

April 11, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Revenue Lease Agreement with Genoa Healthcare, LLC for Space at the Lake Road Health Center. Agreement value is up to \$46,290.84, 3 years and 3 months. Funding is through Genoa Healthcare, LLC. No County General Funds are involved.

Previous Board Action/Review	Briefed at Issues – April 9, 2024		
Performance Clackamas	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy, and secure communities.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Sarah Jacobson	Contact Phone	503-742-5303

EXECUTIVE SUMMARY: This agreement aims to lease pharmacy space at the Lake Road Health Center to Genoa Healthcare, LLC, to provide services to our clients. Services will include purveyance of prescription medication and vaccinations/injections. Genoa Healthcare, LLC currently provides these services at the Beaver Creek Health Center, Sandy Health Center, and the temporary Health Center location at DSB. This lease will replace the lease currently held by Genoa Healthcare, LLC at the DSB and move services to Lake Road Health Center upon its opening to the public.

RECOMMENDATION: The staff respectfully recommends that the Board of County Commissioners approve this agreement and authorize Chair Smith to sign on behalf of Clackamas County.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook

For Filing Use Only

**LEASE BETWEEN
BETWEEN CLACKAMAS COUNTY
AND GENOA HEALTHCARE, LLC**

THIS LEASE (“Lease”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and Genoa Healthcare, LLC (“Lessee”), collectively referred to as the “Parties” and each a “Party.”

RECITALS

County owns certain real property described as follows:

Room 144B (Pharmacy) and 144A (Consult) (the “Rooms”) of the Health Centers Division Behavioral Health Clinic located at 6605 SE Lake Rd. Portland, OR 97222, totaling 656 square feet, further depicted on Exhibit A attached hereto and incorporated by this reference herein,

together with any and all rights, privileges, easements, and appurtenances (collectively, the “Premises”). The Premises includes any and all fixtures, rights, privileges, easements, and appurtenances (collectively the “Improvements”) that may now or exist in the future.

County desires to lease to Lessee, and Lessee desires to lease from County, the Premises subject to the terms and conditions in this Lease.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

- 1. Lease of Premises; Condition of Premises:** County hereby leases the Premises to Lessee, subject to the terms and conditions contained herein. Lessee acknowledges that it has examined the Premises and agrees to accept the Premises in “as-is” condition, and that County has made no representations or warranties regarding the condition of the Premises or its fitness for any particular use.
- 2. Term.** Upon execution of this Lease by both parties (“Effective Date”), the Premises will be leased through June 30, 2027 with renewals of term implemented through written agreement by the parties, unless earlier terminated pursuant to the terms of the Lease.
- 3. Rental Payment.** Lessee shall make rent payments monthly on or before the 1st day of each month following the date that Lessee has taken occupancy the Premises (the “Rental Payment”). Lessee shall have no right to offset rent due under this Lease. The amount of the Rental Payment shall be determined as follows:
 - a. First year.** For the first year of the Lease, Lessee agrees to pay County the annual sum of \$14,976.48 to be paid in twelve equal monthly payments of \$1,248.04. (First year annual lease rate is calculated based on 656 square feet x \$22.83/sq.ft).
 - b. Second year.** For the second year of the Lease, Lessee agrees to pay County the annual sum of \$15,425.76 to be paid in twelve equal monthly payments of \$1,285.48.

- c. **Third year.** For the third year of the Lease, Lessee agrees to pay County the annual sum of \$15,888.60 to be paid in twelve equal monthly payments of \$1,324.05.
- d. **Annual rental adjustment.** For each subsequent year of the Lease, the annual Rental Payment shall increase by the greater of either: (1) three percent (3%) over the prior year's annual rent; or (2) the percentage rate of change in the West Region (Size Class A) of the Consumer Price Index ("CPI") of the US Dept. of Labor, Bureau of Labor Statistics (the "Index") from the last month reported to the same month of the preceding year. Lessee shall pay the adjusted annual rent in twelve equal monthly payments.

If the Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Index.

- 4. **Management Obligations:** Lessee shall direct, manage, supervise, and operate the Premises and all other related or subsequently constructed facilities. Lessee will employ all personnel necessary for these operations, and perform all other activities necessary to operate and maintain the Premises.
- 5. **Use of Premises.** Lessee may use and occupy the Premises during the Term of this Lease solely for the following purposes:
 - a. Operation of a pharmacy and related services from 8am-5pm Monday-Friday, which may be adjusted from time to time with advanced notice to Lessor. Dispense medications and answer questions related to medications. The majority of Genoa consumers will be clients of the Health Centers. Provision of vaccines and long acting injectable medications. Coordination with Health Centers' psychiatric team including regular meetings with Health Centers' leadership and supervising psychiatrist. Manage and maintain deliveries and storage needs. Coordinate with Health Centers' staff in order to work with Facilities and Technology Services to address needs that arise with the space.

Pharmacist will have access to the Premises 24/7 to ensure oversight of medications. Any use of the Premises other than those reasonably necessary to those described above is strictly prohibited.

- 6. **Continuous Operation.** Lessee shall occupy, operate, and manage the Premises continuously for the purposes stated herein and, subject to Section 6 below, carry on business during normal business hours. Lessee may close portions of the Premises for brief periods necessary to perform reasonable repairs and maintenance. However, any closure of any portion of the Premises shall, to the maximum extent practical, be performed in a manner that does not interfere with, damage, disturb, hinder, or prevent the use and enjoyment of those portions of the Premises open for public use and access. Lessee may

not close portions of the Premises for greater than ten (10) business days without the prior written consent of County.

- 7. Compliance with Legal Requirements.** Lessee shall observe and comply with all “Legal Requirements,” defined below, that may apply to the Premises, or to the use or manner of uses of the Premises. Lessee will pay all costs of compliance with the Legal Requirements.

“Legal Requirements” means all applicable present and future federal, state, and local laws, ordinances, orders, rules, regulations, codes, and requirements that now or hereafter apply to the Premises, the Improvements, or any component hereof or any activity conducted thereon, including but not limited to those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).

“Environmental Laws” means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 et seq.), the Clean Air Act (42 USC § 7401 et seq.), amendments to the foregoing, and any rules and regulations promulgated thereunder.

“Hazardous Substances” means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

8. Restrictions on Use of the Premises.

- a.** Lessee shall not use or occupy the Premises, or permit or suffer all or any part of the Premises to be used or occupied: (a) for any unlawful or illegal business, use, or purpose; (b) in any manner so as to constitute a nuisance of any kind; (c) for any purpose or in any way in violation of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (d) for any business, use, or purpose deemed disreputable.
- b.** Lessee shall not cause or permit any waste, damage, disfigurement, or injury to the Premises.
- c.** Lessee shall not use the Premises in any manner that would conflict with the terms and conditions of this Lease.
- d.** Lessee shall not engage in any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent County from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing County to obtain reduced premium rates for long-term fire insurance policies.

- e. Lessee shall refrain from any use that would be reasonably offensive to other tenants, owners, or users of neighboring properties, or that would create a nuisance or damage the reputation of the Premises.
- f. Lessee shall not load the electrical system or floors beyond the point considered safe by an engineer or architect selected by County.
- g. Lessee shall not make any marks on or attach 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 County.

9. Improvements. Lessee may not make any modifications, alterations, or improvements to the Premises or the Improvements without first obtaining County's prior written consent. Any such modification, alteration, or improvement will be performed in compliance with all Legal Requirements and in a good and workmanlike manner. Unless otherwise agreed to in writing, all modifications, alterations, and improvements will become property of the County.

10. Taxes and Utilities

- a. **"Taxes" Defined.** As used in this Lease, the terms "Tax" and "Taxes" mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or the Improvements, or with respect to services or utilities in connection with the use, occupancy, or operations of the Premises or the Improvements, or on County with respect to the Premises or the Improvements, or on any act of leasing space in the Improvements, or in connection with the business of leasing space in the Improvements, including any tax on rents, whether direct or as a part of any "gross receipts" tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes. Taxes will include, but not be limited to, state and local taxes, levies, and assessments, and any tax, fee, or other excise, however described, that may be levied or assessed in lieu of, or as a substitute, in whole or in part, for, or as an addition to any other taxes, and all other governmental impositions and governmental charges of every kind and nature relating to the Premises or the Improvements, including, but not limited to, any road-user or transportation-system-maintenance fee and any charges or fees measured by trip generation or length, parking spaces, impervious surfaces, buildings, vehicle usage, or similar bases for measurement.
- b. **Payment of Taxes.** Lessee pays all taxes that apply to the lease of the premises.
- c. **Contesting Taxes.** If Lessee in good faith desires to contest the validity or the amount of any Tax, Lessee may be permitted to do so by giving to County written notice requesting permission to do so before commencement of such contest. If approved, Lessee may contest with respect to the Property and/or the Improvements. County may, at Lessee's expense (including reimbursement of attorney fees reasonably incurred by County), cooperate with Lessee in any such

contest to the extent that Lessee may reasonably request, but County shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee shall indemnify and save County harmless from any such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Lessee under the provisions of this Lease shall belong to Lessee, except that to the extent any rebates or refunds are related to a period of time in which this Lease is not in effect (either before commencement or after expiration or termination), the portion of the rebate attributable to such time shall be returned to County to the extent previously paid by County.

- d. Evidence of Payment.** Promptly after payment, Lessee shall provide County with evidence reasonably satisfactory to County that all Taxes required to be paid by Lessee have been paid.
- e. Utilities and Services.** Utilities and Services fees are incorporated in Lessee’s monthly rent payment, no additional fees shall be applied for Utilities and Services outside of the monthly rent amount.

11. Insurance. Lessee shall secure at its own expense and keep in effect during the term of the performance under this Lease the insurance required and minimum coverage indicated below. Lessee shall provide proof of said insurance and name Clackamas County as an additional insured on the commercial general liability and automobile policies of insurance. Proof of insurance and notice of any material change should be submitted to the following: HealthCenterContracts@clackamas.us

Required - Workers Compensation: Lessee shall comply with the workers’ compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

This policy(s) shall be primary insurance as respects to County. Any insurance or self-insurance maintained by County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

12. Responsibility for Damages; Indemnity.

Lessee shall be in exclusive control of the Premises. Lessee shall be solely responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, use of the Premises, or from any act, omission, or neglect of Lessee, its subcontractors, agents, or employees.

To the fullest extent permitted by law, Lessee agrees to indemnify, hold harmless and defend County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Lessee or Lessee's employees, subcontractors, or agents. However, neither Lessee nor any attorney engaged by Lessee shall defend the claim in the name of County, or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Lessee settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

13. Liens.

- a. **No Liens.** Lessee shall not suffer or permit any construction liens to attach to or be filed against any part of the Premises owned by County by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or any person occupying or holding an interest in any part of the Premises or the Improvements owned by Lessee. If any such lien is filed against any portion of the Premises or the Improvements, Lessee shall cause the same to be discharged of record within 15 days after the date of its filing by payment, deposit, or bond.
- b. **County Right to Post Notices.** County may post and keep posted at all reasonable times on the Premises notices of non-responsibility and any other notices that County desires or is required to post for the protection of County's interest in the Premises from any such lien.
- c. **No Right to Lien County's Interest.** Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of County, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against County's interest in the Premises or against County's interest, if any, in the Improvements. Lessee shall not be an agent for County.

14. Repairs and Maintenance

- a. **Lessee's Obligation.** Except as expressly provided in Section 19(b), below, Lessee, at its sole expense, must maintain, repair, and replace the Premises and the County-owned Improvements as and when needed so as to keep them clean and in good in good condition and repair, throughout the entire Term. Lessee's obligations extend solely to nonstructural items, all tenant-owned improvements, and to all ordinary maintenance, repair, and replacement work. All of Lessee's maintenance, repairs, and replacements required under this Lease shall be performed in a good and workmanlike manner, of a quality at least equal to the original work, and shall be in compliance with all standards and requirements of law, licenses and municipal ordinances. Lessee's obligations includes, but are not limited to, repair and

maintenance for appliances within the rented premises. County may facilitate obtaining maintenance services for said appliances and issue service fees to Lessee for payment.

- b. County's Obligation.** Consistent with Section 6 of this Lease, County is not required to furnish to Lessee or the Premises any facilities, utilities, or services of any kind whatsoever during the Term except for significant structural repairs, maintenance, or upgrades. County's obligations includes, but are not limited to, plumbing, electrical and all other building maintenance that may affect the Premises. Replacement and function checks of AEDs and Fire Extinguishers. Maintenance performed by County shall be pre-arranged and coordinated with Lessee excepting in emergency circumstances demanding immediate action.

In performing its obligations hereunder, County shall have exclusive access to all or a portion of the Premises. The parties will follow State law regarding access and entry onto the premises.

- 15. Inspection and Access.** County may enter onto the Premises at reasonable times during reasonable business hours to perform inspections, to inspect and take measurements, samples or other activities to access any potential contamination issues, to perform repairs and maintenance under Section 19, above, and to ensure compliance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on County's part to make such inspections or perform such work unless County is otherwise obligated to do so under this Lease. County's performance of any work will not constitute a waiver of Lessee's default in failing to perform the same.

- a. Pursuant to the Oregon State Board of Pharmacy regulations, 855-041-1051, Operation of a Pharmacy, the pharmacy may only be operated when a pharmacist is present. Pursuant to 855-041-1020, Security of Prescription Area, when no pharmacist is present, and County requires access to the Premises, the prescription area shall be secured prior to entry of the Premises by County.**

- 16. Damage and Destruction.** If any Lessee owned Improvement(s) on the Premises are damaged or destroyed by flood, fire or other casualty, Lessee's obligations under the lease will not abate and Lessee shall promptly determine whether to repair, replace, reconstruct, demolish or abandon the Improvement(s). Lessee shall promptly inform County of its decision and its proposed plan of action. Should the Lessee decide to abandon or demolish the damaged Lessee owned Improvement(s) Lessee shall at Lessee's expense clear the remains of the Improvement(s) from the premises unless otherwise directed by County.

- 17. Condemnation.** The Parties expressly acknowledge and understand that the Premises may be subject to condemnation by right of eminent domain. In the event the Premises is subject to condemnation by right of eminent domain by any federal, state, or local agency, the following provisions shall govern.

- a. Total Taking.** If all the Premises is taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a "Taking"), or if in Lessee's reasonable judgment the Taking of any portion of the Premises renders the portion remaining insufficient and unsuitable to permit the restoration of the Improvements following

the Taking, then either party may terminate this Lease by providing written notice thereof within 30 days after the terminating party is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) and Lessee shall vacate the Premises as of the date on which the condemning authority takes possession (any Taking in this section being called a "Total Taking").

- b. Partial Taking and Award for Partial Taking.** If, during the Term, there is a Taking of the Premises, but the Taking is not a Total Taking and not a temporary taking of the kind described below, this Lease will not terminate but will remain in full force and effect with respect to the portion of the Premises not taken.
- c. Temporary Taking.** If there is a Taking of all or a part of the Premises for temporary use, this Lease will continue without change, as between County and Lessee, and Lessee will be entitled to the entire award made for that use.
- a. Award for Total Taking.** It is specifically understood and agreed that County shall be entitled to all of the proceeds of a Total or Partial Taking, and Lessee shall have no claim against County as a result of condemnation. Lessee shall be entitled to the relocation benefits, if any, and all the proceeds of condemnation which are on account of the taking of the improvements, equipment, fixtures or personal property, if any, belonging to Lessee.
- b. Dispute Resolution.** In the event of any dispute between Lessee and County regarding any issue of fact arising out of a Taking mentioned in this Article, the dispute shall be resolved by the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the dispute.

18. Assignment and Subletting. Lessee shall not sell, assign, sublet, grant, or transfer this Lease, or any portion of Lessee's interest therein, without the prior written consent of County. Any attempted assignment or sublet without such prior written consent will be void. County's consent to an assignment or sublease will in no event release Lessee from its liabilities or obligations under this Lease, nor relieve Lessee from the requirement of obtaining County's prior written consent to any further assignment or sublease. County's acceptance of Rental Payments or Revenue Share Payment from any other person will not be deemed to be a waiver by County of any provision of this Lease or consent to any assignment or sublease.

19. Sale of Premises. County may actively market the Premises for sale at any time during the Term of this Lease. Upon sale of the Premises during the Term of this Lease or any extensions, this Lease shall be terminated. County shall not agree to any sale terms that shorten the notice of termination period required to be given to Lessee under this Lease.

20. Default. The following constitute a default under this Lease:

- a.** Lessee's failure to pay any amount required to be paid by Lessee to County under this Lease within 10 days after written notice of such nonpayment is given to Lessee;
- b.** Lessee's violation of any term or condition in this Lease following 30 days' notice and opportunity to cure; after written notice of such violation;

- c. Lessee's failure to occupy the Premises for one or more of the purposes permitted under this Lease for a period of ten (10) business days or more, unless such failure is excused by County;
- d. Lessee becomes insolvent, makes an assignment for the benefit of creditors, a receiver is appointed for Lessee's properties.

21. Termination

- a. **Non-default Termination:** This Lease may be terminated for the following non-default reasons:
 - i. By mutual agreement of the parties;
 - ii. By County for the following reasons:
 - 1. Upon 60 day's written notice to Lessee, for convenience; or
 - 2. If County fails to receive expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to perform under this Lease; or
 - 3. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Lease is prohibited.
 - iii. Upon 30 day's written notice to County, by Lessee for convenience.
- b. **Termination for Default:** upon occurrence of an event of default and failure to cure, if permitted, County may immediately terminate this Lease upon written notice to Lessee and exercise any remedy provided herein.
- c. Upon default or termination of the Lease, the parties will follow State law regarding closure, disposal or removal of pharmaceuticals from the premises.

22. Remedies.

- a. Upon the occurrence of an event of default, County may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:
 - i. Termination. County may terminate this Lease by written notice to Lessee, which is effective immediately, subject to Section 21(c) above.
 - ii. Removal. Subject to Section 21(c), County or County's agent or employee may immediately or at any time thereafter, with or without terminating the Lease, at County's sole discretion, reenter the Premises either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises, to the end that County may have, hold, and enjoy the Premises and the Improvements.
 - iii. Reletting. County may relet the Premises, but County shall not be required to relet the Premises for the purposes specified in the Lease or which purposes County may reasonably consider injurious to the Premises, or to any lessee that County may reasonably consider objectionable. County 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, on any

reasonable terms and conditions County determines, in its sole discretion, to be in the County's best interest. To the extent allowed under Oregon law, County shall not be liable for refusing to relet the Premises or, in the event of reletting, for refusing or failing to collect any rent due on such reletting; and any action of County will not operate to relieve Lessee of any liability under this Lease or otherwise affect such liability. County at its option may make any physical change to the Premises that County, in its sole discretion, considers advisable and necessary in connection with any reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.

- iv. Damages. Whether or not County retakes possession of or relets the Premises, County may recover its damages from Lessee, including without limitation, all lost rentals and all costs incurred by County in restoring the Premises or otherwise preparing the Premises and for reletting, and all costs incurred by County in reletting the Premises.
 - v. Right to Sue More than Once. County may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages shall bar a later action for damages subsequently accruing.
 - vi. Self-Help. If Lessee at any time (a) fails to pay any Tax in accordance with the provisions of this Lease, (b) fails to make any other payment required under this Lease, or (c) fails to perform any other obligation on its part to be made or performed under this Lease, then after 10 days' written notice to Lessee (or without notice in the event of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving County's right to take any action that is permissible under this Lease as a result of the default, County may, (i) pay any Tax or make any other payment required of Lessee under this Lease, and (ii) perform any other act on Lessee's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take any action that may be necessary. All payments so made by County and all costs and expenses incurred by County in connection with the performance of any such act will constitute additional costs payable by Lessee under this Lease and must be paid to County on demand. In no instance shall Lessee be entitled to attorney's fees relating to any default, remedy or self-help, even if it is determined that County did not act appropriately with respect to the same.
 - vii. All Other Remedies. The County shall have any remedy available to it in law or equity, whether or not specified herein.
- b. No Waiver.** No failure by County to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rental Payments or Revenue Share Payments during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, may be waived, altered, or modified

except by a written instrument executed by County. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

- c. **Remedies Cumulative and Nonexclusive.** Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and County's or Lessee's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

23. Surrender and Holdover

- a. **Condition of Premises and Improvements.** Upon expiration of the Term or earlier termination of this Lease, Lessee shall deliver to County the Premises in good condition, free and clear of all occupancies other than subleases to which County has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by County. Lessee shall surrender the Premises and County-owned Improvements in good condition and repair (reasonable wear and tear excepted), free and clear of all occupancies other than subleases to which County has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by County. Lessee shall be solely responsible for the removal or remediation, in compliance with all Legal Requirements, of any Hazardous Substances on the Premises.
- b. **Lessee's Property.** Before the expiration or earlier termination of this Lease, Lessee shall remove all Lessee owned Improvements, furnishings, furniture, and trade fixtures that remain Lessee's property (the "Lessee's Property"). If Lessee fails to do so, at Lessor's option, (a) the failure to remove Lessee's Property will be deemed an abandonment of Lessee's Property, and County may dispose of Lessee's Property in any manner permitted by law; or (b) by written notice given to Lessee, County may elect to hold Lessee to Lessee's obligation of removal, in which case County may remove, transport, and store Lessee's Property and Lessee shall reimburse County for the costs incurred in connection therewith on demand.
- c. **Holdover.** There shall be no holdover permitted under this Lease.

- 24. **Notice** All notices given pursuant to this Lease shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

<p><u>Lessee</u> Attn: Bethany Mitricska Phone: 651-447-4445 Email: bmitricska@genoahealthcare.com</p> <p>Attn: Legal Department Phone: 651-688-0258 Address: 707 S. Grady Way, Suite 400 Renton, WA 98057</p>	<p><u>County</u> Attn: Vivianna Lindley Phone: 971-284-3895 Email: HealthCenterContracts@clackamas.us</p> <p>Attn: Adam Kearn Phone: 503-742-5319 Email: AKearn@clackamas.us Address: 2051 Kaen Road, #367 Oregon City, OR 97045</p>
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25. General Terms and Conditions

- a. **Relationship.** Nothing contained in this Lease will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between County and Lessee.
- b. **Independent Contractor.** The service(s) to be rendered under this Lease are those of an independent contractor. Although the County reserves the right to determine work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Lessee's performance. Lessee is responsible for determining the appropriate means and manner of performing under this Lease. Lessee is not to be considered an agent or employee of County for any purpose. This Lease is not intended to entitle the Lessee to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- c. **Waiver.** Failure of either party at any time to require performance of any provision of this Lease shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.
- d. **Integration.** Except as otherwise set forth herein, this Lease constitutes the entire agreement between the parties on the subject matter of this Lease. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Lease.
- e. **Further Assurances.** The parties to this Lease agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.
- f. **Survival.** All rights and obligations shall cease upon termination or expiration of this Lease except for the rights and obligations set forth in Sections 8, 11, 13, 21, 22, 23 and 26, and all other rights and obligations which by their context are intended to survive.
- g. **Invalidity.** If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

- h. Force Majeure.** If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, terrorism, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.
- i. Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Lease, County is specifically not obligating itself with respect to any discretionary action relating to the Premises including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.
- j. Entire Agreement; Counterparts.** This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Lessee and County mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.
- k. Binding Effect.** The covenants and agreements contained in this Lease are binding on and inure to the benefit of County, Lessee, and their respective successors.
- l. Recordation of Lease.** County may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of Clackamas County, Oregon. Lessee will pay the recording costs.
- m. Time Is of the Essence.** Time is of the essence as to the performance of this Lease.
- n. No Third Party Beneficiaries.** County and Lessee are the only parties to this Lease and are the only parties entitled to enforce its terms. Nothing in this Lease gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Lease.
- o. Access to Records.** Lessee shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Lease. County and its duly authorized representatives shall have access to the books, documents, papers, and records of Lessee, which are directly pertinent to this Lease for the purpose of making audit, examination, excerpts, and transcripts. Lessee shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, 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.

- p. Governing Law.** This Lease, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Lessee that arises out of or relates to the performance of this Lease shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of the courts referenced in this section.
- q. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Lease, each party shall be responsible for its own attorneys' fees and expenses.
- r. Limitation of Liabilities.** This Lease is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Neither party shall be liable for any indirect, incidental, consequential or special damages under this Lease or any damages of any sort arising solely from the termination of this Lease in accordance with the non-default termination provisions of Section 28(a).
- s. Merger.** This Lease constitutes the entire agreement between the parties with respect to the subject matter referenced therein. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Lease. No amendment, consent, or waiver of terms of this Lease shall bind either party unless in writing and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. Lessee, by the signature hereto of its authorized representative, agrees to be bound by the terms and conditions of this Lease.

Genoa Healthcare, LLC

Clackamas County

Todd Gustin

Todd Gustin (Mar 20, 2024 15:47 EDT)

Mar 20, 2024

Authorized Signature

Date

Tootie Smith

Date

Todd Gustin, Chief Executive Officer

Approved as to Form:

Name / Title (Printed)

1070596-93



2024.03.19

15:04:05 -07'00'

Oregon Business Registry #

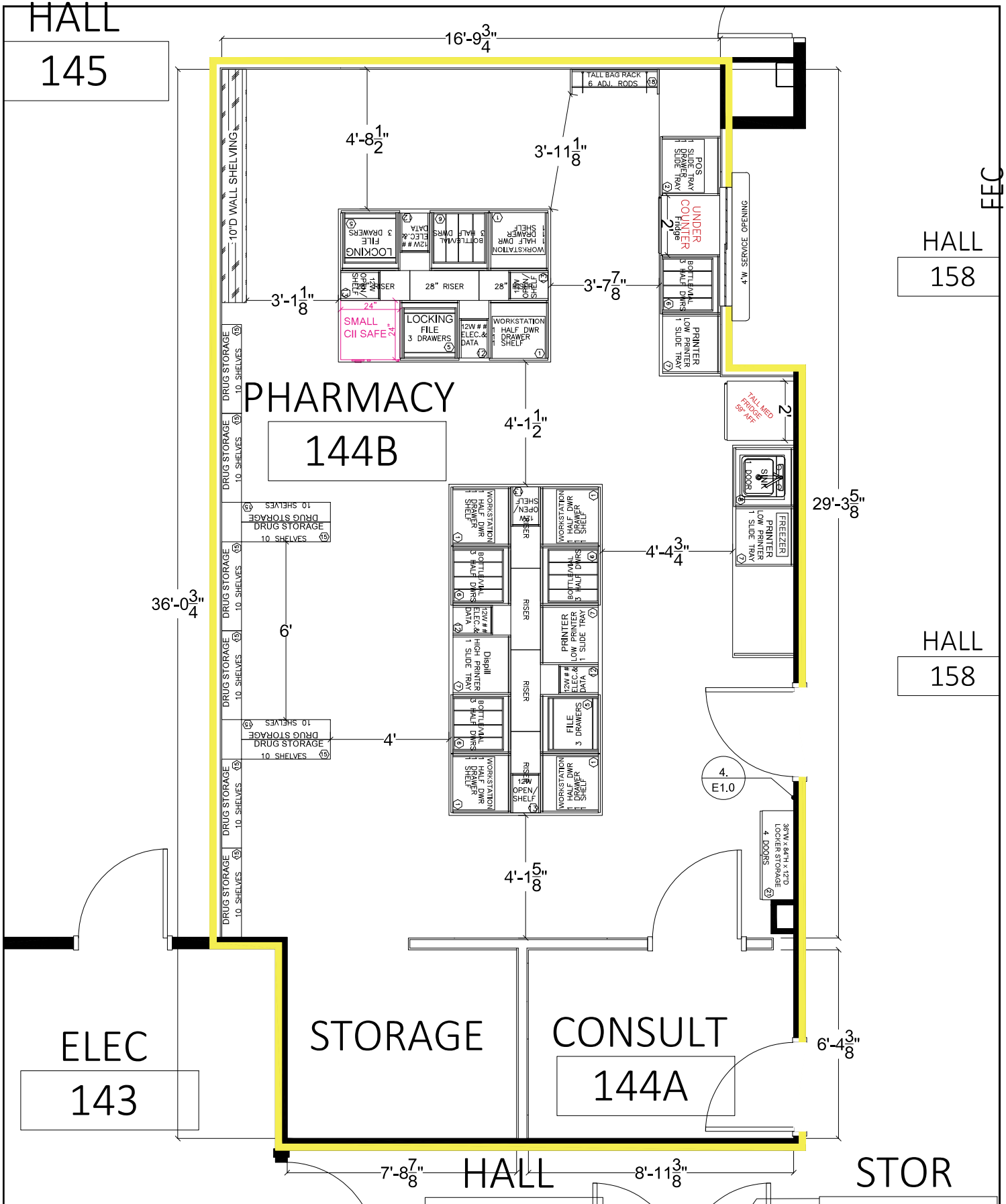
County Counsel

Date

Foreign Limited Liability Company / Pennsylvania

Entity Type / State of Formation

Exhibit A



Genoa @ Clackamas Co
6605 SE Lake Rd.
STE#144
Portland, OR 97222

149 GENOA
HEALTHCARE
PHARMACY
#20541

Total Leased
~656ft²
Pharmacy
~539ft²

142 View of service
window
Revision: 1.1
Date: 1/2/2024