

W. B. D. I.

**AGENDA COVER MEMORANDUM**

**Memorandum Date: June 1, 2011**

**Agenda Date: June 15, 2011**

**TO:** Board of County Commissioners

**DEPARTMENT:** Management Services

**PRESENTED BY:** Jeff Turk, Property Management Officer 2

**SUBJECT:** ORDER/IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A TWO YEAR LEASE WITH TWO, ONE YEAR RENEWAL OPTIONS, FOR AN EXPENSE OF \$138,240, WITH THE CITY OF SPRINGFIELD FOR SPACE FOR THE CENTRAL LANE JUSTICE COURT LOCATED AT 220 FIFTH STREET, SPRINGFIELD

**PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE A TWO YEAR LEASE WITH TWO, ONE YEAR RENEWAL OPTIONS, FOR AN EXPENSE OF \$138,240, WITH THE CITY OF SPRINGFIELD FOR SPACE FOR THE CENTRAL LANE JUSTICE COURT LOCATED AT 220 FIFTH STREET, SPRINGFIELD

**1. AGENDA ITEM SUMMARY:**

The current five year lease agreement for space for the Central Lane Justice Court expires June 30, 2011. The City of Springfield (lessor) wishes to enter into a 2 year agreement for the period July 1, 2011 – June 30, 2013 with option for 2 additional one year renewals upon mutual agreement. The agreement is beyond the limits for execution by the County Administrator without the Board's authorization.

**2. BACKGROUND/IMPLICATIONS OF ACTION:**

**A. Board Action and Other History**

The County initially entered into a five-year lease agreement for the Justice Court space in January 1990 with McKenzie Enterprises which owned the property at that time. During the term of the initial agreement, in addition to the basic monthly rent, the County paid an additional monthly sum to the lessor for reimbursement of approximately \$200,000 for

**C. Board Goals**

Approval of a lease agreement will allow continuation of Justice Court operations.

**D. Financial and/or Resource Considerations**

In addition to the monthly rent of \$5,760, additional monthly expenses of approximately \$1,000 will also be incurred for janitorial services (\$350), utilities (\$500) and maintenance (\$150). Total estimated lease expense for 2 years will be \$162,240 (\$138,240 for rent).

**E. Analysis**

The lease rate offered reflects a “triple net” lease agreement in which the lessee is responsible for most costs associated with building operations (utilities, maintenance, janitorial services and property taxes). Full service lease rates in downtown Springfield range from \$1.00 sq. ft. - \$1.50 sq. ft.

A 2 year agreement with 2, one year option renewals provides flexibility for the County in addressing any Justice Court issues in the future.

**F. Alternatives/Options**

1. Enter into a 2 year lease renewal as proposed.
2. Negotiate different terms as dictated by the Board.

**3. Timing/Implementation**

The current lease agreement expires June 30,2011. A new agreement needs to be executed by that date to maintain the tax exempt status of the premeise.

**4. Recommendation**

It is recommended that the County Administrator be authorized to execute a lease renewal agreement with the City of Springfield which is substantially similar to the attached agreement.

**5. Timing**

The current agreement expires June 30, 2011.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A TWO YEAR LEASE WITH TWO, ONE YEAR RENEWAL OPTIONS, FOR AN EXPENSE OF \$138,240, WITH THE CITY OF SPRINGFIELD FOR SPACE FOR THE CENTRAL LANE JUSTICE COURT LOCATED AT 220 FIFTH STREET, SPRINGFIELD

WHEREAS this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County to enter into a lease agreement with the City of Springfield (lessor) to provide space for the Central Lane Justice Court and

WHEREAS said lease agreement is beyond the authority of the County Administrator to execute without the Board's authorization

IT IS HEREBY ORDERED that the County Administrator is authorized to execute a two year lease agreement, with two, one year renewal options, with the City of Springfield for approximately 8,000 ft. of office space located at 220 Fifth St., Springfield, substantially similar to attached Exhibit "A".

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Faye Stewart, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 6-1-11 lane county

\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A TWO YEAR LEASE WITH TWO, ONE YEAR RENEWAL OPTIONS, FOR AN EXPENSE OF \$138,240, WITH THE CITY OF SPRINGFIELD FOR SPACE FOR THE CENTRAL LANE JUSTICE COURT LOCATED AT 220 FIFTH STREET, SPRINGFIELD

(3) The terms and conditions of the lease for renewal term shall be identical with the Original Term except for rent and except that Tenant will no longer have any option to renew this lease that has been exercised. Rent for a renewal term shall be the greater of (a) the rental during the preceding monthly term or (b) original rent adjusted by the increase in the Portland C.P.I. based on the preceding 6 months percentage increase.

## **Section 2. Rent**

2.1 Base Rent. During the Original Term, Tenant shall pay to Landlord base rent in the amount of \$5,760.00. Rent shall be payable on the 1st day of each month in advance at such place as may be designated by Landlord. The rent has been established to reflect the savings below market rent resulting from Tenant's tax exemption.

2.2 Base Rent for Renewal Term. In the event that Tenant exercises the renewal option, then the base rent for each renewal term shall be as specified in Section 1.2(c).

2.3 Security Deposit. A security deposit is waived.

2.4 Additional Rent. As and for additional rent, the Tenant shall pay to the Landlord the following:

(1) Tenant shall pay a prorated share of all real property taxes and assessments levied against the real property, both land and improvements, during the term of this lease. Said proration shall be based upon the square footage of the leased premises as it relates to the square footage of the entire building owned by the Landlord. Said payment shall be made on or before the 5<sup>th</sup> day of November of each year by the Tenant presenting to the Landlord a check for its proportionate share of taxes and assessments made payable jointly to the Landlord and Lane County Tax Assessor. It is understood and agreed that the Tenant may seek exemption from the payment of taxes due to its governmental status; and in the event Landlord is awarded an exemption from taxes, Tenant shall be excused from the payment of the actual monetary amount of said taxes exempted that would otherwise be paid under this agreement.

(2) Tenant shall further pay as and for rent a prorated share of all insurance premiums paid by Landlord, including those premiums for fire, comprehensive coverage, and liability insurance upon the premises. Payment under this paragraph shall be prorated on the same basis as taxes are prorated above; however, Tenant shall be not responsible for premiums for comprehensive or liability coverage limits above on million dollars.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord.

### 3.3 Hazardous Substance.

(1) Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 3.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

(2) If Tenant breaches the obligations stated herein, or if the presence of Hazardous Material on the Leased Premises caused or permitted by Tenant at any time after execution of this Agreement, results in any contamination of the Leased Premises or any other private or public property, including, without limitation, sewers or streets, or if contamination of the Leased Premises by Hazardous Material otherwise occurs for which Tenant is legally liable to Landlord or to any third party for damages resulting therefrom, then:

(3) Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, judgements, damages, penalties, fines, costs, expenses, liabilities and losses (including, without limitation, diminution in value of the Leased Premises, damages for the loss or restriction on use of the Leased Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) that arise during or after the term of this Lease, as a result of or in connection with such contamination. The foregoing indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial removal or restoration work required or recommended by any federal, state or local governmental agency or political subdivision because of

(1) Repairs and maintenance of the roof and gutters, exterior walls (including painting), bearing walls, structural members, floor slabs, and foundation.

(2) Repair and maintenance of exterior water, sewage, gas, and electrical services up to the point of entry to the leased Premises.

(3) Landlord will maintain exterior of building, roof, and parking lot.

(4) Landlord shall keep and maintain in reasonably good condition, promptly making all necessary repair and replacements, the common areas, short-term parking area, long-term parking area and landscaping.

(5) Landlord has no obligation or responsibility to pay for repairs and maintenance to the HVAC system. Tenants obligations are set forth in Section 4.2(1).

4.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

(1) Tenant, at its own cost and expense, shall keep and maintain all parts of the leased premises (except those for which Landlord is expressly responsible under the terms of this lease) in good condition, reasonable wear and tear excepted, promptly making all necessary repair and replacements, including but not limited to, windows, glass, doors, interior walls, finish work, floor and floor coverings, electrical system, heating and air-conditioning system, plumbing work and fixtures and the whole of the leased premises in a clean and sanitary condition. Tenant shall not be obligated to repair any damage caused by fire or other casualty, covered by the insurance to be maintained by Landlord at Tenant's expense as provided herein.

(2) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, including repairs that would otherwise be the responsibility of Landlord. Tenant will paint interior and replace interior carpets as needed.

(3) Ordinary maintenance of the heating system and any repairs necessary because of improper maintenance.

(4) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 3.2(1).

(5) All other repairs to the premises which Landlord is not required to make under Section 4.1.

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not

## **Section 6. Fire Insurance**

6.1 Fire Insurance. Landlord shall keep the Premises insured on a standard all risks of loss insurance policy including, at Landlord's option, earthquake and flood coverage. Tenant may carry, and shall bear the expense of, any similar insurance insuring the personal property of Tenant and Tenant improvements on the Premises. Tenant shall pay a prorated share of insurance premiums as specified in Section 2.4(a).

6.2 Waiver of Subrogation. Neither the Landlord nor the Tenant shall be liable to the other for loss arising out of damage to or destruction of the Premises, or the building or improvements of which the Premises are a part or with which they are connected, or the contents of any thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard all risk property insurance policy. All such claims for any and all loss, however caused, hereby are waived. Such absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Landlord or Tenant or by any of their respective agents, servants, officials, or employees. It is the intention and agreement that the Landlord and the Tenant shall provide their own property insurance and that both parties shall look to their respective insurance carriers for reimbursement for any such loss, and further, that the insurance carriers involved shall not be entitled to subrogation under any circumstances against any party to this lease. Neither the Landlord nor the Tenant shall have any interest or claim in the other's insurance policy or policies, or the proceeds thereof, unless specifically covered therein as a joint insured.

## **Section 7. Taxes; Utilities**

7.1 Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises. Landlord shall pay when due all real property taxes assessed against the premises provided, however, Tenant shall reimburse Landlord for the payment of said real property taxes as provided herein at Section 2.4(1). Tenant shall pay all real property taxes and special assessments levied against the premises as additional rent in accordance with Section 2.1.

7.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 7.1.

7.3 Contest of Taxes. Tenant shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment.

## **Section 9. Eminent Domain**

9.1 Partial Taking. If a portion of the Premises is condemned and Section 9.2 does not apply, the lease shall continue on the following terms:

(1) Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(2) Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

(3) After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

9.2 Total Taking. If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Tenant was then making of the premises, the lease shall terminate as of the date the title vests in the condemning authorities. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

## **Section 10. Liability and Indemnity**

10.1 Liens. Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 12% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

10.2 Indemnification.

(1) Tenant shall defend, indemnify and hold harmless Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant.



## **Section 12. Default**

The following shall be events of default:

12.1 Default in Rent. Failure of Tenant to pay any rent or other charge within 10 days after it is due.

12.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

12.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default.

## **Section 13. Remedies on Default**

13.1 Termination. In the event of a default the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord 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 and without liability for damages and without having accepted a surrender.

13.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required

## **Section 14. Surrender at Expiration**

**14.1 Condition of Premises.** Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first- class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

**14.2 Fixtures.** All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

**14.3 Holdover.** If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

To Tenant: Jeff Turk  
Lane County Property Manager

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\_\_\_\_\_  
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or to such other address as may be specified from time to time by either of the parties in writing.

16.3 Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

16.4 Recordation. This lease, or any memorandum thereof, shall not be recorded without the prior express written consent of Landlord.

16.5 Entry for Inspection. Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

16.6 Interest on Rent/Late Payment and Other Charges. Any rent or other payment required of Tenant by this lease shall, if not paid within 10 days after it is due, bear interest at the rate of 12% per annum from the due date until paid. In addition, if Tenant fails to make any rent or other payment required by this lease to be paid to Landlord within ten days after it is due, Landlord may elect to impose a late charge of five cents per dollar of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

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

16.8 Oregon Law. This agreement is subject to, and shall be interpreted in accordance with, the laws of the State of Oregon.

16.9 Amendment. No amendment to this lease shall be effective unless made in writing and executed by both parties.

**FIFTH STREET**

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**ALLEY**

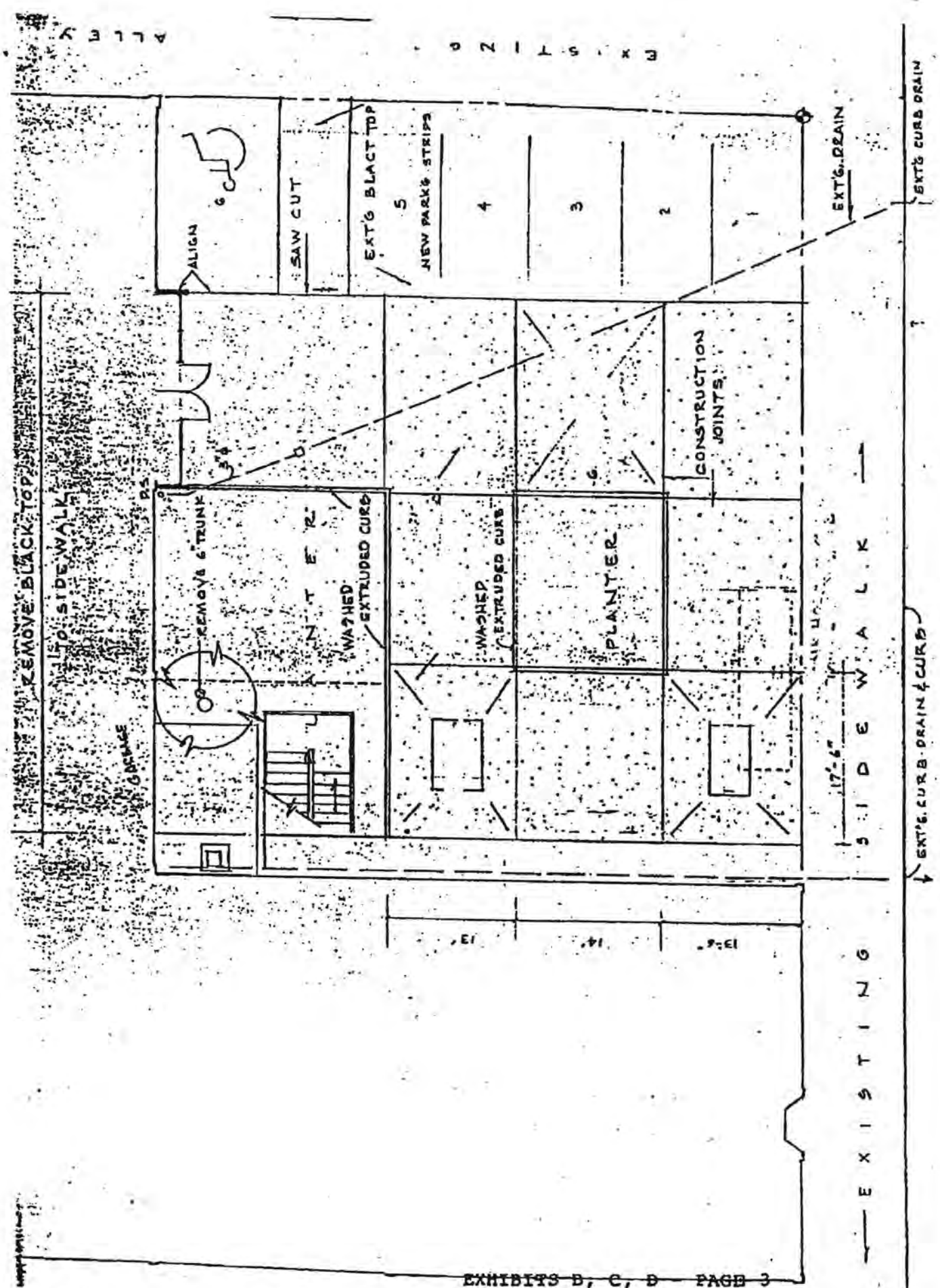
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EXHIBITS B, C, D