

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 99-123

Authorizing Execution of Agreement for Lease of Certain Real Property for the Storage of library books, materials, equipment, and furniture.

The Multnomah County Board of Commissioners Finds:

- a) The Multnomah County Library Department is closing each of the nine branch libraries that are undergoing renovation during the time that each branch is in construction. While a branch is closed, its collection of library materials and equipment is packed into boxes and put into storage.
- b) The County owns no space in which to store these library items during the renovation process.
- c) Storage space suited to the safe keeping of the library items has been located.
- d) The premises described in the attached Lease Agreement before the Board this date have been determined to be available at a reasonable rental from the owner, MLQ Physical Therapy.
- 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:

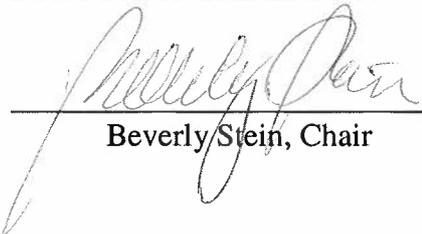
1. The Chair of the Multnomah County Board of Commissioners is authorized and directed to execute the attached Lease Agreement before the Board this date and any other documents required for the completion of this lease on behalf of Multnomah County.

Adopted this 1st day of July, 1999.



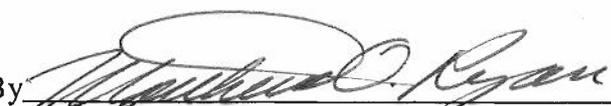
REVIEWED:

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

By


Matthew Ryan, Assistant County Counsel

SUBLEASE

1. Parties. The Sublease, effective November 1, 1998, is made by and between MLQ Physical Therapy, Inc. ("Sublessor") and Multnomah County, an Oregon Political Subdivision ("Sublessee").

2. Premises. Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor for the term, at the rental, and upon all of the conditions set forth herein, that certain real property, including all improvements therein, and commonly known by the street address of 3449 N. Anchor Street, Suite D, Portland, Oregon located in the County of Multnomah, State of Oregon and generally described as (describe briefly the nature of the property) 4177 feet of warehouse space ("Premises"). A drawing of the leased space is attached as Exhibit B.

3. Term.

3.1 Term. The term of this Sublease shall commence on November 1, 1998 and end on June 30, 2001 unless sooner terminated pursuant to any provision hereof.

3.2 Renewal. Provided the Sublease is not in default, Sublessee shall have an option to renew this lease under the same terms and conditions except for rent. Rent for the renewal period shall be the greater of the maximum rent in effect during any period of the initial term of this lease or fair market rent at the time of the renewal.

4. Rent.

4.1 Base Rent. Sublease shall pay to Sublessor as Base Rent for the Premises equal monthly payments as set forth below in advance, on the first day of each month of the term hereof. Sublessee shall pay Sublessor upon the execution hereof \$16,086.32 (1,666.63 + 344.16 times 8 months) as Base Rent for November 1998 through June 1999. Base Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment.

Months	1 - 31	\$1,666.63	Plus CAM (Common Area Maintenance)
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4.2 Rent Defined. All monetary obligations of Sublessee to Sublessor under the terms of this Sublease (except for the Security Deposit) are deemed to be rent ("Rent"). Rent shall be payable in lawful money of the United States to Sublessor at the address stated herein or to such other persons or at such other places as Sublessor may designate in writing.

5. Security Deposit. Sublessee shall deposit with Sublessor upon execution hereof Zero (0) as security for Sublessee's faithful performance of Sublessee's obligations hereunder. The rights and obligations of Sublessor and Sublessee as to said Security Deposit shall be as set forth in Paragraph 5 of the Master Lease as modified by Paragraph 7.3 of this Sublease.

6. Use.

6.1 Agreed Use. The Premises shall be used and occupied as warehouse storage only.

6.2 Compliance. Sublessor warrants that the improvements on the Premises comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances ("Applicable Requirements") in effect on the commencement date. Said warranty does not apply to the use to which Sublessee will put the Premises or to any alterations or

utility installations made or to be made by Sublessee. Sublessee is responsible for determining whether or not the zoning is appropriate for its intended use, and acknowledges that past uses of the Premises may no longer be allowed.

6.3 Acceptance of Premises and Lessee. Sublessee acknowledges that:

(a) it has been advised to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Sublessee's intended use.

(b) Sublessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and

(c) neither Sublessor, Sublessor's agents, nor any Broker has made any oral or written representations or warranties with respect to said matters other than as set forth in this Sublease.

6.4 Access Corridor. Sublessee shall maintain an access corridor providing an additional exit from the adjacent clinic space. The exit corridor shall be no less than six (6) feet wide and running the full length of the East wall. The sublessee is solely responsible for securing to their satisfaction their property while other tenants may access the exit corridor.

7. Master Lease.

7.1 Sublessor is the lessee of the Premises by virtue of a lease, hereinafter the "Master Lease", wherein Rosan, Inc. is the lessor, hereinafter the "Master Lessor."

7.2 This Sublessee is and shall be at all times subject and subordinate to the Master Lease. Without limitation to the foregoing sentence, it is expressly agreed that sublessee will strictly conform to all environmental, safety and hazardous materials provisions contained in the Master Lease.

7.3 The terms, conditions and respective obligations of Sublessor and Sublessee to each other under this Sublease shall be the terms and conditions of the Master Lease except for those provisions of the Master Lease which are directly contradicted by this Sublease in which event the terms of this Sublease document shall control over the Master Lease. Therefore, for the purposes of this Sublease, wherever in the Master Lease the word "Lessor" is used it shall be deemed to mean the Sublessor herein and wherever in the Master Lease the word "Lessee" is used it shall be deemed to mean the Sublessee herein.

7.4 During the term of this Sublease and for all periods subsequent for obligations which have arisen prior to the termination of this Sublease, Sublessee does hereby expressly assume and agree to perform and comply with, for the benefit of Sublessor and Master Lessor, each and every obligation of Sublessor under the Master Lease for the leased premises exclusively. Sublessee will carry such insurance as is required of Sublessor under the Master Lease and shall name Sublessor and any individual guarantor thereon as additional insured. Said insurance will provide 10-days notice of cancellation to Sublessor and any guarantor and will contain the waiver of subrogation required by Section 17 of the Master Lease. Provided, however, that in lieu of the insurance requirement set forth in this Section, Sublessee may be self insured for

liability under this lease to the extent that Master Lessor expressly agrees to waive this provision. For any period that Sublessee is, with the consent of Master Lessor, self insured for liability Sublessee will provide a letter to Lessor and Sublessor stating that Multnomah County will provide coverage as ordered by statute to Master Lessor and Sublessor.

7.5 The obligations that Sublessee has assumed under paragraph 7.4 hereof are hereinafter referred to as the "Sublessee's Assumed Obligations." The obligations that sublessee has not assumed under paragraph 7.4 hereof are hereinafter referred to as the "Sublessor's Remaining Obligations."

7.6 Sublessee shall hold Sublessor free and harmless from all liability, judgments, costs, damages, claims, or demands, including reasonable attorneys fees, arising out of Sublessee's failure to comply with or perform Sublessee's Assumed Obligations.

7.7 Sublessor agrees to maintain the Master Lease during the entire term of this Sublease, subject however, to any earlier termination of the Master Lease without the fault of the Sublessor, and to comply with or perform Sublessor's Remaining Obligations and to hold Sublessee free and harmless from all liability, judgments, costs, damages, claims or demands arising out of Sublessor's failure to comply with or perform Sublessor's Remaining Obligations.

7.8 Sublessor represents to Sublessee that the Master Lease is in full force and effect and that no default exists on the part of any Party of the Master Lease.

7.9 Any covenant herein by Sublessee to defend, indemnify or hold harmless the Sublessor or the Master Lessor shall be subject to the provisions of the Oregon Tort Claims Act, ORS.30.260-30.300, and within the limits in ORS 30.275.

8. Assignment of Sublease and Default.

8.1 Sublessor hereby assigns and transfers to Master Lessor the Sublessor's interest in this Sublease, subject however to the provisions of Paragraph 8.2 hereof.

8.2 Master Lessor, by executing this document, agrees that until a Default shall occur in the performance of Sublessor's Obligations under the Master Lease, that Sublessor may receive, collect and enjoy the Rent accruing under this Sublease. However, if Sublessor shall Default in the performance of its obligations to Master Lessor then Master Lessor may, at its option, receive and collect, directly from Sublessee, all Rent owing and to be owed under this Sublease. Master Lessor shall not, by reason of this assignment of the Sublease nor by reason of the collection of the Rent from the Sublessee, be deemed liable to Sublessee for any failure of the Sublessor to perform and comply with Sublessor's Remaining Obligations.

8.3 Sublessor hereby irrevocably authorizes and directs Sublessee upon receipt of any written notice from the Master Lessor stating that a Default exists in the performance of Sublessor's obligations under the Master Lease, to pay to Master Lessor the Rent due and to become due under the Sublease. Sublessor agrees that Sublessee shall have the right to rely upon any such statement and request from Master Lessor, and that Sublessee shall pay such Rent to Master Lessor without any obligation or right to inquire as to whether such Default exists and notwithstanding any notice from or claim from Sublessor to the contrary and Sublessor shall have no right or claim against Sublessee for any such Rent so paid by Sublessee.

8.4 No changes or modifications shall be made to this Sublease without the consent of Master Lessor.

9. Consent of Master Lessor.

9.1 In the event that the Master Lease requires that Sublessor obtain the consent of Master Lessor to any subletting by Sublessor then, this Sublease shall not be effective unless, within ten days of the date hereof, Master Lessor signs this Sublease thereby giving its consent to this Subletting.

9.2 In the event that the obligations of the Sublessor under the Master Lease have been guaranteed by third parties then neither this Sublease, nor the Master Lessor's consent, shall be effective unless, within 10 days of the date hereof, said guarantors sign this Sublease thereby giving their consent to this Sublease.

9.3 In the event that Master Lessor does give such consent then:

(a) Such consent shall not release Sublessor of its obligations or alter the primary liability of Sublessor to pay the Rent and perform and comply with all of the obligations of Sublessor to be performed under the Master Lease.

(b) The acceptance of Rent by Master Lessor from Sublessee or anyone else liable under the Master Lease shall not be deemed a waiver by Master Lessor of any provisions of the Master Lease.

(c) The consent to this Sublease shall not constitute a consent to any subsequent subletting or assignment.

(d) In the event of any Default of Sublessor under the Master Lease, Master Lessor may proceed directly against Sublessor, any guarantors or anyone else liable under the Master Lease or this Sublease without first exhausting Master Lessor's remedies against any other person or entity liable thereon to Master Lessor.

(e) Master Lessor may consent to subsequent sublettings and assignments of the Master Lease or this Sublease or any amendments or modifications thereto without notifying Sublessor or any one else liable under the Master Lease and without obtaining their consent and such action shall not relieve such persons from liability.

(f) In the event that Sublessor shall Default in its obligations under the Master Lease, and the Master Lease is terminated, the Sublessee shall attorn to Master Lessor in which event Master Lessor shall undertake the obligations of Sublessor under this Sublease from the time of the exercise of said option to termination of this Sublease but Master Lessor shall not be liable for any prepaid Rent nor any Security Deposit paid by Sublessee, nor shall Master Lessor be liable for any other Defaults of the Sublessor under the Sublease.

9.4 The signature of the Master Lessor and any Guarantors of Sublessor at the end of this document shall constitute their consent to the terms of the Sublease.

9.5 Master Lessor acknowledges that, to the best of Master Lessor's knowledge, no Default presently exists under the Master Lease of obligations to be performed by Sublessor and that the Master Lease is in full force and effect.

9.6 In the event that Sublessor Defaults under its obligations to be performed

under the Master Lease by Sublessor. Master Lessor agrees to deliver to Sublessee a copy of any such notice of default. Sublessee shall have the right to cure any Default of Sublessor described in any notice of default within ten days after service of such notice of default on Sublessee. If such Default is cured by Sublessee then Sublessee shall have the right of Reimbursement and offset from and against Sublessor.

10. Broker Fee.

10.1 No brokerage fees are due with respect to this transaction.

11. Attorney's Fees. If any party or the Broker named herein brings an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action, on trial and appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the Court.

12. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and, to the extent permitted by Section 13, assigns.

13. Assignment. Except with the other party's prior written consent, a party may not assign any rights or delegate any duties under this Agreement.

14. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties as follows:

MLQ Clinic, Inc.
c/o Dr. Merritt Quarum
123 N.E. Third Avenue, Suite 215
Portland, Oregon 97232

Multnomah County
Property Management
2505 SE 11th Avenue
Portland, Oregon 97202

With a copy to:

Ann Bunnberg
Attorney at Law
123 N.E. Third Avenue, Ste. 405
Portland, Oregon 97232

Any notice or other communication shall be deemed to be given at the expiration of the 3rd day after the date of deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided in this Section 3.

15. Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties.

16. Headings. The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

17. Entire Agreement. This Agreement (including the exhibits) sets forth the entire

understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

18. Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

19. Severability. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

20. Waiver. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

21. Gender. Any indication of gender of a party in this Agreement shall be modified, as required, to fit the gender of the party or parties in question.

22. Further Assurances. From time to time, each of the parties shall execute, acknowledge, and deliver any instruments or documents necessary to carry out the purposes of this Agreement.

23. Time of Essence. Time is of the essence for each and every provision of this Agreement.

24. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever except those expressly provided to Master Lessor.

25. Expenses. Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated by this Agreement.

26. Exhibits. The exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.

27. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

28. Venue. This Agreement has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in the federal or state courts in Portland, Oregon.

29. Arbitration. Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance, or interpretation of this Agreement, shall be settled by arbitration in Portland, Oregon, in accordance with ORS 36.300-36.365, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.

30. Early Termination. "It is understood and agreed that Sublessee may cancel this agreement, effective on any June 30 during the term hereof, beginning June 30, 1999, by giving Sublessor not less than three months written notice of such cancellation if the program funding to maintain the program to be operated in the premises under this agreement is not provided by the Multnomah County Board of Commissioners. The provisions of this cancellation clause will not be used for the purpose of leasing alternative space where the program would be provided at the same level as in the premises."

31. Tax Exemption Savings. If under the provisions of ORS 307.112 certain real property tax savings resulting from exemption of the property leased herein may accrue to the building. In the event that Master Lessor realizes such savings and elects to pass them to Sublessor any benefit from said savings Sublessor will pass said benefit through to Sublessee.

Executed at _____

on: _____ By: MLQ Clinic, Inc.

Address: _____ By: Merrit Quarum, M.D.
"Sublessor" (Corporate Seal)

Executed at Portland, Oregon

on: July 1, 1999 By: Multnomah County Board of Commissioners

Address: 1120 SW Fifth, Suite 1515 By: *Beverly Stein*
Portland, Oregon 97204-1914 "Sublessee" (Corporate Seal)
Beverly Stein, Chair

- Exhibit List
A - Master Lease
B - Premises Drawing

SOLELY FOR THE PURPOSE OF EVIDENCING ITS CONSENT TO THE FOREGOING SUBLEASE OF THE LEASE BY THE SUBLESSOR TO THE SUBLESSEE ON THE TERMS SET FORTH HEREIN AND WITHOUT LIMITATION THE FOREGOING MASTER LESSOR SPECIFICALLY GIVES CONSENT TO SUBLESSEE BEING SELF INSURED AS SET FORTH IN SECTION 7.4 AND ACKNOWLEDGES THIS SUBLEASE IS SUBJECT TO THE OREGON TORT CLAIMS ACT AS SET FORTH IN SECTION 7.9:

MASTER LESSOR:
Rosan Inc.
By: _____
Name: _____
Title: _____

REVIEWED:
THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY
BY *Matthew O'Keefe*
ASSISTANT COUNTY COUNSEL
DATE 6/23/99

MLQ PT:Multnomah Sublease 3/99

