

## OPTION TO PURCHASE AGREEMENT

THIS AGREEMENT made as of the [insert] day of [insert], [insert].

BETWEEN:

[INSERT]

(hereinafter called the “Optionor”)

OF THE FIRST PART

- and -

**SOUTHLAKE REGIONAL HEALTH CENTRE**

(hereinafter called the “Optionee”)

OF THE SECOND PART

WHEREAS:

- A. Pursuant to a Proposal Call process (the “**Proposal Call Process**”), the Optionee has identified the Property as a suitable property for a proposed future hospital site to be developed by the Optionee;
- B. The Optionor is the registered owner of the Property; and
- C. The Optionor has agreed to grant to the Optionee an option to purchase the Property upon the terms and conditions set out herein.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the Option Fee and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Optionor), the parties hereto hereby covenant and agree as follows:

### **1. DEFINITIONS**

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

- (a) “**Agreement**” means this option to purchase agreement and the schedules attached hereto, as same may be amended, supplemented and restated from time to time.
- (b) “**Business Day**” means any day other than a Saturday, Sunday or a statutory or municipal holiday in the municipality in which the Property is situate.

- (c) “**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.
- (d) “**Closing Date**” means the date which is **[insert]** days after the Exercise Date, provided that if such date is not a Business Day then the Closing Date shall be the first Business Day thereafter.
- (e) “**Exercise Date**” means the date on which the Optionee delivers Notice to the Optionor exercising the Option.
- (f) “**Expiry Date**” means the date determined in accordance with Section 3(b) of this Agreement.
- (g) “**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.
- (h) “**H.S.T.**” means all goods and services tax, harmonized sales tax or other sales or value added tax imposed under Part IX of the *Excise Tax Act* (Canada), as amended from time to time, or under any provincial legislation similar thereto.
- (i) “**Lands**” means the lands described in Schedule A hereto.
- (j) “**Notice**” has the meaning described thereto in Section 11.
- (k) “**Option**” means the option to purchase the Property granted by the Optionor to the Optionee herein.
- (l) “**Option Fee**” means the sum of **[insert]** Dollars (**[\$insert]**) plus applicable H.S.T. payable by the Optionee to the Optionor.
- (m) “**Property**” means the Lands and any structures or improvements thereon (if any).
- (n) “**Proposal Call Process**” has the meaning ascribed thereto in Recital A.
- (o) “**Purchaser**” has the meaning ascribed thereto in Schedule B hereto.
- (p) “**Purchase Agreement**” means the agreement of purchase and sale in respect of the Property on the terms and conditions set out in Schedule B hereto, which will arise in the event that the Option herein is exercised.

## 2. **OPTION FEE**

- (a) The Optionee agrees to pay the Option Fee to the Optionor by wire transfer, concurrent with execution of this Agreement.
- (b) Notwithstanding anything herein contained to the contrary, if the Option is exercised by the Optionee, the Option Fee shall be credited against the purchase price payable by the

Optionee pursuant to the Purchase Agreement.

- (c) Subject to Section 2(b), the Optionee acknowledges that the Option Fee is non-refundable and belongs to the Optionor upon execution and delivery of this Agreement, save and except in the following circumstances:
- (i) the parties determine, either before or after the exercise of the Option, that the transfer of the Property will not comply with the *Planning Act* (Ontario);
  - (ii) the Optionor is not able to give the Optionee good title to the Property, free and clear of all encumbrances other than Permitted Encumbrances, for any other reason whatsoever; or
  - (iii) the Optionor defaults in its obligation to complete the transaction of purchase and sale arising upon exercise of the Option.

### **3. GRANT OF OPTION TO PURCHASE**

- (a) In consideration of the Option Fee, the Optionor hereby grants to the Optionee an exclusive, irrevocable option to purchase the Property, upon the terms and conditions set out in this Agreement.
- (b) The Option hereby granted shall be exercisable by the Optionee by Notice given to the Optionor at any time on or before **[[insert date](being 5 years from the execution date of this Agreement)]** (the “Expiry Date”).
- (c) If the Optionee exercises the Option as aforesaid on or before the Expiry Date, thereupon there shall be constituted a binding agreement of purchase and sale between the Optionor, as the vendor, and the Optionee, as purchaser, pursuant to which the Optionor shall sell the Property to the Optionee for the purchase price and upon the other terms and conditions set out in the Purchase Agreement.
- (d) If the Optionee does not exercise the Option on or before the Expiry Date, the Option shall be null and void, this Agreement shall be terminated and neither party shall have any further obligation to the other hereunder, save only for any obligations which, according to the express terms of this Agreement, survive termination.

### **4. DELIVERIES**

- (a) Within **insert** Business Days after the date of execution of this Agreement by the parties hereto, the Optionor shall deliver to the Optionee the following documents and files relating to the Property (save to the extent already delivered to the Optionee as part of the Proposal Call Process):
- (i) copies of all reports relating to the environmental condition of the Property, including without limitation a current soil test report, a Phase I environmental site assessment and, if applicable, a Phase II environmental site assessment;

- (ii) copies of outstanding work orders, directives or letters of non-compliance issued by any Governmental Authority affecting the Property, if any;
  - (iii) an up-to-date plan of survey for the Property showing any structures and improvements on the Lands, easements, rights of way, and fences; and
  - (iv) the current realty tax bill, the realty tax bill for the previous calendar year, current notices of assessment and any supplementary notices of assessment, and details of any outstanding realty tax appeals, including, any and all updates to the foregoing documents and files if such documents and files were delivered to the Optionee as part of the Proposal Call Process.
- (b) Within three (3) Business Days of receipt of a request from the Optionee, the Optionor shall execute and deliver to the Optionee authorizations permitting Governmental Authorities to release information respecting the Property to the Optionee, provided that any such authorizations shall not authorize or request any inspections of the Property.

## **5. ACCESS**

The Optionor shall permit the Optionee and its employees, agents, representatives, consultants and contractors to have access to the Property, from time to time, at reasonable times and upon prior Notice, at the sole expense and risk of the Optionee, for the purpose of conducting such tests, inspections and investigations as the Optionee may deem necessary or desirable, including without limitation soil tests, environmental audits, and any condition inspections or studies. Such access shall be subject to the following terms and conditions:

- (a) such tests, inspections and investigations will not materially interfere with the operation of the Property or with the tenants thereof; and
- (b) the Optionee shall provide at least two (2) Business Days' prior notice to the Optionor of any such tests, inspections and investigations.

The Optionor acknowledges that the tests and studies may involve the drilling of holes or similar investigations. The Optionee agrees to restore the Property to its original condition, insofar as reasonably possible. The Optionee agrees to indemnify the Optionor from and against all Claims directly and solely caused by any entry, tests, inspections and investigations or other activity on the Property by the Optionee or by its employees, agents, representatives, consultants or contractors. This indemnity shall survive termination of this Agreement, notwithstanding anything herein contained to the contrary.

## **6. REGISTRATION OF NOTICE**

- (a) The Optionor and the Optionee acknowledge and agree that this Option to Purchase Agreement shall run with the lands. The Optionee may register notice of this Agreement against the Property, at the Optionee's cost.
- (b) The Optionor hereby covenants and agrees to execute such further and other instruments and documents as may reasonably be required by the Optionee to effect registration of this

Agreement or a notice hereof, having priority over all charges and liens, without cost or condition to the Optionee. Without limiting the generality of the foregoing, the Optionor covenants and agrees to forthwith obtain and register postponements from holders of any mortgages, charges, liens or other encumbrances against the Property in favour of the notice of this Agreement.

- (c) In the event that the Optionee does not exercise the Option granted pursuant to this Agreement, then the Optionee shall authorize the Optionor to delete the said notice from title to the Property following the Expiry Date.

## **7. OPTIONOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

The Optionor represents and warrants to and covenants with the Optionee, as of the date hereof, as follows:

- (a) That this Agreement (including without limitation the Purchase Agreement) has been duly authorized by all corporate action required to be taken by the Optionor, and constitutes a legal, valid and binding obligation of the Optionor, enforceable in accordance with its terms.
- (b) That the Optionor is the sole legal and beneficial owner of the Property, is in lawful, exclusive and peaceable possession thereof, and has the right to convey the Property free and clear of all encumbrances, save only for the Permitted Encumbrances (as defined in Schedule B hereto).
- (c) That there are no mortgages, charges, liens or other encumbrances affecting the Property, other than (i) Permitted Encumbrances as aforesaid and (ii) such as will be postponed in favour of a notice of this Option to Purchase Agreement and will be discharged on or before the closing date of the purchase of the Property by the Optionee, if the Option is exercised.
- (d) That there are no other options to purchase and no rights of first refusal or other purchase rights with respect to the Property or any part thereof.
- (e) That the representations and warranties on the part of the Optionor set out in this Section 7 and in Section 6.1 of Schedule B hereto are true, accurate and complete as of the date hereof, and shall be true, accurate and complete as of the closing date of the purchase of the Property by the Optionee, in the event that the Option is exercised.
- (f) The Optionor shall not transfer the Property to a third party prior to the Expiry Date (or prior to the Closing Date, if the Option shall have been exercised in accordance with this Agreement), unless the proposed transferee first executes a written agreement with the Optionee, in form and substance satisfactory to the Optionee, assuming the obligations of the Optionor hereunder, failing which any transfer to such proposed transferee shall be of no force and effect. If required by the Optionee, the Optionor shall register against the Property an application to impose a restriction on the Property to prohibit a transfer or charge without the Optionee's consent.

## **8. NO ASSIGNMENT**

The parties hereto shall not be entitled to assign the Option or the rights and obligations under this Option Agreement, in whole or in part. Notwithstanding the foregoing, the Optionee shall be entitled to assign this Agreement and/or the Purchase Agreement to an affiliate or affiliates of the Optionee or another public hospital under the *Public Hospitals Act*.

## 9. PLANNING ACT

This Agreement is subject to the condition that the provisions of Section 50 of the *Planning Act* (Ontario), as amended, are complied with. The Optionor shall take all steps necessary (if any), at its expense, in order to comply with the said provisions of the *Planning Act* (Ontario).

## 10. 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 Optionor and the Optionee or by their respective solicitors who may be specifically authorized in that regard.

## 11. 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 Optionor: [insert name and address]

Attention: [insert]

Email: [insert]

With a copy to: [insert name and address]

Attention: [insert]

Email: [insert]

To the Optionee: Southlake Regional Health Centre  
596 Davis Drive  
Newmarket, ON L3Y 2P9

Attention: President & CEO

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.

## **12. AGENCY FEE**

All real estate commissions or fees payable with respect to this transaction shall be payable by the Optionor, and the Optionor shall indemnify and save harmless the Optionee with respect to any and all such commissions or fees.

## **13. ENTIRE AGREEMENT**

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

## **14. 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.

## **15. 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.

## **16. 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, agents, professional advisors and solicitors from time to time and as may be required by law. This provision shall survive termination of this Agreement.

**17. SUCCESSORS AND ASSIGNS**

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

**18. 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]**



**IN WITNESS WHEREOF** the parties hereto have executed this Option to Purchase Agreement.

**[INSERT]**

(Optionor)

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Optionor.

**SOUTHLAKE REGIONAL HEALTH CENTRE**

(Optionor)

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Optionor.

**SCHEDULE A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**[insert]**

## **SCHEDULE B**

### **TERMS AND CONDITIONS OF AGREEMENT OF PURCHASE AND SALE**

This schedule sets out the terms of the agreement of purchase and sale between [insert], as vendor, and Southlake Regional Health Centre or a permitted assignee pursuant to Section 8 of the Option Agreement (the “**Purchaser**”), as purchaser, which comes into effect upon the exercise of the option to purchase by the Purchaser in respect of the lands and premises described in Schedule A hereto pursuant to an option to purchase agreement dated [insert execution date of this Agreement].

*(see attached)*