

COMMERCIAL LEASE AGREEMENT

This COMMERCIAL LEASE AGREEMENT (“Lease”), is entered into by and between the NORTH BEND URBAN RENEWAL AGENCY, (“Landlord” or “City”), and NORTH FORTY BEER COMPANY, limited liability company, (“Tenant”) (individually, a “Party”; collectively, the “Parties”).

RECITALS

A. The City owns certain property located at 2076 and 2082 Sherman Ave., North Bend, OR 97459, as more particularly described in Exhibit A, which is attached hereto and incorporated herein by this reference (the “Property”).

B. On the Property, there is a 5,051.33 square foot building (the “Premises”), which is more particularly described and depicted in Exhibit B, attached hereto and incorporated herein by this reference.

C. Tenant desires to operate a brewery and restaurant business on the Premises and to sub-lease certain space on the Premises for the existing coffee shop and bakery.

D. The Parties desire to enter into this Lease to memorialize the terms of Tenant’s use of the Premises for its brewery and restaurant business.

In consideration of the mutual covenants and conditions set forth herein, Landlord and Tenant hereby agree as follows:

TERMS

Section 1. Property.

Landlord hereby leases to Tenant the Premises, as more particularly described in Exhibit B. Landlord covenants and warrants that Landlord is the lawful owner of the Premises and has the authority to lease to Tenant.

Tenant shall have quiet enjoyment of the Premises without hindrance or disturbance by Landlord, except as specifically provided in this Lease. Tenant accepts the Premises “AS IS,” except as specifically provided in this Lease. Tenant further acknowledges that neither Landlord nor any agent or person acting for Landlord has made any representations or warranties regarding the condition or suitability of the Premises, applicable land use regulations, utility or access, or any other factor or condition that may affect the suitability of the Premises for Tenant’s intended use. No subsequently discovered condition related to the suitability of the Premises for Tenant use shall constitute grounds for termination of this Lease.

Section 2. Term.

2.1. Initial Term. The term of this Lease shall commence on the execution of the parties (“Effective Date”) and continue until December 31, 2026 (“Initial Term”), unless terminated sooner by either of the Parties pursuant to this Section.

2.2 **Termination.** This Lease shall automatically terminate after the expiration of the Initial Term defined above, unless earlier terminated or extended by the Parties. Either Party may terminate this Lease without cause by providing sixty (60) days' written notice to the other Party. In the event of Default, Landlord may terminate this Lease pursuant to Section 7.

2.3 **Renewal.** This Lease may be renewed for subsequent one-year terms ("Extended Term"), which may be requested by either Party to the other, and will be effective upon written consent of each Party. Unless a new lease agreement is executed, this Agreement shall remain in full force and effect during any Extended Term.

2.4 **Prior Leases Superseded.** All prior leases or occupancy agreements between Tenant and prior owner of the Property hereby superseded by this Agreement and its terms.

Section 3. Rent.

3.1 **Base Rent.** The Initial Term shall be broken down into calendar year Rental Terms. For each respective Rental Term, Tenant shall pay to Landlord as Base Rent for the Premises the following sums per month:

Table 1. Rental Terms and Monthly Rent.

Rental Term	Monthly Rent (\$/month) ("Base Rent")
Effective Date – December 31, 2023	\$4,750.00
January 1, 2024 – December 31, 2024	\$6,314.16
January 1, 2025 – December 31, 2025	\$7,576.99
January 1, 2026 – December 31, 2026	\$8,839.82

Thereafter, on January 1 of each year of this Lease, including any Extended Terms, Base Rent shall be adjusted in the same percentage as the increase, if any, in the Consumer Price Index (the "Index") published by the U.S. Department of Labor, Bureau of Labor Statistics for CPI-W West Region as of June 1st of the year prior to the respective January 1.

Rent shall be payable monthly, with the first payment due within five (5) days of the Effective Date of this Lease, and each monthly instalment payable thereafter shall be due within five (5) days of the 1st of each month. Payment shall be by cash or check, made payable to Landlord as identified in Section 8.3 herein. The Parties acknowledge that the monthly rents provided herein are based on prevailing commercial rates, and are intended to reflect the changes in market value to the Premises that have occurred and are expected to continue throughout the Initial Term of this Lease.

3.2 **Utilities; Services Fees.** Tenant shall be solely responsible for all utilities, and other payments necessary for Tenant's use and enjoyment of the Premises under the terms of this Lease.

Section 4. Use of Premises.

4.1 Permitted Uses. Subject to the terms of this Lease, Tenant may use the Premises for the following purposes: operating a brewery and restaurant and attendant uses (“Permitted Uses”). Tenant shall have exclusive use of the Premises, subject to Landlord’s right to enter into or upon the Premises for the purposes of examining its condition, or for any other lawful purpose. Landlord’s right of inspection shall not unreasonably interfere with Tenant’s use of the Premises.

4.1.1 Best Practices. Tenant shall comply with all applicable federal, state, and local laws, regulations, and requirements of any public authority regarding the Permitted Uses.

4.1.2 Compliance with Laws. Tenant shall comply with all the rules, regulations, and laws in effect by any local, state, or federal authority having jurisdiction over the Premises. Tenant is solely responsible for obtaining any other permits or approvals as may be necessary for the use of the Premises. Furthermore, Tenant agrees to indemnify the Landlord for any damages caused by the violation thereof of any permits or approvals that may otherwise be required.

4.2 Prohibited Uses. The Premises shall not be used for any purposes other than the Permitted Uses, without prior written consent of Landlord. Any other use of the Premises not otherwise described as a Permitted Use shall be considered a prohibited use, which includes, without limitation: any act or inaction by Tenant that constitutes waste; the operation, maintenance, or permission of a nuisance in, on, or upon the Premises; and use of the Premises for any unlawful purpose.

4.2.1 Alterations and Improvements. Tenant shall not make any alterations, additions, or improvements to or upon the Premises without the consent of the Landlord, except for those improvements and alterations that are necessary for Tenant’s Permitted Uses or already exist upon the Effective Date. Except as otherwise expressly agreed to by the parties in writing, improvements and alterations shall become the property of Lessor. Upon termination or expiration of the Lease, at Lessor's written request, Lessee promptly shall remove any Lessee alterations and improvements that Lessor requests be removed.

4.2.2 Assignments. Tenant may not assign or transfer any rights, except insofar as permitted under Section 4.3, under this Lease without the prior written consent of the Landlord.

4.3 Sub-Leasing; Assignments.

(a) Tenant may sublet the portion of the Property currently utilized as a coffee shop/bakery with the City’s approval, which shall not be unreasonable denied.

(b) Tenant shall enter into written sublease agreements with all sublessees. Written sublease agreements must incorporate all terms and conditions of this Lease and must hold all sublessees subject to the same. Tenant must provide City with sublease agreements for City’s review and approval prior to Tenant’s subleasing of the Property. Tenant may not unreasonably deny such sublet agreement but may withhold its approval under Section 4(a) if City finds that a sublease agreement does not substantially comply with the terms and conditions of this Lease or is otherwise deficient.

4.4 Maintenance. Tenant is required to keep the leased space and any improvements in good condition throughout the entire lease term, addressing any needed maintenance, repairs, and replacements. This responsibility applies to both structural and non-structural elements within the leased space. However, the Landlord will share the costs for significant maintenance tasks on the Property. Significant maintenance includes work on shared spaces such as landscaping, parking areas, and other communal parts of the Property. It also covers repairs or replacements of major structural components like electrical, gas, plumbing, fire safety, HVAC systems, and other foundational facilities of the Property, excluding any installations made by the Tenant. Nonetheless, the Tenant is solely responsible for maintaining all structural elements within their specific leased space. The Landlord will not bear any responsibility for repairs or maintenance resulting from damage caused by the Tenant's negligence, or that of their agents, visitors, or guests. This also applies to any damage resulting from a failure to properly maintain the leased space's structural components.

4.5 Landlord Reimbursement. Any activities performed by Tenant on the Premises shall be without expense of any kind (direct or indirect) whatsoever to Landlord. Tenant shall be solely responsible for any damages that may be caused as a result of Tenant's use and operation. Should the Landlord incur costs as a result of Tenant's misuse of the Premises or Property, Tenant agrees to reimburse Landlord within ten (10) days, upon the receipt of an invoice and documentation of such expense.

Section 5. Insurance and Indemnification.

5.1 Indemnity. Subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution Article XI, Section 7, Tenant agrees to defend, indemnify and hold harmless Landlord, against any and all loss, damage, liability, claims, demands, or costs resulting from injury or harm to persons or property to the extent arising out of or in any way resulting from the Tenant's use of the Premises. Tenant's indemnification obligation shall extend to claims arising from the acts and omissions of Tenant's officers, employees, agents, contractors, licensees, invitees, and guests. Tenant shall not be responsible for third-party claims resulting solely from the negligence or other wrongful acts or omissions of Landlord or Landlord's officers, employees, or agents.

5.2 Liability. Tenant shall assume all liability related to injury, death, or disease to invitees or licensees. Tenant shall be deemed solely responsible for any theft, damage, or destruction to any materials, equipment, or any other property of Tenant, or anyone acting on behalf of Tenant in connection with or incidental to this lease.

5.3 Insurance (a) Liability Insurance. Tenant shall continuously maintain at its expense throughout the term of this Agreement, and any renewal period, public liability and property damage insurance with the combined single limit of not less than Two Million Dollars (\$2,000,000). Such insurance shall provide coverage for bodily injury, death or property damage in connection with Tenant's use or occupancy of the Property or the exercise or enjoyment of rights or privileges granted by this Lease

- (b) **Personal Property Insurance.** Tenant shall, at its expense, insure its personal property, equipment and trade fixtures located on the Property.
- (c) **Proof of Insurance.** Upon request, Tenant shall provide proof of insurance to City in the form of certificates evidencing the required coverage.
- (d) Landlord shall maintain fire and casualty insurance for the Premises.

5.4 **No Third-Party Beneficiary.** The purpose of this Section is to allocate risk between Landlord and Tenant. This Section is not intended to benefit or limit the liability of any third-party.

Section 6. Property Tax.

Tenant shall be responsible for payment of all personal property taxes assessed against any personal property, equipment, or fixtures on the Property or Premises. Landlord shall be responsible for payment of real property taxes levied against Landlord's Property.

Section 7. Default.

7.1. **Default.** The occurrence of any one or more of the following events constitutes a Default and breach of this Lease by Tenant:

7.1.1 Tenant fails to timely pay any sum owed to Landlord, and such Default continues for ten (10) days after Landlord has given Tenant notice specifying the same.

7.1.2 Tenant, whether by action or inaction, fails to perform any of its obligations under this Lease and such Default continues and is not remedied within thirty (30) days after Landlord has given Tenant a notice specifying the same.

7.1.3 Tenant uses the Property for any use other than those identified under Section 4, or ceases to use the Property for the purposes stated herein for a period of ninety (90) days.

7.2 **Remedies on Default.** In the event of Default, Landlord may, in its sole discretion, terminate the Lease effective immediately upon Tenant's receipt of Landlord's written notice thereof. Landlord shall be entitled to recover damages from the Tenant for the Default, and Landlord may reenter, take possession, and remove any persons or property by legal action. Landlord shall be entitled to recover immediately from Tenant any costs assessed upon the Premises as the result of Tenant's, or its employees' or agents', impermissible use of the Premises, including but not limited to the reasonable costs of any cleanup, refurbishing, removal of Tenant's property and fixtures, any remodeling or repair costs, all attorney fees and court costs or any other expense occasioned by Tenant's Default. These remedies shall be in addition to and not exclude any other remedy available to Landlord under applicable law. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

Section 8. General and Miscellaneous Provisions.

8.1 **Force Majeure.** If the performance by either of the Parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by

any legal requirement, and not attributable to an act or omission of the Party or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the Party's control, whether or not specifically mentioned, the Party shall be excused, discharge and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence without liability of any kind.

8.2 Prior Agreements. This instrument is the entire agreement of the parties pertaining to the Lease of the Premises and supersedes and replaces all written and oral agreements made or existing between the Parties, their representatives, or predecessors in interest.

8.3 Notices. Any notice required or permitted under this Lease shall be in writing and shall be deemed to be given when (1) actually delivered personally, (2) forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail addressed as follows, or (3) when a facsimile confirming receipt of a facsimile transmission is received by the sender who sent the initial facsimile transmission, or to such other person, physical or mailing address, or facsimile transmission number as one party may designate by written notice to the other party:

If to Tenant:

R.J. Mills, Owner/Operator

North Forty Beer Company

435 SE Jackson St

Roseburg, OR 97470

If to Landlord:

David Milliron

North Bend Urban Renewal Agency

C/O City of North Bend

PO Box B

North Bend, OR 97459

8.4 Attorney Fees and Costs. In the event a dispute shall arise under or about this Lease, then the prevailing Party therein shall be entitled to recover from the non-prevailing Party all costs, expenses and attorneys' fees which may be incurred on account of such dispute, whether or not suit or other legal or quasi-legal proceedings may be brought, as well as at every stage of any such proceedings from the time such dispute first arises through trial, arbitration or other proceedings and all appellate processes.

8.4 Non-waiver. Failure by either Party at any time to require performance by the other Party of any of the provisions hereof shall in no way affect the Party's rights hereunder to enforce the same, nor shall any waiver by any Party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

8.5 Amendments. This Lease may be amended, modified, or extended without new consideration, but only by written instrument executed by both Parties.

8.6 Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Oregon.

8.7 Severability. If any portion of this Lease shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease to be executed by their duly authorized officer.

LANDLORD:

TENANT:

**NORTH BEND URBAN RENEWAL
AGENCY**

NORTH FORTY BEER COMPANY

By:  _____

By:  _____

Name: David A. Milliron

Name: R.J. Mills

Title: Executive Director

Title: Owner/Operator

Date: 11/2/2023

Date: 10/31/2023

EXHIBIT A

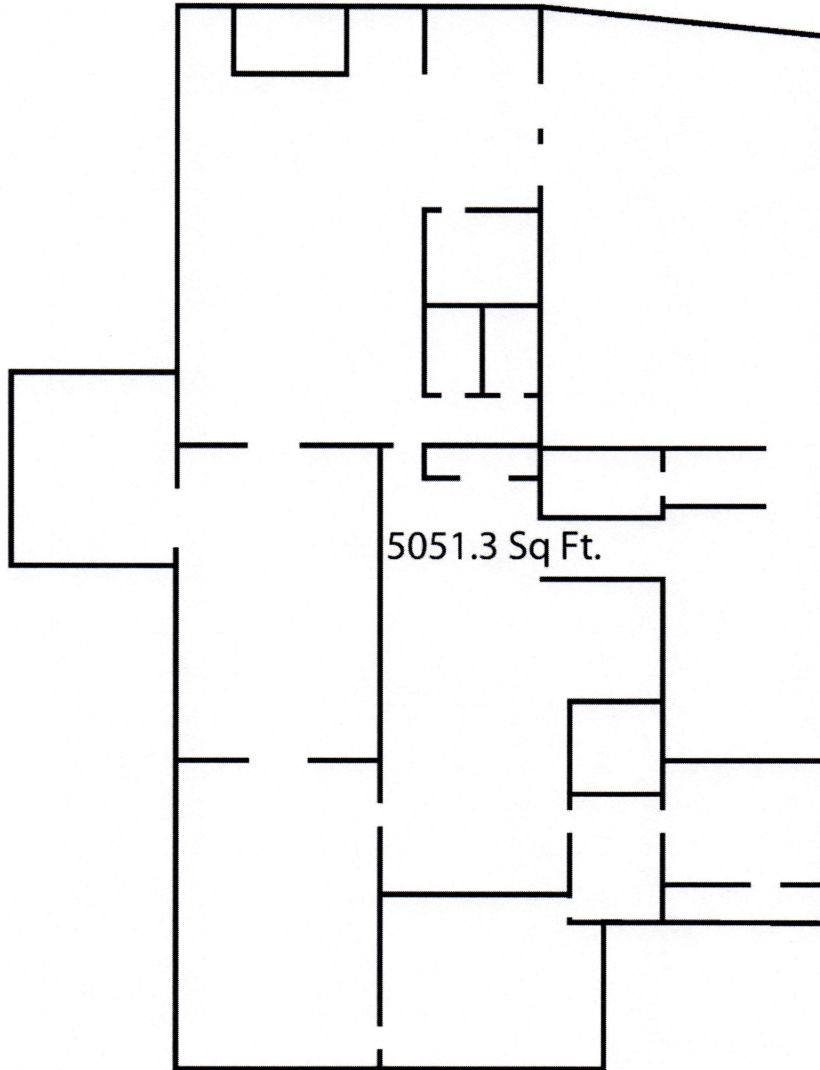
Legal Description of Property

Lots 1, 25 and 26, Block 19, Town of North Bend, Coos County, Oregon.

EXHIBIT B

Description of Leased Premises

SHERMAN AVE



Restaurant
NOT TO SCALE | FOR REFERENCE ONLY