

W. A. A.

AGENDA MEMORANDUM

Date: November 6, 2006
Order Date: November 21, 2006

TO: Board of County Commissioners
DEPARTMENT: Management Services
PRESENTED BY: Jeff Turk, Property Management Officer
AGENDA ITEM TITLE: ORDER NO. _____ /IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN ACKNOWLEDGMENT AND CONSENT DOCUMENT WITH THE OREGON DEPARTMENT OF ENERGY SECURING A GROUND LEASE HELD BY SeSEQUENTIAL RETAIL STATION #1, LLC

I. MOTION:

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN ACKNOWLEDGMENT AND CONSENT DOCUMENT WITH THE OREGON DEPARTMENT OF ENERGY SECURING A GROUND LEASE HELD BY SeSEQUENTIAL RETAIL STATION #1, LLC

II. AGENDA ITEM SUMMARY:

SeSequential wishes to borrow \$852,251 from the State Dept. of Energy (DOE). The DOE has asked the County to execute an Acknowledgment and Consent document to secure SeSequential's leasehold interest in the County's property as collateral. The leasehold interest in property is a sufficient interest in property such that the Board's approval is needed.

III. BACKGROUND/IMPLICATION OF ACTION:

A. Board Action and Other History.

This property is a former gas station that was tax foreclosed. The County entered into agreements with DEQ and SeSequential for the cleanup and transfer of the property to SeSequential with SeSequential leasing the property from the County until cleanup was completed (the property was to be used as a bio-fuels station), per BCC Order 05-6-29-8. The Board Order reflected a desire to transfer the contaminated land to SeSequential and have the property cleaned up, the lease/purchase agreement with SeSequential was structured so that transfer of the property would occur either following

cleanup as approved by DEQ, or upon EPA grant funds obtained for clean-up purposes being fully expended, whichever should first occur.

The State Department of Energy has already loaned SeQuential \$453,000 with the County signing an Acknowledgement and Consent document for that loan. The current request by the DOE for the County to sign an Acknowledgement and Consent will be for an additional \$852,251 loan the DOE wishes to make to Sequential. The loans are secured with all improvements and fixtures on the property, which the State may remove within 180 days of lease termination, should that occur. If not removed, any improvements made by this loan would accrue to the County (the property was essentially unimproved when foreclosed upon and SeQuential has constructed, at its expense, all improvements currently on the premises).

B. Policy Issues.

The previous Board Order, 05-6-29-8, authorized the use of \$50,000 of outside monies for "cleanup activities and (to) redevelop said property as a retail fueling station for bio-diesel fuels" and further noted that cleanup and transfer of the property would lead to economic development. Approval of the currently proposed agreement will assist in developing the property, as loan funds are to be used to place structures on the site and reimburse SeQuential for funds they have used in developing the property .

C. Board Goals.

The cleanup, redevelopment, and return to the tax rolls of this property meet the Board's goals to:

1. Work for a strong regional economy to expand the number of family wage jobs available in Lane County;
2. Contribute to appropriate community development in the areas of transportation ... and land development; and
3. Maintain a healthy environment ...

D. Financial and/or Resource Considerations.

Approving the agreement is unlikely to have adverse financial implications. Should SeQuential not accept the property as agreed, which the lease/purchase agreement states "shall" occur upon either cleanup or DEQ grant funds being expended, the Department of Energy would be entitled to remove structures from the property up to the amount needed to pay off its loans.

E. Analysis.

The use of the loan money and the efforts of SeQuential likely will add significant value to the property. The underlying lease/purchase agreement reflects a desire by the County that this tax-foreclosed and contaminated property be rehabilitated and transferred to SeQuential for no consideration, only that the property be cleaned and put to productive use. There is not much likelihood under the terms of that lease/purchase agreement that this property will continue to be owned by the County. Instead, the County and SeQuential have agreed that "Lessor (county) shall transfer ownership of the premises to Lessee, and Lessee shall accept said transfer, at the sooner of" cleanup or expenditures of grant funds (or expiration of time for spending grant funds). It is anticipated that the EPA grant funds will be expended by April, 2007 with the property transferred to SeQuential shortly thereafter.

Should transfer not occur for some reason, the Department of Energy would have the legal right to remove fixtures from the property. Any fixture not removed within 180 days would then belong to the County.

F. Alternatives/Options.

1. Approve the acknowledgment and consent agreement with the Department of Energy; or
2. Do not approve the acknowledgment and consent agreement with the Department of Energy.

IV. TIMING/IMPLEMENTATION:

Timing is important here, as development of the property is moving forward.

V. RECOMMENDATION:

A. Option 1:

VI. FOLLOW-UP:

Upon approval of Option 1, staff will process the Consent document for signature by the County Administrator.

VII. ATTACHMENTS:

Board Order
Lessor's Acknowledgment and Consent Agreement

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN ACKNOWLEDGMENT AND CONSENT DOCUMENT WITH THE OREGON DEPARTMENT OF ENERGY SECURING A GROUND LEASE HELD BY SeQUENTIAL RETAIL STATION #1, LLC

WHEREAS Lane County has entered into a lease/purchase agreement pursuant to Board Order 05-6-29-8 with SeQuential Retail Station #1, LLC (SeQuential) for the lease and purchase of tax-foreclosed property formerly used as a gas station (86714 McVay Hwy., Eugene) and

WHEREAS SeQuential wishes to secure an \$852,251 loan from the Oregon Dept. of Energy (DOE) and

WHEREAS said DOE, in order to make said loan, will require the County to sign an Acknowledgement and Consent document as said loan will be secured by SeQuential's leasehold interest and

WHEREAS said Acknowledgement and Consent will be in addition to a previously executed Acknowledgement and Consent authorized by Order No. 06-9-13-6 to secure a \$453,000 received by SeQuential from the DOE and

WHEREAS the leasehold interest is a sufficient interest in land such that Board authorization is needed

IT IS HEREBY ORDERED that the County Administrator is authorized to execute an Acknowledgement and Consent document substantially similar to Attached Exhibit "A"

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this _____ day of _____, 20__.

Bill Dwyer, Chair, Board of County Commissioners

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN ACKNOWLEDGMENT AND CONSENT DOCUMENT WITH THE OREGON DEPARTMENT OF ENERGY SECURING A GROUND LEASE HELD BY SeQUENTIAL RETAIL STATION #1

EXHIBIT "A"

WHEN RECORDED, RETURN TO:

OREGON DEPARTMENT OF ENERGY
Attention: SELP
625 Marion Street NE
Salem, OR 97301-3742

LESSOR'S ACKNOWLEDGMENT AND CONSENT

DATE: October ____, 2006

TO: OREGON DEPARTMENT OF ENERGY.
625 Marion Street NE
Salem, OR 97301-3742
ATTN: SELP "Beneficiary"

FROM: LANE COUNTY
Property Management Division
125 E. 8th Avenue
Eugene, OR 97401 "Lessor"

RECITALS

A. Lessor is the lessor in that certain lease (the "Ground Lease") between Lessor and SeSequential Retail Station #1, LLC as Lessee (the "Borrower") dated September 20, 2005. The Ground Lease (or a memorandum of the Ground Lease) was recorded in the Real Property Records of Lane County, State of Oregon, on December 16, 2005, as Recording No. 2005-100109. The real property covered by the Ground Lease is described in Exhibit A attached hereto and by this reference made a part hereof.

B. Borrower has requested that Beneficiary loan Borrower the sum of Eight Hundred Fifty Two Thousand Two Hundred Fifty One and No/100 Dollars (\$852,251) to be secured by among other collateral a Leasehold Commercial Deed of Trust (the "Trust Deed") on Borrower's Lessee's interest in the Ground Lease, and in Borrower's right, title and interest in the property covered by the Ground Lease; Beneficiary has agreed to make the Loan only so long as Lessor executes this Agreement. This is the second loan granted to Borrower by Beneficiary and subsequent to a loan granted by Oregon Department of Economic Development.

C. Lessor acknowledges that Beneficiary making the Loan to Borrower will result in a material benefit to the property which is the subject of the Ground Lease (the "Premises") and to Lessor. To induce Beneficiary to make the Loan to Borrower, Lessor has agreed to execute this Agreement. Lessor acknowledges that Beneficiary is relying upon Lessor's covenants and representations contained in this Agreement in making the Loan to Borrower.

LESSOR'S AGREEMENT:

Lessor covenants and agrees as follows:

1. Recitals Incorporated. The recitals are incorporated into this Agreement.

2. Amendments. Prior to the date of this Agreement, there have been no changes, supplements, amendments or modifications to the Ground Lease, except for as indicated in Recital A above and such changes, supplements, amendments or modifications which have been approved by Beneficiary in writing. Lessor agrees that Lessor shall not supplement, modify or amend the Ground Lease without the prior written consent of Beneficiary. Any such supplementation, modification or amendment without the prior written consent of Beneficiary shall be void and of no force and effect.

3. Ground Lease in Effect. All conditions precedent to the Ground Lease taking effect have been satisfied; the Ground Lease is in full force and effect; and no events of default or events which with the passage of time or notice or both would become an event of default have occurred.

4. Consent to Lien and Security Interest. Lessor consents to Borrower granting to Beneficiary, pursuant to the terms of the Trust Deed, an assignment and a lien on and security interest in:

- (a) All of Borrower's right, title and interest in and to the Lease;
- (b) All of Borrower's present and future right, title and interest in and to the property covered by the Lease;
- (c) All of Borrower's right, title and interest in and to the collateral described in the Trust Deed.

5. Borrower's Default, Surrender, Termination or Abandonment. In the event of any default by Borrower under the Ground Lease or if Borrower attempts to surrender, terminate or abandon the Ground Lease, Lessor will take no action to terminate the Ground Lease nor accept the surrender, termination or abandonment, without giving ninety (90) days' prior written notice to Beneficiary, and hereby grants to Beneficiary the right to cure such default or prevent such surrender, termination or abandonment within such period. Lessor further agrees that in the event of any insolvency or filing of any petition in bankruptcy by or against Borrower, and so long as Beneficiary elects to assume Borrower's rights and obligations under the Ground Lease, and cures all of Borrower's defaults under the Ground Lease which are susceptible of cured by Beneficiary, then Lessor shall not have the right to terminate the Ground Lease or foreclose the Ground Lease or exercise any other remedies with respect to the Premises solely by reason of the existence of bankruptcy or other insolvency proceedings or the like relating to Borrower.

6. Beneficiary Not Liable. So long as Beneficiary has not entered into possession of the Premises, Beneficiary shall not be liable for rent or any other obligations of Borrower under the Ground Lease. If Beneficiary does enter into possession of the Premises, Beneficiary shall only be liable for such rent and other obligations of Borrower which arise while Beneficiary remains in possession of the Premises.

7. Leasehold Improvements. Lessor disclaims all right, title and interest in and to all leasehold improvements, buildings, fixtures, personal property and appurtenances placed by Borrower on the Premises and waives any right of Lessor's distraint, provided that subject to Beneficiary receiving notice of lease termination on or prior to the effective date of termination, Lessor shall receive notice in writing within sixty (60) days of lease termination of Beneficiary's intention to remove the improvements from the premises, and removal of all improvements,

