

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 04-033

Declaring Property within the Mead Building, 421 SW 5th Avenue, Portland, Oregon, to be Surplus and Approving a Real Property Lease to Elders in Action

The Multnomah County Board of Commissioners Finds:

- a. The property specified in the attached lease and located within the Mead Building, 421 SW 5th, Portland, Oregon (Property) is, at this time, surplus to any County use.
- b. The attached lease has been negotiated with Elders in Action.
- 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.

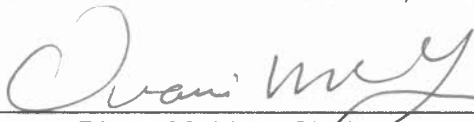
The Multnomah County Board of Commissioners Resolves:

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 to execute amendments to the lease without further Board action.

ADOPTED this 1st day of April, 2004.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Matthew O. Ryan, Assistant County Attorney

LEASE

Between: Multnomah County, Oregon ("Landlord")
Facilities and Property Management
401 N. Dixon Street
Portland, Oregon 97227

And: Elders in Action ("Tenant")
501 SW Washington Street
Portland OR 97204-2238

Landlord leases to Tenant and Tenant leases from Landlord in the facility known as the "Mead Building", located at 421 SW 5th Avenue, Portland, Oregon, the following described property (the "Premises") on the terms and conditions stated below:

2,255 square feet of exclusive space as shown on the attached Exhibit "A."

Section 1. Occupancy

1.1 Original Term. The term of this lease shall commence April 1, 2004 and continue through June 30, 2005, subject to the parties agreement to renew as provided herein.

1.2 Possession. Tenant's right to possession and obligations under the lease shall commence on April 1, 2004.

1.3 Renewal Option. If the lease is not in default at the time each 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) years each, as follows:

(1) Each of the renewal terms 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 four (4) months 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, subject to any rent adjustment being mutually agreed to by the

parties as provided Sub-section 1.3(3). If such notice is not provided by Tenant, Landlord may lease Premises to another tenant at the expiration of the remaining term.

(3) The terms and conditions of the lease for each renewal term shall be identical with the original term except for rent. Rent for a renewal term shall be as mutually agreed upon between Landlord and Tenant. If Landlord and Tenant are unable to agree upon rent for the renewal term, the renewal term shall not commence and this Lease shall terminate at the end of the expiring term.

1.4 Termination. Either party may terminate this Lease effective at any time during the term upon not less than four (4) months' written notice to the other party.

Section 2. Rent

2.1 Base Rent. The base rent shall be \$3,668.17 during the initial term of this Lease, commencing July 1, 2004. 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.

2.2 Back Rent. In addition to the amount identified under Section 2.1, Tenant shall pay Landlord on April 15, 2004 for \$44,018 Base Rent past due from June 1, 2003 through June 30, 2004. This Back Rent is in addition to the current Base Rent payments set forth in Section 2.1 above.

2.3 Additional Rent. Any other sum that Tenant is required to pay to Landlord in addition to that paid pursuant to Sections 2.1 and 2.2, shall be considered additional rent.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for office and public service use, and for no other purpose without the consent of Landlord, which consent shall not be unreasonably withheld or delayed.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws, ordinances 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 selected by Landlord.

(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.

3.3 Hazardous Substances. Tenant 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 repairs to the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting, and Lessor-provided fire extinguishers, sidewalks and parking area, which are located on the Premises or the structure in which the Premises are located. Landlord shall maintain the Premises in a hazard free condition and shall repair or replace, if necessary and at Landlord's sole expense, the heating, venting, air conditioning, plumbing, electrical, and lighting systems in the Premises, obtaining required permits and inspections from Codes enforcement authorities. Landlord shall keep the Premises, improvements, grounds, and landscaping in good repair and appearance. Carpets shall be repaired and replaced as necessary by Landlord. Landlord shall furnish, install and replace all exterior and interior lighting bulbs, ballasts and fluorescent tubes. Custodial cleaning shall be to current standards. Urgent matters may be called into Landlord's Dispatch office at (503) 988-3779.

(2) Tenant shall perform all necessary maintenance and repairs to trade fixtures (regardless if attached to Premises) and at the expiration of the term surrender the Premises in as good condition as at the commencement of this Lease, excepting only reasonable wear, permitted alterations, and damage by fire or other casualty.

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 as provided in Section 6.3 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) All other repairs to the Premises which Landlord is not required to make under Section 4.1.

(4) Snow, ice, and debris removal from the Premises.

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 Alterations Restricted. Tenant shall make no improvements or alterations on the Premises of any kind. Tenant may request that alterations to the Premises be made and such alterations shall be made, subject to Landlord's reasonable approval and at Tenant's sole expense. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. Alterations requested by Tenant will be performed by Landlord at the expense of Tenant.

5.2 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises shall be the property

of Landlord when installed unless the applicable Landlord's consent or work sheet specifically provides otherwise. Such improvements and alterations 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 Insurance Required Landlord. . Landlord is self-insured for its property and liability exposures, as subject to the Oregon Tort Claims Act, ORS 30.260 through 30.300.

6.2 Insurance Required Tenant. Tenant shall provide at its expense on or before the Commencement Date and keep in force during the Term, naming Landlord insured, a commercial general liability insurance policy or such successor comparable form of coverage(hereinafter referred to as a "Liability Policy") written on a "per occurrence basis," including, without limitation, blanket contractual liability coverage, broad form property damage, independent contractor's coverage, and personal injury coverage, protecting Landlord and Tenant against liability occasioned by any covered occurrence on or about the Premises. Such policy shall be written by a good and solvent insurance company licensed to do business in the State of Oregon and shall provide coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily or personal injury (including death) and property damage combined, subject to a commercially reasonable deductible. Prior to the time such insurance is first required to be carried by Tenant and thereafter, Tenant agrees to deliver to Landlord a certificate evidencing such insurance coverage. Said certificate shall contain an endorsement that such insurance may not be canceled except upon ten (10) days' prior written notice to Landlord.

6.3 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 of subrogation shall be valid only if the insurance policies of both parties in question expressly permit

waiver of subrogation or if the insurance companies agree in writing that such waivers will not affect coverage under the policies.

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. If Tenant intends to seek exemption from real property taxes Tenant shall apply for exemption through Multnomah County Assessment and Taxation pursuant to ORS 307.112.

7.2 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.

7.3 Contest of Taxes. Tenant shall be permitted to contest the amount of any tax or 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.

7.4 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 utilities and services listed below to be furnished to the Premises. Costs shall be paid as indicated:

| <u>Utility or Service</u> | <u>Cost Paid By:</u> | |
|---------------------------|----------------------|---------------|
| | <u>Landlord</u> | <u>Tenant</u> |
| Water | <u>X</u> | <u> </u> |
| Sewer | <u>X</u> | <u> </u> |
| Electricity | <u>X</u> | <u> </u> |
| Gas | <u>X</u> | <u> </u> |
| Trash Removal | <u>X</u> | <u> </u> |
| Janitorial Service | <u>X</u> | <u> </u> |
| Janitorial Supplies | <u>X</u> | <u> </u> |

8.2 Recycling Materials. Landlord shall support the policy for recycling materials as provided in ORS 279.560 by providing adequate collection areas and storage facilities for office recycling programs when recycling services are available to Tenant.

Section 9. Damage and Destruction

9.1 Partial Damage. If the Premises are partly damaged and Section 9.2 does not apply, the Premises shall be repaired by Landlord at Landlord's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord and shall be performed in accordance with the provisions of Section 4.3.

9.2 Destruction. If the Premises or the structure are destroyed or damaged such that the cost of repair exceeds fifty five percent (55%) of the value of the structure before the damage, either party may elect to terminate the lease as of the date of the damage or destruction by notice given to the other 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, and Tenant shall be entitled to the reimbursement of any prepaid amounts

paid by Tenant and attributable to the anticipated term. If neither party elects to terminate, Landlord shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

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

9.4 Damage Late in Term. If damage or destruction to which Section 9.2 would apply occurs within six months before the end of the then-current lease term, Tenant may elect to terminate the lease by written notice to Landlord given within thirty (30) days after the date of the damage. Such termination shall have the same effect as termination by Landlord under Section 9.2.

Section 10. Liability 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 nine percent (9%) 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 indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any negligent activity 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 or breach of duty 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. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

(2) Landlord warrants that the Premises, including any common areas within the real property in which the Premises are situated, comply with all applicable regulatory and building codes requirements in force on February 1, 2002 for occupancy by Tenant for the permitted uses under this Lease, and meet the requirements of the Americans With Disabilities Act (ADA) in effect on February 1, 2002 for accessibility in accordance with the standards provided in the ADA Accessibility Guidelines for Buildings and Facilities, including accessible parking for the disabled in compliance with ORS 447.233.

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 which consent shall not be unreasonably withheld or delayed. 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 any rent or other charge within 15 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 the 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 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, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed 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.

(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 at a rental rate equal to the rent last paid by Tenant during the original term. 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 thirty (30) days prior to the termination date 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 have the right to enter upon the Premises with twenty four (24) hours prior notice 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, except in cases of emergency when Landlord shall have the right to enter upon the Premises without notice. In addition, Landlord shall have the right, at any time during the last two 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 nine percent (9%) 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. In addition, if Tenant fails to make any rent or other payment required by this lease to be paid to Landlord within five days after it is due, Landlord may elect to impose a late charge of five cents (\$0.05) per dollar of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

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 Oregon Tort Claims Act. Any covenant herein by Landlord to defend, indemnify or hold harmless the Tenant, or to assume liability for damages of any kind whatsoever, shall be subject to the provisions of the Oregon Tort Claims Act, ORS 30.260-30.300, and within the limits in ORS 30.270.

16.8 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this lease.

16.9 Tenant Purpose and Responsibility.

Tenant shall improve the quality of life for older adults in Multnomah County.


Landlord:
Multnomah County, Oregon

Tenant:
Elders in Action


By: Diane M. Linn, County Chair

By: _____

Reviewed:


Matthew O. Ryan,
Assistant County Attorney

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-3 DATE 04.01.01
DEBORAH L. BOGSTAD, BOARD CLERK

Occupant Information

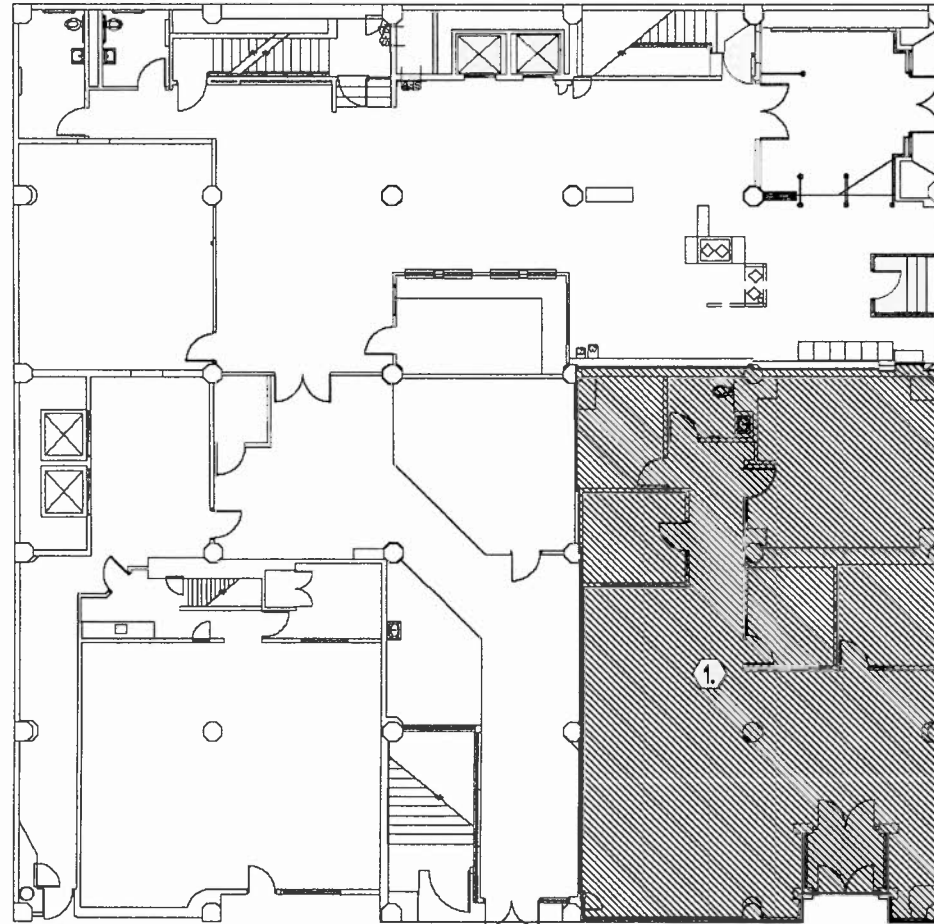
① Space 1
2255 Sqft.

Mead Building - 161

421 SW 5th Ave
Portland, OR 97204

Floor Information

EXHIBIT A



First Floor

Measured by: Brett Taute
Date: 18 February 2004

