

**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** dated as of the **[insert]** day of **[insert]**, **[insert]**

**BETWEEN:**

**[INSERT]**

(hereinafter called the “**Vendor**”)

OF THE FIRST PART

- and -

**SOUTHLAKE REGIONAL HEALTH CENTRE**

(hereinafter called the “**Purchaser**”)

OF THE SECOND PART

**IN CONSIDERATION OF** the mutual covenants and agreements herein set out, the sum of Two Dollars (\$2.00) now paid by each of the parties hereto to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party hereto), the parties hereto hereby agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 DEFINITIONS**

In this Agreement the following terms shall have the respective meanings ascribed thereto as follows:

- (a) “**Acceptance Date**” means the date of execution and delivery of this Agreement by both the Purchaser and the Vendor.
- (b) “**Agreement**” means this agreement of purchase and sale and the schedules attached hereto, as same may be amended, supplemented and restated from time to time.
- (c) “**Board Approval Date**” means the date which is **[insert]** days following the Acceptance Date.
- (d) “**Business Day**” means any day other than a Saturday, a Sunday or a statutory or municipal holiday in the municipality in which the Property is situate.

- (e) “**Claims**” means, collectively, all actions, causes of action, claims, losses, demands, damages, liabilities, penalties, costs and expenses of every nature and kind suffered or incurred by a party.
- (f) “**Closing**” means the completion of the within transaction of purchase and sale of the Property.
- (g) “**Closing Date**” means the date for completion of the transaction of purchase and sale herein contemplated, as set out in Section 8.1, or such other date for completion as may be agreed upon by the Vendor and the Purchaser.
- (h) “**Consent**” has the meaning ascribed thereto in Section 5.2(b).
- (i) “**Deposit**” means, collectively, the First Deposit and the Second Deposit.
- (j) “**DRA**” has the meaning ascribed thereto in Section 8.6.
- (k) “**Due Diligence Condition Date**” means the date which is **[insert]** days following the Acceptance Date.
- (l) “**ETA**” means Part IX of the *Excise Tax Act* (Canada), as amended from time to time.
- (m) “**First Deposit**” has the meaning ascribed thereto in Section 4.2(a).
- (n) “**Final Adjustment Date**” has the meaning ascribed thereto in Section 4.4(c).
- (o) “**Governmental Authority**” means any municipal, regional, provincial or federal government and any regulatory authority, agency, commission, board, branch or department thereof having or claiming jurisdiction over the Property.
- (p) “**H.S.T.**” means all goods and services tax, harmonized sales tax or other sales or value added tax imposed under the ETA and under any provincial legislation similar to the ETA.
- (q) “**Hazardous Substance**” means any substance that is, or is likely to be, hazardous or harmful to the environment or likely to cause an adverse effect, damage or impairment to persons or property and includes, without limiting the generality of the foregoing, the following: (A) any substance that, if added to water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by humans or by any animal, fish or plant; (B) any solid, liquid, gas or odour or combination of any of them that, if emitted into air, soil or water, would create or contribute to the creation of a condition that does or would endanger the health, safety or welfare of persons or the health of animal life, interfere with normal enjoyment of life or property, or cause damage to plant life or to property; and (C) any material or substance declared or deemed to be hazardous, toxic, deleterious, caustic, radioactive, explosive, dangerous, a contaminant, a waste, a source of contaminant, a pollutant or a dangerous good under any environmental law, including, without limitation, petroleum hydrocarbons, benzene, toluene, ethylbenzene, xylene, urea formaldehyde, asbestos, lead, polychlorinated biphenyls and dioxins.

- (r) “**Intended Uses**” has the meaning ascribed thereto in Section 5.1(b)(i).
- (s) “**Notice**” has the meaning ascribed thereto in Section 11.
- (t) “**OLT**” means the Ontario Land Tribunal or any successor Governmental Authority.
- (u) “**Option**” has the meaning ascribed thereto in the Option Agreement.
- (v) “**Option Agreement**” means the option agreement dated [insert] between the Vendor, as optionor, and the Purchaser, as optionee.
- (w) “**Option Fee**” has the meaning ascribed thereto in the Option Agreement.
- (x) “**Outside Date**” means the date which is [insert] months following the Acceptance Date.
- (y) “**Permitted Encumbrances**” has the meaning ascribed thereto in Section 7.1.
- (z) “**Person**” means any individual, sole proprietorship, partnership, limited partnership, limited liability company, corporation, firm, unincorporated association or organization, trust or Governmental Authority.
- (aa) “**Property**” means those certain lands and premises legally described in Schedule A hereto.
- (bb) “**Purchase Price**” has the meaning ascribed thereto in Article 4.
- (cc) “**Purchaser’s Solicitors**” means Borden Ladner Gervais LLP.
- (dd) “**Requisite Deliveries**” has the meaning ascribed thereto in Section 8.6.
- (ee) “**RFP Process**” means the issuance of a non-binding request for proposal by the Purchaser dated [insert] pursuant to which the Property was identified as a suitable property for a proposed future hospital site to be developed by the Purchaser.
- (ff) “**Second Deposit**” has the meaning ascribed thereto in Section 4.2(b).
- (gg) “**Statement of Adjustments**” has the meaning ascribed thereto in Section 4.4.
- (hh) “**Tendering Party**” has the meaning ascribed thereto in Section 8.7.
- (ii) “**Transaction**” means the transaction contemplated or required by this Agreement
- (jj) “**Transfer**” has the meaning ascribed thereto in Section 8.3.
- (kk) “**Vendor’s Solicitors**” means [insert].
- (ll) “**Zoned in Final Form**” has the meaning ascribed thereto in Section 5.2(a).

## **1.2 CERTAIN RULES OF INTERPRETATION**

In this Agreement:

- (a) the division into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
- (b) the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular portion of this Agreement; and
- (c) unless specified otherwise or the context otherwise requires:
  - (i) references to any Article, Section or Schedule are references to the Article or Section of, or Schedule to, this Agreement; and
  - (ii) words in the singular include the plural and vice-versa and words in one gender include all genders.

## **1.3 PERFORMANCE ON BUSINESS DAYS**

If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, the action is valid if taken on or by the next succeeding Business Day.

## **1.4 CURRENCY**

All references to currency in this Agreement, unless specified otherwise, shall be deemed to be references to amounts in Canadian dollars.

## **1.5 SCHEDULES**

The following Schedules are attached to and form part of this Agreement:

- Schedule A - Legal Description
- Schedule B - Permitted Encumbrances
- Schedule C - Vendor’s Work **[insert, as necessary]**

## **ARTICLE 2 PURCHASE AND SALE**

### **2.1 PURCHASE AND SALE OF THE PROPERTY**

The Vendor agrees to sell the Property to the Purchaser and the Purchaser agrees to buy the Property from the Vendor, on and subject to the terms and conditions herein contained.

### **2.2 REFERENCE PLAN**

The Vendor shall cause to be prepared by a qualified Ontario land surveyor a reference plan of survey showing the Property, any existing easements affecting the Property, any lands which are to be made subject to easements to be reserved or transferred pursuant to this Agreement and any lands which are to be made subject to use restrictions pursuant to this Agreement as Parts thereon. The proposed reference plan shall be subject to the approval of the Purchaser. The Vendor shall cause such reference plan of survey to be deposited on title at least thirty (30) days prior to the Closing Date, and shall deliver to the Purchaser, at least twenty (20) days prior to the Closing Date, a copy of the deposited reference plan together with a certificate of the surveyor, certifying to the Purchaser the acreage of the Property to three decimal places. The Vendor shall bear all costs in connection with the reference plan of survey and the certificate of acreage.

### **ARTICLE 3 DELIVERIES AND ACCESS**

#### **3.1 DELIVERIES BY VENDOR**

- (a) Within three (3) Business Days after the Acceptance Date, the Vendor shall deliver to the Purchaser copies of all relevant information and documents in possession or control of the Vendor, including, without limitation, all surveys, plans and specifications, and a soil test report, an environmental report (including without limitation a Phase I environmental site assessment), an engineering report, a site grading plan, a storm water management plan and an archaeological report (collectively, the “**Vendor Deliveries**”), save to the extent already delivered to the Purchaser as part of the RFP Process provided that the Vendor delivers any and all updates to such Vendor Deliveries in accordance with this Section 3.1. Further, if additional reports, plans or surveys or other documents referenced to in this Section 3.1 are subsequently obtained by the Vendor, copies shall be provided to the Purchaser forthwith.

If the Purchaser has not received any or all of the above Vendor Deliveries within the aforesaid time period, the Purchaser may at any time thereafter, prior to receipt of said deliveries, terminate this Agreement by Notice in writing to the Vendor, and the Deposit shall then be returned to the Purchaser forthwith after delivery of such Notice, together with any interest accrued thereon and without set-off or deduction. Failure to give such Notice shall not constitute a waiver of the Purchaser’s right to receive timely delivery of the Vendor Deliveries.

- (b) Within **[insert]** Business Days after the Acceptance Date, the Vendor shall deliver to the Purchaser a record of site condition for the Property conforming to the following requirements: the record must be in the usual form; the record must show, without qualification, that the Property complies with Ministry of the Environment Guidelines for clean-up standards **[or the standards specified in a diligence risk assessment]** for the kind of use that includes the Intended Uses; the record must be addressed to the Purchaser; the record must be signed by consultants reasonably approved by the Purchaser in writing; the record must be accompanied by a certificate reasonably satisfactory to the Purchaser showing that the consultants have errors and omissions insurance coverage for at least \$5 million per occurrence; the record must have been filed with and acknowledged by the Ministry of the Environment.

- (c) Within two (2) Business Days of receipt of a request from the Purchaser, the Vendor shall execute and deliver to the Purchaser authorizations permitting Governmental Authorities to release information respecting the Property to the Purchaser.
- (d) Within two (2) Business Days of receipt of a request from the Purchaser, the Vendor shall consent to and, if necessary, execute such applications and documents relating to development of the Property as are required to be signed by the registered owner of the Property. The Vendor further agrees to support any applications by the Purchaser related to development of the Property for the Intended Uses.

### **3.2 ACCESS TO THE PROPERTY**

Following the Acceptance Date, the Vendor shall permit the Purchaser and its employees, agents, representatives, consultants and contractors to have access to the Property, from time to time, at the sole expense and risk of the Purchaser, for the purpose of conducting such tests, inspections and investigations as the Purchaser may deem necessary or desirable, including, without limitation, soil tests, environmental audits, inspections and studies. The Vendor acknowledges that the tests and studies may involve the drilling of holes or similar investigations. The Purchaser agrees to restore the inspected Property to the condition in existence immediately prior to the inspections, insofar as reasonably possible, in the event this transaction is not completed. The Purchaser agrees to indemnify the Vendor from and against all Claims directly and solely caused by any entry, tests, inspections and investigations or other activity on the Property by the Purchaser or by its employees, agents, representatives, consultants or contractors. This indemnity shall survive termination of this Agreement, notwithstanding anything herein contained to the contrary.

## **ARTICLE 4 PURCHASE PRICE**

### **4.1 PURCHASE PRICE**

The purchase price for the Property shall be the sum of **[insert]** Dollars (**[\$insert]**) (the “**Purchase Price**”), subject to adjustments as herein set out. **[NTD: include the following if Purchase Price is tied to acreage: The Purchase Price has been calculated on the basis of **[\$insert]** per acre, for **[insert]** acres (The “**Estimated Area**”). In the event that the certificate of acreage referred to above discloses that the area of the Property is more or less than the Estimated Area, the Purchase Price shall be adjusted accordingly. Notwithstanding the foregoing, for the purpose of calculating the Purchase Price payable by the Purchaser hereunder, the area of the Property shall be deemed to be the lesser of (A) the area of the Property set out in the said certificate of acreage, and (B) the Estimated Area multiplied by **[insert]**. **The insert in preceding sentence is to reflect the maximum acceptable variance for adjustment to the price.****

### **4.2 PAYMENT OF PURCHASE PRICE**

The Purchase Price shall be payable in lawful money of Canada as follows:

- (a) The amount of Option Fee paid by the Purchaser in accordance with the terms of the Option Agreement shall be acknowledged as a deposit (the “**First Deposit**”), and shall be credited against the Purchase Price on Closing.
- (b) Within three (3) Business Days following the Acceptance Date, the Purchaser shall submit a deposit of [insert] Dollars (\$[insert]) (the “**Second Deposit**”) by wire transfer payable to the Vendor’s Solicitors in trust. The Second Deposit shall be invested forthwith in an interest-bearing account or a guaranteed investment certificate of a Canadian Schedule I chartered bank. The Second Deposit together with accrued interest thereon shall be credited against the Purchase Price on Closing. **[NTD: Deposit structure to be determined through discussions with the Optionor.]**
- (c) The balance of the Purchase Price, subject to adjustments as herein set out, shall be payable by wire transfer to the Vendor or as it directs, on Closing.

Notwithstanding the foregoing or anything else in this Agreement, if, following the exercise of the Option by the Purchaser, the transactions contemplated by this Agreement are not completed for any reason except the default of the Purchaser under this Agreement, the Second Deposit together with any interest accrued thereon (as applicable) shall be forthwith payable to the Purchaser without deduction, and the First Deposit shall be dealt with in accordance with terms of the Option Agreement. In the event that this Agreement is terminated solely by reason of the default of the Purchaser, the Deposit shall be forfeited to the Vendor as liquidated damages, and not as a penalty and the Purchaser hereby irrevocably authorizes the Purchaser’s Solicitors to release the Deposit to the Vendor in such circumstances in full and complete satisfaction of any and all Claims that the Vendor may have against the Purchaser as a result of such default and hereby specifically releases the Purchaser from all liability relating thereto. The release of the Deposit to the Vendor as aforesaid shall constitute the Vendor’s sole legal remedy as against the Purchaser. The foregoing provisions shall in no way affect the Purchaser’s right to rely upon and to exercise any other legal remedies or recourse available to the Purchaser, including an application for specific performance.

#### **4.3 HARMONIZED SALES TAX**

H.S.T. payable in connection with the purchase of the Property shall be the sole responsibility of the Purchaser. In this regard:

- (a) The Purchaser represents that it is registered under the ETA for the collection and remittance of H.S.T.
- (b) The Purchaser covenants and agrees to be liable for, self-assess and remit to the appropriate Governmental Authority all H.S.T. which is payable under the ETA in connection with the transfer of the Property pursuant to this Agreement, all in accordance with the ETA.
- (c) Subject to paragraph (e) of this Section, the Vendor shall not collect H.S.T. on Closing but shall allow the Purchaser to self-assess and remit H.S.T. to the Receiver General in accordance with the ETA.



- (d) The Purchaser shall indemnify and save harmless the Vendor from and against any and all H.S.T., fines, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of the Purchaser's failure to remit any H.S.T. or as a result of any inaccuracy, misstatement or misrepresentation made by the Purchaser in connection with any matter raised in this Section.
- (e) The Purchaser shall deliver to the Vendor on Closing a certificate and indemnity in accordance with the foregoing, including verification of its H.S.T. registration number issued under the ETA. In the event that the Purchaser directs that title to the Property is to be engrossed in favour of another party or in the event that this Agreement is assigned to another party (if permitted hereunder), the party taking title to the Property (as well as the Purchaser) shall deliver to the Vendor on Closing a certificate and indemnity in accordance with the foregoing, including verification of its H.S.T. registration number.

#### **4.4 CLOSING COSTS AND ADJUSTMENTS**

- (a) The Vendor shall pay the cost of preparation of the Transfer (as hereinafter defined) and all fees and expenses of the Vendor's Solicitors and commissions to the Vendor's broker/agent as provided for in Section 9.6.
- (b) Adjustments to the Purchase Price shall be made for (i) acreage (if applicable), and (ii) realty taxes, which shall be apportioned and allowed to the Closing Date, the Closing Date itself to be apportioned to the Purchaser [**NTD: Amend if any other items for adjustment**]. The Vendor shall deliver a statement of adjustments (the "**Statement of Adjustments**") to the Purchaser no later than five (5) Business Days prior to the Closing Date.
- (c) In the event that any adjustment cannot be determined on the Closing Date, or in the event an error or omission is made on the Statement of Adjustments, the Purchaser and the Vendor covenant and agree to adjust or readjust as between themselves forthwith after such adjustment can be determined, provided that all claims for post-closing adjustments must be made on or before the day that is twelve (12) months after the Closing Date (the "**Final Adjustment Date**"). After the Final Adjustment Date, the adjustments and post-closing adjustments made by the parties as at that date shall be final and binding.

### **ARTICLE 5 CONDITIONS**

#### **5.1 CONDITIONS FOR PURCHASER'S BENEFIT**

This Agreement shall be conditional upon each of the following conditions being satisfied or waived by the Purchaser on or before the respective dates noted below:

- (a) On or before the Board Approval Date, the Board of Directors of the Purchaser shall have approved the terms and conditions of this Agreement.



- (b) On or before the Due Diligence Condition Date, the Purchaser shall have satisfied itself with respect to each of the following **[NTD: To be negotiated based on site specific considerations]**:
- (i) all planning and development matters, including, without, limitation, that the Property may be lawfully used for the following purposes:
    - (A) an acute care hospital; and
    - (B) **[NTD: To be determined]**,  
(collectively, the “**Intended Uses**”);
  - (ii) the Property contains at least thirty-five (35) contiguous developable acres;
  - (iii) that the soil conditions of the Property are acceptable for the Intended Uses. Without limiting the foregoing, the Property must be free of subsoil conditions (including below ground structures and groundwater) that might prevent ordinary construction of the Purchaser’s proposed building(s) (including anything that would make construction more difficult or expensive or could result in undue delay);
  - (iv) that no part of the Property contains any Hazardous Substance to an extent that would make the Property unsuitable for the Intended Uses, as determined by the Purchaser in its sole and absolute discretion;
  - (v) that the Property has not been used and is not now a repository for the disposal of waste and does not contain an underground storage tank;
  - (vi) that the Property complies with all laws relating to the environment, health or safety, and that the development and use of the Property for the Intended Uses will comply with every such law;
  - (vii) the Permitted Encumbrances;
  - (viii) that there are no outstanding claims in respect of the Property, including without limitation any request, notice, directive, threat, proceeding or litigation;
  - (ix) that the requirements of the municipality or any other Governmental Authority having jurisdiction with respect to storm water management for the Property to permit the Purchaser to carry on the Intended Uses will be met off-site, without cost to the Purchaser;
  - (x) that the Property has been fully serviced or shall be fully serviceable within the next five (5) to seven (7) years, at the Vendor’s expense, in capacities sufficient, in the opinion of the Purchaser, for the purposes of development of the Property for the Intended Uses, such services to include, without limitation, sanitary sewers, storm sewers, water mains, telecommunication services for telephone, cable and internet

(including fiber-optic communication systems), electricity and natural gas, all to be available at the perimeters of the Property at locations designated by the Purchaser (provided that the Purchaser provides the Vendor with specifications as to the locations of such servicing connections within a reasonable time following the Vendor's written request therefor) and available for internal connection, without cost to the Purchaser other than usual hook-up charges, and to be fully operational and functional after hook-up by Purchaser and that the storm sewers and sanitary sewers are deep enough for the Property to drain by gravity, without requirement of a pump; **[NTD: to be confirmed based on site considerations.]**

- (xi) that all levies, imposts, local improvement charges, development charges and other payments required to be made in connection with the development of the Property (other than the usual building permit issuance fee and any development charges imposed on the Purchaser in respect thereof) have been paid by the Vendor;
- (xii) that the Property fronts on a public road, that the road is fully paved, and that there is full, open and uninterrupted legal public access to and from the Property for ingress and egress by pedestrians and vehicles;
- (xiii) that the Property is free of archaeological remains that may prevent construction of the Purchaser's proposed building or buildings or that may make construction more difficult or expensive or result in undue delay;
- (xiv) that the Property is a vacant site, free of above-ground structures, stockpiled material and debris, is graded in accordance with engineering drawings approved by the municipality and in accordance with the requirements of the Purchaser, has engineered fill to standards approved by the Purchaser, and is clear of all trees;
- (xv) that the requirements of any conservation authority with jurisdiction over the Property, or any other Governmental Authority having jurisdiction with respect to conservation or environmental matters respecting the Property, to permit the Purchaser to develop the Property and to carry on the Intended Uses can be met at a cost determined by the Purchaser in its sole discretion to be reasonable;
- (xvi) that all municipal and other governmental approvals required by it for development of the Property for the Intended Uses will be available on terms and conditions satisfactory to it, and that the costs associated with development of the Property are acceptable to the Purchaser, in its sole and absolute discretion;
- (xvii) that the Purchaser's proposed development on the Property is economically feasible, as determined by the Purchaser in its sole and absolute discretion; and
- (xviii) such other matters of interest to the Purchaser as the Purchaser may determine, in its sole and absolute discretion.

**[NTD: See note regarding zoning at Section 5.2(a).]**

- (c) on Closing, the Vendor shall have delivered good and marketable title to the Property in fee simple free and clear of all encumbrances, save and except for Permitted Encumbrances;
- (d) on or before Closing, receipt of executed copies of the Vendor's closing documents provided for under Section 8.4 of this Agreement;
- (e) on Closing, all of the representations and warranties of the Vendor set out in Section 6.1 shall be true and accurate in all material respects and there shall have been no material changes as of Closing to any of such representations and warranties;
- (f) on Closing, the Vendor shall have addressed any objections made by the Purchaser to title, as set out in Section 7.2; and
- (g) on Closing, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been duly performed in all material respects.

The conditions set forth in this Section 5.1 are solely for the benefit of the Purchaser and may only be satisfied or waived in whole or in part by the Purchaser, in the Purchaser's sole, subjective and absolute discretion, by Notice to the Vendor on or before the Due Diligence Condition Date. If the foregoing conditions have not been satisfied and/or waived by the Purchaser in their entirety on or before the date set out in the applicable subsection above, then this Agreement shall be null and void and of no further force or effect and the Second Deposit shall be returned to the Purchaser in accordance with Section 4.2 and the First Deposit shall be dealt with in accordance with the terms of the Option Agreement. In such event, this Agreement shall terminate automatically at such time and, upon such termination, each of the Purchaser and the Vendor shall be released from all covenants and obligations under this Agreement (except for those covenants and obligations which are deemed to survive the termination of this Agreement).

## 5.2 ABSOLUTE CONDITIONS

This Agreement is subject to the following conditions which have been inserted for the benefit of both the Vendor and the Purchaser and which may not be waived by either party:

- (a) **[NTD: If Property is not being rezoned or will be rezoned by the Purchaser after Closing, omit this paragraph and related provisions, and add to s.5.1(b): “(##) that the zoning applicable to the Property will permit the Intended Uses;” or “(##) that the Property may be rezoned to permit the Intended Uses;”]** The Property shall, at the Outside Date, be “Zoned in Final Form” to permit the development and the construction upon the Property of a building or buildings appropriate for the Intended Uses. Without limiting the foregoing, the zoning shall permit a building or buildings to be erected on the Property having a gross floor area of **[Optionee to insert]** square feet. For the purposes of this Agreement, “Zoned in Final Form” shall mean the approval of a zoning by-law by all municipal authorities having jurisdiction therein or the approval of the OLT, and expiration of the appeal period therefrom, or, if there is an appeal, then upon the completion of the final adjudication including all possible appeals and the expiration of any requisite appeal period. All plans, specifications or drawings required for the submission of any

application for rezoning shall be prepared at the cost of the Vendor. All other costs or expenses incurred in connection with the rezoning, including, without limitation, professional and consultant fees and application fees, shall also be the sole responsibility of the Vendor.

- (b) All consents necessary for the within transaction to comply with the subdivision control provisions of the *Planning Act* (Ontario), as amended will have been obtained and all conditions thereof satisfied on or before the Outside Date. Such consents are hereinafter collectively called the “**Consent**” and shall include:
- (i) a consent to the severance of the Property from other adjacent lands owned by the Vendor and to the transfer of the Property to the Purchaser; and
  - (ii) any consents which may be required to any easements to be transferred or reserved pursuant hereto.

The parties acknowledge that the Consent may also be achieved by way of registration of a plan of subdivision which describes the Property and the lands which are to be subject to easements as whole lots or blocks on such plan or as part lots or blocks if a bylaw exempts same from the part lot control provisions of the *Planning Act*. The Vendor shall, at its sole cost and expense, comply in all respects with the *Planning Act* in respect of the Property.

In the event that any of the conditions in this Section have not been satisfied on or before the Outside Date, then, unless the parties hereto otherwise agree in writing, this Agreement shall be at an end, the Deposit, together with any interest accrued thereon, shall be returned to the Purchaser forthwith without set-off or deduction, and neither party shall have any further liability to the other hereunder.

## **ARTICLE 6 VENDOR’S REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **6.1 VENDOR’S REPRESENTATIONS AND WARRANTIES**

- (a) The Vendor represents and warrants to the Purchaser that:
- (i) the Vendor is a corporation existing under the laws of Ontario and has the necessary corporate authority, power and capacity to own its interest in the Property and to enter into this Agreement and carry out the Transaction contemplated by this Agreement on the terms and conditions herein contained;
  - (ii) this Agreement has been duly authorized by all corporate action required to be taken by the Vendor and constitutes a legal, valid and binding obligation of the Vendor, enforceable in accordance with its terms;
  - (iii) the Vendor is the sole legal and beneficial owner of a 100% fee simple interest in the Property, is in lawful, exclusive and peaceable possession of the Property and has the right to convey the Property and to complete the Transaction as contemplated herein on the Closing Date;

- (iv) there are no options to purchase (other than the Option Agreement), rights of first refusal or other purchase rights with respect to the Property or any part thereof that have not expired or been waived;
- (v) the Vendor is not aware of any Person that claims or may be entitled to claim a lien against the Property under the *Construction Act* (Ontario) or any similar legislation.
- (vi) so far as the Vendor is aware, there are no easements, rights of way, licences or other rights in the nature of easements affecting the Property other than those registered against title to the Property (if any);
- (vii) to the best of the Vendor's knowledge and belief, no Hazardous Substance has been stored, treated or disposed of on the Property and there are no underground storage tanks on the Property; the Vendor has not received notice of and has no knowledge or information of any pending, contemplated or threatened judicial, administrative or other action relating to the existence of a Hazardous Substance on or affecting the Property and has no reason to believe that any cause of action for such exists; and the Vendor has never used the Property as a waste disposal site.
- (viii) to the best of the Vendor's knowledge and belief, there are no Hazardous Substances located in, on, under or migrating to or from the Property;
- (ix) the Vendor has not received any notice of expropriation of any part of the Property and is not aware of any proposed expropriation;
- (x) there are no leases (registered on unregistered), offers to lease, agreements to lease, tenancy agreements or rights of occupation or possession with respect to all or any part of the Property, or any unregistered agreements affecting title to the Property;
- (xi) to the Vendor's knowledge, there are no First Nations claims to the Property;
- (xii) the Vendor has not received notice and is not aware of any pending or threatened litigation or of any other judicial or administrative proceeding affecting the Property including, without limitation, in any way relating to the use and occupation of the Property;
- (xiii) to the Vendor's knowledge, the Property has not been used as a cemetery;
- (xiv) the Vendor has not received notice of and is not aware of any claims adverse to the title of the Vendor to the Property and there are no outstanding disputes with respect to the boundaries of the Property with any abutting owner;
- (xv) the Vendor has not received any notice of and is not aware of any outstanding work orders, deficiency notices, orders to comply or directives against the Property or any part thereof;
- (xvi) at least one boundary of the Property abuts a public highway or municipal roadway, there is open, legal access to the Property, and, to the best of the Vendor's

knowledge and belief, there is no reason that the Purchaser will not be able to obtain from the applicable municipality full and uninterrupted ingress and egress to and from the Property at least one location approved by the municipality;

- (xvii) the Vendor has no knowledge of any pending or proposed zoning or other by-law, amendment to the Official Plan, or other proposed regulatory changes which could adversely affect the Property or the use thereof;
- (xviii) the boundaries of the Property or any part or parts thereof do not conflict with those of adjoining properties, there are no encroachments onto the Property from any adjoining properties and there are no encroachments by any structures on the Property onto any adjoining properties or onto a road or lane, or onto any part of the Property subject to an easement or right of way;
- (xix) save only as set out in Schedule B hereto, the Property is not subject to any site plan agreement, collateral agreement, development agreement, subdivision agreement, engineering agreement, servicing agreement, financial agreement or cost-sharing agreement, and is not subject to any other agreement, restriction (whether imposed privately, by a public body or authority or otherwise) or interim or holding by-law which would prohibit or adversely affect or restrict the contemplated development of the Property by the Purchaser;
- (xx) the Vendor is not now and shall not on the Closing Date be a non-resident of Canada within the meaning ascribed thereto in the *Income Tax Act* (Canada);
- (xxi) The Vendor has not committed any act of bankruptcy nor is it an insolvent person (as such term is defined by the *Bankruptcy and Insolvency Act* (Canada)), and no petition or receiving order has been filed against the Vendor and no proceedings for a composition with or proposal to the creditors of the Vendor or for the winding-up, liquidation or other dissolution of the Vendor has been instituted by or against the Vendor under any provincial or federal law;
- (xxii) the Vendor has paid or will have paid prior to the Closing Date any and all levies, imposts, local improvement charges, development charges or other payments imposed by the municipality or by any other Governmental Authority having jurisdiction in respect of development of the Property and, if applicable, other lands;
- (xxiii) the Vendor is not in default under any of the Permitted Encumbrances; and
- (xxiv) all of the Vendor Deliveries delivered or made available to the Purchaser by the Vendor pursuant to Section 3.1 are true copies in the possession or control of the Vendor, and to the Vendor's knowledge, do not contain any material misstatements, inaccuracies or omissions and comprise all relevant materials in the possession or control of the Vendor relating to the Property and no representation by the Vendor in this Agreement contains any untrue statement of fact, or omits to state any fact necessary to make the statement not misleading, and the Vendor has not omitted to disclose or make available any information of which the Vendor has actual

knowledge in connection with the Property that might reasonably affect the Purchaser's decision to complete purchase of the Property pursuant to this Agreement; and

- (xxv) the Vendor has not retained the services of any real estate broker or agent in connection with the sale of the Property [NTD: if a broker was retained, insert "other than [brokerage name]"].
- (b) The representations and warranties that are made herein are true, accurate and complete as at the Acceptance Date and shall be true, accurate and complete as at the Closing Date. The Vendor agrees that such representations and warranties shall survive the closing of this transaction for a period of [insert] years after the Closing Date.

## 6.2 VENDOR'S COVENANTS

The Vendor covenants and agrees with the Purchaser as follows:

- (a) to forthwith make and diligently pursue an application to have the Property Zoned in Final Form, including any appeals, at the Vendor's sole expense. For clarity, in the event that the Vendor's effort to obtain rezoning as aforesaid is not successful in the first instance, the Vendor shall bring an appeal in respect thereof to the OLT; or in the event that the Vendor succeeds in obtaining a rezoning which rezoning is appealed by a third party, the Vendor shall defend against such appeal at the OLT. The Purchaser shall have the right to participate fully in the rezoning of the Property and shall have the right to review and approve the proposed zoning by-law or zoning by-law amendment, as the case may be. The Vendor shall keep the Purchaser apprised of all discussions in regard to the rezoning and shall provide the Purchaser with copies of all materials submitted or received in connection with such application. The Purchaser shall have the right to attend and participate in all meetings in regard thereto. In the event that the rezoning obtained is a comprehensive zoning by-law for the Property and other lands of the Vendor, the Vendor agrees to allocate at least [insert] square feet of gross floor area to the Property and not to take any action either before or after the Closing Date which would result in a decrease in the allowed building coverage applicable to the Property below that level.
- (b) to forthwith apply for and proceed diligently at its expense to obtain the Consent, including satisfying any conditions in respect thereof at the Vendor's expense, and to keep the Purchaser advised as to the Vendor's progress;
- (c) to complete, at the Vendor's sole cost and expense, the work described in Schedule C hereto in accordance with the [NTD: identify municipal agreement(s)] and in accordance with the schedule for completion of the elements of such work set out in Schedule C;
- (d) without limiting the foregoing, to install at the Vendor's sole cost and expense services to the Property in the manner described in Section 5.1(b)(x) prior to the Closing Date;
- (e) to comply with all obligations under municipal agreements registered against the Property, including without limitation payment of all financial obligations thereunder prior to



Closing, and to indemnify and save harmless the Purchaser from any and all Claims in respect thereof; and

- (f) to remove any structures and material, including any stockpiled soil, from the Property, and to rough grade the Property to meet the rough grades of the adjacent roadways, grading to be in accordance with plans approved by the municipality and the requirements of the Purchaser, all to the satisfaction of the Purchaser, prior to the Closing Date.

### **6.3 PURCHASER'S REPRESENTATIONS AND WARRANTIES**

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a public hospital existing under the laws of Ontario and has the necessary corporate authority, power and capacity to own the Property and to enter into this Agreement and carry out the transaction contemplated by this Agreement on the terms and conditions herein contained;
- (b) this Agreement has been duly authorized by all corporate action required to be taken by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms;
- (c) the Purchaser has not retained the services of any real estate broker or agent in connection with the purchase of the Property by the Purchaser, **[save for: [insert]]**.

## **ARTICLE 7 TITLE MATTERS**

### **7.1 TITLE**

Notwithstanding anything contained in this Agreement, title to the Property shall be good and marketable and free and clear of all charges, encumbrances, restrictions, liens, easements, agreements, tenancies, occupancies and other possessory rights, save and except only for any encumbrances (the "**Permitted Encumbrances**") set out in Schedule B hereto, but subject to any provisos therein, and provided further that the encumbrances set out in Schedule B hereto shall constitute Permitted Encumbrances only if no liens are created by such encumbrances, no financial obligations thereunder remain outstanding, any conveyances required thereby have been given, no easements or rights are created thereby save as expressly identified in Schedule B, and such encumbrances have been fully complied with prior to the Closing Date or, in the case of municipal agreements, the Vendor has provided written confirmation from the municipality, addressed to the Purchaser, confirming that sufficient security for full compliance has been provided to the municipality. The Vendor covenants and agrees to comply with the terms of the provisos set out in Schedule B hereto. On or before the Closing Date, the Vendor shall register discharges of all encumbrances which are not Permitted Encumbrances.

### **7.2 INVESTIGATION OF TITLE**

The Purchaser shall be allowed until 5:00 p.m. (local time) on the Due Diligence Condition Date to examine the title to the Property at its own expense and to satisfy itself that there are no

outstanding work orders or deficiency notices affecting the Property. If within that time any valid objection to title or to any outstanding work order or deficiency notice is made in writing, which the Vendor is unable to remove, remedy or satisfy and which the Purchaser will not expressly waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end, the Deposit paid shall be returned to the Purchaser with accrued interest (if any) and without set-off or deduction, and neither party shall have any further liabilities or obligations to the other hereunder, save for any obligations expressly stated in this Agreement to survive termination. Save as to any valid objections so made by such day, any instruments which are registered or work orders or deficiency notices which arise after such day, and any objection going to the root of title, and subject always to Section 7.1, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the Property.

## **ARTICLE 8 CLOSING**

### **8.1 CLOSING DATE**

This Agreement shall be completed on [insert] (the "Closing Date"). [Alternative: This Agreement shall be completed on the date (the "Closing Date") which is [insert] days following the date of delivery of Notice that the last of the conditions in Section 5.1 has been satisfied or waived.]

### **8.2 VACANT POSSESSION**

The Vendor shall deliver vacant possession of the Property to the Purchaser on Closing.

### **8.3 DOCUMENT PREPARATION**

The transfer/deed of land (the "Transfer") shall, save for the land transfer tax statement, be prepared in registrable form at the expense of the Vendor. The Transfer to be delivered on Closing shall contain the statements contemplated by Section 50 (22) of the *Planning Act* (Ontario).

### **8.4 VENDOR'S CLOSING DOCUMENTS**

On or before the Closing Date, the Vendor shall execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:

- (a) a Transfer of the fee simple interest in the Property in favour of the Purchaser, in registerable form, or as it may otherwise direct in writing, or in favour of an assignee in accordance with Section 9.1 hereof, in registerable form;
- (b) Statement of Adjustments;
- (c) an undertaking by the Vendor to re-adjust the Statement of Adjustments in accordance with the terms of this Agreement;

- (d) a certificate of an officer of the Vendor that the Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (e) a certificate of an officer of the Vendor, that the representations and warranties of the Vendor contained in Section 6.1(a) hereof are true, accurate and complete as of the Closing Date;
- (f) a certificate of an officer of the Vendor regarding such matters related to the Property as are normally required or requested by title insurers in Ontario and which cannot be independently verified or certified by the Purchaser or the Purchaser's Solicitors, subject to the review and approval by the Vendor;
- (g) reliance letters in respect of each of the reports delivered to the Purchaser pursuant to Section 3.1(a) from the third parties that prepared such reports;
- (h) in the event that the Vendor or a predecessor in title, as owner of the Property, entered into a cost-sharing or similar agreement requiring payment of contributions to development costs and such agreement constitutes a Permitted Encumbrance hereunder written confirmation addressed to the Purchaser, from the trustee under such agreement or from another person satisfactory to the Purchaser, in its discretion, confirming that all contributions required to be made by the Vendor under such agreement have been paid in full and that the Purchaser shall have no obligations or liabilities pursuant to such agreement upon its acquisition of the Property; and
- (i) a direction as to the payee or payees of the Purchase Price;
- (j) all other documents which are required by this Agreement or which the Purchaser has reasonably requested to give effect to the terms of this Agreement.

All such documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such closing documents shall contain covenants, representations and warranties which are in addition to or more onerous upon the Vendor than those expressly set out in this Agreement, unless agreed upon by the Vendor in the exercise of its sole discretion.

## **8.5 PURCHASER'S CLOSING DOCUMENTS**

On or before the Closing Date, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor the following:

- (a) the balance of the Purchase Price, payable to the Vendor or as it directs;
- (b) a direction respecting title, if the Transfer is to be engrossed in favour of a Person other than the Purchaser;
- (c) an undertaking by the Purchaser to re-adjust the Statement of Adjustments in accordance with the terms of this Agreement;

- (d) a certificate and indemnity with respect to H.S.T., in accordance with Section 4.3; and
- (e) all other documents which are required by this Agreement or which the Vendor has reasonably requested at least five (5) Business Days before the Closing Date to give effect to the terms of this Agreement.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such closing documents shall contain covenants, representations and warranties which are in addition to or more onerous upon the Purchaser than those expressly set out in this Agreement, unless agreed upon by the Purchaser in the exercise of its sole discretion.

## **8.6 CLOSING ARRANGEMENTS**

In the event that each of the Vendor and Purchaser retains a solicitor to complete the within transaction by electronic registration pursuant to Part III of the *Land Registration Reform Act* (Ontario) and the *Electronic Registration Act* (Ontario), the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the “**Requisite Deliveries**”) and the release thereof to the Vendor and Purchaser will: (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the solicitor(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement (the “**DRA**”) between the said solicitors. The Vendor and Purchaser irrevocably instruct the said solicitors to be bound by the DRA in the form which is recommended from time to time by the Law Society of Ontario. Such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location as agreed to by both solicitors.

## **8.7 TENDER**

Notwithstanding anything contained in this Agreement or in any DRA, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this Section called the “**Tendering Party**”) upon the other party (in this Section called the “**Receiving Party**”) when the solicitor for the Tendering Party has:

- (a) delivered all applicable closing documents to the Receiving Party’s solicitor in escrow in accordance with the provisions of the DRA;
- (b) if applicable, delivered all funds to the Receiving Party’s solicitor in escrow, by wire transfer using the Large Value Transfer System, in accordance with the provisions of the DRA;
- (c) advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and

- (d) completed all steps required by the electronic registration system to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the Transfer and any other documents required to be registered on Closing pursuant hereto for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing them for registration by the Receiving Party's solicitor),

without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents and/or funds, and without any requirements to have an independent witness evidencing the foregoing.

## **ARTICLE 9 GENERAL**

### **9.1 ASSIGNMENT**

This Agreement and the rights and obligations hereunder shall not be assignable by the Vendor without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld), and any assignment given without such consent shall be of no effect. Notwithstanding the foregoing, the Purchaser shall be entitled to assign this Agreement and/or the Purchase Agreement to an affiliate or affiliates of the Purchaser or another public hospital under the *Public Hospitals Act*.

### **9.2 PLANNING ACT**

This Agreement shall be effective to create an interest in the Property only if the subdivision control provisions of the *Planning Act* (Ontario), as amended are complied with prior to Closing.

### **9.3 RESIDENCY**

The Purchaser shall be credited towards the Purchase Price with the amount, if any, necessary for the Purchaser to pay to the Minister of National Revenue to satisfy the Purchaser's liability in respect of tax payable by the Vendor under the non-residency provisions of the *Income Tax Act* (Canada) by reason of this sale. The Purchaser shall not claim such credit if the Vendor delivers on Closing the prescribed certificate or a statutory declaration that the Vendor is not then a non-resident of Canada.

### **9.4 TIME OF THE ESSENCE**

Time shall in all respects be of the essence hereof, provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors who may be specifically authorized in that regard.

### **9.5 NOTICE**

Any notice, statement, document or other communication required or permitted to be given to any party pursuant to the provisions of this Agreement (a “**Notice**”) shall be in writing and given by personal delivery or by e-mail or other means of electronic transmission, addressed as follows:

To the Vendor: [insert name and address]  
Attention: [insert]  
Email: [insert]

With a copy to: [insert name and address]  
Attention: [insert]  
Email: [insert]

To the Purchaser: Southlake Regional Health Centre  
596 Davis Drive  
Newmarket, ON L3Y 2P9  
Attention: [insert]  
Email: [insert]

With a copy to: Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide St West  
Toronto, ON M5H 4E3  
Attention: [insert]  
Email: [insert]

Any such Notice shall, if delivered or sent by e-mail or other electronic transmission prior to 5:00 p.m. (local time at the place of receipt) on a Business Day, be deemed to have been received by the other party on the same day on which it was delivered or transmitted, and, if delivered or transmitted at any other time, shall be deemed to have been received by the other party on the next following Business Day. Any party may change its address under this Section by giving Notice to the other party.

## 9.6 AGENCY FEES

All real estate commissions or fees payable with respect to this transaction shall be payable by the Vendor, and the Vendor shall indemnify and save harmless the Purchaser with respect to any and all such commissions or fees. **[NTD: The foregoing would apply if the Vendor used a listing agent and that agent is to pay the Purchaser’s agent out of commission payable to it by Vendor. Modify in other cases.]** This Section 9.6 shall survive the Closing or termination of this Agreement.

## 9.7 ENTIRE AGREEMENT

This Agreement, including any Schedules attached hereto, constitutes the entire agreement between the Purchaser and the Vendor. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

#### **9.8 FURTHER ASSURANCES**

Each party shall, at the request and expense of the other party, promptly do, execute, deliver or cause to be done, executed or delivered all further acts, documents and matters in connection with this Agreement that such other party may reasonably require from time to time for the purpose of carrying out the intent of this Agreement.

#### **9.9 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

#### **9.10 SEVERABILITY**

If any covenant, obligation, agreement, provision or part thereof or the application thereof to any Person or circumstance shall be determined to be invalid or unenforceable to any extent, same shall be severed from this Agreement, and the remainder of this Agreement or the application of such covenant, obligation, agreement or provision or part thereof to any Person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby but shall continue to be in full force and effect. Each covenant, obligation, agreement and provision in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

#### **9.11 AMENDMENT OF AGREEMENT**

No supplement, modification or waiver (other than a deemed waiver in accordance herewith) of this Agreement shall be binding unless in writing and executed by the parties hereto.

#### **9.12 WAIVER**

No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall any waiver constitute a continuing waiver unless expressly so stated.

#### **9.13 NO REGISTRATION OF AGREEMENT**

The Purchaser shall not register this Agreement or any notice of this Agreement on title to the Property without the consent of the Vendor, which consent shall not be unreasonably withheld.

#### **9.14 CONFIDENTIALITY**

The parties agree to keep all aspects of their negotiations and the terms of this Agreement confidential, save only for disclosure of necessary information to their respective consultants and professional advisors from time to time and as may be required by law. This provision shall survive



termination of this Agreement.

#### **9.15 SUCCESSORS AND ASSIGNS**

This Agreement shall enure to the benefit of and be binding upon the Purchaser and the Vendor and their respective successors and permitted assigns.

#### **9.16 COUNTERPARTS; ELECTRONIC TRANSMISSION**

This Agreement may be executed in separate counterparts, each of which when executed shall be deemed to be an original, and such counterparts taken together shall constitute one and the same agreement. The signature of any party to any counterpart shall be deemed to be a signature to and may be appended to any other counterpart. This Agreement may be executed and delivered by telecopier or other electronic transmission, and, if so executed and transmitted, this Agreement shall be for all purposes as effective as if the parties had delivered an executed original Agreement.

[SIGNATURE PAGE FOLLOWS]



**SCHEDULE A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**[INSERT]**

**SCHEDULE B**  
**PERMITTED ENCUMBRANCES**

**[INSERT]**

**SCHEDULE C**  
**VENDOR'S WORK [s.6.2(c)]**

**[INSERT]**