

TO: City Council for November 7, 2016, Council Meeting
FROM: Mary Steckel, Public Works Director *MS*
DATE: October 26, 2016
THROUGH: Mark W. Shepard, P.E., City Manager *MWS*
SUBJECT: Grouphead Coffee, LLC Proposed Airport Industrial Park Lease



Action Requested:

Staff recommends Council's approval of the lease of the city-owned building at 480 SW Airport Avenue in the Corvallis Airport Industrial Park to Grouphead Coffee, LLC.

Discussion:

Grouphead Coffee, LLC is a coffee roasting operation. The building and its surrounding property (approximately 0.25 acres) was last leased by Western ATM, but has been vacant since 2011. In winter of 2014 water pipes burst and caused considerable damage to the interior of the building.

The City has received bids to repair and upgrade the building to meet the prospective tenant's needs. The City will be able to recoup the cost of the improvements during the life of this lease. Before this work can begin, the City needs to finalize the lease commitment with the business.

The lease has been reviewed by the Airport Advisory Board and the Airport Industrial Park Project Review Department Advisory Committee. Both recommend approval of the lease.

Budget Impact:

This lease will generate revenue for the Airport Fund of \$9,600 in the first year; then \$12,000 annually for the next four years of the lease.

Attachment:

Grouphead, LLC Draft Lease

FOR COUNTY RECORDING ONLY

AFTER RECORDING RETURN TO CITY OF CORVALLIS
ENGINEERING DIVISION, CITY HALL, EXT 5057

LAND LEASE AGREEMENT CORVALLIS AIRPORT INDUSTRIAL PARK

THIS LEASE, made this _____ day of _____ 2016 is by and between the City of Corvallis, an Oregon Municipal Corporation, hereinafter referred to as the City, and **Grouphead Coffee LLC**, hereinafter referred to as the Lessee.

1. PREMISES

The Corvallis Municipal Airport/Industrial Park is owned and managed by the City of Corvallis and is operated as an Enterprise Fund, in that all fees, land leases and rent revenues are retained by the City for the exclusive operation of the Airport. The City, in consideration of the terms, covenants, and agreements herein contained on the part of the Lessee to be kept and performed, does hereby lease the City-owned building at 480 Airport Avenue and 0.25 acres, more or less, around the building at 480 SW Airport Avenue, Corvallis, OR located in the Corvallis Municipal Airport Industrial Park.

See attached Exhibit "A" legal description and Exhibit "B" site plan.

2. TERM

The Lessee shall have the right to possession, use, and enjoyment of the leased property for a period of 5 years, beginning on the date a Certificate of Occupancy is issued. Thereafter, the term of this lease may be extended by mutual approval of both parties, for up to four (4) additional five (5) year periods. Lessee shall notify the City, in writing, at least sixty (60) days prior to the termination date of this lease, of its intent to exercise this option. The City shall not withhold its approval for the extension unreasonably. Legitimate reasons for the City to withhold its approval would include but not be limited to: failure of Lessee to provide insurance; failure of Lessee to make timely payment of rent; or City's determination of a better use of the property.

3. RENT

A. Rental Rate. Lessee shall pay in advance, a monthly rent payment by the first day of each month beginning on the date of Certificate of Occupancy and continue on the first day of each month thereafter during the term of this lease. The monthly rate for the above-described land and building shall be \$800 per month for the first year, and \$1,000 per month for the subsequent 4 years. Rental payments are made payable to the City of Corvallis and are to be delivered in person or mailed to the City at the address given in Section 21 of this lease.

B. Rental Rate Adjustment. After the first 5 years the rental rate shall be increased annually utilizing the Year Ending December figure for the Consumer Price Index for All Urban Consumers, (CPI-U), West – B/C, with adjustments made the following July 1, commencing July 2023. The City shall give written notice to Lessee at least thirty (30) days in advance of the annual adjustment date.

C. Land Rental Rate Adjustment. Notwithstanding Section 3B above, every 5 years, beginning in 2022, the rate shall be adjusted per Council Policy 7.13, Municipal Airport and Airport Industrial Park Leases.

4. USE OF THE PROPERTY

A. Permitted Use. The property shall be used for any legal purpose permitted by applicable zoning laws, regulations and restrictions.

B. Conformance with Laws. Lessee shall conform to all applicable laws and regulations, municipal, state, and federal, affecting the premises and the use thereof. Lessee also agrees to comply with the Airport Industrial Park Development Plan and all applicable City Master Plans as adopted by City Council.

C. Nuisance. Lessee shall not use or permit the use or occupancy of the property for any illegal purposes (as defined by City of Corvallis Municipal Code Chapter 5), or commit or permit anything which may constitute a menace or hazard to the safety of persons using the property, or which would tend to create a nuisance, or that interferes with the safe operation of aircraft using the Corvallis Municipal Airport.

D. Hazardous Materials. Lessee shall not store or handle on the premises or discharge onto the property any hazardous wastes or toxic substances, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 to 9675, and as further defined by state law and the City's Sewer Regulations, Municipal Code Chapter 4.03 as amended, except upon prior written notification to the City and in strict compliance with rules and regulations of the United States and the State of Oregon and in conformance with the provisions of this lease. Any violation of this section may, at the City's option, cause this lease to be immediately terminated in accordance with the provisions of Section 17 of this lease.

Prior to beginning operations, Lessee shall allow the City to inspect the premises and approve its processes for storing and handling Hazardous Materials. Lessee shall at all times operate in accordance with City approved procedures, and shall maintain strict compliance with all federal, state, and local laws, ordinances, rules, and regulations regarding Hazardous Materials. Any violation of this section shall be grounds for termination of this lease as provided in Section 17, unless within ten (10) days of notification Lessee cures the violation or, if the violation is of such a nature that it cannot be remedied within ten (10) days, Lessee provides to City within (10) days satisfactory assurances, including financial assurances, that Lessee can and will correct the violation, and thereafter Lessee proceeds with reasonable diligence to do so. If the violation is caused by a discharge of a hazardous or toxic material or substance, the City shall have the right, at its option, to immediately take any action reasonably necessary to halt or remedy the discharge, at Lessee's sole expense.

E. Roads. Lessee shall be entitled to reasonable use for its purposes of the roads now existing and serving the leased property. The City may locate and relocate roads as desirable to

improve the Corvallis Municipal Airport and Industrial Park so long as reasonable and adjacent access is provided to Lessee on a continual basis.

F. Infrastructure Improvements. Lessee hereby irrevocably agrees to financially participate in the future improvements for public water, wastewater, storm drainage and transportation consistent with the South Corvallis Area Refinement Plan, Airport Master Plan, and Airport Industrial Park Development Plan. It is understood by Lessee that:

1. The cost of the improvements shall be born by the benefited property in accordance with state law, the Charter of the City of Corvallis and its ordinances and policies.
2. The City in its sole discretion may initiate the construction of all or part of the local improvements required, or may join all or part of Lessee's property with other property when creating a local improvement district.
3. Lessee and Lessee's heirs, assigns and successors in interest in the property shall be bound by this document which will run with the property and will be recorded by the City in the deed records of Benton County.
4. Lessee declares that the public improvements herein sought will directly benefit the described property.
5. Lessee shall not challenge the formation of a local improvement district and assessment of Lessee's leased property by City and in any proceedings therein will acknowledge this declaration if requested to do so by City.
6. In construing this section of the agreement singular words include the plural.

5. WATER, SEWER, AND DRAINAGE SYSTEMS

A. Water, Drainage, and Domestic Waste. The City agrees to provide the use and benefits of the public water, sewer, and drainage systems as they now exist or may be later modified. Conditions for the use of these systems shall be the same as the conditions and regulations applying within the corporate limits of the City of Corvallis, including any assessments or charges for any expansion or intensification of Lessee's use of the property.

B. Utility Bills. Water, sewer, and drainage charges shall be paid by the Lessee in addition to the basic monthly rental and at the same rates applicable within the corporate limits of the City of Corvallis. The Lessee shall promptly pay all water, sewer, and drainage charges, and all other utility charges, for the premises as they come due.

C. Prohibited Discharges. Discharge of industrial waste, as that term is defined in the City of Corvallis Sewer Use Municipal Code, Chapter 4.03 (as presently constituted or as amended hereafter), into the sanitary sewer system, drainage system, surface ponds or ditches, or elsewhere is specifically prohibited, except as permitted by a valid Industrial Wastewater Discharge Permit in strict accordance with the Sewer Use Ordinance and applicable state and federal laws. Violation of any provision contained in City of Corvallis Sewer Use Municipal Code, Chapter 4.03 (as presently constituted or as amended hereafter), may cause this lease to be immediately terminated in accordance with the provisions of Section 17 of this lease.

D. General Information Survey. As a condition of entering into this lease, the Lessee shall submit to the City a completed, signed General Information Survey, in accordance with the industrial waste provisions of the City of Corvallis Sewer Use Municipal Code, Chapter 4.03 (as presently constituted or as amended hereafter). The survey shall be submitted to the City at the time that this lease is signed.

E. Discharge Response Procedures. In the event of any discharge or spill of noxious or hazardous material into the environment, sewer system, or drainage system, Lessee shall immediately notify the Oregon Department of Environmental Quality and the City. The City and any appropriate state or federal agency shall have the right to inspect the premises immediately to determine if the discharge or spill constitutes a violation of any local, state, or federal laws, rules, or regulations. If a violation exists, the City shall notify the Lessee of the specific violations and Lessee shall immediately cease all activities and use of the property until the violations are remedied, all at the Lessee's sole cost and expense and without expense whatsoever to the City.

F. South Corvallis Drainage Master Plan. Lessee hereby agrees to comply with the requirements of the "South Corvallis Drainage Master Plan", approved by the City Council during February 1997. Future improvements within the Industrial Park in compliance with the approved drainage plan may include parcel assessments or charges. Conditions and regulations for any assessment or charges shall be similar to those conditions or regulations applying within the corporate limits of the City of Corvallis.

6. DEVELOPMENT STANDARDS

This agreement is made subject to the terms and conditions as referenced in the Airport Industrial Park Development Plan. In addition, compliance with all Corvallis development regulations is required relative to the City's Land Development Code (LDC). Where not otherwise specified by the Airport Handbook, the County's zoning provisions shall apply. Enforcement of development provisions is the responsibility of the City's Development Services Division and Airport Industrial Park Project Review Department Advisory Committee.

7. ALTERATIONS AND IMPROVEMENTS

A. Right to Construct. The Lessee, at its own expense, may construct tenant improvements on the leased property, subject to Lessee's compliance with all applicable city, county, and state laws and regulations and issuance of necessary building permits. Lessee shall notify City of any planned improvements and if City doesn't object within ten (10) business days, Lessee may proceed.

B. Ownership of Improvements. Any improvements constructed by the Lessee on the leased property during the term of this lease shall belong to the Lessee and may be removed by the Lessee at will. Lessee shall have the right to enter the premises during the thirty-day period following termination of this lease to remove any of its property or other improvements, on the leased premises. If, after thirty days after termination of the lease, any of said property remains on the premises, the City may retain the property, or, at its option, remove the property at the Lessee's expense.

8. ENTRY ON PROPERTY

A. Right to Inspect. The City shall have the right to enter the property at any reasonable time or times to examine the condition of the premises or Lessee's compliance with the terms of this lease.

B. Access. The City retains the right to enter the leased premises at any reasonable time or times to repair or modify City buildings and/or utilities located upon the property or to conduct repairs or other work on the property, provided such repairs or modifications shall be scheduled with Lessee to minimize any disruption to Lessee's business operations.

9. ASSIGNMENT AND SUBLETTING

The Lessee shall not assign or sublease this lease without the prior written consent of the City; provided, however, that the City shall not unreasonably withhold such consent. Lessee shall have the right to sublet space within any building on the leased premises to others, subject to the following conditions:

1) No sublease shall relieve Lessee from primary liability for any of its obligations under this lease, and Lessee shall continue to remain primarily liable for payment of rent and for performance and observance of its other obligations and agreements under this lease.

2) Every sublease shall require the sub-lessee to comply with and observe all obligations of the Lessee under this lease, with the exception of the obligation to pay rent to the City.

10. LIENS

The Lessee shall promptly pay for any material and labor used to improve the leased property and shall keep the leased property free of any liens or encumbrances.

11. INSURANCE

A. Coverage Requirements. The Lessee shall purchase and maintain commercial liability insurance coverage. The limit of liability shall be no less than \$500,000 for any claims arising from a single accident or occurrence. In addition, if the insurance policy contains an annual aggregate limit, the aggregate shall not be less than \$1,000,000. The policy shall name the City of Corvallis, its officers, agents, and employees as an additional insured.

B. Certificate of Insurance. At the time that this lease is signed, the Lessee shall provide to the City a certificate of insurance complying with the requirements of this section and indicating that insurer will provide the City with 30 days notice prior to cancellation. A current certificate shall be maintained at all times during the term of this lease.

12. HOLD HARMLESS

A. General. The Lessee shall at all times indemnify, protect, defend, and hold the City of Corvallis, its officers, agents, invitees and employees harmless from any claims, demands, losses, actions, or expenses, including attorney fees, to which the City may be subject by reason of any property damage or personal injury arising or alleged to arise from the acts or omissions of the Lessee, its agents, or its employees, or in connection with the use, occupancy, or condition of the

property. Likewise, the City shall at all times indemnify, protect, defend and hold Lessee, its officers, agents, assignees, invitees and employees harmless from any claims, demands, actions or expenses, including attorney fees, to which Lessee may be subject by reason of any property damage or personal injury arising or alleged to arise from the actions or omissions of, or entry onto the leased premises by, the City, its officers, agents, invitees or employees, or in connection with the repair, maintenance modification or other work the City may undertake that in any way relates to or affects the leased premises, including without limitation, the work, repair and modification provided for under Section 8B of this lease.

B. Environmental Protection. The Lessee shall be liable for and shall hold the City harmless from, all costs, fines, assessments, and other liabilities arising from Lessee's use of the premises during this and all prior leases for this site resulting in the need for environmental cleanup under state or federal environmental protection and liability laws, including, but not limited to, costs of investigation, remedial and removal actions, and post-cleanup monitoring arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 to 9675, as presently constituted or hereafter amended.

City shall defend and hold the Lessee harmless from all costs, expenses, fines, assessments, attorney or other fees and other liabilities arising from the use of the premises by any persons or entities prior to the execution of this lease, except for any contamination caused by the Lessee during the initial term of this lease or any prior leases as a result of the Lessee's activities resulting in the need for environmental clean-up under City, State, Federal environmental protection and liability laws, including, but not limited to, costs of investigation, remedial and removal actions, and post clean-up monitoring including but not limited to liability arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 to 9674, as presently constituted or hereafter amended.

13. NONDISCRIMINATION

The Lessee agrees that no person shall be excluded from the use of the premises based on age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income. Such discrimination poses a threat to the health, safety and general welfare of the citizens of Corvallis and menaces the institutions and foundation of our community.

14. CONDITIONS ON PROPERTY BY THE UNITED STATES OF AMERICA

This agreement is made subject to the terms and conditions and restrictions of transfer recorded in Book 121, Page 40 and Book 125, Page 239, deed records of Benton County, Oregon, as modified by the Instrument of Release recorded in Book 182, Page 238 of said deed records.

15. WAIVER OF BREACH

A waiver by the City of a breach of any term, covenant, or condition of this lease by the Lessee shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition of the lease.

16. DEFAULT

A. Declaration of Default. Except as otherwise provided in this lease, the City shall have the right to declare this lease terminated and to enter the property and take possession upon either of the following events:

1. Rent and Other Payments. If the monthly rent or any other payment obligation provided hereunder to the City, including but not limited to property taxes and utility bills, remains unpaid for a period of sixty (60) days after it is due, un-protested and payable, if not corrected after ten (10) days written notice by the City to Lessee; or
2. Other Obligations. If any other default is made in this lease and is not corrected after thirty (30) days written notice to the Lessee. Where the default is of such nature that it cannot reasonably be remedied within the thirty (30) day period, the Lessee shall not be deemed in default if the Lessee proceeds with reasonable diligence and good faith to effect correction of the default.

B. Court Action. It is understood that either party shall have the right to institute any proceeding at law or in equity against the other party for violating or threatening to violate any provision of this lease. Proceedings may be initiated against the violating party for a restraining injunction or for damages or for both. In no case shall a waiver by either party of the right to seek relief under this provision constitute a waiver of any other or further violation.

17. TERMINATION

A. Immediate Termination. Where a specific violation of this lease gives the City the option to terminate this lease immediately, this lease shall be terminated upon written notification to the Lessee.

B. Termination Upon 30 Days Default. In the event of any other default under Section 17 of this lease, the lease may be terminated at the option of the City upon written notification to the Lessee as provided herein.

C. Surrender Upon Termination. Upon termination or the expiration of the term of the lease, the Lessee will quit and surrender the property to the City in as good order and condition as it was at the time the Lessee first entered and took possession of the property under this or a prior lease, usual wear and damage by the elements excepted.

D. Restoration of Property. Upon termination or expiration of this lease or Lessee's vacating the premises for any reason, the Lessee shall, at its own expense, remove and properly dispose of all tanks, structures, and other facilities containing waste products, toxic, hazardous, or otherwise, which exist on the leased property or beneath its surface and did not pre-exist the commencement of this lease. Lessee shall comply with all applicable state and federal requirements regarding the safe removal and proper disposal of said facilities containing waste products. If the Lessee fails to comply or does not fully comply with this requirement, the Lessee agrees that the City may cause the waste products and facilities to be removed and properly disposed of, and further Lessee agrees to pay the cost thereof with interest at the legal rate from the date of expenditure.

E. Holding Over. No holding over upon expiration of this lease shall be construed as a renewal thereof. Any holding over by the Lessee after the expiration of the term of this lease or any extension thereof shall be as a tenant from month to month only and not otherwise, and the exercise of rights provided under Section 7B shall not be deemed a holding over.

18. RECORDING FEES

The lease will be recorded with the Benton County Assessor's Office and the Lessee shall be responsible for paying all associated fees.

19. ATTORNEY FEES

If any 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 damages and costs, such sum as the trial court or appellate court, as the case may be, may adjudge reasonable as attorney fees.

20. NOTICE

When any notice or anything in writing is required or permitted to be given under this lease, the notice shall be deemed given when actually delivered or 48 hours after deposited in United States mail, with proper postage affixed, directed to the following address:

City
City of Corvallis
Public Works Department
Attention: Airport Manager
P.O. Box 1083
1245 NE 3rd St.
Corvallis, Oregon 97339-1083
541-766-6916

Lessee
Grouphead Coffee, LLC
Attention: Daniel Richard Bruner
1320 NW 27th Street
Corvallis, OR 97330

IN WITNESS WHEREOF, the parties hereto have executed this lease the date and year first written below.

DATED this _____ day of _____, 2016.

DANIEL RICHARD BRUNER, OWNER
GROUPHEAD COFFEE, LLC

STATE OF OREGON)
) ss.
COUNTY OF BENTON)

Personally appeared the above-named Daniel Richard Bruner, who acknowledged he is the OWNER and he accepted the foregoing instrument on behalf of **Grouphead Coffee, LLC**. Before me this _____ day of _____, 2016.

NOTARY PUBLIC FOR OREGON

My Commission Expires _____

ACCEPTED BY:
CITY OF CORVALLIS, OREGON

STATE OF OREGON)
) ss.
County of Benton)

By: _____
Mark W. Shepard, CITY MANAGER

Personally appeared the above-named Mark W. Shepard, who acknowledged he is the City Manager of CORVALLIS and he accepted the foregoing instrument on behalf of the City of CORVALLIS by authority of its City Council.

Before me this _____ day of _____, 2016.

NOTARY PUBLIC FOR OREGON

My Commission Expires _____

Approved as to form:

City Attorney Date

**Lease Parcel
Exhibit "A"**

A Parcel of Land , Located in the South East 1/4 of Section 22, Township 12 South, Range 5
West, Willamette Meridian, Benton County, Oregon.

Beginning at a 5/8" iron rod on the East line of the Southern Pacific Transportation Company's railroad right-of-way (a 60 foot right-of-way) at the intersection of the north right-of-way of Airport road (C.R. 25280) (a 60 foot right of way) said iron rod being North 0° 05' East a distance of 1205.49 feet, and 2,609 feet East from the Southeast corner of the Alfred Rinehart D.L.C. No.73, Located in T12S, R5W, W.M., Benton County, Oregon; thence North 89°52'00" East a distance of 355.92 feet along the North right-of-way of said Airport Road to The **True Point of Beginning**; thence North 89°52'00" East along said North right-of-way a distance of 50.24 feet to a point; thence North 00°09'59" East a distance of 137.87 feet to a point; thence North 89°54'13" West a distance of 50.24 feet to a point; thence South 00°09'59" West a distance of 138.08 feet to the **Point of Beginning**; containing 6932 square feet more or less.

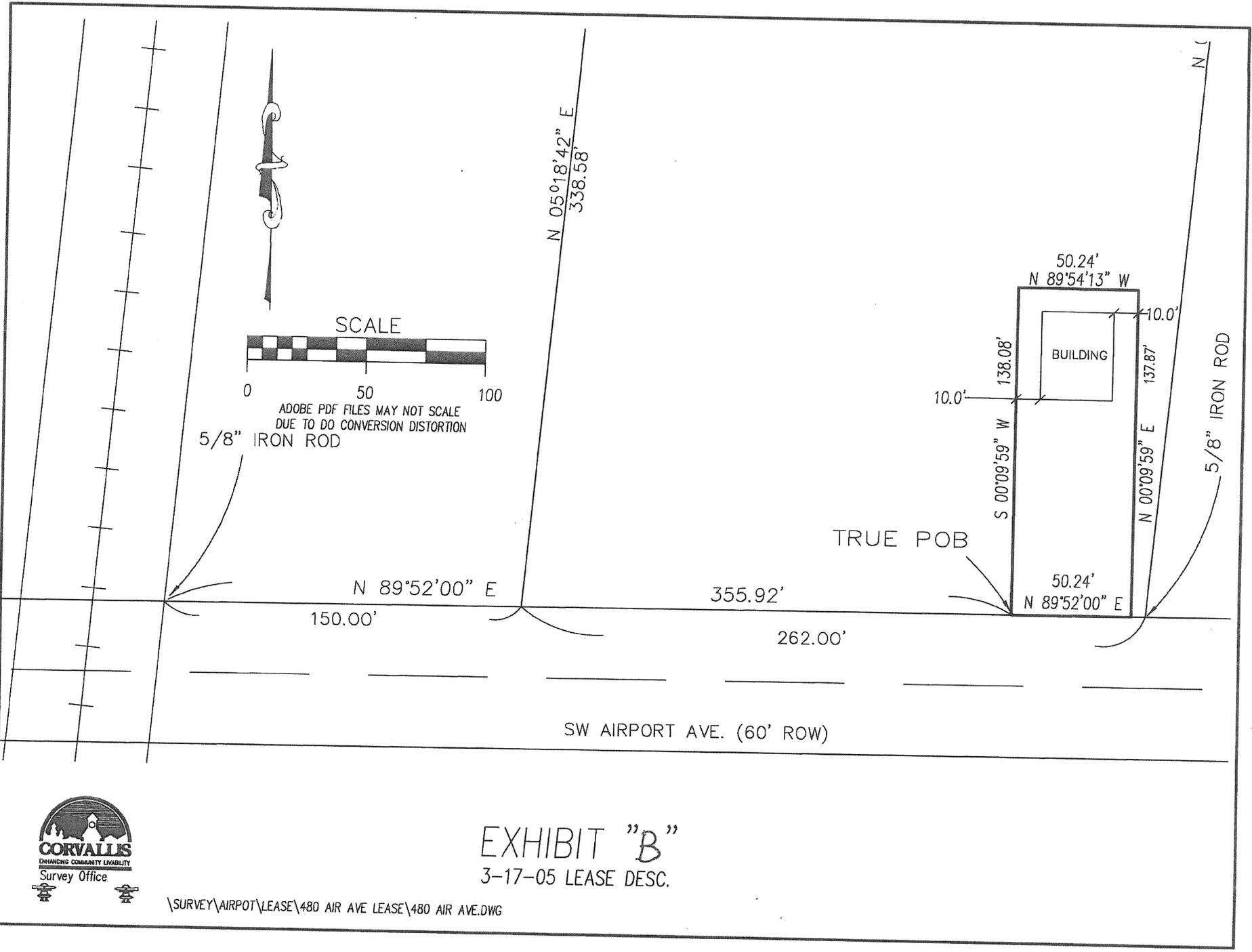


EXHIBIT "B"
 3-17-05 LEASE DESC.

\SURVEY\AIRPOT\LEASE\480 AIR AVE LEASE\480 AIR AVE.DWG