

REAL ESTATE EXCHANGE AND PURCHASE AGREEMENT

This Real Estate Exchange and Purchase Agreement ("Agreement") is entered into on _____, 2012 ("Effective Date"), by and between the City of Portland ("the City"), and Legacy Emanuel Hospital & Health Center ("Legacy").

RECITALS

- A. The City owns certain real property located at _____ in the City of Portland, Multnomah County, Oregon, as more particularly described in Exhibit A (the "Kerby Property").
- B. Legacy owns certain real property located at _____ in the City of Portland, Multnomah County, Oregon, as more particularly described in Exhibit B (the "Legacy Property").
- C. Legacy desires to acquire the Kerby Property. The City is willing to convey the Kerby Property to Legacy in exchange for Legacy conveying the Legacy Property to the City with additional consideration on the terms and conditions set forth in this Agreement.

AGREEMENT

1. **Exchange of Property.** The City agrees to convey the Kerby Property to Legacy in exchange for Legacy conveying the Legacy Property to the City (along with additional monetary compensation described in Section 2 below) on the terms and conditions set forth in this Agreement.
2. **Additional Legacy Consideration.** As additional consideration for the Kerby Property, Legacy will pay to and provide to the City the following:
 - 2.1. \$1,100,000 in cash (the "Cash Payment") on the Closing Date as defined in Section 8.1;
 - 2.2. Ten annual payments of \$53,700.00, commencing on the Closing Date as defined in Section 9.1;
 - 2.3. The leasehold described in the Commercial Lease attached hereto as Exhibit C; and
 - 2.4. The easement described in the Emergency Parking Easement Agreement attached hereto as Exhibit D.
3. **Title to the Kerby Property.**
 - 3.1. Title Report. Within three (3) days after the Effective Date, the City will order a preliminary title report from _____ (the "Escrow Agent") with respect to the Kerby Property (the "Kerby Title Report"). The Kerby Title Report will be accompanied by the most legible copies available of all special exceptions listed therein. Legacy will have until seven (7) days after its receipt of the Kerby Title Report and copies in which to notify the City in writing of Legacy's disapproval of any exceptions shown in the Kerby Title Report. Any special assessments shown on the Kerby Title Report that are objected to by Legacy will be included in Legacy's notice. In the event of any disapproval, the City will notify Legacy in writing within ten (10) days after Legacy's notification as to whether the City agrees to remove any of the exceptions so disapproved, and upon delivering the notice, the City will have until the Closing Date to cause the exceptions that the City has agreed to remove to be removed of record and from the Kerby Title Report. Legacy will be deemed to have accepted all title exceptions to which it has not timely objected.

3.2. Rescission of Agreement—Title Defects. If the City elects not to eliminate any title exception disapproved by Legacy, Legacy may elect to cancel this Agreement by written notice to the City given on or before five (5) days after the City's notification of the election, in which case this Agreement will terminate. If Legacy does not elect to cancel this Agreement, Legacy's objections to the disapproved exceptions that the City elected not to eliminate are deemed waived and the Kerby Property will be conveyed to Legacy with such defects without any credits or offsets. The foregoing notwithstanding, the City agrees that it will cause all trust deed liens against the Kerby Property that are not accepted by Legacy to be released of record by the Closing Date. If Legacy fails to give timely notice to the City of termination under this section, then Legacy's right of termination will be deemed waived.

4. Title to the Legacy Property.

4.1. Title Report. Within three (3) days after the Effective Date, Legacy will order a preliminary title report from the Escrow Agent with respect to the Legacy Property (the "Legacy Title Report"). The Legacy Title Report will be accompanied by the most legible copies available of all special exceptions listed therein. The City will have until seven (7) days after its receipt of the Legacy Title Report and copies in which to notify Legacy in writing of the City's disapproval of any exceptions shown in the Legacy Title Report. Any special assessments shown on the Legacy Title Report that are objected to by the City will be included in the City's notice. In the event of any disapproval, Legacy will notify the City in writing within ten (10) days after the City's notification as to whether Legacy agrees to remove any of the exceptions so disapproved, and upon delivering the notice, Legacy will have until the Closing Date to cause the exceptions that Legacy has agreed to remove to be removed of record and from the Legacy Title Report. The City will be deemed to have accepted all title exceptions to which it has not timely objected.

4.2. Rescission of Agreement—Title Defects. If Legacy elects not to eliminate any title exception disapproved by the City, the City may elect to cancel this Agreement by written notice to Legacy given on or before five (5) days after Legacy's notification of the election, in which case this Agreement will terminate. If the City does not elect to cancel this Agreement, the City's objections to the disapproved exceptions that Legacy elected not to eliminate are deemed waived and the Legacy Property will be conveyed to the City with such defects without any credits or offsets. The foregoing notwithstanding, Legacy agrees that it will cause all trust deed liens against the Legacy Property that are not accepted by the City to be released of record by the Closing Date. If the City fails to give timely notice to Legacy of termination under this section, then the City's right of termination will be deemed waived.

5. The City's Representations.

5.1. Content of Representations. To the best of our knowledge the City represents, warrants, and covenants to Legacy as follows:

5.1.1. *No Leases, Contracts, or Utilities.* There are no (i) leases affecting any portion of the Kerby Property that cannot be terminated by the City without cause or penalty no later than two (2) years after the Closing Date, or (ii) services or maintenance contracts or equipment leases in connection with or used by the City in the operation of the Kerby Property that cannot be terminated by the City without cause or penalty no later than two (2) years after the Closing Date.

5.1.2. *No Litigation.* There is no pending litigation or administrative action with respect to the Kerby Property.

5.1.3. *No Condemnation.* There is no pending eminent domain, condemnation, or other governmental taking of the Kerby Property or any portion thereof.

5.1.4. *No Additional Assessments.* There are no extraordinary governmental assessments or impositions levied against the Kerby Property as distinct from ordinary ad valorem property taxes (which will be disclosed in the Kerby Title Report).

5.1.5. *Authority of the City.* The City's execution of, delivery of, and performance under this Agreement are undertaken according to authority validly and duly conferred on the City and the signatories hereto.

5.1.6. *No Breach of Agreements.* This Agreement and the consummation of the transaction evidenced by this Agreement do not violate any other agreement to which the City is a party.

5.1.7. *Nonforeign Status.* The City is not a "foreign person" as defined in IRC §1445(f)(3), and the City is not a "transferor" as defined in ORS 314.258(2)(b).

5.1.8. The representations herein are made by Bryant Enge, as Director of Bureau of Internal Business Services for the City of Portland.

5.2. Survival of Warranties. All of the City's warranties in this Agreement are deemed given only as of the date of this Agreement, but will be updated in a certificate provided to Legacy at and as of the Closing Date. The City's liability for any misrepresentation or the breach of any warranty under this Agreement will survive the closing of this transaction, but any claim for any misrepresentation or breach of any covenant will be deemed to have been waived unless Legacy files and serves a complaint for damages or other remedies based on the alleged misrepresentation or breach within twelve (12) months after the Closing Date.

6. **Legacy's Representations.**

6.1. Content of Representations. To the best of our knowledge, Legacy represents, warrants, and covenants to the City as follows:

6.1.1. *Legacy's Existence and Authority.* Legacy is a validly existing and duly organized nonprofit corporation under the laws of the State of Oregon and has the full right and authority to conduct its business under the laws of the state of Oregon

6.1.2. *No Leases, Contracts, or Utilities.* There are no (i) leases affecting any portion of the Legacy Property, or (ii) services or maintenance contracts or equipment leases in connection with or used by Legacy in the operation of the Legacy Property.

6.1.3. *No Litigation.* There is no pending litigation or administrative action with respect to the Legacy Property.

6.1.4. *No Condemnation.* There is no pending eminent domain, condemnation, or other governmental taking of the Legacy Property or any portion thereof.

6.1.5. *No Additional Assessments.* There are no extraordinary governmental assessments or impositions levied against the Legacy Property as distinct from ordinary ad valorem property taxes (which will be disclosed in the Legacy Title Report).

6.1.6. *Authority of Legacy.* Legacy's execution of, delivery of, and performance under this Agreement are undertaken according to authority validly and duly conferred on Legacy and the signatories hereto.

6.1.7. *No Breach of Agreements.* This Agreement and the consummation of the transaction evidenced by this Agreement do not violate any other agreement to which Legacy is a party.

6.1.8. *Nonforeign Status.* Legacy is not a "foreign person" as defined in IRC §1445(f)(3), and the City is not a "transferor" as defined in ORS 314.258(2)(b).

6.1.9. The representations herein are made by Larry Hill, Director of Corporate Real Estate for Legacy.

6.2. Survival of Warranties. All of Legacy's warranties in this Agreement are deemed given only as of the date of this Agreement, but will be updated in a certificate provided to the City at and as of the Closing Date. Legacy's liability for any misrepresentation or the breach of any warranty under this Agreement will survive the closing of this transaction, but any claim for any misrepresentation or breach of any covenant will be deemed to have been waived unless the City files and serves a complaint for damages or other remedies based on the alleged misrepresentation or breach within twelve (12) months after the Closing Date.

7. **Conditions to Closing.**

7.1. Legacy's Conditions. Legacy acknowledges that the City does not guarantee the satisfaction of the conditions precedent listed in this Section 7.1 and that the City's failure to satisfy the conditions (for any reason other than the City's bad faith) will not be deemed to be a default hereunder but will merely be a failure of a condition to closing, in which event Legacy's sole remedy will be to (1) waive the condition(s) and any claim against the City with respect thereto, or (2) terminate this Agreement. Legacy's obligation to close this transaction is subject to the satisfaction of each of the following conditions:

7.1.1. *The City's Compliance.* The City's fulfillment of each of its obligations under this Agreement in all material respects.

7.1.2. *The City's Representations.* The continuing accuracy of all the City's warranties and representations in this Agreement in all material respects.

7.1.3. *Material Condemnation.* The absence of any condemnation or the institution of condemnation proceedings that result in the taking of any of the Kerby Property. If this transaction closes, the City will assign to Legacy on the Closing Date all condemnation awards and rights to awards that were not used by the City to pay the costs of any restorations of the Kerby Property necessitated by the condemnation.

7.1.4. *Title Insurance.* The Title Company must be ready, willing, and able to issue an extended coverage American Land Title Association owner's policy of title insurance in the amount of \$375,000, insuring title in Legacy to the Kerby Property consistent with the terms of this Agreement and subject only to the title exceptions approved or deemed approved by Legacy.

7.2. The City's Conditions. The City acknowledges that Legacy does not guarantee the satisfaction of the conditions precedent listed in this Section 7.2 and that Legacy's failure to satisfy the conditions (for any reason other than Legacy's bad faith) will not be deemed to be a default hereunder but will merely be a failure of a condition to closing, in which event The City's sole remedy will be to (1) waive the condition(s) and any claim against Legacy with respect thereto, or (2) terminate this Agreement. The City's obligation to close this transaction is subject to the satisfaction of each of the following conditions:

7.2.1. *Legacy's Compliance.* Legacy's fulfillment of each of its obligations under this Agreement in all material respects.

7.2.2. *Legacy's Representations.* The continuing accuracy of all Legacy's warranties and representations in this Agreement in all material respects.

7.2.3. *Material Condemnation.* The absence of any condemnation or the institution of condemnation proceedings that result in the taking of any of the Legacy Property. If this transaction closes, Legacy will assign to the City on the Closing Date all condemnation awards and rights to awards that were not used by Legacy to pay the costs of any restorations of the Land or Improvements necessitated by the condemnation.

7.2.4. *Title Insurance.* The Title Company must be ready, willing, and able to issue an extended coverage American Land Title Association owner's policy of title insurance in the amount of \$87,000, insuring title in the City to the Legacy Property consistent with the terms of this Agreement and subject only to the title exceptions approved or deemed approved by the City.

8. Closing.

8.1. Closing Date. This transaction will be closed within sixty (60) days after the Effective Date of this Agreement or at such other time as the parties may mutually agree in writing (the date that this transaction closes, as evidenced by the recordation of both deeds described herein, being herein referred to as the "Closing Date"). Each party may extend the Closing Date one (1) time by up to five (5) days if the extension is required by illness, transportation delays, the unavailability of the Escrow Agent, or other causes beyond the party's reasonable control.

8.2. Manner and Place of Closing. This transaction will be closed by the Escrow Agent in Portland, Oregon, or at such other place as the parties may mutually agree to in writing. Closing will take place in the manner and in accordance with the provisions set forth in this Agreement.

8.3. Prorations, Adjustments.

8.3.1. All ad valorem real property taxes and assessments (collectively, the "Expenses") will be prorated and adjusted between the parties as of the Closing Date. At closing, Legacy will be given a credit equal to the sum of all accrued but unpaid Expenses with respect to the Kerby Property and Legacy will pay to the City all prepaid but not yet accrued Expenses with respect to the Kerby Property. Any taxes or additional penalties that would be due as a result of removal of the Kerby Property from any tax deferral or special use assessment program will be assumed by Legacy. At closing, the City will be given a credit equal to the sum of all accrued but unpaid Expenses with respect to the Legacy Property and the City will pay to Legacy all prepaid but not yet accrued Expenses with respect to the Legacy Property. Any taxes or additional penalties that would be due as a result of removal of the Legacy Property from any tax deferral or special use assessment program will be assumed by the City.

8.3.2. Legacy will pay the recording fees for the City's deed and the City will pay the recording fees for Legacy's deed.

8.3.3. Legacy will pay the recording fees for the Emergency Parking Easement Agreement.

8.3.4. The City will pay the premium for a standard owner's title insurance covering the Kerby Property policy in favor of Legacy in the amount of \$375,000. Legacy will pay the premium for a

standard owner's title insurance policy covering the Legacy Property in favor of the City in the amount of \$87,000. Any additional title insurance coverage or endorsements requested by either will be paid by the requesting party.

8.3.5. The City and Legacy will each pay one-half of the escrow and closing fees charged by the Escrow Agent.

8.3.6. Each party will pay its own attorney fees.

8.4. Events of Closing. If the Escrow Agent has received the sums required hereunder and is in a position to cause the title insurance policy to be issued as described below, this transaction will be closed on the Closing Date as follows:

8.4.1. The City will convey the Kerby Property to Legacy by bargain and sale deed, subject to the matters accepted or deemed accepted by Legacy under this Agreement.

8.4.2. Legacy will convey the Legacy Property to the City by bargain and sale deed, subject to the matters accepted or deemed accepted by the City under this Agreement.

8.4.3. Each party will provide the other with (i) the Certificate of Nonforeign Status as provided in IRC §1445(b)(2) and (ii) a certificate or other documentary evidence complying with ORS 314.258 that is reasonably acceptable to the receiving party and the Escrow Agent and sufficient to assure the receiving party and the Escrow Agent that no withholding is required under ORS 314.258.

8.4.4. The Escrow Agent will calculate the prorations agreed to herein, and the parties will be charged and credited accordingly.

8.4.5. Any liens to be paid by either party at closing will be paid and satisfied of record at the obligated party's expense.

8.4.6. Legacy will pay the entire Cash Payment to the City in cash as adjusted for the charges and credits set forth in this Agreement.

8.4.7. Legacy will deliver to the City a promissory note at Closing, in a form satisfactory to the City.

8.4.8. Each party will deliver to the other a copy of the Commercial Lease attached as Exhibit C executed by the delivering party.

8.4.9. Each party will deliver to the Escrow Agent a copy of the Emergency Parking Easement Agreement attached as Exhibit D executed by the delivering party.

8.4.10. The Escrow Agent will be committed to issuing the policies described in this Agreement.

8.4.11. Upon compliance with the parties' closing instructions, the Escrow Agent will record the deeds to each respective party as well as the Emergency Parking Easement Agreement.

8.5. Legacy Title Insurance. As soon as possible after the Closing Date, the Escrow Agent will furnish Legacy a standard American Land Title Association form of owner's policy of title insurance covering the Kerby Property in the amount of \$375,000, subject only to the Escrow Agent's standard preprinted exceptions and exclusions for the form and except for the matters accepted or deemed accepted

by Legacy under this Agreement. The costs of additional or extended title insurance beyond standard coverage will be paid by Legacy, and the availability of any such coverage will not be a condition of closing.

8.6. City Title Insurance. As soon as possible after the Closing Date, the Escrow Agent will furnish the City a standard American Land Title Association form of owner's policy of title insurance covering the Legacy Property in the amount of \$87,000, subject only to the Escrow Agent's standard preprinted exceptions and exclusions for the form and except for the matters accepted or deemed accepted by the City under this Agreement. The costs of additional or extended title insurance beyond standard coverage will be paid by the City, and the availability of any such coverage will not be a condition of closing.

8.7. Possession. Legacy will deliver possession of the Legacy Property to the City on the Closing Date. Subject to the Commercial Lease attached as Exhibit C, the City will deliver possession of the Kerby Property to Legacy on the Closing Date.

8.8. Acceptance of Kerby Property. Legacy is acquiring the Kerby Property "AS IS, WHERE IS" in its current condition existing as of the Closing Date, without any representation or warranty of any kind or nature by the City.

8.9. Acceptance of Legacy Property. The City is acquiring the Legacy Property "AS IS, WHERE IS" in its current condition existing as of the Closing Date, without any representation or warranty of any kind or nature by Legacy.

8.10. Waiver of Certain Claims by Legacy. As part of the consideration for this Agreement, Legacy agrees that except for any breach by the City of an express warranty stated in this Agreement, the City has no liability, and Legacy hereby waives any claims and releases the City for all liability, for any title, physical condition, or any other aspect of the Kerby Property, whether direct or indirect, absolute or contingent, foreseen or unforeseen, and known or unknown. The waiver and release extend to the City and the City's affiliates, successors, members, partners, shareholders, directors, officers, employees, and agents, and their respective heirs, successors, and assigns. Without limiting the generality of the foregoing, Legacy waives all rights to contribution, offsets, and damages that in any manner relate to the compliance of the Kerby Property with any law or regulation applicable thereto, including, without limitation, the Americans with Disabilities Act, 42 USC §§12101-12213; the Fair Housing Act, 42 USC §§3601-3631; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC §§9601-9675; the Resource Conservation and Recovery Act, 42 USC §§6901-6992k; the Clean Water Act, 33 USC §§1251-1387; the Safe Drinking Water Act, 42 USC §§300f-300j-26; the Hazardous Materials Transportation Act, 49 USC §§5101-5128; the Toxic Substances Control Act, 15 USC §§2601-2692; and any and all other federal, state, and local personal disabilities and environmental laws or regulations.

8.11. Waiver of Certain Claims by the City. As part of the consideration for this Agreement, the City agrees that except for any breach by Legacy of an express warranty stated in this Agreement, Legacy has no liability, and the City hereby waives any claims and releases Legacy for all liability, for any title, physical condition, or any other aspect of the Legacy Property, whether direct or indirect, absolute or contingent, foreseen or unforeseen, and known or unknown. The waiver and release extend to Legacy and Legacy's affiliates, successors, members, partners, shareholders, directors, officers, employees, and agents, and their respective heirs, successors, and assigns. Without limiting the generality of the foregoing, the City waives all rights to contribution, offsets, and damages that in any manner relate to the compliance of the Legacy Property with any law or regulation applicable thereto, including, without limitation, the Americans with Disabilities Act, 42 USC §§12101-12213; the Fair Housing Act, 42 USC §§3601-3631; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC

§§9601–9675; the Resource Conservation and Recovery Act, 42 USC §§6901–6992k; the Clean Water Act, 33 USC §§1251–1387; the Safe Drinking Water Act, 42 USC §§300f–300j-26; the Hazardous Materials Transportation Act, 49 USC §§5101–5128; the Toxic Substances Control Act, 15 USC §§2601–2692; and any and all other federal, state, and local personal disabilities and environmental laws or regulations.

9. Operation Expenses.

9.1. Legacy agrees to pay ten annual payments of \$53,700 for a period of ten (10) years commencing on the Closing Date. Legacy shall remit payments on or before December 31st of each year. All amounts required from Legacy not paid when due shall bear interest at the rate of one percent (1%) per month. No billing statement shall be provided by or required from the City. Payments will be remitted to: Facilities Services, City of Portland, 1120 SW Fifth Avenue, Room 1204, Portland, Oregon 97204, Attn. Property Management. A Promissory Note in conformance with this obligation will be provided to the City at Closing.

10. Defaults and Failure to Close.

10.1. Remedies. If this transaction fails to close on account of a default by either party under this Agreement, the non-defaulting party will be entitled to any remedies for breach of contract that may be available under applicable law, including without limitation the remedy of specific performance and the right to recover its actual and consequential damages.

10.2. Defaults. Except for a party's wrongful failure to close or satisfy a condition to closing by the required Closing Date, neither party will be deemed in default under this Agreement unless the party is given written notice of its failure to comply with this Agreement and the failure continues for a period of ten (10) days after the date the notice is given. This section will not be construed as extending the time by which any notice or contingency waiver must be given.

10.3. Late Payments. Any debt due to either party by the other under this Agreement that is not paid when due will bear interest from its due date to and including the date of payment at the rate of eighteen percent (18%) per annum, or the maximum rate allowed by law, whichever is less. Debts stated to be payable on demand herein will be considered delinquent as of the fifth (5th) day after a demand is made in writing. The nondefaulting party will also be entitled to reimbursement by the defaulting party of all costs, expenses, collection agency charges, and attorney fees incurred, with or without litigation, in collecting any debt not paid within fifteen (15) days after its due date and written notice of the delinquency.

10.4. Costs and Attorney Fees. If suit, action, arbitration, or mediation is instituted to interpret or enforce the terms of this Agreement or with respect to any dispute under this Agreement, the prevailing party is entitled to recover from the other party the sum that the court, arbitrator, or mediator may adjudge reasonable as costs and expert witness and attorney fees in any such proceeding, at trial, on any appeal or petition for review, and in any bankruptcy proceeding (including the adjudication of any issues peculiar to bankruptcy law), in addition to all other sums provided by law.

11. Conduct of Business.

11.1. Operations. Between the date of this Agreement and the Closing Date, the City will continue to operate the Kerby Property and Legacy will continue to operate the Legacy Property, in both instances in accordance with their respective current management standards and practices and will take no steps or actions that it knows would be materially detrimental to the value of the respective properties.

11.2. Leases. Between the Effective Date and the Closing Date, neither party will enter into any leases of properties to be conveyed hereunder or any portion thereof except for leases pursuant to this Agreement.

11.3. Contracts. Between the Effective Date and the Closing Date, the City will not enter into any service, maintenance, or utility contract with respect to the Kerby Property the term of which extends beyond two years after the Closing Date. Between the Effective Date and the Closing Date, Legacy will not enter into any service, maintenance, or utility contract with respect to the Legacy Property.

11.4. Insurance. The City agrees to continue to maintain its current self insurance program coverage on the Kerby Property until the Closing Date but has no responsibility (i) for maintaining any such insurance after the Closing Date except as described in the Commercial Lease attached hereto or (ii) to assign any policy to Legacy. Legacy agrees to continue to maintain its current casualty and liability insurance coverage on the Legacy Property until the Closing Date but has no responsibility for maintaining any such insurance after the Closing Date or to assign any policy to the City.

11.5. Property Maintenance. Between the date of this Agreement and the Closing Date, both parties agrees to maintain and make ordinary repairs to their respective properties so as to cause them to be delivered to the other parties in substantially the same condition existing as of the end of the Effective Date of this Agreement, ordinary wear and tear, damage by casualty, and damage by condemnation excepted. Each party will promptly notify the other regarding any item of repair, replacement, or maintenance of which it becomes aware and that requires an expenditure in excess of \$10,000. In no event will either party be required to make any capital repairs or replacements to their respective properties between the Effective Date and the Closing Date.

11.6. No Additional Obligations. Neither party has any obligation to maintain, repair, alter, reconstruct, or replace any portion of the properties to be conveyed hereunder or preserve or enter into any existing or new leases or service contracts, and both parties acknowledges that there exist no express or implied representations or covenants to do so.

12. Legal Relationships.

12.1. Relationship of Parties. This Agreement will not create any joint venture, partnership, or other joint undertaking between the parties. Neither party hereto will have any rights to make any representations or incur any obligations on behalf of the other. Neither party has authorized any agent to make any representations, admit any liability, or undertake any obligation on its behalf. Neither party is executing this Agreement on behalf of an undisclosed principal.

12.2. No Third-Party Beneficiaries. No third party is intended to be benefited or afforded any legal rights under or by virtue of this Agreement.

12.3. Joint and Several Liability. If either party comprises more than one person or entity, the obligations of each person or entity comprising such party under this Agreement will be joint and several.

12.4. Assignments and Successors. Neither party may assign or otherwise transfer this Agreement or any interest herein, voluntarily, involuntarily, or by operation of law, without the prior written consent of the other party. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

13. General Provisions.

13.1. Notices. Notices under this Agreement must be in writing and, if personally delivered or sent by facsimile, will be effective when received. If mailed, a notice will be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, directed to the other party. Notices must be delivered, mailed, or sent by facsimile to the following addresses and telephone numbers:

IF TO THE CITY:

IF TO LEGACY:

Either party may change its address for notices by at least fifteen (15) days' advance written notice to the other.

13.2. Time of Essence. Except as otherwise specifically provided in this Agreement, time is of the essence for each and every provision of this Agreement.

13.3. Invalidity of Provisions. If any provision of this Agreement, or any instrument to be delivered by either party at closing under this Agreement, is declared invalid or is unenforceable for any reason, the provision will be deleted from the document and will not invalidate any other provision contained in the document.

13.4. Neutral Construction. This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and will be construed without regard to which party drafted all or part of this Agreement.

13.5. Captions. The captions of the sections and paragraphs in this Agreement are used solely for convenience and are not intended to limit or otherwise modify the provisions of this Agreement.

13.6. Waiver. The failure of either party at any time to require performance of any provision of this Agreement will not limit the party's right to enforce the provision. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

13.7. Subsequent Modifications. This Agreement and any of its terms may be changed, waived, discharged, or terminated only by a written instrument signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

13.8. Saturdays, Sundays, and Legal Holidays. If the time for performance of any of the terms, conditions, and provisions hereof falls on a Saturday, Sunday, or legal holiday, then the time of the performance will be extended to the next business day thereafter.

13.9. Applicable Law and Venue. This Agreement will be construed, applied, and enforced in accordance with the laws of the state of Oregon. All sums referred to in this Agreement will be calculated

by and payable in the lawful currency of the United States. In any action brought to interpret or enforce any of the provisions of this Agreement, the venue will be in Multnomah County, Oregon

13.10. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the Kerby Property and the Legacy Property and supersedes and replaces all written and oral agreements previously made or existing between the parties.

13.11. No Offer. By providing an unexecuted copy of this Agreement to any person, neither party is deemed to have made an offer to sell or purchase or otherwise indicated its willingness to enter into any transaction with respect to the Kerby Property or the Legacy Property, and this Agreement will not be binding on any party unless and until it has been fully executed and delivered by the City and Legacy.

13.12. No Recording. Neither this Agreement nor any memorandum or short form thereof may be recorded.

13.13. Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same contract.

13.14. Facsimile Copies. Either party may rely on facsimile copies of this Agreement to the same extent as the originals.

13.15. Statutory Warning (ORS 93.040(2)). THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

THE CITY OF PORTLAND

LEGACY EMANUEL HOSPITAL & HEALTH CENTER

By: _____
Name: Jack Graham
Its: Chief Administrative Officer
Office of Management and Finance
Date: _____

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT A
Legal description of Kerby Property

**Abends Addition, Block 1, Lots 1 to 9, Tax Lot 700,
Property Tax ID No. R100180,
Multnomah County, Oregon**

EXHIBIT B**Legal description of Legacy Property**

The East 33.33 feet of Lots 9 and 10, except that portion taken for Highway purposes, in Block 15, SUBDIVISION IN PROEBSTEL'S ADDITION TO ALBINA, in the City of Portland, County of Multnomah and State of Oregon.

605281

185705

EXHIBIT C
Commercial Lease

185705

EXHIBIT D
Emergency Parking Easement Agreement

COMMERCIAL LEASE

1. **Effective Date.** _____, 2012
2. **Lessor.** LEGACY EMANUEL HOSPITAL & HEALTH CENTER
3. **Lessee.** THE CITY OF PORTLAND
4. **Property Leased.** The Lessor hereby leases to the Lessee, upon the terms and conditions herein set forth, a portion of the real property and improvements situated in Multnomah County, Oregon, (the "Leased Premises") legally described as:

**Abends Addition, Block 1, Lots 1 to 9, Tax Lot 700,
Property Tax ID No. R100180,
Multnomah County, Oregon**

5. **Term.** The term of this Lease will be for a period of twenty four (24) months, commencing on _____.

6. **Rent.**

6.1 **Monthly Rent.** No base monthly rent will be charged during the term described in Section 5 above. Lessor is granting the leasehold interest described herein in connection with that certain Real Estate Exchange and Purchase Agreement entered into by the parties effective _____, 2012.

7. **Use of Leased Premises.**

7.1 The Lessee will use the Leased Premises during the term of this Lease for storage and repair of Lessee's vehicle pool and for material, equipment and vehicles in an event of an Emergency as defined in City Code Chapter 3.124.010. Lessor's prior written consent is required for other purposes.

7.2 The Lessee will not make any unlawful, improper or offensive use of the Leased Premises; suffer any strip or waste thereof; permit any objectionable noise or odor to escape or to be emitted from the Leased Premises or do anything or permit anything to be done upon or about the Leased Premises in any way tending to create a nuisance; excepting that ordinary activities of the Lessee associated with the permitted use provided for in Section 7.1 above will not be a breach of this provision.

7.3 The Lessee will not allow the Leased Premises at any time to fall into such a state of disrepair or disorder as to increase the fire hazard thereon.

7.4 Lessee will comply at Lessee's own expense with all current and any future laws and regulations of any municipal, county, state, federal or other public authority respecting the

use of the Leased Premises, including, but not limited to compliance with the Americans With Disabilities Act.

8. **Taxes.** As additional rent, the Lessee will pay to Lessor all real property taxes and general and special assessments assessed against the Leased Premises. The parties will reasonably cooperate in the filing for any applicable real property tax exemption. If a real property tax exemption is obtained for the Leased Premises, Lessee will be not responsible for the foregoing additional rent payment, such that the entire benefit of any such exemption will inure to Lessee. Additionally, Lessee will be responsible for payment of all personal property taxes assessed against Lessee's personal property.

9. **Utilities.** The Lessee will pay for all heat, light, water, power and other services or utilities used in the above Leased Premises during Lessee's occupancy of the Leased Premises.

10. **Repairs and Improvements.**

10.1 Lessee, at its cost, will maintain and keep the entire Leased Premises in accordance with current city practice for this lot. Lessor will not have any responsibility to maintain, repair, or improve the Leased Premises.

10.2 Lessee will not make any alterations, additions, renovations or improvements (hereinafter individually and collectively referred to as "alterations") in or to the Leased Premises without first obtaining the written consent of Lessor, which consent will not be unreasonably withheld or delayed.

10.3 All alterations will be made at the sole cost and expense of Lessee.

10.4 All alterations will become the property of Lessor without payment of any consideration at the election of Lessor and, if such election is made, the alterations will remain in and be surrendered with the Leased Premises as a part thereof at the expiration or sooner termination of this Lease; provided, that if Lessor elects not to have the alterations become its property, Lessee will be obligated to restore the Leased Premises, at Lessee's sole cost and expense, to the condition it was in on the Lease commencement date.

10.5 Lessor's review and approval of Lessee's plans, specifications and contractor with respect to any alterations (including core drilling) may be subject to such reasonable restrictions or conditions, including reasonable requirements that Lessor may deem appropriate, including but not limited to (a) the requirement that Lessee provide not less than five (5) days' notice prior to the commencement of any work, (b) that Lessee file and post all appropriate notices and otherwise conform to all appropriate statutes, ordinances, rules and regulations, and (c) the posting and providing by Lessee of appropriate payment and performance and lien indemnity bonds in an amount satisfactory to Lessor.

11. **Lessor's Right of Entry.** Lessor and Lessor's agents and representatives may upon 24 a hour written notice, at any reasonable time, enter into or upon the Leased Premises for the purpose of examining into the condition thereof, or for any other lawful purpose provided that such entry shall not interfere with business of the Lessee.

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12. **Right of Assignment.** The Lessee will not assign or transfer this Lease, or any interest herein, or permit any other person or persons whomsoever to sublease or otherwise occupy the Leased Premises, or any portion thereof, without the consent of the Lessor being first obtained in writing, which consent will not be unreasonably withheld. This Lease is personal to the Lessee; Lessee's interests, in whole or in part, cannot be sold, assigned, transferred, seized or taken by operation at law, or by virtue of any legal process, attachment or proceedings instituted against the Lessee, or under or by virtue of any bankruptcy or insolvency proceedings had in regard to the Lessee, or in any other manner, except as above mentioned. Lessor's consent to any assignment will not operate as a release of Lessee from any obligation under this Lease.

13. **Liens.** The Lessee will not permit any lien of any kind to be placed upon the building(s) in which the Leased Premises are situated, or the real estate on which it stands.

14. **Ice, Snow, Debris.** Lessee will keep the sidewalks in front of the Leased Premises free and clear of ice, snow, rubbish, debris and obstruction, and will hold harmless and protect the Lessor against any injury whether to Lessor or to Lessor's property or to any other person or property caused by Lessee's failure in that regard.

15. **Indemnification.**

15.1 Neither Lessor nor Lessor's parent, subsidiaries, directors, officers, employees, or agents (collectively, the "Indemnified Parties") will be liable to Lessee, or to Lessee's employees, agents, invitees, licensees, contractors, or visitors, or to any other person, for any injury to person or damage to property or for consequential damages of any nature on or about the Leased Premises caused by any act or omission of Lessee, its agents, servants, or employees, or of any other persons entering upon the Leased Premises under express or implied invitation by Lessee; provided, however, subject to the provisions of Section 18 below, which provisions shall control the terms of this Section 15, an Indemnified Party will be liable for actual damages resulting from its sole negligence or willful misconduct.

15.2 To the extent permitted by Oregon Law and subject to the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, Lessee agrees to indemnify, defend, and hold harmless Indemnified Parties of and from any and all claims, demands, causes of action, losses, liabilities, judgments, attorney's fees, expenses, or damages (i) arising from any accident, incident, injury, damage, caused by Lessee, to any person or property occurring in or about the Leased Premises, except to the extent such accident, incident, injury or damage is caused by the negligence or willful misconduct of an Indemnified Party, (ii) arising out of any and all defaults by Lessee or its agents, employees, or contractors under this Lease, or (iii) arising out of the negligence or willful misconduct of Lessee or its agents, employees, or contractors. Lessee will, at its own cost and expense, defend any and all suits which may be brought against Indemnified Parties either alone or in connection with others upon any such above mentioned cause or claim, and will satisfy, pay and discharge any and all judgments that may be recovered against Indemnified Parties in any such action or actions in which Indemnified Parties may be a party defendant.

15.3 Lessor agrees to indemnify, defend and hold harmless Lessee and its agents, servants, and employees and permitted successors and assigns of and from any loss, attorney fees, expenses, or claims to the extent arising out of (i) any and all defaults by Lessor under this

Lease, or (ii) the negligence or willful misconduct of Lessor or its agents, employees or contractors.

15.4 The provisions of this Section 15 will survive expiration or earlier termination of this Lease with respect to claims or liability occurring prior to such termination.

16. Liability Insurance.

Landlord acknowledges that Tenant is self-insured and will not obtain a separate insurance policy for this Lease. If Tenant is no longer self-insured, then Tenant shall obtain commercial general liability (CGL) insurance, including automobile liability, that protects Landlord and Tenant from damage to property or personal injury, including death, arising from Tenant's activities or any condition of the Premises, whether or not related to an occurrence caused or contributed to by Landlord's negligence. The CGL insurance shall: protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under this Lease and shall protect Landlord and Tenant against claims of third persons; be for not less than \$1,000,000 per each occurrence; and, be without prejudice to coverage otherwise existing and shall name as additional insureds Landlord and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the CGL insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The GCL insurance coverage shall apply as to claims between insured on the policy. Tenant agrees to maintain continuous, uninterrupted insurance coverage for the duration of the Lease.

17. Fixtures. All partitions, plumbing, electrical wiring, additions to or improvements upon the Leased Premises, whether installed by the Lessor or Lessee, will become a part of the improvement as soon as installed and are the property of the Lessor unless otherwise herein provided.

18. Waiver of Subrogation Rights. Neither Lessor nor Lessee will be liable to the other for loss arising out of damage to or destruction of the Leased Premises, or the building(s) or improvement upon the Leased Premises, 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 form of fire insurance with extended coverage, including sprinkler leakage insurance, if any. All such claims for any and all loss, however caused, hereby are waived. The absence of liability will exist whether or not the damage or destruction is caused by the negligence of either Lessor or Lessee or by any of their respective agents, servants or employees. It is the intention and agreement of the Lessor and the Lessee that the rentals reserved by this Lease have been fixed in contemplation that each party will fully provide his own insurance protection at his own expense, and that each party will look to his respective insurance carriers for reimbursement of any such loss, and further, that the insurance carriers involved will not be entitled to subrogation under any circumstances against any party to this Lease. Neither the Lessor nor the Lessee will have any interest or claim in the other's insurance policy or policies, or the proceeds thereof, unless specifically covered therein as joint assured.

19. Eminent Domain. If all of the Leased Premises are taken by eminent domain, this Lease will automatically terminate as of the date Lessee is required to vacate the Leased

Premises, and any and all rentals will be paid to that date. In case of a taking of a part of the Leased Premises, then this Lease will continue in full force and effect and the rental will be equitably reduced, based on the proportion by which the area of the Leased Premises is reduced, such rent reduction to be effective as of the date possession of such portion is delivered to the condemning authority. Lessor reserves all rights to damages to the Leased Premises for any taking by eminent domain, and Lessee hereby assigns to Lessor any right Lessee may have to such damages or award, and Lessee will make no claim against Lessor for damages for termination of the leasehold interest or interference with Lessee's business. Lessee will have the right, however, to claim and recover from the condemning authority compensation for any loss to which Lessee may be put for Lessee's moving expenses and for the interruption of or damage to Lessee's business, provided, that such damages may be claimed only if they are awarded separately in the eminent domain proceeding and not as part of the damages recoverable by Lessor.

20. Environmental Compliance.

20.1 Application. The parties acknowledge that Lessee has owned and operated the land on which the Lease Premises are located prior to the commencement of this Lease. The parties acknowledge and agree that the terms set forth in this Section 20 are intended to apply only to Lessee's conduct during the term of this Lease and that they are not intended to hold Lessee liable for conduct that occurred prior to the commencement of this Lease or for the condition of the Leased Premises as of the commencement of this Lease.

20.2 Presence and Use of Hazardous Substances. Lessee will not, without Lessor's prior written consent, keep on or around the Leased Premises, for use, disposal, treatment, generation, storage or sale, any substances designated as, or containing components designated as hazardous, dangerous, toxic or harmful (collectively referred to as "Hazardous Substances"), and/or any substance that is subject to regulation by any then-current federal, state or local law, statute or ordinance and the rules and regulations implementing them, including, but not limited to, the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 7401 et seq.); the Clean Water Act (33 U.S.C. § 1251 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); and all applicable Oregon Statutes and regulations.

20.3 Permitted Use of Hazardous Substances. Lessee may use, generate, store, handle, contain, transport, treat and dispose of Hazardous Substances to the extent that such activities are necessary in and/or typical of the business of Lessee which are permitted uses pursuant to Section 7. All use, generation, storage, handling, containment, transportation, treatment and disposal of Hazardous Substances incidental to Lessee's business by Lessee will be subject to and will be in prompt and timely compliance with the terms and conditions of all applicable laws set forth above. In the event that the State of Oregon or the federal government has or hereinafter enacts any laws, rules, regulations or ordinances governing the use, generation, storage, handling, containment, transportation, treatment or disposal of Hazardous Substances, Lessee also will comply with all of the current applicable provisions thereof.

20.4 Lessee Covenants: Hazardous Substances. Lessee agrees as follows:

20.4.1 To comply promptly, timely, and completely with all governmental requirements for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers;

20.4.2 To submit to Lessor true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;

20.4.3 Within five (5) days of Lessor's request, to submit written reports to Lessor regarding Lessee's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to Lessor of Lessee's compliance with the applicable government regulations;

20.4.4 To allow Lessor or Lessor's agent or representative to come on the Leased Premises at all times to check Lessee's compliance with all applicable governmental regulation regarding Hazardous Substances;

20.4.5 To comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Leased Premises, such levels or standards will be established by an on-site inspection by the appropriate governmental authorities and will be set forth in an addendum to the Lease);

20.4.6 To comply with all applicable governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances; and

20.4.7 To pay to Lessor upon demand as additional rent any and all costs incurred by Lessor after a violation or breach by Lessee of its obligations under this Section and associated with Lessor's inspection of the Leased Premises and Lessor's monitoring of Lessee's compliance with this Section, including Lessor's attorneys' fees and costs.

20.5 Unauthorized Releases.

20.5.1 Lessee will give immediate notice to Lessor of any release of any Hazardous Substance on or at the Leased Premises or surrounding environment, which release was not made pursuant to or in conformance with the terms of any permit or license issued to Lessee by the appropriate governmental authority. This notice will include a description of measures taken or proposed to be taken by Lessee to contain and/or remedy the release and any resultant damage to property, persons, the Leased Premises, and/or environment.

20.5.2 At Lessee's own expense, Lessee will promptly take all steps necessary to contain and remedy any release of Hazardous Substances to or in the Leased Premises, or surrounding environment, and all resultant damage or injury to property, persons, and the environment.

20.6 Clean-up Costs. Lessee will be fully and completely liable to Lessor for any and all clean-up costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, generation, handling, storage, containment, disposal, transportation, and/or sale of Hazardous Substances.

20.7 Indemnification. To the extent permitted by Oregon Law and subject to the limits of the Oregon Tort Claims Act, ORS 30.260 to 30.300, Lessee will indemnify, defend and hold Lessor harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Lessor (as well as Lessor's attorneys' fees and costs) as a result of Lessee's use, generation, handling, storage, containment, disposal, transportation, and/or sale of Hazardous Substances. Lessor will indemnify, defend and hold Lessee harmless from any and all of the cost, fees, penalties and charges assessed against or imposed upon Lessee (as well as Lessee's attorneys' fees and costs) as a result of Lessor's use, generation, handling, storage, containment, disposal, transportation, and/or sale of Hazardous Substances.

20.8 Default. Upon Lessee's default under this Section, and in addition to the rights and remedies set forth elsewhere in this Lease, Lessor will be entitled to the following rights and remedies:

20.8.1 At Lessor's option, to terminate this Lease immediately; and

20.8.2 To recover any and all damages associated with the default, including, but not limited to, clean-up costs and charges, civil and criminal penalties and fees, loss of business and sales by Lessor, and any and all damages and claims asserted by third parties and Lessor's attorneys' fees and costs.

21. Delivering Up Premises on Termination. At the expiration of the term or upon any sooner termination thereof, the Lessee will quit and deliver up the Leased Premises and all future erections or additions to or upon the same, broom-clean, to the Lessor or those having Lessor's estate in the premises, peaceably, and in good order and condition, reasonable use and wear thereof, damage by fire, unavoidable casualty and the elements alone excepted, as the same are now in or hereafter may be put in by the Lessor.

22. Default, Remedies.

22.1 Default. The occurrence of any one or more of the following events will constitute a default and breach of this Lease by Lessee:

22.1.1 Failure to Perform. The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, where such failure continues for a period of twenty (20) days after written notice thereof by Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than twenty (20) days are reasonably required for its cure, then Lessee will not be deemed to be in default if Lessee commences such cure within said twenty (20) day period and thereafter diligently prosecutes such cure to completion.

22.1.2 Insolvency. Either (a) the appointment of a receiver to take possession of all or any part of the assets of Lessee; or (b) the general assignment by Lessee for the benefit of

creditors; or (c) any action taken or suffered by Lessee under any state or federal insolvency or bankruptcy act if such appointment, assignment or action continues for a period of sixty (60) days.

22.2 Remedies. In the event of a default, Lessor, besides other rights or remedies that it may have, will have the right to terminate this Lease. Whether this Lease is terminated or not, Lessee will pay to Lessor, as soon as ascertained, the reasonable costs and expenses incurred by Lessor in obtaining possession of the Leased Premise and exercising its rights hereunder which costs and expenses will include but not be limited to attorneys' fees (whether or not suit is commenced), and repair and/or construction costs.

22.3 Other Remedies. Lessor will have the right, in addition to the remedies set forth above, to pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state in which the Leased Premises is located.

23. Holding Over. If Lessee for any reason holds over after the expiration or earlier termination of this Lease, such holding over will not be deemed to operate as a renewal or extension of this Lease, but will only create a tenancy at sufferance with rent payable to Lessor at a fair market rent that is reasonably determined by Lessor. Any such tenancy may be terminated at will at any time by the Lessor. Additionally, the parties acknowledge that any holdover by Lessee may interfere with Lessor's development of the land on which the Leased Premises are located and that any such delay might result in lost business to the Lessor as well as Lessor liability to third parties involved in such development. Therefore, if Lessee holds over after the expiration of the twenty four month term, Lessee will be liable to Lessor for any direct damages incurred Lessor as a result of such holdover as well as any consequential damages incurred by Lessor as a result of such holdover, including lost business or liability to any third parties.

24. Lessee's Estoppel Certificates.

24.1 General. Lessee will, within ten (10) days of request by Lessor, execute, acknowledge and deliver to Lessor or its designee a written statement certifying as follows: (a) the date this Lease was executed, its commencement date if different from the date of execution and the date on which this Lease expires; (b) the date Lessee entered into occupancy of the Leased Premises; (c) the amount of rent payable under this Lease; (d) the date to which the rent has been paid; (e) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or specifying the date and terms of agreement so affecting this Lease); (f) that this Lease represents the entire agreement between the parties as to this leasing; (g) that all conditions under this Lease to be performed by Lessor have been satisfied (or specifying those conditions which Lessee claims have not been satisfied; (h) that there are not existing defenses or offsets which Lessee has against the enforcement of this Lease by Lessor; (or specifying those defenses or offsets claimed by Lessee); (i) that no rent has been paid more than one month in advance; (j) and that no security has been deposited with Lessor.

24.2 Reliance. It is intended that any such statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Lessor's interest or a mortgagee of Lessor's interest or assignee of any mortgage upon Lessor's interest in the Leased Premises.

24.3 Failure to Respond. If Lessee fails to respond within ten (10) days of receipt by Lessee of a request by Lessor as herein provided, Lessee will be deemed to have given such certificate as above provided without modification and will be deemed to have admitted the accuracy of any information supplied by Lessor to a prospective purchaser or mortgagee and that this Lease is in full force and effect, that there are no uncured defaults in Lessor's performance, that the prepaid rent (if any) is as stated in this Lease, and that not more than one month's rent has been paid in advance.

25. Priority. Lessee agrees that this Lease will be subordinate to any first mortgages or deeds of trust that may heretofore be placed upon the Leased Premises, and to the interest thereon, and all renewals, replacement and extensions thereof. Provided, however, as long as Lessee performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under such encumbrance, and no steps or procedures taken under such encumbrance, will affect Lessee's rights under this Lease.

26. Attorneys' Fees and Court Costs. In case suit or action is instituted to enforce compliance with or interpret any of the terms of this Lease, the losing party agrees to pay the prevailing party a reasonable attorney's fee, together with all costs and expenses incurred in connection with such actions, including the reasonable cost of searching records to determine the condition of title at the time suit is commenced, such fees and costs to be approved by the court after trial and/or appeal.

27. Waiver. Any waiver by either party of any breach of any covenant herein contained to be performed by the other party will not be deemed as a continuing waiver, and will not operate to bar or prevent the non-breaching party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

28. Notices. Any notice required by the terms of this Lease to be given by one party hereto to the other or desired so to be given, will be sufficient if in writing and mailed by certified or registered mail with postage prepaid, and if intended for the Lessor herein then if addressed to the Lessor at 1919 NW Lovejoy Street, Portland, Oregon 97209, and if intended for the Lessee, then if addressed to the Lessee at Facilities Services, City of Portland, 1120 SW 5th Avenue, Room 1204, ATTN: Property Management, Portland OR 97204. Any such notice will be deemed conclusively to have been delivered to the addressee thereof forty-eight (48) hours after the deposit thereof in the United States mail.

29. Heirs and Assigns. All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto will inure to the benefit of and bind the heirs, executors, administrators, successors and, so far as this Lease is assignable by the terms hereof, to the assigns of such parties.

30. Entire Agreement. This Lease contains the entire agreement of the parties and no representations, promises or agreements, oral or otherwise, between the parties not embodied herein will be of any force and effect. This Lease supersedes and replaces any prior agreement between the parties, written, oral or otherwise. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing executed by Lessor and Lessee.

31. Miscellaneous.

31.1 Recording. Lessee will not record this Lease or a memorandum thereof.

31.2 Severability. If a provision of this Lease is held invalid, it is hereby agreed that all valid provisions remain in effect. If a provision is invalid only as to certain applications, the provision will remain in effect in all valid applications.

31.3 Negation of Partnership. Lessor will not become or be deemed a partner or joint venturer with Lessee by reason of the provisions of this Lease.

31.4 Applicable Law and Venue. This Lease will be construed in accordance with, and governed by, the laws of the State of Oregon. Venue for any action brought under or in connection with this Lease will be in Multnomah County, Oregon.

31.5 Counterparts. This Lease may be executed in one or more counterpart copies. Each counterpart copy will constitute an agreement and all of the counterpart copies will constitute one fully executed agreement.

LESSOR:

LEGACY EMANUEL HOSPITAL &
HEALTH CENTER

By: _____
Name: _____
Its: _____

LESSEE:

THE CITY OF PORTLAND

By: _____
Name: _____
Its: _____

507681

After recording, please return to:

185705

EMERGENCY PARKING EASEMENT AGREEMENT

This Emergency Parking Easement Agreement (the "Agreement") is made as of _____, 2012 (the "Effective Date"), by and between Legacy Emanuel Hospital & Health Center ("Legacy"), and The City of Portland (the "City"). Legacy and the City are collectively referred to in this Agreement as the "Parties."

The Parties agree as follows:

1. **Legacy Grant.** Legacy owns that certain real property described in Exhibit A (the "Servient Estate"). Legacy grants and conveys to the City a temporary emergency parking easement on a portion of the Servient Estate as more particularly described in Exhibit B (the "Parking Easement"). The Parking Easement will be for the nonexclusive use of City employees, contractors, and agents. Use of the Parking Easement by City employees, contractors, and agents will be restricted to Emergency Activation parking and staging of motor vehicles owned or operated by the City. Emergency Activation is an emergency event as defined in City Code, Chapter 3.124.010. The City will immediately remove all City vehicles, equipment, and property from the Parking Easement upon the termination of each applicable emergency.
2. **Legacy Use.** The City acknowledges that Legacy may use portions of the Parking Easement to stage construction projects. If Legacy is engaged in such use when a public emergency is declared, Legacy will use commercially reasonable efforts to provide the City with reasonably similar replacement parking/staging space.
3. **Termination.** This Agreement will terminate on the fifth anniversary of the Effective Date.
4. **Restoration.** The City will repair any damage to the Parking Easement caused by the City's use of the Parking Easement. Legacy will have no obligation to improve the Parking Easement for the City's use hereunder. Legacy will have no obligation to make any repairs to the Parking Easement except to the extent of any damage caused by Legacy or Legacy's employees or contractors that renders the Parking Easement unsuitable for the City's use permitted hereunder.
5. **Indemnification.** The City will indemnify Legacy for any damages or losses suffered as the result of liability resulting from or arising out of their or their employees', agents', invitees', members', guests' or contractors' use of the Parking Easement.
6. **Notices.** Any notice required by the terms of this Agreement to be given by one party hereto to the other or desired so to be given, will be sufficient if in writing and mailed by certified or registered mail with postage prepaid, and if intended for Legacy then if addressed to Legacy at 1919 NW Lovejoy Street, Portland, Oregon 97209, and if intended for the City, then if addressed to the City at Facilities Services, City of Portland, 1120 SW Fifth Avenue, Room 1204, Portland, Oregon 97204, Attn: Property Management. Any such notice will be deemed conclusively to have been delivered to the addressee thereof forty-eight (48) hours after the deposit thereof in the United States mail.

7. **Force Majeure.** The obligations of the Parties to each other are excused, because they are unable to fulfill, or are delayed in fulfilling, any of their respective obligations under this Agreement by reason of strike, other labor trouble, governmental pre-emption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies, materials or labor resulting therefrom, war, insurrection, riot, act of God, act of any public enemy or any other cause, whether similar or dissimilar, beyond that Party's reasonable control; or of any failure or defect in the supply, quantity or character of electricity, water or other utilities by reason of any requirement, act or omission of the public utility or others serving the respective property with electric energy, steam, oil, gas or water, or for any other reason whether similar or dissimilar, beyond that Party's reasonable control.
8. **Attorneys' Fees and Court Costs.** In case suit or action is instituted to enforce compliance with or interpret any of the terms of this Agreement, the losing party agrees to pay the prevailing party a reasonable attorney's fee, together with all costs and expenses incurred in connection with such actions, including the reasonable cost of searching records to determine the condition of title at the time suit is commenced, such fees and costs to be approved by the court after trial and/or appeal.
9. **Miscellaneous.**
- 9.1. Severability. If a provision of this Agreement is held invalid, it is hereby agreed that all valid provisions remain in effect. If a provision is invalid only as to certain applications, the provision will remain in effect in all valid applications.
- 9.2. Applicable Law and Venue. This Agreement will be construed in accordance with, and governed by, the laws of the State of Oregon. Venue for any action brought under or in connection with this Agreement will be in Multnomah County, Oregon.
- 9.3. Counterparts. This Agreement may be executed in one or more counterpart copies. Each counterpart copy will constitute an agreement and all of the counterpart copies will constitute one fully executed agreement.

LEGACY EMANUEL HOSPITAL & HEALTH CENTER THE CITY OF PORTLAND

By: _____
 Name: _____
 Its: _____

By: _____
 Name: _____
 Its: _____

ACKNOWLEDGEMENTS ARE ON THE FOLLOWING PAGE

State of OREGON

County of Multnomah

)
)ss.
)

On this ____ day of _____, 2012, personally
 appeared before me _____ who stated
 that (s)he is the _____ of
 _____, a _____, and that
 the instrument was signed in behalf of
 _____ by authority of its
 _____ and acknowledged said
 instrument to be its voluntary act and deed. Before
 me:

 Notary Public for Oregon

My Commissions Expires: _____

State of OREGON

County of Multnomah

)
)ss.
)

On this ____ day of _____, 2012, personally
 appeared before me _____ who stated
 that (s)he is the _____ of
 _____, a _____, and that
 the instrument was signed in behalf of
 _____ by authority of its
 _____ and acknowledged said
 instrument to be its voluntary act and deed. Before
 me:

 Notary Public for Oregon

My Commissions Expires: _____

185705

8 27 281

EXHIBIT A
Legal Description of Servient Estate

185705

EXHIBIT B
Legal Description of Parking Easement

PROMISSORY NOTE

\$537,000

Portland, Oregon

_____, 2012

1. FOR VALUE RECEIVED, the undersigned ("Maker") promises to pay THE CITY OF PORTLAND, or order ("Note Holder"), the principal sum of FIVE HUNDRED THIRTY SEVEN THOUSAND AND NO/100 DOLLARS (\$537,000.00). All outstanding principal and accrued interest will be payable at Facilities Services, City of Portland, 1120 SW Fifth Avenue, Room 1204, Portland, Oregon 97204, Attn. Property Management, or such other place as the Note Holder may designate ("Note").
2. Payment of the principal sum will be made in ten equal installments of \$53,700.00 as follows:
 - 2.1 The first payment will be made on the Closing Date, as such term is defined in that certain Real Estate Exchange and Purchase Agreement entered into by the parties on or about _____ 2012.
 - 2.2 An additional payment will be made on each December 31 that occurs subsequent to the Closing Date until all ten payments have been made.
3. All payments on the Note will be applied, first, to payment of any interest which has accrued on the unpaid balance to the date of such payment, and, second, to principal.
4. If Maker fails to make a payment hereunder after 10 days' written notice from Note Holder, Note Holder may declare that the entire balance of unpaid principal is due immediately, together with the interest that has accrued.
5. All amounts required from Legacy not paid when within five days after becoming due will bear interest at the rate of one percent (1%) per month. Except as set forth in this Section 5, no interest will be due on the principal sum.
6. Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorser hereof.
7. Any notice to Maker provided for in this Note must be given by mailing such notice by certified mail addressed to Maker at the address stated below, or to such other address as Maker may designate by notice to the Note Holder. Any notice to the Note Holder will be given by mailing such notice by certified mail, return receipt requested, to the Note Holder at the address stated below, or at such other address as Note Holder may designate by notice to Maker. Any notice sent by certified mail will be effective forty eight (48) hours after being deposited in the United States mail with postage prepaid.

If to Maker:

1919 NW Lovejoy Street
Portland, Oregon 97209

If to Holder:

009381

185705

8. If this Note is placed in the hands of an attorney for collection, Maker agrees to pay the reasonable fee and expenses of such attorney whether or not suit is instituted. In case of appeal, Maker promises to pay the Note Holder's reasonable attorneys' fees and expenses.

9. No modification or indulgence by any holder hereof will be binding unless in a written instrument signed by an authorized representative of such holder; and any indulgence on any one occasion will not be an indulgence for any other or future occasion.

10. This Note will be construed, governed, and enforced in accordance with the laws of the State of Oregon.

MAKER:

LEGACY EMANUEL HOSPITAL & HEALTH CENTER

By: _____
Name: _____
Its: _____

NOTE HOLDER:

CITY OF PORTLAND

By: _____
Name: _____
Its: _____