

W.7.a.

AGENDA MEMORANDUM

Date: January 22, 2008
Order Date: February 6, 2008

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer

AGENDA ITEM TITLE: IN THE MATTER OF AUTHORIZING THE EXECUTION OF A QUITCLAIM DEED CONVEYING COUNTY OWNED REAL PROPERTY IDENTIFIED AS ASSESSOR'S MAP NO. 18-03-10-10-03200 TO SeQUENTIAL RETAIL STATION #1, LLC FOR CONSIDERATION OF \$50,000 (86714 MCVAY HWY.)

I. MOTION:

TO AUTHORIZE THE EXECUTION OF A QUITCLAIM DEED CONVEYING COUNTY OWNED REAL PROPERTY IDENTIFIED AS ASSESSOR'S MAP NO. 18-03-10-10-03200 TO SeQUENTIAL RETAIL STATION #1, LLC FOR CONSIDERATION OF \$50,000 (86714 MCVAY HWY.)

II. AGENDA ITEM SUMMARY:

SeSequential Retail Station #1 LLC (SQ) and the County entered into a lease/purchase agreement for county property at 86714 McVay Hwy., Eugene, in September, 2005. The agreement provided for the transfer of the property to SQ upon satisfaction of certain terms within the agreement. Those terms have been satisfied and the Board is being asked to authorize the execution of a Quitclaim Deed to convey the property to SQ.

III. BACKGROUND/IMPLICATION OF ACTION:

A. Board Action and Other History.

The property is a former gas station that was acquired through tax foreclosure in September, 2004. The property had substantial petroleum contamination in the soil and ground water.

SQ expressed an interest in acquiring the property so it could develop a retail fueling station to sell bio fuels (bio diesel). Their interest was contingent upon the County acquiring a cleanup grant from the EPA to remediate the contamination.

The County, upon the Board's approval, applied for and received a \$300,000 cleanup grant from the EPA. Subsequent to receiving the grant the County, pursuant to Order 05-6-29-8, entered into a lease/purchase agreement with SQ. The terms of the agreement provided for:

- SQ leasing and developing the property during the grant period (approximately 2 years)
- SQ contributing \$50,000 towards cleanup of the property - \$40,000 of which was applied as the County's matching funds for the EPA grant.
- Transfer of the property to SQ upon completion of the grant period and/or completion of cleanup – whichever came first.

SQ was also required to enter into a "Prospective Purchasers" agreement (PPA) with the Oregon Dept. of Environmental Quality (DEQ). The agreement details cleanup actions to be taken and SQ's responsibilities with respect to cleanup. The benefit of a PPA is that it removes further liability for the buyer upon completion of the required cleanup actions.

The County also entered into an intergovernmental agreement with the DEQ to effect and manage cleanup of the property.

The grant period has expired, all of the grant funds have been expended and SQ has otherwise fulfilled the terms of the lease/purchase agreement.

B. Policy Issues.

Pursuant to LM 21.425, it is the County's policy to dispose of tax foreclosed property so it may be returned to productive use and the tax roll.

C. Board Goals.

The cleanup, redevelopment, and return to the tax rolls of this property meet the Board's goals to:

1. Work for a strong regional economy to expand the number of family wage jobs available in Lane County;
2. Contribute to appropriate community development in the areas of transportation ... and land development; and
3. Maintain a healthy environment ...

D. Financial and/or Resource Considerations.

Completion of the lease/purchase agreement by transferring the property to SQ will not have any effect on County financial resources.

Since entering into the agreement with SQ and its subsequent development, the property has gone from having a taxable value of \$500 to a taxable value of just under \$1,000,000.

E. Analysis.

Initially, the project had to overcome several obstacles as 6 unique agreements were needed among and between involved parties (County, EPA, DEQ, SQ, Oregon Dept. of Energy, Oregon Economic and Community Development Dept.). Once the agreements were effected the project went relatively smoothly. Cleanup actions and development of the property by SQ occurred simultaneously. SQ completed the development and is now operating retail fueling station selling bio-fuels (Senator Wyden spoke at the grand opening of the station in August, 2006).

Although the EPA grant period has expired and all grant funds have been expended, some cleanup issues remain and will continue to be addressed by DEQ. Ground water monitoring wells will remain on the property to assess any recurring contamination. Closure of some monitoring wells also needs to be completed.

The project can be deemed a success and has been nationally recognized as such. The project has won a "Phoenix" award which is given by the Phoenix Foundation and is given to a project that successfully re-develops contaminated, blighted property to viable economic use in an environmentally sensitive manner.

F. Alternatives/Options.

As the terms of the lease/purchase agreement have been satisfied, the County is obligated to transfer the property to SQ.

IV. TIMING/IMPLEMENTATION:

Title should be transferred to SQ as soon as practical.

V. RECOMMENDATION:

It is recommended that the Board authorize and execute the Quitclaim Deed.

VI. FOLLOW-UP:

Upon approval and execution of the deed, it will be delivered to SQ and duly recorded in the Deed Records of the County.

VII. ATTACHMENTS:

Board Order
Quitclaim Deed
Order 05-6-29-8
Lease/Purchase Agreement
Plat Map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. IN THE MATTER OF AUTHORIZING THE EXECUTION OF A QUITCLAIM DEED CONVEYING COUNTY OWNED REAL PROPERTY IDENTIFIED AS ASSESSOR'S MAP NO. 18-03-10-10-03200 TO SeQUENTIAL RETAIL STATION #1, LLC FOR CONSIDERATION OF \$50,000 (86714 MCVAY HWY.)

WHEREAS Lane County had entered into a lease/purchase agreement pursuant to Board Order 05-6-29-8 with SeQuential Retail Station #1, LLC (SeQuential) for the lease and purchase of tax-foreclosed property (86714 McVay Hwy., Eugene); and

WHEREAS the terms of said agreement provided for the transfer of said property to SeQuential upon completion of a grant from the Environmental Protection Agency to effect the cleanup of hazardous materials present on said property; and

WHEREAS said grant has been completed and SeQuential has fulfilled other terms and conditions of the lease/purchase agreement to effect transfer of said property.

IT IS HEREBY ORDERED that, for consideration of \$50,000 and fulfillment of the terms of that certain agreement between Lane County and SeQuential Retail Station #1 LLC as recorded in the Deed Records of Lane County under, Reception No. 2005-100109, the Board executes a Quitclaim Deed conveying to said SeQuential Retail Station #1, LLC County owned property identified as Map No. 18-03-10-10-03200 and more particularly described in Exhibit "A".

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this _____ day of _____, 20__.

Faye Stewart, Chair, Board of County Commissioners

IN THE MATTER OF AUTHORIZING THE EXECUTION OF A QUITCLAIM DEED CONVEYING COUNTY OWNED REAL PROPERTY IDENTIFIED AS ASSESSOR'S MAP NO. 18-03-10-10-03200 TO SeQUENTIAL RETAIL STATION #1, LLC FOR CONSIDERATION OF \$50,000 (86714 MCVAY HWY.)


APPROVED AS TO FORM
Date: 1/29/08 Lane County

OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

PROPERTY DESCRIPTION

Map # 18-03-10-10-03200

Beginning at the Southeast corner of the A.H. Coryell Donation Land Claim No. 59, in Section 10, Township 18 South, Range 3 West of the Willamette Meridian; thence South 89° 43' 18" West 506.00 feet; thence North 17° 41' 30" West 926.80 feet to the intersection of the North line of County Road No. 1129 (Bloomberg Road) with the West line of Interstate 5 and the TRUE POINT OF BEGINNING of the following described tract of land; thence South 89° 56' 30" West 134.00 feet; thence North 18° 59' 10" West 207.78; thence North 89° 43' 20" East 138.77 feet to the Westerly right of way of Interstate 5; thence South 17° 41' 30" East along the Westerly right of way of Interstate 5 206.80 feet to the TRUE POINT OF BEGINNING, in Lane County, Oregon (map# 18-03-10-10-03200).

QUITCLAIM DEED

LANE COUNTY, a political subdivision of the State of Oregon, pursuant to Order No 05-6-29-8 of the Board of County Commissioners of Lane County, releases and quitclaims to:

SEQUENTIAL RETAIL STATION #1, LLC

all its right, title and interest in that real property situated in Lane County, State of Oregon, described as:

See Attached Exhibit "A"

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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, 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
The true and actual consideration for this transfer is \$50,000

LANE COUNTY BOARD OF COMMISSIONERS

This space reserved for recording sticker

STATE OF OREGON)
) ss
COUNTY OF LANE)

On _____, 2008 personally appeared _____

_____, _____, _____, _____

_____, County Commissioners for Lane County, and acknowledged the foregoing instrument to be their voluntary act. Before me:

After recording, return to/taxes to:
SeSequential Retail Station #1, LLC
1840 Willamette St.
Eugene, OR 97401

Notary Public for Oregon
My Commission Expires _____

EXHIBIT "A"

PROPERTY DESCRIPTION

Map # 18-03-10-10-03200

Beginning at the Southeast corner of the A.H. Coryell Donation Land Claim No. 59, in Section 10, Township 18 South, Range 3 West of the Willamette Meridian; thence South $89^{\circ} 43' 18''$ West 506.00 feet; thence North $17^{\circ} 41' 30''$ West 926.80 feet to the intersection of the North line of County Road No. 1129 (Bloomberg Road) with the West line of Interstate 5 and the TRUE POINT OF BEGINNING of the following described tract of land; thence South $89^{\circ} 56' 30''$ West 134.00 feet; thence North $18^{\circ} 59' 10''$ West 207.78; thence North $89^{\circ} 43' 20''$ East 138.77 feet to the Westerly right of way of Interstate 5; thence South $17^{\circ} 41' 30''$ East along the Westerly right of way of Interstate 5 206.80 feet to the TRUE POINT OF BEGINNING, in Lane County, Oregon (map# 18-03-10-10-03200).

LEASE/PURCHASE AGREEMENT

This lease is entered into by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter "LESSOR", and SEQUENTIAL Retail Station #1 LLC a private for-profit corporation, hereinafter "LESSEE".

RECITALS:

- A. LESSOR is the owner of real property due to tax foreclosure located at 86714 McVay Hwy., Eugene, Oregon (premises). Said real property is more particularly described in attached Exhibit "A".
- B. Said real property was formerly a gas station. Releases of petroleum have occurred at and from the property resulting in soil and groundwater contamination.
- C. LESSEE can use said real property as a site for its business as an operator of a retail/commercial biofuel station.
- D. LESSOR anticipates being awarded \$197,520 in Brownfield Cleanup Grant funds from the Environmental Protection Agency (EPA) to clean up the hazardous materials on the premises. Said grant funds would require a 20% match of funds from LESSOR.
- E. LESSEE is also willing to contribute funds towards the cleanup of the premises
- F. LESSOR is willing to lease and transfer title to said real property to LESSEE pursuant to the following terms and conditions:

SECTION 1. AGREEMENT TO LEASE

1.1 LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR the Premises on the terms and conditions set forth below.

SECTION 2. TERM

2.1 The term of this lease shall begin upon full execution by both parties and shall continue until midnight December 1, 2007 unless it is sooner terminated as provided in this lease.

2.2 This agreement shall not be effective until a Prospective Purchaser Agreement for the leased premises has been fully executed between LESSEE and the Oregon Dept. of Environmental Quality (DEQ) and an Intergovernmental Agreement between LESSOR and the DEQ has been fully executed. A draft of said agreements are attached as Exhibits "B" and "C" respectively.

Lease
SeQuential/Lane County
McVay Hwy..

AFTER RECORDING RETURN TO:
LANE COUNTY 125 E 8th Ave, Eugene Or 1
Attn: Jeff Turk

SECTION 3. CONSIDERATION

- 3.1 Consideration for this Agreement shall be LESSEE'S financial contribution to cleanup of the Property as described in Section 15.

SECTION 4. USE OF PREMISES

- 4.1 LESSEE shall use the Premises for the operation of its business as a operator of a retail/commercial biofuel station provided that said use is consistent with terms set forth in a Prospective Purchaser Agreement (PPA) which LESSEE shall obtain from DEQ prior to commencing any use of the property, and is also consistent with the terms of the EPA grant LESSOR has obtained.
- 4.2 LESSOR has been awarded a grant from the Environmental Protection Agency for the cleanup of hazardous materials present on the Premises. LESSOR, LESSEE and the DEQ will be cooperating with each other to clean up the property pursuant to the terms of the grant and other agreements between the parties. LESSEE shall give its full cooperation to LESSOR and DEQ in facilitating clean up of the Premises. Such cooperation shall include, but not be limited to, providing access to the Premises to LESSOR, DEQ and or/their agents for the purposes of conducting site assessments, obtaining soil samples, installing equipment for removal of hazardous waste and/or monitoring of said waste.

SECTION 5. TAXES AND ASSESSMENTS; UTILITIES

- 5.1 Payment by LESSEE. LESSEE shall pay before delinquency all real and personal property taxes, general and special assessment, and other charges of every description levied on or assessed against the Premises including the land and improvements thereon and personal property of LESSEE. LESSEE shall make all such payments directly to the taxing authority. If any such tax, assessment or charge may be paid in installments, LESSEE may elect to do so as long as each installment together with interest is paid before it becomes delinquent.
- 5.1.1 LESSEE shall notify the county Tax Assessor that LESSEE will be responsible for payment of property taxes and provide the Assessor with an address for mailing of property tax statements.
- 5.2 Right to Contest. LESSEE may contest in good faith the validity or amount of any tax, assessment or charge in accordance with the procedures established by statute or administrative rule for such contest so long as the Premises are not subjected to any lien as a result of the contest. LESSEE may prosecute such contest in the name of LESSOR as LESSOR'S attorney in fact. All tax contests shall be at the sole expense of LESSEE. Any return or rebate from any taxing authority on account of any tax or assessment which was originally paid by LESSEE shall be the sole property of LESSEE.

- 5.3 **Substitute Taxes.** For purposes of paragraph 5.1 "real property taxes" include any tax levy or assessment enacted after the date of this lease in substitution for all or part of ad valorem real property taxes LESSEE would have been obligated to pay under paragraph 5.1, the purpose of which is more closely related to that of an ad valorem or use tax than to an income tax on LESSOR'S income, or any other tax, levy, assessment, imposition or charge measured by or based upon the Premises and imposed upon LESSOR. All such taxes shall be paid by LESSEE as provided above.
- 5.4 **Proof of Compliance.** LESSEE shall furnish to LESSOR receipts or other proof of payment of taxes and assessments within 30 days of making payment.
- 5.5 **Utilities.** LESSEE shall pay when due all charges for electricity, natural gas, water, sewage, telephone, refuse collection and all other services or utilities used on or in connection with the Premises.

SECTION 6. CONSTRUCTION/MAINTENANCE OF IMPROVEMENTS

- 6.1 **LESSEE, at LESSEE'S sole expense, may construct improvements on the Premises necessary to conduct its business. LESSEE shall obtain and pay for all necessary land use approvals, permits or any other governmental (federal, state or local) permit or approval required prior to construction and throughout the term of this lease. LESSOR, in its capacity as the landowner, shall cooperate with LESSEE in obtaining such approvals and permits. Such cooperation shall include signing all applications and other documents requested by LESSEE that may reasonably be related to such matters, provided that LESSOR approves the form and substance of all such documents. Such approvals shall not be unreasonably withheld. All costs and expenses incurred with respect to such approvals shall be paid by LESSEE.**
- 6.2 **Maintenance/Alterations. LESSEE shall be responsible for maintaining the Premises and all improvements in good condition and repair throughout the term of this lease, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, regulations and ordinances of federal, state, county, municipal or other governmental agencies having or claiming jurisdiction. LESSEE shall be responsible for all alterations and remodeling to the improvements made during the lease term. All such work shall be done in a good and skillful manner in compliance with all applicable building and zoning laws and all other laws, ordinances, orders and requirements of all authorities having, or claiming to have, jurisdiction. Said maintenance includes water, sewerage and drainage lines serving the Premises. LESSEE shall also be responsible for maintenance of the grounds – mowing, weed control and similar activities.**
- 6.3 **Reconstruction After Damage. If any building or other improvement on the Premises is damaged or destroyed by fire or any other cause at any time during the lease term, with the cost to repair said damage being 50% or greater of the improvement's value, it shall be at the option of the LESSEE whether or not to repair said damage. Damage which is less than 50% of the value of the improvements shall be repaired by LESSEE.**

Notwithstanding the aforesaid, LESSEE shall be liable to repair, replace, or otherwise remediate any damage to the Premises during the term of this agreement unless said damage was caused by LESSOR.

SECTION 7. OWNERSHIP OF THE IMPROVEMENTS

- 7.1 All improvements on the Premises constructed by LESSEE shall be deemed as owned by LESSEE until expiration or sooner termination of this lease. Except as provided for in Section 7.2 and except for transfer of the Premises pursuant to Section 15 of this agreement, all improvements located on the Premises at the expiration or sooner termination of this lease shall become the property of LESSOR, free and clear of all claims of LESSEE or anyone claiming under LESSEE, and LESSEE shall indemnify and defend LESSOR, its Commissioners, officers, employees and agents, against all liability and loss arising from such claims. LESSOR may require LESSEE, at LESSEE's expense, to remove LESSEE constructed improvements upon expiration or sooner termination of this lease.
- 7.2 LESSEE shall have the option of removing the improvements from the Premises upon expiration or sooner termination of this lease. If LESSEE chooses to remove the improvements from the Premises it shall notify LESSOR in writing not less than ninety (90) days prior to expiration of the lease. If this lease is terminated prior to its expiration, LESSEE shall notify LESSOR in writing within sixty (60) days of said termination whether it wishes to remove the improvements from the Premises. LESSEE shall remove all improvements from the premises within 90 days of the lease's expiration or termination if it has chosen to remove the improvements.
- 7.3 LESSEE, with prior consent from LESSOR which shall not be unreasonably withheld, and at LESSEE's sole expense, may demolish or otherwise remove existing improvements on the Premises. LESSEE shall obtain all necessary permits and regulatory approvals prior to said demolition or removal.

SECTION 8. ASSIGNMENT; SUBLETTING

8.1 Assignment

- 8.1.1 LESSEE shall not assign or otherwise transfer LESSEE'S interest in this lease or the estate created by this lease without the prior written consent of LESSOR which shall not be unreasonably withheld. No consent in one instance shall remove the requirement for consent in any subsequent instance.
- 8.1.2 For purposes of this section 8.1, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of LESSEE, or of the interest of any general or joint venture partner or syndicate member or co-tenant if LESSEE is a corporation, partnership, joint venture, syndicate or co-tenancy, which shall result in changing the

control of LESSEE shall be construed to be an assignment of this lease and shall require LESSOR's consent to any such assignment.

- 8.1.3 The terms of any assignment, whether or not the assignment requires the consent of LESSOR, shall include a covenant by the assignee that it assumes and agrees to pay and perform all of LESSEE'S obligations under this lease. No assignment shall release LESSEE of its obligations under this lease unless LESSOR so agrees in writing.
- 8.2 Right to Sublet. Provided that a sublease of the Premises is permitted by any agreement LESSEE has entered into with the Oregon Department of Environmental Quality (DEQ) and provided that any sublease will not cause LESSOR to lose its immunity from liability for existing contamination on the Premises, LESSEE may sublease a portion of the Premises or improvements thereon with prior approval from LESSEE which shall not be unreasonably withheld. However, no sublease will be approved which will cause the Premises to no longer be used for the marketing and distribution of biofuels by LESSEE.

SECTION 9. INSURANCE; INDEMNIFICATION; LIENS

- 9.1 Fire and Hazard Insurance. LESSEE shall throughout the lease term keep the construction and all buildings on the Premises insured against loss by fire and other hazards covered by a standard form of fire insurance policy with extended coverage endorsement including vandalism and malicious mischief. The amount of the insurance shall not be less than the replacement cost of the insured improvements and shall also be sufficient to prevent LESSEE from becoming a co-insurer under the provisions of the policies. LESSOR shall not carry any insurance that would result in a reduction of the protection of payment to LESSEE under any insurance described above.
- 9.2 Proceeds of Fire and Hazard Insurance
- 9.2.1 The proceeds of the policies described above shall be used to repair, restore and replace any damaged or destroyed improvements. LESSOR shall cooperate fully with LESSEE to obtain the largest possible recovery but LESSOR shall have no expense or cost in that connection.
- 9.2.2 If LESSEE chooses not to repair, restore, replace or reconstruct any damaged or destroyed improvements as provided for in paragraph 6.3, the insurance proceeds shall be used as follows:
- A. First to pay any property taxes owing on the real property, improvements, loans, mortgages or other debts incurred by LESSEE for which the funds were used to construct, remodel or repair the Premises.
- B. Second, to repay loans, mortgages or other debts incurred by LESSEE in which the improvements were used as security

C. Third, to raze and/or otherwise remove the damaged improvements from the Premises.

D. Fourth, to pay claims of third parties for damage to or loss of equipment used in connection with the environmental clean up of the Premises .

E. Fifth, to LESSEE.

9.2.3 All policies of insurance required by paragraph 9.1 shall provide that the proceeds shall be paid to LESSEE and the proceeds shall be deemed to be held in trust by LESSEE for the uses and purposes required by this lease.

9.3 Public Liability Insurance. LESSEE shall procure and continuously maintain during the term of this lease public liability and property damage insurance with limits of \$1 million per occurrence. The insurance shall specifically provide coverage from risks from underground hazards and explosions and collapse. The insurance shall be in a form sufficient to protect LESSOR and LESSEE against claims of third persons for personal injury, death or property damage arising from the use, occupancy or condition of the Premises or improvements on the Premises or LESSEE'S failure to perform the terms of this lease. Lane County, its commissioners, officers, agents, and employees shall be named as additional insureds.

9.3.1 LESSEE shall secure insurance to cover costs associated with the release of hazardous materials on the premises by LESSEE, its employees, agents, contractors or invitees. Said costs shall include, but not be limited to, cost of cleanup and any liability resulting from the release of hazardous materials.

9.4 General Insurance Provisions. All policies of insurance which LESSEE is required by this lease to carry shall:

9.4.1 Provide that the insurer waives the right of subrogation against LESSOR and that any loss shall be payable notwithstanding any negligence or affirmative act of LESSOR.

9.4.2 Be issued by a responsible insurance company which is licensed to practice in the State of Oregon.

9.4.3 Be primary policies.

9.4.4 Be evidenced by certificates furnished to LESSOR bearing endorsement requiring ten (10) days' written notice to LESSOR prior to any change or cancellation of the policies.

9.5 Indemnification. LESSEE shall indemnify, hold harmless and defend LESSOR, its commissioners, officers, employees and agents from any and all claims, losses, damages, expenses and liability arising out of or related to LESSEE's possession of the Premises or

any activity of LESSEE, its employees, contractors, agents or invitees upon or related to the Premises, or LESSEE'S failure to perform the terms of this lease.

9.6 **Liens.** LESSEE shall pay as due all claims for work done on and for services rendered or material furnished to the Premises and shall keep the Premises free from any claims, liens, encumbrances and security interests of any nature and shall indemnify, defend and hold harmless LESSOR from the imposition of any such claims, liens, encumbrances and security interests. If LESSEE fails to pay any such claims or to discharge any lien, LESSOR may do so and collect the cost as additional rent or a separate charge to LESSEE. Any such payment by LESSOR shall bear interest at the prime rate as published in the Wall Street Journal plus 3 points per annum from the date expended by LESSOR and shall be payable on demand. Such action by LESSOR shall not constitute a waiver of any right or remedy which LESSOR may have on account of LESSEE'S default.

9.6.1 LESSEE may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as LESSOR'S property interests are not jeopardized. If a lien is filed as a result of nonpayment, LESSEE shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with LESSOR cash or sufficient corporate surety bond or other surety satisfactory to LESSOR in an amount sufficient to discharge the lien plus any reasonably anticipated costs, attorney fees and other charges that could accrue as a result of a foreclosure of sale under the lien.

9.7 **Environmental Hazards:** LESSEE shall not dispose of, permit the escape of, introduce or release onto or beneath the surface of the Premises any hazardous substance or contaminant.

9.7.1 **Hold Harmless:** LESSEE shall indemnify, defend and hold LESSOR, its commissioners, officers, agents and employees harmless from and against all removal, remediation, containment and other costs caused by, arising out of, or in connection with the handling, storage, discharge, transportation or disposal of any hazardous substance or contaminant brought to, placed on, used at or generated on the Premises by LESSEE.

9.7.2 **Existing Contamination:** Due to LESSOR acquiring the Premises through tax foreclosure, LESSOR has protection under State and Federal laws from liability associated with existing contamination on the Premises LESSEE shall indemnify, defend and hold LESSOR, its commissioners, officers, agents and employees harmless from any liability, damages or claims, and against all removal, remediation, containment and other costs associated with the contamination and hazardous materials existing on and in the soil of the Premises at the time this lease agreement was executed if LESSEE'S use or occupation of the Premises causes LESSOR to lose its protection from liability.

SECTION 10. CONDEMNATION

10.1 If a condemning authority takes title by eminent domain or by agreement in lieu thereof to the entire Premises or a portion sufficient to render the Premises unsuitable for Lessee's use, then either party may elect to terminate this lease effective on the date that possession is taken by the condemning authority. All condemnation proceeds attributable to the land resulting from either a partial or total taking shall belong to LESSOR, and LESSEE shall have no claim against LESSOR or the condemnation award because of the taking. All condemnation proceeds attributable to the improvements shall belong to LESSEE and shall be disbursed in the following order of priority:

- a. To pay any real and personal property taxes or other assessments which may be a lien on the Premises.
- b. To pay any other liens on the Premises incurred by LESSEE.
- c. To LESSEE.

Either party receiving any notice of intended taking, any service of legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation shall promptly give the other party notice of such receipt.

SECTION 11. DEFAULT

Each of the following events shall be a default by LESSEE and a breach of this lease:

- 11.1 **Performance Failures.** Failure of LESSEE to pay the required consideration for this agreement or to perform any other term, condition or covenant of this lease within twenty (20) days after written notice from LESSOR specifying the nature of the failure with reasonable particularity. If the failure is of such a nature that it cannot be completely remedied within the twenty (20) day period, the failure shall not be a default if LESSEE begins correction of the failure within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as practicable.
- 11.2 **Attachment.** Attachment, execution, levy or other seizure by legal process of any right or interest of LESSEE under this lease if not released within thirty (30) days.
- 11.3 **Bankruptcy.** An assignment by LESSEE for the benefit of creditors, the filing by LESSEE of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing, the appointment of a receiver to take possession of the Premises or improvements or the leasehold estate or of LESSEE'S operations on the Premises for any reason. For purposes of this paragraph the term "bankruptcy" includes all arrangements and chapters in the Bankruptcy Code.
- 11.4 **Failure of LESSEE to use the Premises as a site for distributing, selling and marketing biofuels within twelve (12) months of execution of this agreement or failure to use the**

premises as stated above for four (4) consecutive months after the first year of this agreement.

SECTION 12. REMEDIES ON DEFAULT

12.1 In case of default as described in section 11, LESSOR shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law.

12.1.1 LESSOR may terminate the lease and retake possession of the Premises. All of LESSEE'S rights in the Premises and in all improvements on the Premises shall terminate as of the date of termination, however LESSEE shall have the option of removing the improvements pursuant to section 7.2. Promptly after such notice LESSEE shall surrender and vacate the Premises and all improvements broom clean and in good condition. LESSOR may reenter and take possession of the Premises and of all improvements and eject some or all parties in possession. Termination under this paragraph shall not relieve LESSEE from the payment of any sum then due to LESSOR or from any claim for damages previously accrued or then accruing against LESSEE.

12.1.2 LESSOR may recover damages caused by LESSEE'S default which shall include an amount equal to rentals lost because of the default, lease commissions paid for this lease, and the unamortized cost of any LESSEE improvements installed by LESSOR to meet LESSEE'S special requirements. LESSOR may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages shall bar a later action for damages subsequently occurring. LESSOR may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the lease. Such damages shall be measured by the difference between the rent under this lease and the reasonable rental value of the Premises for the remainder of the term, discounted to the time of judgment at the prevailing interest rate on judgments.

12.1.3 LESSOR may make any payment or perform any obligation which LESSEE has failed to perform, in which case LESSOR shall be entitled to recover from LESSEE upon demand all amounts so expended, plus interest from the date of the expenditure at the rate of one-and-one-half percent per month. Any such payment or performance by LESSOR shall not waive LESSEE'S default.

12.2 In the event of a termination LESSOR shall be entitled to damages for the reasonable cost of: re-entry and re-letting, including the cost of any cleanup, broker's or finder's fees and attorney fees.

SECTION 13. SURRENDER ON TERMINATION

13.1 Surrender. Except as provided for in Section 7, upon expiration of the lease term, or any renewal term, LESSEE shall surrender possession of the Premises to LESSOR, including all improvements then located on the Premises, free of occupants and broom clean, all in good condition except for reasonable wear and tear since the last necessary restoration,

repair or reconstruction made by LESSEE pursuant to this lease. All property that LESSEE is required to surrender shall become LESSOR'S property at the date of expiration of this lease. All property that LESSEE is not required to surrender, but that LESSEE does abandon shall, at LESSOR'S election, become LESSOR'S property on the date of expiration or termination of this lease.

- 13.2 **Holdover.** Failure by LESSEE to vacate the Premises at the time specified in this lease shall not constitute a renewal or extension or give LESSEE any rights in or to the Premises or any improvements. Upon such a holdover, LESSEE shall defend and indemnify LESSOR from all liability and expense resulting from the failure or delay of LESSEE to timely surrender the Premises including, without limitation, claims made by any succeeding tenant founded on or resulting from LESSEE'S failure to so surrender.
- 13.3 **Force Majeure.** If the performance by either of the parties of their respective obligations under this Agreement (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, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage 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.

SECTION 14. MISCELLANEOUS

- 14.1 **Nonwaiver.** Waiver by either party of strict performance of any provision or term of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision or any other provision.
- 14.2 **Modifications:** Any modifications or changes to this agreement must be in writing and executed by both parties.
- 14.3 **Notices.** All written notices under this lease shall be effective on the earlier of actual receipt or two (2) days after deposit as registered or certified mail, return receipt requested, postage prepaid and addressed to LESSOR or LESSEE at the addresses stated below, or to such other address as either party may specify by notice to the other party:

LESSOR: LANE COUNTY
Property Management Division
125 E. 8th Avenue
Eugene, OR 97401

LESSEE: SeQuential Retail Station # 1 LLC
1900 Millrace Dr., Ste. 113
Eugene, OR 97403

- 14.4 **Severability.** The invalidity or illegality of any provision of this lease shall not affect the remainder of the lease.
- 14.5 **No Waste:** LESSEE shall not do or suffer any waste, damage or disfigurement to the premises or cause a nuisance.
- 14.6 **No Third Party Beneficiaries:** LESSOR and LESSEE are the only parties to this lease and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this lease.
- 14.7 **Compliance With Applicable Law:** LESSEE shall comply with all federal, state and local laws and ordinances applicable to its use of the Premises. Without limiting the generality of the forgoing, LESSEE expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973 (iii) the Americans with Disabilities Act of 1990, ORS 659A.142 and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 14.8 **Governing Law.** This lease and the party's rights under it shall be construed and regulated by the laws of the State of Oregon.

SECTION 15. PURCHASE/TRANSFER OF OWNERSHIP

- 15.1 **Intent to Transfer:** It is the intention of LESSOR to transfer ownership of the Premises to LESSEE and it is LESSEE's intention to acquire ownership of the Premises from LESSOR.
- 15.2 **Time of Transfer:** LESSOR shall transfer ownership of the Premises to LESSEE, and LESSEE shall accept said transfer, at the sooner of,
- a) Completion of the environmental cleanup work on the Premises, the issuance of a "No Further Action" letter from the DEQ, or similar documentation from the DEQ stating required cleanup actions have been completed, and closure of the EPA grant;
 - b) Upon full expenditure of awarded Federal and State grant funds or expiration of period in which the grant funds must be expended, whichever is sooner, and closure of said grant. Said transfer shall occur regardless of whether the clean up of the property has been completed or whether a letter of "No Further Action" from the DEQ has been issued or not;

- c) Upon full expenditure of any other Federal or State of Oregon grant funds, or expiration of period in which the grant funds must be expended, whichever is sooner, and closure of said grant. Said transfer shall occur regardless if the clean up of the property has been completed or if a letter of "No Further Action" from the DEQ has been issued;

15.3 Consideration for Transfer: As consideration for transfer of the Premises LESSEE shall contribute \$50,000 (Fifty Thousand Dollars) towards the cleanup of the Premises.

15.3.1 Said \$50,000 in consideration shall be paid to the DEQ as described in Section 2(A)(2) of the Prospective Purchaser Agreement (PPA) between LESSEE and DEQ dated 07/14/2005 and by this reference incorporated herein (and attached as Exhibit "B"). The deposited funds shall be used and drawn upon to pay costs associated with the cleanup of the Premises in conformance with said PPA and the Intergovernmental Agreement between LESSOR and DEQ (Exhibit "C") to be signed.

15.3.2 If necessary, said \$50,000, or portions remaining thereof, shall continue to be used for the cleanup of the Premises after the Premises have been transferred to LESSEE.

15.4 Form of Conveyance: LESSOR shall convey the Premises to LESSEE with a Quitclaim Deed. LESSOR shall deliver to LESSEE a recorded Quitclaim Deed within thirty (30) days from satisfaction of any of the conditions in Section 15.2. The Premises will be conveyed on an "as is, where is, with all faults" basis. LESSOR makes no warranties or guarantees pertaining to any matter concerning the Premises including, but not limited to, condition of title, ability to use the Premises for any particular purpose under land use laws and regulations, location of property lines or environmental condition of the Premises. Title insurance, if any, shall be at the option and expense of LESSEE. If LESSEE chooses to close the transfer using the services of an escrow company, LESSEE shall bear all costs associated with the closing.

SECTION 16. TERMINATION

16.1 This agreement, in addition to any other provisions for default or termination contained herein, may be terminated by LESSOR upon 30 days written notice to LESSEE if any of the following occur;

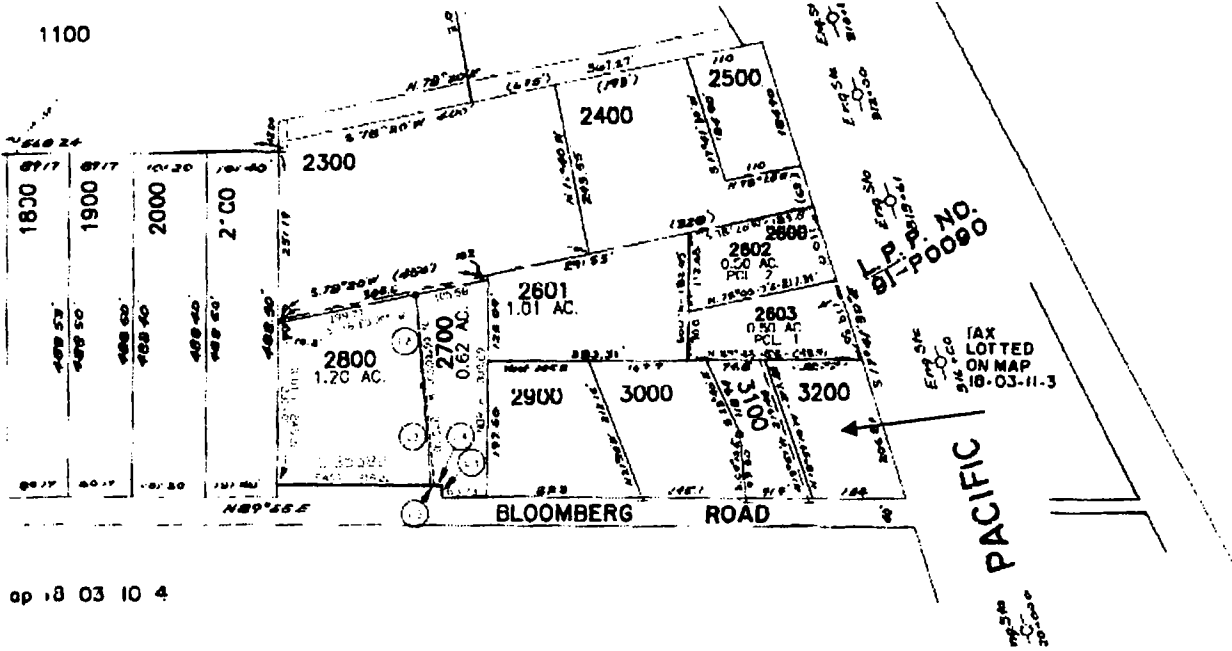
- a) LESSEE's expiration, default or termination of its Prospective Purchaser's Agreement with DEQ.
- b) Any other event that would cause LESSOR to become liable for existing contamination on the Premises due to the presence or actions of LESSEE.
- c) LESSEE fails to abide by the terms of this agreement as set forth, described and conditioned in Section 11 hereto.
- d) If federal or state regulations or guidelines are modified, changed or interpreted in such a way that this agreement is no longer allowable or appropriate.

EXHIBIT "A"

PROPERTY DESCRIPTION

Beginning at the Southeast corner of the A.H. Coryell Donation Land Claim No. 59, in Section 10, Township 18 South, Range 3 West of the Willamette Meridian; thence South $89^{\circ} 43' 18''$ West 506.00 feet; thence North $17^{\circ} 41' 30''$ West 926.80 feet to the intersection of the North line of County Road No. 1129 (Bloomberg Road) with the West line of Interstate 5 and the TRUE POINT OF BEGINNING of the following described tract of land; thence South $89^{\circ} 56' 30''$ West 134.00 feet; thence North $18^{\circ} 59' 10''$ West 207.78; thence North $89^{\circ} 43' 20''$ East 138.77 feet to the Westerly right of way of Interstate 5; thence South $17^{\circ} 41' 30''$ East along the Westerly right of way of Interstate 5 206.80 feet to the TRUE POINT OF BEGINNING, in Lane County, Oregon (map# 18-03-10-10-03200).

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