

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2011-098

Declaring a Portion Of The Property Located At 501 SE Hawthorne, Portland, Oregon To Be Surplus And Approving a Real Property Lease With Point West Credit Union.

The Multnomah County Board of Commissioners Finds:

- a. Multnomah County owns the approximate 224,000 square foot Multnomah Building located at 501 SE Hawthorne, Portland, Oregon. Approximately 108 of rentable square feet of space within this facility (the "Property") is currently vacant and not anticipated to be needed for County use and is surplus.
- b. The attached lease as been negotiated with Point West Credit Union (Point West). Point West desires to lease the Property at the Multnomah Building for office use for a term through June 30, 2013.
- c. It is in the best interests of the County to lease the Property on the terms and conditions set forth in the attached lease.

The Multnomah County Board of Commissioners Resolves:

1. The Board approves the attached lease. The County Chair is authorized to execute the lease substantially in the form attached to this Resolution.
2. The County Chair is authorized to execute renewals of the lease and execute amendments to the lease without further Board action.

ADOPTED this 11th day of August 2011.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jeff Cogen, Chair

REVIEWED:

Henry H. Lazenby, Jr., COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____

Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY: Sherry Swackhamer, Department Director, Dept. of County Assets.

LEASE

Date:

Between: Multnomah County, Oregon ("Landlord")
Facilities and Property Management
Attn: Asset Management-Leases
401 N. Dixon Street
Portland, OR 97227
Phone: (503) 988-3322
FAX: (503) 988-5082

And: Point West Credit Union ("Tenant")
718 NE 12th Avenue
Portland, OR 97232

Landlord leases to Tenant and Tenant leases from Landlord the property described in Sub-Section 1.4 (the "Premises") on the terms and conditions stated below:

Section 1. Occupancy

- 1.1 **Original Term.** The term of this lease shall commence upon the last signature of the parties to the Lease and continue through **JUNE 30, 2013** unless sooner terminated as hereinafter provided.
- 1.2 **Possession.** Tenant's right to possession and obligations under the lease shall commence upon full execution of the Lease.
- 1.3 **Renewal Option.** If Tenant is not in default at the time the option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this Lease for **successive** terms of **one (1)** year, as follows:
 - (1) The renewal term shall commence on the day following expiration of the preceding term.
 - (2) The option may be exercised by written notice to Landlord given not less than ninety (90) days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the Lease binding for the renewal term without further act of the parties.

- (3) The terms and conditions of the Lease for each renewal term shall be identical with the original term except for rent.

1.4 The Premises. Approximately 108 square feet of office space identified as Room No. 162 on the first floor of a building commonly known as the "Multnomah Building", which is located at 501 SE Hawthorne, Portland, Oregon 97214; together with the non-exclusive use of certain first floor common areas in said building, as more particularly shown on the attached Exhibit "A".

1.5 Condition of the Premises. By acceptance of possession of the Premises hereunder, Tenant acknowledges that Tenant accepts the Premises "AS-IS, WHERE IS" and as suitable for Tenant's intended use, in good and sanitary operating order, condition and repair, and without representation or warranty by Landlord as to the condition, use, or occupancy that may be made thereof and that the area of the Premises as set forth above in the Premises description.

Section 2. Rent.

- 2.1 Base Rent.** During the original term, Tenant shall pay to Landlord as **rent the sum of \$224.46 per month**. Rent shall be payable on the first day of each month in advance at the address for Landlord first above stated or at such place as may be designated by Landlord. Rent is based upon the internal charges Landlord assesses its program users and Rent hereunder shall be adjusted when such charges are adjusted effective with Landlord's fiscal year, commencing July 1. However, in no event shall rent be reduced below the first year's base rent. Landlord shall provide Tenant notice of any adjustment in the Rent. Initial rent adjustment will be effective July 1, 2012.
- 2.2 Rent Adjustment.** Rent is subject to adjustment annually at the start of Landlord's fiscal year, which begins on July 1st. Landlord shall provide Tenant notice by June 1st of the new rental rate which shall be effective on July 1st.
- 2.3 Additional Rent.** Any other sum that Tenant is required to pay to Landlord shall be considered additional rent.

Section 3. Use of the Premises.

- 3.1 Permitted Use.** The Premises shall be used for **office** use. The Premises shall be used for no other purpose without the consent of Landlord, subject to Landlord's sole discretion.
- 3.2 Restrictions on Use.** In connection with the use of the Premises, Tenant shall:
- (1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but

Tenant shall not be required to make any structural changes to effect such compliance.

- (2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.
- (3) Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.
- (4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect.
- (5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of Landlord, which shall not be unreasonably withheld.

3.2.1 Hazardous Substances. Sublessee 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 permitted use specified in Section 3.1. 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.

Section 4. Repairs and Maintenance

4.1 Maintenance and Repair of Premises. Responsibilities for repair and maintenance of the Premises shall be as follows:

- (1) Landlord shall perform all necessary maintenance and repair as determined necessary in Landlord's sole discretion to the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting of the Building.
- (2) Landlord shall maintain, repair or replace the heating, air conditioning, plumbing, electrical, and lighting systems in the premises as determined necessary in Landlord's sole discretion. Carpets in the Building and Premises shall be repaired and replaced as determined necessary by Landlord.
- (3) Landlord shall furnish, install and replace all interior lighting bulbs, ballasts and fluorescent tubes.
- (4) Landlord shall be given a reasonable time period to complete repairs necessitated under this section.
- (5) Landlord shall have no liability for failure to perform required maintenance and repair unless written notice of such maintenance or repair is given by Tenant or if Landlord fails to commence efforts to remedy the problem in a reasonable time and manner.

4.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

- (1) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except in Section 6.2 dealing with waiver of subrogation, but including repairs that would otherwise be the responsibility of Landlord under Section 4.1.
- (2) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 3.2(1).
- (3) Tenant shall take good care of the interior of the Premises and shall be responsible for all other repairs to the Premises ;which Landlord is not required to make under Section 4.1.

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant. Tenant shall have neither right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

4.4 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the repairs that are required.

Section 5. Alterations

- 5.1 No Alterations Required.** Tenant has inspected the Premises to its satisfaction and accepts the Premises 'AS-IS, WHERE IS' and has determined no improvements or alterations are necessary prior to Tenant's occupancy.
- 5.2 Future Alterations.** Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent. If Landlord in its sole discretion approves any proposed alterations, all such approved alterations shall be made in a good and workmanlike manner, and in compliance with all applicable laws and building codes. Landlord reserves the right to perform work associated under this section and Tenant shall reimburse Landlord for such work within thirty (30) days of invoice from the Landlord.
- 5.3 Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed unless the applicable Landlord's consent or work sheet specifically provides otherwise. Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant and the Premises restored unless the applicable Landlord's consent or work sheet specifically provides otherwise.

Section 6. Insurance

- 6.1 Fire Insurance.** Tenant shall bear the expense of any insurance insuring the property of Tenant on the Premises against fire and other risks covered by standard fire insurance policy with an endorsement for extended coverage.
- 6.2 Liability Insurance.** Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the Lease shall continue to carry the following insurance at Tenant's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than \$4,000,000 and a per occurrence limit of not less than \$2,000,000. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Landlord's negligence. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under Section 10.2, and shall name Landlord as an additional insured.
- 6.3 Insurance Documentation.** A certificate evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property.
- 6.4 Waiver of Subrogation.** Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks

enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 7. Taxes.

7.1 Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises. Tenant shall, upon invoice from Landlord, reimburse Landlord for all real property taxes levied against the Premises. As used herein, real property taxes include any fee or charge relating to the ownership, use or rental of the Premises, other than taxes on net income of Landlord.

7.1 Special Assessments. If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in the maximum number of installments allowed by law, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 7.1.

7.2 Contest of Taxes. Tenant shall be permitted to contest the amount of any tax of assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment. Landlord shall cooperate in any reasonable manner with such contest by Tenant.

7.3 Proration of Taxes. Tenant's share of real property taxes and assessments for the years in which this Lease commences or terminates shall be prorated based on the portion of the tax year that this Lease is in effect.

Section 8. Services and Utilities.

8.1 Landlord and Tenant Responsibilities. Landlord will cause the following utilities and services to be furnished to the Premises: Water; Sewer; electricity; Gas; in accordance with Landlord's standard for such utilities and services furnished to the Building. When there are any additional charges for electricity, gas, heat within the leased Premises or other utilities of any kind furnished to Premises, Tenant shall pay promptly when due. If Landlord receives and pays bills for any such additional utilities consumed by Tenant, its agents, employees or invitees to the Premises, Tenant shall reimburse Landlord upon demand. In no event shall Tenant overload the electrical circuits from which Tenant obtains currently.

8.2 Recycling Materials. Landlord shall support the policy for recycling materials as provided in ORS 227.450 to the extent possible by providing adequate collection areas and storage facilities for office recycling programs when recycling services are available.

Section 9. Damage and Destruction

9.1 Partial Damage. If the Premises are partly or wholly damaged, repair or restoration are at the Landlord's sole discretion. If the Landlord elects not to repair or restore, the Lease will terminate as of the date of the damage or destruction by notice given by the Landlord given to the Tenant in writing no more than forty-five (45) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term.

9.2 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the Premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

Section 10. Liens and Indemnity

10.1 Liens

- (1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of eight percent (8%) per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.
- (2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 Indemnification. Tenant shall hold harmless, defend and indemnify Landlord from any claim, loss, expense, action or liability arising out of or related to any activity or omission of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant. Landlord shall have no liability to Tenant for any injury, loss, or damage, caused by third parties, or by any condition of the Premises except to the extent caused by Landlord's negligence under this Lease.

Section 11. Quiet Enjoyment; Mortgage Priority

11.1 Landlord's Warranties.

- (1) Landlord warrants that it is the owner of the Premises and has the right to lease them.
- (2) Landlord affirms that the Premises, including any common area within the real property in which the Premises are situated, complied with all applicable regulatory and building codes requirements at the date of construction.

Section 12. Assignment and Subletting. No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord subject to Landlord's sole discretion. This provision shall apply to all transfers by operation of law. No consent in one instance shall prevent the provision from applying to a subsequent instance. In determining whether to consent to assignment Landlord may consider the following factors: financial ability of assignee; use of Premises to be similar to the use permitted under Section 3.1 of this Lease.

Section 13. Default. The following shall be events of default:

13.1 Default in Rent. Failure of Tenant to pay rent or any other charge within ten (10) days after written notice that it is due.

13.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of Lease (other than the payment of rent or other charges) within twenty (20) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with if Tenant begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

13.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the Lease.

Section 14. Remedies on Default. In the event of default by Tenant, the Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated

by the election of Landlord, Landlord shall be entitled to pursue any remedies available to Landlord under applicable law.

Section 15. Surrender at Expiration

15.1 Condition of Premises. Upon expiration of the Lease term or earlier termination as provided herein, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

15.2 Fixtures

- (1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure. Tenant shall be allowed to use furnishings and fixtures within the leased space at the time the Lease is executed. Landlord shall not be responsible for the repair and/or replacement of any of the items Tenant chooses to use. Landlord's furnishings and fixtures shall remain Landlord's property at the expiration of the Lease.
- (2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within twenty (20) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

15.3 Holdover

- (1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and

rental rate, which landlord may increase commensurate with increases in operating and maintenance expenses for the Premises. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

- (2) If a month to month tenancy results from a holdover by Tenant under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than ten (10) days prior to the termination which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month to month tenancy.

Section 16. Miscellaneous

- 16.1 Nonwaiver.** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 16.2 Notices.** Any notice required or permitted under this Lease shall be given when actually delivered or forty-eight (48) hours after deposited in United States mail as certified mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.
- 16.3 Succession.** Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
- 16.4 Entry for Inspection.** Landlord shall, subject to the provisions of paragraph 4.3, have the right to enter upon the Premises at any time to determine Tenant's compliance with this Lease, to make necessary repairs to the building or to the Premises or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two (2) months of the term of this Lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.
- 16.5 Interest on Rent and Other Charges.** Any rent or other payment required of Tenant by this Lease shall, if not paid within ten (10) days after it is due, bear interest at the rate of eight percent (8%) per annum (but not in any event at a rate greater than the maximum rate of interest permitted by law) from the due date until paid.
- 16.6 Proration of Rent.** In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

16.7 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this Lease.

16.8 Early Termination. Landlord or Tenant may terminate this Lease for any reason with minimum ninety (90) day written notice to the other party.

IN WITNESS HEREOF, the duly authorized representatives of the parties have executed this Sublease as of the day and year first written above.

LANDLORD

Multnomah County, Oregon

By: _____

Jeff Cogen, Chair

Reviewed By:

Matthew O. Ryan

Assistant County Attorney

Date: _____

8/11/2011

TENANT

Point West Credit Union

By: _____

Name: _____

Title: _____

Amy Nelson
COO

EXHIBIT "A"

