

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING THE	)	RESOLUTION NO. 14-4586
PLAZA BUILDING SURPLUS PROPERTY,	)	
EXEMPTING THE TENANT FROM PAYING	)	Introduced by Chief Operating Officer Martha
EXCISE TAX, AND AUTHORIZING THE	)	Bennett in concurrence with Council
EXECUTION OF A LEASE WITH TABLE 6	)	President Tom Hughes

WHEREAS, Metro owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "MRC"), which includes a self-contained retail space situated in the northwest corner of the MRC known as the "Plaza Building;"

WHEREAS, Metro currently does not use the Plaza Building for its operations and has leased the Plaza Building in the past to tenants that served food and beverages to the public;

WHEREAS, Table 6 desires to lease the Plaza Building from Metro at a rate that is sustainable for its business model focusing on the preferences for food and beverages of employees of MRC, and Metro desires to lease the Plaza Building to Table 6 on the terms of the proposed lease attached as Exhibit A to this Resolution;

WHEREAS, under the proposed lease, Table 6 will make lease payments directly to Metro and under Metro Code Chapter 7.01.025(b), Metro's excise tax will be presumed to be included in these lease payments; and

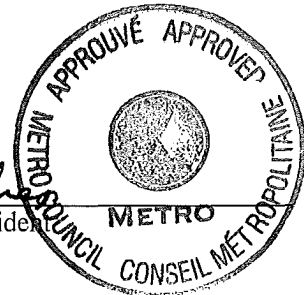
WHEREAS, Table 6 does not anticipate paying additional Metro excise tax on its gross revenues or any additional amount of excise tax that could be assessed in excess of the lease payments; therefore

BE IT RESOLVED that the Metro Council hereby:

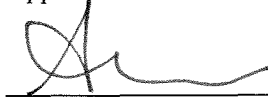
1. Declares the Plaza Building surplus property because it is not needed for public use during the term of the proposed lease;
2. Exempts Table 6 from Metro excise tax on operators and users of Metro facilities; and
3. Authorizes the Chief Executive Officer to enter into a lease agreement with Table 6 similar to the lease agreement attached as Exhibit A, or with those changes approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 4th day of December 2014.

  
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 Tom Hughes, Council President



Approved as to Form:

  
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 Alison R. Kean, Metro Attorney

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**RETAIL LEASE**

Between:

Metro, an Oregon municipal corporation

("Landlord")

and

Table 6, a sole proprietorship

("Tenant")

Dated December \_\_\_\_, 2014

**METRO CONTRACT NO. \_\_\_\_\_**

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## SUMMARY OF FUNDAMENTAL PROVISIONS

Following is a summary of the basic provisions contained in the Lease. In the event of any conflict between any provision contained in this Summary and a provision contained in the balance of the Lease, the latter shall control.

- A. Name of Landlord: Metro, an Oregon municipal corporation
- B. Address, Facsimile Number, and E-mail for Notices to Landlord: 600 NE Grand Ave.  
Portland, OR 97232  
Attn: Rory Greenfield, Facilities Manager  
Email: [Rory.Greenfield@OregonMetro.gov](mailto:Rory.Greenfield@OregonMetro.gov)  
Phone: 503.797.1815
- C. Address for Rent Payments: 600 NE Grand Ave.  
Portland OR 97232  
Attn: Accounts Payable
- D. Name of Tenant and Address of Premises: Table 6, a sole proprietorship
- E. Address, Facsimile Number, and E-mail for Notices to Tenant: Table 6 c/o Cynthia Hymer  
9628 N. Smith St.  
Portland, Oregon 97203  
[hymerfamily@gmail.com](mailto:hymerfamily@gmail.com)
- F. Trade Name Under Which Tenant Will Operate at Premises: Table 6
- G. Business To Be Conducted By Tenant at Premises: Restaurant and catering with counter and/or table service, selling food and beverages to eat in or to take-out, and for no other purpose.
- H. Approximate Floor Area of Premises: 1,600 s.f.
- I. Lease Term: Three years (subject to the options to extend as set forth in **Exhibit B** to this Lease).
- J. Estimated Commencement Date: December 8, 2014
- K. Base Rent: See Section 2
- L. Security Deposit: None

## RETAIL LEASE

THIS LEASE is entered into this \_\_\_\_\_ day of December, 2014, between Metro, an Oregon municipal corporation (“Landlord”), and Table 6, a sole proprietorship (“Tenant”).

Landlord owns a self-contained retail space (the “Plaza Building”) in the northwest corner of the Metro Regional Center located at 600 NE Grand Avenue, Portland, Oregon (the “MRC” or the “Property”). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Plaza Building consisting of approximately 1,600 square feet, as depicted on the attached Exhibit A (the “Premises”) on the terms and conditions set forth in this Lease.

### 1. **TERM**

(a) Initial Term. The term of this Lease (the “Term”) shall be for a period of thirty-six (36) months, commencing on the date that this Lease is executed by and delivered to both parties (the “Commencement Date”). If the first day of the Term is not the first day of a calendar month, then the Term shall be extended by the number of days between the Commencement Date of this Lease and the first day of the first calendar month thereafter, so that the Term shall expire at the end of a calendar month.

(b) Option to Extend Term. See Exhibit B.

### 2. **RENT**

Beginning on the Commencement Date and continuing during the entire Term, Tenant shall pay to Landlord as rent for each “Lease Year,” “Base Rent” as defined in this Section. The term “Lease Year” shall mean the period from the Commencement Date through the first December 31 following the Commencement Date, January 1 through December 31 for each subsequent full calendar year during the Term, and January 1 to the end of the Term for the final Lease Year. All Rent shall be paid when due without notice, offset, or deduction or for any reason.

#### (a) **Base Rent**

The initial monthly Base Rent during the Term (“Base Rent”) shall be **\$200.00**. Effective **January 1, 2016**, the new monthly Base Rent shall be **\$500.00**. Base Rent shall be paid in advance on or before the tenth (10th) day of each calendar month during the Term, except for the first (1<sup>st</sup>) calendar month which shall be paid upon execution of this Lease. If the first (1<sup>st</sup>) month of the Term is a partial month, the first Base Rent payment shall be prorated on a daily basis, based on the actual number of days in such month.

#### (b) **Income Statement**

On or before the twelfth (12th) month and the eighteenth (18th) month of the Term, Tenant shall deliver to Landlord a complete and correct statement showing in reasonable detail Tenant’s income and expenses for the twelve months or eighteen (18) months prior, as applicable. The statement shall be signed by an officer certifying to its accuracy and completeness. The parties will negotiate in good faith any changes a party may desire to Base Rent or Additional Rent based on the Income Statements.

#### (c) **General**

All references to “Rent” or “Rental” in this Lease shall mean Base Rent, Additional Rent, and all other payments required of Tenant under this Lease, unless otherwise expressly specified, and all payments required by Tenant under this Lease shall be deemed “Rent.”

#### (d) **Place of Payment**

Tenant shall pay Rent and other amounts required to be paid by Tenant hereunder to Landlord at the address for Landlord set forth on the Summary of Fundamental Provisions of this Lease, or at such other place as Landlord may from time to time designate in writing.

### 3. **SECURITY DEPOSIT**

Tenant has paid to Landlord a sum equal to the amount set forth on the Summary of Fundamental Provisions. Landlord shall be entitled to apply the Security Deposit (and any portion deposited to date) to pay the cost of repairing any damage caused by Tenant, or performing any obligation which Tenant fails to perform within the time required by this Lease, but such application by Landlord shall not waive Landlord’s other remedies nor be the exclusive remedy for Tenant’s default. Such security deposit shall be returned to Tenant within thirty (30) days after the expiration of this Lease, provided Tenant has fully and faithfully carried out all of Tenant’s obligations

hereunder, including the payment of all amounts due to Landlord hereunder and the surrender of the Premises to Landlord in the condition required in this Lease. However, Landlord, at its option, may apply such sum on account of the payment of the last month's Base Rent or other unpaid Tenant obligations, in which latter event, Tenant shall replace any such sum applied by Landlord immediately upon notice from Landlord of such requirement. Such sum may be commingled with other funds of Landlord and shall not bear interest. In the event of a sale of the Property, 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.

#### 4. **ADDITIONAL RENT**

##### (a) **Operating Expenses**

In addition to Base Rent, Tenant shall pay Landlord for the water and electricity provided to the Premises ("Operating Expenses"). Landlord shall allocate Operating Expenses to the Plaza Building based on its meters of the electricity and water supplying the Plaza Building, in Landlord's reasonable discretion; provided that Tenant shall not be responsible for any usage of such utilities attributable to Landlord or failure of infrastructure that is Landlord's responsibility to maintain under this Lease.

##### (b) **Payment of Operating Expenses**

Beginning on the first (1st) day of the calendar month following the Commencement Date, and continuing throughout the Term, Landlord shall invoice Tenant for the prior month's amount of Operating Expenses. Tenant shall make such monthly payments on or before the tenth (10th) day of the calendar month, together with Tenant's payment of Base Rent.

#### 5. **INSURANCE; INDEMNITY**

##### (a) **Tenant Insurance**

Tenant shall purchase and maintain at the Tenant's expense, the following types of insurance, covering the Tenant, its employees, and agents:

- (i) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$2,000,000 per occurrence. The policy will include coverage for bodily injury, death, property damage, personal injury, contractual liability, premises and products/completed operations. Tenant's coverage will be primary as respects Landlord;
- (ii) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$1,000,000 per accident or disease; and
- (iii) Property or personal property insurance covering Tenant's equipment, improvements and possessions.
- (iv) Liquor liability insurance with limits not less than \$1,000,000 if Tenant sells beer, wine or liquor.

Landlord, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED on Commercial General Liability policy. Tenant shall provide to Landlord thirty (30) days notice of any material change or policy cancellation. Tenant shall provide Landlord with a Certificate of Insurance complying with this section upon execution and delivery of this Lease. The Certificate of Insurance shall identify the Metro contract number.

##### (b) **Indemnity**

Tenant shall indemnify and hold Landlord, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses arising out of or in any way connected with its performance of this Agreement, and for any claims or disputes involving subcontractors.

## 6. USE OF PREMISES

The Premises shall be used for restaurant and catering with counter and/or table service, selling food and beverages to eat in or to take-out, and for no other purpose without Landlord's written consent. In connection with the use of Premises, Tenant shall, at Tenant's sole cost and expense, except as specifically provided otherwise herein:

a) Conform to all applicable laws, statutes, rules, ordinances, orders, regulations, and requirements of any public authority ("Laws") affecting the Premises and the use of the Premises and correct, at Tenant's own expense, any failure of compliance created through Tenant's fault or by reason of Tenant's use, unless such failure is due to Landlord's default in the performance of the agreements set forth in this Lease to be kept and performed by Landlord. Without limiting the generality of the foregoing, Tenant shall comply with the Americans with Disabilities Act as it applies to the Premises.

b) Refrain from any activity that would be unreasonably offensive to Landlord, to other occupants in the MRC, or to owners or users of the adjoining properties, or that would tend to create a nuisance or damage the reputation of the Premises or of any such buildings. Without limiting the generality of the foregoing, Tenant shall not permit any noise or odor (except given Tenant's permitted use) to escape or be emitted from the Premises nor permit the use of flashing (strobe) lights nor permit the sale or display of offensive materials as reasonably determined by Landlord;

c) Refrain from loading the floors, electrical systems, plumbing systems, or heating, ventilating and air conditioning systems ("HVAC"), beyond the point considered safe by a competent engineer or architect selected by Landlord and refrain from using electrical, water, sewer, HVAC, and plumbing systems in any harmful way. If Landlord employs an engineer, architect, electrical, or other consultant to determine whether Tenant's use of the Premises is in violation of this Section 6(c). Tenant shall pay the reasonable costs incurred in connection with that employment. Tenant shall use hair interceptors, grease traps, or other drain protection devices as needed to avoid such harmful use;

d) Not permit any pets or other animals in the Premises except for Seeing Eye dogs;

e) Refrain from making any marks on or attaching any sign, insignia, antenna, window covering, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of Landlord, which consent shall not be unreasonably withheld. Landlord need not consent to any sign that fails to conform to the design concept of the buildings situated on the Property, and all policies and procedures as established by Landlord. Prior to installing any signs, Tenant shall submit detailed color drawings to Landlord for approval indicating the location, size, layout, design, and color of proposed sign, including all lettering and graphics. Electrical service to all signs shall be at Tenant's sole expense. Free standing or monument signs are prohibited. Notwithstanding Landlord's consent to any signs, Tenant shall (i) comply with all Laws and obtain any necessary permits and governmental approvals related to such signs at its own cost and expense, and (ii) within fifteen (15) days after Lease expiration or earlier termination, remove all such signs and repair any damage to the Premises caused thereby, at Tenant's own cost and expense;

f) Comply with any reasonable rules respecting the use of the Premises promulgated by Landlord from time to time and communicated to Tenant in writing. Without limiting the generality of the foregoing, such rules may establish hours during which the common areas shall be open for use, may regulate deliveries to the Premises and may regulate parking by employees. Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading and unloading, to the Premises by a.m. each day, and to prevent delivery trucks or other vehicles serving the Premises to park or stand in front of the locations of other occupants;

g) Comply with any no smoking (and other health related) policies and procedures established by any Law or by Landlord from time to time;

h) Recognize that it is in the interest of both Tenant and Landlord to have regulated hours of business, Tenant shall keep the Premises open for business and cause Tenant's business to be conducted therein during those days and hours as is customary for businesses of like character in the city or county in which the Premises are situated, but in any event during those days and hours reasonably established by Landlord which, at the Commencement Date, shall be 7:30 a.m. to 3:00 p.m. Monday through Friday, and Tenant shall be entitled to remain closed on legal holidays, for two (2) weeks including the weeks of Christmas Day and New Year's Day, and for two (2) additional weeks during any Lease Year, with one (1) month prior written notice to Landlord. Any failure to operate by Tenant shall be excused to the extent that the use of the Premises is interrupted or prevented by causes

beyond Tenant's reasonable control; provided, however, that Tenant's financial condition, poor market demand for Tenant's products, and other economic factors shall not excuse Tenant's obligation to continuously operate as required under this section;

i) Maintain on the Premises an adequate supply of food to service and supply the usual and ordinary requirements of its customers. Tenant shall not use a substantially new or modified menu or restaurant concept without Landlord's prior review and written approval of the new concept, which shall not be unreasonably withheld;

j) Not permit any cash, credit card, or coin-operated vending, novelty, or gaming machines or equipment on the Premises without the prior written consent of Landlord, which may be withheld in its sole discretion; and not permit the use of any part of the Premises for a second-hand store, an auction, distress, fire sale, bankruptcy, or going-out-of-business sale or the like;

k) Not commit or suffer any harm to the Premises, including without limitation, the improvements thereon or any part thereof; and Tenant shall keep the Premises in a neat, clean, sanitary, and orderly condition;

l) Refrain from any use of any area on the Property that is outside the Premises, unless such use is specifically permitted in writing by Landlord in advance or permitted pursuant to Section 7, below;

m) Not generate, release, store, or deposit on the Premises any environmentally hazardous or toxic substances, materials, wastes, pollutants, oils, or contaminants, as defined or regulated by any federal, state, or local law or regulation or any other Law (collectively, "Hazardous Substances"), except that Tenant may have and use small quantities of Hazardous Substances on the Premises as required in the ordinary course of Tenant's business. Tenant shall indemnify, defend, and hold harmless Landlord from and against any and all claims, losses, damages, response costs, and expenses of any nature whatsoever (including without limitation attorneys', experts', and paralegals' fees) arising out of or in any way related to the generation, release, storage, or deposit of Hazardous Substances on the Premises or on Landlord's property by Tenant or any other person or entity other than Landlord on and/or after the date of this Lease;

n) Not allow or permit any conduct or omission at the Premises, or anywhere on Landlord's property, that will promote or allow the production or growth of mold, spores, fungus, or any other similar organism, and shall indemnify and hold Landlord harmless from any claim, demand, cost, and expense (including attorney fees) arising from or caused by Tenant's failure to strictly comply with its obligations under this provision; and

o) Comply with the requirements of all operation and easement agreements and all other agreements and requirements of record on the Property.

## 7. OUTDOOR SEATING

Subject to the provisions of this Section 7, Tenant shall have a nonexclusive revocable license to use the area outside of the Premises on the east side of the Plaza Building at the location shown on Exhibit A (the "License Area") for tables, chairs, propane heating, and outdoor grilling and food preparation at Tenant's election. All of Tenant's cleaning, maintenance, repair, operations, insurance and indemnification obligations, and any Landlord rules and regulations, shall apply to the License Area as if the same were part of the Premises. In addition, Tenant shall clean and bus tables in the License Area, and shall ensure that any propane heaters are operated in a fire-safe manner and turned off by the end of each working day that they are used. Landlord shall have no obligation whatsoever regarding the License Area, including any obligation to clean, patrol, maintain, repair, or insure the License Area. The furniture, heaters and any other furnishings Tenant desires to place in the License Area (in addition to those existing in the License Area as of the date of this Lease) shall be subject to Landlord's prior written approval. Tenant shall comply with all laws, rules, and codes with respect to the License Area, shall procure at its expense any permits or licenses required for use of the License Area (including liquor licenses or permits required for food preparation), and shall deliver a copy of such permits and licenses to Landlord upon receipt. Tenant shall not (a) erect or place any canopy or other enclosure or covering on the License Area without Landlord's prior written approval; (b) permit any music or other similar sounds to be heard in the License Area without Landlord's prior written approval; or (c) permit loitering in the License Area by persons who are not customers of Tenant or occupants of the MRC. Tenant will immediately discontinue use of the License Area and remove the above furnishings from the License Area upon request of any governmental agency, and will only resume such use upon approval or appropriate permitting by such governmental agency. Tenant accepts the License Area in its AS-IS

condition and assumes all risk of accident, theft or injury within the License Area. Landlord makes no representation or warranty as to Tenant's ability to use the License Area for the above purposes.

#### 8. **PUBLICITY; COOPERATION OF THE PARTIES**

Landlord shall use best efforts to steer all reoccurring and catered department meetings and luncheons to Tenant. To this end, Landlord shall cooperate with Tenant's efforts to publicize Tenant's menu, delivery, and pick-up options to occupants and visitors to the MRC, including, by way of example, listing Tenant's weekly menu and website in Metro's "Weekly Update" email for a period of time during the Term and allowing Tenant to write daily lunch specials on a white board inside the MRC lobby. Landlord shall, upon request, provide Tenant with a list of all days that MRC is closed and the dates of all-staff meetings that may interfere with Tenant's regular customer traffic.

#### 9. **PARKING**

Landlord shall provide Tenant with one (1) parking space at no cost within the adjacent parking garage, which Landlord shall mark for Tenant's exclusive use. The parking space shall be located on the ground floor in a location to be determined by Landlord and as close as practicable to the Plaza Building. Landlord shall have the right to relocate the parking space during the Term to a similarly convenient parking space within the adjacent garage.

#### 10. **TENANT IMPROVEMENTS AND ALTERATIONS**

Tenant accepts the Premises AS IS in their condition as of the Commencement Date, and Tenant shall pay for all tenant improvements, whether the work is performed by Landlord or by Tenant. If any improvements or alterations to the Premises or any other work on the Premises by Tenant causes the need to comply with any Laws in areas outside of the Premises including without limitation the Americans with Disabilities Act or regulations pertaining to earthquake codes, Tenant shall pay the cost thereof as well. Tenant shall make no improvements or alterations on the Premises of any kind, including the initial work to be performed by Tenant in the Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant may make minor, cosmetic (non-structural) alterations to the Premises without Landlord's consent, but will notify Landlord from time to time of all such minor alterations. Prior to the commencement of any work by Tenant, Tenant shall first submit the following to Landlord and obtain Landlord's written consent to all of the following, which consent shall not be unreasonably withheld: Tenant's plans and specifications; Tenant's estimated costs; and the names of all of Tenant's contractors and subcontractors. If Landlord is to perform the work for some or all of such work, Landlord shall have the right to require Tenant to pay for the cost of the work in advance or in periodic installments. If the work is to be performed by Tenant, Landlord shall have the right to require Tenant to furnish adequate security to assure timely payment to the contractors and subcontractors for such work. All work performed by Tenant shall be done in strict compliance with all applicable building, fire, sanitary, and safety codes, and other Laws, and Tenant shall secure all necessary permits for the same. Tenant shall keep the Premises free from all liens in connection with any such work. All work performed by Tenant shall be carried forward expeditiously, shall not interfere with Landlord's work, and shall be completed within a reasonable time. Landlord or Landlord's agents shall have the right at all reasonable times to inspect the quality and progress of such work. All improvements, alterations, and any other work performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed, except for Tenant's trade fixtures, and may not be removed at the expiration of this Lease unless the applicable Landlord's consent specifically provides otherwise. Notwithstanding Landlord's consent to improvements or alterations by Tenant, all such improvements, alterations, or other work to be performed by Tenant shall be at the sole cost and expense of Tenant.

#### 11. **REPAIRS AND MAINTENANCE**

##### (a) **Landlord's Responsibilities**

The following shall be the responsibility of Landlord:

- i. Structural repairs and maintenance and repairs necessitated by structural disrepair or defects;
- ii. Repair and maintenance of the exterior walls, roof, gutters, downspouts, and foundation of the Plaza Building, including maintenance of the operating condition of exterior doors and replacement of glass; and



iii. Repair of interior walls, ceilings, doors, windows, floors, and floor coverings when such repairs are made necessary because of failure of Landlord to keep the structure in repair as above provided in this Section 11(a).

iv. Repair and replacement of the HVAC unit on an as needed basis.

v. Repair or replacement of any existing electrical (including electrical panels) and plumbing behind the walls, above the ceiling or below the floors, including, without limitation, plumbing and drain lines.

vi. All underground plumbing/sewer/storm water systems serving the Premises.

vii. Extermination services to keep the Premises free of pests, vermin, and rodents.

viii. All other repairs, maintenance, and replacements to the Plaza Building that Tenant is not expressly required to make under Section 11(b), below. If Landlord and Tenant mutually agree that Landlord should make a capital improvement that is/are related to Tenant's use of the Premises that may not otherwise be provided for in this Lease, Tenant shall repay Landlord its share as applicable of the cost of such mutually agreed upon capital improvements with a five percent (5%) interest factor by way of increased Rent (on a straight line basis) over the useful life of such capital improvement.

**(b) Tenant's Responsibilities**

The following shall be the responsibility of Tenant:

i. The interior of the Premises including any interior decorating and housekeeping;

ii. Any repairs and replacements necessitated by the negligence or use of the Premises by Tenant, its agents, employees, and invitees;

iii. Maintenance and repair of the interior walls and floor coverings (both hard surfaces and carpeting); and

iv. Any repairs or alterations required under Tenant's obligation to comply with all applicable Laws as set forth in this Lease. All Tenant's work shall be in full compliance with then current building code and other governmental requirements.

**(c) Inspections**

Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs as outlined above in any area in Tenant's possession and control shall not mature until a reasonable time after Landlord has received from Tenant written notice of the necessity of repairs, except in the event emergency repairs may be required and in such event Tenant shall attempt to give Landlord immediate notice considering the circumstances.

**(d) Landlord's Work**

All repairs, replacements, alterations, or other work performed on or around the Premises by Landlord shall be done in such a way as to interfere as little as reasonably possible with the use of the Premises by Tenant. Tenant shall have no right to an abatement of Rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's performance of repairs and maintenance pursuant to this Section 11. Landlord shall have no liability for failure to perform required maintenance and repair, unless written notice of such maintenance or repair is given by Tenant and Landlord fails to commence efforts to remedy the problem in a reasonable time and manner. Landlord shall have the right to erect scaffolding and other apparatus necessary for the purpose of making repairs or alterations to the Plaza Building. Work may be done during normal business hours. Tenant shall have no claim against Landlord for any interruption or reduction of services or interference with Tenant's occupancy caused by Landlord's maintenance and repair, and no such interruption or reduction shall be construed as a constructive or other eviction of Tenant.

**12. LIENS; TENANT'S TAXES**

Tenant shall keep the Premises free from all liens, including mechanic's liens, arising from any act or omission of Tenant or those claiming under Tenant. Landlord shall have the right to post and maintain on the Premises or the Plaza Building such notices of nonresponsibility as are provided for under the lien laws of the state in which the

Premises are located. Tenant shall be responsible for and shall pay when due all taxes assessed during the Term against any leasehold or personal property of any kind owned by or placed upon or about the Premises by Tenant.

**13. GARBAGE AND SERVICES**

Tenant shall pay promptly for all water and electricity as set forth in Section 4 of this Lease. Tenant may use Landlord's garbage and recycling bins at no charge, but is responsible for placing the garbage in the bins in sealed trash bags on a daily basis and depositing recycling into appropriate receptacles. Tenant shall haul its own compost off-site daily. Tenant shall comply with any recycling programs required by any Law or reasonably required by Landlord. Landlord shall not be liable or responsible for any interruption of utility service to the Premises and any such interruption shall not entitle Tenant to any abatement of rent, unless such interruption is caused solely by the negligence of Landlord.

**14. ICE, SNOW, AND DEBRIS**

Tenant shall keep the walks in front of the Premises free and clear of ice, snow, rubbish, debris, and obstructions. Tenant shall indemnify and hold Landlord harmless from any injury whether to Landlord or Landlord's property or to any other person or property caused by Tenant's failure to perform Tenant's obligations under this Section 14. Tenant's obligations under this Section 14 shall be performed at Tenant's cost and expense. Landlord reserves the right to cause the removal of ice, snow, debris and obstruction from the area in front of the Premises and Tenant shall pay the cost thereof within ten (10) days after billing therefor.

**15. WAIVER OF SUBROGATION**

Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard multiperil insurance policy, including sprinkler leakage insurance if the Premises have sprinklers, to the extent that any such insurance actually pays any such loss or damage. All claims or rights of recovery for any and all such loss or damage, however caused, are hereby waived. Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either Landlord or Tenant or by any of their respective agents, servants, or employees.

**16. INJURY TO TENANT'S PROPERTY**

Landlord shall not be liable for any injury to the goods, stock, merchandise, or any other property of Tenant or to any person in or upon the Premises or to the leasehold improvements in the Premises resulting from fire or collapse of the Plaza Building or any portion thereof or any other cause, including but not limited to damage by water or gas, or by reason of any electrical apparatus in or about the Premises. Tenant shall carry adequate insurance coverage at its sole cost and expense to cover the risks described in this section.

**17. DAMAGE OR DESTRUCTION**

**(a) Partial Destruction**

If the Premises shall be partially damaged by fire or other cause, and Section 17(b) below does not apply, the damages to the Premises shall be repaired by Landlord, and all Base Rent until such repair shall be made shall be apportioned according to the part of the Premises that is usable by Tenant, except when such damage occurs because of the fault of Tenant. The repairs shall be accomplished with all reasonable dispatch. Landlord shall bear the cost of such repairs, unless the damage occurred from a risk that would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs.

**(b) Substantial Damage**

If the Plaza Building is twenty-five percent (25%) or more destroyed during the Term by any cause, Landlord may elect to terminate the Lease as of the date of damage or destruction by notice given to Tenant in writing not more than sixty (60) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. In the absence of a final election to terminate, Landlord shall proceed to restore the Premises, if damaged, to substantially the same form as prior to the damage or destruction, so as to provide Tenant usable space equivalent in quantity and character to that before the damage or destruction. Work shall be commenced as soon as reasonably possible, and thereafter proceed without interruption, except for work stoppages on account of matters beyond the reasonable control of Landlord. From the date of damage until the Premises are restored or repaired, Base Rent shall be abated or apportioned according to the part of the Premises usable by

Tenant, unless the damage occurred because of the fault of Tenant. Landlord shall bear the cost of such repairs unless the damage occurred from a risk that would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of Tenant, in which event Tenant shall bear the expense of the repairs.

**(c) Restoration**

If the Premises are to be restored by Landlord as above provided in this Section 17, Tenant, at its expense, shall be responsible for the repair and restoration of all items that were initially installed at the expense of Tenant (whether the work was done by Landlord or Tenant) or for which an allowance was given by Landlord to Tenant, together with Tenant's stock in trade, trade fixtures, furnishings, and equipment; and Tenant shall commence the installation of the same promptly upon delivery to it of possession of the Premises and Tenant shall diligently prosecute such installation to completion.

**18. BANKRUPTCY**

Subject to Section 22, the Lease shall not be assigned or transferred voluntarily or involuntarily by operation of law. It may, at the option of Landlord, be terminated, if Tenant be adjudged bankrupt or insolvent, or makes an assignment for the benefit of creditors, or files or is a party to the filing of a petition in bankruptcy, or commits an act of bankruptcy, or in case a receiver or trustee is appointed to take charge of any of the assets of Tenant or sublessees or assignees in or on the Premises, and such receiver or trustee is not removed within thirty (30) days after the date of his appointment, or in the event of judicial sale of the personal property in or on the Premises upon judgment against Tenant or any sublessees or assignee hereunder, unless such property or reasonable replacement therefor be installed on the Premises. To the extent permitted by law, this Lease or any sublease hereunder shall not be considered as an asset of a debtor-in-possession, or an asset in bankruptcy, insolvency, receivership, or other judicial proceedings.

**19. DEFAULT**

The following shall be events of default:

- a) Failure of Tenant to pay any Rent when due or failure of Tenant to pay any other charge required under this Lease within ten (10) days after it is due, after notice and ten (10) day cure period.
- b) Failure of Tenant to execute the documents described in Section 23 or 25 within the time required under such Sections; failure of Tenant to provide or maintain the insurance required of Tenant pursuant to Section 5(b); or failure of Tenant to comply with any Laws as required pursuant to Section 6 within 24 hours after written demand by Landlord.
- c) Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than the failures described in Section 19a) or 19b) above) within ten (10) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the ten (10)-day period, this provision shall be complied with if Tenant begins correction of the default within the ten (10)-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Landlord shall not be obligated to give written notice for the same type of default more than twice; at Landlord's option, a failure to perform an obligation after the second (2<sup>nd</sup>) notice shall be an automatic event of default, without notice or any opportunity to cure.
- d) The abandonment of the Premises by Tenant or the failure of Tenant for fifteen (15) days or more to occupy the Premises for one or more of the designated purposes of this Lease unless such failure is excused under other provisions of this Lease.
- e) The bankruptcy or insolvency of Tenant or the occurrence of other acts specified in Section 18 of this Lease that give Landlord the option to terminate.
- f) The assignment or subletting or purported assignment or subletting of Tenant's interest under this Lease in violation of Section 22.

20. **REMEDIES ON DEFAULT**

In the event of a default, Landlord may, at Landlord's option, exercise anyone or more of the rights and remedies available to a landlord in the state in which the Premises are located to redress such default, consecutively or concurrently, including the following:

a) Landlord may elect to terminate Tenant's right to possession of the Premises or any portion thereof by written notice to Tenant. Following such notice, Landlord may re-enter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. To the extent permitted by law, Landlord shall have the right to retain the personal property belonging to Tenant that is on the Premises at the time of re-entry, or the right to such other security interest therein as the law may permit, to secure all sums due or that become due to Landlord under this Lease. Perfection of such security interest shall occur by taking possession of such personal property or otherwise as provided by law.

b) Following re-entry by Landlord, Landlord may relet the Premises for a term longer or shorter than the Term and upon any reasonable terms, including the granting of rent concessions to the new tenant. Landlord may alter, refurbish, or otherwise change the character or use of the Premises in connection with such reletting. Landlord shall not be required to relet for any use or purpose that Landlord may reasonably consider injurious to its property or to any tenant Landlord may reasonably consider objectionable. No such reletting by Landlord following a default by Tenant shall be construed as an acceptance of the surrender of the Premises. If rent received upon such reletting exceeds the Rent received under this Lease, Tenant shall have no claim to the excess.

c) Landlord shall have the right to recover from Tenant the following damages:

a. All unpaid or other charges for the period prior to re-entry, plus interest at the greater of fifteen percent (15%) per annum or a rate equal to five (5) percentage points in excess of the discount rate, including any surcharge on the discount rate, on ninety (90)-day commercial paper declared by the Federal Reserve Bank in the Federal Reserve District in which Portland, Oregon, is located on the date the charge was due (the "Interest Rate").

b. An amount equal to the Rent lost during any period during which the Premises are not relet, if Landlord uses reasonable efforts to relet the Premises. If Landlord lists the Premises with a real estate broker experienced in leasing commercial property in the metropolitan area in which the Premises are located, such listing shall constitute the taking of reasonable efforts to relet the Premises.

c. All costs incurred in reletting or attempting to relet the Premises, including but without limitation, the cost of clean-up and repair in preparation for a new tenant, including any improvements to the Premises and the cost of correcting any defaults or restoring any unauthorized alterations and the amount of any real estate commissions and advertising expenses.

d. The difference between the Rent reserved under this Lease and the amount actually received by Landlord after reletting, as such amounts accrue.

e. Reasonable attorney fees and legal expenses incurred in connection with the default, whether or not any litigation is commenced.

d) Landlord may sue periodically to recover damages as they accrue throughout the Term and no action for accrued damages shall bar a later action for damages subsequently accruing. To avoid a multiplicity of actions, Landlord may obtain a decree of specific performance requiring Tenant to pay the damages stated in Section 20c) above as they accrue. Alternatively, Landlord may elect in anyone action to recover accrued damages, plus damages attributable to the remaining Term equal to the difference between the Rent under this Lease and the reasonable rental value of the Premises for the remainder of the Term.

e) In the event Tenant remains in possession following default and Landlord does not elect to reenter, Landlord may recover all back Rent and other charges, and shall have the right to cure any nonmonetary default and recover the cost of such cure from Tenant, plus interest from the date of expenditure at the Interest Rate. In addition, Landlord shall be entitled to recover attorney fees reasonably incurred in connection with the default, whether or not litigation is commenced. Landlord may sue to recover such amounts as they accrue, and no one action for accrued damages shall bar a later action for damages subsequently accruing.

f) The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another remedy.

## 21. SURRENDER AT EXPIRATION

### (a) Condition of Premises

Upon expiration of the Term or earlier termination, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Improvements, alterations, wiring, cables, or conduit constructed by or for Tenant shall not be removed or restored to the original condition unless the terms of Landlord's consent provides otherwise or unless Landlord requests Tenant to remove all or any of such improvements, alterations, wiring, cables, or conduit, in which event Tenant shall remove those designated by Landlord for removal and restore the Premises at Tenant's sole cost and expense. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this Section 21 shall be subject to the provisions of Section 17 relating to damages or destruction.

### (b) Fixtures

i. All fixtures placed upon the Premises during the Term, other than Tenant's trade fixtures, shall, at Landlord option, become the property of Landlord. Movable furniture, decorations, floor covering other than hard surface bonded or adhesively fixed flooring, curtains, drapes, blinds, furnishings and trade fixtures shall remain the property of Tenant if placed on the Premises by Tenant; provided, however, if Landlord granted Tenant an allowance for improvements, in stallation, floor coverings, curtains, drapes, blinds or other items, such items shall at Landlord's option become the property of Landlord, notwithstanding the installation thereof by Tenant.

ii. If Landlord so elects, Tenant shall remove any or all fixtures, wiring, cables, or conduit that would otherwise remain the property of Landlord, and shall repair any damage resulting from the removal. If Tenant fails to remove such fixtures, wiring, cables, or conduit, Landlord may do so and charge the cost to Tenant with interest at the Interest Rate. Tenant shall remove all furnishings, furniture, and trade fixtures that remain the property of Tenant and shall repair any damage resulting from the removal. If Tenant fails to do so, this shall be an abandonment of the property, and following ten (10) days' written notice, Landlord may remove or dispose of it in any manner without liability. Tenant shall be liable to Landlord for the cost of removal and transportation to storage, with interest on all such expenses from the date of expenditure at the Interest Rate.

iii. The time for removal of any property or fixtures that Tenant is required to remove from the Premises upon termination shall be as follows:

(1) On or before the date the Lease terminates because of expiration of the Term or because of a default under Section 19.

(2) Within ten (10) days after written notice from Landlord requiring such removal where the property to be removed is a fixture that Tenant is not required to remove except after such notice by Landlord, and such date would fall after the date on which Tenant would be required to remove other property.

### (c) 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 the provisions of this Lease, except the provision for the Term, and except the Base Rent provided herein shall double during the period of the month-to-month tenancy. Failure of Tenant to remove fixtures, furniture, furnishings or trade fixtures or to repair any damage caused by such removal that Tenant is required to remove and repair under this Lease shall constitute a failure to vacate to which this Section 21(c) shall apply if the property not removed or repaired will interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose, including preparation for a new tenant.

## 22. ASSIGNMENT AND SUBLETTING

### (a) Landlord's Consent

Tenant shall not, either voluntarily or by operation of law, sell, assign, or transfer this Lease or sublet the Premises or any part thereof, or assign any right to use the Premises or any part thereof (each a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, and any attempt to do so without such prior written consent shall be void and, at Landlord's option, shall terminate this Lease. If Tenant requests Landlord's consent to any Transfer, Tenant shall promptly provide Landlord with a copy of the proposed agreement between Tenant and its proposed transferee and with all such other information concerning the business and financial affairs of such proposed transferee as Landlord may request. Landlord may withhold such consent unless the proposed transferee (i) is satisfactory to Landlord as to credit, managerial experience, net worth, character, and business or professional standing, (ii) is a person or entity whose possession of the Premises would not be inconsistent with Landlord's commitments with other tenants or with the mix of uses Landlord desires at the Property, (iii) will occupy the Premises solely for the use authorized under this Lease, (iv) expressly assumes and agrees in writing to be bound by and directly responsible for all Tenant's obligations hereunder, and (v) will conduct a business that does not adversely impact the use of the Property's common areas. Landlord's consent to any such Transfer shall in no event release Tenant from its liabilities or obligations hereunder, including any renewal term, nor relieve Tenant from the requirement of obtaining Landlord's prior written consent to any further Transfer. Landlord's acceptance of rent from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or a consent to any Transfer. No modification, amendment, assignment, or sublease shall release Tenant, any assignee, or any guarantor of its liabilities or obligations under this Lease.

### (b) Payment to Landlord and Termination of Lease

i. Landlord may, as a condition to its consideration of any request for consent to a proposed Transfer, impose a fee in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00) to cover Landlord's administrative expenses and Tenant shall also be responsible to promptly pay all Landlord's reasonable legal fees and expenses in connection therewith. Such fee shall be (i) payable by Tenant upon demand, and (ii) retained by Landlord, regardless of whether such consent is granted.

ii. If any such proposed Transfer provides for the payment of, or if Tenant otherwise receives, rent, additional rent, or other consideration for such Transfer that is in excess of the Rent and all other amounts Tenant is required to pay under this Lease (regardless of whether such excess is payable on a lump-sum basis or over a term), then in the event Landlord grants its consent to such proposed Transfer, Tenant shall pay Landlord the amount of such excess as it is received by Tenant. Any violation of this paragraph shall be deemed a material and noncurable breach of this Lease.

iii. If Tenant proposes a sublease or assignment, Landlord shall have the option to terminate this Lease and deal directly with the proposed sublessee, assignee, or any third party with regard to the Premises.

iv. If Tenant is a corporation, an unincorporated association, a partnership, a limited partnership, or a limited liability company, the transfer, assignment or hypothecation of any stock or interest in such entity in the aggregate in excess of twenty-five percent (25%) shall be deemed a Transfer of this Lease within the meaning and provisions of this Section 22.

### (c) Pre-Arranged Sublease

Tenant may sublease this Lease for a period not to exceed four (4) weeks per Lease Year corresponding with Tenant's anticipated closures of its restaurant under Section 6(h), with Landlord's prior written consent, which Landlord may withhold based on the considerations set forth in Section 22(a), above. A sublease in accordance with this Section 22(c) shall be exempt from and shall not trigger the provisions of Section 22(b), above. To request Landlord's consent, Tenant shall deliver to Landlord, at least thirty (30) days prior to the proposed sublease term, the following: (i) a fully executed sublease between Tenant and the subtenant containing at least those terms set forth in **Exhibit C** to this Lease; and (ii) the insurance certificates of the subtenant required as set forth in **Exhibit C**. Landlord shall notify Tenant within ten (10) business days whether Landlord approves or disapproves of the proposed sublease and any additional conditions of Landlord's consent to the sublease, using, as appropriate, the form of consent letter attached to this Lease as **Exhibit D**.

**23. SUBORDINATION**

Tenant's interest hereunder shall be subject and subordinate to all mortgages, trust deeds, and other financing and security instruments in place upon the Commencement Date or placed on the Premises by Landlord from time to time (hereafter "Mortgage"), except that no assignment or transfer of Landlord's rights hereunder to a lending institution as collateral security in connection with a Mortgage shall affect Tenant's right to possession, use, and occupancy of the Premises so long as Tenant shall not be in default under any of the terms and conditions of this Lease. The provisions of this Section 23 shall be self-operating. Nevertheless, Tenant agrees to execute, acknowledge and deliver to Landlord within ten (10) days after Landlord's written request, a n instrument in recordable form that expressly subordinates Tenant's interest hereunder to the interests of the holder of a ny Mortgage, and that includes any other reasonable provisions requested by the holder or prospective holder of any Mortgage. At Landlord's request, Tenant shall furnish Landlord current balance sheets, operating statements, and other financial statements in the form as reasonably requested by Landlord or by the holder or prospective holder of any Mortgage, certified by Tenant as accurate and current. Tenant agrees to sign an authorization for Landlord to conduct a check of Tenant's credit as requested by Landlord from time to time.

**24. TRANSFER OF THE PROPERTY**

If the Property is sold or otherwise transferred by Landlord or any successor to Landlord, Tenant shall attorn to the purchaser or transferee and recognize it as the landlord under this Lease, and, provided the purchaser or transferee assumes all obligations under this Lease thereafter accruing, the transferor shall have no further liability hereunder.

**25. ESTOPPEL CERTIFICATE**

Tenant shall from time to time, upon not less than ten (10) days' prior notice, submit to Landlord, or to any person designated by Landlord, a statement in writing, in the form submitted to Tenant by Landlord, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that to the knowledge of Tenant no uncured default exists hereunder (or if such uncured default does exist, specifying the same), the dates to which the Rent and other sums and charges payable hereunder have been paid, that Tenant has no claims against Landlord and no defenses or offsets to rental except for the continuing obligations under this Lease (or if Tenant has any such claims, defenses, or offsets, specifying the same), and any other information concerning this Lease as Landlord reasonably requests.

**26. PERFORMANCE BY LANDLORD**

Landlord shall not be deemed in default for the nonperformance or for any interruption or delay in performance of any of the terms, covenants, and conditions of this Lease if the same shall be due to any labor dispute, strike, lockout, civil commotion, or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, through acts of God, or other cause beyond the reasonable control of Landlord, providing such cause is not due to the willful act or neglect of Landlord.

**27. LANDLORD'S RIGHT TO CURE DEFAULT**

If Tenant shall fail to perform any of the covenants or obligations to be performed by Tenant, Landlord, in addition to all other remedies provided herein, shall have the option (but not the obligation) to cure such failure to perform after fifteen (15) days' written notice to Tenant. All Landlord's expenditures incurred to correct the failure to perform shall be reimbursed by Tenant upon demand with interest from the date of expenditure at the legal rate of interest if not defined. Landlord's right to cure Tenant's failure to perform is for the sole protection of Landlord and the existence of this right shall not release Tenant from the obligation to perform all the covenants herein provided to be performed by Tenant, or deprive Landlord of any other right Landlord may have by reason of default of this Lease by Tenant.

**28. INSPECTION**

Landlord, Landlord's agents, and representatives, shall have the right to enter upon the Premises at any time in the event of emergency and, in other events, at reasonable times after prior verbal notice for the purpose of inspecting the same, for the purpose of making repairs or improvements to the Premises or the Plaza Building, for showing the Premises during the final ninety (90) days of the Term, or for any other lawful purpose.

29. **FOR SALE AND FOR RENT SIGNS**

During the period of one hundred eighty (180) days prior to the date for the termination of this Lease, Landlord may post on the Premises or in the windows thereof signs of moderate size notifying the public that the Premises are “for sale” or “for rent” or “for lease.”

30. **NOTICES**

Any notice required or permitted under this Lease shall be in writing and shall be deemed given when actually delivered or when deposited in the United States mail as certified or registered mail, return receipt requested, addressed to the addresses set forth in the Summary of Fundamental Provisions of this Lease or to such other address as may be specified from time to time by either of the parties in the manner above provided for the giving of notice. Notice may also be given by facsimile or telecopy transmission and shall be effective upon the date shown in a transmittal record when sent to the party at the facsimile or telecopy number set out in the Summary of Fundamental Provisions of this Lease or such other number as provided by either party, as long as a copy of any such notice is deposited in the United States mail to such party at the above-mentioned address on the same date the electronic transmission is sent.

31. **BROKERS**

The parties covenant, warrant, and represent that neither has engaged any broker, agent, or finder who would be entitled to any commission or fee in connection with the negotiation and execution of this Lease. Each party agrees to indemnify and hold harmless the other against and from any claims for any brokerage commissions and all costs, expenses, and liabilities in connection therewith, including attorney fees and expenses, arising out of any charge or claim for a commission or fee by any broker, agent, or finder on the basis of any agreements made or alleged to have been made by or on behalf of Tenant.

32. **LATE CHARGES**

Tenant acknowledges that late payment by Tenant to Landlord of any Rent or other charge due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges that may be imposed on Landlord under the terms of any Mortgage. Accordingly, if any Rent or other charge is not received by Landlord within ten (10) days after it is due, Tenant shall pay to Landlord a late charge equal to twenty-five percent (25%) of the overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs incurred by Landlord by reason of the late payment by Tenant. Acceptance of any late charge by Landlord shall in no event constitute a waiver of Tenant’s default with respect to the overdue amount in question, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

33. **NO PERSONAL LIABILITY**

The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to the interest of Landlord in the Plaza Building and the Property, and neither Landlord nor any of its owners, principals, employees, or agents shall be liable for any deficiency.

34. **MISCELLANEOUS PROVISIONS**

- a. This Lease does not grant any rights of access to light or air over any part of the Property.
- b. Time is of the essence of this Lease.
- c. The acceptance by Landlord of any Rent or other benefits under this Lease shall not constitute a waiver of any default.
- d. Any waiver by Landlord of the strict performance of any of the provisions of this Lease shall not be deemed to be a waiver of subsequent breaches of the same character or of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Landlord’s right to require strict performance of the same provision in the future or of any other provision of this Lease.
- e. This Lease contains the entire agreement of the parties and supersedes all prior written and oral agreements and representations and there are no implied covenants or other agreements between the parties, except as expressly set forth in this Lease.



f. Neither Landlord nor Tenant is relying on any representations except as expressly set forth in this Lease.

g. The parties acknowledge and agree that any calculations of square footage in the Premises and on the Property are approximations. Except as provided herein, no recalculation of square footage shall affect the obligations of Tenant under this Lease, including without limitation, the amount of Base Rent or other Rent payable by Tenant under this Lease.

h. This Lease shall not be amended or modified except by agreement in writing, signed by the parties hereto.

i. Subject to the limitations on the assignment or transfer of Tenant's interest in this Lease, this Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

j. No remedy herein conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative.

k. In interpreting or construing this Lease, it is understood that Tenant may be more than one person, that if the context so requires, the singular pronoun shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed, and implied to make the provisions hereof apply equally to corporations, partnerships, limited liability companies, and individuals.

l. Section headings are for convenience and shall not affect any of the provisions of this Lease.

m. If any provision of this Lease or the application thereof to any person or circumstance is, at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

n. All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

### 35. QUIET ENJOYMENT

Landlord warrants that as long as Tenant complies with all terms of this Lease, it shall be entitled to possession of the Premises free from any eviction or disturbance by Landlord or parties claiming through Landlord. Neither Landlord nor its managing agent shall have any liability to Tenant for loss or damages arising out of the acts, including criminal acts, of other tenants of the Plaza Building or third parties, and no such acts shall constitute an eviction, construction or otherwise.

### 36. ANTI-TERRORISM LAW

#### (a) Tenant represents and warrants to Landlord as follows:

i. Neither Tenant, its constituents, or affiliates, nor any of their respective agents (collectively, the "Tenant Parties") is in violation of any law relating to terrorism or money laundering, including, but not limited to, Executive Order No. 13224 on Terrorist Financing, the U.S. Bank Secrecy Act, as amended by the Patriot Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act and all regulations promulgated thereunder, all as amended from time to time (collectively, "Anti-Terrorism Law").

ii. None of the Tenant Parties is a "Prohibited Person." A Prohibited Person means any of the following: (1) A person or entity that is "specially designated" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control or that is owned, controlled by, or acting for or on behalf of any such person or entity; (2) A person or entity with whom Landlord is prohibited from dealing by any Anti-Terrorism Law; (3) A person or entity that commits, threatens, or conspires to commit or supports "terrorism," as defined in any Anti-Terrorism Law.

iii. None of the Tenant Parties: (1) conducts any business or transactions or makes or receives any contribution of funds, goods, or services in violation of any Anti-Terrorism Law; or

(2) engages in or conspires to engage in any transaction that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions of any Anti-Terrorism Law.

(b) **Tenant covenants that it shall not:**

i. Conduct any business or transaction or make or receive any contribution of funds, goods, or services in violation of any Anti-Terrorism Law;

ii. Engage in or conspire to engage in any transaction that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions of any Anti-Terrorism Law.

iii. Tenant agrees promptly to deliver to Landlord (but in any event within ten (10) days of Landlord's written request) any certification or other evidence requested from time to time by Landlord, in its reasonable discretion, confirming Tenant's compliance with the foregoing.

37. **FINANCIAL STATEMENTS**

Within fifteen (15) days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements. Tenant will discuss its financial statements with Landlord and will give Landlord access to Tenant's books and records in order to enable Landlord to verify the financial statements. Landlord will not disclose any aspect of Tenant's financial statements except to (a) Landlord's lenders or prospective purchasers of the Plaza Building who have executed a sales contract with Landlord, (b) in litigation between Landlord and Tenant, and (c) if required by any court order.

38. **WAIVER OF JURY TRIAL**

To the maximum extent permitted by law, Landlord and Tenant each waive their right to trial by jury in any litigation arising out of or with respect to this Lease.

39. **EXHIBITS AND ADDITIONAL PROVISIONS**

Exhibits attached hereto are referred to in this Lease and by this reference incorporated herein. Additional provisions, if any, are set forth in Riders attached hereto and by this reference incorporated herein.

40. **REPRESENTATIONS; PREPARATION**

THIS LEASE, ATTACHMENTS, AND AMENDMENTS WERE PREPARED AT THE DIRECTION OF LANDLORD AND TENANT, AND BOTH LANDLORD AND TENANT HAVE BEEN ADVISED AND HAD AN OPPORTUNITY TO SEEK INDEPENDENT COUNSEL TO REVIEW THIS LEASE, ATTACHMENTS, AND AMENDMENTS. THE RULE OF CONSTRUCTION THAT A WRITTEN AGREEMENT IS CONSTRUED AGAINST THE PARTY PREPARING OR DRAFTING SUCH AGREEMENT SHALL SPECIFICALLY NOT BE APPLICABLE TO THE INTERPRETATION OR ENFORCEMENT OF THIS LEASE, ATTACHMENTS, AND AMENDMENTS. NO REPRESENTATION OR RECOMMENDATION IS MADE BY BOMA PORTLAND OR THE REAL ESTATE BROKERS INVOLVED IN THIS TRANSACTION CONCERNING THE LEGAL SUFFICIENCY OR TAX CONSEQUENCES ARISING FROM THIS LEASE.

*[Remainder of Page Left Blank – Signatures Follow on Next Page]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease in duplicate as of the day and year first above written.

Landlord:

METRO, an Oregon municipal corporation

Tenant:

TABLE 6, a sole proprietorship

\_\_\_\_\_  
Martha J. Bennett, Chief Operating Officer

\_\_\_\_\_  
Cynthia Hymer

Address:  
600 NE Grand Ave.  
Portland, OR 97232

Address:  
Table 6 c/o Cynthia Hymer  
9628 N. Smith St.  
Portland, Oregon 97203

**Exhibits:**

The following Exhibits are attached hereto and incorporated as a part of this Lease:

- Exhibit "A" - Premises
- Exhibit "B" - Options to Extend
- Exhibit "C" - Required Sublease Terms
- Exhibit "D" - Form of Landlord Consent to Sublease

EXHIBIT A  
SHOWING PREMISES AND LICENSE AREA

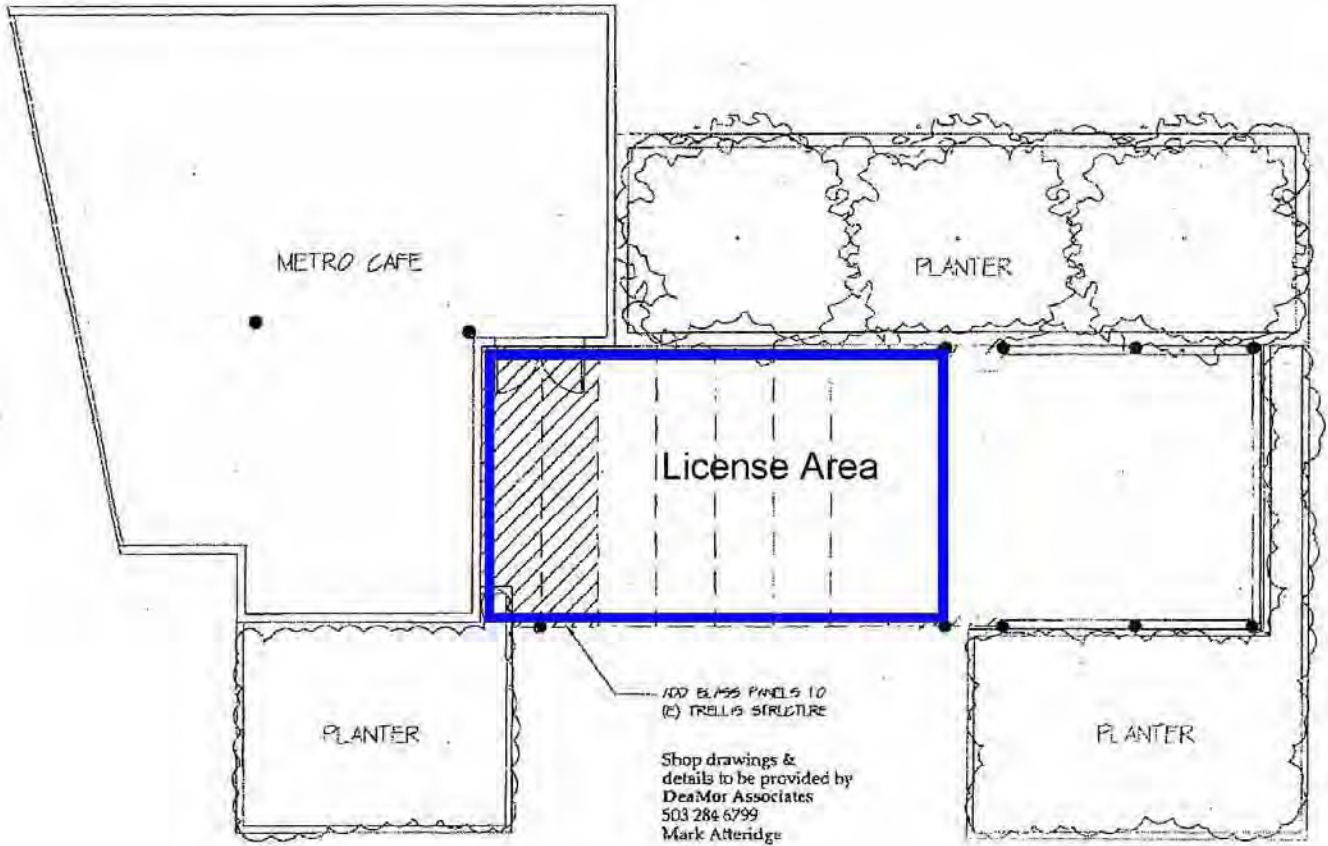


Exhibit A

Please Initial

\_\_\_\_\_  
Landlord

\_\_\_\_\_  
Tenant

EXHIBIT B

OPTIONS TO EXTEND

Provided that Table 6 has not assigned this Lease and is not subletting any or all of the Premises (it being intended that all rights pursuant to this provision are and shall be personal to the original Tenant under this Lease and shall not be transferable or exercisable for the benefit of any Transferee), and provided Tenant is not in default under this Lease at the time of exercise or at any time thereafter until the beginning of such extension of the Term, Tenant shall have the option (the "Extension Option") to extend the Term for two (2) additional consecutive periods of three (3) years (each, an "Extension Period"), by giving written notice to Landlord of the exercise of an Extension Option at least three (3) months, but not more than six (6) months, prior to the expiration of the initial Term, or the first Extension Period, as applicable. The exercise of an Extension Option by Tenant shall be irrevocable and shall cover the entire Premises leased by Tenant pursuant to this Lease. Upon such exercise, the Term of the Lease shall automatically be extended for the Extension Period without the execution of any further instrument by the parties; provided that Landlord and Tenant shall, if requested by either party, execute and acknowledge an instrument confirming the exercise of the Extension Option.

The Extension Option shall terminate if not exercised precisely in the manner provided in this **Exhibit B**. Any extension of the Term shall be upon all the terms and conditions set forth in this Lease and all Exhibits thereto, except that: (i) Tenant shall have only one further option to extend the Term of the Lease, or no further options after the second Extension Option is exercised; (ii) Landlord shall not be obligated to contribute funds toward the cost of any remodeling, renovation, alteration or improvement work in the Premises; and (iii) Base Rent for the Extension Period shall be Two Hundred Dollars (\$200.00) more than the Base Rent in effect during the month immediately prior to the commencement of the applicable Extension Period.



EXHIBIT C

REQUIRED SUBLEASE TERMS

Use. Subtenant shall use the Premises for the following use: Restaurant and catering with counter and/or table service, selling food and beverages to eat in or to take-out, and for no other purpose. Subtenant's use of the Premises shall be consistent with the use of the Premises by Tenant and shall comply with the Lease. Subtenant shall comply with each and every term of the Lease as if subtenant were the tenant under the Lease, in strict compliance with the Lease. Subtenant shall not use the Premises in any manner which would constitute a violation of the Lease. Subtenant agrees that it will commit no act or omission which would cause the Lease to be in default.

Primacy of the Lease. The sublease shall be subject and subordinate at all times to the Lease between Landlord and Tenant and all of its provisions, covenants and conditions. In case of any conflict between the provisions of the Lease and the provisions of the sublease, the provisions of the Lease shall prevail unaffected by the Sublease.

Defaults. The sublease shall not release or discharge Tenant from any liability under the Lease between Landlord and Tenant, and Tenant shall remain liable and responsible for the full performance and observance of all of the provisions, covenants and conditions set forth in the Lease on the part of Tenant to be performed and observed. Any breach or violation of any provision of the Lease by the subtenant shall be deemed to be and shall constitute a default by Tenant in fulfilling such provision.

Insurance. Subtenant shall maintain the insurance required under the Lease and shall, in addition to naming Tenant as an additional insured on its insurance policy, name Landlord as an additional insured on its insurance policy. Subtenant shall provide to Tenant and Landlord evidence of its insurance coverage in compliance with the Lease prior to the commencement date of sublease.

Indemnity. Subtenant hereby agrees to indemnify and hold harmless Tenant and Landlord from and against any and all losses, liabilities, claims, costs, and expenses (including reasonable attorneys' fees) arising out of or in any way related to Subtenant's failure to perform its obligations under the sublease or arising out of its use of the Premises.



EXHIBIT D

FORM OF LANDLORD CONSENT TO SUBLEASE

[date]

[address]

RE: Landlord Consent to Sublease

Dear Table 6:

Landlord hereby consents to the subletting of the Premises, as defined in a Retail Lease dated \_\_\_\_\_, 2014, by and between Metro and Table 6 (the "Master Lease") by Table 6 to \_\_\_\_\_ [name of subtenant], pursuant to a sublease (the "Sublease") dated \_\_\_\_\_, \_\_\_\_\_, such consent being subject to and upon the following terms and conditions:

Nothing contained in this consent shall:

- (a) Operate as a consent to or approval or ratification by Landlord of any of the provisions of the Sublease or as a representation or warranty by Landlord, and Landlord shall not be bound or estopped in any way by the provisions of the Sublease; or
- (b) Be construed to modify, waive or affect (i) any of the provisions, covenants or conditions in the Master Lease, (ii) any of Tenant's obligations under the Master Lease, or (iii) any rights or remedies of Landlord under the Master Lease or otherwise or to enlarge or increase Landlord's obligations or Tenant's rights under the Master Lease or otherwise; or
- (c) Be construed to waive any present or future breach or default on the part of Tenant under the Master Lease. In case of any conflict between the provisions of this Consent and the provisions of the Sublease, the provisions of this Consent shall prevail unaffected by the Sublease.

Sincerely,

\_\_\_\_\_  
on behalf of Metro



Exhibit D

Please Initial

\_\_\_\_\_  
Landlord      Tenant

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 14-4586, 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 TABLE 6

Date: November 24, 2014

Prepared by: Rob Smoot

503.797.1689

Rob.Smoot@OregonMetro.gov

## BACKGROUND

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

Since 2002, a food service provider has leased the Plaza Building, serving the employees and guests of the MRC, the public and local businesses. Last June, Aramark, the last tenant of the Plaza Building, vacated the space. Staff contacted potential tenants and advertised a request for proposals for a new food service tenant/operator to lease the Plaza Building.

Metro conducted an employee survey in June 2014 to determine the type of food provider Metro employees prefer. Metro staff and leadership were clear that they wanted to find a tenant that could provide fresh, local, healthy and sustainable food options in the Plaza Building, for an affordable price. It was also clear from the survey that the food provider should be one that could prepare a variety of food types to satisfy the diverse preferences of our staff. Other key evaluation parameters included in the RFP were diversity of workforce and plans for sustainability.

Three proposals were received and evaluated by a five member panel. The members of this panel were carefully selected for their expertise. They included a sustainability expert from OCC, an equity/diversity expert from Metro, a finance expert from Metro, a food service expert from OCC and a business expert from PDC.

Following the panel evaluation, the two top scoring proposers provided lunch to 40 Metro staff members, who each provided an evaluation of the food. We also received 95 responses to a second survey asking staff to select which proposer's 10-day menu they preferred. Based on evaluations and survey results, staff recommends Table 6 as the new tenant and has negotiated a three-year lease with an option for two extensions.

Table 6 operated in the MRC plaza this past summer under the name of Eleanora's Cookbook. Table 6 will prepare and serve home-style meals for breakfast and lunch. They bake bread and do some cooking on-site, but will not be grilling indoors. The Plaza Building will seat approximately 35 people inside, and Table 6 will have the right to use a small portion of the MRC plaza as weather permits for additional seating or outdoor grilling.

## ANALYSIS/INFORMATION

1. **Known Opposition** - None
2. **Legal Antecedents** - Metro Code section 2.04.026(2) 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, unless exempted as provided therein.

3. **Anticipated Effects** - A Café/Deli is an excellent use of the Plaza Building. Table 6 will provide the neighborhood with an affordable breakfast and lunch option during the work week. It is intended to 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.

Table 6 has offered to cater our in-house events such as Metro's monthly Employee Service Award luncheon, New Employee Orientation, Policy, and Advisory Committee meetings. This would be another benefit to Metro.

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

Excise taxes: Table 6 desires to lease the Plaza Building from Metro, conditioned on an exemption from Metro excise tax (to the extent the tax is not fully paid through Table 6's lease payment). Imposing the Metro excise tax would be inconsistent with customary food service industry practice and might preclude leasing the Plaza Building to food service, deli or any other retail operation. Staff therefore recommends an exemption to the Metro excise tax for Table 6. The lease of the Plaza Building in 2002 to Big Town Hero, and more recently, the lease of the restaurant at the Glendoveer Golf Course to The Ring Side East in 2012, also included an exemption from paying excise tax on sales.

Lease Instrument: The lease attached in Exhibit A of Resolution 14-4586 is a modified Building Owners and Managers Association (BOMA) form lease.

Rent: The rent will start at \$200 per month until January 1, 2016; and then increase to \$500 per month. On or before the twelfth (12th) month and the eighteenth (18th) month of the Term, Table 6 shall submit to Metro a complete and correct financial statement showing in reasonable detail Table 6's income and expenses for the twelve months or eighteen (18) months prior, as applicable. The parties will negotiate in good faith any changes a party may desire to Base Rent or Additional Rent based on the Income Statements.

Parking: Metro shall provide Table 6 one parking space at no charge in the adjacent garage.

Effective Date and Terms: The lease calls for two three-year optional renewals. The lease will become effective upon the date of the last signature on the document; anticipated to be on or before December 15, 2016.

Improvements: Table 6 is responsible for all tenant improvements/repairs in the Plaza Building. Improvements/repairs include improved lighting, food preparation area, interior walls, and seating. Metro will be responsible for any improvements/repairs required to the HVAC and building exterior, except signage. No such needs are known or expected this fiscal year.

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

Signage: Only Metro approved signage may be used.

Utilities, Insurance, and Other Expenses: Table 6 is responsible for electricity, water, insurance, security and janitorial.

4. **Budget Impacts** - Lease payments for the first year will provide a total \$2,400 of revenue to Metro. Payments thereafter will total \$6,000 annually. This action will place the Plaza Building on the property tax rolls. We do not currently know what the impact will be, but will build this into the 2015-2016 budget year. We will review over time to better determine the proper split with the tenant.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution 14-4586.