

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of Granting an Easement and
Equitable Servitudes to the Oregon
Department of Environmental Quality for the
Johnson Oil Remediation Project

ORDER NO. 59-2024

WHEREAS, ORS 271.310 provides that a political subdivision may sell, exchange, convey or lease all or any part of their interest in the property to a governmental body or private individual or corporation, if the public interest will be furthered; and

WHEREAS, ORS 275.090 provides that the County has powers related to lands acquired through foreclosure of delinquent tax liens including cooperation with the State of Oregon in the protection of lands, entering into agreements therefore, and granting easements through and across such lands; and

WHEREAS, Columbia County owns certain real property located at 280 East Columbia River Highway in Clatskanie, Oregon, identified by Tax Map ID #7N4W08-DB-05400 (the "Property"), acquired by the County in 2007 through foreclosure of delinquent tax liens; and

WHEREAS, the Property, a former gas station, is part of the Oregon DEQ's Environmental Cleanup Program, in which the Oregon DEQ has and will continue to fund remediation of contamination on the Property; and

WHEREAS, as a condition of future remediation on the Property and issuance of a Conditional No Further Action letter once remedial action is complete, Oregon DEQ requires that the County grant the Department an easement and equitable servitude authorizing the Department to enter the Property for inspection and mitigation, and agreeing to restrictions on use of the property due to the contamination;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS hereby orders, as follows:

1. The Board of County Commissioners for Columbia County grants an Easement and Equitable Servitudes to the Oregon Department of Environmental Quality as set forth in Attachment 1, which is attached hereto and is incorporated herein by this reference.
2. The Board of County Commissioners finds that granting the Easement and Equitable Servitudes is in the public interest because such action allows the Oregon Department

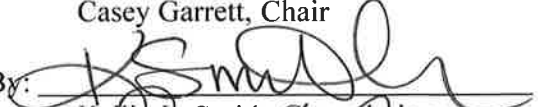
of Environmental Quality seek funding to continue its remediation project on the Property with the goal of a Conditional No Further Action letter.

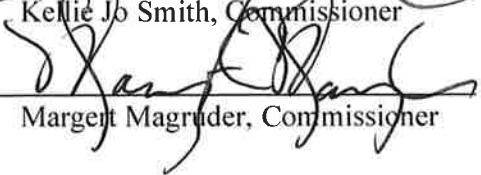
- 3. The Easement and Equitable Servitudes in the form of Attachment 1, shall be recorded in the Columbia County deed record without cost.

DATED this 11 day of December, 2024.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Casey Garrett, Chair

By: 
Kellie Jo Smith, Commissioner

By: 
Margent Magruder, Commissioner

Approved as to form

By: 
Office of County Counsel

Attachment 1

Space above this line for Recorder's use.

After recording, return to:

Grantee

Oregon DEQ
700 NE Multnomah St, Ste 600
Portland, OR 97232
Attention: Kara Master

Grantor

Columbia County
Commissioner Casey Garrett
230 Strand St
St. Helens, OR 97048

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on ~~November~~^{December} 5, 20~~23~~²⁴ between Columbia County ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "**Grantee**").

RECITALS

A. Grantor is the owner of certain real property located at 280 East Columbia River Highway, Clatskanie, OR 97016 in Columbia County, Oregon in Columbia County Tax Map 7N4W08-DB, Tax Lot 05400 (the "**Property**") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name Johnson Oil (Former), ECSI #130 and LUST File No. 05-87-0033 in the files of DEQ's Environmental Cleanup Program at Northwest Region office located at 700 NE Multnomah St, Suite 600, Portland, Oregon, and telephone (503) 229-5696. Interested parties may contact the Northwest Region office to review a detailed description of the risks from contamination remaining at the Property and described in the *Interim Removal Action Measures Report, Former Johnson Oil Site (LUST No. 05-87-0033)*, prepared by Haley & Aldrich, Inc., dated August 2022.

B. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

C. Nothing in this Easement and Equitable Servitude constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitude.

1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.

- 1.3 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Engineering control" has the meaning set forth in OAR 340-122-0115
- 1.6 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.7 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.8 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's issuance of a Conditional No Further Action letter once remedial action is complete, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1. **Groundwater Use Restrictions.** Owner may not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

3.2. **Vapor Engineering Control Use Restrictions.** Owner shall not construct nor expand existing structures on the Property unless appropriate engineering measures are constructed to mitigate the potential for vapor intrusion. The Owner must submit to DEQ engineering specifications and a vapor intrusion mitigation work plan designed to prevent vapor

intrusion into buildings for review and approval. The work plan should include performance monitoring of the proposed controls. A Professional Engineer registered in the State of Oregon must stamp engineering documents submitted for review. Upon completion of the construction, the Owner must submit to DEQ as-built or a certification from the engineer that the barrier or vapor mitigation system was installed in accordance with approved specifications and that performance monitoring data quality objectives have been met.

3.3. **Contaminated Media Management Plan.** Owner shall not permit excavation or construction at the Property without implementing a contaminated media management plan (CMMP) plan that addresses the required handling and disposal of petroleum contaminated soil and groundwater encountered during construction. DEQ is currently preparing a CMMP. The CMMP will be sent to the Owner and will be available through DEQ's cleanup database once complete. Owner may develop its own plan.

3.4. **Land Use Restrictions.** Owner shall not occupy or allow other parties to occupy the Property for residential purposes.

3.5. **Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

5. RELEASE OF RESTRICTIONS

5.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2. Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

6. GENERAL PROVISIONS

6.1. **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2. **Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the City of Clatskanie zoning code or any successor code. As of the date of this EES, the base zone of the Property is General Commercial (C-1).

6.3. **Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.4. **Effect of Recording.** Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.5. **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

6.6. IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitude as of the date and year first set forth above.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: Columbia County

By: _____ Date: _____
Casey Garrett, Columbia County Commissioner

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by Casey Garrett of Columbia County, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature] Date: 11/5/2024
Amanda Wozab, Natural Resource Protection and Sustainability Manager, Northwest Region

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument is acknowledged before me this 5th day of November, 2024, by Amanda Wozab of the Oregon Department of Environmental Quality, on its behalf.



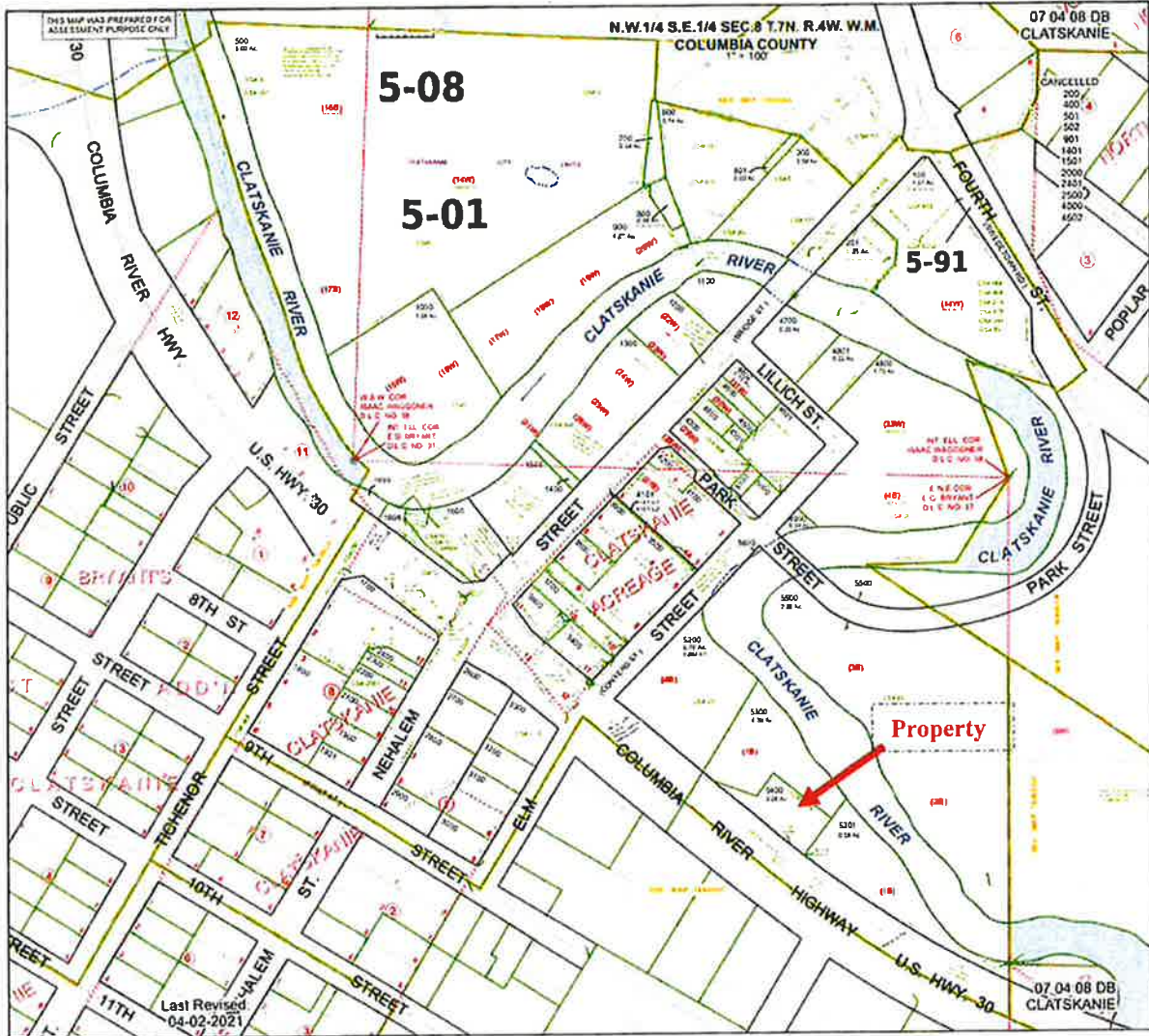
[Signature]
NOTARY PUBLIC FOR OREGON
My commission expires: 7/1/2028

EXHIBIT A**Legal Description of the Property**

A part of Lot 1 of the Subdivision of the South half of the E. G. Bryant Donation Land Claim in Section 8, Township 7 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, said part of Lot 1 being more particularly described as follows: Beginning at a point on the East line of said Lot 1, 343 feet North of the Southeast corner of the E. G. Bryant Donation Land Claim and the Northeast corner of the tract described in deed from Enoch W. Conyers, et al, to William E. Conyers, recorded in Book 21, page 283, Deed Records of Columbia County, Oregon; running thence South 82° 21' West 480.4 feet to a point in a Southeasterly projection of the center of First Street of the City of Clatskanie; thence North 60° 20' West, along said projection of the center of First Street, 328.3 feet, more or less, to the Westerly line of said Lot 1; thence North 29° 40' East, along said Westerly line of said Lot 1, a distance of 360 feet, more or less, to an iron pipe located on the Northerly line of the Columbia River Highway; thence Southeasterly, along said Highway, 23 feet to a point, the true point of beginning of the tract herein described; thence from the true point of beginning, Southeasterly along said Highway, 207 feet to an iron bolt; thence North 37° 46' 28" East 82 feet; thence North 52° 36' West 130 feet; thence South 37° 24' West 51 feet; thence Westerly 84 feet, more or less, to the true point of beginning.

EXHIBIT B

Property Tax Map



Source: <https://gis.columbiacountymaps.com/TaxMaps/7408DB.pdf>

PERMIT AND HOLD HARMLESS AGREEMENT
for use of Columbia County Facilities

THIS AGREEMENT is by and between **COLUMBIA COUNTY ECONOMIC TEAM**, hereinafter referred to as "Permittee," and **COLUMBIA COUNTY**, a political subdivision of the State of Oregon, hereinafter referred to as "County," for the use of a County Facility, as follows:

Name of Facility: John Gumm Building.
Address of Facility: 251 St Helens Street, St. Helens, Oregon.
Use Permitted: Columbia Economic Team Office and Small Business Development Center.
Permitted Space: Suite 101 as well as storage space as assigned by the County. Use will be joint with the Columbia-Pacific Economic Development District.
Date and Time of the Event: 12:01 a.m. October 15, 2024 through 11:59 p.m. October 15, 2029.

In consideration of the permission given by County for Permittee to use the County Facility for the above-Permitted Use, Permittee agrees to release, indemnify, defend and hold harmless the County, its officers, agents and employees, successors and assigns against all liability, loss, and costs arising from actions, suits, claims, or demands, except when due to the County's sole negligence, arising in any manner out of the use of such facilities by Permittee, its officers, agents, employees, members or invited guests.

In addition, Permittee agrees to provide a certificate of insurance in an amount of not less than \$2,000,000 per occurrence to protect County, its officers, agents, and employees. Permittee shall provide County a certificate or certificates of insurance in the amounts described above which names Columbia County, its officers, agents and employees as additional insureds at least 5 days prior to their move in to the facility. Such certificate or certificates shall be accompanied by an additional insured endorsement containing the same language. Permittee shall notify County immediately if any insurance coverage required by this paragraph will be canceled, not renewed or modified in any material way.

This permit is subject to the additional terms and conditions attached hereto as Exhibit A.

Permittee acknowledges that the County may, at its sole discretion, revoke this permit and/or require removal of equipment or other personal property from County property. Unless otherwise agreed to in writing, this permit does not entitle the permittee to exclusive use of County property, nor does it entitle permittee to sublet or charge a fee for use of County property.


PERMITTEE:
Columbia County Economic Team

By: 
(Signature of Authorized Representative)

Name: Paul Vogel
(Name of Authorized Representative)

Date: 10/3/2024

BOARD OF COUNTY COMMISSIONERS FOR
COLUMBIA COUNTY, OREGON:

By: 
Chair

Date: 10/09/2024

EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS OF PERMIT

1. Utilities: County shall pay all charges for gas, electricity, water and garbage. Permittee shall provide and pay for all other services it requires including, but not limited to telephone, network, and internet services. If Permittee uses excessive amounts of utilities and/or services of any kind the County may bill Permittee for such excessive use.
2. Access/Common Areas: Permittee shall have the same right to access the Facility and its common areas as is enjoyed by County departments. Permittee will be responsible for the set-up, take-down and clean-up of any common area of which they make use.
3. Taxes. Permittee will be solely responsible for payment of all taxes imposed on Permittees activities or as a result of this Permit.
4. Use of Facility. Permittee shall:
 - a. Keep the Permitted Space in good, clean order and condition. Permittee shall obtain all services necessary for its activities on the property, including without limitation, security, clean-up, maintenance and janitorial personnel.
 - b. Refrain from using or permitting the use of the Facility for any illegal or improper purposes.
 - c. Refrain from any activity that would make it impossible to insure the Property against casualty, would increase the insurance rate, or would prevent the County from taking advantage of any reduced premium rates for long-term fire insurance policies, unless Permittee pays the additional cost of the insurance.
 - d. Comply with all applicable laws, regulations, ordinances, rulings, and licensing requirements of any public authority relating to the use of the Facility, the use thereof, or any activity thereon.
 - e. Abide by any and all County administrative, operational and safety rules and regulations established by the County at all times during the use of the Facility.
 - f. Refrain from damaging the Facility, including all windows, doors, fixtures, interior walls, pipes, and other appurtenances.
 - g. Refrain from loading the electrical system, HVAC system or floors beyond a reasonable and safe level.
 - h. Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Facility without the prior consent of the County.

- i. Not cause or permit any Hazardous Substance to be used, brought onto, spilled, leaked, disposed of, or otherwise released on or under, County property. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. The term "Environmental Laws" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment.
 - j. Reimburse the County for the cost of repair incurred by the County for damage to the Facility caused by the negligent or intentional acts or any breach of this Permit by Permittee or the officers, agents, employees or guests of Permittee.
 - k. Exercise all reasonable care in the use of halls, stairs, bathrooms, closets, and other fixtures and parts of the premises used in common with other tenants in said building which may be necessary for the preservation of the premises and the prevention of personal injury.
 - l. Permit County officers and employees access to the Property as deemed necessary by the County in its sole discretion. Permittee shall be solely responsible for locking any areas it wishes to be secured. Permittee shall provide the County with copies of all keys. The County must approve of the lock type.
 - m. Upon expiration or termination of this permit, quietly and peaceably deliver up the possession of the Permitted Space in good state and condition, damage or destruction by fire or storm or Act of God excepted.
5. Improvements, Repairs and Alterations. Except as provided herein, or by law, Permittee shall not make any changes to decor or modify the Property in any way without the County's prior consent. Permittee agrees to pay all costs resulting from approved changes or modifications. Permittee is responsible to pay the County any costs associated with restoring changes or modifications at the termination of this Permit.
6. Heating and Cooling. The County shall furnish heat and air conditioning during the normal Buildings hours of 6:00 A.M. to 5:00 P.M. Monday through Friday, and 7:00 A.M. to 2:00 P.M. Saturdays, except for holidays. The acceptable temperature range for the Permitted Space is between 67 degrees to 75 degrees Fahrenheit, as measured from the thermostat level which is approximately sixty inches (60") above the floor, unless there are extreme weather conditions which create an unusually hot or cold condition. In addition, the County will not be required to maintain the above temperature range in computer server rooms or in areas where the occupancy is above one person per 100 useable square feet of leased space.

7. Waiver of Subrogation. Permittee shall be responsible for insuring its personal property and trade fixtures located at the Facility. The County shall not be liable to Permittee for any loss or damage caused by fire, water damage, sprinkler leakage, or any of the risks that are or could be covered by a standard all risk insurance policy with an extended coverage endorsement. There shall be no subrogated claim by Permittee's insurance carrier against the County arising out of any such loss.

8. Party Representatives. Party representatives for this Agreement shall be:

FOR THE COUNTY

Riley Baker
230 Strand Street
St. Helens, OR 97051
(503) 397-7213
riley.baker@columbiacountyor.gov

FOR PERMITEE

Paul Vogel
Columbia Economic Team
P.O. Box 1653
St Helens, Or 97051
paulvogel@columbiacountyoregon.com

All correspondence shall be sent to the above addressees when written notification is necessary. Party representatives can be changed by providing written notice to the other party at the address listed.

9. Additional Terms.

- a. Non-assignment. Permittee shall not sublet the Permitted Space or assign its rights under this Permit without the written consent of the County.
- b. No Partnership. The County is not by virtue of this Agreement a partner or joint venturer with Permittee in connection with the activities contemplated by this Agreement and shall have no obligation with respect to Permittee's debts or other liabilities, and no interest in Permittee's profits.
- c. Entire Agreement. This document constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes any prior oral, written, or contemporaneous agreement between the parties.
- d. Time. Time is of the essence of this Agreement.
- e. Severability. If any term or provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement, including the application of any term or provision to persons or circumstances other than those as to which the application is declared invalid or unenforceable, shall not be affected.
- f. Attorney Fees. If suit or action is instituted arising out of this Agreement, each party shall be responsible for its own attorney fees.
- g. Governing Law; Venue. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed under the laws

of the State of Oregon (without regard to conflicts of law principles). Venue shall lie exclusively in the Circuit Court of the State of Oregon for Columbia County in St. Helens, Oregon.

- h. Amendment. This Agreement may only be amended by a writing signed by the County and Permittee.
- i. No Waiver. Waiver by either party of the strict performance of any term or covenant of this Agreement or of the timely payment of license fee due or any right under this Agreement shall not be a continuing waiver.
- j. Successors and Assigns. This Agreement and the covenants, agreements, obligations, and restrictions herein contained shall be binding upon and shall inure to the benefit of the parties hereto and to their respective representatives, successors, and permitted assigns.