

Metropolitan Exposition Recreation Commission

Resolution No. 05-15

For the Purpose of Approving Retail Lease between Pacific Continental Bank and the Oregon Convention Center.

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

WHEREAS, MERC, Metro and Convention Center staff and attorneys have conducted negotiations and drafted a proposed lease with Pacific Continental Bank in draft form as attached hereto as Exhibit A; and

WHEREAS, the Pacific Continental Bank lease premises consist of approximately 1,000 sq. ft. with a proposed flat rent of \$1,400 per month plus telecommunications charges, and a term of approximately 6 months with a month to month provision for three additional months. The lease would commence June 1, 2005; and

WHEREAS, the MERC Commission determines that the lease premises in the proposed lease is not needed for other public use and that the public interest will be furthered by entering into such retail lease with this lessee;

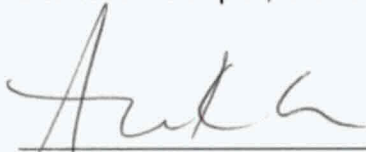
BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission approves entering into a retail lease with Pacific Continental Bank in substantially the form set forth and attached hereto as Exhibit A or in forms approved by the MERC General Manager in consultation with the Office of Metro Attorney; and the Metropolitan Exposition Recreation Commission also authorizes the MERC General Manager to execute such lease on behalf of MERC and to take all actions necessary to complete the leasing of this premises.

Passed by the Commission on May 25, 2005.

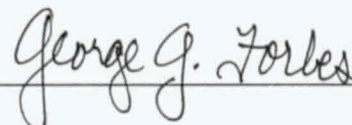


Chair

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



Alison Kean Campbell,
Sr. Assist. Attorney



Secretary/Treasurer

MERC Staff Report

Agenda Item/Issue: Approval of the Retail Lease Agreement between the Oregon Convention Center and Pacific Continental Bank.

Resolution No.: 05-15

Presented By: Jeffrey A. Blosser

Date: May 25, 2005

Background and Analysis: The Oregon Convention Center expansion provided for 1,880 sq. ft. of retail space in the design to be leased for retail operations. Pacific Continental Bank approached OCC staff requesting temporary office space while a permanent location was undergoing renovation. OCC staff, Metro/MERC attorney and PCB have conducted negotiations and drafted a proposed 6 month lease with a month to month option for three additional months. Pacific Continental Bank will pay a flat \$1,400 per month in rent. No improvements will be made to the approximately 1,000 sq. ft. space.

Fiscal Impact: The Pacific Continental Bank lease will generate approximately \$8,400 in revenue plus telecommunications charges.

Recommendation: The Oregon Convention Center staff recommends that the Metropolitan Exposition Recreation Commission approve the lease with Pacific Continental Bank 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.

PACIFIC CONTINENTAL BANK LEASE

This Pacific Continental Bank LEASE (this "Lease") is made as of the ____ day of April, 2005 (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 Pacific Continental Bank, a duly authorized Oregon banking association whose principal place of business is 222 SW Columbia Street, Suite 1650, Portland, OR 97201, ("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 May 25, 2005 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 One Thousand (1,000) 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"**.

(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 or place in the Premises, at Tenant's sole cost and expense, Tenant's Night Depository ("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. Tenant shall be solely responsible for security for its Night Depository and all cash and other funds on the premises. Landlord is not responsible for any monetary losses that occur on the leased Premises or from the Night Depository.

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 seven (7) months. The Term shall commence on June 1, 2005 (the "Rent Commencement Date"), and shall expire on December 31, 2005 (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 three (3) options to renew this lease for additional terms of one (1) month 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 fifteen (15) 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.

3. Rent.

(a) **Rent.** The monthly rent (the "Rent") for the Premises for the Initial Term shall be One Thousand Four Hundred Dollars (\$1,400.00). The Rent may be prorated as appropriate.

(b) **Monthly Payments.** The Rent shall be paid in advance on the first day of each month

(c) **Place of Payment.** The Rent shall be paid at the address for the Center as set forth above. MERC will invoice for Rent payments on the 30th of each month.

4. Hours of Operation.

Tenant will keep the Premises open for business at least during the following minimum hours: from 10 a.m. to 5:00 p.m. Mondays through Fridays.

5. Signage.

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.

6. Use.

(a) **Permitted Uses.** Tenant may use and occupy the Premises to provide general banking services to individuals and entities.

(b) **Restrictions on Use.** Tenant shall not use the Premises for any other purpose other than the uses set forth above as Tenant's Permitted Uses.

(c) **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) 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;

- (3) Tenant shall not load the electrical system, walls or floors beyond the point considered safe by Landlord; and
- (4) 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.

7. 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;

(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.

8. 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:

Daniel Hempy
Pacific Continental Bank
222 SW Columbia Street, Suite 1650
Portland, OR 97201

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.

9. 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.

10. Parking.

Tenant's shall have a non-exclusive right for up to four (4) parking spaces in the parking garage, at the total cost of \$60.00 per month in addition to the Monthly Rent for the Lease Term and any Extension Term.

11. Utilities.

Landlord shall provide all utilities and local telephone service for the Premises necessary to Tenant's operations at the Premises. All utilities consumed and local phone service utilized 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 long-distance 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).

12. 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.

13. Indemnity.

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.

14. 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.

15. 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. 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 18;

(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) **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; attachment of or the levying of execution on the leasehold interest; and

(e) **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 (other than the payment of rent) within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

(f) **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way effect the validity of any other provision.

(g) **Attorney Fees.** In the event either party defaults or breaches this Lease, such party shall reimburse all reasonable costs and attorney fees incurred by the other in connection with the default or breach. In the event of any litigation or other proceeding, including any action or participation in connection with a case or proceeding under any chapter of the Bankruptcy Code or any successor statutes, between the parties to declare or enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other recovery costs, reasonable attorney fees incurred in such litigation or other proceeding as well as post-judgment collection costs.

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

Landlord:

**METROPOLITAN EXPOSITION
RECREATION COMMISSION**

Jeff Miller
MERC General Manager

OREGON CONVENTION CENTER

Jeff Blosser
OCC Executive Director

Tenant:

**PACIFIC CONTINENTAL
BANK**

Daniel Hempy
Executive Vice President

EXHIBIT "A"

FLOOR PLAN OF PREMISES

[ATTACH]

EXHIBIT "B"

TENANT'S WORK

[TENANT PROVIDE DETAILS HERE RE NIGHT DEPOSITORY]

Tenant shall distribute the weight of the night depository box so that the depository box is not a strain on the OCC walls or structure.

EXHIBIT "C"

TENANT'S SIGNAGE

[attach signage]