

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING THE) RESOLUTION NO. 02-3216A
PLAZA BUILDING SURPLUS PROPERTY,)
EXEMPTING THE TENANT FROM PAYING) Introduced by Mike Burton
EXCISE TAX, AND AUTHORIZING THE) Executive Officer
EXECUTION OF A LEASE WITH BIG TOWN
HERO

WHEREAS, Metro owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), and a self contained space situated in the northwest corner of the Metro Regional Center hereinafter referred to as the "Plaza Building" including use of a Patio for outdoor dining (collectively, the "Premises").

WHEREAS, Metro currently does not use the Plaza Building for its operations and has leased the Plaza Building to tenants in the past, and

WHEREAS, Metro has budgeted revenue in anticipation of leasing the Plaza Building and will receive excise tax on the lease payments, and

WHEREAS, the tenant provides Metro with a lease payment and is not providing a Metro good or service and is not willing to pay Metro excise tax on tenants gross revenues, and

WHEREAS, Big Town Hero desires to lease the Premises from Metro at market rates, conditioned on an exemption from Metro excise tax; now therefore

BE IT RESOLVED:

That the Metro Council,

1. Declares the Plaza Building as surplus property, and
2. Exempts Big Town Hero from Metro excise tax on operators and users of Metro facilities, (excise tax will be received on lease payments to Metro), and
3. Authorizes the Executive Office to enter in a lease agreement substantially similar to the lease agreement attached as Exhibit A with Big Town Hero.

ADOPTED by the Metro Council this 5th day of September, 2002.

Susan McLean Dep.
Carl Hosticka, Presiding Officer Presiding

Approved as to Form:

[Signature]
Daniel B. Cooper, General Counsel

Exhibit A

Contract No.

PLAZA BUILDING LEASE

THIS LEASE made as of this _____ day of _____ 2002, between METRO, hereinafter referred to as "Landlord," whose address is 600 N.E. Grand Avenue, Portland, OR 97232-2736, and the Big Town Hero, ADDRESS hereinafter referred to as "Tenant. "

RECITALS

1. Landlord owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), and desires to lease to Tenant a self contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, located at 600 N.E. Grand Avenue and further described in Exhibit "A" "Partial Floor Plan" and hereinafter referred to as the "Plaza Building" including use of a Patio for outdoor dining (collectively, the "Premises").
2. Tenant desires to lease a the Premises from Landlord.
3. The parties desire to enter into the below set forth agreement defining the terms of the Lease.

In consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION 1. Premises: Tenant leases from Landlord the Plaza Building as depicted in Exhibit "A", including the rights to shared use of the common area (hereafter, the "Patio") (collectively, the "Premises") with Landlord its officers, employees, and contractors and the public, subject to the terms set forth herein.

SECTION 2. Term; Possession:

2.1 **Term.** The Initial Lease Term ("Initial Term") shall commence August 1, 2002 (the "Commencement Date") and continue through July 30, 2007, unless sooner terminated pursuant to the terms hereof. A "Lease Year," as such term is used herein, shall run from the Commencement Date or its anniversary ("Anniversary") until the day immediately preceding the next Anniversary.

2.2 **Delivery of Possession.** Land lord will deliver possession of the Premises to Tenant (the "Possession Date") on the Commencement Date. Tenant's obligation to pay Base Rent hereunder begins six months days after the Possession Date. Tenant shall not have the right to terminate this Lease because of delay in the delivery of possession for any reason, unless possession is delayed beyond January 1, 2003; provided that Tenant shall have no right to terminate if said delay is caused by the direct action or inaction of Tenant. In order to exercise the limited right to terminate provided for by the previous sentence, Tenant shall, at its option, give written notice to Landlord of the termination prior to the delivery of possession to Tenant, thereby terminating its future obligations under this Lease; provided, however, that Landlord shall not be liable to Tenant for any damages, but shall be required to return Tenant's security deposit and prepaid rent. Notwithstanding the above, if possession is not delivered to Tenant on or before the Commencement Date, Tenant's obligation to pay Base Rent will be delayed until possession is delivered.

2.3 **Tenant's Work.** On the Possession Date, Landlord will notify Tenant that the Plaza Building is ready for Tenant to begin work and installation of Tenant's improvements, personal property and performance of other work. Tenant will apprise Landlord of the date when the Premises are then expected to be ready for occupancy; however, Tenant acknowledges the advisability of commencing space planning, fixture construction and other activities well in advance of the expected Possession Date. Tenant will promptly perform the work, if any, required to ready the Premises for Tenant's possession and use, in accordance with the terms attached as Exhibit "B." Landlord shall be required to perform only such work to ready the Premises for Tenant's occupancy as is set forth in Exhibit "B. "

Exhibit A

SECTION 3. Rent. Tenant shall pay to Landlord the Base Rent monthly for the Premises and any additional rent provided herein without deduction or offset. Rent for any partial month during the term shall be prorated to reflect the number of days during the month the Tenant occupies the Premises. "Additional Rent" means amounts determined under Paragraph 4 of this Lease.

3.1 **Initial Term Base Rent.** The Initial Term Base Rent is based upon an initial fair market rate of \$16.50 per square foot per year for comparable ground floor, storefront retail space on 1,600 square feet of leased space. Base Rent for the first six (6) months of the first Lease Year of the Initial Term shall be zero. Base Rent for the remaining six (6) months of the first Lease Year of the Initial Term shall be the amount of \$13,200.00, or \$2,200.00 per month. Base Rent for the Second and Third Lease Year of the Initial Term shall be the amount of \$26,400.00, or \$2,200.00 per month. Tenant acknowledges that the Base Rent for the first Lease Year of the Initial Term, as well as rent for all subsequent years of the Lease, is computed based on the square footage of the Plaza Building.

3.2 **Initial Term Rent Escalator.** Base Rent for the Fourth and Fifth Lease Year of the Initial Term and all renewal terms shall be determined by the following method of computation:

a) Using the Consumer Price Index published by the United States Department of Labor for the Portland, Oregon metropolitan area for All Urban consumers, or if such index is no longer published, the nearest comparable data on changes in the cost of living for the Portland metropolitan area as selected by Landlord ("CPI"), compute the percentage increase, if any, between the most recently published CPI as of the current Anniversary and that most recently published as of 2002;

b) Multiply the Base Rent for the immediately preceding Lease Year by said percentage; provided, however, that, at the minimum, the Base Rent shall be increased by 8 percent of the preceding Lease Year's Base Rent, and

c) Add the product so obtained to the Base Rent for the immediately preceding year, with the sum to be the Base Rent for the current year.

3.3 **Time and Place of Payment.** Base Rent and Common Area Charges, as set forth below, will be paid in advance on the first day of each month at the address for Landlord set forth in this Lease. Rent and Common Area Charges are uniformly apportionable day to day.

SECTION 4. Utilities, Taxes, Other Charges. This is a "triple net" Lease and Tenant shall pay as additional rent the items set forth below. The dollar allocation of the responsibility to Tenant may be adjusted by Landlord in its reasonable discretion if the final proportionate square footages of the Building and its various Premises change.

4.1 **Utilities.** Tenant shall pay all utilities and services for the Premises including electricity, sewer and water, garbage and recycling haul services.

4.2 **Real Property Taxes.** Tenant shall pay all real property taxes on the Premises. Landlord is a tax exempt entity and has no responsibility for payment of real property taxes.

4.3 **Common Area Maintenance ("CAM") Charges.** Tenant shall pay CAM Charges at a rate of \$2 per square foot per year, or \$3,200.00 annually, in monthly installments of \$266.66, to cover Landlord's insurance, maintenance, security, landscaping, and operation of the Common Areas. Specifically, then, Tenant shall not be responsible for any of the charges, costs or expenses of the parking area.

4.4 **Extraordinary Costs.** The parties recognize that by virtue of extraordinary use of the Premises by Tenant, Tenant's actual share of the Plaza Building's operating costs could exceed \$2 per square foot per year. Therefore, the parties agree that the above amount is based only upon use of the Premises during ordinary business hours under ordinary use conditions. Tenant agrees to pay as additional rent any extraordinary expenses incurred by Landlord within forty-five (45) days of demand by Landlord.

Exhibit A

SECTION 5. Permitted Use. Tenant shall use the Premises for retail and wholesale vending, for on and off premises consumption of deli, submarine and other sandwiches and related foods and products. No other uses shall be allowed. Tenant shall conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and promptly correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance [unless such changes are required because of Tenant's specific use]. Tenant shall not annoy, obstruct, or interfere with the rights of other Metro Regional Center Campus occupants.

5.1 Patio. Landlord shall designate a portion of the Plaza (the "Patio") allowed to be used by Tenant and its patrons for outdoor dining, along with rules and restrictions for Tenant use. Tenant may use the Patio subject to Landlord's rules and restrictions and to the extent allowed by city ordinances and permits. Tenant shall keep the Patio clean.

5.2 Exclusivity. With the exception of existing vending machines, catered events, and the periodic fundraising activities of Landlord's employees, Landlord grants Tenant exclusive right to sell deli, submarine style and other sandwiches on the Metro Regional Center Campus property and agrees not to sell, lease, let or permit to be used on the Metro Regional Center Campus property, any entity in competition with the sandwich business of the Tenant.

5.3 Continuous Operation. Tenant shall occupy the Premises continuously for the purpose stated in this lease and carry on business during the hours customary in comparable businesses similarly situated with adequate inventory and personnel. This shall not prevent Tenant from closing for brief periods when reasonably necessary for inventory, repairs, remodeling (when specifically permitted by landlord in writing), or other legitimate purpose related to the business carried on, or other factors not within Tenant's control.

SECTION 6. Security Deposit. Upon execution of this lease, Tenant shall pay to Landlord the sum of \$2,200.00, equivalent to one month's Initial Term Base Rent, as security for the full and faithful performance by Tenant of all of the covenants and terms of this lease required to be performed by Tenant.

6.1 Offset. Landlord shall have the right to offset against the Security Deposit any sums owing from Tenant to Landlord and not paid when due, any damages caused by Tenant's default, the cost of curing any default by Tenant should Landlord elect to do so, and the cost of performing any repair or cleanup that is Tenant's responsibility under this lease. Offset against the deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by Landlord, at its option, in addition to any other remedy provided by law or this lease for Tenant's nonperformance. Landlord shall give notice to Tenant each time an offset is claimed against the deposit, and, unless the lease is terminated, Tenant shall within 10 days after such notice deposit with Landlord a sum equal to the amount of the offset so that the total deposit amount, net of offset, shall remain constant throughout the lease term. An interest penalty of 1.5 percent per month shall be assessed beginning on the eleventh day after notice for late payment, but not in any event at a rate greater than the maximum rate of interest permitted by law..

6.2 Last Month's Rent. Additionally, Landlord at its option, may apply the Security Deposit to satisfy Tenant's obligation to pay the last month's rental due hereunder. If not applied to pay the last month's rental due hereunder, the Security Deposit shall be returned to Tenant after the expiration of this lease, provided Tenant has fully and faithfully carried out all of its terms, including the payment of all amounts due to Landlord hereunder and the surrender of the premises to Landlord in the condition required herein. The Security Deposit may be commingled with other funds of Landlord and shall bear no interest. In the event of a sale of the Premises described in Exhibit A subject to this Lease, Landlord shall have the right to transfer the Security Deposit to the purchaser to be held under the terms of this lease, and Landlord shall thereupon be released from all liability for the return of the Security Deposit; Tenant agrees to look solely to the new Landlord for the return of the Security Deposit.

Exhibit A

SECTION 7. Option to Renew Lease. Landlord agrees to allow Tenant to renew this lease at the expiration of the Initial Term for a period of five (5) additional years (the "First Renewal Term") under the same terms and conditions and as those set forth herein, provided Tenant and Landlord sign a lease renewal at least one (1) year prior to the expiration of the Initial Term. Furthermore, if the lease is renewed as per the aforementioned option, then Landlord agrees to allow Tenant an option to further renew the lease at the expiration of the First Renewal Term for a period of (5) additional years (the "Second Renewal Term") under the same terms and conditions as the first renewal lease and those provided herein, providing Tenant and Landlord sign a second lease renewal at least one (1) year prior to the expiration of First Renewal Term.

7.1 Lease Renewal Terms. Upon the inception of the First Renewal Term, the rent shall be adjusted to market or 15 percent higher than the Initial Term's escalated Fifth Lease Year Base Rent, whichever is higher. Upon the inception of the Second Renewal Term, the rent shall be adjusted to market or 15 percent higher than the First Renewal Term's escalated Fifth Lease Year Base Rent, whichever is higher.

SECTION 8. Maintenance and Alterations.

8.1 Tenant's Obligations. Tenant hereby agrees to maintain and keep the Premises, including all interior doors, heating, ventilating, and cooling systems, interior wiring, plumbing and rain pipes, in as good repair, operating condition, working order, and appearance, and as clean and safe during the entire term of this Lease as they were as of the Possession Date, at Tenant's own cost and expense. In this regard, Tenant shall, as necessary: a) replace equipment and fixtures, b) replace broken or damaged interior and exterior glass in the windows and doors of the Premises with glass of as good or better quality as that now in use, and c) paint the interior of the Premises. Finally, Tenant hereby agrees to be responsible and pay for the repair or replacement of any part of the Plaza Building damaged as a result of the action or inaction of Tenant or its agents, independent contractors, employees, suppliers or invitees.

8.2 Landlord's Obligations; Representations. Landlord shall not be required to make any repairs, alterations, additions or improvements to or upon the Premises or Plaza Building during the term of this Lease, except only those specifically hereinafter provided. Landlord agrees to maintain in good order and repair during the term of this Lease the exterior walls, roof, gutters, downspouts, structural systems and foundation of the Plaza Building. It is understood and agreed that Landlord reserves and at any and all times shall have the right to repair or improve the Plaza Building or to add thereto, and, for that purpose, at any time may erect scaffolding and other necessary structures about and upon the Plaza Building and Premises. In such event, Landlord and Landlord's representatives, contractors and workmen may enter in or about the Plaza Building and Premises with such materials as Landlord may deem necessary therefore. Tenant waives any claim against Landlord for damages, including disruption of business resulting therefrom, caused by third parties not in Landlord's control. To the best of Landlord's knowledge, the Premises as turned over to Tenant will be in compliance with the structural requirements of the Americans with Disabilities Act ("ADA"). To the extent the Premises are not so compliant, Landlord will be responsible for compliance. (This shall not reduce Tenant's obligation itself to comply with the requirements of the ADA with respect to its own leasehold improvements). Landlord repairs will be made subject to the capital improvements and budgetary approval of the Metro Council.

8.3 Alterations. Except for initial Tenant Improvement work which is described in Exhibit "B," Tenant shall not alter, add to or improve the Premises, Plaza Building or install additional electrical equipment, machinery or any signs without Landlord's prior written consent. All alterations shall be made in a good and workmanlike manner, and any alterations and fixtures, including partitions, plumbing, electrical wiring and other additions and improvements, installed by Tenant (other than trade fixtures and equipment) shall become part of the Plaza Building and belong to Landlord. The parties specifically agree as follows:

8.4 Signs. Landlord must approve in writing Tenant's signage identifying Tenant on the Plaza Building facade. Landlord's prior approval of the proposed placement and design of signage by Tenant is required prior to installation of Tenant signage. All Tenant signage shall be in conformance with the sign code, shall not damage the

Exhibit A

Plaza Building's exterior, and in Landlord's reasonable opinion shall be tasteful. In any event, the signage and its installation shall be at the sole cost and expense of Tenant.

SECTION 9. Liens. Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Premises or, on its behalf, to the Plaza Building, and shall keep the Premises and the Plaza Building free from any liens other than liens created by Landlord or other tenants; provided, however, that, so long as Tenant escrows cash with Landlord or provides a surety bond sufficient to pay the claim or lien, Tenant shall not be required to pay a claim or lien which it is validly contesting and the non-payment of which does not constitute a default by Landlord under any financing against the Plaza Building. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and set such amount off against the Security Deposit or collect such amount as additional rent. Amounts so paid by Landlord shall bear interest and be repaid by Tenant as provided in paragraphs 6 or 10.1. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

SECTION 10. Default by Tenant. The following shall be events of default by Tenant:

10.1 Payment Default. Failure of Tenant to make any rent or other payment under this Lease within ten (10) days after it is due; provided, however, that Landlord shall give Tenant notice and five (5) business days following such notice to cure such default so long as Landlord has not previously given Tenant notice of a failure to make the same type of payment twice in the last twelve (12) months. An interest penalty of 1.5 percent per month shall be assessed from the beginning of the month for late payments.

10.2 Unauthorized Transfer. Tenant makes any transfer without Landlord's prior written consent as required under paragraph 16.

10.3 Abandonment of Plaza Building. Tenant abandons the Plaza Building, for which purpose "abandons" means a failure by Tenant to occupy and use the Plaza Building for the purposes permitted under this Lease for a total of seven (7) business days or more during the Lease Term, unless such failure is excused under other provisions of this Lease.

10.4 Default in Other Covenants. Failure of Tenant to comply with any other term or condition or fulfill any other obligation of this Lease within the time period provided in this Lease for such performance, or thirty (30) days after notice by Landlord specifying the nature of the default with reasonable particularity, if no time period is herein provided.

SECTION 11. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time. However, Landlord shall perform its obligations within thirty (30) days after receiving written notice from Tenant specifying where and how Landlord has failed to perform its obligations. However, if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

SECTION 12. Remedies on Default. Upon default, Landlord may terminate this Lease and exercise any one or more of the following remedies, as well as any other remedy available under applicable law:

12.1 Retake Possession. Landlord may reenter and retake possession of the Premises either by summary proceedings, force, any other applicable action or proceeding, or otherwise, all without notice to Tenant except as may be required by law. Landlord may use the Premises for Landlord's own purposes or relet it upon any reasonable terms without prejudice to any other remedies that Landlord may have by reason of Tenant's default. None of these actions will be deemed an acceptance of surrender by Tenant.

Exhibit A

12.2 Damages for Default. Whether or not Landlord retakes possession or relets the Premises, Landlord may recover all damages caused by the default (including but **not limited to unpaid rent, reasonable attorneys' fees** relating to the default, and reasonable . costs of reletting). Landlord may sue periodically to recover damages as they accrue during the remainder of the Lease Term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages plus damages for the remaining Lease Term.

12.3 Cure of Tenant's Default. Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The cost of performance, including reasonable attorneys' fees and all disbursements, may be set off against the Security Deposit or be collected from Tenant upon demand, together with interest from the date of expenditure until fully paid at the rate of 1.5 percent per month, but not in any event at a rate greater than the maximum rate of interest permitted by law.

SECTION 13. Surrender & Expiration.

13.1 Condition of Plaza Building. Upon expiration of the Lease Term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition. Depreciation and wear from ordinary use for the purpose for which the Plaza Building was let need not be restored, but all repairs for which Tenant is responsible' shall be completed to the latest practical date prior to such surrender.

13.2 Fixtures. Tenant shall promptly remove all of its furnishings, furniture, and trade fixtures that remain the property of Tenant and reasonably restore all damage caused by such removal. If Tenant fails to effect such a removal within twenty (20) days after Landlord's notice in writing and request for removal, this failure shall constitute an abandonment of the property and Landlord may retain the property and all rights of Tenant with respect to it shall cease. In the alternative, by notice in writing given to Tenant within twenty (20) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, restoration, transportation to storage, and storage, with interest on all such expenses as provided in paragraph 12.3 above.

13.3 Holdover. If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month- to-month, subject to all of the provisions of this Lease (except that the term will be month to month and the initial Base Rent will be 115 percent of the amount of Base Rent being paid by Tenant at the termination or expiration of the Lease), or to eject Tenant from the Premises and recover damages caused by wrongful holdover.

13.4 For Sale and For Rent Signs. During the period of one hundred (100) days prior to the date above provided for the termination of this Lease, Landlord may post on the Plaza Building thereof signs notifying the public that the Premises are "for sale" or "for lease;" provided, however, that any signs outside the Premises shall be above the level of the Premise's windows.

SECTION 14. Damage and Destruction.

14.1 Partial Damage. If the Premises are partly damaged and Section 14.2 does not apply, the Premises shall be repaired by Tenant at Tenant's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Tenant, and shall be performed in accordance with the provisions of Section 8.1.

14.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, Landlord may elect to terminate the lease as of the date of the damage or destruction by notice given to Tenant in writing not more than 45 days following the date of damage. In such event, Tenant shall tender to Landlord that portion of Tenant's all-risk insurance proceeds applicable to the loss and damage to the Plaza Building, and the obligations of the parties shall thereafter cease as of the date of termination. Tenant shall be

Exhibit A

entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If Landlord does not elect to terminate, Tenant shall proceed to restore the Premises to the same form as prior to the damage or destruction, in accordance with Section 8.1, or some other form approved in writing by Landlord. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

14.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the Premises are untenantable except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant, its officers, employees, agents, invitees and assigns.

14.4 Damage Late in Term. If damage or destruction to which Section 14.2 would apply occurs within one year before the end of the then-current lease term, and the damage did not occur as the result of the fault of Tenant, Tenant may elect to terminate the lease by written notice to Landlord given within 30 days after the date of the damage.

SECTION 15. Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 5. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. In addition to all other indemnities provided for by this Lease or by law, Lessee shall be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord from and against all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against Landlord and which, in whole or in part, directly or indirectly, arise from or are in any way connected with Hazardous Substances used, stored or released, by Seller, its employees, agents or assigns on the Premises. This indemnification shall require Lessee to reimburse Landlord for any diminution in value of the Property or other adjacent or nearby property of Landlord, caused by Hazardous Substances, including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, or any other property of Landlord, including damages arising from any adverse impact on marketing of land or buildings in or near the Property, including other property of Landlord.

SECTION 16. Indemnity and Insurance. The Tenant shall hold and save harmless Metro, and indemnify, and defend its elected officials, employees, and agents from actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against Landlord and which, in whole or in part, directly or indirectly, arise from or are in any way connected acts or omissions of Tenant, Tenant employees, agents, and visitors in accordance with the Oregon Tort Claims Act, ORS chapter 30. Tenant shall provide a certificate of insurance to the Landlord with the following coverages:

The Tenant shall maintain comprehensive general liability insurance program which provides coverage for injury and property damage in accordance with limits at a minimum of \$1,000,000.

The Tenant shall maintain "all risk" property insurance and shall be responsible for Tenant's improvements and Tenant's property.

Exhibit A

SECTION 17. Waiver of Rights. Each party hereby releases the other from any and all liability or responsibility to the other (or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to the Premises, the Plaza Building, or property thereon caused by peril which would be covered by a standard "all risks" property insurance policy and water damage, whether or not such insurance is in force or is collectible, even if such loss or damage shall have been caused by the fault or negligence of the party, or anyone for whom such party may be responsible.

Tenant shall be responsible for the first \$5,000 as a deductible of the Landlords property insurance.

SECTION 18. Assignment and Subletting. Tenant shall not assign this Lease or further sublet all or part of the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold consent to any assignment or subletting provided the proposed tenant is compatible with Landlord's standards for the Plaza Building and is financially sound. The giving of such consent in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further transfers.

SECTION 19. Attorneys' Fees. In the event of any suit or action by either party to enforce any provision of this Lease, or in any other suit or action arising out of or in connection with this Lease, the prevailing party shall be entitled to recover its costs of suit or action and reasonable attorneys' fees whether at trial or appeal.

SECTION 20. Cumulative Rights and Remedies. No right or remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies at law or in equity.

SECTION 21. Time of the Essence. Time is of the essence of the performance of each of Tenant's obligations in this Lease.

SECTION 22. Amendments. This Lease shall not be amended or modified except by agreement in writing signed by both parties.

SECTION 23. Exhibits. Exhibit "A" and Exhibit "B" which are referred to in this Lease are attached hereto and by this reference incorporated herein.

SECTION 24. Consent of Landlord. Whenever consent, approval or direction by Landlord is required under the terms contained herein, all such consent, approval or direction must be in writing.

SECTION 25. Quiet Possession. Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all provisions of this Lease.

SECTION 26. Section Headings. The section headings to the sections of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part of it.

SECTION 27. Complete Agreement. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord or its agents to Tenant with respect to the subject matter of this Lease, the Premises or the Plaza Building. There are no representations between Landlord and Tenant other than those contained in this Lease and all reliance with respect to any representations is solely upon representations contained in this Lease.

SECTION 28. Third Parties. Landlord and Tenant are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct,

Exhibit A

or indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its term.

SECTION 29. Estoppel Certificates. Within seven (7) days after Landlord's written request, Tenant shall deliver a written statement stating the date to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested by Landlord.

SECTION 30. Inspection. Landlord or its authorized representatives may enter at any time to determine Tenant's compliance with this Lease, to make necessary repairs, or to show the Premises and Plaza Building to any prospective tenants or purchasers; provided, however, that, except in the case of emergency repairs, such entry will be: a) made only on at least 24 hours prior oral or written notice, b) during normal business hours, and c) with an employee or Tenant to accompany Landlord or its representatives.

SECTION 31. Representations. Tenant certifies that no representations as to the condition or repair of the Premises have been made by Landlord or its agents, and that no agreement to alter, repair, or improve said Premises has been made by Landlord, except as expressly set forth herein.

SECTION 32. Notices. Notices under this Lease shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed postage prepaid to the address for the party set forth on page 1 of this Lease, or to such other address as either party may specify by notice to the other. Rent shall be payable to Landlord at the same address and in the same manner.

SECTION 33. Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and other provisions shall remain in full force and effect.

SECTION 34. Observance of Law. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force during the term of this Lease, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation or alteration of the Premises.

SECTION 35. Choice of Law. This Lease shall be governed by the laws of the State of Oregon.

Big Town Hero

Date

METRO

Mike Burton, Executive Officer

Date

1600 S.F.

219B
UPPER RETAIL

219C
LOWER RETAIL

6" BRICK SILL
TYP.

1'-2"
3'-6"
2'-4"
5'-9"
8"

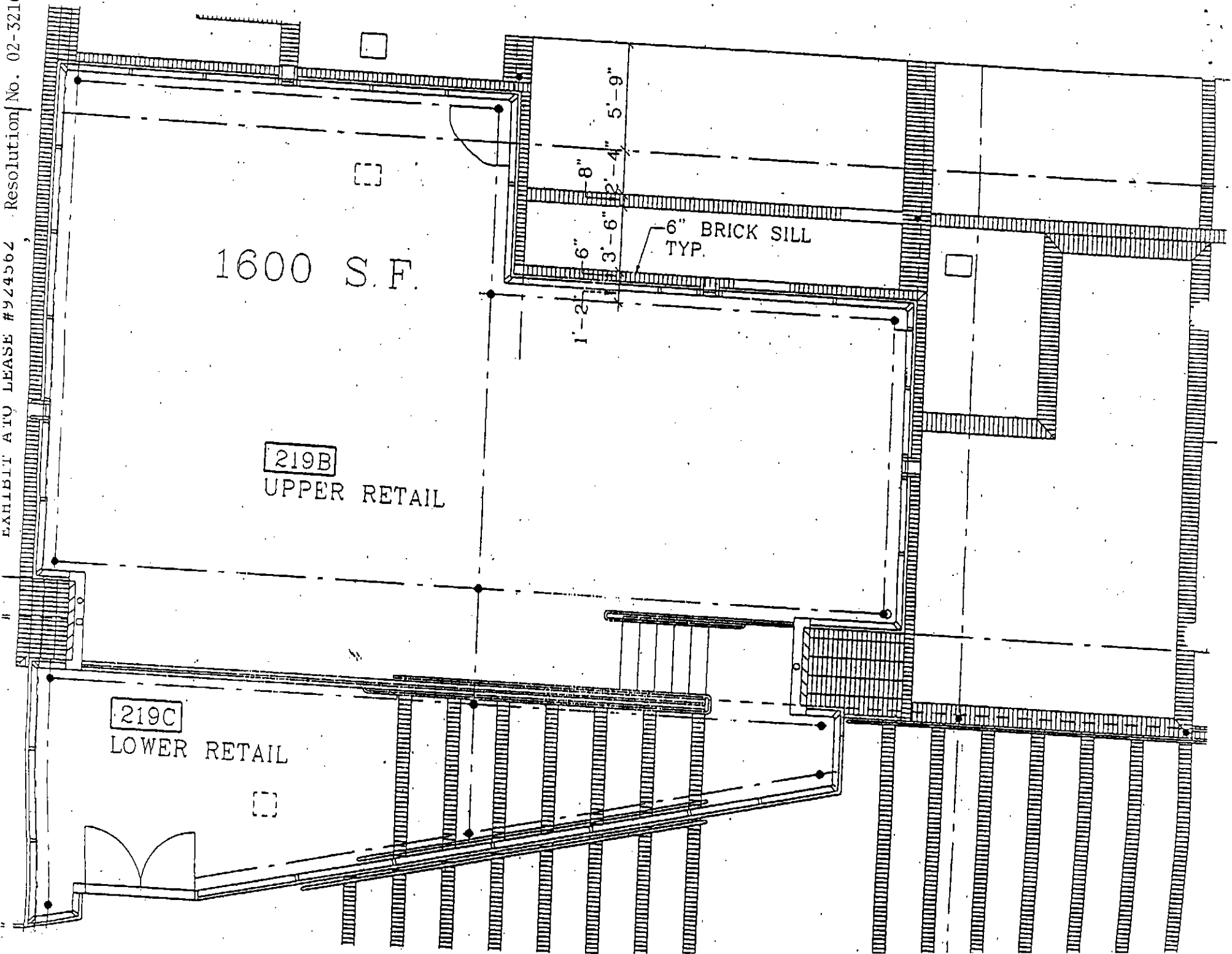


Exhibit B To LEASE # 924562

Tenant Improvements

1. Any HVAC improvements required by Tenant.
2. Any electrical or plumbing improvements required by Tenant. Landlord will provided separate electric and water meters..
3. Two complete, permitted and finished handicapped restrooms.
4. All other improvements required for Tenant's operation.

Landlord Work (subject to Metro Council approval)

1. All exterior work needed for ADA compliance.
2. Painting of exterior.
3. Repair and seal roof.

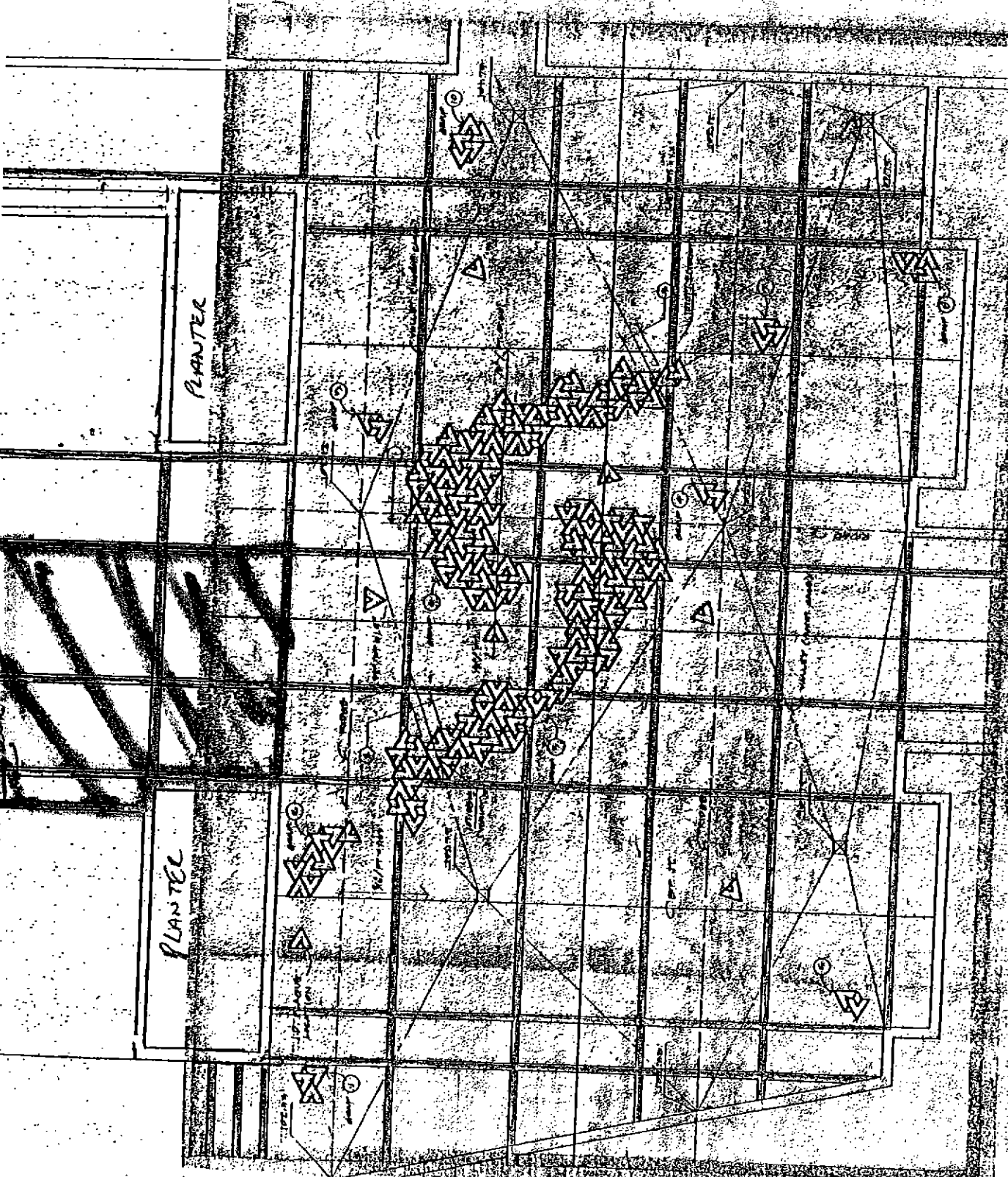
BY SINGLE PAVE
BASED ONCE

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- 19) The artist
- 20) The artist

Resolution No 02-3216A

EXHIBIT C TO LEASE #924562



ALL RIGHTS RESERVED
 NO PART OF THIS DOCUMENT
 MAY BE REPRODUCED OR
 TRANSMITTED IN ANY FORM
 OR BY ANY MEANS
 WITHOUT THE WRITTEN
 PERMISSION OF THE
 COPYRIGHT HOLDER

DATE: 11/11/11
 BY: [Signature]

PLAN, SPECIFICATIONS & ELEVATIONS
 11/11/11

11/11/11

ALL RIGHTS RESERVED
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 OR BY ANY MEANS
 WITHOUT THE WRITTEN
 PERMISSION OF THE
 COPYRIGHT HOLDER

DATE: 11/11/11
 BY: [Signature]

BIG TOWN HERO



- pms 199
- pms 138
- pms 348
- pms 134
- pms 173
- pms 1565
- Black



Smaller

SCOPE OF WORK: PERMIT (AS NECESSARY), MFG & INSTALL:
1'-6" CHANNEL LETTERS: (BIG TOWN HERO) 3" RED RETURNS (INT. / EXT.) TWO (2) SETS
NEON ILLUM: 15MM CLEAR RED
MFG & INSTALL: ALUMINUM RACEWAY / PAINT GREY TO MATCH I-BEAM
INSTALL : ON EXISTING 18" I-BEAM USING WELDED BRACKETS

WINDOW LOGO GRAPHICS: DIGITALLY-PRINTED FULL COLOR VINYL (1ST SURFACE)
 (TWO (2) LARGE (48") AND TWO (2) SMALL (18") REQUIRED
DIRECTIONAL COPY: TO BE DETERMINED (ESTIMATE 40 CHARACTERS 1 1/4")

WEST ELEV. DRAWING SCALE: 3/8" = 1'-0"

<p>QUALITY SINCE 1925</p>	<p>436 SE 12TH AVE PORTLAND, OR 97214 WWW.SECURITYSIGNS.COM OR CCB #122809 WA SECURSI020CF T. 503.232.4172 F. 503.230.1861</p>	<p>© Copyright 2002 Security Signs, Inc. This original design and specifications are exclusive property of Security Signs, Inc. The use of these designs to produce a similar sign without written authorization from Security Signs, Inc. is forbidden.</p> <p>CUSTOMER AGREES BY INITIALING HERE _____</p>	<p>DATE <u>12/24/02</u> DRAWING # <u>02-FS038R5</u> PAGE # <u>1 OF 1</u> PROJECT MANAGER FRANKLIN SMITH</p>	<p>BIG TOWN HERO</p> <p>622 GRAND AVE PORTLAND, OREGON</p>	<p>CLIENT APPROVAL</p> <p>_____ PLEASE SIGN HERE</p> <p>_____ DATE</p>
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BIG TOWN HERO



NW CORNER DRAWING SCALE: 3/8" = 1'-0"



- pms 199
- pms 138
- pms 348
- pms 134
- pms 173
- pms 1565
- Black




 <p>QUALITY SINCE 1925</p>	<p>438 SE 12TH AVE PORTLAND, OR 97214 WWW.SECURITYSIGNS.COM OR CCB # 122809 WA SECURSI020CF T. 503.232.4172 F. 503.230.1861</p>	<p>© Copyright 2002 Security Signs, Inc. This original design and specifications are exclusive property of Security Signs, Inc. The use of these designs to produce a similar sign without written authorization from Security Signs, Inc. is forbidden. CUSTOMER AGREES BY INITIALING HERE _____</p>	<p>DATE <u>12/24/02</u> DRAWING # <u>02-FS038R5</u> PAGE # <u>2 OF 2</u> PROJECT MANAGER FRANKLIN SMITH</p>	<p>BIG TOWN HERO</p> <p>622 GRAND AVE PORTLAND, OREGON</p>	<p>CLIENT APPROVAL</p> <p>_____ PLEASE SIGN HERE</p> <p>_____ DATE</p>
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Exhibit E TO LEASE #924562

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT ("Guaranty") dated as of November 29, 2002, is given by PETER HAGLUND, with an address at 7640 SE 28th, Portland, Oregon 97202 ("Guarantor"), to and in favor of METRO, a municipal corporation established pursuant to Oregon law and the Metro Charter, with an address at 600 NE Grand Avenue, Portland, Oregon 97232-2736.

RECITALS

A. Metro intends to enter into a commercial building lease with Guarantor, which will be evidenced by that certain Plaza Building Lease dated _____, 2002 (the "Lease"), executed by Guarantor as tenant and Metro as landlord.

B. Because the Lease provides that the tenant may assign the Lease to certain specified parties (the "Assignee Tenants") without obtaining Metro's approval of the Assignee Tenants' creditworthiness or ability to fulfill the terms of the Lease and without Metro's consent to said assignment, Metro requires this Guaranty in order to secure performance under the Lease.

C. Guarantor's execution and delivery of this Guaranty is a principal part of the consideration of Metro's making the Lease to Guarantor as tenant, and Landlord is not willing to make the Lease unless this Guaranty is executed and delivered.

AGREEMENT

NOW, THEREFORE, in consideration of the Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guaranty.

- (a) Guarantor unconditionally and irrevocably guarantees (i) the payment and performance by Assignee-Tenant of all of its obligations, covenants, agreements, terms and conditions under the Lease; (ii) the prompt payment of all sums which may become payable by Assignee-Tenant pursuant to the Lease, in full and when due in accordance with the provisions thereof; and (iii) any and all other Secured Obligations. This Guaranty is irrevocable, unconditional and absolute.
- (b) If for any reason any sums shall not be paid by Assignee-Tenant promptly when due (after delivery of such notice as may be required by the Lease and prior to the expiration of any applicable grace period), or any such agreement, covenant, term or condition is not performed or observed by Assignee-Tenant in accordance with the Lease, Guarantor will pay the same promptly after notice thereof and/or will

promptly perform and observe the same or cause the same promptly to be performed or observed, regardless of (i) any defenses or rights of set-off or counterclaims that Assignee-Tenant may have or assert, or (ii) whether Landlord shall have taken any steps to enforce any rights against Assignee-Tenant or any other remedy thereunder as a result of the default of Assignee-Tenant thereunder.

- (c) Guarantor also agrees to pay to Landlord such further reasonable and actual amounts as shall be sufficient to cover the cost and expense actually incurred in collecting any sums payable under the Lease, or any part thereof, or in otherwise enforcing this Guaranty, including reasonable attorneys' fees and disbursements. This Guaranty is a guaranty of payment and performance and not of collection.

2. **Limit.** Payment of sums and amounts by Guarantor as required herein shall be limited to a total aggregate of no more than FIVE THOUSAND DOLLARS (\$5,000.00).

3. **Unconditional Obligation.** The obligations, covenants, agreements and duties of Guarantor under this Guaranty shall in no way be affected or impaired by reason of the happening from time to time of any of the following, without consent of Guarantor:

- (a) The waiver by Landlord of the performance or observance by Assignee-Tenant, Guarantor, or any other party of any of the agreements, covenants, terms or conditions contained in the Lease;
- (b) The extension, in whole or in part, of the time for payment by Assignee-Tenant or Guarantor of any sums owing or payable under any of the Lease;
- (c) The modification or amendment, whether material or otherwise, of any of the obligations (i) of Assignee-Tenant under the Lease, whether the same be in the form of a new lease or the modification or amendment of any existing lease, or (ii) of Guarantor under this Guaranty (any of the foregoing being a "Modification"; provided, however, that, unless such Modification is required by law or on account of bankruptcy or insolvency, no Modification that has the effect of materially increasing the obligations of Guarantor hereunder shall be effective against Guarantor to the extent of such material increase unless Guarantor shall consent to such Modification, which consent shall not be unreasonably withheld or delayed; and provided, further, that if any Modification is made without such consent of Guarantor, such Modification shall be ineffective as against Guarantor only to the extent the same shall materially increase the obligations of Guarantor under this Guaranty;
- (d) The doing or the omission of any of the acts referred to in the Lease;
- (e) Any failure, omission or delay on the part of Landlord to enforce, assert or exercise any right, power or remedy of Landlord under any of the Lease or any action on the part of Landlord granting indulgence or extension in any form whatsoever;

- (f) The voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, marshalling of assets and liabilities, receivership, conservatorship, custodianship, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting Assignee-Tenant or Guarantor or any of their assets;
- (g) Any change in the relationship between Assignee-Tenant and Guarantor or any termination of such relationship;
- (h) The inability of Assignee-Tenant to perform, or the release of Assignee-Tenant or Guarantor from the performance of any obligation, agreement, covenant, term or condition of Assignee-Tenant under any of the Lease by reason of any law, regulation or decree, now or hereafter in effect; or
- (i) Any action or inaction by Landlord that results in any impairment or destruction of any subrogation rights of Guarantor or any rights of Guarantor to proceed against Assignee-Tenant for reimbursement.

4. Definitions. Capitalized terms used herein shall have the respective meanings given by the Lease, unless otherwise defined herein. The term "including" shall mean "including, without limitation."

5. Waiver; Independent Obligations. Guarantor waives any right it may have (i) to require Landlord to first proceed against Assignee-Tenant or against any other party or (ii) to require Landlord to first pursue any remedy within the power of Landlord, and Guarantor agrees that all of Guarantor's obligations under this Guaranty are independent of the obligations of Assignee-Tenant under the Lease or under any other instrument or agreement, and that a separate action may be brought against Guarantor whether or not an action is commenced against Assignee-Tenant under any such lease or other instrument or agreement.

6. Severability. In case any one or more of the provisions hereof or of the Lease shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. Notice. All notices hereunder shall be in writing and shall be deemed to have been properly given and received if sent by hand delivery, overnight courier, United States Express Mail or registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth above, or to such other address as each party may from time to time specify in a notice to the other party.

8. Waiver. Notice of acceptance of this Guaranty and notice of any obligations or liabilities contracted or incurred by Assignee-Tenant under the Lease are hereby waived by Guarantor.

9. Governing Law. This Guaranty shall be construed in accordance with the laws of the state of Oregon.

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3216, FOR THE PURPOSE OF DECLARING THE PLAZA BUILDING SURPLUS PROPERTY, EXEMPTING THE TENANT FROM PAYING EXCISE TAX, AND AUTHORIZING THE EXECUTION OF A LEASE WITH BIG TOWN HERO

Date: July 25, 2002

Presented by: Councilor Burkholder

Committee Recommendation: At its July 25, 2002, meeting, the Governmental Affairs Committee voted 2-0 to recommend Council adoption of Resolution No. 02-3216. Voting in favor: Councilors Burkholder and Bragdon.. Voting against: None. Absent: Councilor Monroe.

Background: Scott Moss, Assistant Administrative Services Director, presented the staff report. He explained that the former tenants of the Plaza Building, located on the northwest corner of Metro Regional Center, vacated the building earlier this year due to bankruptcy. A potential new lessee, Big Town Hero, a retail sandwich shop, is in the process of negotiating a lease with Metro, which requires approval by Metro Council, along with a finding that the Plaza Building is considered to be surplus (and therefore not needed for public use). The proposed lease terms include two automatic five-year renewals, scheduled rent increases at regular intervals, and a six-month delay initial payment of rent so the tenant may effect tenant-paid interior improvements to ready the building for deli use. In addition, the lease specifies that the tenant will be charged excise tax on the lease payments, rather than gross revenues.

Committee Issues/Discussion: Councilor Bragdon asked Mr. Moss if the tenant would be responsible for property taxes. Mr. Moss replied that the tenant would be, and he estimated it would be approximately \$2,600 annually. Councilor Bragdon then stated that he felt that the occupancy of the building is a great use, and would be a boon for employees of Metro as well.

Councilor Burkholder asked if there were permit fees involved, and who would pay for them. Mr. Moss responded that the tenant would be responsible for all permitting requirements and fees. Councilor Burkholder that asked why, if the expected opening date is October, the tenant would be given six-months rent-free. Mr. Moss replied that, because the facility requires restroom upgrades to comply with American Disability Act (ADA) requirements, and because the cost of these upgrades would be borne by the tenant and exceeds six-months of rent, the waiving of rent helps the tenant and saves Metro the cost of paying for the improvements. Councilor Burkholder then stated that he was glad the building would be actively used.

Key Public Testimony: There was none.

STAFF REPORT

FOR THE PURPOSE OF DECLARING THE PLAZA BUILDING SURPLUS PROPERTY,
EXEMPTING THE TENANT FROM PAYING EXCISE TAX, AND AUTHORIZING THE
EXECUTION OF A LEASE WITH BIG TOWN HERO

Date: September 5, 2002

Prepared by: Scott Moss

BACKGROUND

On the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), is a self-contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, referred to as the "Plaza Building".

Since 1995, Business Properties Investment (BPI), a property management firm has leased the Plaza Building. Recently, BPI vacated the Plaza Building due to bankruptcy. Staff contacted several potential clients and advertised the facility as "For Lease". Representatives of Big Town Hero contacted staff with interest in leasing the Plaza Building. Staff and Big Town Hero have negotiated a five-year lease with two automatic extensions.

Big Town Hero retails sub-sandwiches and soup for lunch and dinner. They bake bread on site but no other cooking is done. It will seat about 20 people inside and will use a small portion of the portion of the Plaza as weather permits.

ANALYSIS/INFORMATION

1. **Known Opposition:** None

2. **Legal Antecedents**

Metro Code section 2.04.026 requires Metro Council approval for any contract to lease any real property owned by Metro.

ORS Chapter 271.320 provides that a political subdivision may lease real property it owns whenever said real property is not needed for public use or public interest may be furthered thereby.

Metro Code section 7.01.020 provides for users of Metro facilities to pay excise tax, unless exempted as provided therein.

3. **Anticipated Effects**

A sandwich shop/deli is an excellent use of the Plaza Building. A deli will provide the neighborhood with a low cost lunch and dinner option. It will promote a positive image for Metro in revitalizing the neighborhood, and bringing people together. This use is consistent with the original vision for this space as retail use.

Rent: The rent is \$16.50 annually per square foot, which is above average for this unique space and neighborhood. The lease calls for two five-year automatic renewals. Rent increases are scheduled for 2005, 2007, 2010, 2012, and 2015.

Rent Starting Date: The proposed lease provides the tenant with rent-free occupancy for the first six months of the lease for the following reasons: 1) Big Town Hero is making a number of landlord and tenant improvements, resulting in significant financial savings to Metro, 2) Big Town Hero will be obtaining permits and making improvements, , and 3) it is common practice in long term leases that require significant tenant improvements.

Improvements: Big Town Hero is responsible for all landlord and tenant improvements in the Plaza Building. Improvements include two ADA compliant restrooms, improved HVAC and lighting as needed, food preparation area, carpeting, interior walls, and seating. These improvements are estimated at \$25,000 to \$35,000. Metro will be responsible for any improvement required to the building exterior, except signage. No such needs are known or expected.

Plaza: Metro will designate a portion of the Plaza for open-air dining.

Signage: Only Metro approved signage may be used.

Utilities, insurance, taxes and other expenses: Big Town Hero is responsible for utilities, taxes, insurance, security, janitorial, and landscaping.

Excise taxes: Big Town Hero desires to lease the Plaza Building from Metro at market rental rates, conditioned on an exemption from Metro excise tax. Imposing the Metro excise tax would be inconsistent with customary food service industry practice and would preclude leasing the Plaza Building to a deli or any other retail operation. Consequently, Staff requests an exemption to the Metro excise tax for Big Town Hero. A portion of the each rent payment equivalent to the excise tax revenue lost as a result of the exemption will be allocated to the general fund as if it were excise tax revenue.

Public Benefit: In accordance with Oregon law, in order to execute the lease, the Metro Council needs to find that the Plaza Building is not needed for public use and the public interest may be furthered by entering into the lease with Big Town Hero.

4. Budget Impacts

Lease payments for the first year will provide a total \$13,200 of revenue to Metro. Payments thereafter will total \$26,400 annually with automatic rate increases. Excise tax estimate at \$2000 annually will be paid on all lease payments.

RECOMMENDED ACTION

The Executive Officer recommends approval of Resolution No. 02-3216A by the Metro Council.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING THE) RESOLUTION NO. 02-3216
PLAZA BUILDING SURPLUS PROPERTY,)
EXEMPTING THE TENANT FROM PAYING) Introduced by Mike Burton
EXCISE TAX, AND AUTHORIZING THE) Executive Officer
EXECUTION OF A LEASE WITH BIG TOWN
HERO

WHEREAS, Metro owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), and a self contained space situated in the northwest corner of the Metro Regional Center hereinafter referred to as the "Plaza Building" including use of a Patio for outdoor dining (collectively, the "Premises").

WHEREAS, Metro currently does not use the Plaza Building for its operations and has leased the Plaza Building to tenants in the past, and

WHEREAS, Metro has budgeted revenue in anticipation of leasing the Plaza Building and will receive excise tax on the lease payments, and

WHEREAS, the tenant provides Metro with a lease payment and is not providing a Metro good or service and is not willing to pay Metro excise tax on tenants gross revenues, and

WHEREAS, Home Town Hero desires to lease the Premises from Metro; now therefore

BE IT RESOLVED:

That the Metro Council,

- 1. Declares the Plaza Building as surplus property, and
- 2. Exempts Big Town Hero from paying excise tax on their gross revenues, (excise tax will be received on lease payments to Metro), and
- 3. Authorizes the Executive Office to enter in a lease agreement substantially similar to the lease agreement attached as Exhibit A with Big Town Hero.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

Contract No.

PLAZA BUILDING LEASE

THIS LEASE made as of this _____ day of _____ 2002, between METRO, hereinafter referred to as "Landlord," whose address is 600 N.E. Grand Avenue, Portland, OR 97232-2736, and the Big Town Hero, ADDRESS hereinafter referred to as "Tenant. "

RECITALS

1. Landlord owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), and desires to lease to Tenant a self contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, located at 600 N.E. Grand Avenue and further described in Exhibit "A" "Partial Floor Plan" and hereinafter referred to as the "Plaza Building" including use of a Patio for outdoor dining (collectively, the "Premises").
2. Tenant desires to lease a the Premises from Landlord.
3. The parties desire to enter into the below set forth agreement defining the terms of the Lease.

In consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION 1. Premises: Tenant leases from Landlord the Plaza Building as depicted in Exhibit "A", including the rights to shared use of the common area (hereafter, the "Patio") (collectively, the "Premises") with Landlord its officers, employees, and contractors and the public, subject to the terms set forth herein.

SECTION 2. Term; Possession:

2.1 Term. The Initial Lease Term ("Initial Term") shall commence August 1, 2002 (the "Commencement Date") and continue through July 30, 2007, unless sooner terminated pursuant to the terms hereof. A "Lease Year," as such term is used herein, shall run from the Commencement Date or its anniversary ("Anniversary") until the day immediately preceding the next Anniversary.

2.2 Delivery of Possession. Land lord will deliver possession of the Premises to Tenant (the "Possession Date") on the Commencement Date. Tenant's obligation to pay Base Rent hereunder begins six months days after the Possession Date. Tenant shall not have the right to terminate this Lease because of delay in the delivery of possession for any reason, unless possession is delayed beyond January 1, 2003; provided that Tenant shall have no right to terminate if said delay is caused by the direct action or inaction of Tenant. In order to exercise the limited right to terminate provided for by the previous sentence, Tenant shall, at its option, give written notice to Landlord of the termination prior to the delivery of possession to Tenant, thereby terminating its future obligations under this Lease; provided, however, that Landlord shall not be liable to Tenant for any damages, but shall be required to return Tenant's security deposit and prepaid rent. Notwithstanding the above, if possession is not delivered to Tenant on or before the Commencement Date, Tenant's obligation to pay Base Rent will be delayed until possession is delivered.

2.3 Tenant's Work. On the Possession Date, Landlord will notify Tenant that the Plaza Building is ready for Tenant to begin work and installation of Tenant's improvements, personal property and performance of other work. Tenant will apprise Landlord of the date when the Premises are then expected to be ready for occupancy; however, Tenant acknowledges the advisability of commencing space planning, fixture construction and other activities well in advance of the expected Possession Date. Tenant will promptly perform the work, if any, required to ready the Premises for Tenant's possession and use, in accordance with the terms attached as Exhibit "B." Landlord shall be required to perform only such work to ready the Premises for Tenant's occupancy as is set forth in Exhibit "B. "

SECTION 3. Rent. Tenant shall pay to Landlord the Base Rent monthly for the Premises and any additional rent provided herein without deduction or offset. Rent for any partial month during the term shall be prorated to reflect the number of days during the month the Tenant occupies the Premises. "Additional Rent" means amounts determined under Paragraph 4 of this Lease.

3.1 **Initial Term Base Rent.** The Initial Term Base Rent is based upon an initial fair market rate of \$16.50 per square foot per year for comparable ground floor, storefront retail space on 1,600 square feet of leased space. Base Rent for the first six (6) months of the first Lease Year of the Initial Term shall be zero. Base Rent for the remaining six (6) months of the first Lease Year of the Initial Term shall be the amount of \$13,200.00, or \$2,200.00 per month. Base Rent for the Second and Third Lease Year of the Initial Term shall be the amount of \$26,400.00, or \$2,200.00 per month. Tenant acknowledges that the Base Rent for the first Lease Year of the Initial Term, as well as rent for all subsequent years of the Lease, is computed based on the square footage of the Plaza Building.

3.2 **Initial Term Rent Escalator.** Base Rent for the Fourth and Fifth Lease Year of the Initial Term and all renewal terms shall be determined by the following method of computation:

a) Using the Consumer Price Index published by the United States Department of Labor for the Portland, Oregon metropolitan area for All Urban consumers, or if such index is no longer published, the nearest comparable data on changes in the cost of living for the Portland metropolitan area as selected by Landlord ("CPI"), compute the percentage increase, if any, between the most recently published CPI as of the current Anniversary and that most recently published as of 2002;

b) Multiply the Base Rent for the immediately preceding Lease Year by said percentage; provided, however, that, at the minimum, the Base Rent shall be increased by 8 percent of the preceding Lease Year's Base Rent, and

c) Add the product so obtained to the Base Rent for the immediately preceding year, with the sum to be the Base Rent for the current year.

3.3 **Time and Place of Payment.** Base Rent and Common Area Charges, as set forth below, will be paid in advance on the first day of each month at the address for Landlord set forth in this Lease. Rent and Common Area Charges are uniformly apportionable day to day.

SECTION 4. Utilities, Taxes, Other Charges. This is a "triple net" Lease and Tenant shall pay as additional rent the items set forth below. The dollar allocation of the responsibility to Tenant may be adjusted by Landlord in its reasonable discretion if the final proportionate square footages of the Building and its various Premises change.

4.1 **Utilities.** Tenant shall pay all utilities and services for the Premises including electricity, sewer and water, garbage and recycling haul services.

4.2 **Real Property Taxes.** Tenant shall pay all real property taxes on the Premises. Landlord is a tax exempt entity and has no responsibility for payment of real property taxes.

4.3 **Common Area Maintenance ("CAM") Charges.** Tenant shall pay CAM Charges at a rate of \$2 per square foot per year, or \$3,200.00 annually, in monthly installments of \$266.66, to cover Landlord's insurance, maintenance, security, landscaping, and operation of the Common Areas. Specifically, then, Tenant shall not be responsible for any of the charges, costs or expenses of the parking area.

4.4 **Extraordinary Costs.** The parties recognize that by virtue of extraordinary use of the Premises by Tenant, Tenant's actual share of the Plaza Building's operating costs could exceed \$2 per square foot per year. Therefore, the parties agree that the above amount is based only upon use of the Premises during ordinary business hours under ordinary use conditions. Tenant agrees to pay as additional rent any extraordinary expenses incurred by Landlord within forty-five (45) days of demand by Landlord.

SECTION 5. Permitted Use. Tenant shall use the Premises for retail and wholesale vending, for on and off premises consumption of deli, submarine and other sandwiches and related foods and products. No other uses shall be allowed. Tenant shall conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and promptly correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance [unless such changes are required because of Tenant's specific use]. Tenant shall not annoy, obstruct, or interfere with the rights of other Metro Regional Center Campus occupants.

5.1 Patio. Landlord shall designate a portion of the Plaza (the "Patio") allowed to be used by Tenant and its patrons for outdoor dining, along with rules and restrictions for Tenant use. Tenant may use the Patio subject to Landlord's rules and restrictions and to the extent allowed by city ordinances and permits. Tenant shall keep the Patio clean.

5.2 Exclusivity. With the exception of existing vending machines, catered events, and the periodic fundraising activities of Landlord's employees, Landlord grants Tenant exclusive right to sell deli, submarine style and other sandwiches on the Metro Regional Center Campus property and agrees not to sell, lease, let or permit to be used on the Metro Regional Center Campus property, any entity in competition with the sandwich business of the Tenant.

5.3 Continuous Operation. Tenant shall occupy the Premises continuously for the purpose stated in this lease and carry on business during the hours customary in comparable businesses similarly situated with adequate inventory and personnel. This shall not prevent Tenant from closing for brief periods when reasonably necessary for inventory, repairs, remodeling (when specifically permitted by landlord in writing), or other legitimate purpose related to the business carried on, or other factors not within Tenant's control.

SECTION 6. Security Deposit. Upon execution of this lease, Tenant shall pay to Landlord the sum of \$2,200.00, equivalent to one month's Initial Term Base Rent, as security for the full and faithful performance by Tenant of all of the covenants and terms of this lease required to be performed by Tenant.

6.1 Offset. Landlord shall have the right to offset against the Security Deposit any sums owing from Tenant to Landlord and not paid when due, any damages caused by Tenant's default, the cost of curing any default by Tenant should Landlord elect to do so, and the cost of performing any repair or cleanup that is Tenant's responsibility under this lease. Offset against the deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by Landlord, at its option, in addition to any other remedy provided by law or this lease for Tenant's nonperformance. Landlord shall give notice to Tenant each time an offset is claimed against the deposit, and, unless the lease is terminated, Tenant shall within 10 days after such notice deposit with Landlord a sum equal to the amount of the offset so that the total deposit amount, net of offset, shall remain constant throughout the lease term. An interest penalty of 1.5 percent per month shall be assessed beginning on the eleventh day after notice for late payment, but not in any event at a rate greater than the maximum rate of interest permitted by law..

6.2 Last Month's Rent. Additionally, Landlord at its option, may apply the Security Deposit to satisfy Tenant's obligation to pay the last month's rental due hereunder. If not applied to pay the last month's rental due hereunder, the Security Deposit shall be returned to Tenant after the expiration of this lease, provided Tenant has fully and faithfully carried out all of its terms, including the payment of all amounts due to Landlord hereunder and the surrender of the premises to Landlord in the condition required herein. The Security Deposit may be commingled with other funds of Landlord and shall bear no interest. In the event of a sale of the Premises described in Exhibit A subject to this Lease, Landlord shall have the right to transfer the Security Deposit to the purchaser to be held under the terms of this lease, and Landlord shall thereupon be released from all liability for the return of the Security Deposit; Tenant agrees to look solely to the new Landlord for the return of the Security Deposit.

SECTION 7. Option to Renew Lease. Landlord agrees to allow Tenant to renew this lease at the expiration of the Initial Term for a period of five (5) additional years (the "First Renewal Term") under the same terms and conditions and as those set forth herein, provided Tenant and Landlord sign a lease renewal at least one (1) year prior to the expiration of the Initial Term. Furthermore, if the lease is renewed as per the aforementioned option, then Landlord agrees to allow Tenant an option to further renew the lease at the expiration of the First Renewal Term for a period of (5) additional years (the "Second Renewal Term") under the same terms and conditions as the first renewal lease and those provided herein, providing Tenant and Landlord sign a second lease renewal at least one (1) year prior to the expiration of First Renewal Term.

7.1 Lease Renewal Terms. Upon the inception of the First Renewal Term, the rent shall be adjusted to market or 15 percent higher than the Initial Term's escalated Fifth Lease Year Base Rent, whichever is higher. Upon the inception of the Second Renewal Term, the rent shall be adjusted to market or 15 percent higher than the First Renewal Term's escalated Fifth Lease Year Base Rent, whichever is higher.

SECTION 8. Maintenance and Alterations.

8.1 Tenant's Obligations. Tenant hereby agrees to maintain and keep the Premises, including all interior doors, heating, ventilating, and cooling systems, interior wiring, plumbing and rain pipes, in as good repair, operating condition, working order, and appearance, and as clean and safe during the entire term of this Lease as they were as of the Possession Date, at Tenant's own cost and expense. In this regard, Tenant shall, as necessary: a) replace equipment and fixtures, b) replace broken or damaged interior and exterior glass in the windows and doors of the Premises with glass of as good or better quality as that now in use, and c) paint the interior of the Premises. Finally, Tenant hereby agrees to be responsible and pay for the repair or replacement of any part of the Plaza Building damaged as a result of the action or inaction of Tenant or its agents, independent contractors, employees, suppliers or invitees.

8.2 Landlord's Obligations; Representations. Landlord shall not be required to make any repairs, alterations, additions or improvements to or upon the Premises or Plaza Building during the term of this Lease, except only those specifically hereinafter provided. Landlord agrees to maintain in good order and repair during the term of this Lease the exterior walls, roof, gutters, downspouts, structural systems and foundation of the Plaza Building. It is understood and agreed that Landlord reserves and at any and all times shall have the right to repair or improve the Plaza Building or to add thereto, and, for that purpose, at any time may erect scaffolding and other necessary structures about and upon the Plaza Building and Premises. In such event, Landlord and Landlord's representatives, contractors and workmen may enter in or about the Plaza Building and Premises with such materials as Landlord may deem necessary therefore. Tenant waives any claim against Landlord for damages, including disruption of business resulting therefrom, caused by third parties not in Landlord's control. To the best of Landlord's knowledge, the Premises as turned over to Tenant will be in compliance with the structural requirements of the Americans with Disabilities Act ("ADA"). To the extent the Premises are not so compliant, Landlord will be responsible for compliance. (This shall not reduce Tenant's obligation itself to comply with the requirements of the ADA with respect to its own leasehold improvements). Landlord repairs will be made subject to the capital improvements and budgetary approval of the Metro Council.

8.3 Alterations. Except for initial Tenant Improvement work which is described in Exhibit "B," Tenant shall not alter, add to or improve the Premises, Plaza Building or install additional electrical equipment, machinery or any signs without Landlord's prior written consent. All alterations shall be made in a good and workmanlike manner, and any alterations and fixtures, including partitions, plumbing, electrical wiring and other additions and improvements, installed by Tenant (other than trade fixtures and equipment) shall become part of the Plaza Building and belong to Landlord. The parties specifically agree as follows:

8.4 Signs. Landlord must approve in writing Tenant's signage identifying Tenant on the Plaza Building facade. Landlord's prior approval of the proposed placement and design of signage by Tenant is required prior to installation of Tenant signage. All Tenant signage shall be in conformance with the sign code, shall not damage the

Plaza Building's exterior, and in Landlord's reasonable opinion shall be tasteful. In any event, the signage and its installation shall be at the sole cost and expense of Tenant.

SECTION 9. Liens. Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Premises or, on its behalf, to the Plaza Building, and shall keep the Premises and the Plaza Building free from any liens other than liens created by Landlord or other tenants; provided, however, that, so long as Tenant escrows cash with Landlord or provides a surety bond sufficient to pay the claim or lien, Tenant shall not be required to pay a claim or lien which it is validly contesting and the non-payment of which does not constitute a default by Landlord under any financing against the Plaza Building. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and set such amount off against the Security Deposit or collect such amount as additional rent. Amounts so paid by Landlord shall bear interest and be repaid by Tenant as provided in paragraphs 6 or 10.1. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

SECTION 10. Default by Tenant. The following shall be events of default by Tenant:

10.1 **Payment Default.** Failure of Tenant to make any rent or other payment under this Lease within ten (10) days after it is due; provided, however, that Landlord shall give Tenant notice and five (5) business days following such notice to cure such default so long as Landlord has not previously given Tenant notice of a failure to make the same type of payment twice in the last twelve (12) months. An interest penalty of 1.5 percent per month shall be assessed from the beginning of the month for late payments.

10.2 **Unauthorized Transfer.** Tenant makes any transfer without Landlord's prior written consent as required under paragraph 16.

10.3 **Abandonment of Plaza Building.** Tenant abandons the Plaza Building, for which purpose "abandons" means a failure by Tenant to occupy and use the Plaza Building for the purposes permitted under this Lease for a total of seven (7) business days or more during the Lease Term, unless such failure is excused under other provisions of this Lease.

10.4 **Default in Other Covenants.** Failure of Tenant to comply with any other term or condition or fulfill any other obligation of this Lease within the time period provided in this Lease for such performance, or thirty (30) days after notice by Landlord specifying the nature of the default with reasonable particularity, if no time period is herein provided.

SECTION 11. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time. However, Landlord shall perform its obligations within thirty (30) days after receiving written notice from Tenant specifying where and how Landlord has failed to perform its obligations. However, if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

SECTION 12. Remedies on Default. Upon default, Landlord may terminate this Lease and exercise any one or more of the following remedies, as well as any other remedy available under applicable law:

12.1 **Retake Possession.** Landlord may reenter and retake possession of the Premises either by summary proceedings, force, any other applicable action or proceeding, or otherwise, all without notice to Tenant except as may be required by law. Landlord may use the Premises for Landlord's own purposes or relet it upon any reasonable terms without prejudice to any other remedies that Landlord may have by reason of Tenant's default. None of these actions will be deemed an acceptance of surrender by Tenant.

12.2 Damages for Default. Whether or not Landlord retakes possession or relets the Premises, Landlord may recover all damages caused by the default (including but **not limited to unpaid rent, reasonable attorneys' fees** relating to the default, and reasonable . costs of reletting). Landlord may sue periodically to recover damages as they accrue during the remainder of the Lease Term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages plus damages for the remaining Lease Term.

12.3 Cure of Tenant's Default. Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The cost of performance, including reasonable attorneys' fees and all disbursements, may be set off against the Security Deposit or be collected from Tenant upon demand, together with interest from the date of expenditure until fully paid at the rate of 1.5 percent per month, but not in any event at a rate greater than the maximum rate of interest permitted by law.

SECTION 13. Surrender & Expiration.

13.1 Condition of Plaza Building. Upon expiration of the Lease Term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition. Depreciation and wear from ordinary use for the purpose for which the Plaza Building was let need not be restored, but all repairs for which Tenant is responsible' shall be completed to the latest practical date prior to such surrender.

13.2 Fixtures. Tenant shall promptly remove all of its furnishings, furniture, and trade fixtures that remain the property of Tenant and reasonably restore all damage caused by such removal. If Tenant fails to effect such a removal within twenty (20) days after Landlord's notice in writing and request for removal, this failure shall constitute an abandonment of the property and Landlord may retain the property and all rights of Tenant with respect to it shall cease. In the alternative, by notice in writing given to Tenant within twenty (20) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, restoration, transportation to storage, and storage, with interest on all such expenses as provided in paragraph 12.3 above.

13.3 Holdover. If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month- to-month, subject to all of the provisions of this Lease (except that the term will be month to month and the initial Base Rent will be 115 percent of the amount of Base Rent being paid by Tenant at the termination or expiration of the Lease), or to eject Tenant from the Premises and recover damages caused by wrongful holdover.

13.4 For Sale and For Rent Signs. During the period of one hundred (100) days prior to the date above provided for the termination of this Lease, Landlord may post on the Plaza Building thereof signs notifying the public that the Premises are "for sale" or "for lease;" provided, however, that any signs outside the Premises shall be above the level of the Premise's windows.

SECTION 14. Damage and Destruction.

14.1 Partial Damage. If the Premises are partly damaged and Section 14.2 does not apply, the Premises shall be repaired by Tenant at Tenant's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Tenant, and shall be performed in accordance with the provisions of Section 8.1.

14.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, Landlord may elect to terminate the lease as of the date of the damage or destruction by notice given to Tenant in writing not more than 45 days following the date of damage. In such event, Tenant shall tender to Landlord that portion of Tenant's all-risk insurance proceeds applicable to the loss and damage to the Plaza Building, and the obligations of the parties shall thereafter cease as of the date of termination. Tenant shall be

entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If Landlord does not elect to terminate, Tenant shall proceed to restore the Premises to the same form as prior to the damage or destruction, in accordance with Section 8.1, or some other form approved in writing by Landlord. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

14.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the Premises are untenantable except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant, its officers, employees, agents, invitees and assigns.

14.4 Damage Late in Term. If damage or destruction to which Section 14.2 would apply occurs within one year before the end of the then-current lease term, and the damage did not occur as the result of the fault of Tenant, Tenant may elect to terminate the lease by written notice to Landlord given within 30 days after the date of the damage.

SECTION 15. Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 5. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. In addition to all other indemnities provided for by this Lease or by law, Lessee shall be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord from and against all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against Landlord and which, in whole or in part, directly or indirectly, arise from or are in any way connected with Hazardous Substances used, stored or released, by Seller, its employees, agents or assigns on the Premises. This indemnification shall require Lessee to reimburse Landlord for any diminution in value of the Property or other adjacent or nearby property of Landlord, caused by Hazardous Substances, including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, or any other property of Landlord, including damages arising from any adverse impact on marketing of land or buildings in or near the Property, including other property of Landlord.

SECTION 16. Indemnity and Insurance. The Tenant shall hold and save harmless Metro, and indemnify, and defend its elected officials, employees, and agents from actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against Landlord and which, in whole or in part, directly or indirectly, arise from or are in any way connected acts or omissions of Tenant, Tenant employees, agents, and visitors in accordance with the Oregon Tort Claims Act, ORS chapter 30. Tenant shall provide a certificate of insurance to the Landlord with the following coverages:

The Tenant shall maintain comprehensive general liability insurance program which provides coverage for injury and property damage in accordance with limits at a minimum of \$1,000,000.

The Tenant shall maintain "all risk" property insurance and shall be responsible for Tenant's improvements and Tenant's property.

SECTION 17. Waiver of Rights. Each party hereby releases the other from any and all liability or responsibility to the other (or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to the Premises, the Plaza Building, or property thereon caused by peril which would be covered by a standard "all risks" property insurance policy and water damage, whether or not such insurance is in force or is collectible, even if such loss or damage shall have been caused by the fault or negligence of the party, or anyone for whom such party may be responsible.

Tenant shall be responsible for the first \$5,000 as a deductible of the Landlords property insurance.

SECTION 18. Assignment and Subletting. Tenant shall not assign this Lease or further sublet all or part of the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold consent to any assignment or subletting provided the proposed tenant is compatible with Landlord's standards for the Plaza Building and is financially sound. The giving of such consent in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further transfers.

SECTION 19. Attorneys' Fees. In the event of any suit or action by either party to enforce any provision of this Lease, or in any other suit or action arising out of or in connection with this Lease, the prevailing party shall be entitled to recover its costs of suit or action and reasonable attorneys' fees whether at trial or appeal.

SECTION 20. Cumulative Rights and Remedies. No right or remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies at law or in equity.

SECTION 21. Time of the Essence. Time is of the essence of the performance of each of Tenant's obligations in this Lease.

SECTION 22. Amendments. This Lease shall not be amended or modified except by agreement in writing signed by both parties.

SECTION 23. Exhibits. Exhibit "A" and Exhibit "B" which are referred to in this Lease are attached hereto and by this reference incorporated herein.

SECTION 24. Consent of Landlord. Whenever consent, approval or direction by Landlord is required under the terms contained herein, all such consent, approval or direction must be in writing.

SECTION 25. Quiet Possession. Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all provisions of this Lease.

SECTION 26. Section Headings. The section headings to the sections of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part of it.

SECTION 27. Complete Agreement. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord or its agents to Tenant with respect to the subject matter of this Lease, the Premises or the Plaza Building. There are no representations between Landlord and Tenant other than those contained in this Lease and all reliance with respect to any representations is solely upon representations contained in this Lease.

SECTION 28. Third Parties. Landlord and Tenant are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct,

or indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its term.

SECTION 29. Estoppel Certificates. Within seven (7) days after Landlord's written request, Tenant shall deliver a written statement stating the date to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested by Landlord.

SECTION 30. Inspection. Landlord or its authorized representatives may enter at any time to determine Tenant's compliance with this Lease, to make necessary repairs, or to show the Premises and Plaza Building to any prospective tenants or purchasers; provided, however, that, except in the case of emergency repairs, such entry will be: a) made only on at least 24 hours prior oral or written notice, b) during normal business hours, and c) with an employee or Tenant to accompany Landlord or its representatives.

SECTION 31. Representations. Tenant certifies that no representations as to the condition or repair of the Premises have been made by Landlord or its agents, and that no agreement to alter, repair, or improve said Premises has been made by Landlord, except as expressly set forth herein.

SECTION 32. Notices. Notices under this Lease shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed postage prepaid to the address for the party set forth on page 1 of this Lease, or to such other address as either party may specify by notice to the other. Rent shall be payable to Landlord at the same address and in the same manner.

SECTION 33. Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and other provisions shall remain in full force and effect.

SECTION 34. Observance of Law. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force during the term of this Lease, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation or alteration of the Premises.

SECTION 35. Choice of Law. This Lease shall be governed by the laws of the State of Oregon.

Big Town Hero

Date

METRO

Mike Burton, Executive Officer

Date

Exhibit B

Tenant Improvements

1. Any HVAC improvements required by Tenant.
2. Any electrical or plumbing improvements required by Tenant. Landlord will provided separate electric and water meters..
3. Two complete, permitted and finished handicapped restrooms.
4. All other improvements required for Tenant's operation.

Landlord Work (subject to Metro Council approval)

1. All exterior work needed for ADA compliance.
2. Painting of exterior.
3. Repair and seal roof.

STAFF REPORT

FOR THE PURPOSE OF DECLARING THE PLAZA BUILDING SURPLUS PROPERTY, EXEMPTING THE TENANT FROM PAYING EXCISE TAX, AND AUTHORIZING THE EXECUTION OF A LEASE WITH BIG TOWN HERO

Date: July 25, 2002

Prepared by: Scott Moss

BACKGROUND

On the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), is a self-contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, referred to as the "Plaza Building".

Since 1995, Business Properties Investment (BPI), a property management firm has leased the Plaza Building. Recently, BPI vacated the Plaza Building due to bankruptcy. Staff contacted several potential clients and advertised the facility as "For Lease". Representatives of Big Town Hero contacted staff with interest in leasing the Plaza Building. Staff and Big Town Hero have negotiated a five-year lease with two automatic extensions.

Big Town Hero retails sub-sandwiches and soup for lunch and dinner. They bake bread on site but no other cooking is done. It will seat about 20 people inside and will use a small portion of the portion of the Plaza as weather permits.

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents**

Metro Code section 2.04.026 requires Metro Council approval for any contract to lease any real property owned by Metro.

ORS Chapter 279.826 allows public agencies to lease real or personal property not needed for public use.

Metro Code section 7.01.020 provides for users of Metro facilities to pay excise tax.

3. **Anticipated Effects**

A sandwich shop/deli is an excellent use of the Plaza Building. A deli will provide the neighborhood with a low cost lunch and dinner option. It will promote a positive image for Metro in revitalizing the neighborhood, and bringing people together. This use is consistent with the original vision for this space as retail use.

Rent: The rent is \$16.50 annually per square foot, which is above average for this unique space and neighborhood. The lease calls for two five-year automatic renewals. Rent increases are scheduled for 2005, 2007, 2010, 2012, and 2015.

Rent Starting Date: Metro is allowing a six month delay in starting rent for the following reasons: 1) Big Town Hero is making a number of landlord and tenant improvements, resulting in significant financial savings to Metro, 2) Big Town Hero opening date will be delayed while obtaining permits and making improvements, delay in rent allows them to not pay rent when not earning income, it is in Metro's best interest to see that Big Town Hero is successful, and 3) it is common practice in long term leases.

Improvements: Big Town Hero is responsible for all tenant improvements in the Plaza Building. Improvements include two ADA compliant restrooms, improved HVAC and lighting as needed, food preparation area, carpeting, interior walls, and seating. These improvements are estimated at \$25,000 to \$35,000. Metro will be responsible for any improvement required to the building exterior, except signage. No such needs are known or expected.

Plaza: Metro will designate a portion of the Plaza for seating when weather permits.

Signage: Metro must approve the signage used.

Utilities, insurance, taxes and other expenses: Big Town Hero is responsible for utilities, taxes, insurance, security, janitorial, and landscaping.

Excise taxes: Excise tax will be paid on the lease payments from Big Town Hero to Metro. Staff requests an exemption from charging excise tax on the gross revenues of Big Town Hero. This is not industry practice and will exclude leasing out the facility to a deli or any other retail operation.

Surplus Property: In accordance with state law, the Council must find the Plaza Building is not needed for public use in order to execute the lease.

4. Budget Impacts

Lease payments for the first year will provide a total \$13,200 of revenue to Metro. Payments thereafter will total \$26,400 annually with automatic rate increases. Excise tax estimate at \$2000 annually will be paid on all lease payments.

RECOMMENDED ACTION

The Executive Officer recommends approval of Resolution No. 02-3216 by the Metro Council.

STAFF REPORT

RESOLUTION NO. 02-3216, FOR THE PURPOSE OF DECLARING THE PLAZA BUILDING SURPLUS PROPERTY, EXEMPTING THE TENANT FROM PAYING EXCISE TAX, AND AUTHORIZING THE EXECUTION OF A LEASE WITH BIG TOWN HERO

Date: July 25, 2002

Prepared by: Scott Moss

BACKGROUND

On the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), is a self-contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, referred to as the "Plaza Building".

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Big Town Hero retails sub-sandwiches and soup for lunch and dinner. They bake bread on site but no other cooking is done. It will seat about 20 people inside and will use a small portion of the portion of the Plaza as weather permits.

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents**

Metro Code section 2.04.026 requires Metro Council approval for any contract to lease any real property owned by Metro.

ORS Chapter 279.826-271.320 provides that a political subdivision may lease real property it owns whenever said real property is not needed for public use or public interest may be furthered thereby.
~~allows public agencies to lease real or personal property not needed for public use.~~

Metro Code section 7.01.020 provides for users of Metro facilities to pay excise tax, unless exempted as provided therein.

3. **Anticipated Effects**

A sandwich shop/deli is an excellent use of the Plaza Building. A deli will provide the neighborhood with a low cost lunch and dinner option. It will promote a positive image for Metro in revitalizing the

neighborhood, and bringing people together. This use is consistent with the original vision for this space as retail use.

Rent: The rent is \$16.50 annually per square foot, which is above average for this unique space and neighborhood. The lease calls for two five-year automatic renewals. Rent increases are scheduled for 2005, 2007, 2010, 2012, and 2015.

Rent Starting Date: ~~Metro is allowing a six month delay in starting rent. The proposed lease provides the tenant with rent-free occupancy for the first six months of the lease for the following reasons: 1) Big Town Hero is making a number of landlord and tenant improvements, resulting in significant financial savings to Metro, 2) Big Town Hero opening date will be delayed while obtaining permits and making improvements, delay in rent allows them to not pay rent when not earning income, it is in Metro's best interest to see that Big Town Hero is successful, and 3) it is common practice in long term leases that require significant tenant improvements.~~

Improvements: Big Town Hero is responsible for all landlord and tenant improvements in the Plaza Building. Improvements include two ADA compliant restrooms, improved HVAC and lighting as needed, food preparation area, carpeting, interior walls, and seating. These improvements are estimated at \$25,000 to \$35,000. Metro will be responsible for any improvement required to the building exterior, except signage. No such needs are known or expected.

Plaza: Metro will designate a portion of the Plaza for ~~seating when weather permits~~ open-air dining.

Signage: Only Metro must approved the signage may be used.

Utilities, insurance, taxes and other expenses: Big Town Hero is responsible for utilities, taxes, insurance, security, janitorial, and landscaping.

Excise taxes: Big Town Hero desires to lease the Plaza Building from Metro at market rental rates, conditioned on an exemption from Metro excise tax. Imposing the Metro excise tax would be inconsistent with customary food service industry practice and would preclude leasing the Plaza Building to a deli or any other retail operation. Consequently, Staff requests an exemption to the Metro excise tax for Big Town Hero. A portion of the each rent payment equivalent to the excise tax revenue lost as a result of the exemption will be allocated to the general fund as if it were excise tax revenue. Excise tax will be paid on the lease payments from Big Town Hero to Metro. Staff requests an exemption from charging excise tax on the gross revenues of Big Town Hero. This is not industry practice and will exclude leasing out the facility to a deli or any other retail operation.

Surplus Property: ~~In accordance with state law, the Council must find the Plaza Building is not needed for public use in order to execute the lease.~~

Public Benefit: In accordance with Oregon law, in order to execute the lease, the Metro Council need find that the Plaza Building is not needed for public use or that the public interest may be furthered by entering into the lease with Big Town Hero.

4. Budget Impacts

Lease payments for the first year will provide a total \$13,200 of revenue to Metro. Payments thereafter will total \$26,400 annually with automatic rate increases. Excise tax estimate at \$2000 annually will be paid on all lease payments.

RECOMMENDED ACTION

The Executive Officer recommends approval of Resolution No. 02-3216 by the Metro Council.