

LEASE AGREEMENT FOR COMMERCIAL PREMISES

THIS LEASE agreement is entered into on the date last written below between the CITY OF NEWPORT (hereinafter referred to as CITY) and KATRINA BROWN (hereinafter referred to as LESSEE), whereby CITY agrees to lease to LESSEE and LESSEE agrees to lease from CITY the following described real property:

Lot 9, Block 45, Case and Bayley's Second Addition to the City of Newport, in Lincoln County, State of Oregon (commonly known as 315 SW 9th Street, Newport, Oregon 97365)

on the terms and conditions stated below.

Section 1. Term; Possession

- 1.1 **Original Term.** The term of this lease shall be for a period of five (5) years commencing on March 15, 2016, and continuing through March 15, 2021.
- 1.2 **Possession.** LESSEE's right to possession and obligations under the terms of this lease shall commence on March 15, 2016. LESSEE is currently in possession of the real property described herein and shall continue in possession so long as not in default of the terms of this lease until and through March 15, 2021.

Section 2. Rent

- 2.1 **Base Rent.** The base rent shall be \$80.00 payable on a monthly basis. Rent is due on March 15, 2016, and on the 15th of each month thereafter.
- 2.2 **Annual Rent Increases.** Annual rent payments under this lease shall be increased annually, beginning March 15, 2017, by adjusting the rent by the rate of increase of inflation using the Bureau of Labor Statistics Consumer Price Index for Urban Consumers (CPI-U), but in no event shall the annual rent be adjusted to increase by less than 1%.
- 2.3 **Additional Rents.** Any and all taxes, insurance costs, and utility charges that LESSEE is required to pay by this lease, if any, and any other sum that LESSEE is required to pay to CITY or other third parties shall be additional rent.
- 2.4 **No Agency.** CITY is not by virtue of this section an agent, partner or joint venture with LESSEE in connection with the business carried on upon the premises described herein or under the terms of 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. Option to Renew

- 3.1 **Option to Extend.** So long as LESSEE is not in default under the terms of this lease, LESSEE shall have the right to extend this lease for one additional term of five (5) years. This option may be exercised by LESSEE providing written notice to CITY, at the address provided herein, not less than 90 days nor more than 120 days before the expiration of the last annual term provided in this lease. Unless otherwise agreed in writing, if such notice is given, all terms shall remain the same during the extended term – except for rent. Rent for the renewed and extended term shall be negotiated in good faith to establish a mutually agreed upon fair market rental value for the leased premises.
- 3.2 **Failure to Renew; Duration.** In the event the parties are unable to agree on a fair market rental value for the extension this lease may be cancelled with no further obligations between the parties; in such event that the lease is cancelled, the termination date shall be July 31, 2020 but not later than 30 days after either party has provided the other written notice that a fair market rental value cannot be agreed upon.

Section 4. Use of Premises

4.1 Permitted Uses. The premises shall be used for commercial business purposes consistent with the zoning designation, and for no other purpose, with the consent of CITY, which consent shall not be unreasonably withheld. The use and installation of business related equipment and trade fixtures shall be accomplished by LESSEE and at LESSEE's sole cost and expense.

4.2 Restrictions on Use. In connection with the use of the leased premises, LESSEE shall:

- (1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use thereof, and correct at LESSEE's expense any failure of compliance created through LESSEE's fault or by reason of LESSEE's use. LESSEE shall not be required to make any structural improvements to effect such compliance.
- (2) Refrain from any activity that would make it impossible to insure the premises against casualty, would increase the insurance rate, or would prevent CITY from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing CITY to obtain reduced premium rates for long-term fire insurance policies, unless LESSEE pays the additional cost of such insurance.
- (3) Refrain from any use that would be reasonably offensive to other lessee's, 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 floors or electrical systems beyond the point considered safe by a competent engineer or architect selected at the sole discretion of CITY.
- (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, if any, without the prior written consent and proper permits issued by CITY.

4.3 Hazardous Substances. LESSEE shall not cause or permit any hazardous substance to be stored, spilled, leaked, disposed of, or otherwise released on or under the premises. The term environmental law shall mean any federal, state, or local statute, regulation or ordinance of any of any governmental or judicial order pertaining to the protection of health, safety, or the environment. The term hazardous waste shall mean any hazardous, toxic, infectious or radioactive substance, waste and material as defined or listed by any environmental law and shall be, without limitation, petroleum oil and its fractions

Section 5. Repairs and Maintenance

5.1 CITY's Obligations. The following shall be the responsibility of CITY:

- (1) Repair of sidewalks, driveways, curbs, and other areas of the premises in common use by LESSEE and CITY.
- (2) Repairs and maintenance of exterior water, sewage, gas and electrical services to the premises.

5.2 LESSEE's Obligations. LESSEE is responsible for keeping the premises in good condition and maintained in an orderly manner.

5.3 Inspection of Premises. CITY shall have the right to inspect the premises at any reasonable time.

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Section 6. Alterations

- 6.1 Alterations Prohibited.** LESSEE shall make no improvements or alterations of any kind to the premises without first obtaining written consent from CITY. All alterations shall be made in a good and workmanlike manner, and in compliance with all applicable laws and building codes.
- 6.2 Ownership and Removal.** All improvements and alterations performed on the premises by LESSEE shall be the property of CITY when installed unless the parties otherwise agree in writing. At any time LESSEE relinquishes occupancy or the lease is otherwise terminated, improvements and alterations installed by LESSEE shall be removed by LESSEE and the premises restored unless, at CITY's option, CITY specifically directs LESSEE otherwise.

Section 7. Property Insurance

- 7.1 Casualty Insurance.** CITY shall maintain insurance on the premises at CITY's expense against fire and other risks covered by a standard insurance policy with an endorsement for extended coverage. LESSEE shall bear the expenses of any renters insurance insuring LESSEE's personal property on the premises.
- 7.2 Waiver of Subrogation.** Neither party shall be liable to the other (or to their successors or assignees) for any loss or damage caused by fire or any other 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 subrogation 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 8. Taxes; Utilities

- 8.1 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 of same.
- 8.2 Charges of Fees.** If a new charge or fee relating to the 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.

Section 9. Damage and Destruction

- 9.1 Partial Damage.** If the premises are partly damaged, and section 10.2 does not apply, the premises shall be repaired by LESSEE at LESSEE's sole expense. Repairs shall be accomplished with reasonable dispatch subject to the reasonable delays from other priority work, insufficient funds, labor disputes, and matters beyond control of LESSEE.
- 9.2 Damage Late in Term.** If the damage or destruction occurs within four months prior to the end of the term of this lease, LESSEE may elect to terminate this lease by giving written notice to CITY not more than 30 days after the date of damage.

Section 10. Liens; Indemnification; Insurance

- 10.1 Liens.** Except with respect to activities for which CITY is responsible, LESSEE shall pay as due all work contracted by LESSEE for services rendered or materials furnished to the premises, and shall keep the premises free from any liens. If LESSEE fails to pay any such claim or discharge

any lien, CITY may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 9% from the date of payment and shall be payable on demand. Such action shall not constitute a waiver on behalf of CITY of any right or remedy which CITY may have on account non-payment by LESSEE. LESSEE may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as CITY property interests are not placed in jeopardy.

10.2 Indemnification. LESSEE shall indemnify and defend CITY from any and all claim, loss or liability arising out of or related to any activity of LESSEE on the premises or condition of the premises in possession or in control of LESSEE, including any such claim, loss or liability that may be caused or contributed to, in whole or in part, CITY's own negligence or failure to effect any repair or maintenance required by this lease. CITY 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 CITY's negligence or breach of duty under this lease.

10.3 Liability Insurance. During the term of this lease, LESSEE, at LESSEE's expense, shall procure and maintain commercial 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 any of its employees, agents or assigns, with \$1,000,000 per occurrence and in the aggregate. Such insurance shall protect CITY as an additional insured. A certified true copy of the policy, issued by a company licensed in the State of Oregon or, at the discretion of CITY, a certification in a form satisfactory to CITY certifying to the issuance of such insurance, shall be furnished to the CITY.

Section 11. Quiet Enjoyment; Warranty

CITY warrants that it is the owner of the premises subject to this lease and has the right to lease same. CITY will defend LESSEE's right to quiet enjoyment of the premises from any and all claims of third parties during the term of this lease.

Section 12 Assignment and Subletting

No part of the premises may be assigned or sublet, 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 CITY.

Section 13 Default

The following shall be events of default:

13.1 Default in Rent. Failure of LESSEE to pay any rent or other charge within 10 days after same is due.

13.2 Default in Other Covenants. Failure of LESSEE to comply with any term or condition, or fulfill any obligation of this lease, other than payment of rent under 13.1 herein, within 20 days after written notice from CITY to LESSEE specifying the nature of the default.

If the default is of such a nature that it cannot reasonable be cured within 20 days, this provision shall be complied with if LESSEE begins the cure within 20 days and proceeds thereafter with due diligence and in good faith to effect the remedy as soon as possible.

Section 14 Remedies

14.1 Termination. In the event of default the lease may be terminated at the option of CITY by written notice to LESSEE that the lease is terminated 10 days after date of the notice.

14.2 Remedies Cumulative. The foregoing remedy shall be in addition to and shall not exclude or limit any other remedy available to CITY under applicable law.

Section 15 Surrender at Expiration

Upon expiration of the term of this lease or upon earlier termination, LESSEE shall pay any amount owing for any utility service or other charges and deliver the premises to CITY.

15.1 Condition of Premises. Upon expiration of the lease term or earlier term, LESSEE shall surrender the premises in the same or better condition as when received. Alterations constructed by LESSEE with permission of CITY shall not be removed or restored to the original condition without prior written approval of CITY. Repairs for which LESSEE is responsible shall be completed prior to the date of termination of the lease.

15.2 Removal; Repair; Fixtures

(1) All fixtures placed upon the premises during the term of the lease, except trade Fixtures, at CITY's option shall become the property of CITY. If CITY so elects, LESSEE shall remove any and all fixtures that would otherwise remain property of CITY and shall repair any physical damage resulting from said removal of such fixtures. If LESSEE fails to remove such fixtures, CITY may do so and charge to LESSEE the cost of Removal, together with interest, from the date of expenditure.

(2) Prior to expiration or other termination of the lease term, LESSEE shall remove all property that remains the property of LESSEE. If LESSEE fails to do so, CITY may retain the property and any right of LESSEE with respect to the property shall cease by notice in writing given to LESSEE within 20 days after removal was required, CITY may elect to hold LESSEE to its obligation to remove the property.

15.3 Holdover

(1) If LESSEE does not vacate the premises at the time required, CITY shall have the option to treat LESSEE as a month-to-month tenant subject to all the provisions of this lease, except the provisions for term and renewal, or to eject LESSEE from the premises and recover damages caused by the wrongful holdover. Failure of LESSEE to remove fixtures that LESSEE is required to remove under this lease constitute a failure to vacate.

(2) If a month-to-month tenancy results from a holdover by LESSEE, the tenancy shall be terminable at the end of any monthly rental period on written notice from CITY given not less than 10 days prior to the termination date which shall be specified in the notice. LESSEE waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 16. Miscellaneous

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

16.2 Notices. Any notices required or permitted under this lease shall be given when actually provided or 48 hours after deposit in the United States mail as certified mail. Until otherwise agreed notices shall be directed to the respective addresses:

CITY:

City of Newport
169 SW Coast Highway
Newport, OR 97365

LESSEE:

Katrina Brown
315 SW 9th Street
Newport, OR 97365

- 16.3 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 heirs, successors and assigns.
- 16.4 Recordation.** At LESSEE's request CITY shall execute and acknowledge a memorandum of this lease in a form suitable for recording. LESSEE may record said memorandum at LESSEE's sole expense.
- 15.5 Entry for Inspection.** CITY shall have the right to enter upon the premises at any time to determine LESSEE's compliance with the terms of this lease, to make necessary repairs, or to show the premises to any prospective purchaser or lessee; and in addition, shall have the right during the last 60 days of the term of this lease, to place and maintain upon the premises a sign advertising the premises to be for lease or sale.

DONE AND DATED as set out below.

CITY OF NEWPORT

KATRINA BROWN



Spencer N. Nebel, City Manager

DATE: 6-6-16



Lessee

DATE: 5/19/16

APPROVED AS TO FORM:



Steven E. Rich, City Attorney