

CITY COUNCIL MEETING

AGENDA ITEM V



CITY OF FRANKLIN
COUNCIL AGENDA REPORT

City Council Meeting October 1, 2012

From: Elizabeth Dragon – City Manager
Subject: LRGHealthcare amendment to sign parcel lease

- **Recommended Motion:** “I move the Franklin City Council authorize the City manager to execute the proposed amendment to the lease agreement with LRGHealthcare for a sign lease originally entered into on December 31, 1984”.
-

Discussion:

LRGHealthcare is requesting an amendment to the lease executed back in 1984 for an existing sign. This amendment is necessary due to mortgage financing requirements. This was sent to city attorney for review.

Fiscal Impact:

There is no fiscal impact

Attachments/Exhibits:

Amendment to Lease agreement
Original lease agreement

LRGHealthcare

care. compassion. community.

June 1, 2012

Ms. Elizabeth A. Dragon
City Manager
City of Franklin
316 Central Street
Franklin, NH 03235

RE: Lease with LRGHealthcare
Sign Parcel-Central and Willow Streets

Dear Ms. Dragon:

Under LRGHealthcare's federally insured mortgage financing, we are required to seek consent of our landlords to addition of a lessee successor clause to our leases. I have enclosed a copy of the provision from the recorded Regulatory Agreement with HUD (see (e) (1) Existing Leases for Property and Equipment).

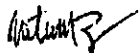
I have also enclosed two copies of a draft Amendment to Lease adding the paragraph, which mirrors the section in the Regulatory Agreement.

If the City is agreeable, have both copies signed and return them to me. I will then have them signed and will return one fully signed copy to you.

If you have any questions or wish to discuss this, please contact me.

Thank you for your assistance.

Sincerely,



Mitchell B. Jean, Esquire
Director
Risk Management & Safety

MBJ/jgb
Enc.

AMENDMENT TO LEASE AGREEMENT

This Amendment is made as of _____, 2012 by and between City of Franklin, a New Hampshire municipal corporation, of 316 Central Street, Franklin, Merrimack County, New Hampshire 03235 (hereinafter referred to as "Lessor") and LRGHealthcare, a New Hampshire voluntary corporation, of 80 Highland Street, Laconia, Belknap County, New Hampshire 03246, successor to Franklin Regional Hospital Association (hereinafter referred to as "Lessee").

WITNESSETH

WHEREAS, Lessor and Lessee entered into a Lease on 31 December 1984, for certain real estate located at the intersection of Central and Willow Streets in Franklin, Merrimack County, New Hampshire (hereinafter referred to as "Premises"); and

WHEREAS, Lessee has mortgage financing insured by the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD"); and

WHEREAS, under the terms of a Regulatory Agreement with HUD Lessee is required to seek Lessor's approval to amend the Lease by providing for a successor clause in the event that Lessee defaults on its Mortgage; and

WHEREAS, Lessor consents to such amendment to the Lease.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Lessor and Lessee agree as follows:

1. The Lease is hereby amended by addition of the following provision:

9.

Realty Lease Successor Clause. Upon a default under LRGHealthcare's Mortgage to The Bank of New York Mellon Trust Company, N.A. dated as of 9 December 2009, the United States Department of Housing and Urban Development, any mortgagee in possession, or successor organization has the right to occupy the Demised Premises for hospital-related activities so long as such party agrees to be bound by all of the terms and conditions of this lease.

2. Except as herein amended, all other terms of the Lease Agreement shall remain in full force and effect.

Executed as of the day and year first above written.

LESSOR:

City of Franklin

By _____
Its City Manager
Duly Authorized

Witness

Executed as of the day and year first above written.

LESSEE:

LRGHealthcare

By _____
Its _____
Duly Authorized

Witness

LEASE AGREEMENT

City of Franklin

and

Franklin Regional Hospital

AGREEMENT made this 31 day of December, 1984, by and between the City of Franklin, a New Hampshire municipal corporation located in the County of Merrimack with a place of business at Memorial Hall, Central Street in said Franklin, hereinafter referred to as the Lessor and the Franklin Regional Hospital, a New Hampshire health care facility organized and incorporated under the laws of the State of New Hampshire with a place of business on Aiken Avenue in said Franklin, hereinafter referred to as the Lessee.

1. The Lessor agrees to lease to the Lessee a portion of a certain lot of land owned by the city, said lot being located at the intersection of Central Street and Willow Street and identified as tax map parcel no. 002-117-345. It is understood and agreed that only a portion of the premises is being leased by the Lessee. The diagram attached to this lease as "attachment 1" shows the actual area to be leased by the Lessee and is hereby incorporated by reference under this agreement.

2. Right of Entry. The Lessee is granted a right of entry over the above-described land of the city for purposes of reaching the actual lease area.

3. Purpose. The sole purpose for which the property shall be used by the Lessee is for the construction and maintenance of a large directional sign indicating the location of the Franklin Regional Hospital, said sign designed for the benefit of the public. The Lessor's responsibilities with regard to the leased property shall be limited to those imposed by law or contained within this agreement.

4. Term. Subject to the cancelation provisions contained herein, this lease shall be for a period of one year and shall be renewable for subsequent equal periods.

5. Consideration. The Lessee shall pay to the Lessor the sum of \$1.00 per year as full consideration for the use of the leasehold premises.

6. Termination or Cancelation. Either party may, upon 30 days notice to the other, cancel this agreement and thereby terminating the obligations thereunder. In the event of this agreement's cancelation, the Lessee shall cause the directional sign on the premises to be removed at the Lessee's expense. Further, the site occupied by the sign shall be returned to its original condition at the expense of the Lessee. However, should the Lessor terminate this lease within one year of the date of its original execution, then the Lessor shall bear the cost of the removal of said sign, the restoration of the site and shall further pay to the Lessee the actual expense incurred by the Lessee for the construction and maintenance of the sign.

7. Covenants of the Lessee. The Lessee hereby agrees and covenants to install and maintain the directional sign and exercise its rights under this agreement pursuant to the following terms and conditions:

1. The sign shall be no larger than 5 feet high by 12 feet wide and shall be designed consistently with the diagram attached hereto as "Attachment 2".

2. The Lessee shall have the right to light the sign with electric power but the Lessee shall bear all expense associated with the connection and utilization of such electric power.

3. The location of the sign shall be appropriately and attractively landscaped in accordance with the direction of the office of the city manager, who shall supply a written landscape plan prior to the erection of the sign.

4. The Lessee shall maintain the sign in a attractive fashion, not allowing it to become dilapidated or un-attractive.

5. The sign shall be erected in such a manner so as not to create any public nuisance or hazard or interfere with the orderly flow of traffic in its location.

8. Assignment. The Lessee shall not assign any rights under this agreement or sublet any portion of the premises without the written permission of the Lessor.

WITNESS our signatures on the date first above written.

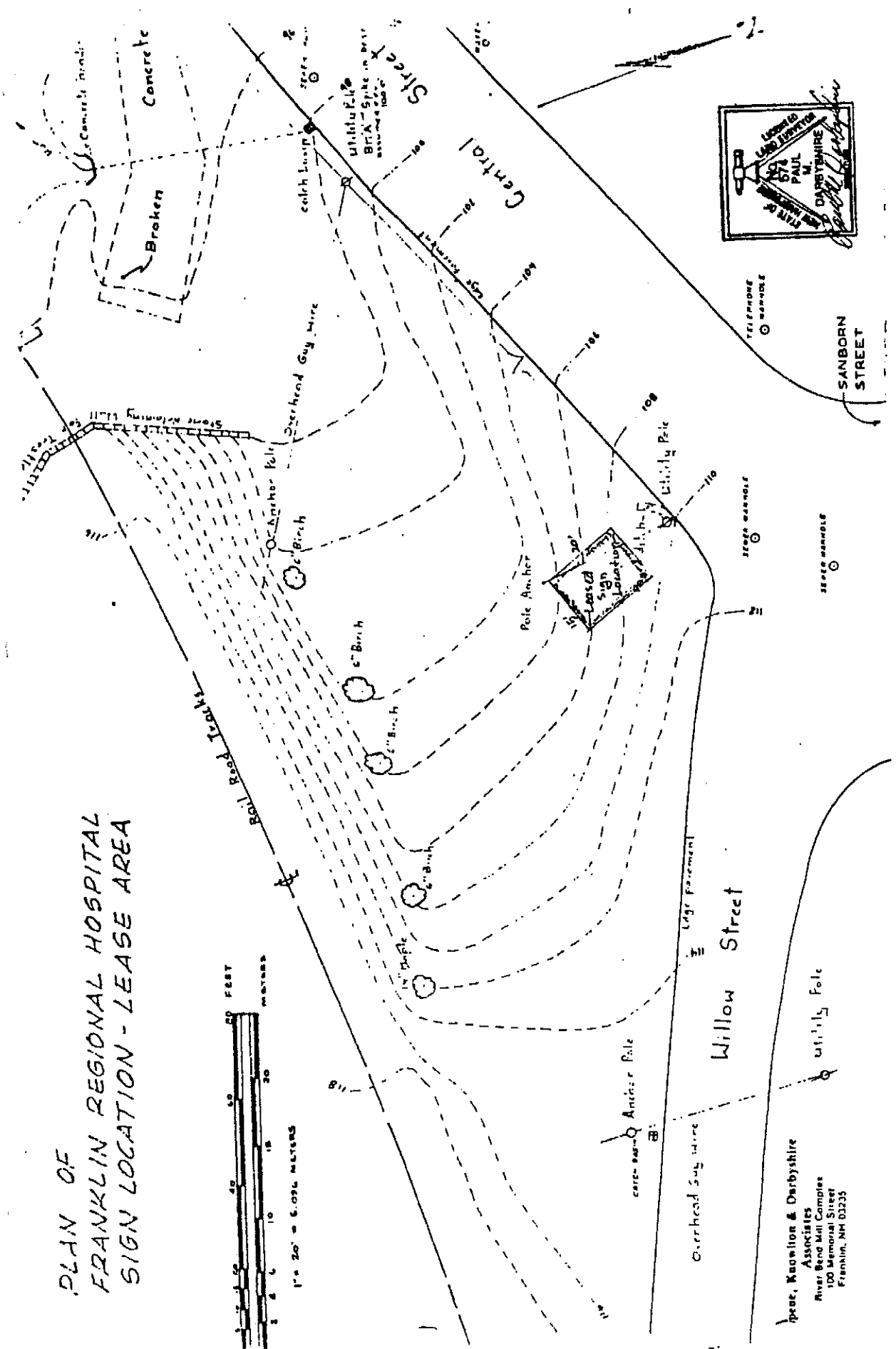
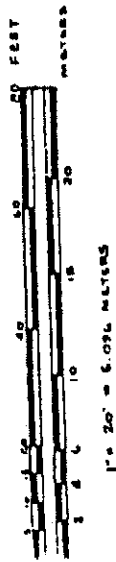
Frank P. Edmunds
Witness

Clayton Gasset
Clayton Gasset, Mayor, City of Franklin, duly authorized

Eliab A. Shanley
Witness

Amelia P. Ladd
President, Franklin Regional Hospital, Inc., duly authorized

PLAN OF
FRANKLIN REGIONAL HOSPITAL
SIGN LOCATION - LEASE AREA



Pease, Kaulon & Darbyshire
Associates
Rivers Bend Mall Complex
170 Memorial Street
Franklin, NH 03235

ROUGH 3/4" = 1' TO SCALE

DARK COLONIAL BLUE BACKGROUND
CREAM COLORED LETTERING & OUTLINE
ON SIDES / W/LIGHTING

HOSPITAL LOGO
SHRUBS, GRADING, SETBACKS AS REQUESTED BY:



120" or less

50" or less

8' x 8'

Doc#: 751532
Book: 3169 Pages: 0286 - 0320
12/07/2009 3:16PM

STEVEN B. GOSS, ESQ

MCRD Book 3169 Page 286

146-
2-
2.02 post.
37.00 cert.

This document was prepared by
and after recording should be returned to:
Nicole Hoffpauir Esq.
Krooth & Altman LLP
1850 M Street
Suite 400
Washington, DC 20036
(202) 293-8200

REGULATORY AGREEMENT FOR SECTION 242 NONPROFIT HOSPITALS

OWNER: LRGHEALTHCARE, a New Hampshire nonprofit corporation
SECRETARY: Secretary of Housing and Urban Development
PROJECT NAME: LRGHealthcare
FHA PROJECT NO.: 024-13004
OWNER'S ADDRESS: 80 Highland Street, Laconia, New Hampshire 03246
PROJECT ADDRESS: 80 Highland Street, Laconia, NH 03246
15 Aiken Avenue, Franklin, NH 03235
238 Daniel Webster Highway / U.S. Route 3, Meredith, NH
Belknap and Merrimack Counties


LT2-3169-286-35


LT1-2-751532-1

- (3) All Short Term Debt must be "paid down" to zero for at least 20 consecutive days during each fiscal year. An exception to this "paid down" requirement will be permitted for an amount of the working line of credit that the chief financial officer of Mortgagor certifies is outstanding to offset a temporary delay in receipt of funds from third party payers. The exempt amount shall not exceed two percent (2%) of the average Adjusted Operating Revenue for the three most recent fiscal years.

(c) **Limitation on Total Debt Service Payments**

In addition to satisfying the separate requirements for Long Term Debt and Short Term Debt, the combined debt service payments for all Long Term Debt and Short Term Debt in the current year shall not exceed 10 percent of the average Adjusted Operating Revenue for the three most recent fiscal years.

(d) **Reporting Requirements**

If additional indebtedness is undertaken, the chief financial officer of Mortgagor shall certify to HUD compliance with:

- (1) If Long Term Debt is undertaken pursuant to the terms of Section 29(a) above, the Historical Pro Forma DSCR of 1.50 or greater for the previous 2 years and the current year's DSCR of 1.50 or greater;
- (2) If any additional indebtedness is undertaken pursuant to the terms of Section 29 above, the combined debt service payments for all Long Term Debt and Short Term Debt in the current year is not projected to exceed 10 percent of the average Adjusted Operating Revenue for the three most recent fiscal years;
- (3) If Short Term Debt is undertaken pursuant to the terms of Section 29(b) above, the amount of the line of credit does not exceed fifteen (15) days of Adjusted Operating Expenses as reflected on the Most Recent Audited Financial Statements nor does the collateral for the Short Term LOC exceed 150 percent of the amount of the line of credit. This certification will be consistent with GAAP and the definitions stated below; and
- (4) If any additional indebtedness is undertaken pursuant to the terms of Section 29 above, the type, the amount, the annual principal and the annual interest payments for both the new and existing indebtedness shall be provided to HUD.

(e) **Existing Leases for Property and Equipment**

- (1) For existing property lease(s) having an expiration of more than 1 year from the date of the Regulatory Agreement, Mortgagor shall use all reasonable efforts to obtain a provision in the lease(s) that states, in substance, that upon a default under the Mortgage, HUD, any mortgagee-in-possession, or any successor organization would have a right to occupy

the leased premises for Hospital-related activities so long as such party agrees to be bound by all of the terms and conditions of the lease (such provision in the lease is hereinafter referred to as the "Realty Lease Successor Clause").

- (2) For all renewals of existing leases for property hereafter entered into by Mortgagor, the Realty Lease Successor Clause shall be obtained. If the Lessor refuses to include the Realty Lease Successor Clause, Mortgagor shall not enter into the new lease without the prior approval of HUD.
- (3) For existing capitalized lease(s) of equipment having an expiration of more than one (1) year from the date of the Regulatory Agreement, Mortgagor shall use all reasonable efforts to obtain the Personalty Lease Successor Clause.
- (4) For all future capitalized equipment leases or renewals of existing capitalized equipment leases hereafter entered into by Mortgagor, the Personalty Lease Successor Clause shall be obtained, otherwise Mortgagor shall not enter into the new or renewal lease without the prior approval of HUD.

30. **Annual Verification of Compliance with Loan Covenants/Conditions**

- (a) Annually, Mortgagor shall have its independent auditor provide an unqualified opinion that in connection with the annual audit, nothing came to the auditor's attention to cause the auditor to believe that Mortgagor is not in compliance with the applicable covenants of the Regulatory Agreement, or, if the auditor is unable to provide an unqualified opinion, the auditor shall provide a listing of any items of noncompliance along with an explanation. The opinion or explanation can be accomplished either:
 - (1) If not required to be included in the audit itself, through a letter directly from the auditor to HUD sent when the audited financial statements are finalized; or
 - (2) Through a separate report referred to in the Independent Auditor's Report attached to the audited financial statements.
- (b) The letter or report shall include a statement listing:
 - (1) the amount required in the MRF as of the balance sheet date;
 - (2) the actual balance of the MRF as of the balance sheet date; and
 - (3) a calculation for DSCR, Current Ratio, Average Payment Period, and Equity Financing Ratio, as such terms are defined at the end of this Rider.