

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 07-182**

Authorizing a First Amendment to the Ground Lease Agreement and a Second Amendment to the Sublease Agreement, Each Dated November 1, 2000 Executed by Multnomah County, Oregon, a Political Subdivision of the State of Oregon, as Lessor, and The Port City Development Center, an Oregon Not for Profit Corporation, as Lessee, in Connection with the Issuance of the County's \$2,000,000 Motor Vehicle Rental Tax Revenue Bonds, Series 2000A (501(c)(3))

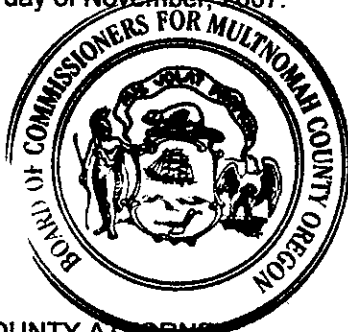
**The Multnomah County Board of Commissioners Finds:**

- a. Motor Vehicle Rental Tax Revenue Bonds ("Bonds") were issued pursuant to a Trust Indenture, dated as of November 1, 2000, between the County, as issuer, and U.S. Bank, N.A. (formerly known as U.S. Bank Trust National Association), as trustee.
- b. In conjunction with the issuance of the Bonds, on November 1, 2000 the County entered into a Ground Lease Agreement ("Ground Lease") and a Sublease Agreement ("Sublease") with Port City Development Center, an Oregon Not for Profit Corporation ("Port City") for lease by the County and sublease back to Port City of certain real property and improvements located in the City of Portland, County of Multnomah, State of Oregon as described more fully in those agreements (the "Property").
- c. Rental payments under the Sublease made by Port City to the County under the Sublease are being used to repay the Bonds.
- d. Due to financial hardship, Port City is requesting an amendment to the Ground Lease and a restructuring of the Sublease rent payments which will extend the term of the lease and the rent payments beyond the date when the bonds are defeased. In the event of another default, Port City has agreed to sell the Property and if unsuccessful to vacate the property and allow the County to sell the Property or take title to the property.
- e. The County's Chief Financial Officer recommends that the rent payment schedule be amended as provided in the attached Second Amendment to Sublease. It is in the best interests of the County to amend the Ground Lease and Sublease on the terms set forth in the attachments to this Resolution.

**The Multnomah County Board of Commissioners Resolves:**

1. The Chair is authorized to execute the First Amendment to Ground Lease and the Second Amendment to Sublease substantially in the form attached to this Resolution.

ADOPTED this 29th day of November, 2007.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By John S. Thomas, Deputy County Attorney

SUBMITTED BY:  
John S. Thomas, Deputy County Attorney

## **FIRST AMENDMENT TO GROUND LEASE AGREEMENT**

**This First Amendment to Ground Lease Agreement** (the "First Amendment"), is made and entered into as of November 29, 2007 by and between The Port City Development Center, an Oregon not for profit corporation (the "Lessor") and Multnomah County, Oregon, a political subdivision of the State of Oregon (the "Lessee").

### **WITNESSETH:**

**WHEREAS**, on November 7, 2000, the Lessor issued its \$2,000,000 Motor Vehicle Rental Tax Revenue Bonds, Series 2000A (501(c)(3)) (the "Bonds") pursuant to a Trust Indenture (the "Trust Indenture"), dated as of November 1, 2000, between the Lessor and U.S. Bank, N.A. (formerly known as U.S. Bank Trust National Association), as trustee (the "Trustee"); and

**WHEREAS**, on November 1, 2000, the Lessor and the Lessee entered into a Ground Lease Agreement relating to the Bonds (the "Ground Lease Agreement"); and

**WHEREAS**, on November 1, 2000, the Lessor and the Lessee entered into a Sublease Agreement relating to the Bonds (the "Sublease Agreement"); and

**WHEREAS**, On August 1, 2002, the Lessor and the Lessee amended and supplemented the Sublease Agreement; and

**WHEREAS**, Contemporaneous with the execution of this First Amendment to Ground Lease Agreement the parties are executing a Second Amendment to Sublease Agreement;

**WHEREAS**, the Lessor and the Lessee desire to amend and supplement the Ground Lease Agreement by the execution and delivery of this First Amendment; and

**NOW, THEREFORE, THIS FIRST AMENDMENT WITNESSETH**, for in consideration of the premises and the mutual covenants and agreements set forth herein, the Lessor and the Lessee hereby agree as follows:

### **ARTICLE 1.**

#### **DEFINITIONS AND FINDINGS**

**Section 1.1. Terms Defined in the Trust Indenture, Sublease Agreement or Ground Lease Agreement.** Except as modified herein, or unless the context shall clearly indicate some other meaning, all words and terms used in this First Amendment that are defined in the Trust Indenture, or Sublease Agreement as Amended by the Second Amendment to Sublease Agreement or the Ground Lease Agreement shall, for all purposes of this First Amendment, have the respective meanings given to them in such documents.

## ARTICLE 2.

### AMENDMENTS TO SECTION 3

#### Section 2.1 Amendments to Section 3.1

Section 3.1 of the Ground Lease Agreement is deleted and replaced with the following:

**3.1 Term** The Ground Lease Term (the "Term") commences on November 1, 2000 and shall end on the date Lessee pays all sums necessary to effect defeasance of the Series 2000A Bonds pursuant to Section 2.12 of the Indenture, but only if all expenses of Bond Trustee and Lessee have been paid and discharged under the provisions of the Sublease and Indenture, or the date that all rent amounts set forth in Exhibit B of the Second Amendment to Sublease Agreement have been paid, whichever is earlier. If there has been a Sublease Default under the Sublease, based upon which default the Sublease is terminated, the term of this Ground Lease shall be ninety-nine (99) years from the date of notice to Lessor of Sublease Default under the Sublease, subject however to the rights of Lessor to sell and the rights of Lessee to purchase or sell the Real Property under Section 11.2 of the Sublease Agreement. Lessor may not terminate this Ground Lease prior to the end of such Term for any reason whatsoever.

#### Section 2.2 Amendments to Section 3.3

Section 3.3 of the Ground Lease Agreement is deleted and replaced with the following:

**3.3 Disposition of Property** If the term ends on payment by Lessor of amounts sufficient to effect defeasance of the Bonds, or payment of all rent amounts pursuant to the terms of the Second Amendment to Sublease Agreement, this Ground Lease shall automatically expire without action of the parties; however Lessee agrees to execute an instrument in recordable form evidencing expiration of this Ground Lease. If the Sublease is terminated based on a Sublease Default, Lessee shall be entitled to exclusive possession and use of the Property until the ninety-nine (99) year remaining Term of this Ground Lease expires, subject however to the rights of Lessor to sell and the rights of Lessee to purchase or sell the Real Property under Section 11.2 of the Sublease Agreement; on expiration of the ninety-nine (99) year Term, Lessor shall own the Property.

## ARTICLE 3.

### MISCELLANEOUS

**Section 3.1. Effect of Ground Lease Agreement.** Except as expressly amended herein, the Ground Lease Agreement shall remain in full force and effect.

**Section 3.2. Execution in Counterparts.** This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 3.3. Captions.** The captions or headings in this First Amendment are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this First Amendment.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of this 29<sup>th</sup> day of NOV, 2007.

Lessor:

**MULTNOMAH COUNTY, OREGON**, a political subdivision of the State of Oregon

REVIEWED:  
AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY  
BY [Signature]  
ASSISTANT COUNTY ATTORNEY  
DATE 11/27/07

[Signature]  
Ted Wheeler  
Chair

Lessee:

**THE PORT CITY DEVELOPMENT CENTER**,  
an Oregon not for profit corporation

[Signature]  
Gabrielle Bolivar  
Executive Director

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APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # 2-B DATE 11-29-07  
DEBORAH L. BOGSTAD, BOARD CLERK

## **SECOND AMENDMENT TO SUBLEASE AGREEMENT**

**This Second Amendment to Sublease Agreement** (the "Second Amendment"), is made and entered into as of 29<sup>th</sup> day of November, 2007 by and between Multnomah County, Oregon, a political subdivision of the State of Oregon (the "Lessor"), and The Port City Development Center, an Oregon not for profit corporation (the "Lessee").

### **WITNESSETH:**

**WHEREAS**, on November 7, 2000, the Lessor issued its \$2,000,000 Motor Vehicle Rental Tax Revenue Bonds, Series 2000A (501(c)(3)) (the "Bonds") pursuant to a Trust Indenture (the "Trust Indenture"), dated as of November 1, 2000, between the Lessor and U.S. Bank, N.A. (formerly known as U.S. Bank Trust National Association), as trustee (the "Trustee"); and

**WHEREAS**, on November 1, 2000, the Lessor and the Lessee entered into a Ground Lease Agreement ("Ground Lease") and a Sublease Agreement relating to the Bonds (the "Sublease Agreement"); and

**WHEREAS**, On August 1, 2002 the Lessor and the Lessee amended and supplemented the Sublease Agreement; and

**WHEREAS**, the Lessor and the Lessee desire to amend and supplement the Sublease Agreement by the execution and delivery of this Second Amendment; and

**WHEREAS**, Section 12.5 of the Sublease Agreement allows the Sublease Agreement to be amended and supplemented without the prior written consent of the Trustee if such amendment does not materially affect the rights of the Bondholders and provided any other relevant provisions in the Sublease Agreement and the Trust Indenture have been complied with; and

**WHEREAS**, Section 7.3 of the Trust Indenture provides that in connection with any amendment to the Sublease Agreement the Trustee may obtain an opinion of Bond Counsel that such amendment is authorized or permitted by the Trust Indenture and will not adversely affect the excludability for federal income tax purposes of interest on the Bonds.

**NOW, THEREFORE, THIS SECOND AMENDMENT WITNESSETH**, for in consideration of the premises and the mutual covenants and agreements set forth herein, the Lessor and the Lessee hereby agree as follows:

## **ARTICLE 1.**

### **DEFINITIONS AND FINDINGS**

**Section 1.1. Terms Defined in the Trust Indenture or Sublease Agreement.** Except as modified herein, or unless the context shall clearly indicate some other meaning, all words and terms used in this Second Amendment that are defined in the Trust Indenture, Ground Lease as amended by the First Amendment to Ground Lease Agreement or the Sublease Agreement shall, for all purposes of this Second Amendment, have the respective meanings given to them in such documents.

**Section 1.2. Findings.** The amendments and supplements to the Sublease Agreement in this Second Amendment are authorized by Section 12.5 of the Sublease Agreement as described in the fourth "Whereas" paragraph above.

## **ARTICLE 2.**

### **AMENDMENT AND RESTATEMENT OF SCHEDULE OF RENTAL AMOUNTS**

**Section 2.1. Amendment of Exhibit B.** The schedule of Rental Amounts payable by Lessee to Lessor for the use of the Property as set forth in Exhibit B of the Sublease Agreement and as amended by the First Amendment, is hereby further amended and restated as set forth in Exhibit B attached hereto. Lessor accepts the rents paid prior to the date of this Second Amendment as having satisfied in full and without default hereunder all rental obligations prior hereto even though such rents were not in amounts originally stated under the Sublease Agreement or the First Amendment to the Sublease Agreement. Lessor acknowledges that the books and records of Lessee shall be revised based on the terms above to eliminate any accrued debt expense, and reflecting only the current and future indebtedness as set forth under the terms of this Second Amendment to Sublease Agreement.

## **ARTICLE 3.**

### **AMENDMENT AND RESTATEMENT OF TERM**

**Section 3.1. Amendment of Term.** Section 3.1 of the Sublease Agreement is amended to read;

The Sublease Term commences on November 1, 2000 and, subject to earlier termination as provided herein, shall end on the date Lessee pays all sums necessary to effect the defeasance of the Series 2000A Bonds in accordance with Section 2.12 of the Indenture, including payment of all expenses of Trustee and Lessor as specified under the provisions of the Indenture, or the date that all rent amounts set forth in Exhibit B of the Sublease Agreement have been paid, whichever is later. If the Sublease is terminated based on a Sublease Default hereunder, the Term shall end on the date specified in the notice of default, unless sooner modified by the Parties.

## **ARTICLE 4.**

### **AMENDMENTS TO SECTION 11 - DEFAULT; REMEDIES**

**Section 4.1 Amendments to Section 11.1.** Section 11.1(a) is amended to read:

(a) Failure by Lessee to pay any Rental Amounts or other amounts required to be paid under Section 5.1 hereof within 10 days of written notification from Lessor that a required payment has not been made.

**Section 4.2 Amendments to Section 11.2.**

**Section 4.2.1** Section 11.2 (b) is deleted:

**Section 4.2.2** Section 11.2 (e) is deleted and replaced with the following:

(e) In the event of a Sublease Default for non-payment of rent, so long as Lessee is and remains in full compliance with all other terms of the Sublease (including any right to cure a nonmonetary default pursuant to Section 11.1 (b) above), 1) Lessee shall have the right, to sell the Property on or before one year from the date set forth in the notice of default ("Lessee's Sale Date") and, 2) Lessee shall have the right, until Lessee's Sale Date, to occupy the property for the uses permitted by the Sublease Agreement. Upon any sale by Lessee, the proceeds of the sale shall be distributed as follows:

(1) First to costs of sale;

(2) Second to Lessor in payment of all sums necessary to effect defeasance of the Series 2000A Bonds in accordance with Section 2.12 of the Indenture including payment of all expenses of Trustee and Lessor at the times specified under the provisions of the Indenture, if any;

(3) Third to Lessor to reimburse Lessor for all costs incurred or losses suffered by Lessor related to Lessee's failure to make payments as required by the original Sublease Agreement or other breach of the Sublease Agreement by Lessee, including but not limited to bond payments or portions thereof made by Lessor from Lessor's funds to avoid default on the bonds. The parties agree that Lessor's costs shall include interest at the rate of 4% per annum simple interest 1) on any payments made by Lessor on account of Lessee's default in making Sublease payments and 2) on any other cost incurred or payment made on account of or for the benefit of Lessee, such interest to run from the date such cost was incurred or payment was made;

(4) Fourth, the balance, if any, to Lessee.

Lessor shall have the right in its sole discretion to disapprove any sale by Lessee that fails to fully compensate Lessor for the sums identified in subsections (2) and (3) above. Provided, however, that Lessor shall have ten (10) days from receipt of proposed sale documents to disapprove any proposed sale by Lessee, or the terms of such proposed sale shall be deemed accepted by Lessor.

If any other event of default (other than default due to non-payment of rent) occurs during the one year period and such default is not cured as provided for in Section 11.1(b) then Lessee's right to sell shall terminate and Lessee shall relinquish possession of the Property to Lessor and shall remove all of Lessee's personal property from the Property.

If Lessee fails to sell the Property before Lessee's Sale Date, Lessee shall, on or before such date, relinquish possession of the Property to Lessor and shall remove all of Lessee's personal property from the Property. From and after such date, Lessor shall have the right to operate the Property in its sole and unfettered discretion for the sole benefit of Lessor.

After Lessee's Sale Date, Lessor shall have an option to purchase the Property by notice to Lessee in writing given not later than 60 days after the Lessee's Sale Date. The purchase price shall be determined by an appraisal of the Property by an appraiser selected by the parties, or if the parties cannot agree then selected by the presiding judge of the Multnomah County Circuit Court from a list consisting of three appraisers proposed by each party. The appraiser's determination of value shall take into consideration the condition of the property including the presence of Hazardous Substances and the appraiser shall be authorized to employ such experts as the appraiser may determine appropriate to advise the appraiser concerning the presence of Hazardous Substances on the Property and the estimated cost, if any, for remediation. After Lessor has given notice of its exercise of the option to purchase under this section, Lessor shall have the right, at Lessor's sole expense, to make such investigation of the Property as Lessor may deem necessary to make a determination whether to purchase the Property. Lessor shall provide the results of any such investigation to the appraiser for use by the appraiser in determining the value of the Property. Within 60 days of receipt of the appraisal, Lessor shall provide notice to Lessee of Lessor's election to purchase the Property for the amount of the appraisal. Closing shall take place not later than 30 days of the date of election to Purchase the Property. If Lessor fails to provide such notice, Lessor's right to purchase the Property shall terminate. At closing, Lessor shall pay to Lessee the sum, if any, that Lessee would have been entitled to receive under Section 11 (e) 4 above had the Property been sold by Lessee for the amount of the appraisal. For purposes of calculation of the sum due Lessee, fifty percent (50%) of the fee paid to the appraiser and the appraiser's consultants, the closing costs and one hundred percent (100%) of the cost of a standard ALTA title insurance policy shall be treated as costs of sale. If Lessor does not purchase the property, Lessor shall pay the fees of the appraiser and the appraiser's consultants. Lessee agrees to cooperate to transfer ownership of the Property to Lessor by statutory special warranty deed free and clear of all liens and encumbrances suffered or created by Lessee, provided, however that (1) any such lien or encumbrance is reasonably dischargeable though payment of funds from the proceeds of sale; and (2) Lessor acknowledges



that certain environmental and land use restrictions encumber the property and will not be removed as part of any sale or transfer by Lessee.

In addition to the right to purchase the property, after Lessee's Sale Date, Lessor shall have the right at any time thereafter to arrange a sale of the Property using any method determined by Lessor in its sole and absolute discretion to be appropriate to market the Property. In its effort to sell the Property, Lessor shall owe no duty to Lessee, fiduciary or otherwise, and shall have no duty to maximize return on the sale of the Property, provided, however, that upon closing of any such sale, Lessee shall be released of all claims and liabilities to Lessor, its successors and assigns, relating to the Property, the Rental Amounts and the bonded indebtedness. All decisions of Lessor relating the Property after the Lessee's Sale Date including but not limited to the sale price, and the level of maintenance of the Property shall be made by Lessor in Lessor's absolute and unfettered discretion. Lessee agrees to cooperate with Lessor and to execute all documents required to be executed by Lessee to close the sale. Lessee agrees that until the closing of the sale of the Property, Lessee shall comply with the provisions of Section 9.3 herein. Upon sale by Lessor, the proceeds shall be distributed as provided above.

## **ARTICLE 5**

### **MISCELLANEOUS AMENDMENTS**

**Section 5.1 Amendment to Section 6.2** Section 6.2 is amended to add the following Subsection (y):

(y) Lessee agrees, that except as provided below, Lessee shall neither create or suffer any lien to be placed on the Property without Lessor's prior written consent which consent shall not be unreasonably withheld. It shall not be unreasonable for Lessor to withhold consent if, in Lessor's reasonable judgment, the lien will jeopardize Lessor's interest in the property. The foregoing limitation shall not apply to creation of a lien or liens with an aggregate principal balance of not more than \$50,000 for the purpose of making repairs to the property, provided that, Lessee shall give Lessor prior written notice of Lessee's intent to create such a lien or liens. Lessee further agrees that it will not incur any debt, other than credit extended in the ordinary course of business, that would potentially jeopardize Lessor's interest in the Property without the written consent of Lessor, which consent shall not be unreasonably withheld.

**Section 5.2 Amendment to Section 7.1** Section 7.1 is amended to delete the last paragraph and substitute the following:

Lessee shall not permit any mechanic's or other liens to be established or remain against the property. Upon the recording of any such lien, Lessee shall promptly notify Lessor in writing and shall within 10 days of such recording take such steps as may be necessary to remove such lien from the property which may include recording a bond or making a deposit as provided in ORS 87.076 or similar statutes.

**Section 5.3 Effect of Sublease Agreement.** Except as expressly amended herein, the Sublease Agreement shall remain in full force and effect.

**Section 5.4 Execution in Counterparts.** This Second Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 5.5 Captions.** The captions or headings in this Second Amendment are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Second Amendment.

29<sup>th</sup> IN WITNESS WHEREOF, the parties have executed this Second Amendment as of this day of NOV, 2007.

Lessor:

**MULTNOMAH COUNTY, OREGON**, a political subdivision of the State of Oregon

REVIEWED:  
AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY

BY [Signature]  
ASSISTANT COUNTY ATTORNEY  
DATE 11/21/07

[Signature]  
Ted Wheeler  
Chair

Lessee:

**THE PORT CITY DEVELOPMENT CENTER**,  
an Oregon not for profit corporation

[Signature]  
Gabrielle Bolivar  
Executive Director

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-8 DATE 11-29-07  
DEBORAH L. BOGSTAD, BOARD CLERK

**SECOND AMENDMENT TO SUBLEASE AGREEMENT  
AMENDED EXHIBIT B**

**Rental Amounts**

<b>Beginning Payment Date</b>	<b>Ending Payment Date</b>	<b>Monthly Payments</b>	<b>Period Total</b>
December 1, 2007	June 30, 2008	2,625	18,375
July 1, 2008	June 30, 2009	2,755	33,060
July 1, 2009	June 30, 2010	2,895	34,740
July 1, 2010	June 30, 2011	3,040	36,480
July 1, 2011	June 30, 2012	3,190	38,280
July 1, 2012	June 30, 2013	3,350	40,200
July 1, 2013	June 30, 2014	3,515	42,180
July 1, 2014	June 30, 2015	3,695	44,340
July 1, 2015	June 30, 2016	3,880	46,560
July 1, 2016	June 30, 2017	4,070	48,840
July 1, 2017	June 30, 2018	4,275	51,300
July 1, 2018	June 30, 2019	4,490	53,880
July 1, 2019	June 30, 2020	4,715	56,580
July 1, 2020	June 30, 2021	4,950	59,400
July 1, 2021	June 30, 2022	5,195	62,340
July 1, 2022	June 30, 2023	5,460	65,520
July 1, 2023	June 30, 2024	5,730	68,760
July 1, 2024	June 30, 2025	6,015	72,180
July 1, 2025	June 30, 2026	6,320	75,840
July 1, 2026	June 30, 2027	6,630	79,560
July 1, 2027	June 30, 2028	6,965	83,580
July 1, 2028	June 30, 2029	7,315	87,780
July 1, 2029	June 30, 2030	7,680	92,160
July 1, 2030	June 30, 2031	8,060	96,720
July 1, 2031	June 30, 2032	8,465	101,580
July 1, 2032	June 30, 2033	8,890	106,680
July 1, 2033	June 30, 2034	9,335	112,600
July 1, 2034	September 30, 2034	9,800	29,400
<b>TOTAL</b>			<b>\$1,738,335</b>

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