

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approving a Lease  
Agreement for Office Space Located at 400  
NE Baker Street in McMinnville

BOARD ORDER 23-412

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on November 2, 2023, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

IT APPEARING TO THE BOARD as follows:

WHEREAS, The Yamhill County Planning Department requires additional office space for its staff and programs; and

WHEREAS, Oregon Mutual Insurance, Inc. (OMI) has agreed to lease to the County office space located at 400 NE Baker Street in McMinnville; and

WHEREAS, OMI and the County have negotiated a lease agreement that is mutually beneficial and that otherwise provides the terms and conditions agreed upon by both parties, attached hereto as Exhibit 1 (the "Lease Agreement"); and

WHEREAS, ORS 271.360 requires the Lease Agreement to be authorized by order of the County; and now, therefore

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The lease agreement attached hereto as Exhibit 1 is approved.

Section 2. A fully executed Lease Agreement shall be filed with the Yamhill County Clerk for recording, with a copy of the recorded Lease Agreement being provided to OMI.

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DATED this 2<sup>nd</sup> day of November, 2023, at McMinnville, Oregon.

ATTEST



KERI HINTON  
County Clerk

YAMHILL COUNTY BOARD OF  
COMMISSIONERS

Chair LINDSAY BERSCHAUER

By:   
Deputy CAROLINA ROOK

Commissioner KIT JOHNSTON

FORM APPROVED BY:

JODI GOLLEHON  
Assistant Yamhill County Counsel

Commissioner MARY STARRETT

Accepted by Yamhill County  
Board of Commissioners on  
11.2.23 by Board Order  
# B.O. 23-412

## COMMERCIAL LEASE OF OFFICE SPACE

For Yamhill County  
(Pursuant to Yamhill County Board Order No. 23- 412.)

THIS LEASE AGREEMENT is made on the 2nd day of November, 2023 by and between **OREGON MUTUAL INSURANCE COMPANY**, hereinafter referred to as "Lessor", and **YAMHILL COUNTY**, a political subdivision of the State of Oregon, for its Department of Planning, herein referred to as "Lessee".

### RECITALS:

- 1) Lessor is the owner of the premises described below, which consists of a building containing office space.
- 2) Lessee provides services for individuals throughout Yamhill County and it desires to lease property from Lessor to provide adequate facilities for these programs.

NOW THEREFORE, in consideration of the following covenants, agreements, and stipulations, Lessor leases to Lessee, and Lessee leases from Lessor, the Property described herein:

### Article 1: DESCRIPTION OF PROPERTY

Lessor leases, demises, and lets to Lessee office space within certain premises located in the City of McMinnville, Yamhill County, Oregon known and described as follows (herein referred to as "the Property"):

400 Northeast Baker Street  
McMinnville, OR 97128

The Property shall be used by Lessee for the provision of Yamhill County Planning Program services. The parties agree to assume that this use is allowed by the zoning currently applicable to the Property, and that assumption is a basis for and condition of this Lease; an error in this assumption or change in zoning laws or regulations affecting the use of the Property shall be a basis for termination of the Lease without liability to either party. In addition, Lessee will have the nonexclusive right to use the common areas of the building, including the entrance area, corridors, fire vestibules, foyers, common restrooms, electrical and telephone closets and mechanical and services rooms housing Lessee equipment, and other similar areas. Access to electrical and telephone closets and mechanical and services rooms will be limited and provided only to Lessee staff with an operational need for access.

### Article 2: LEASE TERMS

2.1 Initial Term of Lease. The initial term of the Lease is as follows:

- 1 year
- Lease Commencement Date: November 1, 2023
- Lease Expiration Date: 1 year after Lease Commencement Date.

2.2 Option to Renew. If subsequently agreed upon in writing by the Lessor and the Lessee, the Initial Term of Lease may be extended for an additional period of up to five years, at which time, the Rent, terms, covenants, and conditions of the Lease may also be amended as needed upon mutual written agreement of the parties.

2.3 Property's Leasable Area. The "Leased Area" is approximately 4,437 square feet within the Property and includes the highlighted area further detailed in Exhibit A, attached hereto and by this reference incorporated herein.

2.4 Parking. Lessor shall make 40 parking spaces in the front parking lot facing Baker Street available to Lessee for its Planning Department and its respective employees, guests, and invitees weekdays during business hours. Lessor reserves the right to assign specific parking spaces to Lessee at any time during the Lease. Marked handicap accessible parking spaces shall be unassigned and shared by Lessee and Lessor for their respective business use on a first-come first-serve basis. Lessor occasionally permits use of the parking lot by charitable and community interest organizations for special events, and thereby closes the lot for its employees, guests, and invitees. Lessee agrees that parking shall not be available on those days.

2.5 Common Areas. Lessee shall make available to Lessor all areas and facilities outside the Property, but within the domain of the Lessor, that are available for the nonexclusive use of Lessor, Lessee, and other Lessees of the building and their respective employees, guests, and invitees. Common Areas shall include, but are not limited to, lobby areas, building corridors, fire vestibules, elevators, foyers, common restrooms, electrical and telephone closets and mechanical and service rooms that house Lessee equipment, and other similar facilities as further described in Exhibit B, attached hereto and by this reference incorporated herein. Access to electrical and telephone closets and mechanical and services rooms will be limited and provided only to Lessee staff with an operational need for access.

2.6 Base Rent. The initial base rent for the Lease is \$27.00 per square foot per year. Rent shall be payable in advance in equal monthly payments due on the first day of each month that Lessee will occupy the premises under the terms of this Lease or any subsequent extension, with payment to be made to Lessor by check mailed to the address set forth below in Article 11.1 or via electronic funds transfer to Lessor. Lessor grants Lessee 10-day grace period beyond the first of the month to deliver monthly base rent payment.

2.7 Prepaid Rent. Lessee shall provide Lessor with two months prepaid rent in the amount of \$19,966.50.

2.8 Security Deposit. Lessee shall deliver to Lessor a Security Deposit in the amount of two month's rent, or \$19,966.50. Lessor may apply the Security Deposit to pay the cost of performing any obligation that Lessee fails to perform within the time required by this Lease, but such application by Lessor will not waive Lessor's other remedies nor be the exclusive remedy for Lessee's default. If Lessee is not in default of this Lease at the expiration or termination hereof, Lessor will return the unapplied portion of the Security Deposit to Lessee, except for any amount necessary to return the Leased Area to the condition set forth in Article 6.1. Lessor will not be obligated to pay interest on the Security Deposit.

2.9 Prohibited Conduct. To ensure peaceable enjoyment of the property and its common areas by all occupants and visitors, as well as to protect the property and its structures, Lessee shall not permit its employees, guests, or invitees to possess or use tobacco, marijuana, electronic cigarettes, vaping products, alcohol, illicit drugs, firearms, or other weapons anywhere on or within the premises, to include the leased office area, common areas, parking lot, and grounds. Lessee shall ensure that its employees, guests, and invitees do not engage in inappropriate conduct on the premises, including but not limited to intimidating, threatening, or hostile behaviors, physical abuse or assault, sexual harassment, vandalism, arson, or theft of property.

**Article 3: DELIVERY OF POSSESSION AND COMMENCEMENT OF LEASE**

3.1 Delivery. Lessor will deliver the Leased Area to Lessee in good condition and repair. The Lease "Commencement Date" shall occur upon the date Lessor delivers possession of the Leased Area to Lessee. If Lessor fails to deliver possession of the Leased Area to Lessee on the Lease Commencement Date for any reason other than a delay caused by Lessee, the Lease will not commence and Lessee will owe no rent until the date Lessor tenders possession of the Leased Area to Lessee.

3.2 Failure to Deliver Within Reasonable Time Period. If Lessor fails to deliver possession of the Leased Area to Lessee within 90 days of the Lease Commencement Date due to a Lessor-caused delay, then Lessee, as its sole remedy, may, by delivering written notice to Lessor within 10 days of the expiration of the 90-day period, terminate this Lease. If Lessor is unable to deliver possession of the substantially complete Leased Area within 180 days for reasons beyond the reasonable control of either Lessor or Lessee, then either party as its sole remedy may terminate this Lease by delivering written notice to the other party within 10 days of the expiration of the 180-day period.

3.3 Acceptance by Lessee. By acceptance of possession of the Leased Area described hereunder, Lessee acknowledges (i) that Lessee accepts the Leased Property "AS IS, WHERE IS" and as suitable for Lessee's intended use, in good and sanitary operating order, condition, and repair, and without representation or warranty by Lessor of the condition, use, or occupancy that may be made thereof; and (ii) that the Leased Area of the Property is as set forth in Article 2.

**Article 4: OPERATING EXPENSES AND TAX STATUS**

4.1 Operating Expenses. During the Initial Term of the Lease, Lessee shall pay, as additional rent, Lessee's proportionate share of its Operating Expenses. For purposes of this Lease, the term "Operating Expenses" means all expenses paid or incurred by Lessor (or on Lessor's behalf) as reasonably determined by Lessor as necessary or appropriate for the operation, maintenance, and repair of, and to insure, the Leased Area and all Common Areas. Operating Expenses may also include any improvements to the Leased Area done at the request of Lessee and installed or paid for by Lessor.

4.2 Lessee's Tax Status & Rental Adjustment. As a governmental agency, Lessee's tenancy in the Leased Area is expected to result in a reduction of property taxes assessed thereon. The determination to apply for a tax exemption is at the sole discretion of the Lessor, but it is expressly agreed that the rent payable by the Lessee as stated in Article 2.6 will be reduced by an amount that represents one half of any reduction of property taxes assessed following application for a tax exemption.

**Article 5: USE OF PREMISES**

5.1 Permitted Use. Lessee shall use the Leased Area for the purpose of providing those services that are provided by the Department of Planning & Development on behalf of Yamhill County, and shall not use or permit the premises' use for any other purpose without the written consent of Lessor. Lessee shall not undertake or permit any act or storage on the premise that may be prohibited under standard forms of fire and/or property insurance. In addition, no use of the premises shall be made

that shall result in (1) waste on the premises, (2) a finding by a court of competent jurisdiction that a public or private nuisance exists on the premises, (3) improper, unlawful, or objectionable use of the Property including the use or sale of alcohol or controlled substances thereon, or (4) the creation of odors, noises or vibrations which unreasonably disturb adjacent property holders. Lessee shall comply with all governmental regulations and statutes affecting the premises either now or in the future.

5.2 Compliance with Laws. Lessor warrants that to the best of its knowledge, as of the Lease Commencement Date, the Leased Area and the Property comply with all applicable laws, statutes, ordinances, rules, and regulations of any public authority (the "Laws"). As of the Lease Commencement Date, Lessee will at its expense promptly comply and cause the Leased Area and the Property to comply with all Laws applicable to Lessee's particular use of the Leased Area (as opposed to those Laws applicable generally to office uses).

5.3 ADA Compliance. Lessor represents and warrants that as of the date of the lease commencement, the Leased Area and Common Areas in or around the building, including sidewalks and walkways and the like, together with all entrances, lobbies, elevators, common restrooms, and the other areas of the building, comply with the Title III of the ADA and all comparable state or local laws, or any rules, regulations or guidelines implementing the foregoing (collectively, the "Accessibility Laws"). In the event a determination is made that the exterior of the building and the land including sidewalks and walkways and the like, together with all entrances, lobbies, elevators, common restrooms, and the other common areas of the building are not in compliance with applicable provisions of the ADA, Lessor shall be responsible for making any alterations to achieve compliance. Lessee shall be responsible for compliance with the applicable provisions of the ADA with respect to all permissible improvements within the premises made to the premises by Lessee during the term of this Lease, including any option periods. Neither Lessor nor Lessee is obligated to supervise, monitor, or otherwise review the compliance activities of the other.

5.4 Rules and Regulations. Lessor may make and Lessee shall comply with all rules and regulations of the Leased Area and Common Areas (the "Rules") as Lessor may revise and enforce from time to time. The Rules are in addition to and will not be construed to modify or amend this Lease in any way, and in the event of any conflict between the terms of this Lease and any Rule, the terms of the Lease will govern.

## **Article 6: ALTERATIONS, MODIFICATIONS, AND REPAIR**

6.1 Current Condition & Procedure for Changes to Property. Lessee has inspected the premises, and the premises are now in a tenantable and good condition. Lessee shall take good care of the premises and shall not alter, repair, or change the premises without the written consent of Lessor, and shall, before making any improvements, major repairs or alterations, submit plans and designs therefore to Lessor for approval.

6.2 Lessee's Obligations. Lessee shall be responsible within the Leased Area for:

- Any repairs necessitated by the negligence of the Lessee, its employees, agents and invitees;
- Any repairs or alterations required under the Lessee's obligation to comply with laws and regulations; and

- All other repairs to the premises which the Lessor is not required to make by this agreement.

6.3 Lessor's Obligations. Lessor shall be responsible for:

- Repairs and maintenance of the roof and gutters, exterior walls (including painting), bearing walls, structural members and foundation;
- Structural repairs and maintenance and repair necessitated by structural disrepair or defect;
- Repair of interior walls, ceilings, doors and windows and related hardware;
- Repair of sidewalks, driveways, curbs and parking area;
- Repair and maintenance of water, sewage, gas, and electrical services including light fixtures, switches, wiring and plumbing in the premise;
- Repair and ordinary maintenance of the heating system and the air conditioning system within the premises;
- Repair and maintenance of any common areas in the building;
- Ordinary maintenance of the yard and grounds around the Property; and
- Removal of ice, snow, debris and obstruction from the Property to the extent necessary to provide reasonably safe access to the premises.

6.3 Costs of Repair. If either party fails or refuses to make repairs which are required by this section, the other party may make the repairs and charge the actual cost of those repairs to the first party. The Lessor shall be reimbursed by Lessee for such repairs by payment of the appropriate sum with the next rental payment due after completion of the repair and provision of notice of the cost of that repair. Except in an emergency creating an immediate risk of personal injury, property damage, or creation of untenable premises, neither party may perform repairs which are the obligation of the other party unless the defaulting party is given notice in writing at least 30 days before work is commenced outlining with reasonable particularity the repairs required, and such party fails within that time to initiate such repairs in good faith.

6.4 Alterations by Lessor. Lessor shall at all times have the right to alter, repair, or improve the Leased Area and/or Common Areas and may at any time, for that purpose, erect scaffolding and all other necessary structures about or upon the demised premises. The Lessor and its representatives, contractors, and workmen may work in and about the Leased Area with such materials as Lessor may deem necessary to alter, repair, or improve the Leased Area and/or Common Areas, provided that such actions are done in a manner calculated to interfere as little as is reasonably possible with Lessee's use of the premises. Lessee shall have no right to an abatement of rent nor any claim against Lessor for disturbance resulting from activities performed in accordance with this provision.

6.5 Lessee Improvements. At Lessee's option, Lessee may implement the "Lessee Improvements" further described in the Lessee Improvement Plan, attached hereto as Exhibit C. All costs of all design, space planning, architectural and engineering work, and all costs of construction, including but not limited to permit fees, for or in connection with the Lessee Improvement Plan shall be at Lessee's sole cost and expense. If the Lessee Improvements require any architectural or structural changes to the Leased Area, Lessee shall obtain prior written approval from the Lessor before proceeding. All Lessee Improvements shall be done in conformity with applicable

building codes, as well as local, state, and federal law. No Lessee Improvements shall be permissible where they would compromise structural integrity of the premises.

#### **Article 7: UTILITIES AND SERVICES**

7.1 General. Lessor will furnish water and electricity to the Property at all times and will furnish heat, ventilation, and air conditioning, at standard levels consistent with general office use. Lessor will provide custodial services to the common areas. Lessee shall be responsible for custodial services within its leased office area.

7.2 Internet and Network Connection. Lessee shall install, utilize, and pay for a separate internet connection to the Leased Area to support Lessee's operations. Server rack space will be provided in Lessor's Data Center for Lessee's equipment to establish a connection with the Lessee's County network. The connection between the Leased Area and Lessee's equipment located within the Lessor's Data Center shall be made by and at the expense of the Lessee.

Lessor will provide Lessee access to an electrical switch closet on the second floor whereby computer and connectivity hardware may be placed.

Access to Lessor's Data Center shall be restricted with access being granted by Lessor during business hours only upon 24 hours' notice to Lessor and after business hours upon 7 days' notice to Lessor. Lessor shall provision access rights to only three of Lessee's employees at any one time, and only upon written notice from Lessee. Access to the Data Center shall require escort by Lessor employee and completion of signature log by Lessee employee. Lessee shall install locks upon its server racks within Lessor's Data Center. Although not required by terms of this Lease, Lessor will endeavor to provide access when requested upon shorter notice when Lessor information technology personnel are within the Data Center.

7.3 Payment. Lessee shall pay for heat, light, water, sewer, power, internet, garbage collection, and other services or utilities used in the Leased Area during the term of this Lease and any extensions thereof. An invoice for Lessee's proportionate share of the water and sewer services shall be provided to Lessee by Lessor on a monthly basis.

7.4 Interruption of Service. Unless caused by the gross negligence or intentional misconduct of Lessor, interruption of any service or utility will not render Lessor liable to Lessee for damages, relieve Lessee from performance of Lessee's obligations under this Lease, or be deemed an eviction or disturbance of Lessee's use and possession of the Leased Area.

#### **Article 8: RISK OF LOSS, INSURANCE, AND INDEMNITY**

8.1 Risk of Loss. Lessor bears the risk of loss from fire or other casualty to the building and any furnishings or appliances left or located by Lessor therein. The Lessee shall bear the risk of loss for the remaining contents of the premises and any improvements, alterations or fixtures it installs thereon.

Lessee agrees that Lessor shall have no obligation to monitor video security cameras or provide physical security patrol for the benefit of Lessee, its employees, guests, and invitees.

Electronic card access to the facility and leased area shall be provisioned by Lessor for the benefit of Lessee's employees at the direction of the Lessee. Lessee shall

immediately notice when its employees separate from service such that access to the leased area and facility may be promptly terminated.

8.2 Insurance Generally. Lessor shall keep the Leased Area insured in an amount equal to or greater than the full insurable value of the premises at Lessor's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Lessee shall provide for coverage of the personal property of the Lessee that is located on the premises through the provisions of its blanket property insurance maintained by Yamhill County but shall not be required to insure or furnish proof of such insurance.

8.3 Major Damage. In case of Major Damage to the Leased Area, Lessor or Lessee may elect to terminate this Lease by notice in writing to the other party within 30 days after the date of the Major Damage. "Major Damage" means damage by fire or other casualty to the Leased Area or Common Areas (a) that causes the Leased Area or any substantial portion of the Leased Area, to be unusable, or (b) the repair of which will cost more than 25 percent of the replacement value of the building. If neither Lessor nor Lessee terminates this Lease after any Major Damage, or if damage occurs to the Leased Area or Common Areas that is not Major Damage, Lessor shall promptly restore the Leased Area or Common Areas to the condition existing immediately before the damage, and this Lease shall continue in full force and effect. In the event of any damage to the Leased Area from a fire or other casualty, Lessee shall promptly repair and restore all Lessee improvements or alterations installed or paid for by Lessee or pay the cost of the restoration to Lessor if Lessor performs the restoration. If the Property is damaged by any casualty, rent will be reduced in proportion to the unusable portion of the Property from the date of damage until the date restoration work to the Property is substantially complete.

8.4 Liability Insurance Required.

8.4.1 *Lessee.* As a political subdivision of the State of Oregon, Lessee has limited liability under the terms of the Oregon Tort Claims Act, ORS 30.260 et seq, and maintains insurance coverage with City-County Insurance Services to the extent of its potential liability thereunder. This coverage includes all risks arising directly or indirectly out of Lessee's activities in or about said leased premises and protects Lessee on account of obligations assumed by Lessee under this Lease, protecting the Lessor to the extent thereof from claims by third parties. Lessee agrees to maintain this or comparable coverage throughout the term of this Lease and any extensions thereof. Lessee will provide Lessor 10 day's written notice of any change in coverage or insurer. At Lessor's request, Lessee shall provide Lessor with certification of coverage or add Lessor as a named insured under the terms of the above-described policy.

8.4.2 *Lessor.* Lessor shall at all times keep in effect commercial general liability insurance, or similar liability insurance, covering its activities and operations and covering bodily injury, death, and property damage, and shall include personal injury liability insurance. The insurance, whatever its form, shall carry at least liability coverage sufficient to meet the requirements set forth in the Oregon Tort Claims Act as codified in ORS 30.260 et seq., which provides the following minimum limits:

- 1) At the amount set pursuant to ORS 30.273(3) for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence;

- 2) \$830,300 beginning July 1, 2023, and at the amount set pursuant to ORS 30.272 thereafter, to any single claimant for all claims arising out of a single accident or occurrence; and
- 3) \$1,660,400 beginning July 1, 2023, and at the amount set pursuant to ORS 30.272 thereafter, for any number of claims arising out of a single accident or occurrence. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Lease. Insurance coverage shall apply on a primary and non-contributory basis.

8.6 Indemnification.

8.6.1 *Lessor Indemnification.* To the fullest extent permitted by law, and to the extent otherwise provided for in private contracts of insurance, Lessor shall indemnify, defend, and hold harmless Lessee, its officers, agents, employees, and volunteers, from all damages, losses and expenses, including but not limited to attorney fees and costs related to litigation, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from Lessor's performance or failure to perform under this Lease. The provisions of the foregoing notwithstanding, Lessor will not be required to indemnify Lessee for any liability arising from the wrongful acts of Lessee's own officers, agents, employees, invitees, guests, directors, or contractors.

8.6.2 *Lessee Indemnification.* Lessee shall indemnify, defend, and hold harmless Lessor, its officers, agents, employees, volunteers, invitees, guests, and contractors, from all damage, loss, expenses, including but not limited to attorney fees, expert witness fees, and costs related to litigation, and to defend all claims, proceedings, losses, or judgment arising out of or resulting from Lessee's operations on the premises as well as Lessee's performance or failure to perform under this Lease. The provisions of the foregoing notwithstanding, Lessee will not be required to indemnify Lessor for any liability arising solely out of wrongful acts of Lessor's officers, agent, employees, invitees, guests, directors, or contractors.

**Article 9: EMINENT DOMAIN; ASSIGNMENT & SUBLEASE**

9.1 Eminent Domain. If any portion of the Property is permanently taken under any right of eminent domain, or any transfer in lieu thereof, and the taking renders the Leased Area unsuitable for Lessee's use, then either party may terminate this Lease by giving 30 days' prior written notice to the other party, and the termination will be effective on the date possession of the Leased Area is delivered to the condemning authority. If this Lease is not so terminated, Lessor will repair and restore the Leased Area, and this Lease will continue, but, commencing with the date on which Lessee is deprived of the use of any portion of the Property or of any rights under this Lease, rent will be proportionately abated or reduced, based on the extent to which Lessee's use of the Property is impaired. Any and all awards payable by the condemning authority in connection with a taking will be the sole property of Lessor; however, nothing contained herein will prevent Lessee from prosecuting a separate claim for the value of its interest, as long as that award does not diminish the award that Lessor would otherwise be entitled to as a result of the taking.

9.2 Assignment & Subletting. Lessee will not assign, transfer, or encumber its interest under this Lease or sublet all or any portion of the Property without having first obtained Lessor's written consent, nor shall it allow any other governmental agency or county department to use the Leased Area for any purpose without prior

written notification to and consent of Lessor. A consent to any one assignment and sublease or lack of objection to a different use or occupation by a governmental agency shall not be construed as a consent to or acceptance of any subsequent assignment, sublease, or occupation or use by another person, entity, agency or department. This Lease shall not be assignable, as to the interest of Lessee, by operation of law, without the written consent of the Lessor.

## **Article 10: DEFAULT**

### **10.1 Events of Default.**

**10.1.1 *Default by Lessee.*** Lessee shall have breached this Lease and shall be considered in default hereunder if:

- 1) Lessee fails to pay rent when due and does not make the delinquent payment within 10 days after the first of the month for which rent is due;
- 2) Lessee fails to perform or comply with any of the covenants or conditions of this Lease and such failure continues for a period of twenty days, or 5 days after receipt of notice thereof from Lessor; or
- 3) Lessee fails to comply with Article 2.9 entitled Prohibited Conduct or Article 5.4 entitled Rules and Regulations.

In the event of any default by Lessee, Lessor may exercise any and all rights available at law or in equity.

**10.1.2 *Default by Lessor.*** Except for Default pursuant to Article 10.1.1 (3), Lessor will not be deemed to be in default of the performance of any obligation required to be performed by Lessor hereunder unless and until Lessor fails to perform the obligation within 20 days after written notice by Lessee to Lessor specifying the nature of Lessor's alleged default; however, if the nature of Lessor's alleged default is such that more than 20 days are required for its cure, then Lessor will not be deemed to be in default if Lessor commences performance within the 20-day period and thereafter diligently prosecutes the same to completion. In the event of any default by Lessor, Lessee may exercise any and all rights and remedies available at law or in equity.

**10.2 Remedies for Default.** Upon the occurrence of an Event of Default described in Article 10.1, the non-defaulting party may exercise the following remedies, as well as any other remedies at law or in equity, by statute, or as set forth in this Lease.

**10.2.1 *Termination.*** In the event of a default, this Lease may be terminated at the option of the non-defaulting party by notice in writing to the defaulting party. If the lease is not terminated by election of the non-defaulting party, the non-defaulting party shall be entitled to recover damages from the defaulting party for default. If the lease is terminated, the defaulting party's liability to the non-defaulting party for damages shall survive such termination. If the Lessor is the non-defaulting party, the Lessor may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force.

**10.2.2 *Reletting.*** In the event of any re-entry by Lessor, Lessor may relet the premises and may make any suitable alterations or refurbish the premises, or both, or change the character or use of the Leased Area, but Lessor shall not be required to relet for any use purpose inconsistent with uses for which the

premises were offered prior to the beginning of this Lease. Lessor may relet all or part of the premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including rent concessions, provided they are consistent with the general practice in the community rental market.

10.2.3 *Damages.* In the event of termination on default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed by expiration of the lease term, the following amounts of damages:

- 1) The loss of reasonable rental value from the date of default until a new Lessee has been, or with the exercise of reasonable diligence could have been, secured;
- 2) The reasonable costs of any alterations or improvements to the Leased Area installed or paid for by Lessor, if the costs of such alterations or improvements have not yet been recouped by Lessor, and of which the alterations or improvements were done at the request of Lessee;
- 3) The reasonable costs of reentry and reletting including without limitation the cost of any clean up, refurbishing, removal of Lessee's property and fixtures, or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, any remodeling costs, attorneys' fees, court costs, broker commissions, and advertising costs; and
- 4) Any excess of the value of the rent and all of Lessee's other obligations under this Lease over the reasonable expected return from the premises for the period commencing the earlier of the date of trial or the date the premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime rate of major Oregon banks in effect on the date of trial.

10.2.4 *Right to Sue More than Once.* Lessor may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

10.3 Condemnation. A condemnation of the entire building, or a condemnation of any portion of the Leased Area, shall result in the termination of this Lease. Lessor shall receive the total of any amount awarded as a result of any condemnation proceeding or sale in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee. All future rent installments to be paid by Lessee under this Lease shall be terminated.

10.4 Loss of Funding. It is specifically understood that Lessee's need for the Leased Area is dependent on yearly appropriation of funds to the agency as part of the county budget process. If county funding is terminated through the annual budget process, Lessee shall endeavor to give Lessor thirty (30) days' notice of this action and its intent not to continue its occupancy. Lessee shall advise Lessor in writing of any funding cuts as soon as it is officially adopted; however, in such an event, Lessee, regardless of the delivery of notice or not, shall not be liable for any rent after ending the Lease under this provision.

**Article 11: NOTICES**

11.1 Notice. All notices, demands, consents, approvals, and other communications provided for herein will be invalid unless set forth in a writing and delivered by facsimile transmission, overnight air courier, personal delivery, or registered or certified U.S. mail with return receipt requested to the appropriate party at its address as follows:

11.1.1 *Lessor Contact Information.*

Office of General Counsel  
Oregon Mutual Insurance Company  
P.O. Box 808  
McMinnville, OR 97128  
Attn: Vice President – General Counsel

11.1.2 *Lessee Contact Information.*

Attn: Ken Huffer, County Administrator  
Yamhill County  
535 NE 5th St.  
McMinnville, OR 97128

11.2 Change in Address. Addresses for notices may be changed from time to time by written notice to all other parties.

11.3 Facsimile Confirmation. Any communication given by facsimile transmission must be confirmed within 48 hours by overnight air courier.

11.4 Effective Date/Time. If any communication is given by mail, it will be effective on the earlier of (a) 48 hours after deposit in the U.S. mail, with postage prepaid; or (b) actual receipt, as indicated by the return receipt, if given by facsimile, when sent. If communication is given by personal delivery or by overnight air courier, it will be effective when delivered.

**Article 12: ACCESS**

12.1 Access Generally. Lessee will have access to the Leased Area 24 hours per day, 7 days per week, and 52 weeks per year. Subject to any federal or state security regulations, Lessor shall not be liable to Lessee for permitting or refusing to permit access to the Leased Area by anyone. Pursuant to the terms and conditions outlined in Article 12.2 below, Lessor may enter the Leased Area with its passkey or other reasonable means to assess compliance with this Lease; perform required or necessary services, maintenance, repairs, alterations, or services to the Leased Area or Common Areas; show the Property to potential buyers of the building; post appropriate notices; and during the last three months of the Lease Term, show the Leased Area to any potential future Lessee. Except in case of emergency, all entry to the Leased Area shall be at times and in a manner that minimizes interference with Lessee's use of the Property.

12.2 Lessor's Right of Entry. Lessee's utilization of the premises for the provision of services on behalf of Yamhill County requires that the confidentiality and privacy of its clients be maintained. Accordingly, the Lessor agrees to limit its right of entry to the Leased Area to only business hours following 24 hours' notice of intent to enter, to be given to Lessee's person in charge at the premises. Non-business hour entry,

except in case of emergency, shall only occur upon three days' written notice and written approval of Lessee, which approval shall not be unreasonably withheld. Emergency entry without notice may occur in cases where such action is reasonably necessary to prevent injury to persons or to prevent damage to the Leased Area, the building, Common Areas, or any contents therein.

**Article 13: SURRENDER; HOLDOVER**

13.1 Surrender of Property. Upon expiration or earlier termination of this Lease, Lessee shall surrender the Leased Area and, at Lessor's option, all improvements and alterations therein, vacuumed, swept, and free of debris and in good and serviceable condition, subject to ordinary wear and tear. Lessee shall remove all of its personal property and any conduits, wiring, cables, or alterations if required by this Lease and will repair all damage to the Leased Area and/or Common Areas resulting from that removal. If Lessee fails to remove any such personal property or alterations, those items will be deemed abandoned, and Lessor may remove or dispose of the items without liability to Lessee or others. Upon demand, Lessee will reimburse Lessor for the cost of such removal.

13.2 Failure to Surrender; Holdover. If Lessee fails to surrender the Leased Area and remove all its personal property as set forth herein, Lessor may either: (a) recognize Lessee as a month-to-month Lessee at sufferance, and such tenancy will be subject to all terms of this Lease, except that Rent will thereafter be 105% percent of the total Rent for the last month being charged, and all options or other rights regarding extension of the term or expansion of the Leased Area will automatically terminate; or (b) evict Lessee from the Leased Area and recover all damages resulting from Lessee's wrongful holdover.

**Article 14: GOVERNING LAW, JURISDICTION, VENUE, & ATTORNEY FEES**

This Lease shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between Lessee and Lessor that arises from or relates to this Lease shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each party hereby consents to the in personam jurisdiction of said courts. Each party shall be responsible for the party's attorney fees, costs, and disbursements at all times including appeals.

**Article 15: ESTOPPEL**

At any time and from time to time upon not less than 10 days' prior notice from either party, the other party will execute, acknowledge, and deliver to the requesting party a certificate certifying that this Lease is in full force and effect and unmodified or, if there are any modifications, that the Lease is in full force and effect as modified; that Lessee is in possession of the Leased Area; the dates to which rent has been paid in advance and the amount of any security deposit or prepaid rent; and such other matters as may be reasonably requested.

**Article 16: QUIET ENJOYMENT**

Lessor warrants that as long as Lessee complies with all terms of this Lease, Lessee will have quiet and peaceful possession of the Leased Area free of disturbance by Lessor or others claiming by or through Lessor.

**Article 17: FORCE MAJEURE**

If the performance by either party of any provision of this Lease (other than the payment of rent) is prevented or delayed by any strikes, lockouts, labor disputes, acts of God, government actions, civil commotions, fire or other casualty, or other causes beyond the reasonable control of the party from whom performance is required, the party will be excused from such performance for the period of time equal to the time of that prevention or delay up to a maximum of 180 days.

**Article 18: NONWAIVER**

No delay by either party in promptly enforcing any right or remedy set forth in this Lease shall be deemed a waiver thereof, and that right or remedy may be asserted at any time after the delaying party becomes entitled to the benefit of the right or remedy notwithstanding the delay. Further, 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.

**Article 19: CAPTIONS**

The article and section headings of this Lease are for descriptive purposes only and in no way define, limit, or describe the scope, intent, or meaning of this Lease.

**Article 20: INTENTIONALLY OMITTED.**

**Article 21: RECORDS MAINTENANCE**

Lessor shall maintain all fiscal records relating to this Lease in accordance with generally accepted accounting principles. In addition, Lessor shall maintain any other records pertinent to this Lease in such a manner as required by law. Lessor acknowledges and agrees that Lessee, the Oregon Secretary of State's Office, the Federal Government, and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Lease for the purpose of performing audits and examinations and making copies, transcripts, and excerpts. All such fiscal records and documents shall be retained by parties for a minimum of 7 years following final payment and termination of this Lease, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Lease, whichever date is later.

**Article 22: TIME OF THE ESSENCE AND HOLIDAYS**

Time is of the essence of each and every provision hereof. If the final date of any period of time set forth herein occurs on a Saturday, Sunday, or legal holiday, then the expiration of the period of time will be postponed to the next day that is not a Saturday, Sunday, or legal holiday.

**Article 23: COMPLETE AGREEMENT; NO IMPLIED COVENANTS**

This Lease and the attached exhibits and schedules, if any, contain the entire agreement of Lessor and Lessee concerning the Leased Area, Property, Building, Common Areas, and Land, and all prior written and oral agreements and representations between the parties are void. Lessor and Lessee agree that there are no implied covenants or other agreements between the parties except as expressly set forth in this Lease. Neither Lessor nor Lessee is relying on any representations of the other party except those expressly set forth herein.

**Article 24: SUCCESSORS**

This Lease shall bind and inure to the benefit of the parties, their respective heirs, successors, and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate by the duly authorized persons whose signatures appear below.

DATED this 2nd day of November, 2023

OREGON MUTUAL INSURANCE COMPANY

BOARD OF COUNTY COMMISSIONERS FOR YAMHILL COUNTY

Charles S Katter

Lindsay Berschauer

Name

Chair, LINDSAY BERSCHAUER

Vice President- Claims

Mary Starrett

Title

Commissioner, MARY STARRETT

October 27, 2023

Kit Johnston

Date

Commissioner, KIT JOHNSTON

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Justin Hogue

Jodi Gollehon

Justin Hogue  
Yamhill County Deputy County Administrator

Jodi Gollehon  
Yamhill County Assistant County Counsel

Accepted by Yamhill County  
Board of Commissioners on  
11.2.23 by Board Order  
# BO. 23 - 412

**EXHIBIT A**  
*[Property Floor Plan]*

EXHIBIT A

LEVEL 01

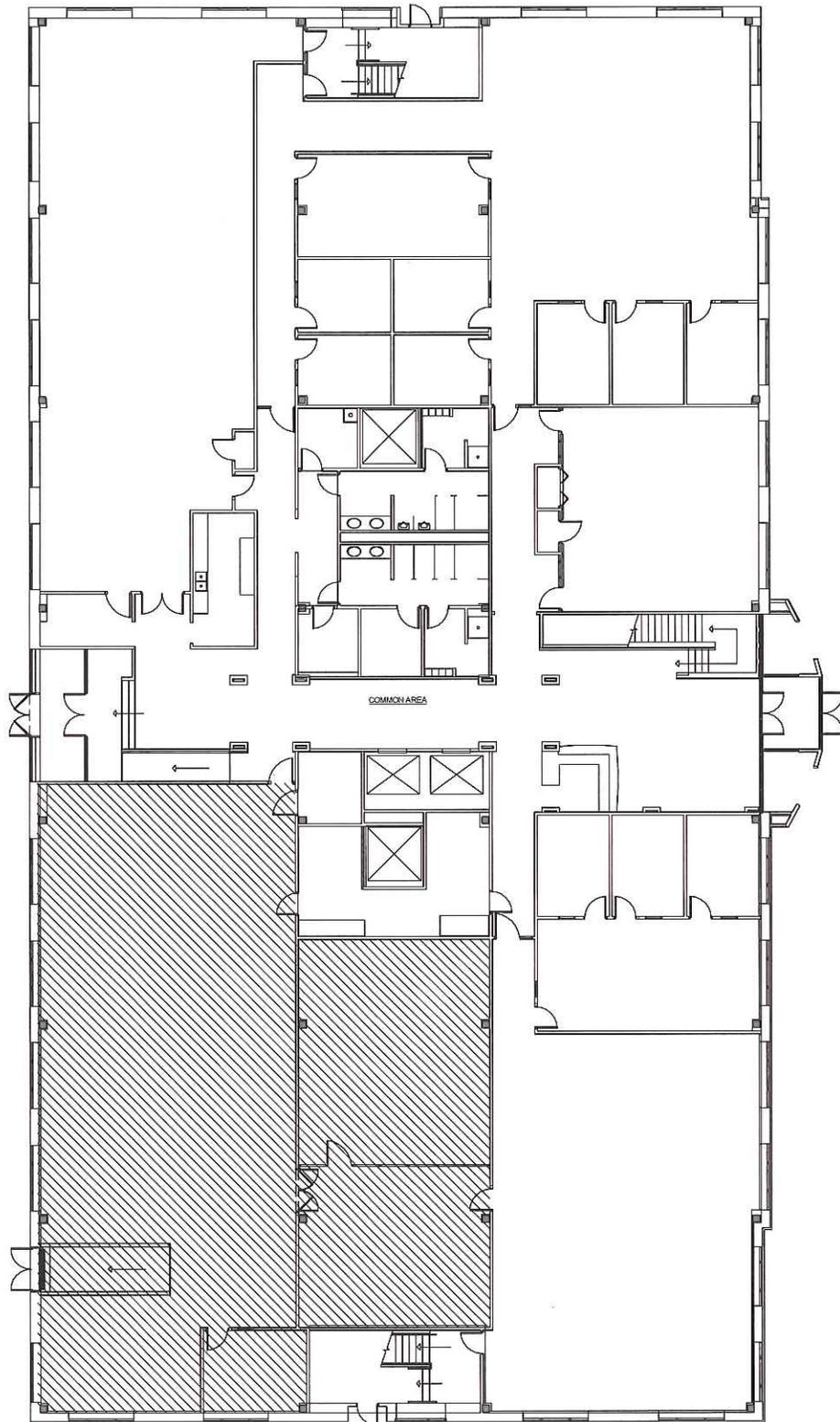
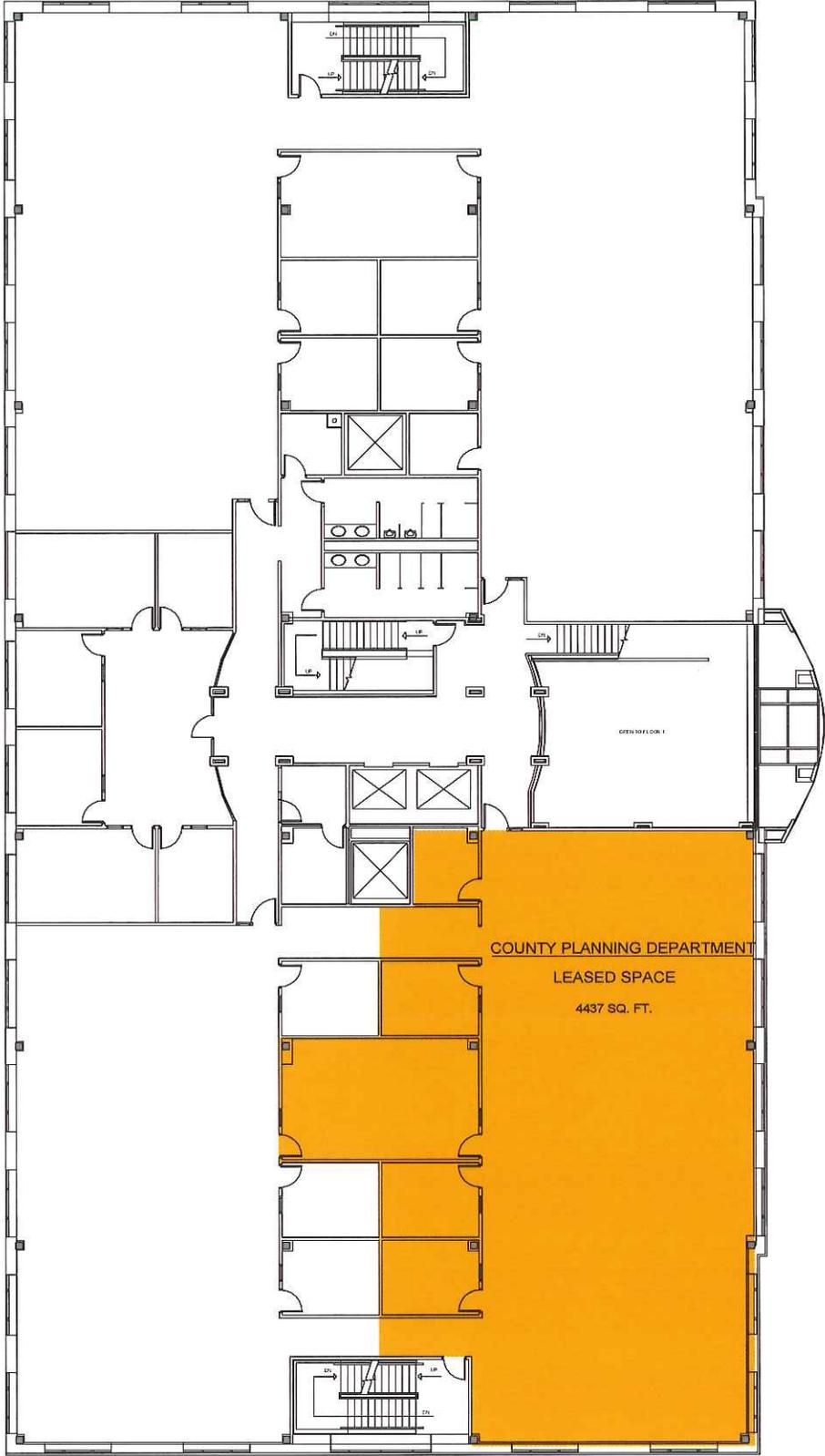


EXHIBIT A

LEVEL 02



**EXHIBIT B**

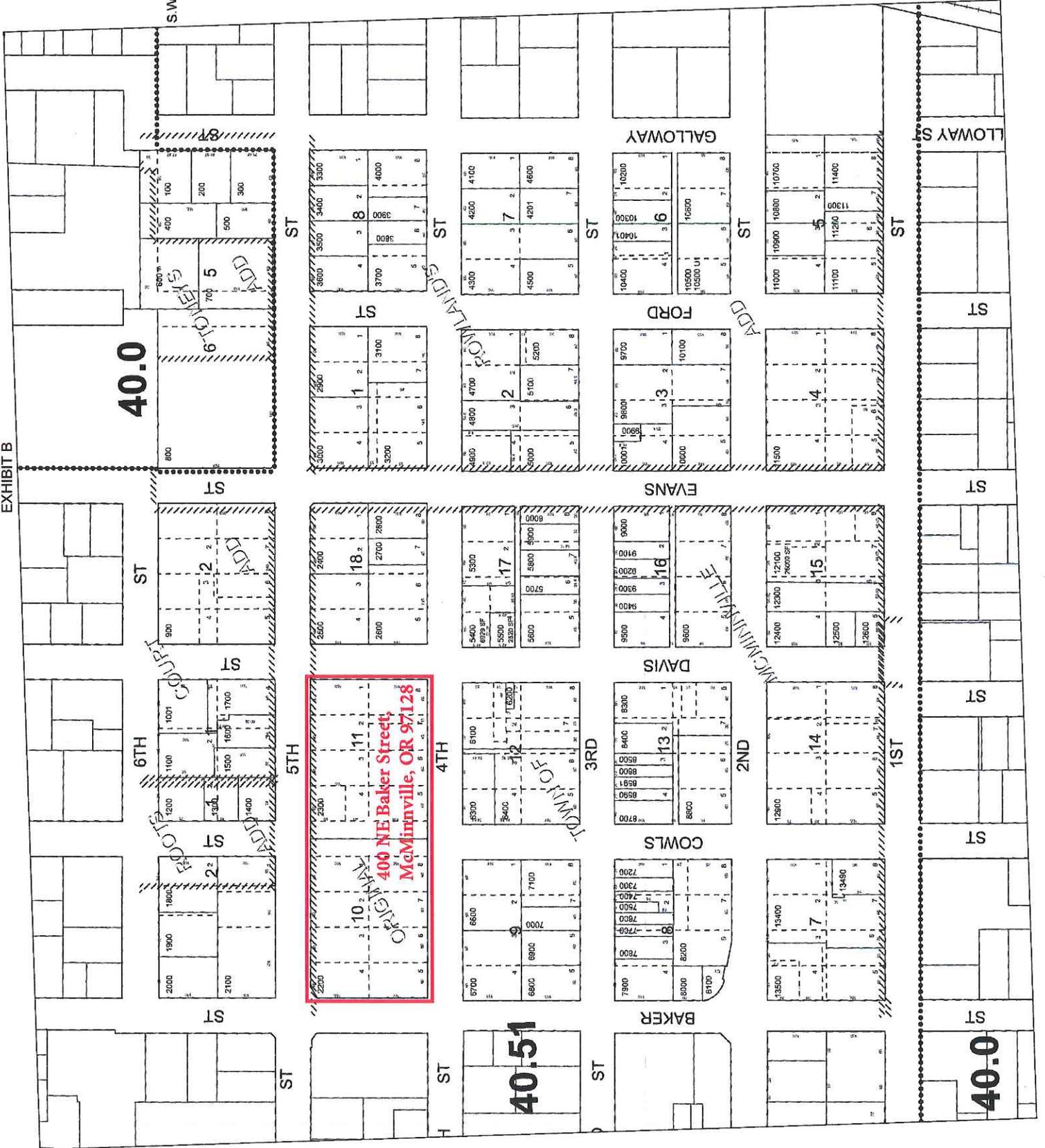
*[Description of the Land where the Building is located & Common Areas]*



ASSESSMENT & TAX  
CARTOGRAPHY

S.W. 1/4 N.W. 1/4 SEC. 21 T. 4S. R. 4W. W.M.  
YAMHILL COUNTY OREGON  
1" = 100'

EXHIBIT B



CANCELLED PLATS:  
9400.001  
1210  
10402

EXHIBIT B

LEVEL 01

- COMMON AREAS
- OMI - NIS

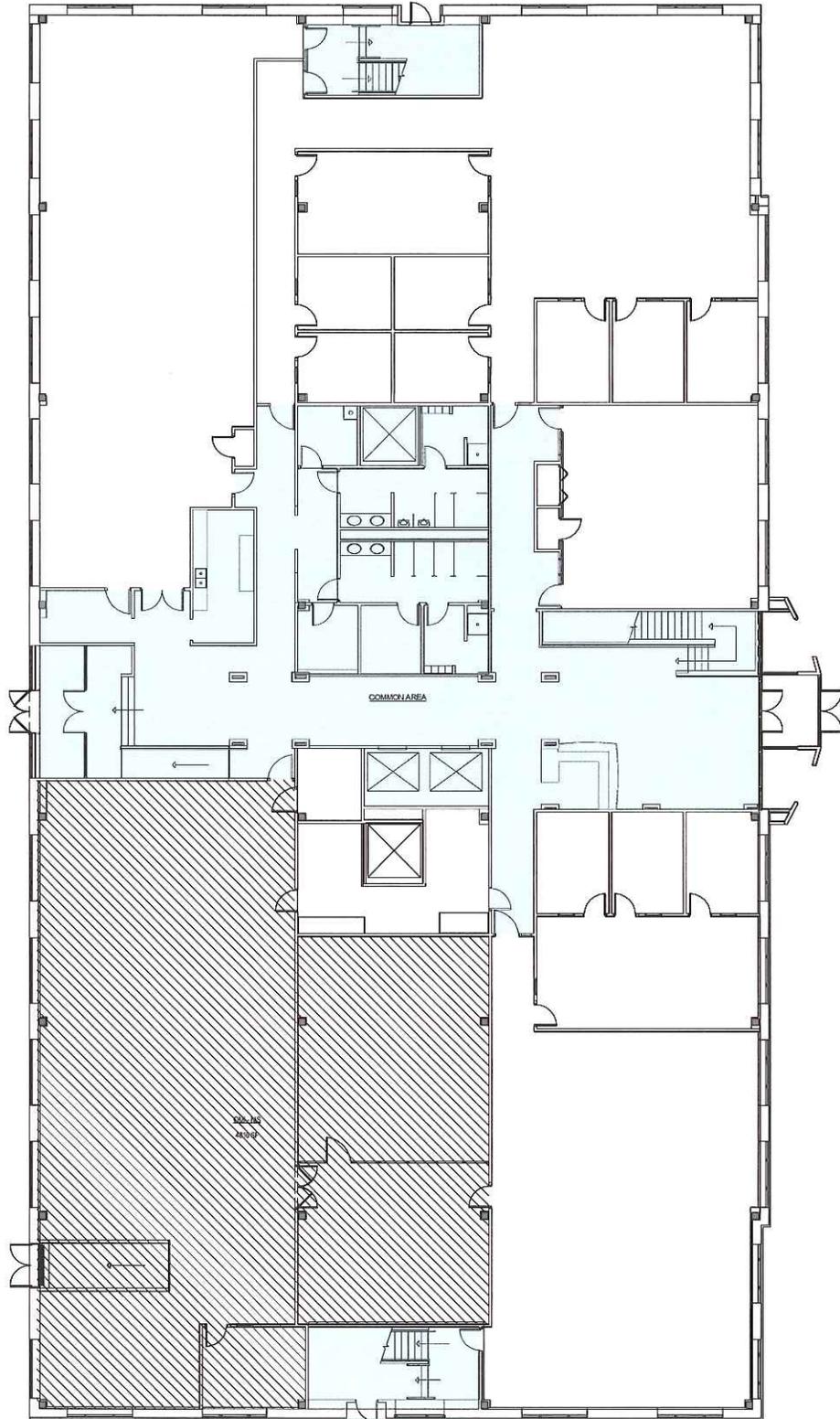
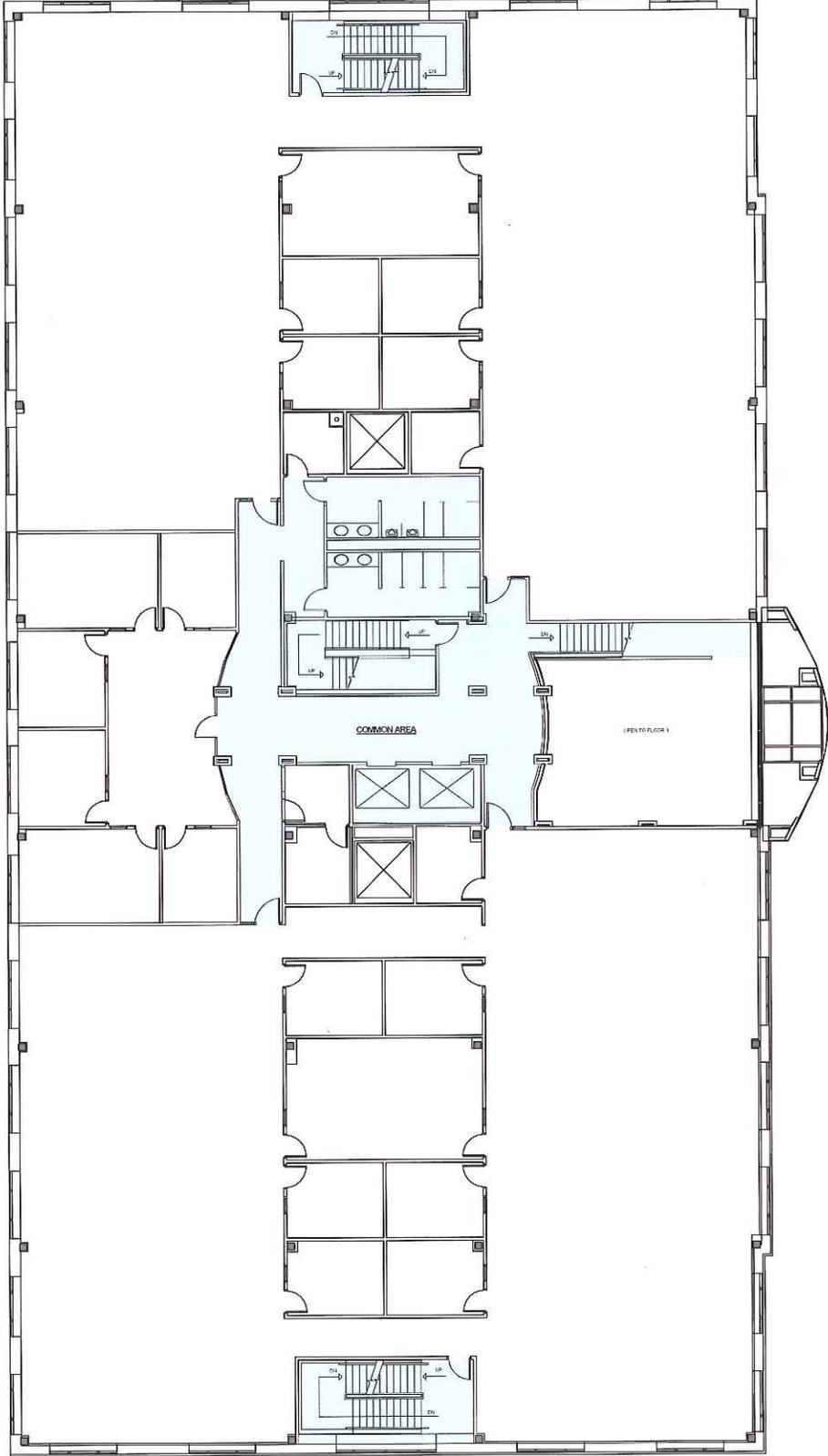


EXHIBIT B

LEVEL 02

COMMON AREA



**EXHIBIT C**  
*[Lessee Improvement Plan]*

EXHIBIT C

Level 02

