**PURCHASE AND SALE AGREEMENT**

**(Lease of Land and Sale of Improvements)**

**DATED:**

BETWEEN: **LEWIS & CLARK COLLEGE** SELLER

 0615 SW Palatine Hill Road

 Portland, OR 97219

AND: PURCHASER

Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, all of Seller's right title and interest in and to the improvements located on the real property commonly known as (the **"Improvements")** on the terms and conditions set forth in this Purchase and Sale Agreement (the "Agreement") and to lease to Purchaser the land described in **Exhibit A** (the "Land") pursuant to a Ground Lease. The Improvements and land are collectively referred to as the **"Property."**

**1. PURCHASE AND SALE OF THE IMPROVEMENTS/LEASE OF LAND.** Seller agrees to sell Seller's interest in and to the Improvements to Purchaser and Purchaser agrees to buy Seller's interest in and to the Improvements from Seller for the price and on the terms and conditions set forth below. In addition, Seller agrees to lease the Land to Purchaser and Purchaser agrees to lease the Land from Seller pursuant to the terms and conditions contained in the Seller's standard College Housing Program Ground Lease ("Ground Lease"). The covenants, conditions and representations described in the Ground Lease are incorporated in this Agreement by this reference and shall survive delivery and acceptance of the deed.

2. **PURCHASE PRICE.**

2.1 **Total Purchase Price.** Purchaser promises to pay Seller as the total purchase price for the Improvements the sum of $ .

2.2 **Earnest Money Deposit.** Upon the execution of this Agreement by Seller and Purchaser, Purchaser shall pay Seller $ as earnest money deposit **("Earnest Money").**

3. **PRECONDITION TO PARTIES OBLIGATION.**

3.1 **Purchaser's Contingency Period.** Purchaser shall have until to satisfy itself concerning the availability of financing for the acquisition of the Improvements.

3.2 **Purchaser's Inspection.** At Purchaser's expense, Purchaser may have the Property and all elements and systems inspected by one or more professionals of Purchaser's choice. Purchaser shall specifically identify in this Agreement any desired inspections which may include testing or removal of any portion of the Property due to the possible presence of any environmentally hazardous substance or condition. If an inspection shows a material defective condition in the Property, Purchaser may terminate the transaction by delivery to Seller of a written notice of Purchaser's disapproval of the inspection report by the date **stated in Section 3.3.** Purchaser understands that if Purchaser does not disapprove of an inspection report in writing within the time provided, that constitutes acceptance of the condition of the Property.

3.3 **Termination.** In the event Purchaser determines that satisfactory financing is unavailable or the inspection report is not satisfactory, Purchaser may, at any time on or before

 rescind this Agreement by giving written notice to Seller. This Agreement thereafter shall be null and void and neither party shall have any obligation to the other.

4. **SELLER'S TITLE TO THE PROPERTY.**

4.1 **Title Report.** As soon as practicable after the execution of this Agreement, Seller at its expense shall furnish to Purchaser a preliminary title report from First American Title Insurance Company of Oregon ("Title Company") showing its willingness to issue title insurance on the Improvements and the leasehold interests under the Ground Lease, together with full copies of all exceptions. Purchaser shall have ten (10) days after receipt of the preliminary title report and exceptions within which to notify Seller in writing of Purchaser's disapproval of any exceptions shown in the report, other than exceptions for any liens to be satisfied by Seller at Closing. In the event of such disapproval, Seller shall have until the Closing to eliminate any disapproved exception. Failure of Purchaser to disapprove any exception within the 10‑day period shall be deemed an approval of the exceptions shown in the title report. If Seller is unable to eliminate any disapproved exception, the Purchaser may either elect to rescind the Agreement by notice to Seller or elect to waive its prior disapproval and proceed to close the sale.

5. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller makes the following representations and warranties, which representations and warranties will survive Closing and the conveyance of the Improvements to Purchaser:

5.1 Seller is the owner of the Improvements and has the right and power to sell theImprovements to Purchaser.

5.2 Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Improvements.

* 1. Seller is not a "foreign person" as that term is defined in IRC § 1445. On the Closing, Seller will execute and deliver to Purchaser a certification of the nonforeign status on a form required by the IRS.

5.4 If the Improvements were constructed before 1978, Purchaser may conduct a risk assessment or inspection to determine the presence of lead‑based paint or lead‑based paint hazards on the Improvements. Purchaser may terminate this transaction by delivery to Seller written notice of Purchaser's disapproval of the risk assessment or inspection within ten (10) days after the date of this Agreement, in which case, this transaction shall be null and void. The parties shall complete and execute a Disclosure of Information and Acknowledgment and Seller shall furnish to Buyer a Lead‑Based Paint brochure.

5.5 Except as provided above, Seller has made no representations, warranties, or other agreements concerning matters relating to the Property. Seller has made no agreement or promise to alter, repair, or improve the Property. Purchaser represents that Purchaser has made their own examination of the Property and is buying the Improvements based on Purchaser's own examination and personal knowledge of the Property and that Purchaser takes the Property in the condition, known or unknown, existing at the time of this Agreement "AS IS." Seller has provided Purchaser with a Seller's Property Disclaimer Statement.

6. **CLOSING.**

 6.1 **Closing.** This transaction will be closed on a date to be selected by the parties but no later than ("Closing").

6.2 **Manner and Place of Closing.** This transaction will be closed in the offices of First American Title Insurance Company of Oregon at 4500 SW Kruse Way, Suite 100, in Lake Oswego, Oregon ("Escrow"), or at such other place as the parties may mutually select. Closing shall take place in the manner and, in accordance with the provisions set forth in this Agreement.

6.3 **Prorations, Adjustments.** Real property taxes and assessments shall be prorated as of Closing. Seller shall be responsible for any and all deferred or abated taxes and related interest and charges, any past due taxes and assessments through Closing and shall cause such to be paid and removed at or before Closing. The current year's taxes shall be prorated between the parties as of Closing. In addition, insurance, interest, water and other utilities constituting liens shall be prorated as of Closing.

6.4 **Certification of Nonforeign Status.** Seller shall deliver to Purchaser at Closing a Certificate of Nonforeign Status, setting forth Seller's address and United States taxpayer identification number and certifying that Seller is not a foreign person as so defined.

6.5 **Events of Closing.** Provided the Title Company is in a position to cause the title insurance policy to be issued as described below, sale of the Improvements will be closed on the Closing as follows:

1. The Escrow officer will perform the prorations described in **Section 6.3,** and the parties shall be charged and credited accordingly.
2. The total purchase price less the Earnest Money shall be payable to Seller at Closing by check or Federal Reserve bank wire to an account designated by the Seller.
3. Any liens required by this Agreement to be paid by Seller at closing and title exceptions and defects to be removed or cured by Seller at or before Closing shall be removed, cured, paid and satisfied of record at Seller’s expense.
4. Seller shall convey the Improvements to Purchaser by Statutuory Warranty Deed.
5. Seller and Purchaser will execute the Ground Lease and Memorandum of Ground Lease.

(f) Title Company will deliver its Commitment letter committing to issue the policy described in Section 6.6 insuring title to the Improvements upon recordation of the closing documents. The title insurance premium will be charged to Purchaser.

1. The Escrow officer will record the Deed and Memorandum of Lease at Purchaser's Expense.

(h) The parties will split the escrow fee of the Title Company for closing this transaction. Each party shall pay its own attorney’s fees and other items customarily required to be paid by the party.

* 1. **Title Insurance.** As soon as possible after Closing, Seller shall furnish Purchaser with owner’s policy of the title insurance to Purchaser in the amount of the total purchase price for the Improvements and leasehold on the Ground Lease, subject only to the standard printed exceptions of the title company and exceptions of the title company and exceptions for the matters accepted by Purchaser.
	2. **Possession.** Seller shall deliver possession of the Property to Purchaser on the Closing date.

7. **FAILURE TO CLOSE.**

In the event that this transaction fails to close on account of Purchaser's fault or inability to close, the amount previously deposited or paid as earnest money shall be forfeited by Purchaser and retained by Seller as liquidated damages. Such amount has been agreed by the parties to be reasonable compensation and the exclusive remedy for Purchaser's default, since the precise amount of such compensation would be difficult to determine.

8. **GENERAL PROVISIONS.**

8.1 **Time of Essence.**  A material consideration to Seller entering into this transaction is that Purchaser will close the purchase of the Property by the Closing described above. Except as

otherwise specifically provided in this Agreement, time is of the essence of each and every provision of this Agreement.

8.2 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns. Either party may transfer such party's interest under this Agreement, provided that the transferee assumes such party's obligations hereunder.

8.3 **Notices.** Notices under this Agreement shall be in writing and shall be effective when actually delivered. If mailed, a notice shall be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown above. Either party may change its address for notices by written notice to the other.

8.4 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

8.5 **Attorneys’ Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

8.6 **Prior Agreements.** This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties.

8.7 **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

8.8 **Brokers.** Each party will defend, indemnify, and hold the other party harmless from any claim, loss, or liability made or imposed by any other party claiming a commission or fee in connection with this transaction and arising out of its own conduct.

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

8. 10 **Survival of Covenants.** Any covenants and agreements which this Agreement does not require to be fully performed prior to Closing shall survive Closing and shall be fully enforceable thereafter in accordance with their terms.

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

8.12 **Invalidity of Provisions.** In the event any provision of this Agreement, or any instrument to be delivered by Purchaser at Closing pursuant to this Agreement, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

**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, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED. USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES. IF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505, ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF THE SALE OR TRANSFER OF THIS PROPERTY.**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the day and year first above written.

**SELLER: PURCHASER:**

**LEWIS & CLARK COLLEGE**

By:

Name: Thomas J. Hochstettler

Title: President

By:

Name: Carl B. Vance

Title: Vice President for Finance and

 Treasurer

**EXHIBIT A**

**(To Purchase and Sale Agreement)**

**REAL PROPERTY DESCRIPTION**

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