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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is made as of May 6th, 1997, between the CITY OF CAMBRIDGE, a municipal corporation and political subdivision of the Commonwealth of Massachusetts (the "City"), and CAMBRIDGE PUBLIC HEALTH COMMISSION, a body politic and corporate of the Commonwealth of Massachusetts (the "Commission").

STATEMENT OF PURPOSES

A. The Massachusetts General Court enacted "An Act Establishing the Cambridge Public Health Commission" which was signed into law by the Governor of Massachusetts on June 30, 1996 and is Chapter 147 of the Acts of 1996 (the "Act").

B. The Act declared for the benefit of the people of the City and the Commonwealth of Massachusetts, that:

(1) In order that there be an increase in their welfare and an improvement in their living conditions, that a new public health care system should be established for the City that can meet the challenges of a rapidly changing health care environment and ensure the continuous delivery of quality health care to the residents of the City and other citizens of the Commonwealth of Massachusetts within the service area of the City's public health care facilities;

(2) That the new public health care system must be able to coordinate outreach, health education, prevention, outpatient, home care, emergency, inpatient, specialty, aftercare, rehabilitation, and long term care services in order to create a comprehensive and integrated continuum of care with the goals of promoting health and well being of all in the system's service area, meeting the public health needs of the City, and educating future physicians and caregivers;

(3) That a new public health commission should be created in the City as the successor to the City's department of health and hospitals in order to better administer, enhance and expand the public health services provided by the City; and

(4) That the new public health system would be committed to the historic mission of the City's health care system.

C. The Commission was created pursuant to the Act to exercise the powers conferred by the Act. On July 1, 1996, the Commission assumed the general care and control of the Cambridge Hospital Network as well as the Somerville Hospital.

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D. In accordance with the Act, the new Commission is committed to the provision of excellent and accessible therapeutic and preventive health care services to the community and programs that are responsive to the multicultural and multilingual composition of the service areas and to the particular needs of specific populations including the elderly, women and children, adolescents, cultural and linguistic minorities and people at high risk for health problems.

E. Pursuant to the Act, on July 1, 1996, ownership of the Cambridge Hospital Network and all other personal property under the care and custody of the Department of Health and Hospitals of the City and all contracts, books and records pertaining to the Cambridge Hospital Network pass to and vest in the Commission.

F. The Act authorizes the City to negotiate and enter into a lease agreement with the Commission for certain real property and facilities under the control of the Department of Health and Hospitals.

G. The City and the Commission are entering into this Agreement to set forth their understanding regarding the terms and conditions on which the City will lease certain real property and facilities to the Commission.

THE CITY AND THE COMMISSION NOW AGREE AS FOLLOWS:

1. DESCRIPTION OF LEASED FACILITIES

1.1. Leased Facilities. The City agrees to lease to the Commission the following premises (collectively the "Leased Facilities"):

- (a) The land described on Schedule A attached to this Agreement (the "Land");
- (b) All improvements, buildings, structures and fixtures that are now or hereafter located on, installed in, or attached to the Land (collectively, the "Improvements");
- (c) All easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Land or the Improvements or the use or occupancy of the Land or the Improvements, whether or not recorded in the land records of the City of Cambridge.

1.2. The Commission accepts the Leased Facilities in their "AS IS" condition existing as of the Effective Date. The Commission agrees that the City is not liable for the condition of the Leased Facilities or any defects in the Leased Facilities. The City makes no implied warranty of fitness or merchantability with respect to the Leased Facilities.

1.3. The City assigns and transfers to the Commission all warranties from any vendor, distributor, manufacturer, architect, engineer, consultant or any other third party, arising from, related to or in connection with the design, condition, fitness, use or operation of the Leased Facilities, effective upon the Effective Date of this Agreement (as defined in paragraph 2.1).

1.4. In the event the City and the Commission agree on a plan for the disposition of Neville Manor and in connection therewith enter into a separate lease or agreement covering all or a portion of the property referred to in Schedule A as Neville Manor, then upon the commencement date of any such lease or other agreement the term "Leased Facilities" shall no longer include such property but this Lease shall otherwise continue in full force and effect.

2. TERM OF THE AGREEMENT; RENEWAL

2.1. Effective Date. The effective date of this Agreement is the Implementation Date designated by the City Manager pursuant to the Act, July 1, 1996 (the "Effective Date").

2.2. Agreement Term. The term of this Agreement is for approximately 50 years, commencing on the Effective Date, and continuing until the last day of the fiscal year ending in 2046, unless sooner terminated in accordance with the provision of this Agreement. As used in this Agreement, the term fiscal year means the fiscal year of the City and a specific fiscal year is indicated by stating the year in which such fiscal year ends.

2.3. Renewal. Not later than the first day of fiscal year 2044 or the first day of the third to last fiscal year in any renewal term, the Commission may notify the City in writing that it wishes to negotiate in good faith to renew the term of this Agreement (such notice is referred to as a "Renewal Request".) Promptly after receipt of a Renewal Request, the parties will commence negotiations in good faith to extend the term.

- (a) If the negotiations conclude with an agreement to extend the term, the parties will execute an amendment to this Agreement or a new agreement.
- (b) If the parties are unable to reach agreement or at any time after the Renewal Request, whether or not negotiations are proceeding, either the City or the Commission may deliver to the other a notice (the "Expiration Notice") stating that this Lease is to expire on a date (the "New Expiration Date") which is the later to occur of (i) the date which is sixty (60) months from the date of the Expiration Notice or (ii) the original expiration date of the term. If the New Expiration Date is after the original expiration date of the term, the Lease term shall be extended to the New Expiration Date. The parties may thereafter continue to negotiate, but if they have not executed an agreement (or amendment) by the New Expiration Date, the term will expire on the New Expiration Date

and the Commission will vacate the Leased Facilities as required in Section 21 hereof.

- (c) If and for so long as a Renewal Request has been delivered by the Commission and an Expiration Notice has not been delivered, the term of this Lease will be automatically extended from year to year until the City or the Commission establishes a New Expiration Date as provided above.

The Commission and the City agree that upon the renewal, expiration or any termination of this Agreement they will execute, deliver and cause to be recorded a notice of such renewal, expiration or termination; at any time after June 30, 2046 the City may, if the Commission fails to do so, execute and record a notice of termination or expiration of this Lease and the City's notice will be conclusive evidence, as to third parties, of the termination or expiration of this Lease.

2.4. Possession. On the first day of the lease term, the City will deliver to the Commission possession of the Leased Facilities, and the Commission will accept possession.

3. **RENT**. During the term of this Lease, including any renewal terms, the Commission will pay rent to the City as follows:

3.1. Basic Rent. On the Effective Date and thereafter on July 1 of each year during the term of this Lease (including any renewal term) the Commission will pay to the City Basic Rent in the amount of one dollar (\$1.00).

3.2. Capital Improvements Rent. In the event that the City provides funding to the Commission expressly for the purpose of making capital improvements to the Leased Facilities or any portion thereof (it being agreed that the City will have no obligation to do so), the Commission will pay Capital Improvements Rent in an amount sufficient to repay all such amounts and reimburse the City for all costs associated with such funding (including, without limitation, interest and reasonable transaction costs). The Commission and the City will mutually agree on the amount of any capital improvement funding and the schedule for repayment before any funding is made available to the Commission.

3.3. Pension Costs. The Commission agrees to pay as additional rent an amount sufficient to reimburse the City for its required pension contributions with respect to employees and former employees of the Commission and the City's former department of health and hospitals, such amount to be established pursuant to the Administrative Services Agreement to be entered into between the City and the Commission in connection with this Lease or pursuant to any other agreement hereafter executed by the parties which relates to such pension costs.

3.4. Impositions. The Commission agrees to pay or cause to be paid as additional rent, all taxes, assessments, special use or assessment district taxes, water and sewer charges, excises, levies, license and permit fees and all other governmental charges of any kind and nature which may be assessed, levied, imposed upon or become due with respect to, or become a lien on the Leased Facilities or any part thereof. All such charges are described as "Impositions". All Impositions will be paid before they become delinquent and before any fine, interest or penalty may be added thereto. Tenant shall have the right to contest or object to the amount or validity of any Imposition. Notwithstanding the foregoing, the City agrees to waive the building permit fee for the proposed renovations to the 119 Windsor Street facility and for the renovation and construction project on the main hospital campus known as the "REACH" project, as presently proposed.

3.5. Additional Rent. The Commission shall pay to the City as additional rent any utility charges or other costs incurred by the City in connection with the Leased Facilities, and all amounts required to be paid by the Commission under the terms of this Lease.

4. USE OF LEASED FACILITIES; COMPLIANCE WITH LAWS.

4.1. Use. The Commission will use the Leased Facilities only for health care, health education, research and related purposes in furtherance of or incidental to its statutory mission as set out in Section 1 of the Act ("Permitted Purposes"). The Commission will continually use and occupy the Leased Facilities, excluding circumstances during which the Commission merely vacates the Leased Facilities as a result of any casualty, construction or as may be necessary to facilitate the reoccupancy of some portion of the Leased Facilities pursuant to a sublease authorized under this Agreement

4.2. Compliance with Laws. The Commission will comply with all applicable laws, rules, regulations and requirements of federal, state and local governments and agencies and their departments and will at all times have in effect any licenses and accreditation necessary for the operation of the Leased Facilities under applicable law.

4.3. Vacancy. In the event that (i) the Commission vacates all or substantially all of any building included within the Leased Facilities, or less than twenty percent (20%) of the usable floor area of any building included within the Leased Facilities is used by the Commission for the Permitted Purposes (as defined in Section 4.1), and (ii) such vacancy or reduced use is not attributable to renovation or reconstruction of such building and (iii) such vacancy or reduced use continues for more than one hundred eighty (180) days, then the City may at any time thereafter while such conditions persist, notify the Commission of its intention to terminate this Lease as to such building. Upon receipt of any such notice, the Commission and the City will cooperate to identify that portion of the Leased Facilities which will be returned to the City, and such portion shall include such adjacent areas, access and appurtenant rights as may be necessary to enable the City to use such building or the land on which it is located, while minimizing any

interference with the use of the remainder of the Leased Facilities for the Permitted Purposes. The City shall not have any obligation to exercise its rights under this subsection, and the failure to exercise its rights will not be deemed a waiver of such rights. After any reconfiguration of the Leased Premises as contemplated in this subsection, the parties agree to execute an appropriate amendment to this Lease. There will be no reduction in rent attributable to any such reduction in the Leased Facilities, unless the Lease is terminated in its entirety. Any portion of a building occupied by a subtenant under a sublease permitted hereunder shall not be considered to be vacant for purposes of this Section.

5. ASSIGNMENT AND SUBLETTING

5.1. General Rule. The Commission will not assign this Agreement or any interest in this Agreement or (except as expressly provided in Section 5.2 hereof) sublet or permit any other person to occupy or use the Leased Facilities or any portion thereof without the prior written consent of the City.

5.2. Permitted Subleases. The Commission may sublet less than a substantial portion of the space within any building included in the Leased Facilities provided that the use and occupancy by the subtenant is consistent with the Permitted Purposes. In addition, the Commission may sublet any portion of the Leased Facilities to its controlled affiliates or subsidiaries consistent with the Permitted Purposes. A "substantial portion" shall mean thirty-three percent (33%) or more of the usable floor area of any building.

5.3. Taxation of Subtenants. In the event that any portion of the Leased Facilities is occupied by a subtenant and if such subtenant would be subject to real estate taxation if it operated its business in premises owned by it, then the portion of the Leased Facilities occupied by such subtenant shall be subject to real estate taxation and the Commission shall pay or cause to be paid all real estate taxes assessed thereon.

5.4. City's Right to Use Surplus Space. With the consent of the Commission, which will not unreasonably be withheld, the City may use any unused space in the Leased Facilities not needed by the Commission, from time to time. The Commission's obligations to pay Impositions to the City shall not apply with respect to any space so occupied by the City.

6. ALTERATIONS AND IMPROVEMENTS; PERSONAL PROPERTY

6.1. Modifications. The Commission may remodel the Leased Facilities or (except as provided in Section 6.5) make additions, modifications and improvements to the Leased Facilities, from time to time, so long as such action does not diminish the overall utility or value of the Leased Facilities or diminish the utility or value for the Permitted Purposes of the portion of the Leased Facilities used in the Cambridge Hospital Network. All costs of such remodeling, additions, modifications and improvements will be paid by the Commission. Any fixtures

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installed as part of any such remodeling, additions, modifications and improvements, other than personal property (as described in Section 6.4), will be owned by the City and will become part of the Leased Facilities under this Agreement.

6.2. Construction. Except as provided in Section 6.5, the Commission may construct or install any new building, structure or improvement on the Leased Facilities (a "New Improvement"), from time to time, so long as such action does not diminish the overall utility or value of the Leased Facilities or diminish the utility or value for the Permitted Purposes of the portion of the Leased Facilities used in the Cambridge Hospital Network. The Commission will not construct or install any New Improvement other than for Permitted Purposes without the prior written consent of the City, which may be granted or withheld by the City in its sole discretion. Any construction by the Commission will be done in accordance with all applicable laws and will be completed as expeditiously as practicable. Any New Improvement will be owned by the City and will become part of the Leased Facilities under this Agreement.

6.3. Plans and Specifications. Throughout the term of this Agreement, the City and the Commission will make available to the other party for use, review and copying, at the requesting party's expense, all plans, specifications, drawings, diagrams and other documents in the possession or control of such party pertaining to the design and construction of the Leased Facilities.

6.4. Personal Property. From time to time, the Commission may install personal property on the Leased Facilities, including property that becomes in whole or in part a fixture when installed. All personal property so installed will be the property of the Commission and the City will have no interest in such personal property, except that the Commission agrees that upon expiration or termination of this Lease, any personal property or fixtures used in connection with the operation of any building (such as, without limitation, heating, ventilation, and air conditioning equipment but not including furniture, medical equipment and the like) will remain in the building and ownership thereof will automatically transfer to the City for no additional consideration. Except as provided in the preceding sentence, the Commission is entitled to remove, replace or substitute any personal property as it deems appropriate.

6.5. Neville Manor. Notwithstanding anything herein to the contrary, the Commission may not construct any addition or expansion to the property referred to in Exhibit A as "Neville Manor" and may not construct any new structure or improvement on the Neville Manor parcel or materially change the use thereof without obtaining in each such case the prior approval of the City, which approval may be granted or withheld in its sole discretion.

7. MECHANICS LIENS AND OTHER LIENS.

7.1. Mechanics Liens. The Commission will pay all proper and valid invoices and charges of all contractors, subcontractors, suppliers, materialperson and similar parties who

furnish services or materials in connection with the construction, modifications, improvement or remodeling of any Leased Facility or any New Improvement. In the event that any such party ever records a mechanic's lien to enforce its claim to payment, the Commission will cause the lien to be released of record within 30 days after it becomes aware of such lien and the Commission will be liable to satisfy and cause a discharge of any such mechanic's lien claim. However, the Commission is entitled to contest any such mechanic's lien claim, provided that the Commission conducts the contest in a timely manner and with diligence and provides the City with appropriate security during the pendency of such contest. If the Commission loses any contest and all further rights of appeal have expired, the Commission will promptly satisfy the mechanic's lien claim in full prior to any foreclosure sale or other disposition of all or any portion of the Leased Facilities.

7.2. No Consent of Landlord. Nothing contained in this Lease shall be construed in any way as constituting the consent or request of the City, express or implied, to any contractor, laborer, materialman, architect or engineer for the performance of any labor or the furnishing of any materials or services for or in connection with the Leased Facilities or any part thereof, and notice is hereby given that the City shall not be liable for any labor or materials or services furnished or to be furnished to the Commission upon credit and that no mechanics or other lien for any such labor, materials or services shall attach to or affect the fee interest of the City in the Leased Facilities.

7.3. Other Liens. The Commission may not pledge, assign, mortgage or create a lien against the Commission's leasehold interest in the Leased Facilities without the prior consent of the City, which shall not unreasonably be withheld.

7.4. Sale. The Commission may not sell or otherwise dispose of all or any part of the Leased Facilities without the prior consent of the City.

7.5. Easements. The Commission may not create, grant or allow to be created or established any easement or right-of-way over, upon or across the Land or any part of the Leased Facilities without the prior consent of the City.

8. FINANCIAL COVENANTS; RELATED AGREEMENTS

8.1. Annual Report. Within 120 days following the close of its fiscal year commencing with fiscal year 1997, the Commission will submit to the City Manager and file with the City Clerk a written annual report concerning the Commission's operations. The annual report will include the latest financial statements relating to the operations and properties of the commission maintained in accordance with generally accepted accounting principles to the extent applicable and audited by an independent certified public accountant or firm of certified public accountants. The parties agree that the timing of the delivery of the annual report set forth in

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this paragraph 8.1 satisfies the requirements of the Act. However, the parties agree to review such timing on a biannual basis to determine whether it is sufficient to permit the City to carry out its financial reporting obligations, and to shorten the 120 day period if reasonably necessary.

8.2. Related Agreements. Certain of the facilities utilized in connection with the City's public health system as of July 1, 1996 are located in buildings owned by third parties and occupied by the City under leases (the "Third Party Leases"). The Commission agrees to perform or cause to be performed all of the City's obligations under the Third Party Leases.

9. INSURANCE

9.1. Property Insurance. At all times during the term of this Agreement, the Commission will, at its expense, carry and maintain standard all-risk perils property insurance (including boiler and pressure vessel insurance, if appropriate) on all Improvements comprising the Leased Facilities. Such insurance must be in an amount equal to not less than eighty percent (80%) of the replacement cost of the Improvements, including foundation and excavation expense, with deductibles which are reasonable in view of the Commission's ability to pay in the event of a casualty. The full replacement cost must be determined by the company issuing the policy at the time the policy is initially obtained and redetermined at least every three years.

During construction, repair or renovation of any of the Leased Facilities, the Commission shall maintain or cause to be maintained at its sole cost and expense, builder's risk insurance (all risks including collapse) in an amount equal to 100% of the projected completed value of such facilities.

9.2. Evidence of Insurance Coverage; Named Insureds. All policies of insurance required under this Section 9 are for the mutual benefit and protection of the City and the Commission; all property insurance shall be in the names of the City and the Commission, as their interests may appear, and the general liability insurance shall name the City as an additional named insured. Executed copies of such policies of insurance or certificates of such policies will be delivered to the City as soon as practicable after execution of this Lease, and thereafter within thirty (30) days prior to the expiration of the term of each such policy. As often as any such policy expires or terminates, the Commission will procure and maintain renewal or additional policies in accordance with the provisions of this Section 9. The Commission will use reasonable efforts to require all policies of insurance to contain a provision that the company writing the policy will give the City twenty (20) days advance written notice of any cancellation or lapse in the insurance, or the effective date of any reduction in the amount of the insurance.

9.3. Coverage Review. Periodically during the Lease Term, the Commission will retain a qualified independent insurance consultant to evaluate the sufficiency and appropriateness of the insurance coverages required hereunder. Based on such evaluation, the

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Commission may request that the City approve revisions to such coverages, which request may be approved or disapproved in the City's sole discretion.

9.4. Additional Requirements. The insurance required under this Section 9 may be provided through procurement of one or more individual or blanket policies of insurance. All policies required under this Section 9 will apply as primary insurance, not subject to contribution from any insurance purchased by the City and not in excess of any insurance coverage that the City may maintain or carry.

9.5. Acts of the Commission. The Commission agrees that it will not do or permit anything to be done on or about the Leased Facilities that will impair or contravene any policies on insurance that may be carried on the Leased Facilities against loss or damage by fire, casualty or otherwise.

10. INDEMNIFICATION; NOTIFICATION OF LITIGATION.

10.1. Indemnification by the Commission. The Commission agrees to defend, indemnify and hold harmless the City from and against any and all liability, claims, damage, penalties, actions, demands or expenses of any kind or nature arising in connection with this Agreement, the Commission's use operation, or maintenance of the Leased Facilities or from any breach, default or failure by the Commission in the performance of its obligations under this Agreement.

The Commission further agrees to defend, indemnify and hold harmless the City from and against (and the City will not be responsible to the Commission with respect to) any and all liability, claims, damage, penalties, actions, demands, costs or expenses of any kind or nature arising out of third party claims alleging harm to persons or property caused by the presence or release of, on, under or about the Leased Facilities of flammable explosives, radioactive materials, hazardous wastes, toxic substances or related injurious materials or caused by any other environmental matter occurring on the Leased Facilities or the failure of the Leased Facilities to comply with any environmental code or other law, rule, regulation or order. The term "hazardous materials" shall include all those materials defined as "hazardous substances", "hazardous materials", or "hazardous wastes" under applicable state and federal laws and regulations adopted and publications promulgated from time to time pursuant to such laws. The Commission shall not use, generate, manufacture, produce, store or release hazardous materials in violation of law on or about the Leased Facilities. The provisions of this Section 10.1 shall survive the expiration or termination of this Lease.

The foregoing indemnification shall not apply to any liability, claim, damage, penalty, action, demand or expenses (i) which arises on account of any action of the City or any of its employees, contractors or agents occurring after July 1, 1996, or (ii) which arises in connection with the use of any portion of the Leased Facilities by the City or anyone claiming by, through

or under the City after control of such portion has ceased to be included in the Leased Facilities as provided in Section 4.3 hereof or while the City is occupying such portion under the provisions of Section 5.4 hereof.

10.2. Procedures for Indemnification. If the City becomes aware of a claim, demand, or commencement of any litigation (each a "Claim") for which the Commission is obligated to defend, the City will promptly notify the Commission of the Claim. The City's failure to notify the Commission will not relieve the Commission of any obligation to defend, indemnify or hold harmless the City, unless such failure prejudices the defense of the Claim. As a condition to the indemnification provided by the Commission, the City will cooperate with the Commission in the defense of the Claim and will not settle, compromise or pay the Claim without the consent of the Commission.

10.3. Cooperation in Litigation. If there is any litigation, administrative hearing or other legal proceeding involving a third party and either the City or the Commission concerning any aspect of this Agreement, the party not involved in the proceeding will, at the other party's request and expense, join and participate in the proceeding. However, neither party is obligated to join or participate in any such proceeding if it reasonably determines that joining or participating constitutes (i) a frivolous action within the meaning of Rule {11} of the Massachusetts Rules of Civil Procedure or the Federal Rules of Civil Procedure (or any successor rule), (ii) an abuse or process, or (iii) a violation of the Code of Professional Responsibility as adopted by the Massachusetts Supreme Judicial Court. Once either party has agreed to join or participate in any such proceeding, both parties will make a reasonable and good faith effort to adopt a mutually agreeable remedial strategy. If a remedial strategy cannot be mutually agreed upon, however, neither party is constrained from pursuing the course of action of its choice with respect to the proceeding. The failure to agree on a mutual remedial strategy is not subject to the dispute resolution procedures set forth in Section 22 of this Agreement.

10.4. Notification of Suits. Without limiting any other rights of the parties, the City and the Commission each agree to notify the other of any action, suit or proceeding threatened against or affecting the other, or any other information that comes to its attention, that may materially adversely affect the operation, programs or financial position of the other.

10.5. Survival. The provisions of this Section 10, other than paragraph 10.4, survive any expiration or termination of this Agreement.

11. REPAIRS AND MAINTENANCE; DAMAGE AND DESTRUCTION

11.1. Repairs. During the term of this Agreement, the Commission will, at its sole expense, keep and maintain the Leased Facilities in as good or better condition as they were when leased, reasonable wear and tear excepted.

11.2. Damage and Destruction. If the whole or any part of any Leased Facility be damaged or destroyed by any cause whatsoever, whether insured or uninsured, at any time during the term of this Agreement, the Commission will promptly replace or repair the portion of the Leased Facilities that is damaged or destroyed at its sole cost and expense, with such changes, alterations or modifications as are determined by the Commission so long as such changes, alterations or modifications do not diminish the overall utility for the Permitted Purposes of the damaged portion of the Leased Facilities. The parties recognize that such damage or destruction may require emergency replacement or repair. The Commission will be entitled to all insurance proceeds in order to effect such replacement, modifications or alterations. However, if (i) the Commission determines that replacement and repair of the Leased Facilities is not in furtherance of its Permitted Purposes or if the cost to replace or repair the portion of the Leased Facilities that is damaged or destroyed exceeds 50% of the replacement value of the entire Leased Facilities, and (ii) the damage to or destruction of the Leased Facilities was covered by such property insurance as may be required pursuant to Section 9.1 hereof, as affected by any revisions permitted by the City pursuant to Section 9.3 hereof, and (iii) the Commission demolishes any destroyed buildings and secures any damaged buildings, in each case to a safe condition, reasonably satisfactory to the City, then the Commission may elect not to repair or replace and may terminate this Agreement by giving notice to the City. In such event, the Commission will pay to the City all insurance proceeds remaining after payment of costs incurred to demolish or secure the damaged buildings and the Commission will vacate the Leased Facilities as soon as practicable.

12. RIGHTS OF THE CITY TO ACCESS AND TO PERFORM.

12.1. Access. The Commission agrees that, subject to reasonable security regulations and advance notice, the City and its authorized representatives have the right to enter upon, examine and inspect the Leased Facilities at all reasonable times.

12.2. Right to Perform. If the Commission fails to perform any of its obligations under this Agreement, the City, after notice to the Commission, may, but is not obligated to, perform such obligation and may enter upon the Leased Facilities for that purpose. The City may recover from the Commission the payments made or costs incurred by the City in performing such obligation. The City does not waive any of its other rights under this Agreement by exercising its rights under this paragraph 12.2.

13. CONDEMNATION

13.1. Total Condemnation. If all of the Leased Facilities are taken as a result of the exercise of the police power or the power of eminent domain, or sold under the threat of the exercise of such actions ("Condemnation"), this Agreement will automatically terminate as of the date the condemning authority takes title or possession, whichever occurs first (the "Taking Date"). Upon receipt of notice that all or any portion of the Leased Facilities have been or is proposed to be subject to Condemnation, the party receiving notice will immediately notify the other party in writing. In any event, the City will not sell or convey any portion of the Leased Facilities under a threat of eminent domain, without the prior consent of the Commission which consent will not be unreasonably withheld or delayed. The Commission may withhold such consent if the pertinent sale or conveyance would cause a material interference with the Commission's use and occupancy of the Leased Facilities or with the Commission's ability to operate and use the Cambridge Hospital Network in a manner which will allow it to fulfill its Permitted Purposes and to repay any outstanding indebtedness owed under any financing agreement, trust indenture or other instrument of indebtedness.

13.2. Substantial Condemnation. If a Condemnation of less than the entire Leased Facilities occurs, and such Condemnation interferes in any material manner with the Commission's ability to carry out its statutory mission and purposes, then the Commission may, subject to this paragraph 13.2, either elect to terminate this Agreement as of the Taking Date, or to remain in possession of the portion of the Leased Facilities that were not taken. The Commission will give the City notice of its election within 30 days after the Taking Date. If the Commission fails to give the City such notice, the Commission will be deemed to have elected not to terminate this Agreement and to remain in possession of the remaining portion of the Leased Facilities. If the Commission elects or is deemed to have elected to remain in possession, then this Agreement will continue in all respects in full force and effect with respect to the portion of the Leased Facilities not taken by Condemnation.

13.3. Insubstantial Condemnation. If a portion of the Leased Facilities is taken by Condemnation and neither paragraph 13.1 or 13.2 applies, then this Agreement will automatically terminate on the Taking Date only as to the portion of the land taken by Condemnation and this Agreement will continue in full force and effect with respect to the remaining portion of the Leased Facilities.

13.4. Right to Damages Awarded. The Commission's interest in any taking by Condemnation will equal the value to the Commission of the remaining term of this Lease, the value to the Commission of the use and enjoyment of the Leased Facilities, and the Commission's relocation expenses insofar as relocation expenses are paid by the taking authority (collectively, the "Commission's Share"). The City's interest in any taking by Condemnation will equal the value of the City's remaining interest in the Leased Facilities (the "City's Share").

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All awards from the Condemnation of the Land will be divided between the Commission and the City in the proportion that the Commission's Share bears to the City's Share.

13.5. Settlement Rights. The City and the Commission hold the right and power jointly to negotiate with, litigate or enter into settlement with the governmental or condemning authority in connection with any Condemnation of the Leased Facilities. In this regard, both parties will cooperate in good faith and with reasonable diligence to agree to a mutually satisfactory resolution of the matter. Each party will bear its own costs and expenses of cooperation and participation in any such negotiation, litigation or settlement.

14. **UTILITIES**. The Commission shall assume all responsibility, commencing on the Effective Date of this Agreement, for costs and payment of all utilities for the Leased Facilities. The City will cooperate in arranging for any transfer of accounts necessary to permit the Commission to assume said responsibility.

15. **QUIET ENJOYMENT**. So long as the Commission performs and observes all of its obligations under this Agreement, it will peaceably and quietly have, hold and enjoy the use and possession of the Leased Facilities during the term of this Agreement, subject to all the terms and provisions of this Agreement. The City will not disturb the rights of the Commission to the Leased Facilities. The City will, at the Commission's request and expense, defend the Commission's possession and enjoyment of the Leased Facilities during the term of this Agreement against all parties or will permit the Commission, in its own name and on its own behalf to the extent allowed by law, or in the name of the City and on the City's behalf, to defend that possession and enjoyment.

16. **REPRESENTATIONS AND WARRANTIES**.

16.1. Representations and Warranties of the City. The City represents and warrants to the Commission as of the Effective Date as follows:

(a) The City is a municipality duly organized and existing in good standing under the laws of the Commonwealth of Massachusetts.

(b) The City is authorized by the Act to enter into this Agreement and to carry out its obligations under this Agreement.

(c) The City has duly authorized the execution and delivery of this Agreement.

(d) This Agreement is a valid and legally binding obligations of the City enforceable in accordance with its terms.

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(e) The execution, delivery and performance of this Agreement by the City will not conflict with, result in a breach of or constitute a default under any agreement to which it is a party and will not result in the creation or imposition of any lien, charge or encumbrance of any nature on any of the property or assets of the City under the terms of any such agreement.

(f) The City is not in default under any order, decree or regulation of any federal, state, municipal or other governmental agency which may materially and adversely affect its operation or its properties. The City is not in material default under any agreement to which it is a party.

(g) There is no action, suit or proceeding now pending or, to the best knowledge of the City, threatened against or affecting the City, or any of its properties or rights, that, if adversely determined, would materially and adversely impair its ability to execute, deliver or perform this Agreement.

16.2. Representations and Warranties of the Commission. The Commission represents and warrants to the City as of the Effective Date as follows:

(a) The Commission is a body politic and corporate of the Commonwealth of Massachusetts, duly organized and existing in good standing under the laws of the Commonwealth of Massachusetts.

(b) The Commission is authorized by the Act to enter into this Agreement and to carry out its obligations under this Agreement.

(c) The Commission has duly authorized the execution and delivery of this Agreement.

(d) This Agreement is a valid and legally binding obligation of the Commission enforceable in accordance with its terms.

(e) The execution, delivery and performance of this Agreement by the Commission will not conflict with, result in a breach of or constitute a default under any agreement to which it is a party and will not result in the creation or imposition of any lien, charge or encumbrance of any nature on any of the property or assets of the Commission under the terms of any such agreement.

(f) The Commission is not in default under any order, decree or regulation of any federal, state, municipal or other governmental agency which may materially and

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adversely affect its operation or its properties. The Commission is not in material default under any agreement to which it is a party.

(g) There is no action, suit or proceeding now pending or, to the best knowledge of the Commission, threatened against or affecting the Commission, or any of its properties or rights, that, if adversely determined, would materially and adversely impair its ability to execute, deliver or perform this Agreement.

17. TRANSFER AND ENCUMBRANCE RESTRICTIONS OF CITY. During the term of this Agreement, the City will not dispose of its interest in all or any part of the Leased Facilities or create or suffer to be created any lien, encumbrance or easement on all or any part of the Leased Facilities, without the prior consent of the Commission.

18. ESTOPPEL CERTIFICATES. At the request of either party, the other party will promptly sign and deliver a certification: (a) that this Agreement is in full force and effect

without amendment, except as described; (b) that to the knowledge of the party, there are no uncured events of default under this Agreement, except as described; (c) identifying the amount of any payments that the Commission is then obligated to pay to the City under this Agreement; and (d) stating the commencement and expiration dates of the term of this Agreement.

19. TASK FORCE

19.1. General. The parties acknowledge that the establishment of a new public health care system for the City to meet the challenges of the rapidly changing health care environment and ensure the continuous delivery of quality health care to the residents of the City will require joint coordination between the Commission and the City. To this end, the City and the Commission will establish a task force (the "Task Force") to oversee the implementation of this Agreement and to resolve any disputes pursuant to paragraph 22.2 of this Agreement. The function of the Task Force is advisory only, and its decisions and recommendations are not binding on either party.

19.2. Composition of Task Force. The Task Force will consist of four members, two appointed by the City Manager and two appointed by the Chief Executive Officer of the Commission. Each party will notify the other of the identity of its Task Force members and any changes in its Task Force representation.

19.3. Meetings and Voting. The Task Force will meet as needed to resolve any dispute. Three members of the Task Force constitute a quorum. Each member of the task force will have one vote and a vote of at least three of those present at any meeting at which a quorum is present is required for action. If any member of the Task Force cannot be present at any meeting, the member may designate an alternate to attend and vote in his or her stead.

20. DEFAULTS AND REMEDIES.

20.1. Default. The occurrence and continuation of any material breach by either party of any of its material obligations under this Agreement is a default (a "Default") under this Agreement.

20.2. Procedures for Default. Either party may notify the other party if it believes the other party is in Default under this Agreement (a "Default Notice"). The Default Notice must describe the default in reasonable detail and set forth any requirements for cure of the Default. Upon receipt of a Default Notice, the defaulting party will have ninety (90) days to cure the Default. If the Default is not cured within that period, the non-defaulting party may terminate this Agreement by notifying the defaulting party of its intent to terminate, which termination will be effective immediately or at such subsequent time as stated in the notice. However, if the Default is susceptible of cure but cannot be reasonably cured within ninety (90) days and if the defaulting party has promptly undertaken and continues at all times diligently to pursue cure of

the Default, then the period for cure will be extended for a reasonable period to permit its completion.

20.3. Rights Cumulative. The rights of the parties under this Section 20 are in addition to all other rights under this Agreement and may be exercised concurrently with any other right, including the right to dispute resolution and injunctive relief.

20.4. Continuity of Patient Care. In the exercise by the City of its rights under this Section 20, the City agrees to use reasonable efforts to maintain the continuity of care provided to patients of the Cambridge Hospital Network.

20.5. Effect of Termination. Upon the termination of this Agreement, neither party will have any further liability or obligation to the other except for any obligations or liabilities required by the Act or other applicable law, the obligations under Section 21 of this Agreement, and the obligations of the parties under certain provisions of this Agreement that expressly survive termination.

21. OBLIGATION UPON EXPIRATION OR TERMINATION OF AGREEMENT

21.1. Obligations of the Commission. At and upon the expiration or earlier termination of this Agreement, the Commission will surrender to the City the Leased Facilities in good order, condition and repair, ordinary wear and tear excepted.

21.2. Obligations of the City. At and upon the expiration or earlier termination of this Agreement, the City will accept immediate possession of the Leased Facilities and all other structures, buildings or improvements then situated on the Land.

22. DISPUTE RESOLUTION

22.1. General. Except as otherwise provided in this Section 22, no party may initiate litigation to resolve any claim, controversy or dispute under this Agreement or relating to the interpretation or breach of this Agreement (each, a "Dispute") without first attempting to resolve the Dispute pursuant to the procedures described in this Section 22.

22.2. First Stage -- Task Force Negotiations. The parties will first attempt to resolve the Dispute through the Task Force. Either party may initiate this process whenever it believes that the parties will be unable to resolve the Dispute in the ordinary course of business after good faith attempts to do so. To initiate this process, a party (the "Initiating Party") must notify the other of the existence of the Dispute and its desire to resolve the Dispute through the Task Force (the "Negotiation Notice"). Within ten days of delivery of the Negotiation Notice, the receiving party must submit a written response (the "Response Notice") to the Initiating Party. The Negotiation Notice and the Response Notice must contain a description of the nature of the

Dispute and a statement of the party's position and a summary of the reasoning supporting such position. Each party is responsible for making its Task Force representatives aware of the Dispute and providing them with copies of the Negotiation Notice and Response Notice. Within ten days after the Initiating Party has received the Response Notice, the Task Force will convene to attempt to resolve the Dispute. If the Task Force is unable to resolve the Dispute within thirty (30) days after the Negotiation Notice, or if either party is dissatisfied with the Task Force's recommended resolution, the parties may refer the dispute to a mutually acceptable mediator.

22.3. Injunctive and Other Relief Not Prohibited. The procedures set forth in this Section 22 are the sole and exclusive procedures for resolving any Dispute involving this Agreement, provided that this section does not limit the right of any party to initiate litigation to obtain any injunctive relief, specific performance or other equitable remedies where necessary to prevent irreparable injury or preserve the status quo before, during or after the pendency of any dispute resolution procedures. All applicable statutes of limitations will be tolled pending the completion of these procedures.

22.4. Disclosure of Information. Each party will honor all reasonable requests for information from the other party, the Task Force or the mediator, as applicable, in connection with the resolution of any Dispute.

22.5. Effect on Default Remedies. The procedures set forth in this Section 22 do not affect the right of either party to pursue the default remedies in paragraph 20.2. However, if either party invokes the dispute resolution procedures during any cure period set forth in paragraph 20.2, the period for cure will be extended until the Dispute is resolved pursuant to the dispute resolution procedures of this Agreement. The extension of the cure period during dispute resolution does not affect the defaulting party's obligation to diligently pursue cure of the Default.

23. GENERAL PROVISIONS

23.1. City Manager. The term "City Manager" shall mean the City Manager of the City and the successors serving in such position from time to time. Any action, consent or agreement required or permitted to be taken by the City under this Agreement shall be taken or given by the City Manager, and any action, consent or agreement taken or given by the City Manager shall bind the City hereunder.

23.2. Defined Terms. Terms will have the meanings, if any, set forth in the Act, unless otherwise defined in this Agreement.

23.3. Business Day. If any day set forth in this Agreement on which a specific action is to take place does not fall on a business day, then such action will take place on the next

succeeding business day. For purposes of this Agreement, a business day is any day other than a Saturday, a Sunday or a day on which the {public} offices of the City of Cambridge are authorized or obligated by law, executive order or governmental decree to be closed.

23.4. Further Assurances. At all times during the term of this Agreement, each party will cooperate in good faith and will take all appropriate action and execute any agreement, instrument, certificate or other writing of any kind that is reasonably necessary or advisable to carry out and confirm the provisions of this Agreement or as otherwise reasonably requested by either party.

23.5. Notices. Unless otherwise stated in this Agreement, all notices or other communications required or permitted under this Agreement must be in writing and addressed to the parties at the following addresses or at such other address as either party may designate by notice:

| | | |
|-----------------------|------------|--|
| If to the City: | Address | City of Cambridge City Hall 795 Massachusetts Ave. Cambridge, MA 02139 |
| | Attention: | City Manager |
| If to the Commission: | Address | Cambridge Public Health Commission 1493 Cambridge St. Cambridge, MA 02139 |
| | Attention: | Chief Executive Officer |

Notices are deemed to be given at the time of delivery, evidenced by a receipt from the office of the addressee or from the delivery service.

23.6. Entire Agreement. This Agreement represents the entire understanding between the parties regarding to the Leased Facilities. Any prior agreement, promises, representations and negotiations, either oral or written, express or implied, relating to the subject matter of this Agreement that are not expressly set forth in this Agreement are superseded hereby and of no force or effect.

23.7. Amendment. This Agreement may be amended by the mutual agreement of both parties consistent with the provisions of the Act. All amendments must be in writing. Any amendment executed by the City Manager on behalf of the City and by the chief executive officer of the Commission, shall be deemed to bind the City and the Commission, respectively.

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23.8. Consents. Any consent or approval given by either party under this Agreement must be in writing and signed by the party giving its consent to be effective. A consent or approval granted in one instance will not constitute a waiver of any party's obligations to obtain consent or approval in any future instance.

23.9. Assignment. This Agreement may not be assigned by either party without the prior consent of the other party.

23.10. Binding Effect. This Agreement is binding upon the City and the Commission and their respective successors and permitted assigns.

23.11. Governing Law. This Agreement is governed by the laws of the Commonwealth of Massachusetts as are now in effect or as may be later amended or modified.

23.12. Headings. The headings in this Agreement or for reference purposes only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

23.13. Independent Contractors. The relationship between the City and the Commission under this Agreement is that of independent contractors. Neither party is authorized to act as an agent, representative or employee of the other party or to bind the other party in any respect.

23.14. No Third-Party Benefit. This Agreement is for the benefit of the City and the Commission and is not intended and may not be construed to confer any rights, privileges or benefits of any other person or entity, including any resident or employee of the City or the Commission or any patient of the Cambridge Hospital Network.

23.15. Severability. No provision of this Agreement is dependent on the validity of any other provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such finding will not affect any other provision and all other provisions will remain in full force and effect.

23.16. Waiver; Rights Cumulative. The waiver by either party of any breach of any provision of this Agreement must be in writing to be effective and any such waiver does not waive any subsequent breach of the same or any other provision. The failure to exercise any right or remedy under this Agreement does not operate as a waiver of such right or remedy. All rights and remedies provided for under this Agreement are cumulative.

23.17. Counterparts. This Agreement may be executed in any number of counterparts, each of which is regarded as an original and all of which constitute one and the same document.

23.18. Recording. The parties agree that they will not record this Lease. However, upon request of either party, both parties shall execute, acknowledge and deliver a notice of this

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Lease, in recordable form, and upon termination of this Lease to execute an instrument acknowledging the date of actual termination.

23.19. No Discrimination. In the conduct of the Permitted Use at the Leased Facilities, the Commission will not discriminate on the basis of race, color, creed, religion, national origin, immigration status, sex, sexual orientation, handicap, ability to pay or any other protected class under federal or state law.

[Signatures on following page]

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EXECUTED as a sealed instrument as of the date set out in the opening paragraph of this Lease Agreement.

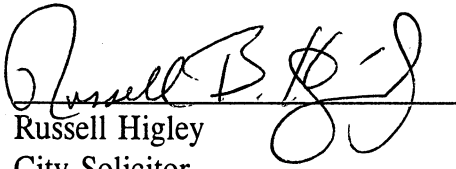
CITY OF CAMBRIDGE

By:



Robert Healy
City Manager

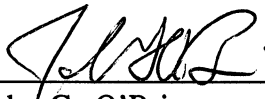
APPROVED AS TO FORM:



Russell Higley
City Solicitor

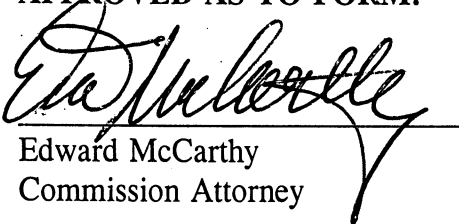
CAMBRIDGE PUBLIC HEALTH COMMISSION

By:



John G. O'Brien
Chief Executive Officer

APPROVED AS TO FORM:



Edward McCarthy
Commission Attorney

**SCHEDULE A
LEGAL DESCRIPTION**

1. **Cambridge Hospital Main Campus**

a. 1493 Cambridge Street

As described in Deeds recorded in the Middlesex South Registry of Deeds (the "Registry") in Book 4549, Page 116, Book 3905, Page 231, and Book 3905, Page 228.

b. Former Camelia Avenue

A certain parcel of land situated in the City of Cambridge, Middlesex County, Massachusetts, bounded and described as follows:

A Portion Of Camelia Avenue

Beginning at a point on the westerly street line of Camelia Avenue, a private way, 40 feet wide, said point being 140.00 (one hundred forty) feet northeast of the intersection of said westerly street line of Camelia Avenue with the northerly street line of Cambridge street;

thence running along said westerly street line of Camelia Avenue N 09 -36'-20" E a distance of 80.00 (eighty) feet to a point at the northwest corner of Camelia Avenue,

thence turning and running southeasterly along the northerly street line of Camelia Avenue S 80 -23'-40" E a distance of 40.00 (forty) feet to a point at the northeasterly corner of Camelia Avenue,

thence turning and running southerly along the easterly street line of Camelia Avenue S 09 -36'-20" W a distance of 80.00 (eighty) feet to a point,

thence turning and running westerly within Camelia Avenue N 80 -23'-40" W a distance of 40.00 (forty) feet to the point of beginning.

Containing 3,200 + square feet of land.

The above described discontinuance is shown as Parcel 'A' on a plan entitled "Discontinuance of Camelia Avenue" prepared by Bryant Associates, Inc. dated June 16, 1994.

c. 10 Camelia Avenue

A certain parcel of land with the buildings and trees thereon situated in Cambridge, Middlesex County, Massachusetts, being now numbered 10 Camelia Avenue and being shown as lot 10 on a plan entitled "Plan of Portions of the Hovey Estate, Cambridge, Mass. Sold to Wm. E. Doyle" dated December 10, 1889, by Gilbert Hodges, Civil Engineer, recorded with Middlesex South District Deeds, Plan Book 62, Plan 4, being bounded and described as follows:

EASTERLY by said Camelia Avenue, forty-five (45) feet, more or less;
 NORTHERLY by Lot 13 on said Plan, eighty-two (82) feet, more or less;
 WESTERLY by Lot 9 on said Plan, forty-five (45) feet, more or less;
 SOUTHERLY by Lot 7 on said Plan, eighty-two (82) feet, more or less;

d. 8 Camelia Avenue

Described in City of Cambridge Taking dated December 12, 1916 recorded at the Registry in Book 4108, Page 162.

e. 122 Line Street, Somerville

Described in Plan Book 62, Map A filed at the Registry

2. **Riverside Health Center, 207 Western Avenue, Cambridge**

A certain parcel of land known as Lot A-1 Western Avenue, Cambridge, Middlesex County, Massachusetts, on a "Subdivision Plan, Cambridge, Mass." Scale 1"=10' March 4, 1991 Wendell H. Mason, Prof. Land Surveyor, reference to which is hereby made for a more particular description.

3. **The Windsor Street Health Center, 105 Windsor Street, Cambridge**

4. **New Windsor Street Health Center, 119 Windsor Street, Cambridge**

One (1) certain parcel of registered land and one (1) certain parcel of unregistered land, in each case with all buildings and improvements thereon, situated in Cambridge, Middlesex County, Massachusetts, more particularly described as follows:

First Parcel

A parcel of registered land on Windsor Street bounded and described as follows:

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SOUTHEASTERLY by Windsor Street, thirty-five (35) feet;
SOUTHWESTERLY by land now or formerly of Oscar G. Petterson ninety (90) feet;
NORTHWESTERLY by lands now or formerly of Harriet F. Drinan and of Lucy M. Lagerquist thirty-five (35) feet; and
NORTHEASTERLY by land now or formerly of William H. Davis et al ninety (90) feet.

All of said boundaries are located as shown on a plan filed in the Land Registration Office, a copy of a portion of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 34, Page 317, with Certificate of Title 5335.

Second Parcel

A parcel of land situated on Windsor, Washington and Cherry Streets and on Cherry Court, bounded and described as follows:

SOUTHEASTERLY by Windsor Street one hundred fifty-eight (158) feet;
SOUTHWESTERLY by the First Parcel hereinabove described end line of Cherry Court one hundred and two (102) feet;
SOUTHEASTERLY again by Cherry Court seventy-six (76) feet;
SOUTHWESTERLY again by Cherry Court eighty-five (85) feet;
NORTHWESTERLY by Cherry Street two hundred thirty-four and 70/100 (234.70) feet and NORTHEASTERLY by Washington Street one hundred ninety and 40/100 (190.40) feet.

All of said bounds being more or less.

5. Neville Manor, 650 Concord Avenue, Cambridge

As described in Deed recorded in the Registry in Book 1893, Page 443.

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**Lease Agreement between the
City of Cambridge and the
Cambridge Public Health
Commission**

May 6, 1997