

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 99-188**

Authorizing Execution of Lease Agreement for Certain Real Property at 3653 S.E. 34<sup>th</sup> Ave., for operation of Pacific University Optometry Clinic in the Multnomah County S.E. Health Clinic.

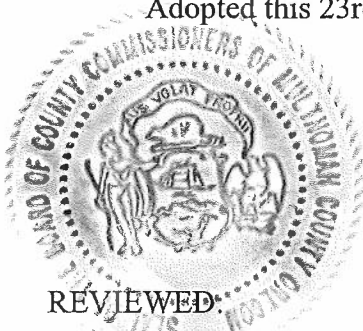
The Multnomah County Board of Commissioners Finds:

- a) The Pacific University Optometry Clinic provides resources to clients in the Southeast Portland area and immediately surrounding areas.
- b) The existing space has been the location of the Pacific University Optometry Clinic, since October 1994, when the clinic began its operations as part of the county's S.E. Health Clinic, providing access to eye care not available through county services.
- c) The existing space has been identified as adequate to continue providing Pacific University Optometry services through June 30, 2004.
- d) The premises described in the attached Lease Agreement before the Board this date are those leased for the past five years, and are available to Pacific University at a rate calculated according to Facilities and Property Management budget for the building.
- e) It appears that the lease of the premises described in the Lease Agreement before the Board this date will benefit Multnomah County.

The Multnomah County Board of Commissioners Resolves:

- 1. The Chair of the Multnomah County Board of Commissioners is authorized and directed to execute the attached Lease Agreement before the Board this date and any other documents required for the completion of this lease on behalf of Multnomah County.

Adopted this 23rd day of September, 1999.



REVIEWED:

Thomas Sponsler, County Counsel  
For Multnomah County, Oregon

By   
Matthew O. Ryan, Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

THIS LEASE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1999, by and between MULTNOMAH COUNTY, OREGON, hereinafter referred to as Lessor, and PACIFIC UNIVERSITY, hereinafter referred to as Lessee.

WITNESSETH: Lessor owns a building and other improvements on that certain real property situated in the City of Portland, County of Multnomah and State of Oregon. Lessor hereby leases to Lessee and Lessee rents from Lessor upon the terms, conditions and covenants hereinafter set forth, the premises described in Exhibit "A" which are a part of said building.

1. Term: The term of the lease shall commence July 1, 1999 and shall continue through June 30, 2004.
2. Rental: Lessee shall pay to Lessor the monthly rental provided herein in advance on or before the first day of each month during the term of this lease. Monthly rental for the period July, 1999 through June 30, 2000 shall be \$2,537.00; monthly rental for the period July 1, 2000 through June 30, 2004 shall be in amounts calculated annually by multiplying 1,894 square feet by the monthly rate per square foot established for the space by Multnomah County Facilities and Property Management Division for County departmental budgeting for the building in which the premises are located, and shall not exceed 3% annually.
3. Acceptance of Premises: Lessee shall accept the premises "as is".
4. Use of Premises: The Premises shall be used for provision of optometric services and related uses, and for no other purpose without Lessor's written consent, which consent shall not be unreasonably withheld. In connection with the use of the Premises, Lessee shall:
  - (a) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use, unless such failure is due to Lessor's default in the performance of the agreements hereof to be kept and performed by Lessor.
  - (b) Refrain from any activity which would be reasonably offensive to Lessor, to other lessees in the building in which the leased Premises are situated, or owners or users of the adjoining premises, or which would tend to create a nuisance or damage the reputation of the leased Premises or said building. Without limiting the generality of the foregoing, Lessee shall not permit any objectionable noise or odor to escape or be emitted from the Premises.

- (c) Refrain from loading the floors beyond the point considered safe by a competent engineer or architect selected by Lessor.
  - (d) 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 the Lessor, which consent shall not be unreasonably withheld. Lessor need not consent to any sign which fails to conform to the general design concept of the building as established by Lessor. Notwithstanding Lessor's consent to any signs, Lessee shall remove all such signs upon termination of the lease and repair any damage to the Premises caused thereby at Lessee's own cost and expense.
  - (e) Comply with any reasonable rules respecting the use of the Premises promulgated by Lessor from time to time and communicated to Lessee in writing including those contained within the Memorandum of Understanding attached hereto.
  - (f) Refrain from any activity which would make it impossible to insure the Premises against casualty or which would increase the insurance rate of the building or prevent Lessor from taking advantage of the ruling of the Insurance Rating Bureau of the state in which the lease Premises are situated or its successors allowing Lessor to obtain reduced premium rates for long term fire insurance policies, unless Lessee pays the additional cost of the insurance for the building.
  - (g) Not commit or suffer any strip or waste of the leased Premises or the improvements thereon or any part thereof.
5. Alterations: Lessee shall make no improvements or alterations on the leased Premises of any kind without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Prior to the commencement of any work by the Lessee, Lessee shall first submit its plans and specifications to Lessor for Lessor's consent. All work performed by the Lessee shall be done in strict compliance with all applicable building, fire, sanitary and safety codes, and other applicable laws, statutes, regulations and ordinances, and Lessee shall secure all necessary permits for the same. Lessee shall keep the Premises free from all liens in connection with any such work. All work performed by the Lessee shall be carried forward expeditiously and completed within a reasonable time. Lessor or Lessor's agents shall have the right at all reasonable times to inspect the quality and progress of such work. All improvements, alterations and other work performed on the leased Premises by either Lessor or Lessee shall be the property of Lessor when installed, except for Lessee's trade fixtures, and may not be removed at the expiration of this lease unless the applicable Lessor's consent specifically provides otherwise. Notwithstanding Lessor's consent to improvement or alterations by Lessee, all such improvement, alterations or other

work to be performed by Lessee shall be at the sole cost and expense of Lessee. Tenant improvements as agreed upon by the parties may be performed by Lessor, but shall bear the sole cost and expense of Lessee.

6. Repairs and Maintenance:

(a) The following shall be the responsibility of the Lessor:

- (i) Structural repairs and maintenance and repairs necessitated by structural disrepair or defects.
- (ii) Repair and maintenance of the exterior wall, roof, gutters, downspouts and foundation of the building in which the leased premises are located.
- (iii) Repair of interior wall, ceilings, doors, windows, floors and floor coverings when such repairs are made necessary because of failure of Lessor to keep the structure in repair as above provided in this Subparagraph (a).
- (iv) Maintenance and repair of the heating and air conditioning systems and sprinkler systems, if any, and light bulb replacement, general maintenance of doors and other built-in fixtures. Access for emergency services will be through the Facilities Management Office at 248-3322.

(b) The following shall be the responsibility of the Lessee:

- (i) Any interior decorating.
  - (ii) Any repairs necessitated by the negligence of Lessee, its agents, employees and invitees.
  - (iii) Maintenance of the Premises interior, including repair of the interior walls and floor coverings.
  - (iv) Any repairs or alterations required under Lessee's obligations to comply with the laws and regulations as set forth in Paragraph 4 (a) above.
- (c) Lessor 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 the Lessor to make repairs as outlined above in any area in Lessee's possession and control shall not mature until a reasonable time after the Lessor has received from Lessee written notice of the necessity or repairs, except in the event emergency repairs may be required and in such event

Lessee shall attempt to give Lessor appropriate notice considering the circumstances.

- (d) Any repairs, replacements, alterations or other work performed on or around the leased Premises by Lessor shall be done in such a way as to interfere as little as reasonably possible with the use of the Premises by Lessee. Lessee shall have no right to an abatement of rental nor any claim against Lessor for any inconvenience or disturbance resulting from Lessor's performance of repairs and maintenance pursuant to this Paragraph 6.
- (e) Lessor will furnish heat, electricity, elevator service and air conditioning during the normal building hours of 8:00 AM to 5:00 PM, Monday through Friday except holidays. Janitorial service will be provided in accordance with the regular schedule of the building, which may change from time to time.
  - Lessee shall comply with all government laws or regulations regarding the use or reduction of use of utilities on the Premises. Interruption of services or utilities shall not be deemed an eviction or disturbance of Lessee's use and possession of the Premises, render Lessor liable to Lessee for damages, or relieve Lessee from performance of Lessee's obligations under this Lease, but Lessor shall take all reasonable steps to correct any interruptions in service. Electrical service furnished will be 110 volts unless different service already exists in the Premises.
- 7. Liens: Lessee shall keep the Premises free from all liens, including mechanics' liens arising from any act or omission of Lessee or those claiming under Lessee.
- 8. Indemnity of Lessor – Insurance: Lessee shall indemnify and save harmless the Lessor from any and all liability, damage, expense, attorney's fee, causes of action, suits, claims or judgements arising from injury to person or damage or property arising out of or connected with the use, occupancy, management or control of leased Premises excepting only the sole negligence of Lessor. Lessee shall, at its own cost and expense, defend any and all suits which may be brought against the Lessor either alone or in conjunction with others upon any such above-mentioned cause or claim, and shall satisfy, pay and discharge any and all judgements that may be recovered against the Lessor in any such action or actions in which the Lessor may be a party defendant.
- 9. Waiver of Subrogation: Neither party shall be liable to the other 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, including sprinkler leakage insurance, if any, if such insurance was obtainable at the time of such loss or damage. All claims or rights of recovery for any and all such loss or damage, however caused, are hereby waived. Without limiting the generality of the foregoing, said absence of liability shall exist whether or not such loss or damage is caused by the negligence of either Lessor or Lessee or by any of their respective agents, servants or employees.

10. Injury to Lessee's Property: Lessor shall not be liable for any injury to the goods, stock, merchandise or any other property of Lessee or to any person in or upon the leased Premises resulting from fire or collapse of the building in which the leased Premises are located or any portion thereof or any other cause, including but not limited to damage by water, gas or steam, or by reason of any electrical apparatus in or about the leased Premises.
11. Damage or Destruction:
- (a) If the leased Premises shall be partially damaged by fire or other cause, and Subparagraph (b) below does not apply, the damages to the Premises shall be repaired by Lessor and the rent until such repair shall be made shall be apportioned according to the part of the leased Premises which is useable by Lessee except when such damage occurs because of the fault of Lessee. The repairs shall be accomplished with all reasonable dispatch, Lessor shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage and the damage was the result of the fault of the Lessee, in which event the Lessee shall bear the expense of the repairs.
  - (b) If the building or the leased Premises are 50% or more destroyed during the term of this lease for any cause, Lessor may elect to terminate the lease as of the date of damage or destruction by notice given to Lessee in writing not 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. In the absence of an election to terminate, Lessor shall proceed to restore the leased Premises to substantially the same form as prior to the damage or destruction, so as to provide Lessee useable space equivalent in quantity and character to that before the damage or destruction. Work shall be commenced as soon as reasonably possible, and thereafter proceed without interruption, except for work stoppages on account of matters beyond the reasonable control of Lessor. Rent shall be abated from the date of damage, unless the damage occurred because of the fault of Lessee. Lessor shall bear the cost of such repairs unless the damage occurred from a risk which would not be covered by a standard fire insurance policy with an endorsement for extended coverage, including sprinkler leakage, and the damage was the result of the fault of the Lessee, in which event the Lessee shall bear the expense of the repairs.
12. Default: The following shall be the events of default:
- (a) Failure of Lessee to pay any rental or other charge required hereunder within ten (10) days after it is due.

- (b) Failure of Lessee to comply with any term or condition or fulfill any obligation of this lease (other than the payment of rental or other charges), within ten (10) days after such written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the ten (10) day period, this provision shall be complied with if Lessee begins correction of the default within the (10) day period, and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
  - (c) The abandonment of the premises by Lessee or the failure of Lessee for fifteen (15) days or more to occupy the property for one or more of the designated purposes of this lease unless such failure is excused under other provisions of this lease.
  - (d) The bankruptcy or insolvency of the Lessee or the occurrence of other acts specified in paragraph 17 of this lease which give Lessor the option to terminate.
13. Remedies of Default: In the event of a default, Lessor, may at Lessor's option, exercise any one or more of the rights and remedies available to a landlord in the state in which the leased Premises are located to redress such default, consecutively or concurrently, including the following:
- (a) Lessor may elect to terminate Lessee's right to possession of the leased Premises or any portion thereof by written notice to Lessee. Following such notice, Lessor may re-enter, take possession of the leased Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. To the extent permitted by law, Lessor shall have the right to such other security interest therein as the law may permit, to secure all sums due or which become due to Lessor under this lease. Perfection of such security interest shall occur by taking possession of such personal property or otherwise provided by law.
  - (b) Following the re-entry by Lessor, Lessor may relet the leased Premises for a term longer or shorter than the term of this lease and upon any reasonable terms, including the granting of rent concessions to the new tenant. Lessor may alter, refurbish or otherwise change the character or use of the leased Premises in connection with such reletting. Lessor shall not be required to relet for any use or purpose which Lessor may reasonably consider objectionable. No such reletting by Lessor following a default by Lessee shall be construed as an acceptance of the surrender of the leased Premises. If rent received upon such reletting exceeds the rent received under this lease, Lessee shall have no claim to the excess.
  - (c) Following the re-entry Lessor shall have the right to recover from Lessee the following damages:

- (i) All unpaid rent or other charges for the period prior to re-entry plus interest of 10% per annum.
  - (ii) An amount equal to the rent lost during any period during which the leased Premises is not relet, if Lessor takes reasonable efforts to relet the leased Premises.
  - (iii) All costs incurred in reletting or attempting to relet the leased Premises, including but without limitation, the cost of cleanup and repair in preparation for a new tenant, the cost of correcting any defaults or restoring any unauthorized alterations and the amount of any real estate commissions or advertising expenses.
  - (iv) The difference between the rent reserved under this lease and the amount actually received by Lessor after reletting, as such amounts accrue.
  - (v) Reasonable attorney's fees incurred in connection with the default, whether or not any litigation is commenced.
- (d) Lessor may sue periodically to recover damages as they accrue throughout the term of this lease and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. To avoid a multiplicity of actions, Lessor may obtain a decree of specific performance requiring Lessee to pay the damages stated in Subparagraph 6 above as they accrue. Alternatively, Lessor may elect in any one action to recover accrued damages plus damages attributable to the remaining term of the lease equal to the difference between the rent under this lease and the reasonable rental value of the leased Premises for the remainder of the term, discounted to the time of the judgement at the rate of 6% per annum.
- (e) In the event that Lessee remains in possession following default and Lessor does not elect to re-enter, Lessor may recover all back rent or other charges, and shall have the right to cure any nonmonetary default, whether or not litigation is commenced. Lessor may sue to recover such amounts as they accrue, and no one action for accrued damages shall bar a later action for damages subsequently accruing.
- (f) The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided under applicable law, and no election to pursue one remedy shall preclude resort to another consistent remedy.

14. Surrender at Expiration:

- (a) Condition of premises. Upon expiration of the lease term or earlier termination, Lessee shall deliver all keys to the Lessor and surrender the



leased Premises in the condition in which Lessee received possession hereunder, ordinary wear excepted, and broom clean. Improvements and alterations constructed by Lessee shall not be removed or restored to the original condition unless the terms of Lessor's consent provides other wise or unless Lessor requests Lessee to remove such improvement or alterations, in which event Lessee shall remove the same and restore the leased Premises. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Lessee is responsible shall be completed to the latest practical date prior to such surrender. Lessee's obligations under this paragraph shall be subject to the provisions of Paragraph 11 relating to damage or destruction.

(b) Fixtures

(i) All fixtures placed upon the leased Premises during the term other than Lessee's trade fixtures, shall, at Lessor's option, become the property of the Lessor. Movable furniture, decoration, floor covering other than hard surface bonded or adhesively fixed flooring, curtains, blinds, furnishing and trade fixtures shall remain the property of Lessee if placed on the leased premises by Lessee.

(ii) If Lessor so elects, Lessee shall remove any or all fixtures which would otherwise remain the property of Lessor, and shall repair any physical damage resulting from the removal. If Lessee fails to remove such fixtures, Lessor may do so and charge the cost to Lessee with interest at 12% per annum from the date of expenditure. Lessee shall remove all furnishings, furniture and trade fixtures which remain the property of Lessee. If Lessee fails to do so, this shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within 20 days after removal was required. Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public or private storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at 12% per annum on all such expenses from the date of expenditure by Lessor.

(iii) The time for removal of any property or fixtures which Lessee is required to remove from the leased Premises upon termination shall be as follows:

(1) On or before the date the lease terminates because of expiration of the term or because of a default under paragraphs 15 and 16.

(2) Within 30 days after notice from Lessor requiring such removal

where the property to be removed is a fixture which Lessee is not required to remove except after such date would fall after the date on which Lessee would be required to remove other property.

(c) Holdover

- (i) If Lessee does not vacate the leased Premises at the time required. Lessor shall have the option to treat Lessee as a tenant from month-to-month, subject to all of the provisions of this lease except the provision for the term of the lease. Failure of Lessee to remove fixtures, furniture, furnishings or trade fixtures which Lessee is required to remove under this lease shall constitute a failure to vacate to which this subparagraph (c) shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Lessor for any purpose including preparation for a new tenant.
- (ii) If a month-to-month tenancy results from a holdover by Lessee under the Subparagraph (c), the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than 10 days prior to the termination date which shall be specified in the notice. Lessee waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

- 15. Assignment and Subletting: Lessee shall not assign this lease or sublet all or any part or the Premises without the written consent of Lessor, which consent will not be unreasonably withheld. Without limiting the generality of this foregoing, it shall not be unreasonable for Lessor to withhold its consent if the proposed assignee or sublessee is not an experienced operator of the type of business to be operated on the Premises. If Lessee is a corporation or a partnership, the transfer, assignment or change in the ownership of any stock or partnership interest in the aggregate in excess of 33% shall be deemed an assignment within the meaning of this paragraph. Lessee shall remain primarily liable, after any assignment or sublease for the payment of the rental and the performance of all of Lessee's obligations under this lease, notwithstanding such assignment or subletting by Lessee.
- 16. Inspection: Lessor, Lessor's agents and representatives, shall have the right to enter upon the leased Premises at reasonable times for the purpose of inspecting the same, for the purposes of making repairs or improvements to the leased Premises or the building in which the leased Premises are located or for any other lawful purpose.
- 17. Nonwaiver: The acceptance by Lessor of any rental or other benefits under this lease shall not constitute a waiver of any default. Any waiver by Lessor of the strict performance of any of the provisions of this lease shall not be deemed to be a waiver of subsequent breaches of the same character or of a different character,

occurring either before or subsequent to such waiver, and shall not prejudice Lessor's right to require strict performance of the same provision in the future or of any other provision of this lease.

18. Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs such sum as the trial court may adjudge reasonable as attorney fees, and in the event any appeal is taken from any judgement or decree in such suit or action, the losing party shall pay the prevailing party in the appeal its reasonable attorney's fees and costs arising from such litigation and appeal.
19. Notices: Any notice required or permitted under this lease shall be in writing and shall be given when actually delivered or when deposited in the United States mail as certified or registered mail addressed as follows:

To Lessor: Multnomah County Property Management  
2505 SE 11<sup>th</sup> Ave.  
Portland, OR 97202

To Lessee: Executive Director of Clinical Programs and Finance  
  
Pacific University  
College of Optometry  
2043 College Way  
Forest Grove, Oregon 97116

or to such other addresses as may be specified from time to time by either of the parties in the manner above provided for the giving of notice.

20. Succession: Subject to the above stated limitations on the assignment or transfer of Lessee's interest, this lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.
21. Cumulative Rights: No remedy herein conferred upon or reserved to Lessor or Lessee shall be exclusive of any other remedy herein provided or provided by law, but each remedy shall be cumulative.
22. Interpretation: In interpreting or construing this lease, it is understood that Lessee may be more than one person, that if the context so requires, the singular pronoun


shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals. Paragraph headings are for convenience and shall not affect any of the provisions of this lease.

23. Exhibits and Additional Provisions: Exhibit "A" which is referred to in this lease is attached hereto and by this reference incorporated herein.
24. Hazardous Substance: Hazardous substance means any pollutant, contaminant, toxic or hazardous waste dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which is restricted, prohibited, regulated or penalized by any and all federal, state, county, or municipal regulations ordinances, statutes or laws now or at any time hereafter in effect.
- (a) The tenant shall not use in any way, or permit or suffer the use of the Property or the Site or any part thereof, to either directly or indirectly prepare, produce, generate, manufacture, refine, treat, transport, store, maintain, handle, dispose of, transfer, or process any Hazardous Substance as defined herein, unless it has received the prior written consent of the Landlord, which may be unreasonably withheld.
  - (b) Any substance which the Landlord permits the tenant to treat, store, transfer, or dispose of must be done in strict compliance with any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect.
  - (c) Lessee shall be solely responsible for and will defend, indemnify and hold Lessor its agents, and employees harmless from and against any claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property which may result from Lessee's use or bringing of Hazardous Substances upon the Site or the Property.

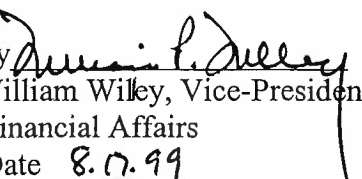
24. Parking. Parking arrangements shall be coordinated through negotiations with the Southeast Health Center Management.

In Witness Whereof, Lessor and Lessee have executed this Lease in duplicate the day and year first herein written.

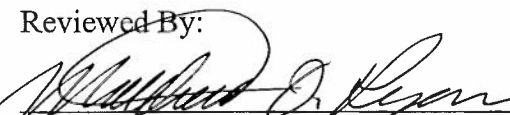
MULTNOMAH COUNTY, OREGON

By   
Beverly Stein, County Chair  
Date 9/23/99

PACIFIC UNIVERSITY

By   
William Willey, Vice-President,  
Financial Affairs  
Date 8.17.99

Reviewed By:

  
Multnomah County Counsel

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-4 DATE 9/23/99  
DEB BOGSTAD  
BOARD CLERK

## EXHIBIT A

### LEGAL DESCRIPTION

Tax Lot 1 of Lots 9 through 15, Lancelot, in City of Portland, County of Multnomah and State of Oregon.

### PREMISES

Approximately 1,894 rentable square feet of space in the Multnomah County Clinic at 3653 SE 34<sup>th</sup> Avenue, Portland, Oregon.