



RESOLUTION 2024-063

AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT WITH H F & SONS, LLC TO OPERATE SESAME DONUTS

WHEREAS, the City has leased City-owned property to Siham's Sons, LLC since May 1, 2006, to operate Sesame Donuts; and

WHEREAS, the City's contract with Siham's Sons, LLC ended on June 30, 2023; and

WHEREAS, Siham's Sons, LLC's registered agent Fakih Haidar, now doing business as H F & Sons, LLC, would like to continue to lease property and continue doing business as Sesame Donuts; and

WHEREAS, ORS 271.360 requires the city council to authorize leases of property owned by the City; and

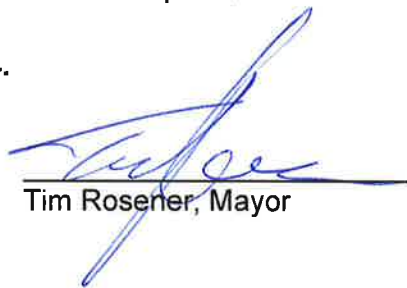
WHEREAS, attached as Exhibit 1 is a contract with substantially the same terms as the previous contract between Siham's Sons, LLC and City of Sherwood.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to execute said contract in a form substantially similar to Exhibit 1.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 20th day of August 2024.



Tim Rosener, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

COMMERCIAL LEASE

Between:
The City of Sherwood ("Landlord")
22560 SW Pine Street
Sherwood, Oregon 97140

And:
H F & Sons, LLC ("Tenant") DBA Sesame
Donuts
12700 SW North Dakota, Suite 100
Tigard, OR 97223

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on the terms and conditions stated below:

1,065 square feet (more or less) on the ground floor of the southwest corner of Sherwood City Hall, 22560 SW Pine Street, Sherwood, Oregon 97140, as further described in Exhibit A to the Lease.

Section 1. Occupancy

1.1 Original Term. The term of this Lease shall commence September 1, 2024 and continue for a period of thirty-four (34) months through July 1, 2027 (the "Original Term") unless sooner terminated as hereinafter provided.

1.2 Possession. Tenant's right to possession, use of the Premises and obligations under this Lease shall commence on September 1, 2024 or on such later date as the Premises are available for possession by Tenant if possession is not given on the opening day of the term.

Landlord shall have no liability for delays in delivery of possession and Tenant will not have the right to terminate this Lease because of delay in delivery of possession except as hereinafter provided. If Landlord is not able to give Tenant possession of the Premises on or before September 1, 2024 for reasons other than delays caused by matters not within Landlord's reasonable control, Tenant may rescind this Lease by notice in writing to Landlord given at any time thereafter prior to the date on which possession is tendered by Landlord.

1.3 Renewal. If not then in default under this Lease, not earlier than one-hundred eighty (180) calendar days and not later than ninety (90) calendar days before the end of the Original Term, Tenant shall have an option to extend, by written notice to Landlord, the term of this Lease for one (1) thirty-six (36) month Renewal Term with rent adjusted effective July 1, 2027 to the then current market rate as determined by Landlord in Landlord's sole discretion, and rent further adjusted thereafter pursuant to the methodology in Section 2.1 below.

Additionally, if not then in default under this Lease, not earlier than one-hundred eighty (180) calendar days and not later than ninety (90) calendar days before the end of said Renewal Term, Tenant shall have an option to extend, by written notice to Landlord, the term of this Lease for one (1) additional thirty-six (36) month Second Renewal Term with rent adjusted effective July 1, 2030 to the then-current market rate as determined by Landlord in Landlord's sole discretion, and rent further adjusted thereafter pursuant to the methodology in Section 2.1 below.

Section 2. Rent

2.1 Rent. Tenant shall pay monthly rent to Landlord as follows:

\$2,132 per month effective September 1, 2024. Effective July 1, 2025, and on July 1st of each subsequent year, the rent will be increased by 3% and rounded to the nearest whole dollar.

Rent shall be due and payable on the first day of each month in advance at the Offices of the City Manager.

Effective Date of Rent Increase	New Base Monthly Rent
July 1, 2025	\$2196
July 1, 2026	\$2262

2.3 Additional Rent. All taxes, insurance costs, and utility charges that Tenant is required to pay by this Lease, and any other sum that Tenant is required by this Lease to pay to Landlord or third parties, shall be additional rent.

2.4 Continuous Operation. Tenant shall occupy the Premises continuously for the purpose stated in this Lease and carry on business during the hours customary in comparable businesses similarly situated, with adequate inventory and personnel. This requirement shall not prevent Tenant from closing for brief periods when reasonably necessary for inventory, repairs, remodeling (when permitted), or other legitimate purposes related to the business carried on, or when closure is the result of a labor dispute, however caused, or other factors not within Tenant's control.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for the preparation and service of breads, donuts, baked goods, coffee, soups, sandwiches, ice cream, and related food products and non-alcoholic beverages.

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

- (1) Conform to all applicable laws and regulations of any public authority affecting the Premises and its use, and correct (at Tenants' own expense) any failure of compliance created through Tenant's fault or by reason of Tenant's use.
- (2) Refrain from any activity that would make it impracticable to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.
- (3) Refrain from any use that would reasonably be offensive to other users of the Premises or neighbors of the Premises or that would tend to create a nuisance or damage the reputation of the Premises.
- (4) Refrain from any use, sale, processing, testing, or production of Marijuana, Marijuana items, or Marijuana consumption implements.
- (5) Refrain from loading the electrical system, floors, or water or sewer systems beyond the point considered safe by a competent engineer or architect selected by Landlord in Landlord's sole discretion.
- (6) Refrain from making any marks on or attaching any item, apparatus, sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the express written consent of Landlord.

3.3 Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used in the prudent and safe operation of the business identified in Section 3.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant 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, Tenant 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 Landlord's Obligations. The following shall be the responsibility of Landlord, except as provided in Section 4.2 below:

- (1) Repairs and maintenance of the roof and gutters, exterior walls (including painting), bearing walls, structural members, and foundation.
- (2) Repair and maintenance of sidewalks, driveways, curbs, parking areas, and areas used in common by Tenant and Landlord.
- (3) Repair and maintenance of exterior water, sewage, gas, and electrical services up to the point of entry to the leased Premises.
- (4) Repair and maintenance of the heating and air conditioning systems.

4.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

- (1) Repair of interior walls, ceilings, doors, windows, floors and related hardware, light fixtures, switches; and wiring and plumbing from the point of entry to the Premises. Without limiting the generality of the foregoing, this obligation includes repair of the restroom facilities in the Premises.
- (2) Any repairs necessitated by the fault of Tenant, or its agents, employees, and invitees, except as provided in Section 6.2 dealing with waiver of subrogation, but including repairs that would otherwise be the responsibility of Landlord under Section 4.1.
- (3) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 3.2(1).
- (4) All other repairs to the Premises which Landlord is not required to make under Section 4.1

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant. Tenant shall have no right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

4.4 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. With respect to any portion(s) of the Premises which are not generally open to the public, Landlord shall provide Tenant with written notice at least twenty-four (24) hours in advance of Landlord's inspection of such portion(s) of the Premises, except in cases of emergency. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the repairs that are required.

Section 5. Alterations

5.1 Alterations Prohibited. Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. As used herein, "alterations" includes the installation of computer and telecommunications wiring, cables, and conduit.

5.2 Alterations Required. The improvements and alterations delineated on the work sheet attached to and made a part of this Lease, if any, shall be performed by the party designated and within the time stated in the work sheet.

5.3 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed, unless the applicable Landlord's consent or work sheet specifically provides otherwise. Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant and the Premises restored to prior condition unless the applicable Landlord's consent or work sheet specifically provides otherwise.

5.4 Waiver. Landlord may condition its consent to installation of a work of visual art in the Premises, as defined in the Visual Artists Rights Act of 1990 (VARA) at 17 USC §101, on Tenant's delivery to

Landlord of a written waiver of moral rights under the VARA executed by the artist and to be executed by Landlord acknowledging that the work may be subject to destruction upon removal.

Section 6. Insurance

6.1 Insurance Required. Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall carry similar insurance insuring the property of Tenant on the Premises against such risks and bear the expense of same.

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. Tenant shall pay as due all taxes on its personal property located on the Premises. Landlord shall pay as due all real property taxes levied against the Premises and all assessments for public improvements made against the Premises.

7.2 Contest of Taxes. Tenant shall be permitted to contest the amount of any personal property tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment.

7.3 Payment of Utilities Charges. Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including (but not limited to) charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. If any utility services are provided by or through Landlord, charges to Tenant shall be comparable with prevailing rates for comparable services. Notwithstanding the foregoing, in addition to the rent set forth in Section 2.1 above, Tenant shall pay Landlord one-hundred forty dollars (\$140.00) per month for water and sewer.

7.4 Internet Service. Notwithstanding Section 7.3 above, Landlord, through its utility, Sherwood Broadband, will provide Tenant with one port of basic Internet service capable of symmetrical speeds up to 25mbps at no additional cost to Tenant. Tenant will be solely responsible for any internal cabling and/or equipment needed to extend this Internet service beyond the demarcation point. The demarcation point will be determined by Landlord in its sole discretion and will be located within ten (10) feet of the existing network cabling inside the Premises. Tenant must accept the standard Sherwood Broadband terms and conditions including the Internet Acceptable Use Policy prior to service activation, and failure to abide by those terms and conditions as they may be amended from time to time will result in termination of Landlord's obligation to provide Internet service pursuant to this Section 7.4. Additionally, Landlord's obligation to provide Internet service pursuant to this Section 7.4 shall terminate if at any time Landlord ceases to own or operate Sherwood Broadband.

Section 8. Damage and Destruction

8.1 Partial Damage. If the Premises are partly damaged and Section 8.2 does not apply, the Premises shall be repaired by Landlord at Landlord's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord and shall be performed in accordance with the provisions of Section 4.3.

8.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds fifty percent (50%) of the value of the structure before the damage, either party may elect to terminate this Lease as of the date of the damage or destruction by notice given to the other in writing not more than forty-five (45) calendar 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 Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant in relation to time periods subsequent to the date of termination. If neither party elects to terminate, Landlord 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 Landlord's reasonable control.

8.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the Premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

Section 9. Eminent Domain

9.1 Partial Taking. If a portion of the Premises is condemned and Section 9.2 does not apply, this Lease shall continue on the following terms:

- (1) Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.
- (2) Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.
- (3) After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of the taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.
- (4) If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 9.1 (1) and 9.1 (3) apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

9.2 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as termination under Section 8.2.

Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

9.3 Sale in Lieu of Condemnation. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 9 as a taking by condemnation.

Section 10. Liability and Indemnity

10.1 Liens.

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) calendar days after knowledge of the filing, either secure the discharge of the lien, or deposit with Landlord cash or sufficient corporate surety bond or other surety

satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant. Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises in the possession or under the control of Tenant. Notwithstanding the foregoing, Tenant shall not be required to indemnify and defend Landlord with regard to any claim, loss, or liability arising out of or related to any condition of the Premises in the possession or under the control of Tenant if such claim, loss, or liability was caused by Landlord's own fault or failure to effect any repair or maintenance required by this Lease. This Section 10.2 will survive the expiration or termination of this Lease regardless of cause.

10.3 Liability Insurance. Before going into possession of the Premises, or upon execution of this Lease, Tenant shall procure and thereafter during the term of this Lease shall continue to carry the following insurance at Tenant's cost: comprehensive general liability insurance in a responsible company with limits of not less than two million dollars (\$2,000,000) for injury to one person, two million dollars (\$2,000,000) for injury to two or more persons in one occurrence, and one-hundred thousand dollars (\$100,000) for damage to property; a commercial general liability policy from an A rated insurance company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than two million dollars (\$2,000,000) and a per occurrence limit of not less than two million dollars (\$2,000,000). Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Landlord's negligence. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under Section 10.2 and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring ten (10) calendar days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property, or upon execution of this Lease.

Section 11. Quiet Enjoyment

11.1 Landlord's Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the term of this Lease.

Section 12. Assignment and Subletting

No part of the Premises may be assigned, mortgaged, 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 Landlord. This provision shall apply to all transfers by operation of law. No consent in one instance shall prevent this provision from applying to a subsequent instance. Landlord may withhold or condition such consent only for good cause.

Section 13. Default

The following shall be events of default:

13.1 Default in Rent. Failure of Tenant to pay any rent or other charge within ten (10) calendar days after written notice that it is due.

13.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease (other than the payment of rent or other charges) within twenty (20) calendar days after written notice by Landlord 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 twenty (20)-day period, this provision shall be complied with if Tenant begins correction of the default within the twenty (20)-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

13.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) calendar days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) calendar days shall constitute an event of default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 13.3 shall apply to each individual unless within ten (10) calendar days after an event of default occurs, the remaining individual(s) produce evidence satisfactory to Landlord that it/they has/have unconditionally acquired the interest of the one causing the default. If this Lease has been assigned, the events of default so specified shall apply only with respect to the individual(s) or business entity/entities then exercising the rights of Tenant under this Lease.

13.4 Abandonment. Failure of Tenant for thirty (30) calendar days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 14. Remedies on Default

14.1 Termination. In the event of a default, this Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not this Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, 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.

14.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in this Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable.

14.3 Damages. In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the term of this Lease, the following amounts as damages:

- (1) The loss of rental income from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out.
- (2) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 14.5, or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.
- (3) Any excess of the value of the rent and all of Tenant's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet and continuing through the end of the term of this Lease. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

14.4 Right to Sue More than Once. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the term of this Lease, and no action for damages shall bar a later action for damages subsequently accruing.

14.5 Landlord's Right to Cure Defaults. If Tenant fails to perform any obligation under this Lease, Landlord shall have the option to do so after thirty (30) calendar days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Landlord. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

14.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

Section 15. Surrender at Expiration

15.1 Condition of Premises. Upon expiration of the term of this Lease or earlier termination, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord 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 Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

15.2 Fixtures.

(1) All fixtures placed upon the Premises during the term of this Lease (other than Tenant's trade fixtures) shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the rate of nine percent (9%) from the date of expenditure.

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

15.3 Holdover.

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant either as a tenant from month to month (subject to all of the provisions of this Lease except the provisions for term and renewal, and at a rental rate equal to one-hundred fifty percent (150%) of the rent last paid by Tenant) or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section 15.3 shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) calendar days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 16. Miscellaneous

16.1 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.

16.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

16.3 Notices. Any notice required or permitted under this Lease shall be given when actually delivered or forty-eight (48) hours after deposit 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.

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

16.5 Entry for Inspection. Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this Lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two (2) months of any term of this Lease, to place and maintain upon the Premises notices for leasing or selling of the Premises. With respect to any portion(s) of the Premises which are not generally open to the public, Landlord shall provide Tenant with written notice at least twenty-four (24) hours in advance of Landlord's entry into such portion(s) of the Premises, except in cases of emergency.

16.6 Interest on Rent and Other Charges. Tenant acknowledges that late payment by Tenant to Landlord of any Rent or other charge due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges that may be imposed on Landlord under the terms of any Mortgage. Accordingly, if any Rent or other charge is not received by Landlord on or before the date it is due, Tenant shall pay to Landlord a late charge of five percent (5%) of the overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs incurred by Landlord by reason of the late payment by Tenant. Acceptance of any late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to the overdue amount in question, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

16.7 Proration of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

16.8 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this Lease.

16.9 Dispute Resolution.

(1) Should any dispute arise between the parties, it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Lease shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation.

(2) The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless the parties agree in writing otherwise. The parties agree to exercise good faith efforts to resolve disputes covered by this Section 16.9 through this mediation process.

If a party requests mediation and the other party fails to respond within ten (10) calendar days, or if the parties fail to agree on a mediator within ten (10) calendar days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section 16.9.

16.10 Nondiscrimination. Tenant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Tenant also shall comply with the Americans with Disabilities Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws, at Tenant's sole expense.

16.11 Merger. This Lease and attached exhibits, if any, constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Lease shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Lease. Tenant, by the signature of its authorized representative, hereby acknowledges that he or she has read this Lease, understands it, and agrees to be bound by its terms and conditions.

16.12 Governing Law; Forum. The provisions of this Lease shall be construed in accordance with the provisions of the laws of the State of Oregon, without regard to conflicts of law principles. Any action or suits involving any question arising under this Lease must be brought in the appropriate court in

Washington County, Oregon or, only if there is no Oregon state court jurisdiction, the United States District Court for the District of Oregon, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding.

16.13 Severability. The parties agree that if any term or provision of this Lease is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Lease did not contain the particular term or provision held to be invalid.

IT IS SO AGREED

CITY OF SHERWOOD

H F & Sons, LLC DBA Sesame Donuts

By _____
Craig Sheldon
City Manager

By _____
Haidar Fakih
Owner

Date signed _____

Date signed _____

Exhibit A

Premises

