

W. S. E. I.

**AGENDA COVER MEMORANDUM**

**Memorandum Date: August 30, 2006**

**Agenda Date: September 13, 2006**

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**TO:** Board of County Commissioners

**DEPARTMENT:** Management Services

**PRESENTED BY:** Jeff Turk, Property Management Officer

**SUBJECT:** ORDER/IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN EXTENSION ADDENDUM TO THE LEASE/PURCHASE AGREEMENT WITH SEQUENTIAL RETAIL STATION #1, LLC AND TO EXECUTE A CONSENT TO LIEN DOCUMENT FOR COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP # 18-03-10-10-03200 (86714 MCVAY HWY. EUGENE)

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1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE AN EXTENSION ADDENDUM TO THE LEASE/PURCHASE AGREEMENT WITH SEQUENTIAL RETAIL STATION #1, LLC AND TO EXECUTE A CONSENT TO LIEN DOCUMENT FOR COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP # 18-03-10-10-03200 (86714 MCVAY HWY. EUGENE)

2. **AGENDA ITEM SUMMARY:**

The Board is being asked to:

- a. Extend an existing lease with SeQuential Retail Station #1, LLC (SQ) through December 1, 2037
- b. Authorize the County Administrator to execute a Consent to Lien document to allow SQ to secure a loan.

## **BACKGROUND/IMPLICATIONS OF ACTION:**

### **A. Board Action and Other History**

Pursuant to Order 05-6-29-8, the County entered into a lease/purchase agreement with SQ in September, 2005 for County property located at 86714 McVay Hwy., Eugene.. The term of the lease was through December 1, 2007. This coincided with the term of an EPA cleanup grant the County had secured for the property. The lease required SQ to contribute \$50,000 towards the environmental cleanup of the property. SQ wishes to secure a \$50,000 loan from the Oregon Economic and Community Development Department (OECDD) to meet its obligation.. The OECDD wishes to secure the loan with a leasehold trust deed. In order for the OECDD to execute the trust deed and make the loan, it has requested that the County and SQ amend the term of the lease to run through December 1, 2037 and that the County consent to allowing OECDD to secure the loan with a lien on SQ's leasehold (not the real property).

The county acquired the subject property through tax foreclosure in September, 2004. The property was formerly a gas station and was identified as containing substantial petroleum contamination in the soil and groundwater.

In September, 2005 the County obtained a Brownfields Cleanup Grant from the EPA for \$200,000. The grant required cleanup actions to be completed by December, 2007.

Coinciding with the EPA grant, the County entered into a lease/purchase agreement with SQ, a marketer of bio-diesel products. SQ was going to use the property as a retail fueling station. The agreement provided for transfer of the property to SQ upon cleanup of the property or expiration of the EPA grant, whichever was sooner. The term of the lease/purchase agreement was to expire December 1, 2007 – the same time the EPA grant was to expire.

The agreement with SQ required them to contribute \$50,000 towards cleanup of the property. The \$50,000 also covered the required 20% match the county is to contribute as a match for the EPA grant. The funds are to be given to the DEQ pursuant to a Prospective Purchaser Agreement between the DEQ and SQ. The County, through an IGA, has contracted with the DEQ to manage the cleanup of the property.

The agreement with SQ provided for the transfer of the property to SQ upon the sooner of the completion of cleanup activities, full expenditure of EPA grant funds or expiration of the grant period in December, 2007.

Cleanup of the property is progressing in a timely manner. Contaminated soil has been removed. Groundwater contamination remains an issue and the next phase of the cleanup

will entail pumping out the contaminated groundwater. It is anticipated that cleanup actions, with respect to the grant funds, will be completed by the 2<sup>nd</sup> quarter of 2007.

SQ has largely completed development of the property. An opening ceremony, attended by Senator Wyden, occurred on August 23<sup>rd</sup>. SQ anticipates opening to the public for retail sales approximately September 1<sup>st</sup>.

SQ will be selling various grades of bio-diesel fuels as well as regular gasoline mixed with ethanol. An array of Solar panels has been installed to provide power for station operations and SQ has also developed the property with a convenience store that has a “living roof”.

**B. Policy Issues**

Pursuant to LM 21.425, it is the policy of Lane County to dispose of county property not needed for public purposes.

**C. Board Goals**

Pursuant to item B2 [c] of the Strategic Plan (Resource Planning and Allocation) the county is to assess its real property assets and utilize them in a manner that is beneficial to the county.

**D. Financial and/or Resource Considerations**

The proposal to extend the lease does not require, nor will it effect, expenditure of county financial resources. Resource considerations are limited to staff time required to finalize the agreements.

**E. Analysis**

Extending the lease through 2037 will not affect the county’s ability to transfer the property to SQ upon completion of cleanup activities or expiration of the EPA grant period as stated in the lease terms. The transfer of the property will occur no later than December 2007. Extending the lease through 2037 will allow the OECDD to make the loan per their guidelines by being able to show a 30 year payback period

The leasehold trust deed will be between the OECDD and SQ – the County is not a party to that agreement. The trust deed will secure the loan by giving the OECDD an interest in SQ’s personal property as well as SQ’s interest in their lease with the County. In the event SQ defaults on their loan prior to the property being transferred to them, the OECDD could take SQ’s position in the lease and become the lessee. The County must consent to allowing the OECDD to lien the leasehold.

Assistant County Counsel Marc Kardell has reviewed the lease hold trust deed and is comfortable with its terms. Mr. Kardell has also drafted the change to the lease between the County and SQ extending the lease term should the Board choose to do so.

**F. Alternatives/Options**

- a. Approve the lease amendment extending the term to December, 2037 and approve authorizing the County Administrator to execute a Consent to Lien document.
- b. Reject the proposed lease amendment.

**V. TIMING/IMPLEMENTATION**

Upon approval by the Board, the amendment and consent to lien document will be processed for execution by the County Administrator..

**VI. RECOMMENDATION**

It is recommended that the County Administrator be authorized to execute a lease amendment extending the lease term to December 1, 2037 and also be authorized to execute a consent to lien document.

**VII. FOLLOW-UP**

Upon approval by the Board, staff will finalize documents for signature by the CAO.

**VII. ATTACHMENTS**

- Board Order
- Lease Amendment
- Consent to Lien Document

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN EXTENSION ADDENDUM TO THE LEASE/PURCHASE AGREEMENT WITH SEQUENTIAL RETAIL STATION #1, LLC AND TO EXECUTE A CONSENT TO LIEN DOCUMENT FOR COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP # 18-03-10-10-03200 (86714 MCVAY HWY. EUGENE)

WHEREAS Lane County entered into a lease/purchase agreement dated September 20, 2005 with Sequential Retail Station #1, LLC (lessee) for County owned real property identified as Assessor's map no. 18-03-10-10-03200 and

WHEREAS the lessee, in order to secure a loan from the Oregon Economic and Community Development Dept. to aid in the environmental cleanup of said property, has requested that the term of the lease be extended through December 1, 2037 and

WHEREAS extending said lease term will not affect the County's ability to transfer ownership of said real property to lessee per terms of the original agreement and

WHEREAS the Oregon Economic and Community Development Dept. has requested that the County execute a Consent to Lien Document to allow said Oregon Economic and Development Dept. to secure its loan with Sequential Retail Station #1, LLC by having a lien on lessee's leasehold interest

IT IS HEREBY ORDERED that the County Administrator is authorized to execute a lease addendum agreement with Sequential Retail Station #1, LLC substantially similar to attached Exhibit "A" and is also authorized to execute a Consent to Lien Document substantially similar to Exhibit "B"

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 \_\_\_\_, 2006

APPROVED AS TO FORM  
Date 8-31-06  
*[Handwritten signatures]*  
GRACE OBLER  
COUNTY CLERK

\_\_\_\_\_  
Bill Dwyer, Chair, Board of County Commissioners

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN EXTENSION ADDENDUM TO THE LEASE/PURCHASE AGREEMENT WITH SEQUENTIAL RETAIL STATION #1, LLC AND TO EXECUTE A CONSENT TO LIEN DOCUMENT FOR COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP # 18-03-10-10-03200 (86714 MCVAY HWY. EUGENE)

Exhibit "A"

LEASE ADDENDUM #1

SEQUENTIAL RETAIL STATION #1, LLC/LANE COUNTY

WHEREAS Lane County (lessor), a political subdivision of the State of Oregon, entered into a lease/purchase agreement with Sequential Retail Station #1, LLC (lessee) dated September 20, 2005 for County owned real property identified as Assessor's map no.18-03-10-10-03200 and

WHEREAS the term of said agreement ran through December 1, 2007 and

WHEREAS the parties wish to extend the term of said lease through December 1, 2037

IT IS HEREBY AGREED that Section 2.1 of said agreement shall be amended and now read as follows:

*"The term of this lease shall begin upon full execution by both parties and shall continue until midnight December 1, 2037 unless it is sooner terminated as provided in this lease"*

**All other terms of the lease/purchase agreement not specifically changed by the language herein shall remain in full force and effect.**

LESSOR: LANE COUNTY

By: \_\_\_\_\_  
William Van Vactor

Title: County Administrator

Date: \_\_\_\_\_

Pursuant to Board Order No. \_\_\_\_\_

LESSEE: Sequential Retail Station # 1 LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "B"**

WHEN RECORDED, RETURN TO:  
Oregon Economic and Community Development Department  
Community Development Division  
775 Summer Street NE, Suite 200  
Salem, Oregon 97301-1280  
Attention: Jacki Yoder, Regional Coordinator

**LESSOR'S ACKNOWLEDGMENT AND CONSENT**

DATE: \_\_\_\_\_, 2006

TO: State of Oregon, "Lender"  
acting by and through its Economic and Community Development  
Department,  
775 Summer Street N.E., Suite 200  
Salem, Oregon 97301-1280

FROM: LANE COUNTY "Lessor"  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RECITALS:**

- A. Lessor is the lessor in that certain lease/purchase agreement dated on or about September 20, 2005 between Lessor and SEQUENTIAL RETAIL STATION #1, LLC, as Lessee (the "Borrower"), as said lease/ purchase agreement was amended by an amendment dated on or about \_\_\_\_\_, 2006 executed by Lessor and Borrower (collectively the "Ground Lease"). 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, Reception No. 2005-100109 and on \_\_\_\_\_, 2006, Reception No. \_\_\_\_\_. 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 Lender loan Borrower the sum of Fifty Thousand and No/100 Dollars (\$50,000) to be secured by among other collateral a Leasehold Commercial Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (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; Lender has agreed to make the Loan only so long as Lessor executes this Agreement.
- C. Lessor acknowledges that Lender 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 Lender to make the Loan to Borrower, Lessor has agreed to execute this Agreement. Lessor acknowledges that Lender 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 such changes, supplements, amendments or modifications which have been approved by Lender in writing. Lessor agrees that Lessor shall not supplement, modify or amend the Ground Lease without the prior written consent of Lender. Any such supplementation, modification or amendment without the prior written consent of Lender 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; the term of the Ground Lease extends beyond the Maturity Date of the Note; 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 Lender, 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 Lender, and hereby grants to Lender 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 Lender 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 cure by Lender, 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. Lender Not Liable. So long as Lender has not entered into possession of the Premises, Lender shall not be liable for rent or any other obligations of Borrower under the Ground Lease. If Lender does enter into possession of the Premises, Lender shall only be liable for such rent and other obligations of Borrower which arise while Lender 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.

- 8. Copy of Trust Deed. Lessor acknowledges receipt of a copy of the Trust Deed.
- 9. Captions for Convenience. The captions of the sections of this Agreement are for convenience only and are not to be used to interpret or define the provisions of this Agreement.
- 10. Binding Effect. This Acknowledgment shall be binding upon Lessor and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.
- 11. DOE Security Agreement. Nothing herein shall be construed to affect the validity of the terms and conditions of the Oregon Department of Energy security agreement encumbering the Premises.
- 12. Borrower Acknowledgment. Borrower also signs this Consent and Acknowledgment to signify it has read the Consent and Acknowledgment and has agreed to disclose to Lessor the information contained in the Consent and Acknowledgment and in the Trust Deed attached to this Consent and Acknowledgment.
- 13. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings assigned to them by the Trust Deed.

IN WITNESS WHEREOF, Lessor has signed this Lessor's Acknowledgment and Consent the day and year first written above.

LANE COUNTY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006 by \_\_\_\_\_, a \_\_\_\_\_ of \_\_\_\_\_, on behalf of Lane County.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

SEQUENTIAL RETAIL STATION #1, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_