

THIS LEASE AND MUNICIPAL CAPITAL FACILITY AGREEMENT dated this ____ day of _____, 2024 and made in pursuance of the *Short Forms of Leases Act*, R.S.O. 1990, c. S.11

B E T W E E N:

THE CORPORATION OF THE TOWN OF PELHAM

("the Town")

- and -

WELLSPRING NIAGARA CANCER SUPPORT FOUNDATION

("the Foundation")

WHEREAS the Town is the registered owner of certain lands in the Town of Pelham municipally known as 50 Wellspring Way and as illustrated in Schedule "A" ("the Lands"); and

WHEREAS the Foundation is a not-for-profit charitable organization that provides social and health services in the form of non-medical support for cancer patients and their families; and

WHEREAS on May 15, 2017, the Town and the Foundation entered into a lease agreement for the Lands pursuant to which the Foundation covenanted to pay all taxes levied for municipal and school purposes on or in relation to the Lands; and

WHEREAS the Foundation has requested that it be exempted from the foregoing covenant; and

WHEREAS the Lands are entirely occupied and used for a service or function that may be provided by the Town, namely, the provision of social and health services, and may therefore be the subject of a municipal capital facility agreement under the *Municipal Act, 2001*, S.O. 2001, c. 25; and

WHEREAS on June 19, 2024, By-law No. 43-2024 was passed by Council of the Town, authorizing the Town to enter into a municipal capital facility agreement to exempt the Lands from all taxes levied for municipal and school purposes on or in relation to the Lands and thereby exempt the Foundation from its covenant to pay all such taxes; and

WHEREAS the Town and the Foundation have agreed to terminate the prior lease agreement and replace it with this Lease and Municipal Capital Facility Agreement ("Agreement");

WHEREAS the Foundation is a not-for-profit corporation duly incorporated pursuant to the laws of Ontario and has properly authorized the entering into of this Agreement;

NOW THEREFORE, IN CONSIDERATION of the covenants and agreements contained herein, the Town demises and leases unto the Foundation, and the Foundation leases from the Town, the Lands on the following terms:

1. TERM

- 1.1. The Town demises and leases the Lands to the Foundation for a term of twelve (12) years commencing on the first (1st) day of January 2025 and ending on the thirty-first (31st) day of December 2037 (“the Initial Term”), unless terminated earlier pursuant to the provisions of this Agreement.
- 1.2. At the end of the Initial Term, this Agreement shall automatically renew for an additional term of twenty (20) years, on the same terms and conditions as contained herein, and shall thereafter automatically renew for subsequent terms of twenty (20) years (each a “Renewal Term”), provided that at the time of each renewal, the Lands continue to be used as the Wellspring Niagara Cancer Support Centre in the Town of Pelham.
- 1.3. If the Foundation does not wish to renew this Agreement at the end of the Initial Term or any Renewal Term, it shall provide the Town with not less than twelve (12) months’ written notice of its intention not to renew the Agreement. Upon expiration of the term in which such notice is given, the provisions of section 2 shall apply.
- 1.4. If the Foundation continues to occupy the Lands after the expiration of this Agreement or after an earlier termination as provided for herein, there shall be no tacit renewal of this Agreement notwithstanding any statutory provision to the contrary.
- 1.5. If the Town consented in writing to the overholding as described in subsection 1.4, then the Foundation shall be deemed to be occupying the Lands as a monthly tenant and such tenancy may be terminated by either of the Town or the Foundation on thirty (30) days’ notice and otherwise on the same terms as contained herein. Any acceptance by the Town of the annual lease fee or other consideration shall not imply consent to any overholding by the Foundation.
- 1.6. Nothing herein shall limit the liability of the Foundation in damages or otherwise for any overholding and the Foundation shall indemnify and hold harmless the Town from and against any and all claims incurred by the Town as a result of such overholding.

2. LANDS AND IMPROVEMENTS

- 2.1. The Lands are illustrated in Schedule “A”, which is appended hereto and forms part of this Agreement. Subject to the terms and conditions of this Agreement, the Foundation accepts the Lands in the condition existing on the first day of the Initial Term.
- 2.2. All buildings and structures located entirely within the boundaries of the Lands that were constructed by or on behalf of the Foundation (“the Improvements”) are the property of the Foundation and, upon expiration or earlier termination of this Agreement, shall be administered as follows:
 - i. The Town shall have the option to purchase the Improvements for fair market value (“FMV”), as determined by a qualified real property appraiser jointly retained by the Foundation and the Town to determine the FMV of the Improvements, the FMV of the Lands only, and the FMV of the Lands and the Improvements combined.
 - ii. If the Town elects not to purchase the Improvements, then the Lands shall be listed for sale at the FMV as determined by the appraisal of the Lands and Improvements combined.

iii. Upon completion of the sale, the Town shall receive net sale proceeds equal to the FMV of the Lands only, over the FMV of the Lands with the Improvements, and the Foundation shall receive the balance of the net sale proceeds.

2.3. The absolute right of the Town to purchase the Improvements pursuant to subsection 2.2 takes priority over any other interest in the Improvements that may now or hereafter be created by the Foundation. For greater certainty, all dealings by the Foundation that may in any way affect title to the Improvements shall be made expressly subject to this right of the Town and the Foundation shall not assign, encumber or otherwise deal with the Improvements except as permitted under this Agreement.

3. LEASE FEE

3.1. The Foundation shall pay to the Town an annual lease fee in the amount of one dollar (\$1.00) plus any applicable taxes, payable in advance and in full on or before the first (1st) day of January in each year of the Initial Term and any Renewal Term(s).

4. MUNICIPAL CAPITAL FACILITY

4.1. For the purposes of section 110 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*"), this Agreement is deemed to be a municipal capital facility agreement, and the Lands are deemed to be a municipal capital facility used for the provision of social and health services.

4.2. Notwithstanding any other provision of this Agreement, the Town and the Foundation acknowledge and agree that the Lands constitute a municipal capital facility as defined in the *Municipal Act, 2001*. In the event that the Town enacts a by-law exempting the Lands from taxation for municipal and school purposes in accordance with section 110 of the *Municipal Act, 2001*, and the Lands are thus exempt from taxation in accordance with the said by-law, then the Foundation shall not be liable for the payment of municipal taxes in respect of the Lands during the Initial Term and any Renewal Term(s).

5. USE AND OCCUPANCY OF THE LANDS AND IMPROVEMENTS

5.1. The Foundation shall use the Lands and the Improvements to operate the Wellspring Niagara Cancer Support Centre in the Town of Pelham and for no other purpose. For greater certainty, the Foundation covenants that the sole use made of the Lands and the Improvements shall be the provision of non-medical support for cancer patients and their families.

5.2. Should the Foundation cease to operate the Wellspring Niagara Cancer Support Centre in the Town of Pelham on the Lands, the Foundation may seek the consent of the Town to assign this Agreement to another community service organization. The Town has sole discretion to grant or withhold its consent to any such request and/or to impose terms and conditions on the proposed assignment.

5.3. The Foundation further covenants that at all times the use made of the Lands and the Improvements shall comply with and conform to all requirements of the Town's zoning by-law and any other municipal, provincial and/or federal laws and regulations that may affect the Lands.

- 5.4. During the Initial Term and any Renewal Terms, the Foundation shall, at its sole cost and expense, keep in good order and condition the Lands and the Improvements, and all appurtenances and equipment thereof, both inside and outside, and shall make any and all necessary repairs, replacements, substitutions, improvements, and additions, foreseen or unforeseen, structural or otherwise, and shall ensure that all such repairs and maintenance are completed in a good and workmanlike manner.
- 5.5. The Foundation may make repairs, additions, alterations, or replacements (“Changes”) to the Improvements or any other part of the Lands provided that where such Changes materially affect the appearance or character of the exterior of the Improvements or exterior portions of the Lands, or will materially affect the structure of the Improvements, the Foundation shall first obtain the written approval of the Town, which shall not be unreasonably withheld. The Foundation shall construct Changes at its sole cost and in a good and workmanlike manner, using first-class materials.
- 5.6. In determining whether to grant approval to any Changes, the Town shall have regard to whether the Foundation has provided sufficient information to satisfy the Town that the Changes will comply with all applicable federal, provincial and municipal laws and regulations, will not weaken or compromise the structure of the Improvements, and will not materially adversely affect the FMV of the Lands and/or the Improvements.
- 5.7. Before requesting the Town’s approval of any Changes, the Foundation shall submit to the Town conceptual plans of the proposed Changes. Within thirty (30) calendar days after receiving such plans, the Town shall advise the Foundation in writing whether it approves the Changes, and if not, shall request modifications to the plans. Within thirty (30) calendar days after the Foundation receives such a request, it shall submit revised plans and other similar material for the Town’s approval. The Town and the Foundation agree to negotiate in good faith to modify the proposed Changes to secure the approval of the Town.
- 5.8. The Foundation shall not cause or permit any injury to the Lands or the Improvements and shall not use or occupy, or permit to be used or occupied, any part of the Lands or the Improvements so as to constitute a nuisance or for any illegal or unlawful purpose, nor in any manner that may contravene lawful restrictions on their use. The Foundation shall not damage or disfigure the Lands or the Improvements or any part thereof.
- 5.9. The Foundation shall, at its sole expense, keep the sidewalks, curbs and passageways adjacent to the Lands and the Improvements clean from rubbish, ice and snow at all times and shall not encumber or obstruct the same or allow the same to be encumbered or obstructed in any manner.
- 5.10. The Foundation shall construct or repair municipal and similar services with respect to the Lands and the Improvements as the Town or other relevant authority may require from time to time, and without contribution from the Town. For greater certainty, and notwithstanding any other term of this Agreement, it is understood that the Foundation shall be required to construct or repair required municipal services from the boundary line between the Lands and adjacent Town property.

- 5.11. The Foundation shall be solely responsible for and shall promptly pay to the appropriate utility suppliers all charges for water, gas, electricity, telecommunications, and all other utilities and services supplied to the Lands. In no event shall the Town be liable for, or have any obligation with respect to, any interruption or cessation of or a failure in the supply of any utilities, services or systems in, to or serving the Lands.
- 5.12. The Foundation shall not cause or permit any lien to be registered against the Lands for any work performed or claimed to have been performed on the Lands or the Improvements by or at the direction or sufferance of the Foundation. The Foundation shall have the right to contest the validity of, or the amount claimed under or in respect of, any such lien if such contesting shall involve no forfeiture, foreclosure or sale of the Lands or any part thereof and the Foundation shall not be required to cause such lien to be discharged and released until after a final determination of the contest, at which time the Foundation shall cause such lien to be discharged.
- 5.13. The Town and its employees, agents and contractors shall be entitled to enter upon the Lands and the Improvements at any time during normal business hours, on reasonable prior notice, purposes of inspecting the Lands or the Improvements. The Foundation shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby. The Town shall take reasonable precautions not to unreasonably interfere with the Foundation's operations and to minimize interference with its use and enjoyment of the Lands.
- 5.14. Upon expiration or earlier termination of this Agreement, the Foundation shall remove its furniture, chattels and other usual tenants' fixtures not forming any part of the structure of the Improvements.
- 5.15. The complete or partial destruction of or damage to the Improvements by fire or other casualty shall not terminate this Agreement or entitle the Foundation to surrender the Lands or to have or demand any abatement or reduction of any amounts payable under this Agreement.
- 5.16. The Foundation covenants and agrees that following the complete or partial destruction of or damage to any of the Improvements, it shall repair, reconstruct or replace such Improvements to the standard set out in this Agreement. The Foundation shall first use the proceeds of insurance in accordance with subsection 6.2 and, should the insurance monies be insufficient to pay the entire cost, the Foundation shall pay the deficiency.

6. INSURANCE AND INDEMNITY

- 6.1. During the Initial Term and any Renewal Term(s), the Foundation shall, at its sole cost and expense, obtain and maintain in full force and effect the following insurance:
 - i. fire and extended perils coverage under a standard extended form of fire insurance policy, with standard extended coverage endorsements, with coverage to the full insurable value of the Lands and the Improvements, computed on a replacement cost basis and that names the Town as an additional insured; and
 - ii. comprehensive general liability and property damage insurance with limits of not less than five million dollars (\$5,000,000) per occurrence that names the Town as an additional insured with respect to this Agreement and contains cross-liability and severability of interest clauses and a waiver of any right of subrogation by the Foundation's insurers against the Town and its elected officials, employees and/or

agents, and that contains an undertaking by the insurer(s) to give thirty (30) days prior written notice to the Town of any material change to the coverages and/or the cancellation or expiry of the said policy or policies.

- 6.2. All proceeds of any insurance shall first be used by the Foundation for the costs of repairing, reconstruction or replacing, as the case may be, any damaged or destroyed portions of the Lands or the Improvements to the standard set out in this Agreement.
- 6.3. The Foundation shall provide the Town with proof of insurance upon request.
- 6.4. If the Foundation fails to obtain or maintain any insurance coverage required under this Agreement, the Town has the right to take out such insurance and pay the premium(s). The Foundation shall thereafter pay to the Town the premium amount(s) plus fifteen percent (15%), which shall be payable on the first day of the next month following the said payment by the Town.
- 6.5. The Foundation shall indemnify and save harmless the Town and its elected officials, employees and agents from and against all liabilities, claims, damages, interest, fines, penalties, monetary sanctions, losses, costs and expenses whatsoever arising from or in any way related to the use, occupancy or presence of the Foundation or any other person, firm, partnership or corporation at or upon the Lands or the Improvements.

7. ASSIGNMENT AND AMENDMENT

- 7.1. Other than as set out in subsection 5.2, the Foundation shall not assign this Agreement, in whole or in part, and shall not sublet any portion of the Lands or the Improvements without the prior written consent of the Town. The Town has sole discretion to grant or withhold its consent to any such request and/or to impose terms and conditions on the proposed subletting of any portion of the Lands or the Improvements.
- 7.2. Neither the Foundation nor any other person, firm, partnership or corporation acting on behalf of, or claiming under, the Foundation, including any assignee, subtenant or other occupant, shall register this Agreement or any other instrument related to it against the Lands. The Foundation may register a notice or caveat of this Agreement provided that a copy of the Agreement is not attached and the Town gives prior written approval of the proposed registration. Upon expiration or earlier termination of this Agreement, the Foundation shall immediately discharge or otherwise vacate any such notice or caveat.
- 7.3. Should the Town sell, transfer or dispose its interest in the Lands or any part thereof, or assign this Agreement, in whole or in part, the Town shall cause the purchaser, transferee or assignee to directly assume the covenants and obligations of the Town under this Agreement and the Town shall thereafter be freed and relieved of all liability for such covenants and obligations under this Agreement.
- 7.4. This Agreement may be amended only by consent of the parties. All amendments shall be made in writing, signed by the parties, and appended to this Agreement.

8. QUIET ENJOYMENT

- 8.1. The Foundation, upon payment of the annual lease fee and performing and observing all terms, conditions and covenants in this Agreement that are required to be performed or observed by the Foundation, shall be entitled to quiet enjoyment of the Lands during the Initial Term and any Renewal Term(s).

9. DEFAULT AND TERMINATION

- 9.1. Any of the following constitutes an event of default under this Agreement:
- i. the Foundation fails to pay the annual lease fee or any other amount payable under this Agreement on the appointed payment date(s) and fails to pay the said amount, with interest, within fifteen (15) calendar days of written notice to the Foundation;
 - ii. the Foundation fails to observe or perform any of other term, condition or covenant of this Agreement required to be observed or performed by the Foundation and fails to rectify the breach of, or non-compliance with, this Agreement, within thirty (30) calendar days of written notice to the Foundation of the matter complained of;
 - iii. the Foundation becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes a proposal, assignment or arrangement with its creditors, or any steps are taken by any person for the dissolution, winding-up or other termination of the Foundation's existence or the liquidation of its assets;
 - iv. a trustee, receiver, receiver/manager or other person acting in a similar capacity is appointed with respect to the assets of the Foundation;
 - v. the Foundation makes any assignment, transfer or sublet other than in compliance with this Agreement; or
 - vi. the Foundation abandons the Lands and/or the Improvements.
- 9.2. If an event of default described in subsection 9.1 occurs, then, without prejudice to any other rights arising under this Agreement, by statute or at common law, the Town shall have the following rights and remedies, which are cumulative and not alternative:
- i. to terminate this Agreement by notice to the Foundation;
 - ii. to enter and repossess the Lands and/or the Improvements;
 - iii. to remove all persons and property from the Lands and the Improvements and to store such property at the risk and expense of the Foundation or to sell or dispose of such property as the Town sees fit and without notice to the Foundation;
 - iv. to relet the Lands and/or the Improvements on terms determined by the Town;
 - v. to make alterations to the Lands and/or the Improvements to facilitate reletting;
 - vi. to apply the proceeds of any sale of property or reletting, first, to the payment of expenses incurred by the Town with respect to such sale or reletting, second, to payment of any indebtedness of the Foundation to the Town other than the annual lease fee, and third, to the payment of any annual lease fee in arrears;
 - vii. to remedy or attempt to remedy any default of the Foundation and to enter on the Lands and/or the Improvements for this purpose;
 - viii. to remedy or attempt to remedy any default of the Foundation without notice to the Foundation of its intention to do so;

- ix. to recover from the Foundation all expenses incurred by the Town to remedy or attempt to remedy any default of the Foundation; and
 - x. to recover from the Foundation all damages, costs and expenses incurred by the Town as a result of any default by the Foundation.
- 9.3. The Town and the Foundation may terminate this Agreement at any time upon mutual agreement made in writing. In addition, the Town and the Foundation shall each have the option to terminate this Agreement by giving twenty-four (24) months' written notice to the other party.
- 9.4. Upon termination of this Agreement pursuant to subsection 9.1 or 9.2, the Foundation shall promptly remove all furniture, chattels and other usual tenants' fixtures not forming any part of the structure of the Improvements and shall repair any damage to the Lands or the Improvements resulting from such removal. The parties shall thereafter proceed as set out in section 2 of this Agreement.
- 9.5. The termination of this Agreement by expiration or otherwise shall not affect the liability of either of the Town or the Foundation to the other with respect to any obligation under this Agreement which has accrued up to the date of such termination but has not been properly satisfied or discharged.

10. DISPUTE RESOLUTION

- 10.1. In case of any dispute between the parties during the Initial Term or any Renewal Term as to any matter arising under this Agreement, the party that disputes the other party's position or conduct shall immediately provide written notice to the other party.
- 10.2. Where a notice of dispute is received in accordance with section 10.1, the Town and the Foundation shall attempt to resolve the dispute through direct negotiation between the parties. If a dispute cannot be resolved through negotiation within ninety (90) days after the notice of dispute is delivered, it shall be arbitrated in accordance with this Agreement and the *Arbitration Act, 1991*, S.O. 1991, c. 17.
- 10.3. The Town and the Foundation shall jointly select an arbitrator who:
- i. holds a valid Chartered Arbitrator (C. Arb.) designation;
 - ii. is a member in good standing of the ADR Institute of Ontario; and
 - iii. has identified "Real Estate and Property" as an Area of Expertise in the Ontario Dispute Resolution Professionals Directory maintained by the ADR Institute of Ontario (<https://adr-ontario.ca/public-member-directory/#/cid/1468/id/201>).
- 10.4. In the event that the Town and the Foundation are unable to agree on an arbitrator who meets the requirements of subsection 10.3, the arbitrator with the earliest availability shall be selected.
- 10.5. The arbitrator's decision shall be final and binding on the parties.
- 10.6. The Town and the Foundation shall each bear their own costs associated with the determination of disputes arising under this Agreement, including but not limited to legal costs and arbitration costs.

11. GENERAL

- 11.1. Notwithstanding any other provision of this Agreement, in the event that either the Town or the Foundation should be delayed, hindered or prevented from the performance of its obligations under this Agreement by reason of an event beyond the reasonable control of the parties, including but not limited to strikes, inclement weather, or acts of God, but not including insolvency or lack of funds, then the performance of such obligation shall be postponed for a period of time equivalent to the time lost by reason of such delay.
- 11.2. Waiver by a party of any provision of this Agreement shall not constitute a waiver in any other instance and any such waiver must be made in writing. Moreover, any delay or failure on the part of either party to exercise or enforce any right, power or remedy conferred by this Agreement shall not constitute a waiver of same and shall not operate as a bar to that party exercising or enforcing such right, power or remedy at any subsequent time.
- 11.3. This Agreement constitutes the entire agreement between the Town and the Foundation in relation to the matters set out herein. There are no other representations, warranties, covenants, agreements or terms relating to the subject matter of this Agreement. This Agreement supersedes any prior discussions, understandings or agreements between the Foundation and the Town in relation to its subject matter.
- 11.4. The invalidity or unenforceability of any particular term of this Agreement shall not limit the validity or enforceability of the remaining terms of this Agreement, each of which is distinct and severable from all other terms of this Agreement.
- 11.5. This Agreement shall be binding upon and enure to the benefit of the Town and the Foundation and to their respective successors and permitted assigns.
- 11.6. 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.
- 11.7. All communications or notices required under or contemplated by this Lease shall be considered to have been sufficiently given if delivered by hand, sent by registered mail or sent by email to the party to which such notice is directed as set forth below:

If to the Foundation: Wellspring Niagara Cancer Support Foundation
50 Wellspring Way
Fonthill ON L0S 1E6
Attention: Ann Mantini-Celima, Executive Director
ann@wellspringniagara.ca

If to the Town: The Corporation of the Town of Pelham
P.O. Box 400
20 Pelham Town Square
Fonthill ON L0S 1E0
Attention: Town Clerk
clerks@pelham.ca

or such other address of which either party has notified the other, in writing, and any such notice mailed or delivered shall be deemed good and sufficient notice under the terms of the Agreement.

- 11.8. Notices delivered or sent by prepaid registered mail are deemed to be effective on the date of receipt. Notices sent by email are deemed to be effective on the day the email is sent or, if sent after 4:00 p.m., on the following day.
- 11.9. This Agreement may be signed in counterpart, each of which is an original, and all of which taken together constitute one single document. Counterparts may be executed on different dates and in original or electronic form and may be exchanged by way of mail or PDF file delivered by email.

[signature page follows]

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IN WITNESS WHEREOF the parties have executed this Agreement by their authorized representatives and agree to be bound thereby.

**WELLSPRING NIAGARA CANCER SUPPORT
FOUNDATION**

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

THE CORPORATION OF THE TOWN OF PELHAM

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

DRAFT

SCHEDULE "A"

