

## **PARKING SUBLEASE AGREEMENT**

This Parking Sublease Agreement (“**Agreement**”) is entered into on November \_\_, 2016 (“**Effective Date**”), by and between the City of Fort Bragg, 416 N. Franklin Street, Fort Bragg, California 95437, a municipal corporation (“**City**”) and North Coast Brewing Co., Inc., 455 N. Main Street, Fort Bragg, California 95437, a California corporation, (“**NCBC**”). City and NCBC are hereinafter referred to individually as “**Party**” and collectively as the “**Parties**.”

### **Recitals**

WHEREAS, City currently leases parking spaces in that certain parking lot located between Laurel and Pine Streets and west of Main Street in the City of Fort Bragg, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (“**Parking Lot**”) pursuant to a Parking Lease Agreement entered into on October 1, 2008 by and between the Mendocino Railway and the City (“**Parking Lot Lease**”); and

WHEREAS, NCBC desires to lease from City a portion of the parking spaces leased by the City under the Parking Lot Lease for its exclusive use as employee parking, pallet storage, truck loading, and similar business uses; and

WHEREAS, the City desires to lease to NCBC for its exclusive use a portion of the parking spaces leased by the City under the Parking Lot Lease;

NOW THEREFORE, in consideration of the recitals and obligations of the Parties herein expressed, City and NCBC hereby agree as follows:

### **Agreement**

#### **1. LEASED PREMISES.**

City hereby leases to NCBC and NCBC hereby leases from City those certain 12 spaces in the Parking Lot, as more particularly shown in Exhibit B attached hereto and incorporated herein by this reference (“**NCBC Parking Space**”).

#### **2. TERM**

The term of this Agreement (“**Term**”) shall commence on the Effective Date and shall expire on October 1, 2018.

#### **3. RENT**

NCBC shall pay an annual rent, calculated on a monthly basis of \$25 per parking space. The first annual payment is due within ten (10) business days of the Effective Date, and the second annual payment is due within ten (10) business days of the anniversary of the Effective Date. The second annual payment shall be increased to \$27 per parking space per month.

In the event of an early termination of this Agreement, the City shall have 60 days to rebate a pro-rated portion of the rent to reflect the period paid for but no longer leased.

#### 4. USE

NCBC shall be entitled to use the NCBC Parking Space for its normal business needs, subject to the following limitations: a) its use shall not interfere with the use of the Parking Lot as a whole, and b) its use shall comport with the limitations of the Parking Lot Lease, including without limitation the prohibition on commercial truck parking in the Parking Lot except in the NCBC Parking Space and the use, generation, manufacturing, production, storage, release, discharge, disposal, or transportation of any Hazardous Substance.

A. Both the City of Fort Bragg and Mendocino Railway authorize NCBC to utilize the space specified in the Sub Lease for its normal business operations. This includes company equipment, passenger vehicles, commercial trucks, etc. At no time shall any equipment or vehicles be stored or parked outside of the area specified in the Agreement.

#### 5. "AS-IS" CONDITION OF NCBC PARKING SPACE

NCBC acknowledges and agrees that, except as expressly set forth in this Agreement, City has made, and is making, no representations or warranties of any kind or nature whatsoever respecting the NCBC Parking Space or any part thereof, including, without limitation, the condition of the NCBC Parking Space, the suitability of the NCBC Parking Space for the conduct of NCBC's business thereon, or any other matters (whether or not of public record) respecting the NCBC Parking Space. NCBC acknowledges and agrees that, prior to entering into this Agreement, it has examined and inspected the NCBC Parking Space and has performed such tests and studies and has reviewed all such matters respecting the NCBC Parking to the full extent NCBC has deemed necessary, and that in entering into this Agreement (except as otherwise expressly provided herein), NCBC is not relying upon any representation or warranty of any kind or nature whatsoever by City and that the NCBC Parking Space is acceptable to NCBC in all respects and NCBC is accepting the NCBC Parking Space in its "AS-IS" condition.

#### 6. MAINTENANCE AND REPAIR; IMPROVEMENTS

City shall be responsible for ongoing maintenance, repairs, and improvements to the Parking Lot, inclusive of the NCBC Parking Space, in accordance with and as limited by the Parking Lot Lease, except as otherwise specified in this Section or Section 10. NCBC shall not make any alternations, improvements, or repairs to the NCBC Parking Space without the prior written consent of the City.

A. If the NCBC Parking Space is damaged by NCBC, City is entitled to recover any such amounts incurred in repairing such damage from NCBC.

B. It is anticipated that the NCBC Parking Space will be marked by appropriate signage. City shall install all necessary signage and NCBC shall reimburse the City for its costs. At the termination of the Agreement, NCBC shall be responsible for the costs associated with the City's removal of the signage.

#### 7. PARKING REGULATION ENFORCEMENT

It shall be NCBC's responsibility to clearly indicate the approved use of the NCBC Parking

Space by its agents, owners, invitees, employees, or similar, and shall communicate to the City how it intends to indicate approved use. By way of example, indication may be by the issuance of parking passes to vehicles authorized by NCBC to park in the NCBC Parking Space.

City shall be responsible for all parking regulation enforcement, for example, by the ticketing or removal of vehicles not displaying a NCBC Parking Space pass.

#### 8. RIGHT TO ENTER

The City shall have the right to enter the NCBC Parking Space at all reasonable times for the purposes of inspection, maintenance, repair, or parking regulation enforcement.

#### 9. INSURANCE

NCBC shall procure and maintain at its sole expense a commercial general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000) per occurrence against the risk of bodily injury, property damage, and personal injury liability and shall name the City as an additional insured. City and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of NCBC, products and completed operations of NCBC; premises owned, occupied, or used by NCBC; and automobiles owned, leased, or used by NCBC. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers. All policies of insurance shall be maintained with financially sound and responsible insurance companies reasonably acceptable to City and which are admitted to do business as an insurance company in the State of California. NCBC shall provide the City with copy of the insurance at the Effective Date and shall promptly provide updated and renewed copies when received.

#### 10. INDEMNITY

NCBC shall indemnify, protect, defend and hold harmless City, and its elected and appointed officials, officers, agents and employees (collectively, the "**Indemnified Parties**"), from and against any and all claims, actions, liabilities, damages, losses, judgments, costs and expenses (including reasonable attorneys' fees and costs), (collectively "**Claims**") which the Indemnified Parties, or any of them, may suffer or incur arising from any default by NCBC under this Agreement or from NCBC's use of the NCBC Parking Space or from the conduct of NCBC's business or from any activity, work or things done, permitted or suffered by NCBC in or about the NCBC Parking Space, and shall further indemnify, protect, defend and hold harmless the Indemnified Parties, and each of them, from and against any Claims arising from any negligence of NCBC, its agents, contractors, servants, employees, or licensees; provided, that the foregoing indemnity shall not extend to any Claims to the extent arising from the grossly negligent, willful or intentional acts or omissions of the Indemnified Parties, or any of them, as to all of which Claims City shall indemnify, protect, defend and hold harmless NCBC.

#### 11. ASSIGNMENT AND SUBLETTING

NCBC shall not be permitted to sublet all or any portion of the NCBC Parking Space, nor shall NCBC be permitted to assign its interest in this Agreement without City's prior, written

approval. In the event of any subletting of all or any portion of the NCBC Parking Space by NCBC and/or any assignment or attempted assignment of this Agreement by NCBC in violation of the provisions of this Section, City shall be entitled to all remedies provided for in California Civil Code section 1995.320.

## 12. NO OBSTRUCTION/INTERFERENCE

NCBC shall not interfere with use of the Parking Lot, exclusive of the NCBC Parking Space, by the general public. No walls, fences, or barriers of any sort or kind shall be constructed or maintained by a Party within the Parking Lot; provided, however, that reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic or for security purposes may be installed, so long as access and use of such areas is not unreasonably impaired.

## 13. TERMINATION

This Agreement shall automatically terminate with the termination of the Parking Lot Lease on October 1, 2018. This Agreement may also be terminated by either Party with 90 days' written notice.

## 14. REPRESENTATIONS

The Parties hereby represent and warrant that all of the following are true and correct as of the Effective Date:

A. The Party making the representation ("**Representing Party**") has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the Representing Party enforceable against the Representing Party in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

B. The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the Representing Party or any provision of any indenture, agreement or other instrument to which the Representing Party is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the Representing Party.

## 15. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

## 16. NOTICES

All notices required to be sent in writing shall be sent by United States certified mail or by personal delivery, effective upon delivery, to the address provided hereunder. The Parties may change this notice address upon written notice to the other Party.

City:

City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, CA 95437  
Attention: City Manager  
(707) 545-8009

North Coast Brewing Co., Inc.:

North Coast Brewing Co., Inc.  
455 N. Main Street  
Fort Bragg, CA 95437  
Attention: President  
(707) 964-2739

With copy to:

Samantha Zutler, City Attorney  
Burke, Williams & Sorensen, LLP  
101 Howard Street, Suite 400  
San Francisco, CA 94105  
(415) 655-8100

## 17. CAPTIONS; CONSTRUCTION

The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

## 18. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

## 19. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Mendocino County, California.

## 20. ATTORNEYS' FEES

If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.

21. INDEMNITY INCLUDES DEFENSE COSTS

In any case where either Party is obligated under an express provision of this Agreement, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

22. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties, any rights or remedies hereunder.

23. ENTIRE AGREEMENT; MODIFICATION

This Agreement, together with Exhibit A and Exhibit B which by this reference are hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

This Agreement may be amended or modified only by a written instrument executed by the Parties.

24. WAIVER

No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party.

25. TIME IS OF THE ESSENCE.

Time is of the essence of this Agreement and of each provision hereof.

26. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

27. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.

No member, official, employee or agent of City shall be personally liable to NCBC or its successors in interest in the event of any default or breach by City or for any amount which may become due to NCBC pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first shown above:

CITY OF FORT BRAGG

By: Linda Ruffing  
Linda Ruffing, City Manager

NORTH COAST BREWING COMPANY

By: Mark R. Ruedrich  
Mark Ruedrich, President

ATTEST:

June Lemos  
June Lemos, City Clerk

APPROVED AS TO FORM:

see attached signature  
Samantha W. Zutler, City Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first shown above:

CITY OF FORT BRAGG

NORTH COAST BREWING COMPANY

By: \_\_\_\_\_  
Linda Ruffing, City Manager

By: \_\_\_\_\_  
Mark Ruedrich, President

ATTEST:

\_\_\_\_\_  
June Lemos, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Samantha W. Zutler, City Attorney



# EXHIBIT A

## Legal Description of Parking Lot

008-053-29  
A.P.N.: 005-149-08

File No.: 2306-1301837  
(DN)  
Date: 04/14/2004

Beginning at U.S.C. & G.S. Station "Soldier;" thence North 54° 31' 38" East, bearings based on the Grid Meridian (State Plane Coordinates) North 3,856.96 feet to the True Point of Beginning a 3/4" rebar L.S. 4455; thence North 04° 59' 33" West, 170.31 feet to a 3/4" rebar L.S. 4455; thence North 0° 56' 11" East, 215.00 feet to a 3/4" rebar L.S. 4455, hereinafter known as "Point A," said point is the beginning of a tangent curve of 387.31 feet radius, concave Southeasterly; thence Northeasterly through a central angle of 18° 52' 22" a distance of 127.58 feet to a 3/4" rebar L.S. 4455 at the beginning of a non-tangent line bearing North 12° 56' 20" West, thence along said line 23.98 feet to the Southeast corner of a concrete fuel tank enclosure; thence South 77° 18' 00" West 49.95 feet to a "PK" Nail and L.S. 4455 tag at the Southwest corner said enclosure; thence North 12° 55' 37" West 24.00 feet to the Northwest corner said enclosure; thence North 77° 18' 00" East, 49.95 feet to a "PK" Nail and L.S. 4455 tag at the Northeast corner said enclosure; thence North 20° 26' 46" East, 85.46 feet to a "PK" Nail and L.S. 4455 tag in a concrete footing of a cyclone fence post; thence North 70° 43' 18" East, 30.18 feet to a "PK" Nail and L.S. 4455 tag in another concrete footing of a cyclone fence post, hereinafter known as "Point B," thence North 67° 45' 41" East, 69.81 feet to a "PK" Nail and L.S. 4455 tag in a third concrete footing of a cyclone fence post; thence North 39° 34' 19" East 221.07 feet to a 3/4" rebar tagged L.S. 4455 on the South line of Pine Street; thence South 88° 27' 14" East 113.71 feet along said South line to a "PK" Nail and L.S. 4455 tag; thence South 01° 32' 46" West, 275.00 feet along the Westerly boundary of City Lots; #16, #15, #14, #13, #12 and #11 of Block #14; thence North 88° 27' 14" West 50.00 feet to a 3/4" rebar tagged L.S. 4455; thence South 01° 32' 47" West, 185.55 feet to the South line of Laurel Avenue; thence along said South line North 88° 41' 11" West, 39.96 feet to a "PK" Nail and Brass Washer stamped L.S. 3184 on the Northerly boundary of property conveyed to the City of Fort Bragg in Record of Survey filed in Map Case 2, Drawer 42, page 75, Mendocino County Records; thence along the Westerly boundary said Record of Survey. The following courses and distances:

South 01° 18' 49" West, 7.01 feet; South 33° 21' 13" West, 18.01 feet; South 01° 18' 49" West, 16.06 feet; South 89° 15' 40" West, 54.70 feet; South 00° 21' 27" West, 198.73 feet; to a 3/4" rebar L.S. 3184 at the Southwest corner of property conveyed to the City by said Record of Survey; thence North 88° 41' 11" West, 2.83 feet to a 3/4" rebar tagged L.S. 3184 at the Northwest corner of property conveyed to Daly Eureka Corporation in Record of Survey filed in Map Case 2, Drawer 42, page 59, Mendocino County Records; thence along the Westerly boundary said Record of Survey, the following courses and distances:

South 01° 11' 41" West, 40.72 feet; North 88° 17' 49" West, 18.18 feet; South 01° 30' 45" West, 72.30 feet; to a 3/4" rebar tagged L.S. 4455; thence North 89° 19' 16" West, 31.70 feet, leaving said Westerly boundary to a point on the Easterly boundary of a Parking Area, leased by Daly Eureka Corporation from George-Pacific as shown on Record of Survey filed in Map Case 2, Drawer 42, page 59; thence along said Lease boundary the following courses and distances:

North 01° 01' 21" East, 37.55 feet; North 89° 39' 42" West, 13.55 feet; North 00° 48' 38" East, 59.39 feet; to the Northeast corner Parking Lease Area, hereinafter known as "Point C," thence continuing North 00° 48' 38" East, 160.86 feet to a 3/4" rebar tagged L.S. 4455; thence North 88° 36' 24" West, 75.06 feet to a 3/4" rebar tagged L.S. 4455; thence South 01° 19' 53" West, 63.35 feet to a "PK" Nail and L.S. 4455 tag in concrete; thence North 88° 40' 13" West, 2.50 feet to a 3/4" rebar tagged L.S. 4455; thence South 11° 50' 48" West, 94.29 feet to a "PK" Nail and L.S. 4455 tag in concrete footing of a cyclone fence; thence South 01° 57' 25" West, 139.33 feet to a 3/4" rebar tagged L.S. 4455; thence North 86° 18' 13" West, 41.31 feet to the True Point of Beginning.

**EXHIBIT B**  
**Diagram of NCBC Parking Space**

See Attachment



Google earth

miles  
km



- SKUNK TRAIN DEPOT PARKING LOT
- CITY OF FORT BRAGG PARKING LOT LEASE AREA
- NORTH COAST BREWERY-PARKING SUB-LEASE AREA