

**MODEL ENVIRONMENTAL**  
**PROVISIONS FOR**  
**TENANTS HANDLING HAZARDOUS**  
**SUBSTANCES**



**TABLE OF CONTENTS**

1	ENVIRONMENTAL MANAGEMENT AND COMPLIANCE .....	4
1.1.1	DEFINITIONS.....	4
1.1.2	AST FACILITY .....	4
1.1.3	BEST MANAGEMENT PRACTICES .....	4
1.1.4	ENVIRONMENTAL AUDIT .....	4
1.1.5	ENVIRONMENTAL COSTS .....	4
1.1.6	ENVIRONMENTAL LAWS.....	5
1.1.7	HAZARDOUS SUBSTANCE.....	5
1.1.9	MST FACILITY .....	5
1.2	NATURAL RESOURCES DAMAGE.....	5
1.2.1	SPILL PREVENTION AND RESPONSE PLAN.....	6
1.2.3	UST FACILITY .....	6
1.2.4	“AS IS” CONDITION AND GENERAL ENVIRONMENTAL OBLIGATIONS OF LESSEE	6
1.2.5	HAZARDOUS SUBSTANCE USE ON PROPERTY.....	6
1.2.6	MATERIAL SAFETY DATA SHEETS FOR HAZARDOUS SUBSTANCES USED ON THE PROPERTY .....	7
1.2.7	WETLANDS PREVENTION .....	7
1.2.8	STORM WATER MANAGEMENT SYSTEM AND WASH WATER DISCHARGES .....	7
1.2.9	DISCHARGE AND TREATMENT OF INDUSTRIAL WASTE WATER.....	8
1.2.10	UNDERGROUND INJECTION CONTROLS .....	8
1.2.11	OFF SITE WASTE-LIKE MATERIALS.....	8
1.2.12	AUTHORIZATION TO OPERATE AST FACILITIES.....	9
1.2.13	AST FACILITY DESIGN REQUIREMENTS .....	9
1.3	SPILL PREVENTION AND RESPONSE ("SPAR") PLAN.....	9
1.3.1	PORT'S RIGHT TO IMMEDIATELY STOP OPERATION IN EMERGENCY	10
1.3.2	CLOSURE AND DECOMMISSIONING OF AST FACILITY .....	10

DRAFT MODEL ENVIRONMENTAL PROVISIONS FOR INDUSTRIAL LEASE DATED  
012307

1.3.3	ENVIRONMENTAL AUDITS .....	10
1.3.3.1	INITIAL AUDIT AND BASELINE .....	10
1.3.3.2	SPECIAL AND PERIODIC AUDITS.....	11
1.3.3.3	EXIT AUDIT.....	11
1.3.3.4	ENVIRONMENTAL INSPECTION.....	12
1.4.	LIABILITY FOR HAZARDOUS SUBSTANCES RELEASES.....	12
1.4.1	HAZARDOUS SUBSTANCE RELEASES.....	12
1.4.2	PRESUMPTION.....	12
1.4.3	LIMITATION OF LESSEE'S LIABILITY .....	12
1.5	ENVIRONMENTAL REMEDIATION .....	12
1.5.1	IMMEDIATE RESPONSE.....	12
1.5.2	CORRECTIVE ACTION AND REMEDIATION.....	13
1.6	NATURAL RESOURCES DAMAGES ASSESSMENT AND RESTORATION 13	
1.7 COMMENT	PORT'S APPROVAL RIGHTS AND RIGHTS OF NOTICE, REVIEW AND 13	
1.8	NOTICE.....	13
1.9	SPLIT SAMPLING .....	14
1.10	PORT'S RIGHT OF SELF HELP.....	14
1.11	VIOLATIONS OR BREACHES OF DUTY BY LESSEE'S REPRESENTATIVES.....	14
1.12	GOVERNMENT OVERSIGHT.....	14
1.12	ANNUAL CERTIFICATION .....	14

## **1 ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

### **1.1.1 DEFINITIONS**

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

### **1.1.2 AST FACILITY**

"**AST Facility**" shall include aboveground storage tanks, aboveground piping, dispensers, related underground and aboveground structures and equipment, including without limitation associated spill containment features and oil/water separators, and the surrounding area used in connection with the operation for fueling and other management of Hazardous Substances.

### **1.1.3 BEST MANAGEMENT PRACTICES**

"**Best Management Practices**" shall include those environmental or operational standards or guidelines specifying common and accepted practices appropriate for the types of businesses Lessee and Lessee's Representatives engage in on the Property or such standards or guidelines as have been articulated by pertinent trade associations, professional associations or regulatory agencies.

### **1.1.4 ENVIRONMENTAL AUDIT**

"**Environmental Audit**" means an environmental site assessment and compliance audit satisfying, at a minimum, the all appropriate inquiry requirements of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et. Seq., Section 101(35)(B) (42 U.S.C. § 9601(35)(B)), the Oil Pollution Act, as amended, 33 U.S.C. § 2701 et seq., Section 1003(d)(4), 33 U.S.C. § 2703(d)(4), 40 CFR Part 312, ORS 465.255(6), and American Society of Testing Materials ("**ASTM**") Standard E1527-05 (Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process), and any other compliance assessment or auditing standards, including ASTM Standard E2107-00 (Standard Practice for Environmental Regulatory Compliance Audits), relevant and appropriate to Lessee's use of the Premises, or the successors to any of these criteria or standards. If as a result of such environmental audit additional evaluation, testing, analysis, or supplemental audit work is recommended, then, the environmental audit shall include the additional evaluation, testing, analysis or audit work scoped and performed in accordance with commercially reasonable practices.

### **1.1.5 ENVIRONMENTAL COSTS**

"**Environmental Costs**" means damages, fines, costs and fees arising from any violation of or noncompliance in any material respect with: (a) any applicable Environmental Laws; or (b) any of the environmental provisions of this Lease, and includes costs of immediate response, remediation, and restoration actions, Natural Resources Damages (defined in Section 0), Self Help under Section 0, oversight and participation costs of governmental agencies, including natural resource trustees; reasonable and documented fees and costs of project managers, attorneys, legal assistants, engineers, consultants, accountants, and experts, whether or not employees of the damaged party and whether or not taxable as costs, incurred prior to, at or after any administrative or judicial proceeding, including appeals and other forms of judicial review; and diminution in value, loss or restriction on use of the Property.

### **1.1.6 ENVIRONMENTAL LAWS**

"**Environmental Laws**" shall include any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, ordinances and legally enforceable guidance documents, now or hereafter in effect, as the same may be amended 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, cultural resources protection, animals or plants, noise, or products and relate to the protection of health, safety or the environment and natural resources, including land, sediments, water, groundwater, and stormwater.

### **1.1.7 HAZARDOUS SUBSTANCE**

"**Hazardous Substance**" shall include any and all substances, pollutants, contaminants, materials or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated 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.

### **1.1.8 HAZARDOUS SUBSTANCE RELEASE**

"**Hazardous Substance Release**" shall include the spilling, discharge, deposit, injection, dumping, emitting, releasing, placing, leaking, migrating, leaching, and seeping of any Hazardous Substance into the air or into or on any land, sediment or waters, except any release in compliance with Environmental Laws and specifically authorized by a current and valid permit issued under Environmental Laws with which Lessee is in compliance at the time of such release, but not including within the exception any such release in respect of which the State of Oregon has determined that application of the State's Hazardous Substance removal and remedial action rules might be necessary in order to protect public health, safety or welfare, or the environment.

### **1.1.9 MST FACILITY**

"**MST Facility**" shall include a Hazardous Substance storage tank facility and associated piping, dispensing and other equipment that is not stationary but is capable of being moved from one location to another.

## **1.2 NATURAL RESOURCES DAMAGE**

"**Natural Resources Damage**" is the injury to, destruction of, or loss of natural resources resulting from a Hazardous Substance Release. The measure of damage is the cost of restoring injured natural resources to their pre-Hazardous Substance Release baseline condition, compensation for the interim loss of injured natural resources pending recovery, and the reasonable cost of a damage assessment. Natural resources include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State, an Indian Tribe, or a local government.

### **1.2.1 SPILL PREVENTION AND RESPONSE PLAN**

"**Spill Prevention and Response Plan**" ("**SPAR Plan**") means any written plan required by Environmental Law and/or required by the Port for the Property, prepared by the Lessee to address fueling practices, spill prevention, containment, spill source control, immediate removal,

remediation or other corrective action and related management, training, operational and monitoring activities and other requirements to prevent and address any Hazardous Substance Release associated with the handling of Hazardous Substances on-site in connection with an AST Facility or MST Facility.

### **1.2.3 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 chemical products or other material.

### **1.2.4 "AS IS" CONDITION AND GENERAL ENVIRONMENTAL OBLIGATIONS OF LESSEE**

The Port makes no warranties or representations regarding the environmental or natural resources condition of the Property. Lessee has inspected the environmental and natural resources condition of the Property and accepts the Property in "**AS IS**" condition, upon taking possession. Lessee shall manage and conduct all of its activities on or relating to the Property: (a) in compliance with applicable Environmental Laws and the environmental provisions of this Lease; (b) in cooperation with the Port in the Port's efforts to comply with applicable Environmental Laws; and (c) in adherence with Best Management Practices applicable to Lessee's use of the Property. Lessee shall take immediate steps to correct any non-compliance with Environmental Laws or the environmental provisions of this Lease. Lessee shall manage and, as appropriate, secure the Property and its occupation or use of the Property so as to prevent any violation of Environmental Laws by any person on the Property.

### **1.2.5 HAZARDOUS SUBSTANCE USE ON PROPERTY**

Lessee shall only use Hazardous Substances on the Property that are associated with the Permitted Use [**DEFINED ELSEWHERE IN THE LEASE**]. Lessee shall strive to minimize Hazardous Substance use on the Property and identify and use non-hazardous alternatives in Lessee's operations. Except as pre-approved in writing by Port in its sole unrestrained discretion, Lessee shall not use other Hazardous Substances on the Property. Under no circumstances, however, shall Lessee be permitted the following uses of Hazardous Substances on the Property: facility for transporting, collecting, treating, storing, transferring, managing or disposing of Hazardous Substances requiring a hazardous waste permit under the Resources Conservation and Recovery Act (RCRA) or any facility constituting a large quantity generator of hazardous waste under RCRA; (b) facility for storing, handling or otherwise managing any Hazardous Substance banned from manufacture under the Toxic Substances and Control Act (TSCA); (c) facility for storing, handling, managing, processing, recycling, cleaning, sorting, baling, selling, or disposing of salvage or used parts or used materials of any kind, including, but not limited to, automobiles, automobile parts, waste paper, rags, metal, plastic, wood, tires, glass, or other scrap products; (d) facility for handling, management, transfer, recycling, disposal or landfilling of refuse, solid waste, or petroleum-contaminated or other contaminated media; (e) facility for hazardous gas or hazardous liquid chemical handling, management, storage, distribution, manufacturing, or processing; (f) facility or handling, managing, generating, storing, disposing, manufacturing, or processing of medical or biological waste or biohazards;

(g) facility for handling, managing, storing, blending, manufacturing or processing of petroleum products, including but not limited to, tar, asphalt and used oils, except storage incidental to the Permitted Use of the Property; (h) any use that involves radioactive materials, except as contained in test and measurement equipment; and (i) any use that involves use or storage of explosives.

### **1.2.6 MATERIAL SAFETY DATA SHEETS FOR HAZARDOUS SUBSTANCES USED ON THE PROPERTY**

Lessee shall maintain Material Safety Data Sheets (“MSDSs”) for each and every Hazardous Substance used on the Property by Lessee or by its agents, employees, contractors, licensees, invitees or Sublessees, to the extent required by Environmental Law. In order to ensure that is the MSDS Materials are available to the Port in the event of a Hazardous Substances Release or other emergency, the MSDSs shall be kept current at all times and a copy of the MSDSs shall be kept in a place known to and easily accessible to the Port.

### **1.2.7 WETLANDS PREVENTION**

Lessee shall not create any wetlands under any federal, state, regional or local jurisdiction on the Property during the term of this Lease or extension thereof, or on any adjacent Port-owned or non-Port owned property. Lessee shall also manage the Property so that no wetlands are allowed to form on the Property and so that Lessee's development and use of the Property does not cause the formation of wetlands on any adjacent Port-owned or non-Port owned property. If the Port believes that wetlands are likely to form on the Property 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 Property 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.

### **1.2.8 STORM WATER MANAGEMENT SYSTEM AND WASH WATER DISCHARGES**

Lessee must at its sole cost manage storm water associated with the Property ("**Lessee's Storm Water**") prior to its discharge into any storm sewer system. Lessee shall not discharge storm water to any storm sewer system without complying with applicable laws and regulations, including any applicable Environmental Laws, all applicable terms, conditions and best management practices of the Port's municipal separate storm sewer system (“MS4”) permit (MS4 Permit 101314), Port Ordinance No. 361, and any requirements of the Oregon Department of Environmental Quality ("**DEQ**") or the City of Portland. Nothing in this Section shall override or be deemed to limit or restrict the Port's ability to comply with its MS4 Permit, including, but not limited to, complying with any MS4 permit requirement that the Port enforce a storm water management plan and storm water rules. Compliance by the Port with the MS4 permit, storm water management plan or storm water rules may result in the imposition of additional storm water management requirements upon Lessee. If during the term of the Lease, it becomes necessary for Lessee to treat storm water associated with the Property to meet the terms, conditions, and best management practices of the Port's MS4 permit, then the Port shall



have the right, but not the duty, to approve or disapprove the method, design or installation of any such additional treatment system in order to ensure the Port's compliance with all applicable permit terms or other DEQ-mandated requirements. Lessee shall not discharge any wash water into the City's storm sewer system except as expressly approved by the City. Lessee shall not discharge any wash water into the Port's storm sewer system except as expressly approved by the Port in writing. Lessee shall submit to the Port a written set of procedures for any washing activities, including without limitation the washing of vehicles and equipment, and shall obtain the Port's prior written approval before undertaking any such activities. Within sixty (60) days of the commencement of this Lease and annually thereafter, Lessee shall provide information to the Port demonstrating compliance of Lessee's Storm Water management with Environmental Laws.

### **1.2.9 DISCHARGE AND TREATMENT OF INDUSTRIAL WASTE WATER**

No industrial waste water discharge shall be made by Lessee into the ground, the groundwater, surface water, or any Port owned conveyance or storage system unless such discharge meets the requirements of all applicable laws and regulations, including Environmental Laws. Port shall have the right, but not the duty, in its sole discretion, to review and approve or disapprove any industrial waste water management, treatment or discharge system constructed or modified on the Property during the term of the Lease.

### **1.2.10 UNDERGROUND INJECTION CONTROLS**

Construction or use of any kind of underground injection control system, including dry wells, stormwater injection wells, subsurface fluid distribution systems such as French drains, sumps and drainfields, is prohibited without prior written approval of the Port, which approval may be granted or denied in the Port's sole discretion.

### **1.2.11 OFF SITE WASTE-LIKE MATERIALS**

Lessee shall not allow any person to store, manage, treat, deposit, place or dispose of off-site waste-like material defined as trash, rubbish, slag, debris, industrial by-products, construction or demolition debris, wood waste, dredged material posing an unacceptable risk to health or the environment, Hazardous Substance-contaminated solid waste material, or other solid or liquid wastes brought to the Property from off site ("**Off-Site Waste-Like Materials**") on the Property without the prior written approval of the Port, which approval may be granted or denied in the Port's sole discretion taking into account the extent to which such materials contain levels of Hazardous Substances posing an unacceptable risk to health or the environment or constitute a nuisance. Before such approval may be given, Lessee must present the Port with adequate information to enable the Port to evaluate the origin and likely contents of any such Off-Site Waste-Like Materials. In the event that the Port in its sole discretion is not satisfied with its evaluation of the origin and likely contents of such Off-Site Waste-Like Materials, the Port may require Lessee, at Lessee's cost, to test the material to ensure that, in the Port's sole opinion, such material contains no levels of Hazardous Substances that pose an unacceptable risk to human health or the environment.

### **1.2.12 AUTHORIZATION TO OPERATE AST FACILITIES**

The Port consents to Lessee's construction and operation of the AST Facility shown on **Exhibit G** attached hereto and to their operation in accordance with this Lease. If in the future Lessee wishes to install an additional AST Facility or an MST Facility on the Property, Lessee

shall be permitted to do so provided that Lessee executes the Port's Storage Tank Agreement attached hereto as **Exhibit B**.

### **1.2.13 AST FACILITY DESIGN REQUIREMENTS**

The AST Facilities are of the type, model, capacity, and equipment and components as described in attached **Exhibit C**. Lessee shall not manage any Hazardous Substances other than Hazardous Substances authorized as a Permitted Use in the AST Facilities. No other AST Facility, components, or Hazardous Substance contents stored therein may be substituted without the prior written approval of the Port, which approval will not be unreasonably withheld provided that such use is not inconsistent with the Permitted Use or otherwise prohibited by the Lease. Lessee is solely responsible for the proper installation, operation, maintenance, use, removal and decommissioning of the AST Facilities. The Lessee AST Facility shall be made of material compatible with their contents and shall include appropriate secondary containment which will fully contain any Hazardous Substance Release.

### **1.3 SPILL PREVENTION AND RESPONSE ("SPAR") PLAN**

Lessee shall provide to the Port a written SPAR Plan that addresses the measures to be followed by Lessee to prevent, control, and perform corrective actions in the event of a Hazardous Substance Release at or from the Property. In addition to meeting all requirements of applicable law, the SPAR Plan shall address the measures Lessee will take to prevent Hazardous Substances Releases and immediately to respond to any Hazardous Substance Release. A copy of the SPAR Plan shall be maintained at the Property, and a copy shall be provided to the Port within thirty (30) days of the Effective Date of this Lease. The SPAR Plan shall be revised and updated to reflect current operations of Lessee and Lessee's Representatives at the Property as necessary, but at a minimum every three (3) years. The Port shall be provided a copy of all such modifications. In addition to any elements required by Environmental Laws, Lessee shall address the following in its SPAR Plan, or at its option in a separate document: (i) procedures for the proper receipt, storage and dispensing of Hazardous Substances authorized as a Permitted Use by Lessee and Lessee's Representatives at the Property, including the maintenance, observation and monitoring, safety checks, and safe practices applicable to the Lessee AST Facility; (ii) procedures for regular inspection of each above ground storage tank system within the AST Facility, including, but not limited to, confirmation that each such system and key components, such as pumps, hoses, and fittings, are in good and safe working condition; (iii) procedures for promptly, but in no case later than within forty-eight (48) hours of acquiring relevant information or knowledge, notifying the Port of any suspected or confirmed Hazardous Substance Release, and for verbal and written notification to appropriate regulatory agencies under applicable Environmental Law required in connection therewith; (iv) operating procedures for spill contingency and emergency response to Hazardous Substance Releases, including the designation of individuals responsible for directing the removal, response and restoration actions for such releases; (v) procedures to address large Hazardous Substance Releases that on-site resources may be inadequate to manage, including, but not limited to, identification of an outside twenty four (24) hour emergency response contractor to handle large Hazardous Substance Releases; (vi) procedures to keep the Port timely informed during the course of Lessee's response to a Hazardous Substance Release; (vii) provision for prompt use of on-site spill response equipment designed to keep a Hazardous Substance Release from reaching other property, storm water or sanitary sewers or area ground water or surface waters; (viii) provision

for trained onsite personnel to operate any Lessee spill response equipment during filling and dispensing operations and to be available on call at all other times, (ix) provision for prompt regular submission to the Port of copies of all relevant permits, consents, approvals, reports, and other correspondence with any regulatory agencies pertaining to the AST Facility and their compliance in any material respect with Environmental Laws; and (x) provision for training of personnel to implement Lessee's SPAR Plan and Lessee's compliance with applicable Environmental Laws.

### **1.3.1 PORT'S RIGHT TO IMMEDIATELY STOP OPERATION IN EMERGENCY**

The Port shall have the right to direct Lessee to cease operation of those portions of the AST Facility immediately upon delivery of written notice from the Port to the Lessee if the Port determines that the operation of same by Lessee: (i) is not being undertaken by Lessee or Lessee's Representatives in any material respect in accordance with applicable permits, approvals, laws or regulations; (ii) constitutes an emergency, meaning an imminent endangerment to human health, safety, or welfare or the environment; or (iii) resulted in a Hazardous Substance Release.

### **1.3.2 CLOSURE AND DECOMMISSIONING OF AST FACILITY**

Not less than thirty (30) days following the expiration or earlier termination of the Lease or any extension thereof, Lessee shall provide written confirmation to Port that the AST Facility has been closed, removed, decommissioned, and disposed of in accordance with Environmental Law ("**Closure**") and that the Property and any surrounding property to the extent impacted by operation of same by Lessee has been remediated by Lessee in accordance with Section 1.15. Lessee shall give the Port thirty (30) days advance written notice of any proposed closure of any Lessee AST Facility at the Property. Closure in place is prohibited. Within thirty (30) days of Closure completion, Lessee shall provide to the Port copies of a final report of closure, any remediation and restoration, and any regulatory agency approvals thereof.

### **1.3.3 ENVIRONMENTAL AUDITS**

#### **1.3.3.1 INITIAL AUDIT AND BASELINE**

Lessee had an Environmental Audit conducted of the Property and adjacent areas. The results of such Environmental Audit are contained in the report authored by \_\_\_\_\_ entitled "Phase I Environmental Site Assessment for the \_\_\_\_\_ Lease Property, Portland, Oregon," and dated \_\_\_\_\_, 200\_\_ (the "**Lessee Audit**"). The Port reserves the right to supplement the Lessee Audit with an additional Environmental Audit completed before the Effective Date of this Agreement. The Lessee Audit as supplemented by any Port additional Environmental Audit shall constitute the "Initial Audit" (the "**Initial Audit**") which shall be deemed to be a part of this Lease and incorporated herein by reference. Lessee and the Port have reviewed and approved the Initial Audit and acknowledge that in connection with this Lease, the Initial Audit, shall be used as a baseline to assist in the determination of future environmental liability between Lessee and the Port ("**Environmental Baseline**"), as described in Section 0.

#### **1.3.3.2 SPECIAL AND PERIODIC AUDITS**

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, there is an imminent threat

of a Hazardous Substance Release, or that Hazardous Substances are being stored, handled, disposed of or otherwise managed onsite in violation of Environmental Law or the requirements of this Lease, the Port may, after written communication of those reasons to Lessee, conduct an Environmental Audit, as defined in Section 0, of the Property ("**Special Audit**"). If the Special Audit confirms a Hazardous Substance Release for which Lessee is responsible under this Lease, excluding a Hazardous Substance Release that is de minimis and immaterial under the "all appropriate inquiry" criteria referenced in Section 0, or confirms an imminent threat of a Hazardous Substance Release for which Lessee would be liable under Environmental Laws or this Lease (collectively a "**Material Violation**"), 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. In addition, upon the Port's prior written request, from time to time but in no event earlier than five (5) years subsequent to the Initial Audit or last Special or Periodic Audit, whichever last occurred, Lessee and the Port shall perform a periodic Environmental Audit, as defined in Section 0, of the Property ("**Periodic Audits**"). The cost of a Periodic Audit shall be borne by the Port, except that if a Material Violation is found, Lessee shall bear the reasonable cost of the Periodic Audit as an Environmental Cost. Additional Periodic Audits will not be performed more frequently than every ten (10) years thereafter, except that if a Periodic Audit reveals a Material Violation, additional Periodic Audits may be performed by the Port every five (5) years with the same payment provisions being applicable.

#### **1.3.3.3 EXIT AUDIT**

At the termination or upon a Transfer of this Lease, the Port and Lessee shall jointly define and conduct, using a mutually acceptable consultant, an Environmental Audit of the Property ("**Exit Audit**"). The Exit Audit shall be performed and a complete copy of the results of the Exit Audit shall be provided to each party, not more than one hundred and twenty (120) days, but not less than sixty (60) days, prior to the actual termination or Transfer date of this Lease. So long as completed at least thirty (30) days before the termination or Transfer date, either party shall have the right to conduct an additional Environmental Audit at its cost. Lessee shall pay for the cost of any Exit Audit that must be performed upon a Transfer. In non-Transfer situations, if the Exit Audit and any additional Environmental Audit reveal the presence of a Material Violation, Lessee shall pay for the cost of the Exit Audit; otherwise the Port and Lessee will share equally in the cost of the Exit Audit. Not less than thirty (30) days prior to the termination of the Lease, the Port shall conduct a final inspection of the Property to verify that there has been no change in the environmental condition of the Property since the Exit Audit.

#### **1.3.3.4 ENVIRONMENTAL INSPECTION**

The Port reserves the right from time to time, after reasonable notice to Lessee, to inspect the Property and Lessee's operations on and use of the Property to: (a) evaluate Lessee's management of Hazardous Substances; (b) conduct subsurface or stormwater sampling; (c) evaluate compliance with Environmental Laws or Section 1 of this Lease; and (d) to facilitate the Port's compliance with Environmental Laws or implementation of its environmental management system.

#### **1.4. LIABILITY FOR HAZARDOUS SUBSTANCES RELEASES**

##### **1.4.1 HAZARDOUS SUBSTANCE RELEASES**

Except as provided in Sections 1.14.2 and 1.14.4, Lessee shall be responsible for all response, remediation and restoration of any Hazardous Substance Release and associated Environmental Costs, on or from the Property, on other properties, in the air or in adjacent or nearby surface waters and ground water, that results from or occurs in connection with Lessee's occupancy, possession, or use of the Property occurring during or continuing after the termination of the Lease.

##### **1.4.2 PRESUMPTION**

If a Hazardous Substance Release at, to or from the Property, a violation of applicable Environmental Laws or a violation of Section 6 of this Lease is discovered, that relates to the Upland Portion of the Property and that was not disclosed and discussed in the Environmental Baseline, then a rebuttable presumption will exist, as to matters within the scope of the Environmental Baseline relating to the Property, that Lessee is responsible under Section 1.14 for all response, remediation, restoration and Environmental Costs arising from such Hazardous Substance Release, violation of applicable Environmental Laws or violation of Section 1 of this Lease. The presumption established by this Section 1.14.2 shall expire after the results of the Exit Audit have been obtained and Lessee has completed all response, remediation or restoration and payment of any Environmental Costs for which Lessee is responsible.

##### **1.4.3 LIMITATION OF LESSEE'S LIABILITY**

As between the Port and Lessee, Lessee shall have no responsibility for Hazardous Substance Releases or associated Environmental Costs that are caused by the Port, its agents, employees, contractors or other Port lessees after the Effective Date of this Lease, and Hazardous Substances Releases or associated Environmental Costs where Lessee has complied with, as applicable, the conditions for non-liability established in 42 U.S.C. § 9607(q) and equivalent Oregon law (including Oregon DEQ's May 20, 2004 Contaminated Aquifer Policy).

#### **1.5 ENVIRONMENTAL REMEDIATION**

##### **1.5.1 IMMEDIATE RESPONSE**

In the event of a Hazardous Substance Release, or a 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, at Lessee's sole expense, all action necessary and appropriate to investigate, contain, stop, accomplish source control, remove and perform interim remediation regarding the Hazardous Substance Release.

##### **1.5.2 CORRECTIVE ACTION AND REMEDIATION**

Lessee shall promptly undertake, at Lessee's sole expense, all actions necessary to ensure that any violation of Environmental Law, any violation of any provision of this Agreement, or any Hazardous Substance Release by Lessee, its officers, directors, employees, agents, contractors, invitees, and licensees in any way associated with the Premises is completely remediated to such a condition that a "No Further Action" or "Completion of Cleanup" determination, or an equivalent, not conditioned upon facility or use restrictions is obtained from the government agency with jurisdiction over the Hazardous Substance Release. In the alternative, Lessee may seek the Port's prior written approval of remediation to risk-based levels

and involving a No Further Action or Completion of Cleanup determination, or an equivalent, conditioned upon the maintenance of facility and use restrictions. The Port may approve such an alternative approach on the condition that the Lessee assumes responsibility for any liability under Environmental Law and any Environmental Costs of the Port resulting from the residual risks associated with the alternative approach.

#### **1.6 NATURAL RESOURCES DAMAGES ASSESSMENT AND RESTORATION**

Lessee shall promptly undertake, at Lessee's sole expense, all actions necessary to ensure that any Natural Resources Damage associated with the Property and the violation of Environmental Laws, the environmental provisions of this Lease or any Hazardous Substance Release is investigated, determined, quantified, assessed, and permanently restored and compensated for, to the extent legally required by any natural resource trustee with jurisdiction over the matter.

#### **1.7 PORT'S APPROVAL RIGHTS AND RIGHTS OF NOTICE, REVIEW AND COMMENT**

Except in the case of an emergency or a regulatory agency order requiring immediate action, Lessee shall give the Port advance notice before beginning any immediate response, remediation or restoration action required by this Lease or applicable Environmental Laws. The Port shall have the right to approve or disapprove the proposed work and the entities and individuals conducting such work. Lessee shall copy the Port, at no cost to the Port, on all of the immediate response, remediation or restoration action deliverables submitted to the regulatory agencies and shall allow the Port a reasonable period of time based upon the surrounding circumstances to submit comments thereon to Lessee. Within thirty (30) days following completion of any immediate response, remediation or restoration action required by this Lease, Lessee shall provide the Port, at no cost to the Port, with a written report outlining, in detail, what has been accomplished.

#### **1.8 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 Property or of this Section of the Lease; and (b) any Hazardous Substance Release on, under, from or adjacent to the Property or threat of or reasonable suspicion of such. In addition, Lessee shall also notify the Port by calling the Port's twenty four (24) hour/seven (7) days a week Environmental Hotline: (503) 335-1111. If Lessee fails to notify the Port of a matter as required in this Section 6.16, and if the Port does not otherwise acquire knowledge of the matter, Lessee shall be liable for any exacerbation of such Hazardous Substance Release that could reasonably have been avoided if such notification by Lessee had been provided.

#### **1.9 SPLIT SAMPLING**

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 split samples. Lessee shall provide the Port with copies, at no cost to the Port, of any sampling results and associated chain of custody and quality assurance and quality control information within ten (10) days of receipt by Lessee.

### **1.10 PORT'S RIGHT OF SELF HELP**

Except in the event of an emergency or a governmental agency order requiring immediate action, when significant notice cannot be given, the Port shall have the right, upon giving Lessee seven (7) days written notice, stating the obligations in issue, to perform Lessee's obligations arising under this Section 1 (Environmental Management and Compliance) or under any Environmental Laws and charge Lessee the resulting Environmental Cost, plus a Delinquency Charge thereon from the date any funds were expended by the Port ("**Self Help**"). Lessee agrees to reimburse the Port, upon demand, any amounts the Port may spend pursuant to this Subsection on behalf of Lessee. The Port may not commence performance on behalf of Lessee under this Section if, within such notice period, Lessee promptly notifies the Port, begins, and continually thereafter diligently pursues to completion the performance of the obligations stated in the Port's notice.

### **1.11 VIOLATIONS OR BREACHES OF DUTY BY LESSEE'S REPRESENTATIVES**

Lessee shall be fully and primarily responsible to the Port for any violation of any Environmental Laws or non-performance of the duties stated in this Lease by Lessee and Lessee's Representatives [*MAKE SURE THIS IS A DEFINED TERM*] and Lessee shall be fully responsible for the same as if Lessee had committed the violation or breach itself.

### **1.12 GOVERNMENT OVERSIGHT**

If requested in writing by the Port, Lessee shall fulfill its obligations under this Section by entering into an agreement with the appropriate governmental agency with jurisdiction over the matter and by paying such agency's oversight costs.

### **1.12 ANNUAL CERTIFICATION**

If requested in writing by the Port, Lessee shall provide on or before each anniversary of the Effective Date of this Lease, a written statement, certified by Lessee as true and complete to the best of its actual knowledge, that during the preceding year with respect to the Property and Lessee's occupation and use of the Property, Lessee has complied with applicable Environmental Law. If Lessee is unable to provide such certification at the time requested by the Port, then Lessee shall provide the Port with a written statement of the steps Lessee is taking to enable it to provide the Port with a certification of compliance.