



## **AGENDA and Notice of Urban Renewal Agency**

The City of Newport Urban Renewal Agency meeting will be held on Monday, May 18, 2015, at 5:45 P.M. The meeting will be held in City Council Chambers of the Newport City Hall, located at 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder 541.574.0613.

The City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session and/or meeting.

### **URBAN RENEWAL AGENCY MEETING Monday, May 18, 2015 - 5:45 P.M. City Council Chambers**

#### **I. Call to Order and Roll Call**

#### **II. Public Comment**

*This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the Agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.*

#### **III. Consent Calendar**

*The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.*

- A. Approval of the Urban Renewal Agency Minutes from May 4, 2015 (Hawker)

#### **IV. Executive Director Report**

*All matters requiring approval of the Urban Renewal Agency originating from the city manager and departments will be included in this section. This section will also include any status reports for the Urban Renewal Agency information.*

- A. Approval of Lease Agreements with:
  - a. Jim Morris
  - b. James Meyers
  - c. Oregon Coast Community Forest Association (OCCFA)

d. Cheryl Schones

**V. Adjournment**

May 4, 2015  
5:45 P.M.  
Newport, Oregon

The Urban Renewal Agency of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Sawyer, Engler, Swanson, Busby, and Roumagoux were present. Saelens was excused.

Staff present was City Manager Nebel, City Recorder Hawker, Public Works Director Gross, Administrative Assistant Nelson, and Police Chief Miranda.

### CONSENT CALENDAR

The consent calendar consisted of the following item:

- A. Approval of the April 20, 2015 minutes.

MOTION was made by Swanson, seconded by Busby, to approve the minutes of the April 20, 2015 meeting, as amended by Allen. The motion carried unanimously in a voice vote.

### AMENDED EXECUTIVE DIRECTOR REPORT

#### Appointment of Two Citizen Members to the Urban Renewal Advisory Committee.

Nebel reported that Resolution No. 3708 created an Urban Renewal Advisory Committee to assist in the preparation of a new Northside Urban Renewal Plan. He stated that the resolution provides for the Urban Renewal Agency to appoint two citizens at-large to this advisory committee. He noted that the city has received four application from the following people: Bill Posner, Frank Geltner, Robert Joyce, and Robert McAfee. He added that while the rules of order do not specifically address appointments by the Urban Renewal Agency, the rules do indicate that the meetings of the Agency will follow the "rules governing Council meetings." He stated that based on that language, it is staff's interpretation that the appointment would be made by the Chair of the Urban Renewal Agency subject to confirmation by the Agency members.

Allen noted that it was his opinion that the applications could be reviewed and discussed by the Agency, but should be appointed by the Mayor during the Council meeting, subject to ratification of the City Council. The Agency concurred. A brief discussion ensued regarding the four applicants for the position.

### ADJOURNMENT

Having no further business, the meeting adjourned at 6:00 P.M.

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Melanie Nelson, Administrative Assistant

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David N. Allen, Chair





**Agenda Item:**

**Consideration of Lease Agreements with Cheryl Schones, Oregon Coast Community Forest Association, Jim Morris, and James Meyers - 3333-3337 South Coast Highway**

**Background:**

On November 17, 2014, the Agency adopted Amendment No. 11 to the South Beach Urban Renewal Plan which authorized the purchase of the subject property (Resolution No. 3695). It was determined that acquisition of the property is advantageous, in the near term, because it provides the Agency with the flexibility to reconfigure the parcel, as needed, to accommodate planned transportation improvements that are to be constructed between 2015 and 2018. The purchase also affords the Agency an opportunity to position the property for resale to a private developer once the infrastructure work is completed. A plan for redeveloping the site will be developed with public input, and will likely emphasize attracting retail service uses (e.g. grocery store, gas station, restaurant, etc.), as such uses are critical to the continued economic growth of South Beach. It is the intent to use the proceeds from the sale to accelerate the urban renewal district's debt retirement.

The site cannot be positioned for redevelopment until the planned transportation improvements are completed, which is likely to occur toward the end of 2017. In the meantime, the lessees have asked that they be allowed to continue to use the property as they have been on a month-to-month basis at their current lease rates. The lease agreements have been structured so that the Agency is free to undertake the activities it needs to complete the transportation improvements, and the leases may be terminated by the Agency once the transportation improvements are completed. Agency approval of leases covering the period of time that the infrastructure work is being undertaken is consistent with the Urban Renewal Plan.

**Recommended Action:**

I recommend the Urban Renewal Agency consider the following motion:

**I move to approve leases with Cheryl Schones, the Oregon Coast Community Forest Association, Jim Morris, and James Meyers, as presented, and authorize the Executive Director to sign the leases at such time that the Agency closes on the property.**

**Fiscal Effects:**

Lease revenues will be placed in a reserve account that can be used in the future to fund the demolition of structures and preparation of the site for redevelopment.

**Alternatives:**

Not entering into lease agreements. This would leave existing improvements vacant unless the Agency elected to actively seek new tenants.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. Nebel".

Spencer R. Nebel  
Executive Director of the Urban Renewal Agency



Agenda Item # IV.A  
Meeting Date May 18, 2015

**URBAN RENEWAL  
AGENDA ITEM SUMMARY**  
City of Newport, Oregon

Issue/Agenda Title Approval of Lease Agreements with Cheryl Schones, Oregon Coast Community Forest Association (OCCFA), Jim Morris, and James Myers (3333 - 3337 South Coast Highway)

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval:

**ISSUE BEFORE THE AGENCY:** Consideration of lease agreements with the listed parties for use of a coffee kiosk, storage building bays, and vacant land at 3333 - 3337 South Coast Highway. The improvements are located on property at the northeast corner of SE 35<sup>th</sup> Street and US 101 (Portion of Lot 2, Block J, Harborton Subdivision (Tax lot 1400, Assessor's Map 11-11-17-DB)).

**STAFF RECOMMENDATION:** Staff recommends that the Agency approve the leases.

**PROPOSED MOTIONS:** I move that the Urban Renewal Agency approve leases with Cheryl Schones, OCCFA, Jim Morris and James Myers, as presented, and authorize the City Manager to sign the leases at such time as the Agency closes on the property.

**CONSISTENCY WITH SOUTH BEACH URBAN RENEWAL PLAN:** Agency adopted Amendment No. 11 to the South Beach Urban Renewal Plan on November 17, 2014 authorizing the purchase of the subject property (Resolution No. 3695). It was determined that acquisition of the property is advantageous, in the near term, because it provides Agency with the flexibility to reconfigure the parcel, as needed, to accommodate planned transportation improvements that are to be constructed between 2015 and 2018. The purchase also affords the Agency an opportunity to position the property for resale to a private developer once the infrastructure work is completed. A plan for redeveloping the site will be developed with public input, and will likely emphasize attracting retail service uses (e.g. grocery store, gas station, restaurant, etc.), as such uses are critical to the continued economic growth of South Beach. It is Agency's intent to use proceeds from the sale to accelerate the urban renewal district's debt retirement.

The site cannot be positioned for redevelopment until the planned transportation improvements are completed, which is likely to occur towards the end of 2017. In the meantime, the parties have asked that they be allowed to continue to use the property as they have been on a month-to-month basis at their current lease rates. The lease agreements have been structured so that Agency is free to undertake the activities it needs to complete the transportation improvements and may be terminated by the Agency once the transportation improvements are completed. Therefore, Agency approval of leases covering the period of time that the infrastructure work is being undertaken is not inconsistent with the Urban Renewal Plan.

**OTHER ALTERNATIVES CONSIDERED:** Not entering into lease agreements. This would leave the existing improvements vacant unless the Agency elects to actively seek new tenants.

**ATTACHMENT LIST:**

- Draft Lease Agreements

**FISCAL NOTES:** Lease revenues will be placed in a reserve account that can be used in the future to fund the demolition of structures and preparation of the site for redevelopment.

## AGREEMENT FOR LEASE OF BUSINESS PREMISES

Date: June 1, 2015

Between: Newport Urban Renewal Agency (Agency), Lessor  
169 SW Coast Highway, Newport, Oregon 97365

And: Jim Morris (Morris), Lessee  
636 NE Douglas Street, Newport, Oregon 97365

**Newport Urban Renewal Agency** leases to Morris and Morris leases from the Newport Urban Renewal Agency the following described property (the "Premises"):

A 350 square foot enclosed storage bay identified as Unit A of the building located at 3337 S Coast Highway, along with an attached covered parking area, the dimensions of which are depicted on Exhibit A.

The building is situated on real property identified as follows:

Beginning at a point on the North line of Lot 2, Block J, HARBORTON, which point is at the intersection of the North line of said Lot 2 and the East line of U.S. Highway 101 as now located; thence East along the said North line of Lot 2, 170.1 feet to the true point of beginning; thence continuing East along said North line of Lot 2, 261.9 feet to the West line of the old Ferry Road; thence Southwesterly along the Westerly right-of-way line of said Ferry Road to the intersection of the same and the South line of Lot 2, Block J, HARBORTON; thence West along the South line of Lot 2 to a point that is South 3°18' West from the true point of beginning; thence North 3°18' East 299 feet, more or less, to the true point of beginning, all in Lincoln County, Oregon.

Said lease is subject to the terms and conditions stated below:

### **Section 1. Term**

**1.1 Original Term.** The term of this Lease shall be a month-to-month basis, commencing on June 1, 2015.

**1.2 Possession.** Lessee's right to possession and obligations under the lease shall commence on June 1, 2015.

### **Section 2. Rent**

**2.1 Base Rent.** The base rent shall be \$200.00 per month.

**2.2 Additional Rent.** All taxes, insurance costs, utility charges that Lessee is required to pay by this lease, if any, and any other sum that Lessee is required to pay to Agency, Newport, or third parties shall be additional rent.

**2.4 No Partnership.** Agency is not by virtue of this section a partner with Lessee in connection with the business carried on under this lease, and shall have no obligation with respect to Lessee's debts or other liabilities, and no interest in Lessee's profits.

### **Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used for equipment storage. Lessee shall use the premises for no other purpose without the consent of Agency, which consent shall not be unreasonably withheld. The use and installation of business related equipment shall be contracted for by Lessee and installed and used at Lessee's cost.

**3.2 Restrictions on Use.** In connection with the use of the Premises, Lessee shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use, but shall not make any structural changes to effect such compliance without prior written consent of Agency.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Agency from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Agency to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Agency.

(5) 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 premises without the written consent and appropriate permits issued by Newport.

**3.3. Hazardous Substances.** Lessee shall not cause or permit any hazardous substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold for the purpose of perming

maintenance and repairs. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all environmental laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the Premises. The term environmental law 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. 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.

#### **Section 4. Repairs and Maintenance**

**4.1 Lessee's Obligations.** Lessee is responsible for all maintenance and repair of the Premises and shall keep the Premises in good condition.

**4.2 Inspection of Premises.** Agency shall have the right to inspect the Premises at any reasonable time upon the giving of 24 hours notice, except that such notice is not required in the event of an emergency.

#### **Section 5. Alterations**

**5.1 Alterations Prohibited.** Lessee shall make no improvements or alterations on the Premises of any kind without first obtaining Agency's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

**5.2 Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by Lessee shall be the property of Agency when installed unless the parties agree otherwise. At any time Lessee relinquishes occupancy or the Lease is otherwise terminated, improvements and alterations installed by Lessee shall, at Agency's option, be removed by Lessee and the premises restored unless Agency specifically provides otherwise.

#### **Section 6. Property Insurance**

**6.1. Casualty/Loss Insurance Required.** Agency may keep the Premises insured at Agency's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Lessee shall bear the expense of any renter's insurance insuring its property on the Premises against such risks.

**6.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

## **Section 7. Taxes; Utilities**

**7.1 Property Taxes.** Lessee shall pay all taxes on its personal property located on the Premises and any real property taxes that may be assessed on the Premises due solely to Lessee's use.

**7.2 New Charges or Fees.** If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom, or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Lessee shall pay such charge or fee.

**7.3 Payment of Utilities Charges.** Lessee shall be responsible for all utilities to the building including natural gas, electricity, water, sewer, garbage, door locks, and any telephone or telecommunication equipment.

## **Section 8. Damage and Destruction**

**8.1 Partial Damage.** If the Premises are partly damaged and Section 6.1 does not apply, the Premises shall be repaired by Lessee at its' expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in accordance with the provisions of Section 5.

**8.2 Destruction.** If the Premises are destroyed or damaged such that the cost of repair exceeds 25% of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of termination, and Lessee shall be entitled to reimbursement of any prepaid amounts paid by Lessee and attributable to the anticipated term. If neither party elects to terminate, Lessee shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessee's reasonable control.

## **Section 9. Liens and Indemnity**

### **9.1 Liens**

(1) Except with respect to activities for which Agency is responsible, Lessee shall pay as due all claims for work contracted by Lessee for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Agency may do so and collect the cost as additional rent. Any amount so added shall bear interest at the then-current rate allowed by law from the date expended by Agency and shall be payable on demand. Such action by Agency shall not constitute a waiver of any right or remedy which Agency may have on account of Lessee default.

(2) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Agency's property interests are not jeopardized.

**9.2 Indemnification.** Lessee shall indemnify and defend Agency from any claim, loss, or liability arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Lessee's own negligence or failure to effect any repair or maintenance required by this lease. Agency shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Agency's negligence or breach of duty under this lease.

### **Section 10. Quiet Enjoyment; Warranty**

Agency warrants that it is the owner of the Premises and has the right to lease them. Agency will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

### **Section 11. Assignment and Subletting**

No part of the Premises may be assigned or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Agency.

### **Section 12. Default**

The following shall be events of default:

**12.1 Default in Rent.** Failure of Lessee to pay any rent or other charge within 10 days after written notice that it is due.

**12.2 Default in Other Covenants.** Failure of Lessee to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days' after written notice by Agency specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

### **Section 13. Termination**

**13.1 Termination.** At any time Agency or Lessee may terminate the lease on not less than 90 days' prior notice to the other party. In the event of a default that is not remedied as set forth in Section 12, the lease may be terminated at the option of Agency by 30 days' written notice to Lessee. Agency may reenter and take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**13.2 Remedies Cumulative.** The foregoing remedy shall be in addition to and shall not exclude any other remedy available to Agency under applicable law.

### **Section 14. Surrender at Expiration**

Upon expiration of the lease term or earlier termination, lessee shall pay any amount owed for utility service provided under Section 7.3. on a pro-rata basis for any partial month.

**14.1 Condition of Premises.** Upon expiration of the lease term or earlier termination, Lessee shall deliver all keys to Agency and surrender the Premises in first-class condition and broom clean. Alterations constructed by Lessee with permission from Agency shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Lessee is responsible shall be completed to the latest practical date prior to such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

### **14.2 Removal; Fixtures; Repair**

(1) All fixtures placed upon the Premises during the term, other than Lessee's trade fixtures, shall, at Agency's option, become the property of Agency. If Agency so elects, Lessee shall remove any or all fixtures that would otherwise remain the property of Agency, and shall repair any physical damage resulting from the removal. If Lessee fails to remove such fixtures, Agency may do so and charge the cost to Lessee with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Lessee shall remove all furnishings, furniture, and trade fixtures that remain its property. If Lessee fails to do so, this shall be an abandonment of the property, and Agency may retain the property and all rights of Lessee with respect to the property shall cease or, by notice in writing given to Lessee within 20 days after removal was required, Agency may elect to hold Lessee to its obligation to remove the property. If Agency elects to require Lessee to remove the property, Agency may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Agency for the costs of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Agency.

## **Section 14. Miscellaneous**

**14.1 Nonwaiver.** Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**14.2 Notices.** Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

**14.3 Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**14.4 Recordation.** This lease shall not be recorded without the written consent of Agency.

**14.5 Entry for Inspection.** Agency shall have the right to enter upon the Premises at any time after 24 hours notice to Lessee to determine Lessee's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective lessee or purchaser. In addition, Agency shall have the right to place and maintain upon the Premises notices for leasing or selling of the Premises after notice is provided that the lease is being terminated in accordance with Section 13.1. The 24 hour notice provision shall not apply in the event of an emergency.

## **14.6 Subordination**

Lessee acknowledges and agrees to subordinate any interest of Lessee in the leased Premises to facilitate improvements Agency plans to make to adjoining public rights-of-way including, but not limited to:

- (1) Agency transferring or conveying any interest in real property along the perimeter of the real property upon which the Premises is located;

- (2) Agency locating and/or relocating utilities above or below the Premises and real property upon which the Premises is located;
- (3) Agency staging construction materials and equipment on the Premises provided the staging activities do not unnecessarily interfere with the Lessee occupancy; and
- (4) Agency relocating points of ingress and egress to the Premises.

Provided; however, that the Lessee shall not be required to subordinate its lease in any manner that causes the Lessee to give up use of the building during the term of the lease.

**NEWPORT URBAN RENEWAL AGENCY**

\_\_\_\_\_  
Spencer Nebel, Executive Director

\_\_\_\_\_  
Date

**Approved as to Form:**

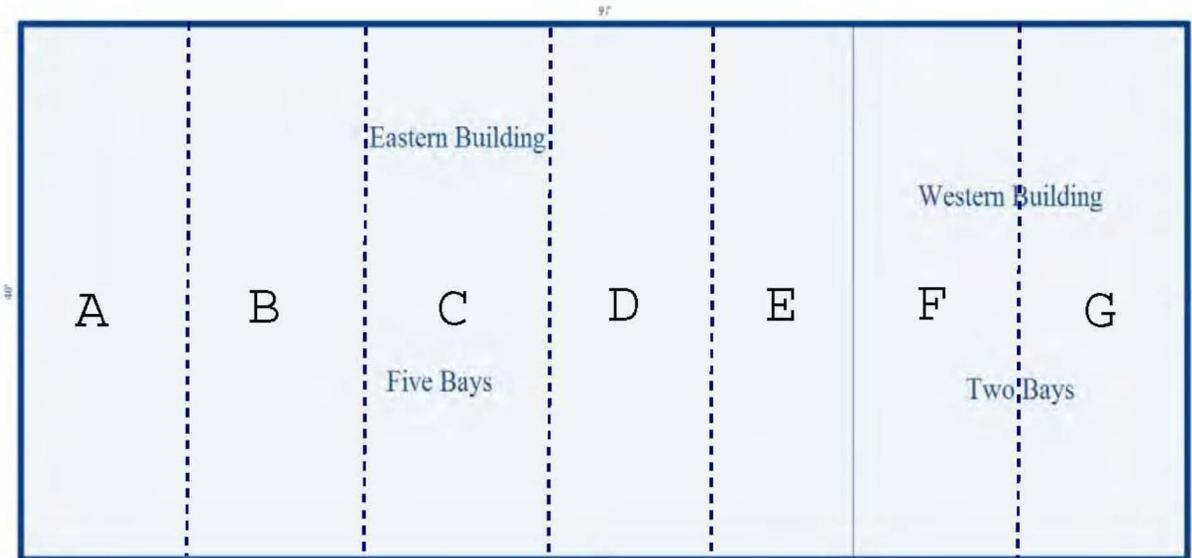
\_\_\_\_\_  
Steve Rich, City Attorney

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Date



View of Storage Buildings Facing Southwest



Storage Buildings



**AGREEMENT FOR LEASE OF BUSINESS PREMISES**

Date: June 1, 2015

Between: Newport Urban Renewal Agency (Agency), Lessor  
169 SW Coast Highway, Newport, Oregon 97365

And: James Meyers (Meyers), Lessee  
7359 SW Surfland Street, South Beach, Oregon 97366

**Newport Urban Renewal Agency** leases to Meyers and Meyers leases from the Newport Urban Renewal Agency the following described property (the "Premises"):

A 120-ft x 100-ft laydown area for the retail sale of landscaping materials on property located at 3337 S Coast Highway the dimensions of which are depicted on Exhibit A.

The lease area is situated on real property identified as follows:

Parcel 1: Beginning at a point on the North line of Lot 2, Block J, HARBORTON, which point is the intersection of the North line of said Lot 2 and the East line of U.S. Highway 101; thence East along the said North line of Lot 2, 170.1 feet; thence South 3°18' West 299 feet, more or less, to the South line of said Lot 2; thence West on the South line of Lot 2 to the East line of U.S. Highway 101; thence Northerly along said East line of Highway 101 to the place of beginning, all in Lincoln County, Oregon.

Parcel 2: Beginning at a point on the North line of Lot 2, Block J, HARBORTON, which point is at the intersection of the North line of said Lot 2 and the East line of U.S. Highway 101 as now located; thence East along the said North line of Lot 2, 170.1 feet to the true point of beginning; thence continuing East along said North line of Lot 2, 261.9 feet to the West line of the old Ferry Road; thence Southwesterly along the Westerly right-of-way line of said Ferry Road to the intersection of the same and the South line of Lot 2, Block J, HARBORTON; thence West along the South line of Lot 2 to a point that is South 3°18' West from the true point of beginning; thence North 3°18' East 299 feet, more or less, to the true point of beginning, all in Lincoln County, Oregon.

Said lease is subject to the terms and conditions stated below:

## **Section 1. Term**

**1.1 Original Term.** The term of this Lease shall be a month-to-month basis, commencing on June 1, 2015.

**1.2 Possession.** Lessee's right to possession and obligations under the lease shall commence on June 1, 2015.

## **Section 2. Rent**

**2.1 Base Rent.** The base rent shall be \$100.00 per month from October through March and \$300 per month from April through September.

**2.2 Additional Rent.** All taxes, insurance costs, utility charges that Lessee is required to pay by this lease, if any, and any other sum that Lessee is required to pay to Agency, Newport, or third parties shall be additional rent.

**2.4 No Partnership.** Agency is not by virtue of this section a partner with Lessee in connection with the business carried on under this lease, and shall have no obligation with respect to Lessee's debts or other liabilities, and no interest in Lessee's profits.

## **Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used for retail sales of landscape materials. Lessee shall use the premises for no other purpose without the consent of Agency, which consent shall not be unreasonably withheld. The use and installation of business related equipment shall be contracted for by Lessee and installed and used at Lessee's cost.

**3.2 Restrictions on Use.** In connection with the use of the Premises, Lessee shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use, but shall not make any structural changes to effect such compliance without prior written consent of Agency.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Agency from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Agency to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Agency.

(5) Refrain from installing any sign, insignia, antenna, aerial, or other device on the Premises without the written consent and appropriate permits issued by Newport.

**3.3. Hazardous Substances.** Lessee shall not cause or permit any hazardous substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold for the purpose of perming maintenance and repairs. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all environmental laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the Premises. The term environmental law 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. 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.

#### **Section 4. Repairs and Maintenance**

**4.1 Lessee's Obligations.** Lessee is responsible for maintaining the Premises and shall keep the Premises in good condition.

**4.2 Inspection of Premises.** Agency shall have the right to inspect the Premises at any reasonable time.

#### **Section 5. Alterations**

**5.1 Alterations Prohibited.** Lessee shall make no improvements or alterations on the Premises of any kind without first obtaining Agency's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

**5.2 Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by Lessee shall be the property of Agency when

installed unless the parties agree otherwise. At any time Lessee relinquishes occupancy or the Lease is otherwise terminated, improvements and alterations installed by Lessee shall, at Agency's option, be removed by Lessee and the premises restored unless Agency specifically provides otherwise.

## **Section 6. Property Insurance**

**6.1. Casualty/Loss Insurance Required.** Agency may keep the Premises insured at Agency's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Lessee shall bear the expense of any renter's insurance insuring its property on the Premises against such risks.

**6.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

## **Section 7. Taxes; Utilities**

**7.1 Property Taxes.** Lessee shall pay all taxes on its personal property located on the Premises and any real property taxes that may be assessed on the Premises due solely to Lessee's use.

**7.2 New Charges or Fees.** If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom, or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Lessee shall pay such charge or fee.

**7.3 Payment of Utilities Charges.** Lessee shall be responsible for all utilities to the building including natural gas, electricity, water, sewer, garbage, door locks, and any telephone or telecommunication equipment.

## **Section 8. Damage and Destruction**

**8.1 Partial Damage.** If the Premises are partly damaged and Section 6.1 does not apply, the Premises shall be repaired by Lessee at its' expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in accordance with the provisions of Section 5.

**8.2 Destruction.** If the Premises are destroyed or damaged such that the cost of repair exceeds 25% of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of termination, and Lessee shall be entitled to reimbursement of any prepaid amounts paid by Lessee and attributable to the anticipated term. If neither party elects to terminate, Lessee shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessee's reasonable control.

## **Section 9. Liens and Indemnity**

### **9.1 Liens**

(1) Except with respect to activities for which Agency is responsible, Lessee shall pay as due all claims for work contracted by Lessee for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Agency may do so and collect the cost as additional rent. Any amount so added shall bear interest at the then-current rate allowed by law from the date expended by Agency and shall be payable on demand. Such action by Agency shall not constitute a waiver of any right or remedy which Agency may have on account of Lessee default.

(2) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Agency's property interests are not jeopardized.

**9.2 Indemnification.** Lessee shall indemnify and defend Agency from any claim, loss, or liability arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Lessee's own negligence or failure to effect any repair or maintenance required by this lease. Agency shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Agency's negligence or breach of duty under this lease.

## **Section 10. Quiet Enjoyment; Warranty**

Agency warrants that it is the owner of the Premises and has the right to lease them. Agency will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

## **Section 11. Assignment and Subletting**

No part of the Premises may be assigned or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Agency.

## **Section 12. Default**

The following shall be events of default:

**12.1 Default in Rent.** Failure of Lessee to pay any rent or other charge within 10 days after written notice that it is due.

**12.2 Default in Other Covenants.** Failure of Lessee to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days' after written notice by Agency specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

## **Section 13. Termination**

**13.1 Termination.** At any time Agency or Lessee may terminate the lease on not less than 90 days' prior notice to the other party. In the event of a default that is not remedied as set forth in Section 12, the lease may be terminated at the option of Agency by 30 days' written notice to Lessee. Agency may reenter and take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**13.2 Remedies Cumulative.** The foregoing remedy shall be in addition to and shall not exclude any other remedy available to Agency under applicable law.

## **Section 14. Surrender at Expiration**

Upon expiration of the lease term or earlier termination, lessee shall pay any amount owed for utility service provided under Section 7.3. on a pro-rata basis for any partial month.

**14.1 Condition of Premises.** Upon expiration of the lease term or earlier termination, Lessee shall deliver all keys to Agency and surrender the Premises in first-class condition and broom clean. Alterations constructed by Lessee with permission from Agency shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be

excepted but repairs for which Lessee is responsible shall be completed to the latest practical date prior to such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

#### **14.2 Removal; Fixtures; Repair**

(1) All fixtures placed upon the Premises during the term, other than Lessee's trade fixtures, shall, at Agency's option, become the property of Agency. If Agency so elects, Lessee shall remove any or all fixtures that would otherwise remain the property of Agency, and shall repair any physical damage resulting from the removal. If Lessee fails to remove such fixtures, Agency may do so and charge the cost to Lessee with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Lessee shall remove all furnishings, furniture, and trade fixtures that remain its property. If Lessee fails to do so, this shall be an abandonment of the property, and Agency may retain the property and all rights of Lessee with respect to the property shall cease or, by notice in writing given to Lessee within 20 days after removal was required, Agency may elect to hold Lessee to its obligation to remove the property. If Agency elects to require Lessee to remove the property, Agency may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Agency for the costs of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Agency.

#### **Section 14. Miscellaneous**

**14.1 Nonwaiver.** Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**14.2 Notices.** Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

**14.3 Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**14.4 Recordation.** This lease shall not be recorded without the written consent of Agency.

**14.5 Entry for Inspection.** Agency shall have the right to enter upon the Premises at any time to Lessee to determine Lessee's compliance with this lease, to make necessary repairs to the Premises, or to show the Premises to any prospective lessee or purchaser. In addition, Agency shall have the right to place and maintain

upon the Premises notices for leasing or selling of the Premises after notice is provided that the lease is being terminated in accordance with Section 13.1.

#### 14.6 Subordination

Lessee acknowledges and agrees to subordinate any interest of Lessee in the leased Premises to facilitate improvements Agency plans to make to adjoining public rights-of-way including, but not limited to:

- (1) Agency transferring or conveying any interest in real property along the perimeter of the real property upon which the Premises is located;
- (2) Agency locating and/or relocating utilities above or below the Premises and real property upon which the Premises is located;
- (3) Agency staging construction materials and equipment on the Premises provided the staging activities do not unnecessarily interfere with the Lessee occupancy; and
- (4) Agency relocating points of ingress and egress to the Premises.

Provided; however, that the Lessee shall not be required to subordinate its lease in any manner that causes the Lessee to give up use of the building during the term of the lease.

**NEWPORT URBAN RENEWAL AGENCY**

\_\_\_\_\_  
Spencer Nebel, Executive Director

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
Steve Rich, City Attorney

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Date



Aerial Image of Property showing 120-ft x 100-ft Lease Area for Retail Sales of Landscape Materials



## AGREEMENT FOR LEASE OF BUSINESS PREMISES

Date: June 1, 2015

Between: Newport Urban Renewal Agency (Agency), Lessor  
169 SW Coast Highway, Newport, Oregon 97365

And: Oregon Coast Community Forest Association (OCCFA), Lessee  
c/o Ann Fineman, PO Box 149, Newport, Oregon 97365

**Newport Urban Renewal Agency** leases to OCCFA and OCCFA leases from the Newport Urban Renewal Agency the following described property (the "Premises"):

A 350 square foot enclosed storage bay identified as Unit E, of the building located at 3337 S Coast Highway the dimensions of which are depicted on Exhibit A.

The building is situated on real property identified as follows:

Beginning at a point on the North line of Lot 2, Block J, HARBORTON, which point is at the intersection of the North line of said Lot 2 and the East line of U.S. Highway 101 as now located; thence East along the said North line of Lot 2, 170.1 feet to the true point of beginning; thence continuing East along said North line of Lot 2, 261.9 feet to the West line of the old Ferry Road; thence Southwesterly along the Westerly right-of-way line of said Ferry Road to the intersection of the same and the South line of Lot 2, Block J, HARBORTON; thence West along the South line of Lot 2 to a point that is South 3°18' West from the true point of beginning; thence North 3°18' East 299 feet, more or less, to the true point of beginning, all in Lincoln County, Oregon.

Said lease is subject to the terms and conditions stated below:

### **Section 1. Term**

**1.1 Original Term.** The term of this Lease shall be a month-to-month basis, commencing on June 1, 2015.

**1.2 Possession.** Lessee's right to possession and obligations under the lease shall commence on June 1, 2015.

### **Section 2. Rent**

**2.1 Base Rent.** The base rent shall be \$250.00 per month.

**2.2 Additional Rent.** All taxes, insurance costs, utility charges that Lessee is required to pay by this lease, if any, and any other sum that Lessee is required to pay to Agency, Newport, or third parties shall be additional rent.

**2.4 No Partnership.** Agency is not by virtue of this section a partner with Lessee in connection with the business carried on under this lease, and shall have no obligation with respect to Lessee's debts or other liabilities, and no interest in Lessee's profits.

### **Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used for equipment storage. Lessee shall use the premises for no other purpose without the consent of Agency, which consent shall not be unreasonably withheld. The use and installation of business related equipment shall be contracted for by Lessee and installed and used at Lessee's cost.

**3.2 Restrictions on Use.** In connection with the use of the Premises, Lessee shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use, but shall not make any structural changes to effect such compliance without prior written consent of Agency.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Agency from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Agency to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Agency.

(5) 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 premises without the written consent and appropriate permits issued by Newport.

**3.3. Hazardous Substances.** Lessee shall not cause or permit any hazardous substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold for the purpose of perming

maintenance and repairs. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all environmental laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the Premises. The term environmental law 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. 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.

#### **Section 4. Repairs and Maintenance**

**4.1 Lessee's Obligations.** Lessee is responsible for all maintenance and repair of the Premises and shall keep the Premises in good condition.

**4.2 Inspection of Premises.** Agency shall have the right to inspect the Premises at any reasonable time upon the giving of 24 hours notice, except that such notice is not required in the event of an emergency.

#### **Section 5. Alterations**

**5.1 Alterations Prohibited.** Lessee shall make no improvements or alterations on the Premises of any kind without first obtaining Agency's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

**5.2 Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by Lessee shall be the property of Agency when installed unless the parties agree otherwise. At any time Lessee relinquishes occupancy or the Lease is otherwise terminated, improvements and alterations installed by Lessee shall, at Agency's option, be removed by Lessee and the premises restored unless Agency specifically provides otherwise.

#### **Section 6. Property Insurance**

**6.1. Casualty/Loss Insurance Required.** Agency may keep the Premises insured at Agency's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Lessee shall bear the expense of any renter's insurance insuring its property on the Premises against such risks.

**6.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

## **Section 7. Taxes; Utilities**

**7.1 Property Taxes.** Lessee shall pay all taxes on its personal property located on the Premises and any real property taxes that may be assessed on the Premises due solely to Lessee's use.

**7.2 New Charges or Fees.** If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom, or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Lessee shall pay such charge or fee.

**7.3 Payment of Utilities Charges.** Lessee shall be responsible for all utilities to the building including natural gas, electricity, water, sewer, garbage, door locks, and any telephone or telecommunication equipment.

## **Section 8. Damage and Destruction**

**8.1 Partial Damage.** If the Premises are partly damaged and Section 6.1 does not apply, the Premises shall be repaired by Lessee at its' expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in accordance with the provisions of Section 5.

**8.2 Destruction.** If the Premises are destroyed or damaged such that the cost of repair exceeds 25% of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of termination, and Lessee shall be entitled to reimbursement of any prepaid amounts paid by Lessee and attributable to the anticipated term. If neither party elects to terminate, Lessee shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessee's reasonable control.

## **Section 9. Liens and Indemnity**

### **9.1 Liens**

(1) Except with respect to activities for which Agency is responsible, Lessee shall pay as due all claims for work contracted by Lessee for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Agency may do so and collect the cost as additional rent. Any amount so added shall bear interest at the then-current rate allowed by law from the date expended by Agency and shall be payable on demand. Such action by Agency shall not constitute a waiver of any right or remedy which Agency may have on account of Lessee default.

(2) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Agency's property interests are not jeopardized.

**9.2 Indemnification.** Lessee shall indemnify and defend Agency from any claim, loss, or liability arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Lessee's own negligence or failure to effect any repair or maintenance required by this lease. Agency shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Agency's negligence or breach of duty under this lease.

### **Section 10. Quiet Enjoyment; Warranty**

Agency warrants that it is the owner of the Premises and has the right to lease them. Agency will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

### **Section 11. Assignment and Subletting**

No part of the Premises may be assigned or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Agency.

### **Section 12. Default**

The following shall be events of default:

**12.1 Default in Rent.** Failure of Lessee to pay any rent or other charge within 10 days after written notice that it is due.

**12.2 Default in Other Covenants.** Failure of Lessee to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days' after written notice by Agency specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

### **Section 13. Termination**

**13.1 Termination.** At any time Agency or Lessee may terminate the lease on not less than 90 days' prior notice to the other party. In the event of a default that is not remedied as set forth in Section 12, the lease may be terminated at the option of Agency by 30 days' written notice to Lessee. Agency may reenter and take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**13.2 Remedies Cumulative.** The foregoing remedy shall be in addition to and shall not exclude any other remedy available to Agency under applicable law.

### **Section 14. Surrender at Expiration**

Upon expiration of the lease term or earlier termination, lessee shall pay any amount owed for utility service provided under Section 7.3. on a pro-rata basis for any partial month.

**14.1 Condition of Premises.** Upon expiration of the lease term or earlier termination, Lessee shall deliver all keys to Agency and surrender the Premises in first-class condition and broom clean. Alterations constructed by Lessee with permission from Agency shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Lessee is responsible shall be completed to the latest practical date prior to such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

### **14.2 Removal; Fixtures; Repair**

(1) All fixtures placed upon the Premises during the term, other than Lessee's trade fixtures, shall, at Agency's option, become the property of Agency. If Agency so elects, Lessee shall remove any or all fixtures that would otherwise remain the property of Agency, and shall repair any physical damage resulting from the removal. If Lessee fails to remove such fixtures, Agency may do so and charge the cost to Lessee with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Lessee shall remove all furnishings, furniture, and trade fixtures that remain its property. If Lessee fails to do so, this shall be an abandonment of the property, and Agency may retain the property and all rights of Lessee with respect to the property shall cease or, by notice in writing given to Lessee within 20 days after removal was required, Agency may elect to hold Lessee to its obligation to remove the property. If Agency elects to require Lessee to remove the property, Agency may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Agency for the costs of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Agency.

## **Section 14. Miscellaneous**

**14.1 Nonwaiver.** Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**14.2 Notices.** Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

**14.3 Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**14.4 Recordation.** This lease shall not be recorded without the written consent of Agency.

**14.5 Entry for Inspection.** Agency shall have the right to enter upon the Premises at any time after 24 hours notice to Lessee to determine Lessee's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective lessee or purchaser. In addition, Agency shall have the right to place and maintain upon the Premises notices for leasing or selling of the Premises after notice is provided that the lease is being terminated in accordance with Section 13.1. The 24 hour notice provision shall not apply in the event of an emergency.

### **14.6 Subordination**

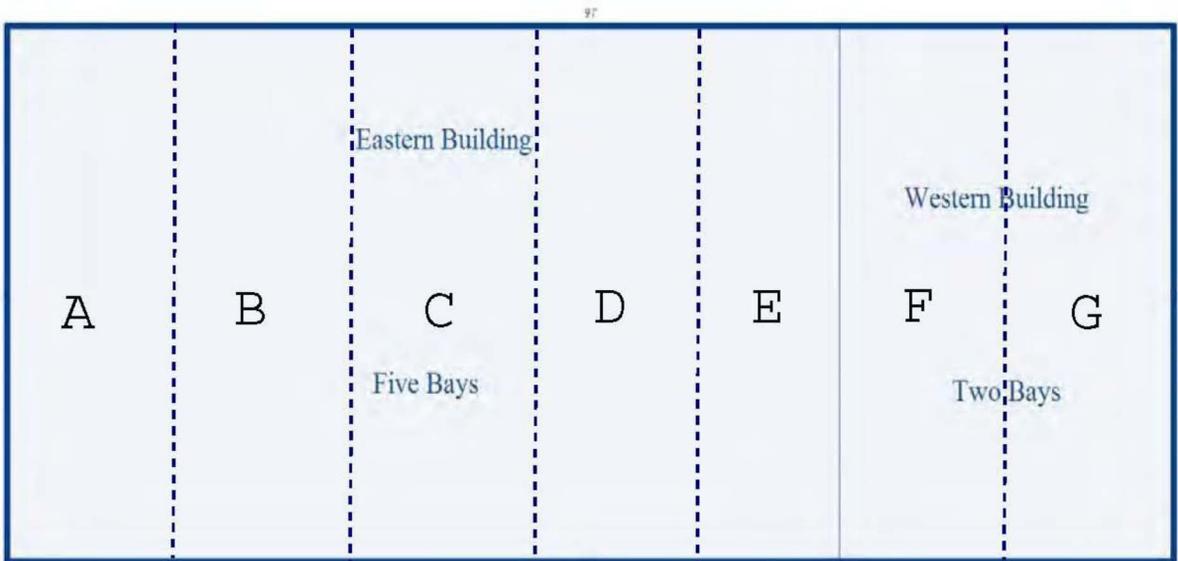
Lessee acknowledges and agrees to subordinate any interest of Lessee in the leased Premises to facilitate improvements Agency plans to make to adjoining public rights-of-way including, but not limited to:

- (1) Agency transferring or conveying any interest in real property along the perimeter of the real property upon which the Premises is located;





West End of Storage Buildings Facing South





## AGREEMENT FOR LEASE OF BUSINESS PREMISES

Date: June 1, 2015

Between: Newport Urban Renewal Agency (Agency), Lessor  
169 SW Coast Highway, Newport, Oregon 97365

And: Cheryl Schones (Schones), Lessee  
436 NW 12<sup>th</sup> Street, Newport, Oregon

**Newport Urban Renewal Agency** leases to Cheryl Schones and Cheryl Schones leases from the Newport Urban Renewal Agency the following described property (the "Premises"):

A 240 square foot building located at 3333 S Coast Highway and currently operated as Espresso Coffee and Bakery, the dimensions of which are depicted on Exhibit A together with drive isles immediately adjacent thereto.

The building is situated on real property identified as follows:

Beginning at a point on the North line of Lot 2, Block J, HARBORTON, which point is the intersection of the North line of said Lot 2 and the East line of U.S. Highway 101; thence East along the said North line of Lot 2, 170.1 feet; thence South 3°18' West 299 feet, more or less, to the South line of said Lot 2; thence West on the South line of Lot 2 to the East line of U.S. Highway 101; thence Northerly along said East line of Highway 101 to the place of beginning, all in Lincoln County, Oregon.

Said lease is subject to the terms and conditions stated below:

### **Section 1. Term**

**1.1 Original Term.** The term of this Lease shall be a month-to-month basis, commencing on June 1, 2015.

**1.2 Possession.** Lessee's right to possession and obligations under the lease shall commence on June 1, 2015.

### **Section 2. Rent**

**2.1 Base Rent.** The base rent shall be \$300.00 per month.

**2.2 Additional Rent.** All taxes, insurance costs, utility charges that Lessee is required to pay by this lease, if any, and any other sum that Lessee is required to pay to Agency, Newport, or third parties shall be additional rent.

**2.4 No Partnership.** Agency is not by virtue of this section a partner with Lessee in connection with the business carried on under this lease, and shall have no obligation with respect to Lessee's debts or other liabilities, and no interest in Lessee's profits.

### **Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used as a drive through and walk up coffee kiosk. Lessee shall use the premises for no other purpose without the consent of Agency, which consent shall not be unreasonably withheld. The use and installation of business related equipment shall be contracted for by Lessee and installed and used at Lessee's cost.

**3.2 Restrictions on Use.** In connection with the use of the Premises, Lessee shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use, but shall not make any structural changes to effect such compliance without prior written consent of Agency.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Agency from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Agency to obtain reduced premium rates for long-term fire insurance policies, unless Lessee pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to other lessees or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Agency.

(5) 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 premises without the written consent and appropriate permits issued by Newport.

**3.3. Hazardous Substances.** Lessee shall not cause or permit any hazardous substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Lessee may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold for the purpose of perming maintenance and repairs. Lessee may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all environmental laws and exercise the highest

degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the Premises. The term environmental law 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. 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.

#### **Section 4. Repairs and Maintenance**

**4.1 Lessee's Obligations.** Lessee is responsible for all maintenance and repair of the Premises and shall keep the Premises in good condition.

**4.2 Inspection of Premises.** Agency shall have the right to inspect the Premises at any reasonable time upon the giving of 24 hours notice, except that such notice is not required in the event of an emergency.

#### **Section 5. Alterations**

**5.1 Alterations Prohibited.** Lessee shall make no improvements or alterations on the Premises of any kind without first obtaining Agency's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

**5.2 Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by Lessee shall be the property of Agency when installed unless the parties agree otherwise. At any time Lessee relinquishes occupancy or the Lease is otherwise terminated, improvements and alterations installed by Lessee shall, at Agency's option, be removed by Lessee and the premises restored unless Agency specifically provides otherwise.

#### **Section 6. Property Insurance**

**6.1. Casualty/Loss Insurance Required.** Agency may keep the Premises insured at Agency's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Lessee shall bear the expense of any renter's insurance insuring its property on the Premises against such risks.

**6.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company

shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

## **Section 7. Taxes; Utilities**

**7.1 Property Taxes.** Lessee shall pay all taxes on its personal property located on the Premises and any real property taxes that may be assessed on the Premises due solely to Lessee's use.

**7.2 New Charges or Fees.** If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom, or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Lessee shall pay such charge or fee.

**7.3 Payment of Utilities Charges.** Lessee shall be responsible for all utilities to the building including natural gas, electricity, water, sewer, garbage, door locks, and any telephone or telecommunication equipment.

## **Section 8. Damage and Destruction**

**8.1 Partial Damage.** If the Premises are partly damaged and Section 6.1 does not apply, the Premises shall be repaired by Lessee at its' expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in accordance with the provisions of Section 5.

**8.2 Destruction.** If the Premises are destroyed or damaged such that the cost of repair exceeds 25% of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of termination, and Lessee shall be entitled to reimbursement of any prepaid amounts paid by Lessee and attributable to the anticipated term. If neither party elects to terminate, Lessee shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessee's reasonable control.

## **Section 9. Liability Insurance and Indemnity**

### **9.1 Liens**

(1) Except with respect to activities for which Agency is responsible, Lessee shall pay as due all claims for work contracted by Lessee for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Agency may do so and collect the cost as additional rent. Any amount so added shall bear interest at the then-current rate allowed by law from the date expended by Agency and shall be payable on demand. Such action by Agency shall not constitute a waiver of any right or remedy which Agency may have on account of Lessee default.

(2) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Agency's property interests are not jeopardized.

**9.2 Indemnification.** Lessee shall indemnify and defend Agency from any claim, loss, or liability arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Lessee's own negligence or failure to effect any repair or maintenance required by this lease. Agency shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Agency's negligence or breach of duty under this lease.

**9.3 Liability Insurance.** Lessee shall procure and maintain during the term of the lease general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Lessee or of any of its employees, agents or assigns, with \$1,000,000 per occurrence and in the aggregate. Such insurance shall protect Agency on account of the obligations assumed by Lessee under this lease, and shall name Agency as an additional insured. A copy of the policy, issued by a company currently licensed in the State of Oregon and certified as a true copy by an authorized representative of the issuing company, or, at the discretion of the Agency, a certificate in a form satisfactory to Agency certifying to the issuance of such insurance, shall be furnished to Agency no later than June 1, 2015.

## **Section 10. Quiet Enjoyment; Warranty**

Agency warrants that it is the owner of the Premises and has the right to lease them. Agency will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

## **Section 11. Assignment and Subletting**

No part of the Premises may be assigned or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Agency.

## **Section 12. Default**

The following shall be events of default:

**12.1 Default in Rent.** Failure of Lessee to pay any rent or other charge within 10 days after written notice that it is due.

**12.2 Default in Other Covenants.** Failure of Lessee to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days' after written notice by Agency specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

## **Section 13. Termination**

**13.1 Termination.** At any time Agency or Lessee may terminate the lease on not less than 90 days' prior notice to the other party. In the event of a default that is not remedied as set forth in Section 12, the lease may be terminated at the option of Agency by 30 days' written notice to Lessee. Agency may reenter and take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**13.2 Remedies Cumulative.** The foregoing remedy shall be in addition to and shall not exclude any other remedy available to Agency under applicable law.

## **Section 14. Surrender at Expiration**

Upon expiration of the lease term or earlier termination, lessee shall pay any amount owed for utility service provided under Section 7.3. on a pro-rata basis for any partial month.

**14.1 Condition of Premises.** Upon expiration of the lease term or earlier termination, Lessee shall deliver all keys to Agency and surrender the Premises in first-class condition and broom clean. Alterations constructed by Lessee with permission from Agency shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Lessee is responsible shall be completed to the

latest practical date prior to such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

#### **14.2 Removal; Fixtures; Repair**

(1) All fixtures placed upon the Premises during the term, other than Lessee's trade fixtures, shall, at Agency's option, become the property of Agency. If Agency so elects, Lessee shall remove any or all fixtures that would otherwise remain the property of Agency, and shall repair any physical damage resulting from the removal. If Lessee fails to remove such fixtures, Agency may do so and charge the cost to Lessee with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Lessee shall remove all furnishings, furniture, and trade fixtures that remain its property. If Lessee fails to do so, this shall be an abandonment of the property, and Agency may retain the property and all rights of Lessee with respect to the property shall cease or, by notice in writing given to Lessee within 20 days after removal was required, Agency may elect to hold Lessee to its obligation to remove the property. If Agency elects to require Lessee to remove the property, Agency may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Agency for the costs of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Agency.

#### **Section 14. Miscellaneous**

**14.1 Nonwaiver.** Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**14.2 Notices.** Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

**14.3 Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**14.4 Recordation.** This lease shall not be recorded without the written consent of Agency.

**14.5 Entry for Inspection.** Agency shall have the right to enter upon the Premises at any time after 24 hours notice to Lessee to determine Lessee's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective lessee or purchaser. In addition, Agency shall have the right to place and maintain upon the Premises notices for leasing or

selling of the Premises after notice is provided that the lease is being terminated in accordance with Section 13.1. The 24 hour notice provision shall not apply in the event of an emergency.

**14.6 Subordination**

Lessee acknowledges and agrees to subordinate any interest of Lessee in the leased Premises to facilitate improvements Agency plans to make to adjoining public rights-of-way including, but not limited to:

- (1) Agency transferring or conveying any interest in real property along the perimeter of the real property upon which the Premises is located;
- (2) Agency locating and/or relocating utilities above or below the Premises and real property upon which the Premises is located;
- (3) Agency staging construction materials and equipment on the Premises provided the staging activities do not unnecessarily interfere with the Lessee occupancy; and
- (4) Agency relocating points of ingress and egress to the Premises.

Provided; however, that the Lessee shall not be required to subordinate its lease in any manner that causes the Lessee to give up use of the building during the term of the lease.

**NEWPORT URBAN RENEWAL AGENCY**

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Spencer Nebel, Executive Director

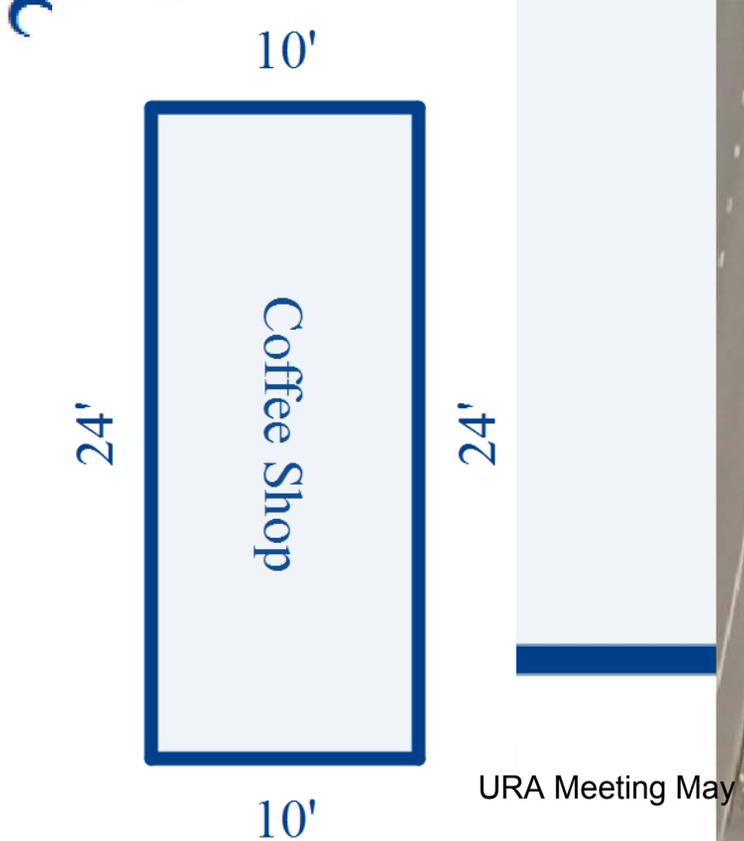
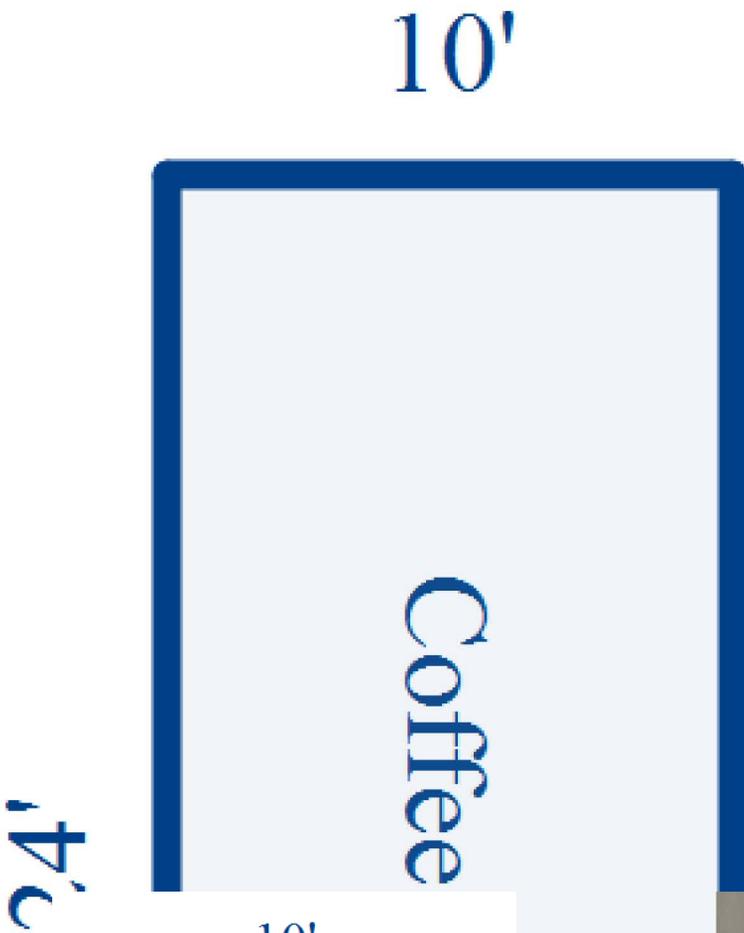
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Date

**Approved as to Form:**

\_\_\_\_\_  
Steve Rich, City Attorney

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Lessee

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Date



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