

APPENDIX E

**UPRR/Amerities West, LLC,
Institutional Controls Agreement**

Lessor, for any amount so paid by Lessor within ten (10) days after receiving written demand therefor.

ARTICLE 8 QUIET ENJOYMENT

Lessor covenants, represents and warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Lessee, subject to the terms and conditions of this Lease and performance of the covenants and agreements hereof shall peaceably and quietly have, hold and enjoy the Premises, subject to the terms and conditions set forth herein, without molestation or hindrance of any person claiming by, through or under Lessor. Lessor agrees to defend any claims against title, which materially or substantially impact or impair Lessee's use of the Premises.

ARTICLE 9 USE OF PREMISES

9.1 Permitted Use. Lessee shall use the Premises during the Term solely for the use specified in Article 1.7 above, and Lessee shall not use or suffer or permit the Premises (or any portion thereof) to be used for any other purpose whatsoever. Lessee, at Lessee's expense, shall promptly comply with all present and future federal, state or local laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction, affecting or applicable to the Premises, including, but not limited to the applicable requirements of the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as heretofore or hereafter amended, and the regulations heretofore or hereafter promulgated pursuant to such Act (collectively, "CERCLA"), the Clean Water Act ("CWA") and other laws or regulations that govern the cleanliness, safety, occupancy and use of the same. If any governmental license(s) or permit(s) shall be required for the proper and lawful conduct of Lessee's business or other activity carried on from the Premises, then Lessee, at its sole expense, shall duly procure and thereafter maintain such license(s) or permit(s) and submit the same for inspection by Lessor prior to the Commencement Date and thereafter upon Lessor's request therefor.

9.2 Specific Use Restrictions. Unless approved by Lessor, which approval may be granted or withheld in Lessor's sole discretion, Lessee shall not do any of the following:

- (a) Use, develop or attempt to use or develop the Premises or any portion thereof for any purpose other than the purposes expressly allowed (without the benefit of a conditional use permit, zoning variance, exception or amendment) as of the Commencement Date under the municipal, county, state and federal statutes, laws, ordinances, judicial decisions, rules and regulations, including zoning ordinances and regulations (collectively "Regulations") applicable to the Premises;

(b) Change or attempt any change in zoning, or obtaining or applying for a conditional use permit, zoning variance or exception or other similar approval with respect to the use or development of the Premises or any portion thereof not expressly allowed under the existing Regulations as of the Commencement Date;

(c) Construct or maintain any building or other Improvements on the Premises not in full compliance with all requirements of law, the provisions of this Lease or in any recorded covenants, conditions and restrictions existing from time to time and encumbering the Premises.

9.3 Hazardous Substances; Disclosure; Access.

(a) As used in this Agreement, the term "Hazardous Substance", "Hazardous Waste" or "Hazardous Material" shall mean the following: (i) those substances included within the definitions of "hazardous substance," "pollutant," or "contaminant" in CERCLA, (ii) the definitions pursuant to Section 1004 of RCRA, and state laws and regulations similar to or promulgated pursuant to such Acts; (iii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable explosive, or (D) radioactive; and (iv) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

(b) Lessee shall use the Premises during the Term solely for the use specified in Article 1.7 above, and Lessee shall not use or suffer or permit the Premises (or any portion thereof) to be used for any other purpose whatsoever. Lessee hereby releases Lessor and Lessor's Affiliates from all liability arising out of or in any manner whatsoever resulting from Lessee's use of any Hazardous Substance on the Premises during the Term.

(c) Lessor acknowledges that it has ongoing remediation obligations to federal and state agencies relating to the Premises. Lessor agrees to retain all liabilities, costs, damages, and expenses arising in connection with conditions (i) existing on the Environmental Liability Date, or (ii) arising after the Environmental Liability Date that result from activities or events prior to the Environmental Liability Date (hereafter "Retained Environmental Liabilities"). The Retained Environmental Liabilities shall not include any condition or event that is caused by Lessee while occupying the Premises or conducting operations described in Article 1.7.

(d) Nothing contained herein shall be construed or interpreted as making Lessor an owner, operator, generator, arranger or a transporter of hazardous substances or wastes or an operator of a treatment, storage or disposal facility pursuant to the provisions of CERCLA, RCRA, or any other federal, state or local laws, statutes, rules and regulations governing the generation, treatment, storage and disposal of hazardous and non-hazardous substances or wastes, except with respect to Retained Environmental Liabilities.

(e) If, based solely on the operations by Lessee on the site after the Environmental Liability Date, Lessor shall be interpreted to be an owner, operator, generator or a transporter of hazardous substances or wastes or a generator, arranger or operator of a treatment, storage or disposal facility under RCRA, CERCLA or any state statute governing the treatment, storage and disposal of hazardous wastes, Lessee agrees to indemnify, hold harmless and defend Lessor from and against any and all liabilities, costs, damages or expenses of any sort resulting from such an interpretation, except with respect to Retained Environmental Liabilities.

(f) Without limiting Lessee's obligations under Article 10 of this Lease, Lessee shall protect, defend, indemnify and hold harmless Lessor and any parent, subsidiary or affiliate of Lessor, the officers, directors, shareholders and employees of Lessor and any such parent, subsidiary or affiliate of Lessor, and the successors and assigns of any of the foregoing (collectively, "Lessor's Affiliates") from and against any and liabilities, losses, damages, claims, demands, causes of action, costs and expenses, fines and penalties, of whatsoever nature (including, without limitation, court costs and reasonable attorneys' fees and the cost and expense of cleaning, restoration, containment, remediation, decontamination, removal, investigation, monitoring or closure), arising out of and from (i) the use of the Premises during the Term of this Lease by the Lessee for any Hazardous Substance use regardless of Lessor's consent to such use, other than Retained Environmental Liabilities; and (ii) any Hazardous Substance which otherwise first becomes present in, on or under the Premises during the Term of this Lease, as a result of any acts of Lessee other than Retained Environmental Liabilities.

(g) Lessee acknowledges having been informed by Lessor: (i) that the Premises are listed as a Superfund site by the United States Environmental Protective Agency with site remediation work administered by the Oregon Department of Environmental Quality; (ii) that there are previous agreements with the ODEQ including:

- (1) Deed restrictions. Includes restrictions on groundwater and soil handling and a Right of Entry for ODEQ staff during reasonable hours; that a worker health and safety program will need to be implemented by Lessee;
- (2) Expanded Worker Health and Safety Requirement. Requires workers be protected from wood treating constituents present in soils above levels considered protective.
- (3) Site Access Controls. Access control using fencing is a required component of the site remedy. Lessee will maintain the existing fencing at the site with site access controlled during non-working hours.

(h) Lessee will make its best efforts to give reasonable notice to Lessor if it has knowledge that its activities are likely to trigger deferred soil investigations. Lessee will give reasonable access to Lessor to collect the required soil samples and perform the required analyses prior to continuing work on the project that triggered the deferred soil investigation. Situations that trigger the deferred investigation are:

- (1) Removal and/or replacement of tank from the tank farm area;
- (2) Demolition and/or replacement of the retort building or drip pad or any other structure in the north retort area; and
- (3) Groundwater or NAPL monitoring data indicates that there is a significant source undiscovered source of groundwater contamination at the plant site.

(i) Lessor hereby reserves for itself, its employees, contractors, consultants and agents the right to enter upon the Premises, 24 hours a day, 365 days a year as provided in this Agreement as Lessor may reasonably deem necessary or appropriate, to operate and maintain the existing remediation systems, to expand remedial systems and to perform environmental investigations or characterization or remediation. This license shall include, without limitation: the right to install soil test borings; installation of groundwater monitoring wells; soil removal and replacement; installation of soil vapor extraction wells; installation of soil vapor monitoring wells; installation of contaminant extraction/recovery wells; installation of utility trenches; installation of contaminant recovery equipment and appropriate enclosures; storage of containerized investigation/remediation derived wastes; and use of soil stockpiles. When Lessor no longer requires use of any monitoring or recovery system installed in connection with this license, Lessor shall remove such monitoring and recovery system, except that trenches and wells may be abandoned in place. Notwithstanding the license reserved in this Article 9.3(i), nor any other provision of this Agreement, Lessor shall not unreasonably interfere with Lessee's operations on the Premises.

(j) The current system consists of 29 groundwater extraction wells, 20 injection wells, four oil-water separation systems, a water treatment plant and an effluent discharge line. Lessee agrees to conduct wood treating operations in a manner that protects the existing groundwater remedial systems including, but not limited to the following:

- 1) Protection of Equipment. The groundwater remediation system is distributed in the retort area of the site. There is both above-ground and below-ground equipment. Lessee agrees to repair and/or replace damage to this equipment that has been caused as a result of any act of Lessee, its contractors, subcontractors, agents or invitees of Lessee. All other repairs and replacement shall be completed at Lessor's sole cost and expense.

- 2) Expansion of System. Although unlikely, there is a potential that the groundwater remediation system could be expanded in the future if a new source to groundwater contamination is discovered, Lessee agrees to provide reasonable access to the site to accommodate future expansions of the groundwater remedial system.
- 3) Retort Building Piping Chase. A piping chase in the retort building is used for piping to transfer water and recovered oil from the south to the north side of the retort area. Lessee agrees to repair and/or replace damage to piping and other parts of the remedial system located in plant structures if such damage has been as a result of any independent act of Lessee, its contractors, subcontractors, agents or invitees of Lessee. All other repairs and replacement shall be completed at Lessor's sole cost and expense.

(k) Subsurface soil at the site may be classified as a RCRA hazardous waste if excavated. Any Party, including its contractors, subcontractors or other agents acting on their behalf, who excavates any soil shall be responsible, at its sole cost and expense for proper disposal of any hazardous waste generated, released or disturbed by such excavation. If the soil excavation is required by governmental law, order, or regulation to inspect, repair, or remediate a structure, equipment or soil condition that existed prior to the Environmental Liability Date or arises after the Environmental Liability Date but results from activities or events prior to the Environmental Liability Date, the costs for such disposal shall be borne by Lessor. Lessee shall obtain the consent of Lessor prior to commencing any substantial excavation of soil on the Premises.

(l) The Parties acknowledge that, as of the Environmental Liability Date Lessor and/or its environmental contractors are operating ground remediation oil cars in and around the Premises. Lessee agrees that, during the Term, it will permit Lessor and/or its contractors to operate and store ground remediation oil cars in and around the Premises at no charge. Lessor agrees to indemnify, hold harmless and defend Lessee, any financial institution as permitted by Article 18.14, and any parent, subsidiary or affiliate of Lessee or such financial institution, the officers, directors, shareholders and employees of Lessee and any such parent or affiliate, and the successors and assigns of the foregoing (collectively "Lessee's Affiliates") from and against any and liabilities, losses, damages, claims, demands, causes of action, costs and expenses, fines and penalties, of whatsoever nature, including, without limitation, court costs and reasonable attorneys' fees, and the cost and expense of cleaning, restoration, containment, remediation, decontamination, removal, investigation, monitoring or closure arising out of or resulting from the activities of the Lessor and/or its consultants and other agents on the Premises.

(m) Without limiting other obligations under this Lease, Lessor shall protect, defend, indemnify and hold harmless Lessee and Lessee's Affiliates from and against any and liabilities, losses, damages, claims, demands, causes of action, costs and expenses, fines and penalties, (including, without limitation,

court costs and reasonable attorneys' fees, and the cost and expense of cleaning, restoration, containment, remediation, decontamination, removal, investigation, monitoring or closure), arising out of and/or resulting from the Retained Environmental Liabilities or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, RCRA or CERCLA and any damages or costs or remediation arising out of or resulting from the Retained Environmental Liabilities. Lessor promises to continue to perform remediation, clean-up, removal, investigation and all other necessary work as required by any governmental agency relating to the Retained Environmental Liabilities.

ARTICLE 10 INSURANCE AND INDEMNITY

10.1 Property and Liability Insurance. Lessee, at no cost or expense to Lessor, shall procure and maintain the insurance coverage set forth on Exhibit D attached hereto and made a part hereof throughout the Term or any extension thereof. Certificates of Insurance evidencing the required coverage shall be furnished to Lessor prior to Lessee taking possession of the Premises. The All Risk Property Insurance shall include debris removal and demolition in case of casualty.

10.2 Liability Limits. The limits of the insurance required by this Lease to be obtained by Lessee shall in no event limit the liability of Lessee or relieve Lessee of any obligation under this Lease.

10.3 Release/Indemnity. Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor and Lessor's Affiliates from and against, any loss, personal injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee, except in each case with respect to the Retained Environmental Liabilities. This release and indemnity shall not apply to the extent said Loss was caused by the negligence of any indemnified party. For the purposes of this section, "invitee or licensee of Lessee" shall be deemed to exclude Lessor and Lessor's agents and/or other contractors working on the Premises.

ARTICLE 11 REPAIRS AND MAINTENANCE; FENCING; CLEARANCE STANDARDS