

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 03-47

For the Purpose of Approving Urban Wineworks, Your NorthWest, and Kinko's Retail Leases for the Oregon Convention Center

WHEREAS, the Oregon Convention Center's expansion provided for an additional 1,880 sq. ft. of retail space that can be leased for retail operations; and

WHEREAS, MERC, Metro and Convention Center staff and attorneys have conducted negotiations and drafted three proposed leases with Bishop Creek Farms, Inc. dba Urban Wineworks ("Urban Wineworks"), Your NorthWest, Inc. ("Your NorthWest") and Kinko's Inc. (Kinko's) in draft forms as attached hereto as Exhibits A, B and C; and

WHEREAS, the Urban Wineworks lease premises consist of approximately 600 square feet with a proposed 25% percentage rent; and

WHEREAS, the Your NorthWest lease premises consist of approximately 780 square feet with a proposed \$22 per square foot base rent plus breakpoint percentage rent, with two months of free rental; and

WHEREAS, the Kinko's lease premises consist of approximately 935 square feet with a proposed \$22 per square foot rent; and

WHEREAS, the Urban Wineworks, Your NorthWest, and Kinko's leases provide the opportunity to bring items of Northwest regional interest to the Convention Center attendees and to increase patronage and revenue to the Convention Center; and

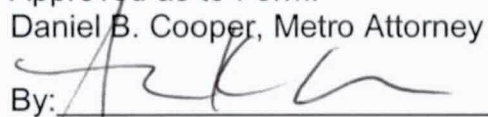
WHEREAS, the MERC Commission determines that the lease premises in these three proposed leases are not needed for other public use and that the public interest will be furthered by entering into such retail leases with these three lessees;

BE IT THEREFORE RESOLVED AS FOLLOWS:


That the Metropolitan Exposition Recreation Commission approves entering into retail leases with Urban Wineworks, Your NorthWest and Kinko's in substantially the forms set forth and attached hereto as Exhibits A, B and C or in forms approved by the MERC General Manager in consultation with the Office of Metro Attorney; and the Metropolitan Exposition Recreation Commission also authorizes the MERC General Manager to execute such leases on behalf of MERC and to take all actions necessary to complete the leasing of those premises.

Passed by the Commission on December 17, 2003.

Approved as to Form:
Daniel B. Cooper, Metro Attorney

By: 
Alison Kean Campbell, Sr. Assist. Attny


Chair


Secretary/Treasurer

MERC Staff Report

Agenda Item/Issue: Approval of the Retail Lease Agreement between the Oregon Convention Center and Urban Wineworks.

Resolution No.: 03-47

Presented By: Jeffrey A. Blosser

Date: December 17, 2003

Background and Analysis: This group originally came to OCC through ARAMARK, as a business to market and support the Oregon Wine Industry. They have guaranteed \$25,000 to make improvements to create a wine bar and market their products as part of their lease. We have structured a percentage ease and put them in space that was not originally intended to be retail space.

Fiscal Impact: Urban Wineworks will pay MERC 25% of gross sales. It is difficult to determine fiscal impact, however, staff would like to see a minimum of \$10,000 annually.

Recommendation: The Oregon Convention Center staff recommends that the Metropolitan Exposition Recreation Commission approve the lease with Urban Wineworks to occupy a retail operation per the retail lease submitted with the Resolution, as well as direct the MERC General Manager to execute the lease on behalf of MERC.

MERC Staff Report

Agenda Item/Issue: Approve Business Center Lease at OCC.

Resolution No.: 03-47

Presented By: Jeffrey A. Blosser

Date: December 17, 2003

Background and Analysis: The Oregon Convention Center operated a business center services for about six years as a necessary service. By default, the business center was operated part time by the OCC Media department because we needed the office space and supply service for the last four of those six years. With the expansion, retail space was developed and OCC included the business center space as an option for extending services to a full time business center operations.

OCC, with Metro's approval, chose to utilize the services of a real estate broker so points of the lease could be negotiated. After soliciting quotes, the firm of Melvin Mark was selected to perform real estate broker services. Melvin Mark received from OCC staff interested retail space proposers which had been collected by OCC staff. Melvin Mark did not use, nor was required to use an RFP process to solicit interested parties. Melvin Mark worked with Kinko's, who showed extreme interest in the business center opportunity at the Oregon Convention Center. As the negotiations were in progress, it became apparent there was another party interested in making a proposal related to the business center space and services. A letter to MERC was received from a NE business owner requesting the opportunity to submit a proposal. The MERC General Manager suspended negotiations with Kinko's and OCC staff met with and received a second business center proposal from Parcel Place.

MERC then solicited the assistance of three independent individuals familiar with MERC's First Opportunity Target Area program, OCC facility business, the convention industry, and the local real estate market to interview and discuss each proposal in detail with each proposer. The committee consisted of Ron Kawamoto, a former MERC Commissioner and real estate broker with Norris, Beggs, Simpson; Maggie Brister, a consultant who previously advised MERC on improving its performance in FOTA programs, and Brian McCartin, POVA's Executive Vice President for Sales and Marketing, who has experience operating similar types of business services in large hotels.

The Committee unanimously recommended that Kinko's proposal be forwarded to the General Manager for consideration and approval by the full MERC Commission:

- 1) Kinko's could transition into the space right away and the Parcel Place would need until January 19th with lease commencing February 1, 2004.
- 2) Kinko's is in 4 convention centers now and has experience operating in them currently which puts them in this culture already and recognized by groups and attendees.
- 3) Kinko's is better suited to handle the diversity of clientele at OCC from corporate shows to small businesses as well as national conventions.
- 4) Kinko's was considered higher on service issues, staffing, investment and the ability to adapt quickly to requests of shows, presenters and attendees.
- 5) Kinkos had a much better ability to market to local and national clients through their contacts and would help market business to come to the center.
- 6) Kinko's current 14 locations in the Metropolitan areas gives it the ability to do any job anytime and pull needed staff for any show requests.

The Committee noted that this was a tough decision for the group as they can see the potential of the Parcel Place and wished it had been in business a couple of years more prior to making this proposal.

Fiscal Impact: \$20,570 annual rent from this lease

Recommendation: Staff recommends, based on input by the Review Committee, that the MERC Commission approves entering into a retail lease with Kinko's in substantially the form set forth and attached to the Resolution, or in forms approved by the Office of Metro Attorney; and that the MERC Commission authorize the MERC General Manager to execute such lease on behalf of MERC and take all actions necessary to complete the leasing of this premises.

URBAN WINEWORKS LEASE

This Urban Wineworks LEASE ("Lease") is made as of the ____ day of November, 2003 (the "Effective Date"), by and between METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter, by and through the Metropolitan Exposition Recreation Commission ("MERC") (METRO and MERC jointly referred to herein as "Landlord") and Bishop Creek Farms, Inc. dba Urban Wineworks, an Oregon corporation whose principal place of business is in McMinnville, Oregon ("Tenant").

RECITALS

WHEREAS, Landlord owns and/or manages the Oregon Convention Center (the "Center"), located at 777 NE Martin Luther King Boulevard, Portland, Oregon 97232-2742; and

WHEREAS, Landlord and Tenant desire to enter into this Lease on the following terms and conditions; and

WHEREAS, on _____, 2003 the MERC Commission authorized this Lease under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Premises:

(a) **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the terms and conditions set forth herein, certain premises consisting of approximately six hundred (600) square feet of space (the "Premises") located at the Center. The Premises are designated on the floor plan attached hereto and incorporated herein by this reference as Exhibit "A". In addition to the Premises, Tenant may also use, on a non-exclusive bases, the kitchen and dishwashing facilities in the volunteer break room immediately adjacent to the Premises ("Kitchen Use"), so long as such Kitchen Use does not interfere with Landlord's or Landlord's employees use of the kitchen or Center.

(b) **Improvements.** Landlord shall deliver the Premises in broom clean condition, fully demised and vacant. Tenant shall accept the Premises in its "as is" condition, with existing painted walls and existing carpeting. Tenant has or shall construct in the Premises, at Tenant's sole cost and expense, Tenant's work including but not limited to all fixtures, display cabinets, and equipment necessary to Tenant's use of the Premises ("Tenant's Work") described in Exhibit "B" attached hereto and incorporated herein by this reference. Tenant's Work shall be subject to Landlord's prior written approval, shall comply with all applicable building codes, laws and regulations, and shall not require any changes to or modifications of any of the mechanical, electrical, plumbing or other systems of the Center, unless such changes are required for the Premises to comply with applicable laws, codes, regulations or ordinances. In the event that Tenant requires additional electrical outlets, lighting, communication and data lines and outlets, all such expenses shall be Tenant's cost. Tenant's design shall allow visitors to enter the space even if no staff person is present. Prior to commencing Tenant's Work, Tenant shall deliver a full set of proposed construction drawings to Landlord with Tenant's Work described therein. Landlord shall review the proposed construction drawings and provide Tenant with written comments to or approval of the construction drawings within thirty (30) days after Landlord's receipt of the construction drawings. The final construction drawings for Tenant's Work shall be mutually approved in writing by Landlord and Tenant.

Except for the initial tenant improvement work that is described in Exhibit "B", Tenant shall not alter, add to or improve the Premises, or install additional electrical equipment or machinery 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 Center and belong to Landlord. Notwithstanding the foregoing, however, at the termination or expiration of the Lease Term Landlord may, at Landlord's discretion,

require Tenant to remove all or some of the improvements from the Premises and repair any damage to the Premises.

2. Term:

(a) **Initial Term.** The initial term of this Lease (the "Term") shall be five (5) years. The Term and the payment of Monthly Rent (defined below) shall commence on _____, 2003 (the "Rent Commencement Date"), and shall expire on the last day of the sixtieth (60th) month following the Rent Commencement Date (the "Lease Expiration Date"), unless such Term is otherwise extended or terminated in accordance with the terms hereof.

(b) **Option to Renew.** If the lease is not in default at the time the option can be exercised, Tenant shall have the option to renew this lease for one term of five years ("Extension Term"), as follows (both the Initial Term and the Extension Term shall be considered the "Term" as used herein, unless otherwise noted):

- (1) The Extension Term shall commence on the day following expiration of the preceding term.
- (2) The option may be exercised by written notice to Landlord given no less than nine (9) months prior to the last day of the expiring term.
- (3) The terms and conditions of the lease for each extension term shall be identical with the preceding term except for rent and except that Tenant will no longer have any option to renew this lease. Rent for the Extension Term shall be the greater of (a) the percentage rental during the preceding original or extension term or (b) a reasonable rental for the ensuing term, as set forth below.
- (4) If the parties do not agree on the rent within 60 days after notice of election to renew, a reasonable rental rate shall be determined by a qualified, independent real property appraiser familiar with commercial rental values in the area. The appraiser shall be chosen by Tenant from a list of not fewer than three such individuals submitted by Landlord. If Tenant does not make the choice within five days after submission of the list, Landlord may do so. Within 30 days after his/her appointment, or such other timeframe as the parties agree, the appraiser shall return his/her decision, which shall be final and binding upon both parties. The cost of the appraisal shall be borne equally by both parties. The appraiser's decision shall be determinative of the rent for the Extension Term, unless such decision is less than the rent during the preceding term, in which case the preceding rent shall be the new rent for the Extension Term.

3. Rent:

(a) **Percentage Rent:** Tenant shall pay to Landlord as percentage rent an amount equal to twenty five percent (25%) of Tenant's annual gross receipts ("Percentage Rent"). "Gross receipts" means the amount paid or payable for all goods or services sold or provided from the Premises by Tenant or any other party, for cash or on credit and including the value of any exchanges. Sales made or services rendered by Tenant, directly or indirectly, from any other premises because of orders originating in or arising out of business transacted on the Premises are included. The following shall not be included within gross sales; and anything not listed below shall be considered included in gross receipts:

- (1) Bulk sales of equipment or trade fixtures not in the ordinary course of business; and
- (2) Cash refunds made to customers in the ordinary course of business.

(b) **Monthly Payments.** The Percentage Rent shall be paid in advance on the fifteenth day of each month ("Monthly Rent"), with an adjustment to an annual basis at the end of each calendar year as provided below. Each monthly payment shall be determined by applying the percentage to the gross receipts for the month. The monthly gross receipts shall be certified by an accountant or officer of Tenant.

(c) **Place of Payment.** Monthly Rent shall be paid at the address for the Center as set forth above.

(d) **Annual Adjustment.** On or before June 15th of each year, Tenant shall submit to Landlord an unaudited statement for the preceding year showing Tenant's total gross receipts, the aggregate percentage rental payable, and the amount actually paid. Any deficiency shall be paid upon submission of the statement. Any excess

shall be reimbursed to Tenant by Landlord within 30 days after receipt of the statement unless within that time Landlord requests an audit. Notwithstanding anything to the contrary, in no event shall Tenant pay an average of more than Two Thousand Dollars (\$2,000.00) per month during the initial lease term.

(e) **Audit.** At any time after Tenant's statement of annual receipts is due, whether or not it has been submitted, Landlord may request an audit of Tenant's gross receipts by an independent certified public accountant chosen by Tenant from a list of not fewer than three submitted by Landlord in conjunction with the request. If Tenant has not made the choice within five days, Landlord may do so. The auditor shall have access to all of Tenant's records and shall take such steps as the auditor deems necessary to make a certified audit. The report shall be final and binding on both parties, and payments required to make adjustments in rent to conform to the report shall be made within five days after receipt of the report. The cost of the audit shall be borne by either or both parties depending on the difference in percentage rent shown to be due, as follows: less than 1% additional rent due – by Landlord; from 1% to 3% additional due – by Tenant and Landlord equally; over 3% additional due – by Tenant. If the audit discloses more than 6% additional due, Landlord will have the right to terminate this lease.

(f) **Records.** During the Term, Tenant shall keep proper and complete books of account and other records pertaining to gross receipts and render monthly statements of gross receipts at the time monthly payments of percentage rent are due. The books and records shall be kept or made available at a location reasonably accessible to landlord, who may inspect all such books and records, and copies of Tenant's federal and state income tax returns for relevant years, at all reasonable times to verify Tenant's gross receipts. Tenant shall submit to landlord a copy of any sales report filed by Tenant with any local, state or federal taxing authority promptly after filing.

4. **No Partnership.** Landlord is not by virtue of the percentage rent payments or any other Lease term a partner or joint venturer with Tenant in connection with the business carried on under this Lease, and Landlord shall have no obligation with respect to Tenant's debts or other liabilities.

5. **Hours of Operation:**

Tenant will keep the Premises open for business at least during the following minimum hours: from noon to 6:00 p.m. Wednesdays through Saturdays. In addition to those standard hours, Landlord and Tenant shall confer monthly regarding the Center's convention and show schedules, and mutually determine additional hours that the Tenant shall keep the Premises open for business, consistent with attempting to maximize the Percentage Rent paid to Landlord and profits made by Tenant.

6. **Signage and Equipment:**

(a) Tenant shall have the right to install upon the exterior of the Premises the signage described in Exhibit "C" attached hereto and incorporated herein by this reference, provided such signs comply with any and all applicable laws and codes. Landlord's prior written approval of the proposed placement and design of all other Tenant signage is required prior to installation of Tenant signage. All Tenant signage shall be at Tenant's sole cost and expense and shall not damage the Center. Tenant may not install signage on the exterior of the Center.

(b) During the Term, Landlord shall use its best efforts to afford Tenant signage in other areas of the Center, such as in connection with rotating announcements and signs of other tenants on televised monitors. Landlord shall also cooperate with Tenant in identifying and implementing other ways to alert Center visitors to the presence and location of Tenant's wine tasting.

7. **Use:**

(a) **Permitted Uses.**

(1) **Tenant's Exclusive Items.** During the Term, and conditional on Landlord negotiating and executing an amendment to the current Aramark Agreement modifying Aramark's exclusivity for food, beverages, and alcoholic beverages, Tenant shall have the exclusive right at the Center to offer, sell and provide in-Center, the following retail goods and services to the public: bottle, case, or tasting sales of Oregon wine; tasting and sampling of Oregon wine both for a charge and for free; wine shipping; and arranging Oregon winery/vineyard tours (collectively, "Tenant's Exclusive Items").

- (2) Tenant's Non-Exclusive Items. Additionally, during the Term, in addition to Tenant's Exclusive Items, Tenant shall have the non-exclusive right to offer, sell and/or provide the following goods and services to the public from the Premises: Oregon wine-related magazines or reading material; Oregon wine public service information; other wine-related items such as corkscrews, wine jackets (collectively, "Tenant's Non-Exclusive Items"). Tenant's Exclusive Items and Tenant's Non-Exclusive Items are referred to collectively as "Tenant's Permitted Uses."

(b) Exceptions to Exclusive Uses. Tenant's exclusive right to offer retail sales of Oregon wines as set forth above shall not be construed to prevent the following: (1) Aramark, or any subsequent Center concessions or catering firm, shall be allowed to sell or offer Oregon wine; and (2) Another retailer in the Center specializing in Pacific Northwest items shall be allowed to offer the sale of Oregon wines in gift baskets and gift sets, and shall also be allowed to sell individual bottles of non-grape Oregon fruit and varietal wines; and (3) Trade shows and conventions at the Center shall not be prohibited from selling or displaying Oregon wine, conducting wine-tasting, or selling or displaying any other Exclusive or Non-Exclusive Item.

(c) Restrictions on Use. Tenant shall not use the Premises for any other purpose other than the uses set forth above as Tenant's Exclusive Items and Tenant's Non-Exclusive Items. In addition, the following restrictions on use shall apply:

- (1) Tenant shall not sell: packaged or unpackaged snack foods; beverages other than wine; magazines or reading material (unless Oregon wine-related); public service information (unless Oregon wine-related); novelties and/or sundries (unless wine-related and listed above as a Permitted Use); and
- (2) Tenant shall not make any use of the Premises or the Center that would violate the exclusive use rights of any other Center tenant.

(d) Compliance with Laws/Further Limitations on Use. In addition to the above restrictions on use, Tenant shall comply with the following:

- (1) Tenant shall comply with all federal, state and local laws, including all Metro and MERC ordinances, rules and regulations, governing the Premises and Tenant's use thereof;
- (2) Prior to operating at the Center, Tenant shall obtain and maintain all applicable and required Oregon Liquor Control Commission ("OLCC") licenses, and Tenant shall fully comply with all OLCC rules and regulations and any other applicable law, rule or regulation regarding alcohol and the operations of Tenant's business;
- (3) Tenant shall not make any use of the Premises or the Center that would be reasonably offensive to other tenants, or that would tend to cause a nuisance or damage the reputation of the Center;
- (4) Tenant shall not load the electrical system or floors beyond the point considered safe by Landlord; and
- (5) Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance, defined as any hazardous, toxic, or radioactive substance or waste, including petroleum, to be spilled, leaked, disposed of, or otherwise released on or under the Premises. In addition to all other indemnities provided for by this Lease or by law, Tenant 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 Tenant, its employees, agents or assigns on the Premises.

8. Condition Precedent to Lease/Aramark. This Lease is expressly conditioned upon, and shall not take effect until and unless Landlord has successfully negotiated, in Landlord's sole discretion, an amendment to the current Aramark Concessions and Catering Management Agreement regarding alcohol exclusivity and other exclusives.

9. Taxes and Insurance:

(a) 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. Tenant shall also pay all personal property and other taxes as they become due. Landlord shall pay fire and extended coverage insurance on the Center.

(b) Tenant will provide and maintain, at its own expense:

(i) Workers' compensation insurance (including employers' liability) that complies with the applicable workers' compensation laws governing Tenant and all employees working for Tenant; and

(ii). Comprehensive Commercial General Liability insurance (including products and contractual liability and liability for bodily injury or property damage) with a combined single limit of not less than \$1,000,000.00 per occurrence; and

(iii). "All risk" property insurance insuring Tenant's property against loss or damage by fire and other various risks on all fixtures, improvements, and other property controlled by Tenant and located upon the Premises, in an amount not less than the full replacement value of such property.

(d) All of Tenant's policies shall be specifically endorsed to provide that the coverage obtained by Tenant by virtue of this Lease will be primary, and that any insurance carried by Landlord shall be excess and non-contributory. Such insurance shall name Metro, MERC, and the OCC as additional insureds. All policies shall be specifically endorsed to provide that such coverage shall not be canceled or materially changed. Upon written request, Tenant shall deliver certificates of insurance and any renewals thereof to the general manager of the Center, which evidences the required coverage.

(e) Tenant shall not allow any act or thing upon the Premises that could reasonably be expected to conflict with Landlord's insurance policies.

10. Notices:

For purposes of notice under this Lease, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

if to Landlord:

Oregon Convention Center
777 NE Martin Luther King, Jr. Boulevard
Portland, Oregon 97232-2742
Attn: General Manager

Copy to:

Metro
Office of Metro Attorney
600 N.E. Grand Ave.
Portland OR 97232-2736

if to Tenant:

[fill in]

Landlord and Tenant and their respective successors may change their respective addresses from time to time and each shall have the right to specify a new address for notice purposes, upon fifteen (15) days' prior written notice to the other party.

11. Brokers:

Landlord and Tenant each represent and warrant to the other that no brokers have been employed in carrying on any negotiations relating to this Lease, except Maria Duncan and Don Drake who shall be paid by

Landlord pursuant to a separate written agreement. Landlord and Tenant shall each indemnify and hold harmless the other from any claim for brokerage or other commission arising from or out of any breach of the foregoing representation and warranty.

12. Parking:

Tenant's shall have a non-exclusive right for one (1) parking space in the parking garage, at the cost of \$20.00 per space per month in addition to the Monthly Rent for the first two years of the Lease, parking cost to increase to \$30.00 per space per month in addition to the Monthly Rent for the third, fourth, and fifth years of the Lease.

13. Utilities:

Landlord shall provide all utilities to the Premises necessary to Tenant's operations at the Premises. All utilities consumed by Tenant shall be at Landlord's sole cost and expense. Notwithstanding the foregoing, however, Tenant shall contract for and pay directly to the service provider for telephone service and internet access (Landlord is currently the internet service provider and access to and payment for internet service shall be separately set forth in a different written agreement).

14. Maintenance:

(a) Tenant's Obligations / AS IS. Tenant agrees to accept the Premises "as is", with no representations or warranties from Landlord. Tenant, at its own expense, hereby agrees to repair, replace and maintain in good and reasonable condition the Premises and every part thereof except that portion of the Premises to be maintained by Landlord as provided for herein, and including, without limitation, the interior utility meters, interior pipes and interior conduits, all fixtures exclusively serving the Premises and other equipment therein, including any equipment installed by Tenant which is part of said system, the storefront, all signs, locks and closing devices, all windows, doors, floor coverings, including carpeting. Maintenance of all glass, both exterior and interior, is the sole responsibility of Tenant. Tenant shall provide storage area for rubbish containers and garbage cans within Tenant's Premises.

(b) Landlord's Obligations. Subject to the foregoing provisions, Landlord shall keep and maintain in good and reasonable condition and repair the roof, exterior walls (not including storefronts), structural parts of the Premises, and pipes and conduits outside the Premises that furnish the Premises with various utilities; provided, however, that Landlord shall not be required to make repairs necessitated by reason of the gross negligence of Tenant or Tenant's employees, or by reason of the failure of Tenant to perform or observe any conditions or agreements of this Lease. Landlord will provide collection areas for final disposal of Tenant's garbage. Landlord shall provide floor cleaning, window cleaning, trash pickup and general cleaning of the Premises at Landlord's expense. Tenant shall be responsible for any other janitorial maintenance of the Premises. Landlord shall provide electricity, heating and air conditioning.

15. Indemnity:

(a) Landlord hereby agrees that Landlord, in accordance with the Oregon Tort Claims Act, shall defend, indemnify and hold Tenant harmless for, from and against any and all claims, damages, losses, liens, judgments, penalties, expenses (including reasonable attorneys and consultants fees), and/or liabilities arising from or relating to Landlord's or Landlord's employees', agents' or contractors' intentional misconduct or negligent acts or omissions.

(b) Tenant hereby agrees that Tenant shall defend, indemnify and hold Landlord and Landlord's elected officials, employees, and agents harmless for, from and against any and all claims, damages, losses, liens, judgments, penalties, expenses (including reasonable attorneys and consultants fees), and/or liabilities and which, in whole or in part, directly or indirectly, arise out of or relate to injury to any person or loss of or damage to property which occurs in the Premises or which arises out of Tenant's particular use of the Premises, or to the willful misconduct or negligent acts or omissions of Tenant, Tenant employees, agents, or contractors.

16. ADA Compliance:

Landlord will ensure that the Center, building site, access to and the exterior of the Premises and the Center shall meet all handicap access laws or regulations on the Commencement Date and thereafter throughout the Term, including the Americans with Disabilities Act. Tenant shall ensure that the Premises and all of Tenant's interior improvements comply with said laws.

17. **Default by Tenant.** The following shall be events of default by Tenant:

(a) **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 written 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 \$75 per month shall be assessed from the beginning of the month for late payments to reimburse Landlord for administration expenses related to late notices.

(b) **Unauthorized Transfer.** Tenant makes any Transfer without Landlord's prior written consent as required under paragraph 20.

(c) **Abandonment of Premises.** Tenant abandons the Premises, for which purpose "abandons" means a failure by Tenant to occupy and use the Premises 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 allowed under other provisions of this Lease.

(d) **Default in Other Terms or Conditions.** Failure of Tenant to comply with any other term or conditions or to fulfill any other obligations of this Lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity.

18. **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.

19. **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:

(a) **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.

(b) **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. However, Landlord shall have an affirmative duty to mitigate all such damages.

(c) **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 following written notice as provided in this Lease. 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 (1.5%) per month, but not in any event at a rate greater than the maximum rate of interest permitted by law.

20. **NO Assignment/Subletting.**

For purposes of this section, "Transfer" shall mean to assign, sublet the Premises or any part thereof, or permit the use or occupancy of the Premises by any party other than Tenant. Tenant shall not Transfer this Lease or the Premises or any part thereof without the prior written consent of Landlord which Landlord may withhold in its sole discretion. Any attempted Transfer in violation of the requirements of this section shall be null and void and, at the option of Landlord, shall constitute a default that entitles Landlord to terminate this Lease and to exercise its other rights and remedies for such default.

21. 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 Center, and shall keep the Premises and the Center free from any liens other than liens created by Landlord or other tenants. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and collect such amount as additional rent. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

22. Additional Provisions:

(a) **Entire Agreement.** This Lease and the exhibits attached hereto constitute the entire agreement between the parties, and supersede any prior agreements or understandings between the parties hereto. This Lease is not effective until authorized by the MERC Commission and executed and delivered by Landlord and Tenant. The provisions of this Lease may not be modified in any way except by written agreement signed by both parties.

(b) **No Implied Waiver.** The waiver by Landlord or Tenant of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition of any prior or subsequent breach of the same or any other term, covenant or condition herein.

(c) **Choice of Law and Forum / Interpretation.** This Lease shall be governed by, interpreted and construed in accordance with the laws of the State of Oregon. Any litigation arising under this Lease shall occur in Multnomah County Circuit Court, or if in the federal courts, in the United States District Court for the District of Oregon.

(d) **Ambiguities.** The parties agree and warrant that they have had the benefit or opportunity to consult with their own legal counsel prior to entering into this Agreement, such that all language herein shall be construed equally against the parties, and such that Tenant waives any right, claim, argument or defense that any language of this Lease should be construed strictly against Landlord.

(e) **Authority.** Landlord represents and warrants that, subject to the formal approval by the MERC Commission and the Metro Council, the undersigned signatory has the authority to bind Landlord to the obligations of this Lease, and that Landlord shall be legally bound to the terms and conditions of this Lease once fully executed. Landlord further represents and warrants that, subject to the formal approval by the MERC Commission and the Metro Council, Landlord has obtained any and all necessary consents and/or approvals prior to executing this Lease. Tenant represents and warrants that the undersigned signatory has the authority to bind Tenant to the obligations of this Lease, and that Tenant shall be legally bound to the terms and conditions of this Lease once fully executed. Tenant further represents and warrants that Tenant has obtained any and all necessary consents and/or approvals prior to executing this Lease.

IN WITNESS WHEREOF, duly authorized representatives of Landlord and Tenant have executed this Lease on the day and year first above written.

Landlord:

Tenant:

OREGON CONVENTION CENTER

URBAN WINE WORKS

Jeff Blosser
General Manager

[name]
[title]

DRAFT

EXHIBIT "A"

FLOOR PLAN OF PREMISES

[ATTACH]

DRAFT

EXHIBIT "B"

TENANT'S WORK

[complete and attach prior to Lease execution]

DRAFT

EXHIBIT "C"

TENANT'S SIGNAGE

[attach signage]

YOUR NORTHWEST LEASE

This Your NorthWest LEASE (this "Lease") is made as of the _____ day of _____, 2003 (the "Effective Date"), by and between METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter, by and through the Metropolitan Exposition Recreation Commission ("MERC") (METRO and MERC jointly referred to herein as "Landlord") and Your NorthWest, an Oregon corporation whose principal place of business is _____, ("Tenant").

RECITALS

WHEREAS, Landlord owns and/or manages the Oregon Convention Center (the "Center"), located at 777 NE Martin Luther King Boulevard, Portland, Oregon 97232-2742; and

WHEREAS, Landlord and Tenant desire to enter into this Lease on the following terms and conditions; and

WHEREAS, on _____, 2003 the MERC Commission authorized this Lease under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Premises:

(a) **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the terms and conditions set forth herein, certain premises consisting of approximately Seven Hundred Eighty (780) square feet of space (the "Premises") at the Center. Landlord shall provide a locking mechanism for the existing folding wall separating the spaces. The Premises are designated on the floor plan attached hereto and incorporated herein by this reference as Exhibit "A". In addition to the Premises, Landlord agrees that Tenant may lease additional space for satellite carts, at the rental rates set forth below, for the uses set forth herein, at locations and during times as may be mutually agreed to by the parties.

(b) **Improvements.** Tenant shall accept the Premises in its "as is" condition, with existing painted walls and existing carpeting. Landlord shall deliver the Premises in broom clean condition, fully demised and vacant. Tenant has or shall construct in the Premises, at Tenant's sole cost and expense, Tenant's work ("Tenant's Work") described in Exhibit "B" attached hereto and incorporated herein by this reference. Tenant's Work shall be subject to Landlord's prior written approval, shall comply with all applicable building codes, laws and regulations, and shall not require any changes to or modifications of any of the mechanical, electrical, plumbing or other systems of the Center, unless such changes are required for the Premises to comply with applicable laws, codes, regulations or ordinances. Prior to commencing Tenant's Work, Tenant shall deliver a full set of proposed construction drawings to Landlord with Tenant's Work described therein. Landlord shall review the proposed construction drawings and provide Tenant with written comments to or approval of the construction drawings within thirty (30) days after Landlord's receipt of the construction drawings. In the event Landlord fails to provide Tenant with written comments to said drawings within such period, said drawings shall be deemed approved by Landlord. The final construction drawings for Tenant's Work shall be mutually approved in writing by Landlord and Tenant.

Except for the initial tenant improvement work that is described in Exhibit "B", Tenant shall not alter, add to or improve the Premises, or install additional electrical equipment or machinery 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 Center and belong to Landlord. Notwithstanding the foregoing, however, at the termination or expiration of the Lease Term Landlord may, at Landlord's discretion, require Tenant to remove all or some of the improvements from the Premises and repair any damage to the Premises.

2. Term:

(a) **Initial Term.** The initial term of this Lease (the "Term") shall be three (3) years. The Term shall commence on _____, 2003 (the "Rent Commencement Date"), and shall expire on the last day of the thirty-sixth month following the Rent Commencement Date (the "Lease Expiration Date"), unless such Term is otherwise extended or terminated in accordance with the terms hereof.

(b) In the event that Tenant's annual gross sales are not at least One Hundred Fifty Six Thousand Dollars (\$156,000) per year, Tenant may elect to terminate the Lease upon 120 days prior written notice as set forth herein. If Tenant does not exercise his right to terminate by the two-year anniversary of the commencement of the Lease Term, Tenant's termination right shall expire and become null and void. Notwithstanding the start date of the Lease or any other provision herein, Tenant may only give the 120-day termination notice during the months of December or June on any calendar year for which the early termination right is in effect, and such notice may not be given sooner than one (1) year after the Rent Commencement Date. Tenant shall continue to pay rent and operate the business during the 120-day period.

(c) **Option to Renew.** If the lease is not in default at the time the option can be exercised, Tenant shall have two options to renew this lease for additional terms of three (3) years each ("Extension Terms"), as follows (both the Initial Term and the Extension Terms shall be considered the "Term" as used herein, unless otherwise noted):

- (1) The Extension Term shall commence on the day following expiration of the preceding term.
- (2) The options may be exercised by written notice to Landlord given no less than one hundred eighty (180) days prior to the last day of the expiring term.
- (3) The terms and conditions of the lease for each extension term shall be identical with the preceding term except for rent. Rent for the Extension Term shall be the greater of (a) the percentage rental during the preceding original or extension term or (b) a reasonable rental for the ensuing term, as set forth below.
- (4) If the parties do not agree on the rent within 60 days after notice of election to renew, a reasonable rental rate shall be determined by a qualified, independent real property appraiser familiar with commercial rental values in the area. The appraiser shall be chosen by Tenant from a list of not fewer than three such individuals submitted by landlord. If Tenant does not make the choice within five days after submission of the list, Landlord may do so. Within 30 days after his/her appointment, or such other timeframe as the parties agree, the appraiser shall return his/her decision, which shall be final and binding upon both parties. The cost of the appraisal shall be borne equally by both parties. The appraiser's decision shall be determinative of the rent for the Extension Term, unless such decision is less than the rent during the preceding original or extension term, in which case the preceding rent shall be the new rent for the Extension Term.

3. Rent:

(a) **Base Rent:** The monthly base rent (the "Base Rent") for the Premises for the Initial Term shall be One Thousand Four Hundred Thirty Dollars (\$1430.00), which is based on a rent of \$22 per square foot gross.

(b) **Two Months Free Base Rent:** Notwithstanding the foregoing, however, Tenant shall be given two (2) months of free Base Rent for the first two months of the Term. During those first two months Tenant shall pay Percentage Rent as set forth below.

(c) **Percentage Rent:** In addition to the Base Rent, Tenant shall pay to Landlord as Percentage Rent an amount equal to six percent (6%) of Tenant's annual gross receipts in excess of One Hundred Sixty Seven Thousand Seven Hundred Twenty Dollars (\$167,720.00). "Gross receipts" means the amount paid or payable for all goods or services sold or provided from the Premises by Tenant or any other party, for cash or on credit and including the value of any exchanges. Sales made or services rendered by Tenant, directly or indirectly, from any other premises because of orders originating in or arising out of business transacted on the Premises are included. The following shall not be included within Gross Receipts; and anything not listed below shall be considered included in Gross Receipts:

- (1) Bulk sales of equipment or trade fixtures not in the ordinary course of business; and
- (2) Cash refunds made to customers in the ordinary course of business.

(d) **Monthly Payments.** The Base Rent and Percentage Rent (referred to herein together as the "Monthly Rent") shall be paid in advance on the fifteenth day of each month, with an adjustment to an annual basis at the end of each calendar year as provided below. Each monthly payment shall be determined by applying the percentage to the gross receipts for the month. The monthly gross receipts shall be certified by an accountant or officer of Tenant.

(e) **Place of Payment.** Monthly Rent shall be paid at the address for the Center as set forth above.

(f) **Annual Adjustment.** On or before June 15th of each year, Tenant shall submit to Landlord an unaudited statement for the preceding year showing Tenant's total gross receipts, the aggregate percentage rental payable, and the amount actually paid. Any deficiency shall be paid upon submission of the statement. Any excess shall be reimbursed to Tenant by landlord within 30 days after receipt of the statement unless within that time Landlord requests an audit.

(g) **Audit.** At any time after Tenant's statement of annual receipts is due, whether or not it has been submitted, Landlord may request an audit of Tenant's gross receipts by an independent certified public accountant chosen by Tenant from a list of not fewer than three submitted by landlord in conjunction with the request. If Tenant has not made the choice within five days, Landlord may do so. The auditor shall have access to all of Tenant's records and shall take such steps as the auditor deems necessary to make a certified audit. The report shall be final and binding on both parties, and payments required to make adjustments in rent to conform to the report shall be made within five days after receipt of the report. The cost of the audit shall be borne by either or both parties depending on the difference in percentage rent shown to be due, as follows: less than 1% additional rent due – by landlord; from 1% to 3% additional due – by Tenant and landlord equally; over 3% additional due – by Tenant. If the audit discloses more than 6% additional due, Landlord will have the right to terminate this lease.

(h) **Records.** During the Term, Tenant shall keep proper and complete books of account and other records pertaining to gross receipts and render monthly statements of gross receipts at the time monthly payments of percentage rent are due. The books and records shall be kept or made available at a location reasonably accessible to landlord, who may inspect all such books and records, and copies of Tenant's federal and state income tax returns for relevant years, at all reasonable times to verify Tenant's gross receipts. Tenant shall submit to landlord a copy of any sales report filed by Tenant with any local, state or federal taxing authority promptly after filing.

4. **No Partnership.** Landlord is not by virtue of the percentage rent payments or any other Lease term a partner or joint venturer with Tenant in connection with the business carried on under this Lease, and Landlord shall have no obligation with respect to Tenant's debts or other liabilities.

5. **Hours of Operation:**

Tenant will keep the Premises open for business at least during the following minimum hours: from 9 a.m. to 5:00 p.m. Mondays through Fridays. In addition to these standard hours, Landlord and Tenant shall confer monthly regarding the Center's convention and show schedules, and mutually determine additional hours that the Tenant shall keep the Premises open for business, consistent with attempting to maximize the Percentage Rent paid to Landlord and profits made by Tenant.

6. **Signage and Equipment:**

(a) Tenant shall have the right to install upon the exterior of the Premises the signage described in Exhibit "C" attached hereto and incorporated herein by this reference, provided such signs comply with any and all applicable laws and codes. Landlord's prior written approval of the proposed placement and design of all other Tenant signage is required prior to installation of Tenant signage. All Tenant signage shall be at Tenant's sole cost and expense and shall not damage the Center. Tenant may not install signage on the exterior of the Center.

(b) During the Term, Tenant shall install and maintain the equipment specified in Exhibit "D" attached hereto and incorporated herein, at the Premises, or at Tenant's sole option, other subsequently produced equipment which incorporates technological advances in the equipment specified in Exhibit "D".

7. Use:

(a) Permitted Uses.

- (1) **Tenant's Exclusive Items.** During the Term, Tenant shall have the exclusive right at the Center to offer, sell and provide in-Center, the following goods and services to the public: prepackaged items that are exclusive to the Your NorthWest Label and Columbia Empire Farms defined as the following: Your NorthWest brand hazelnuts, preserves, syrups, and smoked salmon (collectively, "Tenant's Exclusive Items").
- (2) **Tenant's Non-Exclusive Items.** Also, during the Term, in addition to Tenant's Exclusive Items, Tenant shall have the non-exclusive right to offer, sell and/or provide the following goods and services to the public from the Premises: other Northwest Products (defined as products made in Oregon, Washington, Idaho, Montana, Alaska, and British Columbia and identified and marketed as such) such as prepackaged foods for consumption off-premises; individual bottles of non-grape Oregon fruit and varietal wines; Oregon grape wines in gift baskets and gift sets only and not individual bottles; Northwest clothing from the following manufacturers: Nike, Columbia Sportswear, Addidas, Pendleton; and other Northwest merchandise such as _____ (collectively, "Tenant's Non-Exclusive Items"). Tenant's Exclusive Items and Tenant's Non-Exclusive Items are referred to collectively as "Tenant's Permitted Uses". In addition, and conditional on Landlord negotiating and executing an amendment to the current Aramark Agreement regarding Aramark's exclusivity for food and beverages, Tenant shall also have the non-exclusive right to offer, sell and/or provide to the public bottled water, bottled soft drinks, and coffee that have been purchased through Aramark or any successor to the Center's concessions agreement.

(b) **Exceptions to Exclusive Uses.** Tenant's exclusive right to offer retail sales of Tenant's Exclusive Items shall not be construed to prevent the following: (1) Other retail stores in the Center shall be permitted to sell Northwest-identified goods, merchandise and products so long as such retail stores do not devote over 25% of their retail space to such Northwest products or substantially compete with Your NorthWest's product line; (2) other retail stores in the Center shall be permitted to sell goods and merchandise from national manufacturers headquartered in the Northwest including but not limited to Nike, Columbia Sportswear, Addidas, Pendleton; and (3) Trade shows and conventions at the Center shall not be prohibited from the sale or display of any Exclusive Item or Non-Exclusive Item at the Center.

(c) **Restrictions on Use.** Tenant shall not use the Premises for any other purpose other than the uses set forth above as Tenant's Exclusive Items and Tenant's Non-Exclusive Items. In addition, the following restrictions on use shall apply:

- (1) Tenant shall not sell: unpackaged food or food intended to be consumed at the Center; individual bottles of wine, except for non-grape Oregon fruit and varietal wines and Oregon grape wines in gift baskets and gift sets only and not individual bottles, as set forth above in the Non-Exclusive Items section; and
- (2) Tenant shall not make any use of the Premises or the Center that would violate the exclusive use rights of any other Center tenant.

(d) **Compliance with Laws/Further Limitations on Use.** In addition to the above restrictions on use, Tenant shall comply with the following:

- (1) Tenant shall comply with all federal, state and local laws, including all Metro and MERC ordinances, rules and regulations, governing the Premises and Tenant's use thereof;
- (2) Prior to operating at the Center, Tenant shall obtain and maintain all applicable and required Oregon Liquor Control Commission ("OLCC") licenses, and Tenant shall fully comply with all OLCC rules and regulations and any other applicable law, rule or regulation regarding alcohol and the operations of Tenant's business;

- (3) Tenant shall not make any use of the Premises or the Center that would be reasonably offensive to other tenants, or that would tend to cause a nuisance or damage the reputation of the Center;
- (4) Tenant shall not load the electrical system or floors beyond the point considered safe by Landlord;
- (5) Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance, defined as any hazardous, toxic, or radioactive substance or waste, including petroleum, to be spilled, leaked, disposed of, or otherwise released on or under the Premises. In addition to all other indemnities provided for by this Lease or by law, Tenant shall be solely responsible for and shall defend, 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 Tenant, its employees, agents or assigns on the Premises.

8. Taxes and Insurance:

(a) 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. Tenant shall also pay all personal property taxes as they become due. Landlord shall pay fire and extended coverage insurance on the Center.

(b) Tenant will provide and maintain, at its own expense:

(i) Workers' compensation insurance (including employers' liability) that complies with the applicable workers' compensation laws governing Tenant and all employees working for Tenant; and

(ii) Comprehensive Commercial General Liability insurance (including products and contractual liability and liability for bodily injury or property damage) with a combined single limit of not less than \$500,000.00 per occurrence; and

(iii) "All risk" property insurance insuring Tenant's property against loss or damage by fire and other various risks on all fixtures, improvements, and other property controlled by Tenant and located upon the Premises, in an amount not less than the full replacement value of such property.

(c) All of Tenant's policies shall be specifically endorsed to provide that the coverage obtained by Tenant by virtue of this Lease will be primary, and that any insurance carried by Landlord shall be excess and non-contributory. Such insurance shall name Metro, MERC, and the OCC as additional insureds. All policies shall be specifically endorsed to provide that such coverage shall not be canceled or materially changed. Upon written request, Tenant shall deliver certificates of insurance and any renewals thereof to the general manager of the Center, which evidences the required coverage.

(d) Tenant shall not allow any act or thing upon the Premises that could reasonably be expected to conflict with Landlord's insurance policies.

9. Notices:

For purposes of notice under this Lease, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

if to Landlord:

Oregon Convention Center
777 NE Martin Luther King, Jr. Boulevard
Portland, Oregon 97232-2742
Attn: General Manager

Copy to:
Metro

Office of Metro Attorney
600 N.E. Grand Ave.
Portland OR 97232-2736

if to Tenant:

Landlord and Tenant and their respective successors may change their respective addresses from time to time and each shall have the right to specify a new address for notice purposes, upon fifteen (15) days' prior written notice to the other party.

10. Brokers:

Landlord and Tenant each represent and warrant to the other that no brokers have been employed in carrying on any negotiations relating to this Lease, except Maria Duncan and Don Drake who shall be paid by Landlord pursuant to a separate written agreement. Landlord and Tenant shall each indemnify and hold harmless the other from any claim for brokerage or other commission arising from or out of any breach of the foregoing representation and warranty.

11. Parking:

Tenant's shall have a non-exclusive right for up to 2 parking spaces in the parking garage, at the cost of \$30.00 per space per month in addition to the Monthly Rent for the first two years of the Lease, parking cost to increase to \$35.00 per space per month in addition to the Monthly Rent for the third year of the Lease.

12. Utilities:

Landlord shall provide all utilities to the Premises necessary to Tenant's operations at the Premises. All utilities consumed by Tenant shall be at Landlord's sole cost and expense. Notwithstanding the foregoing, however, Tenant shall contract for and pay directly to the service provider for telephone service and internet access (Landlord is currently the internet service provider and access to and payment for internet service shall be separately set forth in a different written agreement).

13. Maintenance:

(a) Tenant's Obligations/ AS IS. Tenant agrees to accept the Premises "as is", with no representations or warranties from Landlord. Tenant, at its own expense, hereby agrees to repair, replace and maintain in good and reasonable condition the Premises and every part thereof except that portion of the Premises to be maintained by Landlord as provided for herein, and including, without limitation, the interior utility meters, interior pipes and interior conduits, all fixtures exclusively serving the Premises and other equipment therein, including any equipment installed by Tenant which is part of said system, the storefront, all signs, locks and closing devises, all windows, doors, floor coverings, including carpeting. Maintenance of all glass, both exterior and interior, is the sole responsibility of Tenant. Tenant shall provide storage area for rubbish containers and garbage cans within Tenant's Premises.

(b) Landlord's Obligations. Subject to the foregoing provisions, Landlord shall keep and maintain in good and reasonable condition and repair the roof, exterior walls (not including storefronts), structural parts of the Premises, and pipes and conduits outside the Premises that furnish the Premises with various utilities; provided, however, that Landlord shall not be required to make repairs necessitated by reason of the gross negligence of Tenant or Tenant's employees, or by reason of the failure of Tenant to perform or observe any conditions or agreements of this Lease. Landlord will provide collection areas for final disposal of Tenant's garbage. Landlord shall provide floor cleaning, window cleaning, trash pickup and general cleaning of the Premises at Landlord's expense. Tenant shall be responsible for any other janitorial maintenance of the Premises. Landlord shall provide electricity, heating and air conditioning.

14. **Indemnity:**

(a) Landlord hereby agrees that Landlord, in accordance with the Oregon Tort Claims Act, shall defend, indemnify and hold Tenant harmless for, from and against any and all claims, damages, losses, liens, judgments, penalties, expenses (including reasonable attorneys and consultants fees), and/or liabilities arising from or relating to Landlord's or Landlord's employees', agents' or contractors' intentional misconduct or negligent acts or omissions.

(b) Tenant hereby agrees that Tenant shall defend, indemnify and hold Landlord and Landlord's elected officials, employees, and agents harmless for, from and against any and all claims, damages, losses, liens, judgments, penalties, expenses including reasonable attorneys and consultants fees, and/or liabilities and which, in whole or in part, directly or indirectly, arise out of or relate to injury to any person or loss of or damage to property which occurs in the Premises or which arises out of Tenant's particular use of the Premises, or to the willful misconduct or negligent acts or omissions of Tenant, Tenant employees, agents, or contractors.

15. **ADA Compliance:**

Landlord will ensure that the Center, building site, access to and the exterior of the Premises and the Center shall meet all handicap access laws or regulations on the Commencement Date and thereafter throughout the Term, including the Americans with Disabilities Act. Tenant shall ensure that the Premises and all of Tenant's interior improvements comply with said laws.

16. **Default by Tenant.** The following shall be events of default by Tenant:

(a) **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 written 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 \$75 per month shall be assessed from the beginning of the month for late payments to reimburse Landlord for administration expenses related to late notices.

(b) **Unauthorized Transfer.** Tenant makes any Transfer without Landlord's prior written consent as required under paragraph 19.

(c) **Abandonment of Premises.** Tenant abandons the Premises, for which purpose "abandons" means a failure by Tenant to occupy and use the Premises 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 allowed under other provisions of this Lease.

(d) **Default in Other Terms or Conditions.** Failure of Tenant to comply with any other term or conditions or to fulfill any other obligations of this Lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity.

17. **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.

18. **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:

(a) **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.

(b) 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. However, Landlord shall have an affirmative duty to mitigate all such damages.

(c) 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 following written notice as provided in this Lease. 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 (1.5%) per month, but not in any event at a rate greater than the maximum rate of interest permitted by law.

19. NO Assignment/Subletting.

For purposes of this section, "Transfer" shall mean to assign, sublet the Premises or any part thereof, or permit the use or occupancy of the Premises by any party other than Tenant. Tenant shall not Transfer this Lease or the Premises or any part thereof without the prior written consent of Landlord which Landlord may withhold in its sole discretion. Any attempted Transfer in violation of the requirements of this section shall be null and void and, at the option of Landlord, shall constitute a default that entitles Landlord to terminate this Lease and to exercise its other rights and remedies for such default.

20. 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 Center, and shall keep the Premises and the Center free from any liens other than liens created by Landlord or other tenants. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and collect such amount as additional rent. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

21. Additional Provisions:

(a) Entire Agreement. This Lease and the exhibits attached hereto constitute the entire agreement between the parties, and supersede any prior agreements or understandings between the parties hereto. This Lease is not effective until authorized by the MERC Commission and executed and delivered by Landlord and Tenant. The provisions of this Lease may not be modified in any way except by written agreement signed by both parties.

(b) No Implied Waiver. The waiver by Landlord or Tenant of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition of any prior or subsequent breach of the same or any other term, covenant or condition herein.

(c) Choice of Law and Forum / Interpretation. This Lease shall be governed by, interpreted and construed in accordance with the laws of the State of Oregon. Any litigation arising under this Lease shall occur in Multnomah County Circuit Court, or if in the federal courts, in the United States District Court for the District of Oregon.

(d) Ambiguities. The parties agree and warrant that they have had the benefit or opportunity to consult with their own legal counsel prior to entering into this Agreement, such that all language herein shall be construed equally against the parties, and such that Tenant waives any right, claim, argument or defense that any language of this Lease should be construed strictly against Landlord.

(e) Authority. Landlord represents and warrants that, subject to the formal approval by the MERC Commission and the Metro Council, the undersigned signatory has the authority to bind Landlord to the obligations of this Lease, and that Landlord shall be legally bound to the terms and conditions of this Lease once fully executed. Landlord further represents and warrants that, subject to the formal approval by the MERC Commission and the

DRAFT

Metro Council, Landlord has obtained any and all necessary consents and/or approvals prior to executing this Lease. Tenant represents and warrants that the undersigned signatory has the authority to bind Tenant to the obligations of this Lease, and that Tenant shall be legally bound to the terms and conditions of this Lease once fully executed. Tenant further represents and warrants that Tenant has obtained any and all necessary consents and/or approvals prior to executing this Lease.

IN WITNESS WHEREOF, duly authorized representatives of Landlord and Tenant have executed this Lease on the day and year first above written.

Landlord:

Tenant:

OREGON CONVENTION CENTER

[TENANT NAME]

Jeff Blosser
General Manager

[name]
[title]

DRAFT

EXHIBIT "A"

FLOOR PLAN OF PREMISES

[ATTACH]

DRAFT

EXHIBIT "B"

TENANT'S WORK

[complete and attach prior to Lease execution]

DRAFT

EXHIBIT "C"

TENANT'S SIGNAGE

[attach signage]

DRAFT

EXHIBIT "D"

TENANT'S EQUIPMENT

[attach space plan with equipment locations]

BUSINESS CENTER LEASE - DRAFT

This **BUSINESS CENTER LEASE** (this "Lease") is made as of the _____ day of _____, 2003 (the "Effective Date"), by and between METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter, by and through the Metropolitan Exposition Recreation Commission ("MERC") (METRO and MERC referred to herein as "Landlord") and KINKO'S, INC., a Delaware corporation whose principal place of business is Three Galleria Tower, 13155 Noel Road, Suite 1600, Dallas, Texas 75240 ("Tenant").

RECITALS

WHEREAS, Landlord owns and/or manages the Oregon Convention Center (the "Center"), located at 777 NE Martin Luther King Boulevard, Portland, Oregon 97232-2742; and

WHEREAS, Landlord desires to have Tenant provide business services and technical support to guests of the Center from facilities located within the Center; and

WHEREAS, Tenant desires to locate its business services and technical support centers within the Center for the purpose of offering business services and technical support to the Center's guests; and

WHEREAS, on _____, 2003 the MERC Commission authorized this Lease under the terms and conditions set forth herein;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Premises:

(a) **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the terms and conditions set forth herein, certain premises consisting of approximately nine hundred thirty five (935) square feet of space (the "Premises") located on the first (1st) floor of the Center. The Premises are designated on the floor plan attached hereto and incorporated herein by this reference as **Exhibit "A"**.

(b) **Improvements.** Landlord delivered the Premises in broom clean condition, fully demised and vacant. Tenant has or shall construct in the Premises, at Tenant's sole cost and expense, Tenant's work ("Tenant's Work") described in **Exhibit "B"** attached hereto and incorporated herein by this reference. Tenant's Work shall be subject to Landlord's prior written approval, shall comply with all applicable building codes, laws and regulations, and shall not require any changes to or modifications of any of the mechanical, electrical, plumbing or other

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systems of the Center, unless such changes are required for the Premises to comply with applicable laws, codes, regulations or ordinances, Prior to commencing Tenant's Work, Tenant shall deliver a full set of proposed construction drawings to Landlord with Tenant's Work described therein. Landlord shall review the proposed construction drawings and provide Tenant with written comments to or approval of the construction drawings within thirty (30) days after Landlord's receipt of the construction drawings. In the event Landlord fails to provide Tenant with written comments to said drawings within such period, said drawings shall be deemed approved by Landlord. The final construction drawings for Tenant's Work shall be mutually approved in writing by Landlord and Tenant.

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Except for the initial tenant improvement work that is described in Exhibit "B", Tenant shall not alter, add to or improve the Premises, or install additional electrical equipment or machinery 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 Center and belong to Landlord.

2. Term:

(a) The term of this Lease (the "Term") shall be five (5) years. The Term and the payment of Monthly Rent (defined below) shall commence on November 1, 2003 (the "Rent Commencement Date"), and shall expire on the last day of the sixtieth (60th) month following the Rent Commencement Date (the "Lease Expiration Date"), unless such Term is otherwise extended or terminated in accordance with the terms hereof.

(b) In the event that Tenant's annual gross sales are not at least Two Hundred Thousand Dollars (\$200,000) per year, Tenant may elect to terminate the Lease upon 120 days prior written notice as set forth herein. If Tenant does not exercise his right to terminate by the three-year anniversary of the commencement of the Lease Term, Tenant's termination right shall expire and become null and void. Notwithstanding the start date of the Lease or any other provision herein, Tenant may only give the 120-day termination notice during the months of December or June on any calendar year for which the early termination right is in effect. Tenant shall continue to pay rent and operate the business during the 120-day period.

Deleted: Furthermore, Tenant shall pay to Landlord an amount equal to any unamortized leasing cost including lease commissions that are provided by Landlord.

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Deleted: The Monthly Rent for the second year after the Rent Commencement Date shall be One Thousand Six Hundred Five and 08/100 dollars (\$1605.08). The Monthly Rent for the third year after the Rent Commencement Date shall be One Thousand Six Hundred Fifty Three and 39/100 dollars (\$1,653.39). The Monthly Rent for the fourth year after the Rent Commencement Date shall be One Thousand Seven Hundred Three and 26/100 dollars (\$1,703.26). The Monthly Rent for the fifth year after the Rent Commencement Date shall be One Thousand Seven Hundred Fifty Three and 90/100 dollars (\$1,753.90). ¶

3. Base Rent:

(a) The monthly rent (the "Monthly Rent") for the Premises after the Rent Commencement Date shall be One Thousand Seven Hundred Fourteen and 17/100 dollars (\$1,714.17) for the term of the Lease. (b) Time and Place of Payment. The Monthly Rent shall be paid in advance on the first day of each month at the address for the Center as set forth above.

4. Hours of Operation:

Tenant will keep the Premises open for business at least during the following minimum hours: from 8:00 a.m. to 5:00 p.m. during all conventions. Landlord and Tenant shall mutually agree to Tenant's operating hours during non-convention days.

5. Signage and Equipment:

(a) Tenant shall have the right to install upon the exterior of the Premises the signage described in Exhibit "C" attached hereto and incorporated herein by this reference, provided such signs comply with any and all applicable laws and codes. Landlord's prior written approval of the proposed placement and design of all other Tenant signage is required prior to installation of Tenant signage. All Tenant signage shall be at Tenant's sole cost and expense and shall not damage the Center. Tenant may not install signage on the exterior of the Center.

(b) During the Term, Tenant shall install and maintain the equipment specified in Exhibit "D" attached hereto and incorporated herein by this reference, at the Premises, or at Tenant's sole option, other subsequently produced equipment which incorporates technological advances in the equipment specified in Exhibit "D".

(c) **Landlord's Communication Equipment.** Landlord shall have the right, but not the obligation, to enclose its communication equipment in the storage area within the Premises, so long as Tenant's use of the Premises is not disturbed by such communication equipment. Landlord shall have reasonable access to its communication equipment at all times during the Lease.

6. Property Taxes and Insurance:

(a) 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. Tenant shall also pay all personal property taxes as they become due. Landlord shall pay fire and extended coverage insurance on the Center.

(b) Tenant will provide and maintain, at its own expense:

(i) Workers' compensation insurance (including employers' liability) that complies with the applicable workers' compensation laws governing Tenant and all employees working for Tenant; ~~and~~ ----- Deleted: .

(ii). Comprehensive general liability insurance (including products and contractual liability and liability for bodily injury or property damage) with a combined single limit of not less than \$1,000,000.00 per occurrence; and

(iii). "All risk" property insurance insuring Tenant's property against loss or damage by fire and other various risks on all fixtures, improvements, and other property

controlled by Tenant and located upon the Premises, in an amount not less than the full replacement value of such property.

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(c) All of Tenant's policies shall be specifically endorsed to provide that the coverage obtained by Tenant by virtue of this Lease will be primary, and that any insurance carried by Landlord shall be excess and non-contributory. Such insurance shall name Metro, MERC, and the OCC as additional insureds. All policies shall be specifically endorsed to provide that such coverage shall not be canceled or materially changed without at least thirty (30) days' prior written notice to the general manager of the Center. Upon written request, Tenant shall deliver certificates of insurance and any renewals thereof to the general manager of the Center, which evidences the required coverage.

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(e) Tenant shall not allow any act or thing upon the Premises which could reasonably be expected to conflict with Landlord's insurance policies.

7. Notices:

For purposes of notice under this Lease, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

if to Landlord:

Oregon Convention Center
777 NE Martin Luther King, Jr. Boulevard
Portland, Oregon 97232-2742
Attn: General Manager

Copy to:

Metro
Office of Metro Attorney
600 N.E. Grand Ave.
Portland OR 97232-2736

if to Tenant:

Kinko's, Inc.
Three Galleria Tower
13155 Noel Road, Suite 1600
Dallas, Texas 75240
Attn: General Counsel

Landlord and Tenant and their respective successors may change their respective addresses from time to time and each shall have the right to specify a new address for notice purposes, upon fifteen (15) days' prior written notice to the other party.

8. Brokers:

Landlord and Tenant each represent and warrant to the other that no brokers have been employed in carrying on any negotiations relating to this Lease, except Maria Duncan and Don Drake who shall be paid by Landlord pursuant to a separate written agreement. Landlord and Tenant shall each indemnify and hold harmless the other from any claim for brokerage or other commission arising from or out of any breach of the foregoing representation and warranty.

9. Parking:

Kinko's shall have a non-exclusive right for up to 4 parking spaces in the parking garage, at the cost of \$25.00 per space per month in addition to the Monthly Rent for the first two years of the Lease, parking cost to increase to \$30.00 per space per month in addition to the Monthly Rent for the third, fourth, and fifth years of the Lease. One (1) of the aforementioned parking spaces shall be marked and designated exclusively for Tenant's delivery vehicles.

10. Utilities:

Landlord shall provide all utilities to the Premises necessary to Tenant's operations at the Premises. All utilities consumed by Tenant shall be at Landlord's sole cost and expense. Notwithstanding the foregoing, however, Tenant shall contract for and pay directly to the service provider for telephone service and internet access (which internet access shall be provided by Landlord pursuant to a separate written agreement).

11. Maintenance:

(a) Tenant's Obligations. Tenant, at its own expense, hereby agrees to repair, replace and maintain in good and reasonable condition the Premises and every part thereof except that portion of the Premises to be maintained by Landlord as provided for herein, and including, without limitation, the interior utility meters, interior pipes and interior conduits, all fixtures exclusively serving the Premises and other equipment therein, including any equipment installed by Tenant which is part of said system, the storefront, all signs, locks and closing devices, all windows, doors, floor coverings, including carpeting, Maintenance of all glass, both exterior and interior, is the sole responsibility of Tenant. Tenant shall provide storage area for rubbish containers and garbage cans within Tenant's Premises.

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(b) Landlord's Obligations. Subject to the foregoing provisions, Landlord shall keep and maintain in good and reasonable condition and repair the roof, exterior walls (not including storefronts), structural parts of the Premises, and pipes and conduits outside the Premises that furnish the Premises with various utilities; provided, however, that Landlord shall not be required to make repairs necessitated by reason of the gross negligence of Tenant or Tenant's

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employees, by reason of the failure of Tenant to perform or observe any conditions or agreements of this Lease. ~~Landlord will provide collection areas for final disposal of Tenant's garbage.~~

Deleted: Landlord shall be under no obligation to make any repairs, alterations, replacements or improvements to and upon the Premises or the mechanical equipment exclusively serving the Premises at any time except as this Lease expressly provides.

Landlord shall provide floor cleaning, window cleaning, trash pickup and general cleaning of the Premises at Landlord's expense. Tenant shall be responsible for any other janitorial maintenance of the Premises.

12. Promotions:

Tenant shall be included, at Landlord's sole cost and expense, in all group promotions, directories, convention kits, proposals, and other related promotions.

13. Use:

Landlord represents and warrants that, to the best of Landlord's knowledge, Tenant's use does not violate any (i) other tenant exclusives, or (ii) restrictive covenants that affect the Center or the Premises. During the Term, Tenant shall have the exclusive right at the Center to offer, sell and provide in-Center business services and technical support, including the exclusive right to offer, sell and/or provide the following goods and services to the public: photocopying (color and black and white); printing; digital printing; digital imaging; binding; mounting; laminating; blueprinting; desktop publishing; large format printing (including the production of banners and cut vinyl signs); passport photography; word processing; typing services; and to offer, sell and/or provide any substitutes for or items which are the technological evolution of any of the foregoing items (collectively, "Tenant's Exclusive Items"). Additionally, during the Term, in addition to Tenant's Exclusive Items, Tenant shall have the non-exclusive right to offer, sell and/or provide the following goods and services to the public from the Premises: retail art and graphic design; video teleconferencing; mail and facsimile services; overnight courier services; on-site computer rentals; internet access; document exchange; film processing; digital photo processing; office supplies; stationary and greeting cards; computer learning books; CD-ROM disks and coursework; and computer sales and promotions.

Tenant shall, at Tenant's expense, comply with all federal, state and local laws, including all Metro and MERC ordinances, rules and regulations, governing the Premises and Tenant's use thereof.

14. Indemnity:

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(a) Landlord hereby agrees that Landlord, in accordance with the Oregon Tort Claims Act, shall defend, indemnify and hold Tenant harmless for, from and against any and all claims, damages, losses, liens, judgments, penalties, expenses (including reasonable attorneys and consultants fees), and/or liabilities arising from or relating to Landlord's or Landlord's employees', agents' or contractors' intentional misconduct or negligent acts or omissions.

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(b) Tenant hereby agrees that Tenant shall defend, indemnify and hold Landlord and Landlord's elected officials, employees, and agents harmless for, from and against any and all claims, damages, losses, liens, judgments, penalties, expenses including reasonable attorneys and consultants fees, and/or liabilities and which, in whole or in part, directly or indirectly, arise out of or relate to injury to any person or loss of or damage to property which occurs in the Premises or which arises out of Tenant's particular use of the Premises or the Center, or to the willful misconduct or grossly negligent acts or omissions of Tenant, Tenant employees, agents, or contractors.

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15. Hazardous Materials: 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 13. 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, Tenant 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 arise solely from Hazardous Substances used, stored or released, by Tenant, its employees, agents or assigns on the Premises. Landlord represents and warrants that if hazardous substances (including without limitation, asbestos) as defined in federal, state and/or local laws or regulations, are found in the Center and are not the responsibility of Tenant as set forth in this Lease, Landlord shall remove same in compliance with all jurisdictional laws governing same.

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16. ADA Compliance:

Landlord will ensure that the Center, building site, access to and the exterior of the Premises and the Center shall meet all handicap access laws or regulations on the Commencement Date and thereafter throughout the Term, including the Americans with Disabilities Act. Tenant shall ensure that all of Tenant's interior improvements comply with said laws.

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

(a) 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 written 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 \$75 per month shall be assessed from the beginning of the month for late payments to reimburse Landlord for administration expenses related to late notices.

(b) Unauthorized Transfer. Tenant makes any Transfer without Landlord's prior written consent as required under paragraph 20.

(c) -----

(d) Default in Other Covenants. Failure of Tenant to comply with any other term or conditions or to fulfill any other obligations of this Lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity.

Deleted: Abandonment of Premises.
Tenant abandons the Premises, for which purpose "abandons" means a failure by Tenant to occupy and use the Center 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 allowed under other provisions of this Lease.

18. 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.

19. 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:

(a) 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.

(b) 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 shall have an affirmative duty to mitigate all such damages.

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(c) 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 following written notice as provided in this Lease. 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 (1.5%) per month, but not in any event at a rate greater than the maximum rate of interest permitted by law.

20. NO Assignment/Subletting.

For purposes of this section, "Transfer" shall mean to assign, sublet the Premises or any part thereof, or permit the use or occupancy of the Premises by any party other than Tenant. Tenant shall not Transfer this Lease or the Premises or any part thereof without the prior written consent of Landlord which Landlord may withhold in its sole discretion. Any attempted Transfer in violation of the requirements of this section shall be null and void and, at the option of Landlord, shall constitute a default that entitles Landlord to terminate this Lease and to exercise its other rights and remedies for such default. Notwithstanding anything in this Lease to the contrary, the public sale of Tenant's stock in any amount shall not be considered a "Transfer" for purposes of this Lease.

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21. 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 Center, and shall keep the Premises and the Center free from any liens other than liens created by Landlord or other tenants. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and collect such amount as additional rent. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

22. Additional Provisions:

(a) Entire Agreement. This Lease and the exhibits attached hereto constitute the entire agreement between the parties, and supersede any prior agreements or understandings between the parties hereto, including but not limited to the "OCC Interim Copying Services Agreement" dated September 9, 2003. This Lease is not effective until executed and delivered by Landlord and Tenant. The provisions of this Lease may not be modified in any way except by written agreement signed by both parties.

(b) **No Implied Waiver.** The waiver by Landlord or Tenant of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition of any prior or subsequent breach of the same or any other term, covenant or condition herein.

(c) **Choice of Law and Forum / Interpretation.** This Lease shall be governed by, interpreted and construed in accordance with the laws of the State of Oregon. Any litigation arising under this Lease shall occur in Multnomah County Circuit Court, or if in the federal courts, in the United States District Court for the District of Oregon.

(d) **Authority.** Landlord represents and warrants that, subject to the formal approval by the MERC Commission, the undersigned signatory has the authority to bind Landlord to the obligations of this Lease, and that Landlord shall be legally bound to the terms and conditions of this Lease once fully executed. Landlord further represents and warrants that, subject to the formal approval by the MERC Commission, Landlord has obtained any and all necessary consents and/or approvals prior to executing this Lease. Tenant represents and warrants that the undersigned signatory has the authority to bind Tenant to the obligations of this Lease, and that Tenant shall be legally bound to the terms and conditions of this Lease once fully executed. Tenant further represents and warrants that Tenant has obtained any and all necessary consents and/or approvals prior to executing this Lease.

IN WITNESS WHEREOF, duly authorized representatives of Landlord and Tenant have executed this Lease on the day and year first above written.

Landlord:

OREGON CONVENTION CENTER
a _____

Kinko's:

KINKO'S, INC.,
a Delaware corporation

Jeff Blosser
General Manager

Thomas A. Carroll
SVP Real Estate

EXHIBIT "A"

FLOOR PLAN OF PREMISES

[ATTACH]

EXHIBIT "B"

TENANT'S WORK

[complete and attach prior to Lease execution]

EXHIBIT "C"

TENANT'S SIGNAGE

[attach signage]

EXHIBIT "D"

TENANT'S EQUIPMENT

[attach space plan with equipment locations]



