

PORT OF NEWPORT COMMISSION SPECIAL MEETING AGENDA

Tuesday, December 20, 2016, 12:00 noon
South Beach Activities Room
2120 SE Marine Science Drive, Newport, OR 97365

- I. Call to Order
- II. Chelsea Rose Lease
- III. Rogue Mural Progress – presentation by artist Ardis DeFreece
- IV. Public Comment
- V. Adjournment

Regular meetings are scheduled for the fourth Tuesday of every month at 6:00 p.m.

The Port Newport South Beach Marina and RV Park Activity Room is accessible to people with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours in advance of the meeting to Port of Newport Administration Office at 541-265-7758.

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COMMERCIAL LEASE

THIS LEASE made July 1, 2014, between PORT OF NEWPORT, a Port district and municipal corporation existing under the laws of the State of Oregon, hereinafter referred to as "Lessor" and Cody Chase, Chelsea Rose Seafood, hereinafter referred to as "Lessee".

THIS LEASE is for the sole purpose of allowing the F/V Chelsea Rose to continue operations as a fish selling station by the current owner. No other similar leases will be allowed.

1. DEMISE AND DESCRIPTION OF LEASED PREMISES.

Lessor hereby grants to Lessee and Lessee hereby accepts from Lessor the following described premises situated at Port Dock 3, within the Port of Newport's Commercial Marina, hereinafter referred to as the "Leased Premises":

The first 60 feet of Port Dock 3, West End. See attached drawing.

2. TERM.

The term of this Lease shall be for a five (5) year term. The term shall commence on July 1, 2014 and shall end on June 30, 2019. Monthly rental payments shall be due within ten (10) business days of receipt of billing.

3. RENEWAL OPTION.

3.1 If this lease is not in default at the expiration of the existing five (5) year term, this agreement shall renew according to Section 3.3 below for an additional one (1) year term and each consecutive year thereafter, as long as this agreement is not in default and not to exceed more than ten years.

3.2 Each of the renewal terms shall commence on the day following expiration of the preceding term.

3.3 The option to renew shall be exercised only by written notice to Lessor given not less than sixty (60) days prior to the last day of the expiring term.' The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties. Lessor and Lessee shall then be bound to take the steps required in connection with the determination of rent as specified below without further act of the parties. Lessor and Lessee shall then be bound to take the steps required in connection with the determination of rent as specified below.

4. CONDITION OF PREMISES.

Lessee agrees to accept the premises (moorage area) as is for the purpose of use as described in Section 5 below.

5. USE OF LEASED PREMISES.

5.1 Lessee is hereby granted the right and privilege, and exclusive use of the

Leased Premises for the operation of Chelsea Rose Seafood. Lessee shall provide a full service seafood selling establishment, such service to be operated and attended by Lessee or a qualified employee of Lessee, on a daily basis, during all hours or on call. Lessee shall not offer products or services not customarily offered by a seafood selling service without the express written consent of Lessor. Said consent, if granted, can be revoked at any time for any reason whatsoever.

Such operation shall be conducted on a non-discriminatory basis, in accordance with and subject to the terms, conditions and requirements imposed by law or by the Port of Newport, City of Newport, or Lincoln County.

5.2 It is understood that the actual dock, equipment, piping, conduit, gangway, and all related equipment are the property of the Lessor, and the Lessor shall be solely responsible for the repairs of same throughout the term hereof. The Leased Premises shall include the first 60 feet of Port Dock 3 and the right of access thereto. It is understood that all improvements to the premises and related to Lessee's operations on the premises become the property of Lessor upon installation, and Lessor does not purport to grant any rights with respect to such improvements except for assurances of the continued ability to maintain such improvements in their present location or that alternate locations are available, if needed. Lessor reserves the right, at Lessor's expense, to relocate the Chelsea Rose Seafood operation and other equipment if necessary for the best management of the marina complex. Lessor shall make reasonable efforts to minimize interference with Lessee's operations, but shall not be liable to Lessee for reasonable interference or disruption of such operations during any such relocation.

5.3 In the event Lessor, in its sole discretion, elects to reconfigure, replace, rebuild or reconstruct the docks in the vicinity of the Leased Premises for which this Lease is granted, Lessor shall have the right to terminate this Lease upon not less than 90 days written notice to Lessee. Upon such termination the parties shall negotiate a new Lease on the same terms and conditions of this lease following any reconfiguration, replacement, rebuilding, or reconstruction.

6. RENT AND OTHER CHARGES.

6.1 During this first year of the present lease term, (July 1, 2014-June 30, 2019), the base rent shall be Three Hundred Eighty Five dollars (\$385.00) per month. In addition to the base rent, Lessee agrees to pay a monthly utility fee of Eighty Dollars (\$80.00) per month for the use of water, sewer, and trash service for a total monthly rate, including utility fee, of Four Hundred Sixty Five Dollars and Fifty Cents (\$465.00).

The annual lease rate for a renewed term beginning July 1, 2014 will be adjusted to match the monthly moorage rate based on the overall length (OAL) of the Lessee's vessel, including all overhangs on both the bow and stern of the vessel, and set according to Lessee's annual printed rate schedule for the Commercial Marina. Future rental increases for a renewal term shall be the greater of (a) the rental based on the present moorage rate plus utility fee, as described above, or (b) a reasonable rental for the ensuing term beginning in the month of March each year after the first year by a percentage equal to the percentage change in the Consumer Price Index for Portland, Oregon, or the nearest comparable data on changes in the cost of living if such index is no longer published. In no event, however, shall the increase during any renewal term increase by more than five percent (5%).

6.2 Lessee shall pay eighteen percent (18%) per year interest on all payments of rent required above more than ten (10) days in arrears.

7. COMPLIANCE WITH GOVERNMENTAL RULES.

7.1 Lessee shall at all times during the term of this lease, at its sole cost and expense, comply with all governmental rules, regulations, ordinances, statutes and law now or hereafter in effect pertaining to Lessor or Lessee's operation of its business pursuant to this Lease.

7.2 Lessee shall, at all times during the term hereof, comply with all reasonable rules and regulations which Lessor may at any time establish concerning the use of its facilities, provided, however, that any such rule or regulation so made shall not be so inconsistent with this Lease as to unreasonably interfere with Lessee's operations hereunder.

8. MAINTENANCE OF LEASED PREMISES.

8.1 Lessee shall, at Lessee's own expense, maintain and repair the Chelsea Rose vessel and the improvements thereon. Lessee shall keep the vessel in a clean and orderly condition. Lessee shall be responsible for any permits, licenses or certification required in its operation. Lessee shall, at Lessee's expense, be responsible for maintaining the proper electrolysis control by providing proper and adequate anodes to be attached to the vessel's hull on an annual or as needed basis.

8.2 Lessee shall prepare an Oil Spill Prevention and Spill Response Plan (OSPSRP) (attachment A), and provide a copy to Lessor, and shall have sole responsibility for implementation of this plan and shall be responsible to comply with the Yaquina Bay Oil Spill Response Plan (YBOSRP) (attachment B). The Lessee as part of the YBOSRP shall within the first hour of any incident contact the Emergency Response Team (attachment C). Lessee shall also be responsible to comply with any requirement of any environmental or other applicable law, rule, regulation, or requirement relating to lessee's facilities or operations.

9. IMPROVEMENTS AND ALTERATIONS.

In the event that Lessee desires to alter or add to the equipment or facilities on the Leased Premises, Lessee shall have the right to do so at their own expense subject to the prior written approval of Lessor of plans and specifications, which approval shall not be unreasonably withheld or delayed.

10. LIENS.

Lessee shall keep the Leased Premises free from liens arising out of the operations of Lessee, including any liens arising out of any labor performed for or materials furnished to Lessee on the Leased Premises. Lessee shall indemnify Lessor against any claims for labor or materials in connection with any construction of any improvements on the Leased Premises, including the costs of defending against the claims. Lessor shall have the right to enter on the Leased Premises at any

reasonable time to post notices, if necessary.

11. TITLE AT TERMINATION.

Lessor shall retain upon installation title to all fixtures, equipment, machinery, and other improvements installed on or connected to the Leased Premises by Lessee. Lessee may remove personal property belonging to Lessee on the termination of this Lease, provided that any damage to the Leased Premises that is caused by the removal of the property shall promptly be repaired at the expense of Lessee. Any property that is not removed by Lessee within thirty (30) days after termination of this Lease shall be considered abandoned property.

12. DESTRUCTION OF LEASED PREMISES.

12.1 If during the term of this Lease, the Leased Premises, or a portion thereof, are destroyed by fire or other casualty, however caused, Lessor shall promptly restore the destroyed facilities (Port Dock 3 and attached utilities) to substantially their original condition. The rental with respect to the Leased Premises shall be abated from the date of the casualty in proportion to the extent that the Leased Premises are not usable by Lessee during the time the restoration is being accomplished.

12.2 If the facilities are destroyed by fire or other casualty to such an extent that they are wholly unfit for the use contemplated, Lessor shall have the option to terminate this Lease without further obligation. On such termination, Lessor shall collect and retain the proceeds of any applicable insurance and upon making itself whole, disburse the remainder, if any, to Lessee.

13. INSURANCE.

13.1 Lessee shall at all times during the term hereof, at its sole cost and expense, obtain and maintain in force and effect a policy or policies of Protection and Indemnity Liability insurance, issued by an insurance carrier approved by Lessor, insuring against loss, damage or liability for injury to or death of persons or loss or **damage to property as the result of the business operations.** Such protection and liability insurance to include, by endorsement, product liability and shall be extended to provide liability extending to the walkways, ramps, wharves, and docks used by guests and customers of the Lessee. Such liability insurance shall be in the minimum amount of \$1,700,000 or as set by State industry standards. Each occurrence and in addition shall provide for payment of all attorneys fees and legal expense arising there from. This insurance shall be written on a form acceptable to the Lessor. Lessor shall be named as an additional insured for Lessor's liability arising out of the operations of the Lessee.

Inasmuch as this Lease agreement is for a short (one year) term and is subject to annual renewal, it is expressly acknowledged by the parties that the foregoing limits of protection and indemnity insurance shall be subject to reasonable increases, based upon the recommendation of the insurance agent of record for Lessor, based upon changes in public liability laws and similar factors.

13.2 Lessee shall, at all times during the term hereof, at its full cost and expense, procure and maintain in force and effect standard forms of hull all risk insurance covering the Lessee's vessel, merchandise, materials, and equipment, as well as the personal property of others in Lessee's possession and care, in, upon or about the vessel, or used by Lessee in connection with its business operated pursuant to this agreement. Such insurance shall be in an amount adequate to cover the costs for replacement of the property. Lessor shall be named an additional insured for this property insurance and the insurer shall waive all rights of subrogation to the Lessor.

If Lessee were to attach an engine or other means of mobility, then Lessee must also keep in full force and effect the policy of insurance, insuring against the hazards and liability for pollution and environmental hazards, in a form and with coverage limits reasonably satisfactory to the Lessor, in no event less than \$300,000, naming the Lessee and Lessor as named insured for the operations arising out of the operations of the vessel including its operation as a seafood selling operation. It is understood that such limit is relatively low, and in order to minimize risks from pollution and environmental hazards, Lessee shall at all times employ all reasonable precautions to avoid claims arising from pollution and other environmental hazards caused by Lessee's actions or operations. Deductibles shall be the responsibility of the Lessee, and the Lessor shall not be required to contribute toward any deductible.

If Lessee has employees, Lessee shall furnish evidence of Workers Compensation insurance and Crew Liability insurance with a limit of not less than \$1,700,000, or as set by State industry standards per occurrence. Such insurance shall be endorsed to provide statutory State of Oregon workers compensation benefits and statutory United States Longshore and Harbor Workers Act coverage's. Prior to beginning operation, Lessee shall furnish evidence, as stipulated in 14.2 above, through Certificates of insurance of workers compensation, USL&H, and crew liability insurance.

To the extent not covered by insurance, Lessee will solely bear all risk of loss, **damage, or claims for pollution and other environmental hazards caused by Lessee's own actions.**

13.3 Lessee shall provide Workers Compensation or Longshoremen and Harbor Workers coverage for Lessee's employees as required by state or federal law.

13.4 Upon execution of this Lease, Lessee shall furnish to Lessor a certificate properly executed by the insurance carrier showing that the foregoing insurance policies are in effect. The policies shall provide that such insurance can be canceled only on thirty (30) days written notice to Lessor. The policies shall evidence the insurance coverage required herein, including an express waiver of rights of subrogation required below.

13.5 Lessee hereby waives any and all rights of recovery against Lessor, its officers, agents and employees, for any loss or damage, including consequential loss or damage caused by any peril, or perils including negligent acts, enumerated in each insurance policy required to be maintained by Lessee hereunder. This waiver of subrogation shall not apply with respect to any claim by Lessee, if it is in contravention of any term or provision of any insurance policy which would otherwise

provide reimbursement to Lessee, so as to render such coverage void. However, Lessee shall make reasonable efforts to obtain a policy or policies of insurance permitting such a waiver of subrogation, or expressly waiving subrogation.

14. INDEMNITY.

14.1 Lessee shall indemnify Lessor or any of the agents or employees of Lessor against claims arising out of any injury to persons, including death or damage to property, sustained as a result of the acts of Lessee. Lessee shall defend any action brought against Lessor or any of the agents or employees of Lessor based on any alleged injury or damage caused by Lessee, and Lessee shall pay all costs, including attorney fees, resulting from the action. Lessee shall not indemnify Lessor against any claims involving the sole negligence or fault of Lessor or any of the agents or employees of Lessor.

14.2 When using the Leased Premises, Lessee shall comply with all applicable federal, state, municipal, and local laws and regulations. Lessee shall indemnify Lessor against any liability that may be imposed by governmental authorities for any violation by Lessee or the agents or employees of Lessee of any laws or regulations.

15. SIGNS.

No signs shall be placed on the Leased Premises without the prior written approval of Lessor.

16. DEFAULT OF LESSEE.

The following occurrences shall be deemed events of default of Lessee:

16.1 Failure to make any payment of rent due pursuant to this Lease within thirty (30) days after the date payment is due, or failure to pay any other service charge or assessment within thirty (30) days after Lessor bills Lessee therefore;

16.2 Failure to proceed with due diligence to remedy any other breach of a condition of this Lease and to fully indemnify Lessor against all liability resulting from the breach within thirty (30) days after Lessor gives notice of the breach to the Lessee; and

16.3 Failure to occupy or abandonment of the Leased Premises.

16.4 On the occurrence of any default described in this section, Lessor may, at its option, in addition to any other remedy given by law, give notice to Lessee that this Lease shall terminate on the date specified in the notice, which date shall not be earlier than thirty (30) days after the giving of the notice.

17. BANKRUPTCY OR INSOLVENCY OF LESSEE.

The occurrence of any of the following shall be deemed a default of Lessee:

17.1 A petition in bankruptcy filed by or against Lessee;

17.2 A petition or answer filed by or against Lessee seeking a reorganization, liquidation, dissolution or other relief of the same or different kind under any provision of the bankruptcy laws;

17.3 Adjudication of Lessee as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense;

17.4 An assignment of all or substantially all of the assets of Lessee for the benefit of creditors;

17.5 A proceeding by or against Lessee for the appointment of a trustee, receiver, conservator, or liquidator of Lessee with respect to all or substantially all of the assets of Lessee;

17.6 A proceeding by or against Lessee for the dissolution or liquidation of Lessee, or the taking of possession of the assets of Lessee by any governmental authority in connection with any dissolution or liquidation; or

17.7 The taking by any person of the leasehold created by this Lease, or any part of the leasehold, on execution, attachment, or other process of law or equity against Lessee.

17.8 On the occurrence of any default described in this section, Lessor shall give Lessee notice of the default. If the default is not corrected or reasonable attempts to cure the default within ten (10) days after date of the notice, Lessor may, in addition to any other remedy or right given under this Lease or by law, give notice to Lessee that this Lease shall terminate on the date specified in the notice, which date shall not be earlier than thirty (30) days after the giving of the notice.

18. RIGHT OF LESSOR TO REENTER LEASED PREMISES ON DEFAULT OF LESSEE.

On termination of this Lease as provided in Section 18 or 19, Lessor may immediately enter on the Leased Premises without further demand or notice. Lessor may retake possession of the Leased Premises by summary proceedings, by action in law or in equity, by force or otherwise, without liability for trespass or for damages. Reentry, resumption of possession, or reletting of the Leased Premises by Lessor shall in no event be deemed to be a surrender of this Lease or a waiver of the rights and remedies of Lessor under this Lease.

19. DISPOSITION OF PERSONAL PROPERTY LOCATED ON LEASED PREMISES.

19.1 On retaking possession of the Leased Premises, Lessor shall at the expense of Lessee hold in storage for Lessee any personal property that is located on the Leased Premises, regardless of whether the personal property belongs to Lessee or any other person. Lessor may deliver the goods to Lessee or a consignee or any person or concern owning any interest in the property.

19.2 After the expiration of ten (10) days after retaking possession, should any personal property located on the Leased Premises not be claimed by Lessee or its true owner, such property shall be considered abandoned; and Lessee shall bear full responsibility for the disposition of such property by Lessor and shall indemnify and hold Lessor harmless from any and all claims, suits, and demands of true owners of such property disposed of by Lessor, whether such claims, suits, or demands be legitimate or otherwise.

20. EXPENSES TO BE PAID BY LESSEE ON TERMINATION OF LEASE DUE TO DEFAULT OF LESSEE.

20.1 On termination of this Lease for default, as provided in Section 18 or 19, Lessee shall pay to Lessor the expenses, including but not limited to reasonable attorney and other fees, incurred by Lessor in connection with:

- (a) Obtaining possession of the Leased Premises;
- (b) Removal and storage of the property of Lessee and other occupants; and
- (c) Maintenance and repair of the Leased Premises while vacant.

20.2 The expenses shall be deemed prima facie to be the amounts invoiced to Lessor.

20.3 Lessor may sue for the payments as they accrue without waiting for the payment date fixed in this Lease. Any proceeding to recover such payments shall not be deemed a waiver of any other rights of Lessor under law, equity or this Lease.

21. RELETTING PREMISES ON DEFAULT OF LESSEE.

21.1 On termination of this Lease under Section 17 or 18, Lessor shall use reasonable efforts to relet the Leased Premises to a suitable tenant. All the rents or other sums received, if any, from the alternate tenant, after deducting all costs of Lessor specified in Section 21, shall be credited against the total amount due from Lessee. The failure of Lessor to find a suitable tenant, however, shall in no way prejudice the rights of Lessor under this Lease.

21.2 If Lessee has prepaid amounts due under this Lease that are subsequently obtained by Lessor from a new tenant, Lessor shall refund to Lessee the net amount of the overpaid rents or other sums.

22. INSPECTION.

Lessor and the agents and employees of Lessor may at all reasonable times enter the Leased Premises to inspect and determine whether the Leased Premises are kept in good repair and maintenance in accordance with the terms of the Lease, and to show the Leased Premises to prospective tenants or buyers.

23. ASSIGNMENT AND SUBLETTING.

Lessee shall not assign or sublet any rights or interests under this Lease.

24. QUIET ENJOYMENT.

Lessor agrees that Lessee, on paying the rent and other charges in this Lease provided and on observing and keeping all the provisions of this Lease, shall quietly occupy the Leased Premises during the term of this Lease and any renewal hereof without hindrance.

25. COVENANT AGAINST WASTE.

Lessee shall not commit or suffer to be committed any waste on the Leased Premises.

26. FORCE MAJEURE.

26.1 For purposes of this Lease, the term "force majeure" is defined as any act of God, act of a public enemy, strike, fire, storm, flood, civil disturbance, failure or delay of persons from whom the parties to this Lease obtained machinery, equipment, or supplies to make delivery, or other causes beyond the control of either party, regardless of whether the other causes be of the class here specifically set out.

26.2 Neither party shall be responsible for any failure of performance of any of its obligations under this agreement, where the failure is due to force majeure.

27. EFFECT OF WAIVER OF PRIOR BREACH.

No waiver by Lessor of any covenant or condition of this Lease shall be construed as a waiver of any other covenant or condition, nor shall the waiver of any breach of this Lease be construed as waiver of any other or subsequent breach.

28. SEVERABILITY.

Should any provision of this Lease be declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions of this Lease shall not be affected thereby.

29. TIME OF ESSENCE.

Punctual performance by the parties to this Lease of the covenants contained in this Lease is of the essence of this Lease.

30. SECTION TITLES ONLY FOR IDENTIFICATION.

The titles to all sections used in this Lease are for purposes of identification only

and shall not vary the context of the sections.

31. MODIFICATION OF LEASE.

No modification of this Lease shall be effective unless agreed to in writing by the parties to this Lease. No modification of one provision of this Lease shall be considered a waiver, breach, or cancellation of any other provision of this Lease.

32. HOLD OVER.

If Lessee remains on the Leased Premises after the expiration of the term of this Lease without exercising the option to renew the Lease, the holding over shall be deemed to create a month-to-month tenancy under the same terms and conditions of this Lease but shall not be construed as a renewal of this Lease.

33. NOTICES.

33.1 Whenever it is required or permitted that notice be given by either party to this Lease to the other party, the notice must be in writing and must be given personally or forwarded by certified mail addressed as follows:

TO Lessor: Port of Newport
600 SE Bay Blvd.
Newport, OR 97365

TO Lessee: Cody Chase
F/V Chelsea Rose
P.O. Box 1941
Newport, OR 97365

33.2 Unless otherwise specified in this Lease, all notices required to be given under this Lease shall be effective on the date of receipt.

33.3 The addresses to which notices are to be sent may be changed from time to time by notice given according to the terms of this section.

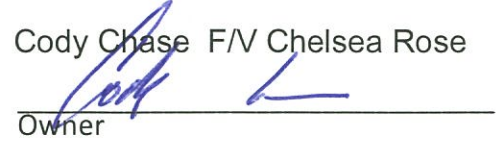
34. ATTORNEYS' FEES.

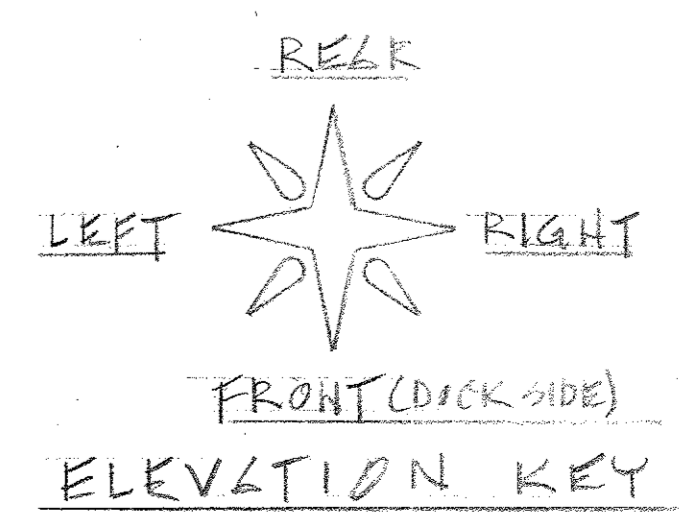
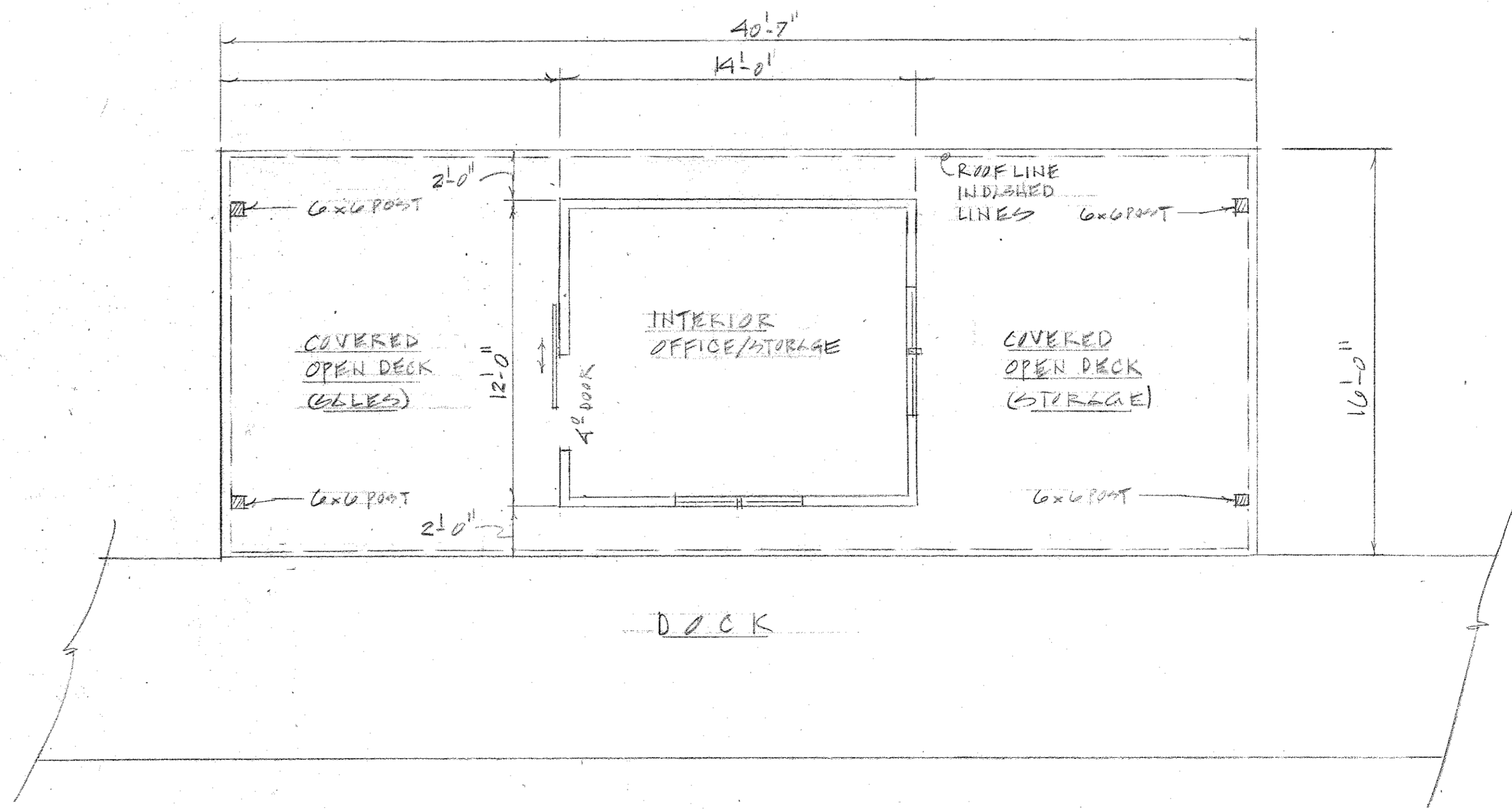
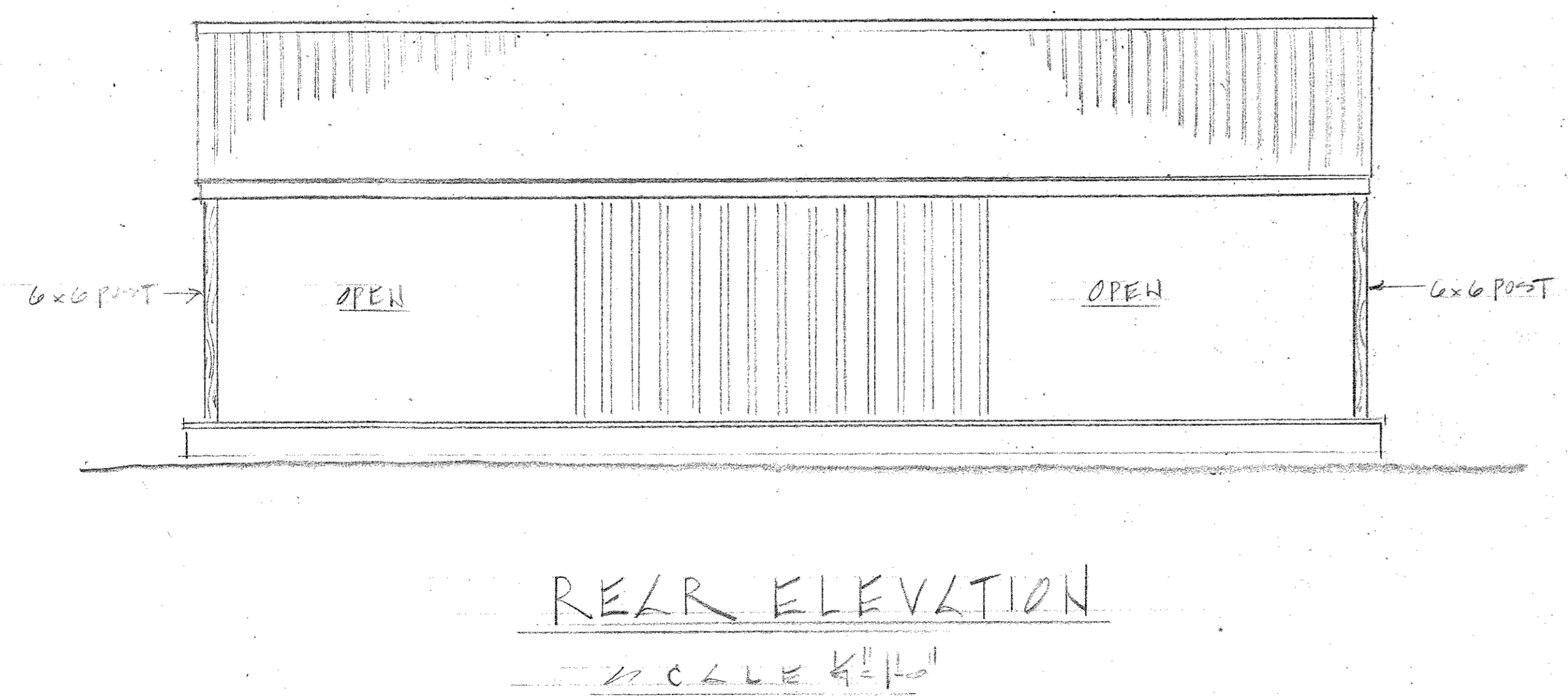
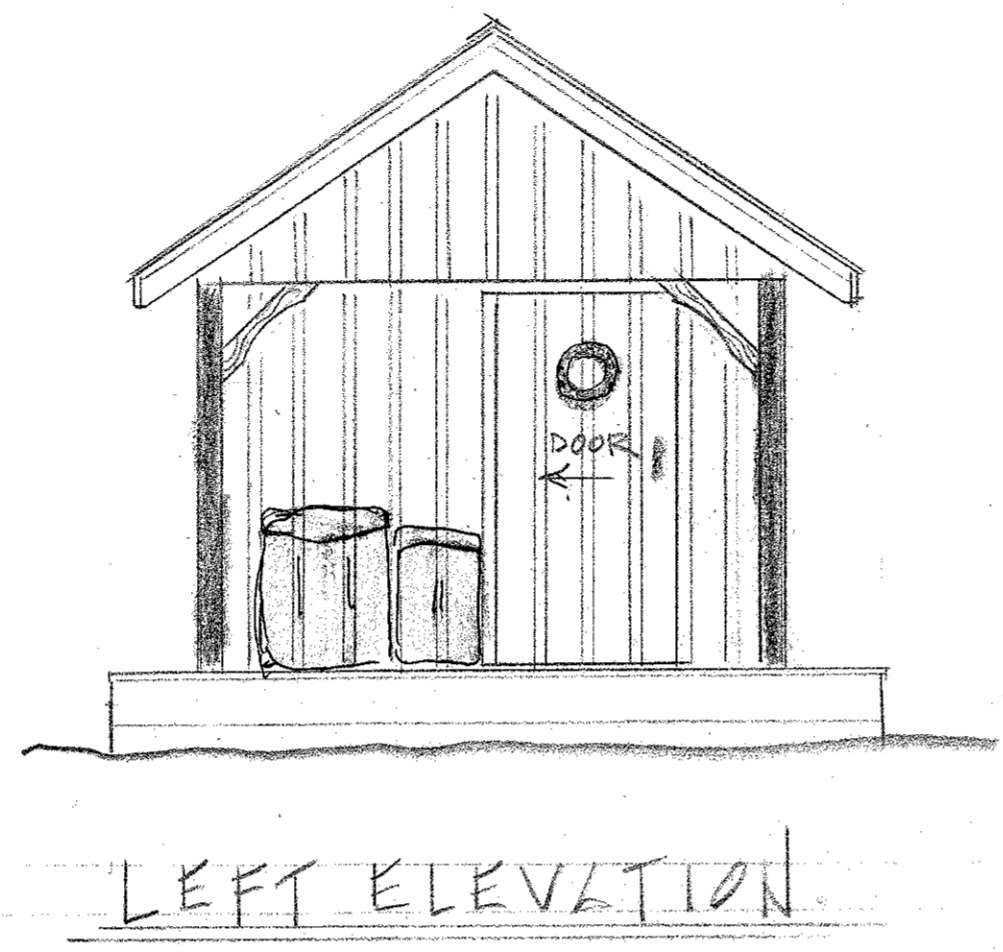
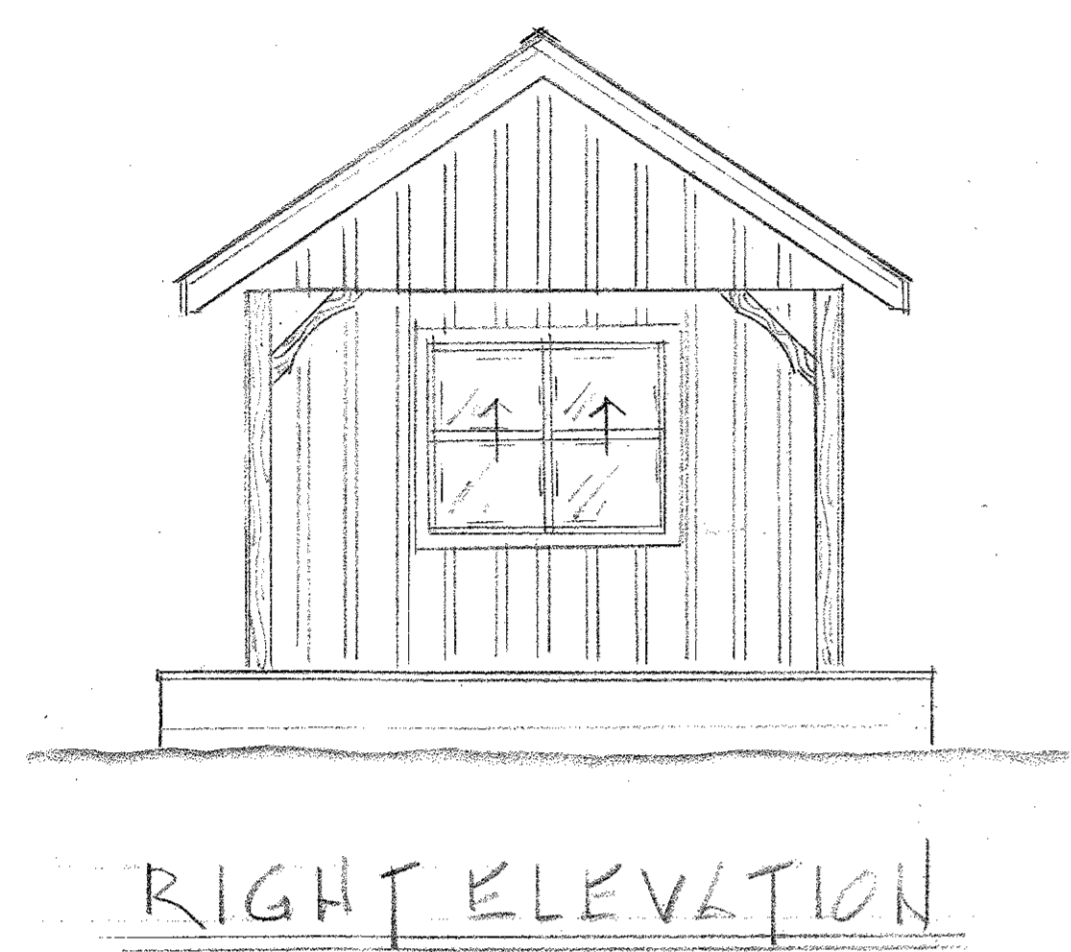
In addition to the fees provided in Section 21 due to default, should either party hereto institute or be made a party to any action or proceeding in court to enforce any provision hereof or for damages or other relief by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to receive from the losing party, in addition to allowable court costs, such amounts as the court may adjudge to be reasonable as attorneys' fees, including any appeal thereof, and such amount may be made a part of the judgment against the losing party.

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate to be effective as of the day and year above set forth, and any corporate signature is af-fixed hereto only pursuant to the board of directors or other governing body thereof.

PORT OF NEWPORT

General Manager

Cody Chase F/V Chelsea Rose

Owner



JON HOLBROOK DESIGN
405 SE Scenic Loop, Newport, Oregon, 97365
Ph. 541-265-9366 Fax 541-265-4050
E-mail: cuthome@hotmail.com

REV.	DATE

DRAWN
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NEW CHELSEA ROSE II

Historic F/V Chelsea Rose

Fresh from the Sea to You!!

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Halibut June 25th



New Logo

Chelsea Rose Seafood provides fresh, locally-caught seafood all year round in Newport, Oregon.

We sell directly from our Historic Fishing Vessel H/F/V Chelsea Rose at Newport's Port Dock 3. The boat was built in 1907 and purchased by our Captain, Cody Chase, in 1997. The Chelsea Rose is semi-retired now and no longer goes out to sea. She stays at dock year round allowing us to supply the public with fresh quality seafood. Our captain catches the majority of our crab from the newest boat in our fleet, the F/V Aquarius. The majority of our tuna is purchased from the F/V Norma M, which is owned by Cody's father. Our halibut, salmon and rock fish are bought from a few select local fishermen.

We also sell crab and other fish from Port Dock 7.