

KIMMEL GRANT AGREEMENT

This **GRANT AGREEMENT** (“**Grant Agreement**”) is made and entered into the last date set forth below by and between Allan Kimmel, (“**Grantee**”), and the Tillamook Urban Renewal Agency, a public body corporate and politic, activated by the City of Tillamook, Oregon, and existing under and by virtue of the laws of the State of Oregon, (“**Grantor**”).

RECITALS

- A. The Grantor has established and maintained a Private Project Program (“Program”) to encourage rehabilitation of commercial properties within the Tillamook Urban Renewal Area (“Area”) defined in the Tillamook Urban Renewal Plan, approved October 11, 2006, as thereafter amended.
- B. Grantee owns that certain real property located in the Area known as 1812 1st Street, Tillamook, OR (“Property”). The Property is legally described in Exhibit A attached hereto. Grantee intends to repurpose the Property by providing hook-up services, including electricity, water, and sewage, for food and miscellaneous vendor carts.
- C. On September 20, 2017, Grantee applied for funding assistance from the Program. The TURA Board, on the recommendation of its Proposal and Justification Committee, approved the application at their October 11, 2017 meeting for a loan in the amount of \$30,000.00 (“Loan”), a forgivable loan (“Forgivable Loan”) in the amount of \$30,000.00, and a grant in the amount of \$40,000.00. The Grantor and Grantee, as Borrower, have executed documents necessary to make and secure the Loans contemporaneously with this Grant Agreement.
- D. Grantor and Grantee now desire to enter into this Grant Agreement to specify the amount and terms and conditions of Grantor's Grant funding for Grantee's project.

NOW THEREFORE, the parties agree as follows:

ARTICLE 1 GRANT GENERALLY

Section 1.1 **Grant Amount.** On the terms and conditions of this Grant Agreement, Grantor agrees to make a grant to Grantee in an amount not to exceed Forty Thousand and no/100 Dollars (\$40,000.00) (the "**Grant**") to assist Grantee in implementing the renovation of the Property as described as 1812 1st Street, Tillamook, OR 97141 (the "**Project**"). The attached Exhibit B provides a summary description of the costs of renovating the Property that will be financed by the Grantor through the Loan and the Grant (the "TURA Financing") up to \$100,000 ("Eligible Costs"). Grantee may use the Grant proceeds only for the Property renovation costs set forth in the attached estimates, incorporated herein by reference, as Exhibit C.

Section 1.2 **Disbursement of Grant Proceeds.** The Grant will be disbursed as set forth in TURA guidelines during construction, on the basis of reimbursement for Eligible Costs, but only after the Grantor has fully disbursed all funds available to Grantee pursuant to the Loan, unless otherwise deemed necessary by the Grantor. Grantee will submit to the Grantor itemized billings after the Grantor has fully disbursed all funds available to Grantee pursuant to the Loan for Eligible Costs completed through the preceding month until the Grant amount is fully disbursed.

- a) Each billing shall include or have attached the following:
 - i. The renovation set forth in Exhibit B and allocated for TURA Financing in Exhibit C;
 - ii. Copies of all applicable subcontractor and/or material invoices; and
- b) Within ten (10) days after submission of each billing by Grantee, an inspection shall be made by TURA's Contract Committee Designee and if:
 - i. Progress has been made on the items of renovation listed in Exhibit B in accordance with the billing submitted by Grantee;
 - ii. TURA's Contract Committee is reasonably satisfied with the billing and its attachments;
 - iii. No default has occurred and is continuing under this Agreement; and
 - iv. The general contractor and all subcontractors shall have been paid for amounts covered by prior billings, then

the billing shall be paid by the Grantor to the Grantee by the 2nd Thursday of the month following the month in which the billing was submitted by Grantee. In the event the representatives of Grantor, upon inspection, believes the criteria set forth in this paragraph 3(b) have not been satisfied, the Grantor shall provide written notice to Grantee on or before the 1st Thursday of the month following the month in which the billing was submitted setting forth the Grantor's objection to payment and the reasons for the Grantor's objections.

- (c) Except for funds available to the Grantee as the Loan, Grantee will provide all funds to cover costs of the Property renovation and all additional costs incurred in the Property renovation as a result of cost overruns or unanticipated expenses in the Property renovation.

ARTICLE 2 GRANTEE'S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

Section 2.1 **Existence and Power; Authority.** Grantee is an individual property owner and in good standing under the laws of the State of Oregon. Grantee has (a) full power and authority to carry on its business as now being conducted and as Grantee contemplates it to be conducted with respect to the Project, and (b) full power, authority, and legal right to execute and deliver this Grant Agreement and to incur and perform its obligations hereunder and thereunder. The execution and performance by Grantee of this Grant Agreement have been duly authorized by all necessary actions of Grantee. This Grant Agreement has been duly executed by Grantee and will constitute legal, valid, and binding obligations of Grantee, enforceable in accordance with their terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

Section 2.2 **No Violations or Default.** Grantee is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Grantee notice or threatened to give it any notice of default under any material agreement. No event has occurred and is continuing and no condition exists with respect to Grantee or the Project that would constitute an Event of Default or an event which, with the lapse of time or the giving of notice, or both, would become an Event of Default.

Section 2.3 **Litigation.** No action, suit or proceeding (and to Grantee's knowledge, no investigation) is pending against Grantee or with respect to the Project before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, would be reasonably expected to have a material adverse effect on the business, assets, operations, or financial condition of Grantee, the Project or the power of Grantee to complete the Project or (b) which purports to affect the legality, enforceability, or validity of this Grant Agreement.

Section 2.4 **Compliance With Laws.** Grantee is in material compliance with all federal, state and local laws, rules, regulations, ordinances and orders applicable to it, the Project, and the completion thereof, including, without limitation, all applicable health and safety, environmental, and zoning laws.

ARTICLE 3 AFFIRMATIVE COVENANTS

Until completion of the Project or as otherwise indicated, Grantee covenants and agrees as follows:

Section 3.1 **Completion of Project and Performance of Obligations.** Grantee shall complete the Project no later than October 31, 2018 (the "**Project Completion Deadline**") and Grantor is not obligated to reimburse any Project costs incurred after the Project Completion Deadline.

Section 3.2 **Compliance with Laws and Use Restrictions.** Grantee will comply with all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality having jurisdiction over Grantee and the Project, including all applicable health and safety, environmental, and zoning laws.

Section 3.3 **Other Obligations.** Grantee will pay and discharge before the same shall become delinquent all indebtedness, taxes, and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies except any thereof whose validity or amount is being contested in good faith by Grantee in appropriate proceedings with adequate provision having been made in accordance with generally accepted accounting principles for the payment thereof if the contest is determined adversely to Grantee.

Section 3.4 **Indemnity.** Grantee shall indemnify and hold Grantor, its officers, employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and expenses) which any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made by Grantee, (b) any transaction contemplated by this Grant Agreement or (c) the actions or inactions of Grantee, or its employees, agents or contractors, related to the Project, other than claims, losses, damages, or

expenses that arise solely from the gross negligence or willful misconduct of Grantor. This Section 3.4 shall survive completion of the Project and any termination of this Grant Agreement.

Section 3.5 **Records and Inspection.** Grantee shall keep proper books of account and records on all activities associated with the Grant, including but not limited to, books of account and records on the expenditure of all Grant proceeds. Grantee will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of three years after the Project Completion Deadline or the date that all disputes, if any, arising under this Grant Agreement have been resolved. Grantee will permit Grantor and/or its duly authorized representatives to inspect, review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of funds received from Grantor. Access to these records is not limited to the required retention period. The authorized representatives shall have access to the records at any reasonable time for as long as the records are maintained. This Section 3.5 shall survive completion of the Project and any termination of this Grant Agreement.

Section 3.6 **Audits.** Grantor, either directly or through a designated representative, may conduct financial and performance audits of the use of Grant proceeds and the implementation of the Project at any time during Project implementation and during the three-year period after the Project Completion Deadline. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. If an audit finds that payments to Grantee were in excess of the amount to which Grantee was entitled, then Grantee shall repay that amount to Grantor. This Section 3.6 shall survive completion of the Project and any termination of this Grant Agreement.

ARTICLE 4 EVENTS OF DEFAULT

Any of the following shall constitute an Event of Default under this Grant Agreement:

Section 4.1 **Failure to Pay General Debts When Due.** Grantee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying, its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent; (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or

composition or adjustment of debts, (vii) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

A proceeding or case is commenced against Grantee, without its consent, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Grantee, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Grantee or for all or a substantial part of its assets, or (iii) relief is granted to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 60 days, or an order for relief against Grantee is entered in an involuntary case under the United States Bankruptcy Code (as now or hereafter in effect).

Section 4.2 **Failure to Disclose Material Facts.** Grantee fails to disclose any fact material to the making of the Grant, or a disbursement, to Grantee, or upon discovery by Grantor of any misrepresentation by, on behalf of, or for the benefit of, Grantee.

Section 4.3 **Failure to Pay Amounts Due.** Grantee fails to pay any sum due under this Grant Agreement within the time specified herein or therein.

Section 4.4 **Failure to Comply with Other Obligations.** Grantee fails to observe, perform, discharge or comply with any other covenant, agreement or obligation imposed on Grantee by this Grant Agreement and such failure remains uncured 30 days after Grantor's written notice thereof to Grantee; provided, however, that failure to complete the Project by the Project Completion Deadline shall not be considered an Event of Default but it will disqualify Grantee for future grants from Grantor for activities similar to the Project.

ARTICLE 5 RIGHTS AND REMEDIES UPON EVENT OF DEFAULT

Upon the occurrence of an Event of Default and at any time thereafter, Grantor may, at its option, exercise any one or more of the following rights and remedies:

Section 5.1 **Repayment.** Grantor may declare that the Grantee repay the entire original Grant (or so much thereof as has been disbursed to Grantee) and that Grantee pay other charges payable by Grantee pursuant to this Grant Agreement. Repayment or payment shall be immediately due and payable in full and, upon

Grantor's declaration, Grantee shall pay to Grantor the amount declared to be immediately due and payable.

Section 5.2 **Termination of Funding Obligation.** Grantor may, by and effective upon written notice to Grantee, terminate Grantor's obligation to disburse additional Grant funds to Grantee.

Section 5.3 **No Election Required.** Grantor shall have any other right or remedy provided in this Grant Agreement or any other Grant Document, or available at law, in equity, or otherwise in such order and manner as it may select.

Section 5.4 **Rights and Remedies Cumulative.** All rights and remedies described in this Article 6 are cumulative and in addition to any other remedy Grantor may have by agreement, at law, or in equity. Partial exercise of any right or remedy shall not limit or restrict Grantor's subsequent exercise of such right or remedy nor shall it restrict Grantor's contemporaneous or subsequent exercise of any other right or remedy.

Section 5.5 **No Waiver.** No failure on the part of Grantor to exercise, and no delay in exercising, any right, power, or privilege under this Grant Agreement shall operate as a waiver of that right or any other right. No modification or waiver of any provision of this Grant Agreement shall be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on Grantee shall entitle Grantee to any other notice or demand in other similar circumstances.

Section 5.6 **Payment of Costs of Collection.** In case of an Event of Default, or in case litigation is commenced to enforce or construe any term of this Grant Agreement or any other Grant Document, the losing party will pay to the prevailing party such amounts as shall be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees as approved by a court of competent jurisdiction and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

ARTICLE 6 MISCELLANEOUS

Section 6.1 **Counterparts.** This Grant Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

Section 6.2 **Survival.** All agreements, representations, and warranties shall survive the execution and delivery of this Grant Agreement, any investigation at any time made by Grantor or on its behalf and the making of the Grant.

Section 6.3 **Notice.** Any notice required or permitted under this Grant Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the parties as follows:

Grantee:

Allan Kimmel
1816 1st Street
Tillamook, OR 97141
Email: askimmel@charter.net

Grantor:

Tillamook Urban Renewal Agency
Attn: Debbi Reeves, Executive Assistant
210 Laurel Avenue
Tillamook, OR 97141
Email: dreeves@tillamookor.gov

Section 6.4 **Successors and Assigns.** Grantee may not assign this Grant Agreement, in whole or in part, without the prior written consent of Grantor. This Grant Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

Section 6.6 **Governing Law, Jurisdiction, Venue.** This Grant Agreement and the other Grant Documents shall be governed by and construed in accordance with the laws of the State of Oregon. Any legal action regarding this Grant Agreement be brought and conducted in the federal or state court, as appropriate, serving Tillamook County, Oregon, and the parties hereby consent to the jurisdiction and venue of such courts.

Section 6.7 **Modification; Prior Grant Agreements; Headings.** This Grant Agreement may not be modified or amended except by an instrument in writing signed by Grantee and Grantor. This Grant Agreement reflect and set forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersede all prior agreements and understandings relating to such subject matter. The headings in this Grant Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

Section 6.8 **Validity; Severability.** If any provision of this Grant Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Grant Agreement and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

Section 6.9 **Exhibits.** The exhibits to this Grant Agreement are, by this reference, incorporated into and deemed a part of this Grant Agreement as if they were fully set forth in the text hereof.

Section 6.10 **Time of Essence.** Time is of the essence of this Grant Agreement.

Section 6.11 **Relationship of the Parties.** Nothing contained in this Grant Agreement or any acts of the parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.

Section 6.12 **No Third Party Beneficiary Rights.** No person not a party to this Grant Agreement is an intended beneficiary of this Agreement, and no person not a party to this Grant Agreement shall have any right to enforce any term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by their duly authorized representatives effective as of the date first above written.

GRANTOR: Tillamook Urban Renewal Agency

GRANTEE: Allan Kimmel

By:

By:

Tom Connaughton - Chairman

Allan Kimmel - Owner

STATE OF OREGON)
) ss.:
County of _____

On this day before me, the undersigned Notary Public, personally appeared Allan Kimmel to me known to be the property owner of 1812 1st Street, Tillamook, OR 97141, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, my hand and official seal on this _____ day of _____, 2015.

By: _____
Notary Public for the State of Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.:
County of _____

On this day before me, the undersigned Notary Public, personally appeared Tom Connaughton to me known to be the Chairman of the Tillamook Urban Renewal Agency that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the agency, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, my hand and official seal on this _____ day of _____, 2017.

By: _____
Notary Public for the State of Oregon
My Commission Expires: _____

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EXHIBIT A

PROPERTY LEGAL DESCRIPTION 1812 1st Street, Tillamook OR

LEGAL DESCRIPTION OF THE LOTS ARE AS FOLLOWS:

PARCEL 1:

THE EAST 20 FEET OF LOT 5, AND ALL OF LOT 6, BLOCK 2, TOWN OF LINCOLN, NOW TILLAMOOK CITY, IN TILLAMOOK COUNTY, OREGON.
TOGETHER WITH THAT STRIP OF LAND 10 FEET WIDE AND 100 FEET LONG LYING BETWEEN LOTS 6 AND 7 IN SAID BLOCK 2.

PARCEL 2:

THE WEST 40 FEET OF LOT 7, BLOCK 2, TOWN OF LINCOLN, NOW TILLAMOOK CITY, IN TILLAMOOK COUNTY, OREGON.

PARCEL 3:

BEGINNING AT A POINT 58 FEET WEST OF THE SOUTHEAST CORNER OF BLOCK 2, TOWN OF LINCOLN, NOW TILLAMOOK CITY, IN TILLAMOOK COUNTY, OREGON; THENCE NORTH 100 FEET; THENCE WEST 2 FEET; THENCE SOUTH 100 FEET; THENCE EAST 2 FEET TO THE POINT OF BEGINNING; BEING ALSO DESCRIBED AS THE EAST 2 FEET OF THE WEST 42 FEET OF LOT 7, BLOCK 2, TOWN OF LINCOLN, NOW TILLAMOOK CITY, IN TILLAMOOK COUNTY, OREGON.

EXHIBIT B

PROJECT DESCRIPTION

Renovation plans for the vacant lot at 1812 1st Street, Tillamook, OR:

Renovate the lot for a food truck courtyard with plans for renting space to 6 - 9 food/beverage/vendor mobile units by adding water, sewer, and electricity hookups.

Add courtyard style seating with tables and places to sit along with a propane fire pit, a roof style overhead.

Add a restroom with one stall and warm running water.

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EXHIBIT C

ELIGIBLE PROJECT COMPONENTS

Component Description
Electrical Hookup
Electrical Installation
Trenching
Boring Under Road
Restroom Building
Plumbing Installation
Covered Area
Concrete Sawing

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