

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is made as of the 1st day of December, 2016, by and between Mark Bierly, an individual ("Assignor"), Yamhill County, a political subdivision of the State of Oregon ("Assignee") and Lutheran Community Services Northwest, an Oregon nonprofit corporation ("LCSN")

### RECITALS:

A. Assignor is the "Lessor" and LCSN is the "Lessee" under that certain lease agreement, dated November 6, 2014, for office space in a portion of the building located at NE Sixth and Davis Streets, McMinnville, Oregon, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference (the "Lease").

B. On September 6, 2016 Assignor sent a letter to LCSN informing LCSN that Assignor had entered into an agreement to sell to Assignee the building located at NE Sixth and Davis Street, including that portion of the building that is the subject of the Lease. A copy of the letter is attached hereto as Exhibit B and incorporated herein by this reference (the "Letter")

C. Effective December 1, 2016 Assignor has closed the sale of the entire building to Assignee and, effective that same date, Assignor now desires to assign to Assignee, and Assignee now desires to assume, all of Assignor's remaining interest, rights and obligations under the Lease.

IN CONSIDERATION of the mutual covenants hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Effective December 1, 2016, Assignor hereby conveys and assigns to Assignee, subject to the terms and conditions of the Lease and this Assignment, all of Assignor's interest, rights and obligations under the Lease. Furthermore, as stated in the Letter, Assignee agrees to continue the existing Lease on a month to month basis under the same terms and conditions (except as expressly modified herein) and at the current amount of rent of Three Thousand Five Hundred Sixty Five and 00/100 dollars (\$3,565.00) provided in the Lease, until such time as (i) the Lease is terminated pursuant to its terms and conditions or (ii) Assignee and LCSN negotiate suitable terms for a new lease agreement.

2. Assumption. Effective December 1, 2016, Assignee hereby assumes and agrees to be bound by all of Assignor's obligations pursuant to the Lease arising out of events occurring from and after the date of this Assignment, and agrees to perform and observe all the covenants and conditions contained in the Lease to be performed or observed from and after the date of this Assignment.

3. Acknowledgement. As of the date of this Assignment, Assignor acknowledges and agrees that Assignor is not in default under the Lease and no event or condition exists which, with the giving of notice or passage of time, or both, would constitute a default or event of default by Assignor under the Lease. Furthermore, LCSN acknowledges and agrees that, as of the date of this Assignment, LCSN is not in default under the Lease and no event or condition exists which, with the giving of notice or passage of time, or both, would constitute a default or event of default by LCSN under the Lease.

B.D. 16-480

4. **Notice to Lessor.** Effective December 1, 2016 all notices required under the Lease to be given to Lessor shall either be personally delivered or mailed to Lessor at, ATTN: HHS Director, 627 NE Evans, McMinnville, OR 97128, or to such other address as Lessor may hereafter designate.

5. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. This Assignment shall not benefit any third parties who are not parties to this Assignment.

6. **Entire Agreement.** This Assignment is the entire agreement between the parties pertaining to the assumption by Assignee of the Agreement.

6. **Modification.** No amendment, modification or change to the Lease or this Assignment shall be valid unless in writing and duly executed by the party to be charged therewith.

7. **Counterparts.** This Assignment may be executed in counterparts, each of which (or any combination of which) when signed by all of the parties shall be deemed an original, but all of which when taken together shall constitute one agreement. Executed copies hereof may be delivered by facsimile and upon receipt shall be deemed originals and binding upon the parties hereto, and actual originals shall be promptly delivered.

8. **Governing Law.** This Assignment will be interpreted, construed, and enforced in accordance with the laws of the State of Oregon without reference to its choice of law rules.

9. **Recitals.** The above recitals are incorporated into and made a part of this Assignment, as if set forth fully herein.

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as of the date and year first above written

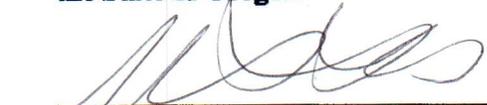
ASSIGNOR

Mark Bierty

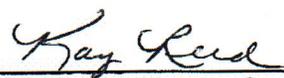
  
Print Name: Mark F. Bierty  
Title: \_\_\_\_\_  
Date: 11-30-16

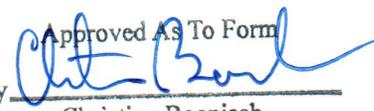
ASSIGNEE

Yamhill County, a political subdivision of the State of Oregon

  
Print Name: MARY STARRETT  
Title: CHAIR, BOARD OF COMMISSIONERS  
Date: 12-1-16

LCSN

  
Print Name: Kay Reed  
Title: Chief Financial Officer

Approved As To Form  
by   
Christian Boenisch  
County Counsel  
Yamhill County

Accepted by Yamhill County  
Board of Commissioners on  
12-1-16 by Board Order  
# 16-480

Date: 11-30-16

**Exhibit A**  
**(see attached)**

**LEASE**

This Lease is made in duplicate this 6<sup>th</sup> day of ~~October~~ <sup>November</sup>, 2014 by and between Mark F. Bierly, hereinafter referred to as Lessor, and Lutheran Community Services Northwest, hereinafter referred to as Lessee.

**W I T N E S S E T H:**

WHEREAS, Lessor is the owner of a professional office building located in McMinnville, Yamhill County, Oregon, and

WHEREAS, Lessee is desirous of renting space for the conduct of its affairs,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

**Description of Premises.** Lessor leases to Lessee certain office space in a portion of the building located at NE Sixth and Davis Streets, McMinnville, Oregon, and more particularly consists of the exclusive use of rooms at street level containing approximately 2,590 sf, labeled as A, B, and C on the floorplan attached hereto as Exhibit 1, the exclusive use of rooms in the basement containing approximately 1,131 sf, labeled as A, B, and C on the floorplan attached hereto as Exhibit 2, the shared use of the common hallway, kitchen, and restrooms located in the basement, and the shared use of the common parking lot behind the building on a first come first served basis.

**Term.** This Lease is for an initial term beginning on November 1, 2014 and expiring on October 31, 2016. It supersedes the existing Lease between the parties that expires on October 31, 2015.

**Rent.** The rent under this Lease shall amount to \$3,565.00 per month, which amount Lessee agrees to pay Lessor in advance on or before the first day of each month during the term of this Lease. In the event that a lease payment is not physically received by Lessor within five days of when it is due, Lessee agrees to pay a late fee in the amount of \$25. Imposition or collection of the late fee shall not constitute a waiver by Lessor of his right to declare a default for late or non-payment of rent.

The parties agree that to the best of their knowledge the fair market rental value for the premises to be occupied by Lessee exceeds the amount of rent being paid by Lessee. Lessee is a nonprofit, 501c3 organization. In recognition and support of

Lessee's charitable services being provided to the community, Lessor is making an in-kind donation to Lessee each month by providing the premises to Lessee at a below market rate. Lessee shall upon request provide whatever written receipt Lessor may request to document for income tax purposes the donation of premises in an amount calculated by Lessor but not verified by Lessee.

**Use of Premises.** Lessee's use of the premises described herein is subject to the following conditions:

1. Lessee shall only use the premises as an office for counseling, education, and related purposes.
2. Lessee shall not smoke inside of the building.
3. Lessee shall not allow any waste or nuisance on the premises or keep any hazardous substances or use the premises for any illegal purposes or in violation of any municipal, county, or state law or ordinance.
4. Lessee shall not do or permit others to do anything on the premises, bring or permit anything to be brought on the premises or to be kept therein, nor permit the use of the premises for any purposes that would cause an increase in the rate of any fire insurance premium on the premises.
5. Lessee shall not sublet the premises, or any part thereof, or assign this Lease without obtaining Lessor's prior written consent.
6. Lessee shall use reasonable care to maintain the physical security of the building from unauthorized entry by ensuring that all exterior doors are locked when the premises will be unoccupied.
7. Lessee shall not disturb other occupants' use of the remainder of the building.
8. Lessee is responsible for ensuring that all employees, agents, and invitees also abide by the above conditions.

**Condition of Premises.** Lessee has examined and knows the condition of the premises and has received the same in good condition and working order. Lessee shall surrender the premises at the end of the term in the same condition as when Lessee took possession, allowing for reasonable use and wear and damage by acts of God. Lessee acknowledges that Lessor has made no

representations or warranties as to the condition, repair, or use of said premises or improvements. Lessee has accepted the premises in the condition existing at the time of this Lease. Lessee shall at its own expense keep and maintain the premises in a clean and good condition at all times and promptly repair all damages to the premises occasioned by the fault or negligence of Lessee or Lessee's employees, agents, or invitees. Lessee shall promptly notify Lessor of any repairs that may be the responsibility of the Lessor or of any other conditions needing Lessor's attention.

**Alterations and Improvements.** Lessee may not make any alterations or improvements to the premises without obtaining the prior written consent of Lessor. Lessee may at its own expense attach a sign to the exterior of the building or erect a freestanding sign with Lessor's prior consent, which consent shall not be unreasonably withheld, provided upon termination of the Lease Lessee removes any such signs and restores the premises to its prior condition.

**Utilities.** Lessor shall pay for all garbage, water, and sewer services supplied to the premises during the term of this Lease. In the event Lessee's garbage use exceeds one container, Lessee shall pay the additional cost incurred by Lessor to make a second container available. Lessor shall pay for the electrical service supplied to the basement and consumed by Lessee. Lessee shall pay for all electricity provided to the street level premises occupied by Lessee and for all telephone fees and services, including internet access, furnished to the premises or used by Lessee during the term of this Lease and hold Lessor harmless therefrom. Lessee shall take reasonable steps to keep the utility services provided by Lessor from being wasted, such as turning off lights when not in use and promptly reporting any water leaks. Lessee shall provide its own janitorial services as needed, including cleaning the restrooms and kitchen in the basement. Lessor shall not be liable for any failure or interruption of utility services to the premises.

**Indemnification.** Lessee shall assume all liability for and defend, indemnify, and hold Lessor harmless from and reimburse Lessor for any claim, loss, liability, or expenses suffered directly or from a third-party claim arising out of or in any way connected with Lessee's or its employee's, agent's, or invitee's occupancy or use of the premises, the condition of the premises under Lessee's possession or control, or any liens or encumbrances placed or allowed to be placed against the premises by Lessee. Lessee shall provide evidence to Lessor of its commercial general liability insurance coverage. This indemnification obligation however does not apply to any claim, loss, or liability arising out of the sole negligence of Lessor.

**Insurance.** Lessor will maintain property damage insurance on the building (but not Lessee's personal property or contents) and Lessee will maintain insurance with regard to damage to Lessee's personal property within the building and any tenant improvements. To the extent any damage to the building or to contents belonging to the Lessee is covered by the other party's property insurance, then each party will waive their rights to subrogation against the other party.

**Default.** In the event Lessee shall fail to perform or be in breach of any condition or term of this Lease or fails to make the rental payment as provided for herein, Lessor shall be entitled to declare Lessee to be in default. In the event Lessee shall fail to correct any default within seven days of Lessor giving written notice of the default, or in the event it can not be remedied within seven days, Lessee's failure to take substantial steps toward completion of remedying the default within seven days and then promptly completing said remedy within a reasonable time thereafter, this Lease shall immediately terminate. In the event Lessor within the previous 12 months has previously declared Lessee to be in default for the same reason or the default is of such a nature that it cannot be remedied by Lessee, the Lease shall terminate immediately upon Lessor's giving written notice of default without any opportunity by Lessee to cure or remedy said default. Lessor at his discretion may perform any obligation of Lessee or make any payment required by Lessee under this Lease if Lessee fails to do so without waiving the right to hold Lessee in default, terminate the Lease, or seek damages from Lessee.

**Termination.** In the event the Lease is terminated due to Lessee's default, or upon the expiration of the term, Lessee shall immediately vacate the premises and remove all of its personal property placed thereon. The exclusive possession and use of the premises shall immediately and automatically revert to Lessor and any personal property remaining shall be considered abandoned by Lessee and Lessor shall have no obligation to account to Lessee for the disposition thereof. Whether or not Lessor terminates the Lease or retakes possession of the premises, Lessor shall be entitled to recover from Lessee all damages caused by Lessee's default. In the event Lessee remains in possession of the premises following expiration of the term of the Lease, Lessee's occupancy shall be considered to be pursuant to a month to month tenancy on the same terms and conditions but shall not constitute an extension or renewal of the original lease term. It is understood that Lessee is providing services through various funders and should the funding for the services be substantially reduced, Lessee shall have the right to terminate this Lease without penalty by giving Lessor not less than 90 days written notice of such termination.

**Inspection.** Lessor shall have the right to enter the premises upon giving reasonable notice to determine Lessee's compliance with this Lease or to make necessary repairs to the building or the premises.

**Waiver.** Failure of Lessor at any time to require performance by Lessee of any of the provisions hereof shall in no way effect Lessor's rights hereunder to enforce the same, nor shall any waiver by Lessor of any breach thereof be held to be a waiver of any succeeding breach or waiver of this nonwaiver clause. Lessor's performance of any of the obligations of Lessee hereunder shall not constitute a waiver of the right to enforce the same against Lessee.

**Attorney fees.** In the event Lessee is in default under this Lease, Lessee agrees to pay Lessor's reasonable costs and attorney fees to enforce the Lease even though no suit or action is filed. In the event a suit or action is filed to enforce any of the provisions hereof, to collect any of the rents due, or to retake possession of the premises, Lessee agrees to pay Lessor's costs and reasonable attorney fees as set by the Court, including any appeal thereon.

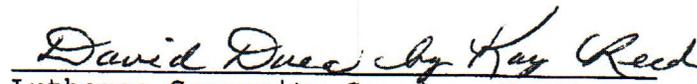
**Notices.** All notices required herein to be given to Lessor shall either be personally delivered or mailed to Lessor at 345 NE 6th St., McMinnville, OR 97128, or such other address as Lessor may hereafter designate. All notices required herein to be given to Lessee shall either be personally delivered or mailed to Lessee at 617 NE Davis St., McMinnville, Oregon 97128, or such other address as Lessee may hereafter designate.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first above written and Lessee acknowledges receipt of a copy.

Lessor:

Lessee:

  
Mark F. Bierly

  
Lutheran Community Services Northwest  
By: David Duea  
President/CEO





**Exhibit B**  
**(see attached)**

**MARK F. BIERLY**  
Attorney at Law  
345 NE 6th St.  
McMinnville, Oregon 97128

---  
Telephone (503) 472-9337  
Fax (503) 435-0154

**RECEIVED**  
SEP 06 2016

BY: .....

September 6, 2016

Jordan Robinson  
Lutheran Community Services  
617 NE Davis St.  
McMinnville, OR 97128

Re: Lease

Dear Jordan:

This is to officially inform you that I have entered into an agreement with Yamhill County to sell them the building in which you are renting space.

I do not know when the sale will be completed, but if it is before your lease expires on October 31, 2016, you will be entitled to remain in possession through the remainder of your lease as Yamhill County is aware of your right to occupy the premises through that date. If the sale closes after October 31<sup>st</sup> and you are still in possession, I am willing to continue your existing lease on a month to month basis at the same amount of rent in the interim. Either way, I would recommend you immediately consult with Yamhill County to determine what their plans are with the building and if they would allow you to continue renting from them for a period of time.

I trust you and Yamhill County will be able to negotiate suitable terms for you to remain until you are able to locate new space. If you have any questions regarding the transition or ownership please let me know.

Very truly yours,



Mark F. Bierly

MFB:tlr

B.O. 16-480