

# LEASE AGREEMENT

Between

WATERS' NEW BIOTECH

and the

BOARD OF HARBOR COMMISSONERS

CITY OF MILWAUKEE

For lease of 3.7 acres located on the Ports South Harbor Tract

Initial Term: May 1, 2009 through April 30, 2024  
(See Section 1B for further extension terms)

## LEASE AGREEMENT

Lease Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between WATERS' NEW BIOTECH INC., a Wisconsin corporation, (hereinafter referred to as "Tenant"), and the CITY OF MILWAUKEE, a Wisconsin corporation, by and through its Board of Harbor Commissioners (hereinafter collectively referred to as the "City").

### WITNESSETH:

City hereby leases, demises and lets unto Tenant the real property comprised of approximately 3.7 acres (hereinafter referred to as the "Property"), located on the South Harbor Tract of the City of Milwaukee. The Property is more particularly described in Exhibit A, which is affixed hereto and incorporated into this document by this reference. This Lease is to be considered a bare ground lease. The building and other improvements upon the Property left by the previous tenant belong to City. These are to be removed by Tenant on or before September 1, 2009 and City will reimburse Tenant for the cost of this removal as described in Section 2(B), below.

This Lease is entered into by the parties under the following terms and conditions:

1. **Term.**

(A) **Initial Term.** The Initial Term of this Lease shall be for a period of fifteen (15) years (the "Initial Term") commencing 12:00 a.m. May 1, 2009 and terminating at 11:59 p.m. April 30, 2024, subject to the City's right to terminate earlier pursuant to Sections 5(D) and 8, below.

(B) **Extension Terms.** Provided that no event of default then exists, Tenant shall have the right to extend the term of this Lease for two (2) successive periods of five (5) years each (the "First Extension Term" 12:00 a.m. May 1, 2024 to 11:59 p.m. April 30, 2029 and the "Second Extension Term" 12:00 a.m. May 1, 2029 to 11:59 p.m. April 30, 2034). In order to exercise each option, Tenant shall provide City with written notice of its intent to do so no less than twelve (12) months prior to the expiration of the Initial Term or of the First Extended Term. After the conclusion of the Second Extension Term and upon mutual written agreement between City and Tenant, this Lease may be amended and extended for additional extension terms. Should Tenant wish to extend this Lease after the conclusion of the Second Extension Term and subsequent extension terms, Tenant shall provide written notice of such intent to City at least twenty-four (24) months prior to the expiration date of the Second Extension Term and subsequent extension terms.

2. **Rent.**

(A) **Base Rent.** The base rental rate for the Property (3.7 acres) shall be \$23,000 per acre per year or Eighty Five Thousand One Hundred Dollars (\$85,100) per year (the “Base Rent”) for the total Property payable monthly in advance on the first day of each month in the amount of \$7,091.67.

(B) **Demolition Credit.** In consideration of Tenant’s commitment to remove at its sole cost and expense all existing City-owned improvements now located on the Property, the annual Base Rent during the years 2009, 2010, and 2011 shall be reduced to \$46,433.36, payable monthly at \$3,869.45 to compensate Tenant for those demolition costs (estimated at \$116,000). Tenant shall provide the City with true and complete copies of all invoices evidencing its complete actual demolition costs, within thirty days after completing the demolition. If actual demolition costs differ more or less by more than 20% from the above estimate of \$116,000, Base Rent for the years 2009, 2010, and 2011 will be adjusted accordingly to reflect the difference by a written amendment to this Lease.

(C) **Base Rent Increases.** Beginning on January 1, 2012 and continuing on each second January 1 thereafter (in 2014, 2016, etc.) for the term of this Lease and any extensions thereto, the Base Rent for the Property shall be adjusted to the amount determined by applying the percentage increase, if any, in the “All Commodities line (Code 2500) of the “Producer Price Indexes” published by the United States Bureau of Statistics (or its successor organization) (1982=100) for the two-year period prior to the beginning of the new 2-year rental period to the annual rent payable during the previous 2-year period of this Lease; provided, however, that in no event shall the new Base Rent, as adjusted by the foregoing method, be decreased to an amount below that for the Base Rent during the preceding year.

(E) **Wharfage.** In addition to the Base Rent, Tenant shall also pay City wharfage according to the current Municipal Port Tariff, Item 215 “Bulk Commodities – Dry” during the terms of this Lease for cargo, product, or ingredients shipped from the Property by vessels, barges, rail cars, trucks or other conveyances, wharfage will be charged quarterly in arrears on January 1, April 1, July 1, and October 1 each year. Each wharfage payment shall be for the immediately preceding quarter. Minimum billable wharfage (except during 2009, 2010 and 2011) shall be 100,000 metric tons on product shipped out of the facility. If any quarter during the Initial Term or any extension thereto tonnage shipped from the Property exceeds 50,000 metric tons wharfage shall be charged at 80% of current Port tariff rate.

(F) Upon mutual consent and agreement between City and Tenant the rental terms of this lease may be renegotiated in the future.

3. **Records.** Tenant shall maintain completed, accurate and verifiable books and records of its business conducted on the property relative thereto, the form of such books and records to be subject to

the approval of the Board of Harbor Commissioners and the City Comptroller and to be made available to properly accredited representatives of the Board of Harbor Commissioners and of the City of Milwaukee, at any reasonable time after request at Tenant's office, for audit or for such other inspection as may be deemed desirable by the City. Tenant shall maintain adequate books and records for determination of all amounts due City under this Lease; such books and records shall be kept in accordance with generally-accepted accounting principles. Tenant's books and records are its private property, and City shall endeavor to keep confidential all information which it derives therefrom to the fullest extent allowed by law.

4. **Financial Guarantees.**

(A) Performance Guaranty. Upon the commencement of the term of this Lease, Tenant shall furnish either a bond or a standby bank letter of credit or an equivalent financial guarantee instrument in a form approved by the City, in the amount of \$100,000, which shall be sufficient to fully cover one year's total Base Rent (before demolition credit), estimated wharfage fees, and other financial obligations of the Tenant payable to the City (the "Performance Guaranty"). In the event Tenant is unable, after exercising every reasonable effort, to procure the Performance Guaranty, Tenant, at the sole option of the City, may furnish to City written personal guarantees of its shareholders in a form and amount approved by the City. In the event that the Performance Guaranty expires under its terms or in the event that City ever draws upon the Performance Guaranty furnished under this Section, Tenant shall immediately post a new or equivalent Performance Guaranty in the form and amount specified by this Section.

(B) Removal Guaranty. In addition to the Performance Guaranty, upon receiving construction permits from permitting authorities, Tenant shall also furnish another bond or a standby bank letter of credit or an equivalent financial guarantee instrument in a form approved by the City, in the amount of \$200,000, which amount the parties agree shall be sufficient at the commencement date of this Lease, to guaranty the removal of all improvements constructed on the Property by Tenant upon termination or expiration of this Lease (the "Removal Guaranty"). In the event that the Removal Guaranty expires under its terms or in the event that City reasonably determines (not more than once in any five year period) that the amount of the Removal Guaranty is insufficient to pay for the removal of all improvements constructed on the Property by Tenant, Tenant shall immediately post a new or equivalent Performance Guaranty in the amount required by City and in the form and specified by this Section.

## 5. Use of the Property.

(A) Permitted Use. Tenant shall use the Property for the construction and operation of a wood pelleting and gasification facility including related fixtures necessary for the receiving of raw materials, and handling, storage and delivery of final precuts.

(B) Protection of City Infrastructure. Tenant agrees that storage of piled materials shall be restricted to locations at a distance from the edge of the dock (dock setback) designated by the City Harbor Engineer in order to assure dockwall stability and as depicted in Exhibit A. Tenant further agrees to provide suitable protection to any existing water lines, power lines or other underground installations that are now in place to protect them from damage. The kind and quality of said installations are subject to the approval of City. Tenant will take all necessary precautions to prevent the spillage of products on both land and water surfaces.

(C) Other Uses. Additional uses of the Property are not permitted without the prior written approval of the Municipal Port Director. Tenant acknowledges the suitability of the Property for its intended uses and bears sole responsibility for making any determination with respect thereto.

(D) Construction of New Facilities and Operation of Business. To facilitate Tenant's permitted use of the Property, Tenant, at its sole cost and expense, shall demolish all existing improvements on the Property, construct one or more new buildings on the Property, install bulk loading/unloading systems and conveyors intended to handle cargo from rail cars and/or trucks to or from vessels and/or trucks to the new building and construct such other improvements as may be necessary for Tenant's permitted use (collectively the "Project"). Tenant acknowledges and agrees that its timely completion of the entire Project in a good and workmanlike manner is an essential condition to its on-going right to occupy the Property under the terms of this Lease. Accordingly, regardless of Tenant's timely payment of Base Rent and full compliance with all other terms and conditions of this Lease, Tenant acknowledges and agrees that, in the event that Tenant fails to timely complete any of the following benchmarks, at any time thereafter (but prior to Tenant's achievement of such benchmark), City may terminate this Lease by giving written notice to Tenant, without providing Tenant with any right to cure:

- (i) on or before September 1, 2009, completion of the demolition of all existing improvements now located on the Property and removal of all debris from the Property following demolition;
- (ii) on or before September 1, 2009, submission to and approval by City, which shall not be unreasonably withheld, conditioned or delayed, of detailed architectural plans and

specifications, prepared by a Wisconsin licensed architect using generally accepted trade practices, which are complete in all respects and contain all details requisite for completion of the Project in a form sufficient to allow Tenant to operate the Project for the permitted use thereof;

- (iii) on or before September 1, 2009, submission to and approval by City, which shall not be unreasonably withheld, conditioned or delayed, of fully executed fixed price contract(s) with a reputable general contractor(s) and equipment supplier(s) for all labor, materials and equipment required by the plans and specifications for completion and operation of the entire Project;
- (iv) on or before December 1, 2009, completion of all foundation work for the Project;
- (v) on or before March 1, 2010, completion of all framing and roof work for the Project;
- (vi) on or before June 1, 2010, completion of all bulk loading/unloading systems and conveyors and all other improvements necessary for the Project and Tenant's permitted use of the Property;
- (vii) on or before September 1, 2010, installation of all equipment necessary for the Project and Tenant's permitted use of the Property; and
- (vii) on or before November 1, 2010, commencement of Tenant's business operations.

(E) Vessel Berthing. Tenant shall have preferential, but not exclusive use of berthing space in the inner harbor alongside Tenant's leasehold. Tenant recognizes that this space is a shared docking area with other Port tenants. Tenant will give City a forty-eight (48) hour prior notice Monday through Friday during normal business hours of vessel arrivals. Tenant shall provide access to vessels, which may moor along such harbor dock whenever such access is required in the judgment of the City upon request by City. It is understood and agreed that City regularly uses the Municipal Mooring Basin adjoining and adjacent to the Property as a vessel berth and for incidental dock and navigation uses. Tenant agrees to conduct its operations in such manner as to not interfere with such mooring operations, dock operations or storage operations of City. In case of conflict over docking space, the City's Harbor Master authority for assigning berths will apply.

6. Occupancy Subject to Existing Easements and Restrictions. Tenant's occupancy of the Property is subject to any recorded easements and restrictions of record.

7. **Termination and Vacation.**

(A) **Termination and Vacation Date.** Tenant shall vacate the Property on or before the expiration of this Lease. The Property shall be returned to City by Tenant in substantially the same condition in which it was received, except for the existing improvements, which Tenant shall demolish on or before September 1, 2009 in accordance with Section 5 (D) (i) above, and the new Project, which Tenant shall construct in accordance with Section 5(D), (ii through vii) above, and which Tenant shall either demolish or leave intact on the Property in accordance with Section 7(C), below. In the event that Tenant fails to vacate the Property in a timely fashion, City shall have the option to do any or all of the following: (1) cause the Property to be vacated; (2) charge Tenant twice (2x) the Base Rent set forth in Section 2 of this Lease for all periods subsequent to the date of expiration of this Lease or of any agreed extension thereof; and (3) to assess and recover against the Tenant the actual costs of such vacation and any damages sustained by the City as a consequence of the Tenant's failure to timely vacate the Property.

(B) **Optional Month-to-Month Extensions.** City may at its sole option extend the Lease term on a month-to-month basis and on the same terms and conditions in the event additional time is required for Tenant to vacate Property under this section.

(C) **Surrender or Removal of Improvements.** As City shall elect and direct in writing, within ninety (90) days prior to the expiration date of this Lease or within ninety (90) days after the earlier termination date of this Lease, Tenant shall either leave intact or demolish and vacate the Property free and clear of all of the Project and all of related materials, equipment, improvements, and installations in place or constructed upon the Property, in accordance with Sections 5 and 15, and shall return the Property to City as bare ground. In the event that Tenant fails to vacate the Property in the prescribed state of clearance, as determined by City, after ten (10) days' written notice to Tenant, City shall have the option to have such clearance and clean-up conducted as in its reasonable judgment is necessary in order to bring the Property to the prescribed state of clearance and to assess the costs of such action against Tenant. In no event shall City have any right to any of Tenant's trade fixtures; and, except as otherwise set forth in this Lease, Tenant may remove such trade fixtures upon the termination of this Lease, provided Tenant repairs any damage caused by such removal.

8. **Default.** The occurrence of one or more of the following events shall be considered events of default under the terms of this Lease:

(A) Tenant shall be adjudged a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of Tenant under Federal Bankruptcy Laws as now or hereafter

amended, or under the laws of this State, shall be entered, and any such decree, judgment or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; City may at its sole option extend the Lease term on a month-to-month basis in the event additional time is required for Tenant to vacate Property under this Section; or

(B) Tenant shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or Tenant shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, or reorganization; or

(C) Tenant shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Tenant; or

(D) Tenant shall abandon the Property for a period of thirty (30) days.

(E) Tenant shall be delinquent in any rental or other payments due under this Lease and such delinquency shall continue for five (5) days after notice thereof in writing to Tenant; or

(F) Tenant shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for ten (10) days after notice thereof in writing to Tenant; or

(G) Tenant shall make any assignment, sublease, transfer, conveyance or other disposition of its interest in the Property without the express written consent of City; or

(H) Tenant shall fail to timely meet any of the benchmarks set forth in Section 5(D), above. Upon occurrence of any one or more of such events of default, it shall be lawful for City, at its election in the manner and terms herein provided, to declare this Lease ended, and to recover possession of the Property, either with or without process of law, to enter and to expel, and remove Tenant and all agents, employees and representatives of Tenant engaged in operating the Property or occupying the Property, using such force as may be necessary in so doing. If default shall be made in any covenants, agreements, conditions or undertakings herein contained, to be observed and performed by Tenant, which cannot with due diligence be cured within a period of ten (10) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of said ten (10) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default, then City shall not have the right to declare the term of the Lease as ended;



however, that the curing of any default in such manner shall not be construed to limit or restrict the right of City to declare this Lease ended and terminated, and to enforce all of City's rights and remedies hereunder for any other default not so cured.

9. **Maintenance and Housekeeping.**

(A) Routine maintenance, housekeeping and cleanliness shall be the responsibility of Tenant. City retains the right to have any of its officers, agents or employees inspect the Property at all reasonable time and Tenant shall be required to grant full access to the Property at such times.

(B) Since the Property is vacant at the inception of this Lease, any and all buildings, fixtures or other improvements thereon that may be constructed or placed upon Property shall be constructed or placed at the Tenant's sole cost and expense. Except for damage caused by fire or other casualty, as specified in Section 16 of this Lease, Tenant, at Tenant's sole cost and expense, shall have the affirmative duty to periodically inspect, maintain, service, repair and replace, if necessary, all portions of the Property including all buildings and improvements thereon, and including, but not limited to, all building elements, branch plumbing and fixtures, pest extermination, fences and rail track up to and including the railroad switch leading onto Tenant's spur. In addition thereto, Tenant shall keep the Property and any dock area servicing the Property in a clean and sanitary condition shall take all necessary measures to prevent pollutants and hazardous wastes from being discharged onto or beneath the Property or into navigable waterways, shall keep the common parking areas, driveways and loading docks free of Tenant's debris, and shall control weeds and maintain landscaping. Tenant shall not store materials, waste or pallets outside of the Property, and shall timely arrange for the removal and/or disposal of all pallets, crates and refuse owned by Tenant which cannot be disposed of in the dumpster(s) servicing the Property.

(C) Tenant shall perform all repairs and maintenance in a good and workmanlike manner, using materials and labor of the same character, kind and quality as originally employed within the Property; and all such repairs and maintenance shall be in compliance with all governmental and quasi-governmental laws, ordinances and regulations, as well as all requirements of City's insurance carrier. In the event Tenant fails to properly perform any such repairs or maintenance within a reasonable period of time, City shall have the option to perform any such repairs on behalf of Tenant, in which event Tenant shall reimburse to City, as Additional Rent, the costs thereof within thirty (30) days after receipt of City's invoice for same.

10. **Utilities.** Tenant shall be solely responsible for the installation and purchase of all utility services required by Tenant during the term of this Lease.

11. **Assignment and Subleasing.** Tenant shall not assign or sublet the Property or any portion thereof, nor allow the same to be used or occupied by any other person or for any other use than herein specified, without the prior written consent of City. For purposes of this Section, the transfer of any majority interest in any corporation or partnership shall be deemed to be an assignment of this Lease. In the event City consents to any sublease or assignment, the same shall not constitute a release of Tenant from the full performance of Tenant's obligations under this Lease. Further, in the event of any such sublease or assignment, Tenant shall reimburse City for all reasonable attorneys' fees in connection with reviewing and/or drafting any appropriate documents to affect such transfer of Tenant's interests. Further, Tenant shall pay to City as Additional Rent under this Lease, 50% of any profit, rental or other compensation received in excess of the rental specified in Section 2 of this Lease by Tenant as a consequence of any assignment or sublease hereunder.

12. **Indemnification.** Tenant hereby agrees to indemnify and save harmless City from and against all liabilities, claims, demands, judgments, losses and all suits at law or in equity, costs and expenses, including reasonable attorney's fees, for injury to and/or death of any person or persons and/or loss and/or damage to the property of any person, firm or corporation whomsoever, including both parties hereto and their employees, arising from the construction, maintenance or operation of Tenant's improvements and equipment, or in the carrying on of its business as hereinbefore set forth, except when such liability, claim, demand, judgment or loss arises solely from a negligent act of the City, its agents, contractors or employees.

13. **Insurance.** Tenant shall maintain in full force and effect throughout the currency of this Lease, the following insurance covering any and all liability or obligations which may result from operations by Tenant, Tenant's employees, agents, contractors or subcontractors as aforesaid in this Lease:

(A) Property insurance coverage protecting against physical damage (including but not limited to fire, lightning, extended coverage perils, vandalism, sprinkler leakage, water damage, collapse and other special extended perils) to the extent of the replacement cost of Tenant's personal property and improvements as well as goods or property in Tenant's care, custody and/or control.

(B) Comprehensive General Liability Insurance (including but not limited to Products and Completed Operations and Contractual Liability, as applicable to Tenant's obligations under this Lease) with limits not less than:

Each Occurrence Limit:	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000
General Policy Aggregate:	\$2,000,000

- (C) Automotive Liability Insurance with Limits not less than:  
 Bodily Injury and Property Damage  
 Combined Single Limit: \$1,000,000 per occurrence
- (D) Worker's Compensation Insurance in accordance with Chapter 102, Wisconsin Statutes and any applicable Federal law.
- (E) Umbrella Coverage: \$10,000,000 in aggregate
- (F) Environmental Impairment Liability Coverage to be continued for a period of 4 years after Lease expiration.
- |                       |             |
|-----------------------|-------------|
| Each Occurrence Limit | \$2,000,000 |
| Aggregate Coverage    | \$4,000,000 |

(G) The requirements of Subsection (C) and (D) above will be met once Tenant obtains one or more motor vehicles and once Tenant acquires one or more employees. Both acquisitions must be reported to City immediately in writing. Failure to comply with this requirement will result in the termination of this Lease.

(H) All such policies shall be of a form and content satisfactory to City. In addition, the Board of Harbor Commissioners of the City of Milwaukee and the City of Milwaukee will be designated on the General Liability, Property Insurance, Automobile and Umbrella policies as Additional Named Insureds. All policies shall be with companies licensed to do business in the State of Wisconsin and rated A or better in the most current issue of Best's Key Rating Guide. Tenant shall furnish City with certificates of insurance for all policies showing that insurance has been written as required. Such evidence shall be provided by Tenant at least thirty (30) days prior to occupancy; and further, such policies shall provide that no less than thirty (30) days written notice be given to City before any such policies are cancelled or substantially changed to reduce the insurance provided thereby. Said certificates of insurance shall remain in effect for the duration of this. Tenant shall not act in any manner that may make void or voidable any insurance required herein. Upon written demand, Tenant shall provide City full, complete and accurate copies of the insurance policies required by this Lease. Once in every three (3)-year period during the term of this Lease, City shall review the extent and limits of the insurance coverage required herein. After said review, should City determine an increase in the extent and/or limits of insurance coverage is required, Tenant shall be so notified in writing and Tenant shall cause such increases to be placed in effect within thirty (30) days of receiving such notice. In no event shall the extent and limits of insurance coverage be reduced from the amounts shown herein.

(I) The attorney in fact or agent of any insurance company furnishing any policy of insurance shall sign and furnish an affidavit setting forth that no City official or employee has any interest, direct or indirect, or has received any premium, commission, fee or other thing of value on account of furnishing said policy of insurance.

14. **Taxes.** Tenant shall pay and discharge when due all taxes, if any, assessments, levies and other charges, general and special, that are or may be during the term hereof levied, assessed, imposed or charged on the Property or the improvements thereon or hereafter placed thereon.

15. **Alterations & Improvements.** Tenant shall not make any alterations, additions, buildings or improvements to the Property without the prior written consent of City except as specified in this Lease. Improvements shall be constructed in a good and workmanlike manner, and in compliance with all applicable governmental and quasi-governmental laws, ordinances and regulations, Tenant shall furnish, upon City's request, plans, specifications, drawings and/or renderings of any proposed alterations, additions, buildings or improvements. Tenant or its contractors agree to properly secure all necessary permits and licenses required by any state, federal or local departments or agencies for the construction and operation of Tenant's business and improvements. A copy of each such permit or license shall be sent to the Port of Milwaukee for its record file.

16. **Destruction.** If the project or other improvements upon the Property are damaged in whole or in part by casualty, Tenant shall be solely responsible for the repair or replacement of the same within one hundred eighty (180) days from the date of said casualty. There shall be no rent abatement during such period. If Tenant does not rebuild in 180 days or such other period of time as Tenant and City mutually agree upon in writing, City may immediately terminate this Lease.

17. **Compliance with Laws and Orders.**

(A) **Laws.** Tenant agrees to observe fully and to comply with any laws, statutes, regulations, ordinances, rules, requirements or directives now in force or which shall emanate from any state, federal or local departments or agencies having jurisdiction. Tenant also agrees to be fully bound and to observe the provisions of the Municipal Port Tariff in effect as of the date of commencement of this Lease and of any successor or equivalent document issued by the Board of Harbor Commissioners of the City of Milwaukee during the term of this Lease.

(B) **Licenses and Permits.** Tenant or its contractors agree to properly secure all necessary permits and licenses required by any state, federal or local departments or agencies for the construction and operation of Tenant's business and improvements. A copy of each such permit or license shall be sent to the Port of Milwaukee for its record file.

**18. Security Compliance.**

(A) Homeland Security. Tenant agrees to conform to all national security requirements imposed by the U.S. Department of Homeland Security, the Marine Transportation Security Act and its implementing regulations, as well as any applicable state and local security rules and regulations.

(B) Port Consortium. Tenant also agrees to comply with any measures and obligations imposed by a Port of Milwaukee tenant consortium formed to administer security requirements. Tenant will become a member of any such consortium and pay any fees or levies imposed by that consortium or by the Port of Milwaukee to cover security costs.

(C) Definition. "Security," as that term is used herein shall mean "Measures designed to safeguard personnel; to prevent unauthorized access to equipment, property, buildings, harbor facilities, installations, materials, and documents; and to safeguard against espionage, sabotage, damage, and theft, or to prevent persons or organizations from engaging in any activity or using Port properties, equipment and material in a manner that would aid an effort to harm vital interests of the City of Milwaukee, the State of Wisconsin or the United States of America."

**19. Environmental Compliance and Obligations.**

(A) Compliance with Environmental Regulations. Tenant shall fully comply with all statutes, regulations, or other applicable requirements imposed by any federal, state, or municipal agency with respect to the environmental condition of the Property and/or with respect to any activities or operations that Tenant may conduct upon the Property (hereinafter referred to as "Environmental Requirements"). Tenant shall not cause, permit or suffer the existence or commission by Tenant, its agents, employees, contractors or invitees, or by any other person of any violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof.

(B) Hazardous Material; Environmental Liens. Except to the extent commonly used in the day-to-day operation of the Property, and in strict compliance with all Environmental Requirements (including those relating to storage, use and disposal), Tenant shall not cause, permit or suffer any "hazardous material" or "hazardous substance" (as defined by applicable Federal or State statutes or regulations) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about, or beneath the Property or any portion thereof by Tenant, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of the City. Any request by Tenant for such consent by the City shall be in writing and shall demonstrate to the reasonable satisfaction of the City that such "hazardous material" or "hazardous substances" is necessary to the conduct of the business of Tenant and will be stored, used, and disposed

of in a manner that complies with all applicable Environmental Requirements. Tenant shall not create or suffer to exist with respect to the Property any lien, security interest, or other charge or encumbrance of any kind relating to the environmental condition of the Property, including (without limitation) any lien imposed pursuant to Sec. 107(f) of the Superfund Amendments and Reauthorization Act 1986 (42 U.S.C. § 9607(L)) or any similar State Statute.

(C) Obligation to Investigate and/or Remediate. Tenant shall, upon demand of the City, and at its sole cost and expense, promptly take all actions to investigate and/or remediate the environmental condition of the Property which may be required by any federal, state or local governmental agency or political subdivision which remediation is necessitated from, or attributable to, the presence upon, about, or beneath the Property of any "hazardous material" or "hazardous substances" or any violation of Environmental Requirements caused by the Presence of and/or activities or operations conducted by the Tenant upon the Property. Any such investigation and/or remediation shall be performed by and under the direction of a qualified environmental consulting or engineering firm approved by City in advance of the commencement of the work. Tenant agrees to allow entry upon the Property by the City, or agents, contractors or employees of the City for purposes of conducting environmental audits and/or other tests for the purpose of determining the impact of Tenant's presence and/or activities or operations upon or with respect to the Property upon the environmental condition thereof. In the event that Tenant performs any such environmental audit and/or test on its own behalf, it shall promptly provide to the City full and complete copies of any results and/or reports that are generated in connection with the above activities.

(D) Survival of Obligations. Tenant's obligations with respect to the environmental condition of the Property (as more fully set forth in Subsections (A) through (C) above) shall survive the expiration or termination of this Lease.

(E) "Baseline Environmental Survey." Tenant and City will equally share the cost to conduct a Phase I comprehensive environmental survey of the Property ("Baseline Environmental Survey"), which shall describe in detail the environmental condition of the Property existing as of the commencement date of this Lease. Tenant acknowledges that any environmental issues, conditions or problems not specifically identified and described in the Baseline Environmental Survey would be attributable to the activities and/or operations of the Tenant and, therefore, within the scope of the Tenant's obligations under this Section.

20. **Liens.** Tenant shall not mortgage or otherwise encumber or allow to be encumbered its interest herein without obtaining the prior written consent of City. Should Tenant cause any mortgage, lien or other encumbrance (hereinafter singularly or collectively referred to as “Encumbrance”) to be filed, against the Premises or the Property, Tenant shall dismiss or bond against same within fifteen (15) days after the filing thereof. If Tenant fails to remove said Encumbrance within said fifteen (15) days, City shall have the absolute right to remove said Encumbrance by whatever measures City shall deem convenient including, without limitation, payment of such Encumbrance, in which event Tenant shall reimburse City, as Additional Rent, all costs expended by City, including reasonable attorney’s fees, in removing said Encumbrance. All of the aforesaid rights of City shall be in addition to any remedies which either City or Tenant may have available to them at law or in equity.

21. **Time of the Essence.** It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Lease.

22. **Waiver.** One or more waivers by any party of any covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

23. **Sole Agreement and Amendment.** This shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Lease. Each person signing this Lease warrants that this is the full, entire and complete Lease between the parties; that the terms of this Lease supersede and nullify any and all prior discussion, negotiations or agreements between the parties and/or any of the parties’ respective officers, employees or agents relating in any manner to the subject matter of this Lease; and that no promise or inducement not expressed in this Lease has been made or exists to cause or influence each such person to execute this Lease. Each person signing this Lease warrants their ability to bind the party on whose behalf each signs.

24. **Notice.** Any notice provided for herein or given pursuant to this Lease, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

To the City:

BOARD OF HARBOR COMMISSIONERS  
2323 S. Lincoln Memorial Drive  
Milwaukee, WI 53207  
Attention: Municipal Port Director

To The Tenant:

Edward L. Waters  
Waters' New Biotech, Inc.  
1393 Meadowcreek Dr. #8  
Pewaukee, WI 53072

25. **Governing Law.** This Lease shall be governed by the internal laws of the State of Wisconsin. If any term or provision of this Lease or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Lease and exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by applicable law.

26. **Public Records Law.** Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Lease are subject to and conditioned on the provisions of Wis. Stat. §19.21, et seq. Tenant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Lease, and that the Tenant must defend and hold the City harmless from liability under that laws. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Lease.

27. **Nondiscrimination.** Tenant hereby agrees that in its use of the Property and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

28. **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Lease. The terms "Board of Harbor Commissioner" and "City" whenever used herein shall mean and include the Board of Harbor Commissioners of the City of Milwaukee and/or its successors and assigns in authority, as the context may require.



29. **Approval.** IT IS FURTHER AGREED AND UNDERSTOOD that this Lease must be submitted to the Common Council of the City of Milwaukee and that the same must be approved by the Common Council and its execution authorized.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers executed this Lease under seal as of the day and year first above written.

**CITY OF MILWAUKEE**

\_\_\_\_\_  
Thomas A. Barrett , Mayor

\_\_\_\_\_  
Ronald D. Leonhardt, City Clerk

**COUNTERSIGNED:**

\_\_\_\_\_  
W. Martin Morics, City Comptroller

**BOARD OF HARBOR COMMISSIONERS**

\_\_\_\_\_  
Timothy K. Hoelter, President

\_\_\_\_\_  
Donna Luty, Secretary

**WATERS' NEW BIOTECH INC.**

\_\_\_\_\_  
Edward L. Waters, CEO & President

**STATE OF** \_\_\_\_\_  
\_\_\_\_\_ **COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Edward L. Waters, CEO & President, and \_\_\_\_\_ the \_\_\_\_\_, of Waters New Biotech Inc., who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission Expires \_\_\_\_\_

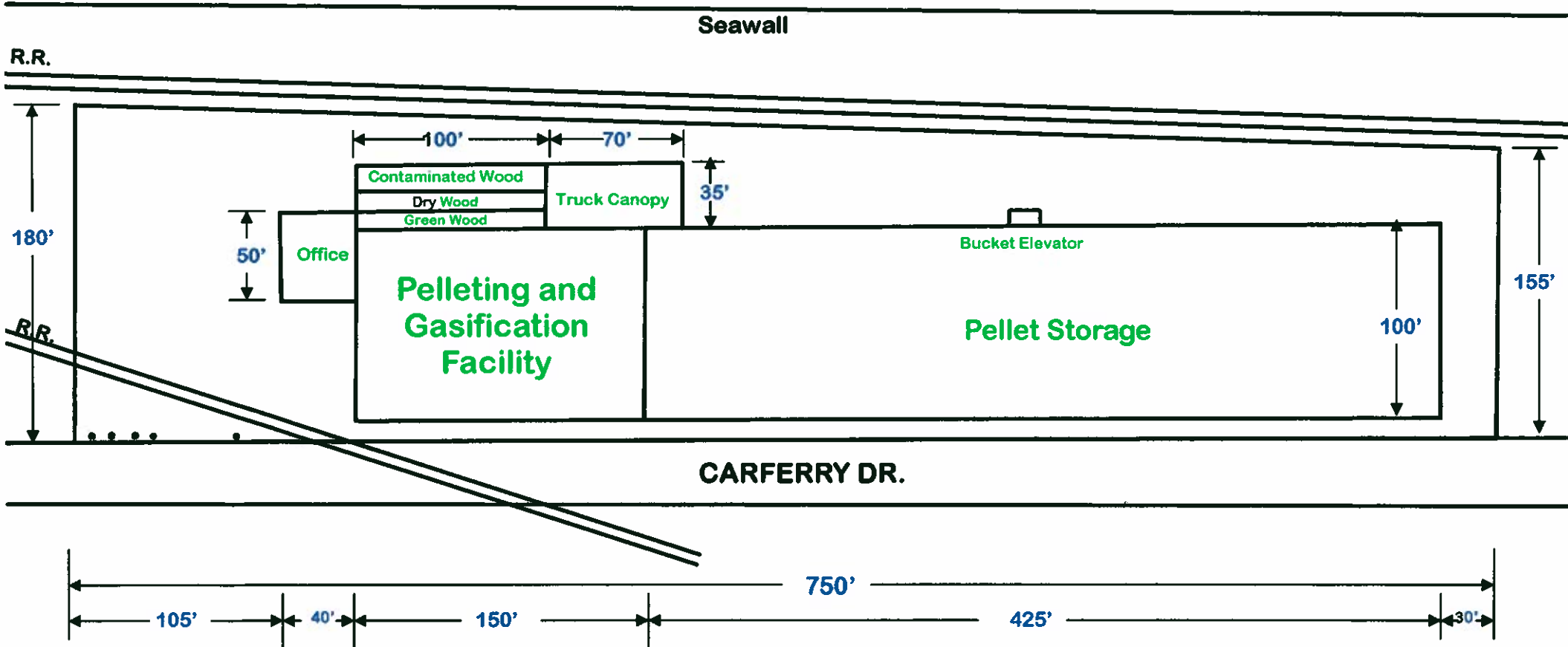
APPROVED as to Form and Execution this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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Assistant City Attorney

i:watersbiotechlse09.doc

# MUNICIPAL MOORING BASIN



1/10" = 7.5'