so that in the event of a sale, transfer, conveyance, or other termination of Landlord's interest in the Premises, Landlord shall be and is entirely freed and relieved of all liability of Landlord thereafter accruing, and in such event Landlord shall remit any funds held by Landlord, in which Tenant has an interest, to the successor owner of the Premises. Landlord shall remain liable for any such money not so remitted. It shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and such successor owner of the Premises, that such successor owner has assumed and agreed to carry out any and all agreements, covenants, and obligations of Landlord thereafter accruing.

**40. Recordation of Lease**

Tenant may elect that a copy of this Lease or a memorandum, executed and acknowledged by both parties, be recorded in the public records of Klamath County, Oregon. Tenant shall pay the recording costs.

**41. Statutory Warning**

The following is the notice as required by Oregon law: **"THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE**

ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.”

**42. Rule of Construction**

Any rule of construction interpreting this instrument against it drafter shall be inapplicable.

**43. Employment of Attorneys**

The law firm of Saalfeld Griggs PC of Salem, Oregon has been employed by the Landlord to prepare the documents in conjunction with this Lease, and such attorneys represent only the Landlord in this matter. Tenant is hereby encouraged to seek and obtain legal counsel prior to signing this Lease.

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease to be executed by their duly authorized officers.

Landlord:

West Coast Bank  
by Tom Frounzie  
Senior Vice Pres.

Tenant:

Curt Owens  
Oregon Outback RFPD  
Board Chairman



**Exhibit A**  
**The Property**

The E1/2 NW1/4 and SW1/4 NW1/4 of Section 22, Township 23 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, LESS AND EXCEPTING that portion lying within the right of way of the Great Northern Railroad.

## ADDENDUM TO LEASE

This Addendum to Lease is offered as an acknowledgement by West Coast Bank and Oregon Outback R.F.P.D. of the Ground Lease Modification & Restatement, entered into by the parties on June 10, 2010. This Addendum to Lease is intended to be attached to said Ground Lease Modification & Restatement, and incorporated therein.

State of Oregon                    )  
  ) ss.  
County of Clackamas

On this 9th day of July, 2010 personally appeared Tom Provancha on behalf of West Coast Bank, who being duly sworn, did acknowledge the foregoing instrument to be his voluntary act and deed.

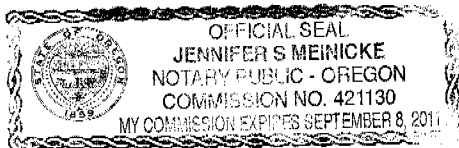


Before me:

Corinne Murdock  
Notary Public for Oregon  
My Commission Expires: 7/20/2013

State of Oregon                    )  
  ) ss.  
County of DESCUTES  
~~Clackamas~~

On this 2 day of AUGUST, 2010 personally appeared Curtis Owens on behalf of Oregon Outback R.F.P.D., who being duly sworn, did acknowledge the foregoing instrument to be his voluntary act and deed.



Before me:

[Signature]  
Notary Public for Oregon  
My Commission Expires: 9/8/2011