

**PORT OF NEWPORT COMMISSION EXECUTIVE SESSION AND
SPECIAL MEETING**

Friday, June 10, 2022, 10:30 a.m.
South Beach Activity Room
2120 SE Marine Science Dr.
Newport, OR 97365

This will be a virtual meeting. This will be a virtual meeting, which means you can attend by registering or you can view the livestream on our website: <https://www.portofnewport.com/2022-06-10-commission-meetings-2022-june-10-2022-10-30-a-m>

Anyone interested in making public comment must complete the form on our website and submit it by 8:00 a.m. on Friday, June 10, 2022: <https://www.portofnewport.com/2022-06-10-commission-meetings-2022-june-10-2022-10-30-a-m>

EXECUTIVE SESSION

I. Call to Order

II. Executive Session Pursuant to ORS. 192.660(2)(h) Legal Counsel

The Port of Newport Board of Commissioners will go into Executive Session. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

III. Adjournment

SPECIAL SESSION

I. Call to Order

II. Changes to the Agenda

III. Public Comment (3-minute limit per person)

IV. Approval of OSU Hatfield Visitor Center Gift Shop Sublease – *Miranda*.....Page 2

V. Employee Settlement – *Miranda*

VI. Adjournment

NEW BUSINESS ITEM

DATE: June 10, 2022
RE: OSU Sublease approval/Gift Shop
TO: Port of Newport Board of Commissioners
ISSUED BY: Paula J. Miranda, General Manager

BACKGROUND

In 1962 the Port entered into a lease with the Oregon State University (OSU Hatfield). Under the lease OSU Hatfield is allowed support for its use. The previous gift shop had up to 10 years renewal option, but because of the pandemic Hatfield lost its tenant. Now they would like to provide a sublease to **AACE, LLC. dba Memories** to support its visitor's center. Our lease requires OSU Hatfield to first obtain Port's approval on subleases

The negotiated sublease is attached for review. The rent amount is minimal and in the past the Port has not charged for such subleases.

RECOMMENDATIONS

I recommend "a motion authorizing the General Manager to provide an approval letter allowing OSU Hatfield to enter into a lease with **AACE, LLC. dba Memories.**"

Lease Agreement

OREGON STATE UNIVERSITY / AACE, LLC. dba Memories

THIS LEASE AGREEMENT ("Lease") is entered into by and between OREGON STATE UNIVERSITY ("LESSOR") and AACE, LLC. dba Memories ("LESSEE"):

Background

LESSOR has available space within LESSOR's Hatfield Marine Science Center (HMSC) located at 2030 Marine Science Drive, Newport, OR. 97365 ("Property"); and

LESSEE has need of retail space and LESSOR is willing to provide retail space.

NOW, THEREFORE, LESSOR leases to LESSEE and LESSEE leases from LESSOR the following described space on the following terms and conditions:

1. **PREMISES** - A portion of the Property consisting of approximately 526 square feet of retail space ("Premises"), as shown on the attached Exhibit A.

LESSOR makes no warranties or representations regarding the condition of the Premises or the Property, including, without limitation, the suitability of the Premises for intended uses or the condition of the improvements. LESSEE has inspected and accepts the Premises in its "AS-IS" condition upon taking possession.

2. **TERM** - The Lease commences on July 1, 2022 and continues through January 31, 2024, unless sooner terminated as provided herein ("Term"). In addition to any other termination provisions in the Lease, the Lease may be terminated by either LESSOR or LESSEE at any time upon 30 days' prior written notice delivered to the other according to Section 22.
3. **RENT** - The rent for this Lease is \$6,000 per year, which amount is due and payable in advance, on the first day of each month, with the first payment due on _____. LESSEE shall deliver or mail payments to _____, Attn _____.

Rent for partial months is to be prorated.

4. **PARKING** - During the Term of this Lease, LESSEE shall participate in LESSOR's parking program for parking needs of its customers, invitees, employees and visitors and shall apply for parking permits and make payments at then-current rates, subject to availability, pursuant to that program.
5. **MAINTENANCE AND IMPROVEMENTS** - LESSEE shall keep the Premises clean and generally cared for during the Term. LESSEE shall not injure or in any manner deface the Premises, and shall not cause or allow the Premises to be injured or defaced. If, during the Term of this Lease, the Premises or any portion of the Property or grounds are damaged by the act, default or negligence of LESSEE, or its agents, employees, or any other person or persons admitted to the Premises by

LESSEE, LESSEE shall pay to LESSOR, upon demand, such sum as shall be necessary, in LESSOR's discretion, to restore the Premises to their original condition.

Except for the foregoing and LESSEE's obligations under paragraph 11 (A), annual inspection and prompt repairs and maintenance of the Premises, including, without limitation, all the plumbing, electrical, mechanical, HVAC, and refrigeration equipment and fixtures, shall be the responsibility of LESSOR.

LESSEE shall not make or remove any tenant improvements without written authorization by LESSOR.

LESSEE shall not authorize or cause to be filed any liens on the Premises.

6. **OBSERVANCE OF LAWS, RULES, POLICIES** - LESSEE agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to this Lease, including all then-current rules, standards and policies of LESSOR for its HMSC campus (including but not limited to non-smoking policies, public safety standards regarding firearms, sexual harassment standards and environmental health and safety standards). LESSEE is not required to make any structural changes or capital improvements that are not mandated by LESSEE'S particular use. In other words, changes to the Premises mandated by general laws, including without limitation, the Americans with Disabilities Act are the responsibility of LESSOR.

LESSOR is mandated by Federal law to follow the reporting guidelines in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act which covers a wide range of security, crime, and fire related incidents. If an incident occurs on the Premises, or adjacent to, and may involve safety, security, criminal acts, or fire LESSEE must report it to the Oregon State University Public Safety Department. In life-threatening situations call 911.

7. **TRANSFER OF INTEREST** - No part of the Premises, nor any interest in this Lease, may be sold, assigned, pledged, transferred, mortgaged, or subleased by LESSEE, whether voluntarily or by operation of law, nor may any right of use of any portion of the Premises be conveyed or conferred on any third party by LESSEE by any other means, without the prior written consent of LESSOR, which consent may be given or withheld in its sole discretion.
8. **ASSUMPTION OF RISK BY LESSEE** - As between LESSOR and LESSEE, LESSEE assumes all risk of loss or damage from whatever cause except negligence by LESSOR as described and subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260-30.300, and the Oregon Constitution, Article XI, Section 7.
9. **EVENTS AND CONSEQUENCES OF DEFAULT** - The following shall be events of default:
 - A. Failure of LESSEE to pay any rent or other charge within thirty (30) days after the date due.
 - B. Failure of LESSEE to comply with any other term or condition or fulfill any other obligation of LESSEE within thirty (30) days after written notice by LESSOR specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the thirty-day period, this provision shall be deemed to have been complied with if LESSEE begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practical.
 - C. Abandonment of Premises by LESSEE. Abandonment is defined as non-use of the Premises for forty-five (45) consecutive days.

Upon default, the Lease may be terminated at the option of LESSOR, and LESSOR may re-enter and take possession of the Premises.

10. **USE OF PREMISES/FACILITY** - LESSEE may use the Premises only for the lawful purposes of operating and maintaining a gift shop and for no other purposes. Lessee shall maintain the same hours of operation as the HMSC, unless otherwise approved by Lessor. The storage of hazardous and flammable material on the Premises is NOT allowed. LESSEE will conduct its operations, activities and duties under this Lease in a safe manner and in compliance with all safety standards imposed by applicable federal, state, and local laws and regulations. LESSEE will require the observance of the foregoing by all subcontractors and all other persons transacting business with or for the LESSEE in any way connected with the conduct of LESSEE under this Lease.
11. **SERVICES AND UTILITIES** - LESSOR will furnish phone and internet access, heat, air conditioning, electricity, water. Lessee may dispose of trash at a central location at the Property. If LESSEE uses an excessive amount of utilities or services of any kind, LESSOR may impose a reasonable charge for supplying such extra utilities or services, which charge shall be payable by LESSEE within 10 days of notification by LESSOR.
12. **INDEMNIFICATION** - LESSEE shall indemnify, defend and hold harmless LESSOR, including its officers, trustees, employees and agents from all claims, suits, or actions of any nature resulting from the activities of LESSEE, its officers, contractors, employees or agents under this Lease.
13. **OREGON WORKERS' COMPENSATION** - LESSEE is a subject employer under the Oregon Worker's Compensation Law and shall either comply with ORS 656.017, which requires it to provide worker's compensation coverage for all subject employees working at the Premises, or is exempt under ORS 656.126.
14. **LESSOR'S COVENANTS** - LESSOR covenants that it has the right to make this Lease and to lease the Premises to LESSEE; that possession of the Premises will be delivered to LESSEE free of conflicting claims; and that on paying the rent and performing its covenants, LESSEE may enjoy the rights granted by this Lease free from rightful interference by any third party and LESSOR shall defend such right of enjoyment of LESSEE.
15. **INSURANCE** - During the Term of this Lease, LESSEE agrees to keep in full force and effect general liability insurance with a minimum limit of \$2,000,000 per occurrence, \$4,000,000 aggregate with a minimum sublimit of \$1,000,000 for fire damage, and auto liability insurance with a minimum limit of \$500,000 per accident, issued by an insurance company authorized to do business in Oregon, with an AM Best rating of no less than A-VII. LESSOR and its officers, trustees, agents and employees shall be named as additional insured's on LESSEE's general liability policy. Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided or cancelled except after thirty (30) days prior written notice, except when cancellation is for non-payment of premium, then fifteen (15) days prior notice may be given. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. LESSOR in no way warrants that the minimum limits contained herein are sufficient to protect LESSEE from liabilities that might arise out of this Lease. LESSEE may purchase such additional insurance as LESSEE determines necessary. LESSEE shall provide LESSOR a certificate of insurance showing compliance with this section of this Lease upon request. LESSOR does not waive the right of subrogation.

LESSEE shall require subcontractors, if any, to secure at their own expense and keep in effect, a general liability insurance policy with a minimum limit of \$1,000,000 per occurrence and auto liability

insurance with a minimum limit of \$1,000,000 per occurrence, issued by an insurance company authorized to do business in Oregon. LESSEE, LESSOR and their respective officers, trustees, agents and employees shall be named as additional insureds in said insurance policy. Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided or cancelled except after thirty (30) days prior written notice, except when cancellation is for non-payment of premium, then fifteen (15) days prior notice may be given. LESSEE shall require any subcontractor to provide a certificate of insurance showing compliance with this section of the Lease upon LESSOR's request.

16. **CASUALTY DAMAGE** - If the Premises or improvements thereon are damaged or destroyed by fire or other casualty to such a degree that the Premises are unusable for the purpose leased, and if repairs cannot reasonably be made within 120 days, then this Lease will be cancelled.

Rent shall abate during such time as the Premises cannot reasonably be occupied by LESSEE due to damage or destruction by fire or other casualty.

17. **TAXES, ASSESSMENTS, FEES** -LESSEE shall promptly pay, before the same become delinquent, all taxes and assessments, permits, inspection and license fees levied, assessed or imposed upon LESSEE now or at any time during the Term of this Lease, or levied, assessed or imposed upon LESSEE's business. LESSEE shall pay, before the same becomes delinquent, all personal or real property taxes assessed against the Premises.

18. **HOLDOVER**

- A. If LESSEE does not vacate the Premises at the time required, LESSOR shall have the option to treat LESSEE as a holdover tenant renting from month to month, subject to all of the other provisions of this Lease, or to eject LESSEE from the Premises and recover the damages caused by wrongful holdover.
- B. If a month-to-month tenancy results from a holdover by LESSEE under this section, the tenancy shall be terminable upon written notice from either party given not less than thirty (30) days prior to the termination date which shall be specified in the notice.

19. **RENEWAL OPTION** - If LESSEE is not in default at the time of each option, LESSEE shall have the option to renew this Lease for one (1) successive term of five (5) years each, as follows:

- A. The renewal term will commence on the day following expiration of the then-current Term.
- B. The option may be exercised by written notice to LESSOR given not less than ninety (90) days prior to the last day of the then-current Term. The renewed Lease will be upon the same provisions contained herein except that the monthly rental rate shall be negotiated by the parties.

20. **USE OF ORGANIZATIONS' NAMES** -

- a. Subject to the terms and conditions of this Lease, LESSOR grants to LESSEE, for the Term, a non-exclusive, non-transferable, non-sublicensable, non-assignable license to use LESSOR's name and logos, as shown on Exhibit B (the "Trademarks") in connection with the advertising, promotion and sale of products in the Premises, provided that such use meets Quality Standards. For the purposes of this Lease, "Quality Standards" means use of the Trademarks (a) meets the specifications provided in Exhibit B; (b) meets or exceed standards of quality and performance generally accepted in the industry; and (c) complies with all applicable laws, rules, and regulations. Apart from the rights specifically granted, LESSEE is granted no other rights, license or interest in respect of any property of LESSOR.

- b. LESSEE shall only purchase products bearing the Trademarks from LESSOR approved vendors. LESSEE shall not directly manufacture and sell products bearing the Trademarks without a separate license agreement from the Office of the Trademark Licensing.
- c. Nothing in this Lease shall diminish LESSOR's rights to the Trademarks. All rights of every kind in the Trademarks are solely owned by LESSOR.
- d. LESSEE shall not utilize, develop, produce, or distribute the Trademarks in any way that contains any defamatory matters that would harm the reputation of LESSOR, its employees, students, or alumni.
- e. LESSOR shall have the right to review and approve any and all use of the Trademarks and the compliance of such use with the Quality Standards.

21. **RELATIONSHIPS** - LESSEE and LESSOR agree they are independent entities and neither party may make commitments or enter into agreements on the other's behalf. LESSEE is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.

22. **NOTICES** - Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed as shown, or by confirmed delivery of electronic mail.

LESSOR: Oregon State University
 Attn: Maureen Collson
 OSU Sea Grant
 2030 Marine Sciences Dr.
 Newport, OR. 97365
 Email: Maureen.Collson@oregonstate.edu

With a copy to:
 OSU Leasing and Strategic Real Property Management
 Attn: Director
 850 SW 35th Street
 Corvallis, OR 97333
 Email:

LESSEE: AACE, LLC. dba Memories
 Attn: Erik Anderson
 2397 NW Kings Blvd #151
 Corvallis, OR. 97330
 Email: _____

23. **MISCELLANEOUS PROVISIONS**

- A. **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 full, strict and literal performance of the same provision in the future or of any other provision.
- B. **SUCCESSION** - This Lease shall be binding on and inure to the benefit of the parties and their respective successors, heirs, executors, personal representatives and assigns.
- C. **AMENDMENT AND MODIFICATION** - Subject to applicable law, this Lease may be amended, modified, or supplemented only by a written agreement signed by the parties hereto.

- D. **GOVERNING LAW AND VENUE** - All matters with respect to this Lease, including but not limited to matters of validity, construction, effect, and performance, will be governed by the laws of the State of Oregon applicable to leases made and to be performed therein between residents thereof, regardless of the laws that might be applicable under principles of conflicts of law. If any suit or action is filed by any party to enforce this agreement, venue shall be in the federal or state courts in Lincoln County, Oregon.
- E. **COUNTERPARTS** - This Lease may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.
- F. **SEVERABILITY** - Any term or provision of this Lease that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Lease, or affecting the validity or enforceability of the terms or provisions of this Lease.
- G. **GENDER AND NUMBER** - Any indication of gender of a party in this Lease shall be modified, as required to fit the gender of the party or parties in question. Similarly, any references to singular parties shall include plural parties as the context requires. In the event any of the parties are or become more than one individual, the obligations of the individuals, companies, partnerships, trusts, limited liability companies and other entities comprising and other entities comprising that party shall be joint and several.
- H. **HEADINGS** - The headings used in this Lease are solely for convenience of reference, are not part of this Lease, and are not to be considered in construing or interpreting this Lease.
- I. **EXHIBITS** - The exhibits attached hereto are incorporated herein by reference.

LESSEE'S PERSONAL PROPERTY - Removable decorations, detached floor coverings, trade fixtures and other personal property placed on the Premises by LESSEE ("Personal Property") will remain the property of LESSEE. At or before the termination of this Lease, LESSEE, at LESSEE's expense, will remove from the Premises any and all of LESSEE's Personal Property and will repair any damage to the Premises resulting from the installation or removal of the Personal Property. If LESSEE fails to remove such items by the termination of this Lease, those items will be deemed abandoned, and LESSOR may remove or dispose of the items without liability to LESSEE or others. Upon demand, LESSEE will reimburse LESSOR for the cost of such removal.

THIS LEASE 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 THE PARTY TO BE BOUND. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE IF MADE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS LEASE. EACH PARTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES THAT IT HAS READ THIS LEASE, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

This Lease shall not become effective and shall not be binding upon the parties until it has been executed, in the signature spaces provided below, by all parties to this Lease, including those whose approval is required.

IN WITNESS HEREOF, the parties hereto have executed this Lease as of the date(s) written below.

Exhibit A

