



Iowa Department of  
Administrative Services

Director's Office

Attachment J.2

Chester J. Culver, Governor  
Patty Judge, Lt. Governor

Mollie K. Anderson, Director

May 30, 2007

Mr. Dennis Prouty  
Legislative Services Agency  
Capitol Building  
Des Moines, Iowa 50319

RE: Purchase of Mercy Capitol Hospital

Dear Mr. Prouty:

Pursuant to section 8.46, Code of Iowa, please consider this formal notification of the Department of Administrative Services' intent to purchase the real estate referenced above. The Department has been working with the Treasurer of the State of Iowa to arrange for financing of the purchase. The Treasurer's office has been advised that this arrangement falls under the "lease-purchase" provisions of section 8.46, which require that the following information be provided:

- A description of the object of the lease-purchase installment acquisition arrangement.
- The proposed terms of the contract.
- The cost of the contract, including principal and interest costs. If the actual cost of a contract is not known at least thirty days prior to entering into the contract, the state agency shall estimate the principal and interest costs for the contract.
- An identification of the means and source of payment of the contract.
- An analysis of consequences of delaying or abandoning the commencement of the contract.

If after reviewing this information you have any questions, please do not hesitate to contact me.

Sincerely,

Mollie K. Anderson  
Director

Enclosures

- A description of the object of the lease-purchase installment acquisition arrangement.

The entire hospital property consists of approximately 10 acres and is bordered by East 14th Street on the east, East 11th Street on the west, Des Moines Street on the south, and East Lyon Street on the north. The property also consists of five buildings which are located on the property: the main hospital building, one privately owned medical clinic/office (land lease to Mercy), a small pharmacy building (land lease), a vacant brick building (Annex), and a small maintenance facility.

- The proposed terms of the contract.

Please see the attached contract, which is still in the review phase. The contract has been reviewed by DAS and the Treasurer's office, as well as DAS' real estate consultant.

- The cost of the contract, including principal and interest costs. If the actual cost of a contract is not known at least thirty days prior to entering into the contract, the state agency shall estimate the principal and interest costs for the contract.

The offer to purchase is \$6,000,000, with financing arranged through the Treasurer's office; and, we have requested that the loan amount include an additional \$2,000,000 for costs of conversion/demolish of the Annex building. The amount of interest is unknown at this time; however, an \$8,000,000 loan (includes \$6.0m acquisition cost and \$2.0m) @ 5.25% for 20 years = \$646,896 in interest over the life of the loaned amount.

- An identification of the means and source of payment of the contract.

DAS will pursue financing options through the State of Iowa Treasurer's Office via net cash flow generated by relocating state employees from leased space to the Capitol Complex. Please see the attached information.

- An analysis of consequences of delaying or abandoning the commencement of the contract.

The hospital is planning to relocate to a location in West Des Moines, and is a willing seller at this time. We are focused on accomplishing the following goals by purchase of the property:

- Moves state employees out of costly leased space into more affordable Capitol Complex space.
- Provides much needed parking for employees and visitors.
- Provides an opportunity to complete the West Capitol Terrace project (as planned) and relocate DAS State Fleet operations.
- Facilitates the demolition of the Wallace Building.
- Improves the Capitol Complex aesthetics.
- Provides staging areas for construction of the new state office building.

**WORKING DRAFT - Acquisition Cost/Benefit Summary – WORKING DRAFT**

**Asset Value:**

**Land**

9.71 acres X \$522,302/acre (per recent Capitol Complex land appraisal) = \$5,071,552

**Buildings**

3 primary buildings (main hospital, pharmacy, maintenance building) = \$3,000,000

Total Asset Value = \$8,071,552

**Terms and Conditions of Financing:**

**Annual Payment**

\$8,000,000 loan (includes \$6.0m acquisition cost and \$2.0m conversion/demolish Annex building cost) @ 5.25% for 20 years = \$646,896

**Monthly Payment**

\$646,896/12 months = \$ 53,908

**Cash Flow to Repay Loan:**

180,000 square feet of office space currently leased at \$15.00/square foot = \$2,700,000

Number of Months/Year = 12

Leased Space Cost/Month = \$ 225,000

Less: Monthly loan repayment (from above) = \$53,908

Monthly utility cost @ \$1.25/square foot = \$18,750

Monthly custodial @ \$3.10/square foot = \$46,500

Monthly routine maintenance @ \$1.00/square foot = \$15,000

Monthly major maintenance @ \$1.00/square foot = \$15,000

Total: \$149,158

Difference = Monthly Net Cash Flow: \$ 75,842

Number of Months/Year: 12

Annual Net Cash Flow: \$ 910,104

20 Year Loan Period Savings \$18,202,080

**Basis for Potential for Lease Reduction:**

\$910,104 Annual Net Cash Flow/180,000 square feet = savings = \$5.06/square foot

**New Lease Rate = Satisfies All Loan Payment Requirements and Operating Costs:**

\$15.00/square foot current price minus \$5.06/square foot savings = \$9.94/square foot

**Benefits:**

- The state will acquire an asset valued at approximately \$8.1m. Provides an opportunity for future Capitol Complex growth. This acquisition would be the largest expansion since 1913.
- Permits the state to reduce the size of the new office building from 350,000 square feet to 300,000 square feet, saving the state over \$8,500,000 in construction cost.
- Provides annual lease savings of over \$900k and approximately \$18.2m during the life of the loan.
- All acquisition and conversion costs can be repaid with lease payments.
- Solves a variety of current and future Capitol Complex parking and expansion problems.



## REAL ESTATE PURCHASE AND SALE AGREEMENT

This **REAL ESTATE PURCHASE AND SALE AGREEMENT** (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_, 2007 (the "Effective Date"), by and between the State of Iowa, (the "Purchaser") and Catholic Health Initiatives - Iowa, Corp. d/b/a Mercy Medical Center-Des Moines (the "Seller").

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### RECITALS:

A. Seller owns certain parcels of real estate upon which Seller operates a hospital facility and legally described as set forth on the attached Exhibit A commonly known as Mercy Capitol ("Hospital Real Estate");

B. Seller also owns a parcel of real estate currently used by Seller as a parking lot locally known as 612 E. 12th Street and legally described as set forth on the attached Exhibit B ("Seller Parking Lot");

C. Purchaser owns certain parcels of real estate currently used by Purchaser as a parking lot legally described as set forth on the attached Exhibit C ("Purchaser Parking Lot");

D. Purchaser desires to purchase from the Seller, and Seller is willing to sell to Purchaser, in accordance with the terms and conditions hereinafter set forth, the Hospital Real Estate and related property;

E. Purchaser desires to obtain from the Seller the Seller Parking Lot and to transfer to Seller the Purchaser Parking Lot in exchange and Seller desires to obtain the Purchaser Parking Lot and to transfer to Purchaser the Seller Parking Lot in exchange.

### WITNESSETH:

**NOW, THEREFORE**, for and in consideration of the above premises, the mutual promises and covenants herein contained, and for other good and valuable consideration, the full receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is hereby agreed as follows:

#### **1. Sale and Purchase.**

**1.1 Description.** Seller and Purchaser agree that at the Hospital Real Estate Closing (as hereafter defined), subject to the terms and conditions of this Agreement, Seller will sell,

assign, convey and deliver to Purchaser, and Purchaser will purchase and accept conveyance and delivery of, all of the following tangible property and assets comprising the Hospital Real Estate as specifically set forth in paragraphs 1.1.1-1.1.4 below. Seller and Purchaser further agree that at the Parking Lot Closing (as hereafter defined), Seller will convey and deliver to Purchaser the Seller Parking Lot, without additional consideration, and Purchaser will convey and deliver to Seller, without additional consideration, the Purchaser Parking Lot.

**1.1.1** The Hospital Real Estate, more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes, together with all strips and gores, rights of way, privileges and appurtenances pertaining thereto, including any right, title and interest of Seller in and to any street, alley or right of way adjoining any portion of such property;

**1.1.2** All right, title and interest of Seller, if any, in and to any easements, rights-of-way, privileges, licenses or other interests in, on, or to, any land, highway, street, road, or avenue, open or proposed, in, on or across, in front of, abutting or adjoining, the Hospital Real Estate; and all right, title and interest of Seller, if any, in and to any awards made, or to be made in lieu thereof, and in and to any unpaid awards for damage thereto by reason of a change of grade of any such highway, street, road or avenue (collectively, "Easements");

**1.1.3** Except as limited regarding the Ground Lease Real Estate as hereafter described, all parking areas, buildings, structures, facilities and improvements located on the Hospital Real Estate and including, without limitation, all mechanical systems, fixtures and equipment; heating systems, fixtures and equipment; air conditioning systems, fixtures and equipment; plumbing systems, fixtures and equipment; electrical systems, fixtures and equipment; and ventilating systems, fixtures and equipment (collectively, the "Improvements");

**1.1.4** Except as limited regarding the Ground Lease Real Estate as hereafter described, all equipment, furniture, furnishings, electronic items, fixtures, machinery, compressors, appliances, engines, desks, file cabinets, tools, spare parts, and other items of tangible personal property remaining on the Hospital Real Estate on the Hospital Real Estate Closing Date (collectively, the "FF&E"). Notwithstanding the foregoing, Seller shall have the right to remove and retain any such FF&E, with no reduction in the Purchase Price, up to the Hospital Real Estate Closing. Seller agrees that Seller is responsible for any damages caused to the building located on the Hospital Real Estate caused by the removal of FF&E.

**1.2 Conveyance of Title.** Seller agrees to convey, and Purchaser agrees to accept, (a) title to the Hospital Real Estate, Easements and Improvements by Warranty Deed (the "Warranty Deed") and (b) title to the FF&E by Bill of Sale (the "Bill of Sale"). The parties agree that title to the Seller Parking Lot and Purchaser Parking Lot shall be

conveyed by exchanging a warranty deed from the Seller and a patent issued by the State of Iowa for the respective properties with no additional consideration paid for either property.

## **2. Purchase Price; Seller's Liabilities.**

**2.1 Purchase Price.** The purchase price ("Purchase Price") for the Hospital Real Estate shall be SIX MILLION DOLLARS AND NO/100 DOLLARS (\$6,000,000.00), as adjusted pursuant to the terms of this Agreement. The Purchase Price shall be paid as follows:

**2.1.1.** Upon execution of this Agreement, Purchaser shall deposit \$50,000 as earnest money (the "Earnest Money") with Seller's Attorney to be held in an interest bearing escrow account and disbursed at the Hospital Real Estate Closing to Seller, except as otherwise provided herein. All interest shall accrue for the benefit of the Purchaser, unless Purchaser would default hereunder in which case, the Seller shall be entitled to all interest earned as part of its damages hereunder.

**2.1.2** Subject to the satisfaction of the conditions described in Section 8 (including without limitation the condition described in Section 8.14, the balance of the Purchase Price shall be payable in cash at the Hospital Real Estate Closing.

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**2.2 Assumption of Seller's Liabilities.** Purchaser is not assuming, or taking the Hospital Real Estate subject to, any liabilities, obligations or claims of or against Seller and Seller agrees to indemnify and hold Purchaser harmless therefrom.

Notwithstanding the above, Purchaser acknowledges that the portion of the Hospital Real Estate legally described as set forth on the attached Exhibit D ("Ground Lease Real Estate") is subject to that one certain ground lease by and between Des Moines General Hospital Company, as lessor, and Schmidt Investments Limited Partnership, as lessee, and Schmidt/Des Moines Medical Office Building, Inc., successor lessee, a memorandum of which was recorded in Book 6991, Page 308 and re-recorded in Book 7050 Page 206 of the Polk County Recorder's Office ("Ground Lease"). Purchaser further acknowledges that the Ground Lease interest of the Grantor, together with all buildings and improvements on the Ground Lease Real Estate was subsequently transferred to Ladco Properties XIX, L.L.C. and Purchaser is taking the Ground Lease Real Estate subject to the Ground Lease and all encumbrances against the same and that Seller is not conveying title of the building located on the Ground Lease Real Estate or its contents to Purchaser.

In addition, on the east end of the Hospital Property, the Seller currently leases a building for a community pharmacy. A copy of the current lease will be provided to the Purchaser. The lease for such space will not be renewed beyond the anticipated closing



date hereof, and unless agreed to in writing by the Purchaser, at the time of the Hospital Real Estate Closing, this pharmacy property will either be vacant or subject to a month to month lease only, which will be assigned to Purchaser as part of the Hospital Real Estate Closing.

**2.3 Allocation of Purchase Price.** Purchaser and Seller agree that the Purchase Price shall be attributed solely to the Hospital Real Estate and that no additional consideration shall be paid by either party for conveyance of the Purchaser Parking Lot or the Seller Parking Lot and that the Purchaser Parking Lot and Seller Parking Lot are simply being exchanged.

**3. Closing.**

**3.1 Parking Lot Closing.** The Parking Lot Closing shall take place at the office of the Seller's Attorney, or other mutually agreeable place, at 9:00 a.m. C.S.T. ("Parking Lot Closing Date") on June \_\_\_\_, 2007.

**3.2 Hospital Real Estate Closing.** The Hospital Real Estate Closing shall take place at the office of the Seller's Attorney, or other mutually agreeable place, at 9:00 a.m. C.S.T. ("Hospital Real Estate Closing Date") on the date that is thirty (30) days after the date which Seller's new hospital located in Mercy Westlakes Plat 2, to be know as Mercy Westlakes is open to the public for business. It is currently anticipated that the Hospital Real Estate Closing will take place in December, 2009.

**4. Title; Survey and Environment Report.**

**4.1 Abstract of Title.** Within fourteen (14) days after the Effective Date, Seller shall, at Seller's sole cost and expense, deliver to Purchaser the original abstract of title for the Seller Parking Lot. Within 45 days after the Effective Date, Seller shall, at Seller's sole cost and expense, deliver to Purchaser the original abstract of title for the Hospital Real Estate (including the Ground Lease Real Estate) currently updated for examination by Purchaser. Within fourteen (14) days after the Effective Date, Purchaser shall, at Purchaser's sole cost and expense, deliver to Seller the original abstract of title for the Purchaser Parking Lot currently updated for examination by Seller.

**4.2 Survey.** Within fourteen (14) days after the Effective Date, Seller shall provide to Purchaser a copy of the most recent ALTA as-built survey of the Hospital Real Estate, if any. Purchaser may then cause, at Purchaser's sole cost, there to be prepared an update (the "Survey") of such survey of the Hospital Real Estate. Copies of the Survey shall be provided to Seller.

**4.3 Environmental Report.** Seller has already provided to Purchaser a copy of the most recent phase I environmental report of the Real Property, if any. Purchaser may then, at Purchaser's sole cost, cause there to be prepared an update (the "Environmental Report") of such report of the Real Property. Copies of the

Environmental Report shall be provided to Seller.

**4.4 Review of Abstract, Survey and Environmental Report.** Purchaser shall have the right to review the Title Opinion, the Survey and the Environmental Report for the Hospital Real Estate for a period of 90 business days beginning upon the receipt of the information in 4.1, 4.2, 4.3, hereof from the Seller (the "Purchaser Review Period"). During the Purchaser Review Period, Purchaser may give Seller written notice of its objections to any liens, encumbrances, encroachments and other matters reflected by the title opinion or the Survey (the "Purchaser Title Objections") or any possible hazardous materials, substances, conditions or wastes reflected by the Environmental Report (the "Environmental Objections", and, collectively with the Purchaser Title Objections, the "Purchaser's Objections").

Each party shall have the right to review the Title Opinion with respect to the Purchaser Parking Lot or the Seller Parking Lot for a period of 10 business days beginning upon the receipt of the information in 4.1 hereof from the other party (the "Parking Lot Review Period"). During the Parking Lot Review Period, one party may give the other written notice of its objections to any liens, encumbrances, encroachments and other matters reflected by the title opinion (the "Parking Lot Title Objections").

**4.5 Cure Period.** The parties shall have Ten (10) days ("Parking Lot Title Cure Period") from receipt of written notice of any Parking Lot Title Objections within which to make such arrangements and to take such steps as they may deem appropriate, in their sole and absolute discretion, to satisfy or to cause to be satisfied the Objections; provided, however, they shall not be required to pay any sum of money or undertake or agree to undertake any obligations in order to cure Objections, except for liens or encumbrances placed on the real estate owned by that party or judgment liens or materialmen's liens arising from actions of that party. Since the Hospital Real Estate Closing will not occur for a period of time, Seller shall have up to 6 months to cure title Purchaser Title Objections. If the party fails to cure any such Objections to the reasonable satisfaction of the Objecting party within the time provided above and give the Objecting party written notice thereof (or evidence that same will be so cured at the applicable Closing), the Objecting Party shall have the right either to:

**4.5.1** Terminate this Agreement by giving written notice thereof to the other party within ten (10) days following the expiration of the Cure Period (in which event the termination is by the Purchaser the Earnest Money and all interest earned with respect thereto) shall be immediately returned to Purchaser upon receipt of such written notice of termination) and this Agreement shall be null and void and of no further force or effect with respect to the applicable real estate as the case may be (notwithstanding the above, if the Hospital Real Estate purchase is terminated hereunder, it shall not affect the completed exchange of the Seller Parking Lot for the Purchase Parking Lot; or



4.5.2 Elect to consummate the purchase subject to the uncured Objections without reduction or adjustment of the Purchase Price on account of such Objections.

4.6 **Permitted Exceptions.** Notwithstanding anything to the contrary herein, the parties shall be deemed to have approved and to have agreed to purchase or exchange the real estate involved herein, whichever the case may be, subject to the following (all of which are collectively referred to as the "Permitted Exceptions "):

4.6.1 All exceptions to title shown in the title opinion or matters shown on the Survey that the party has approved or is deemed to have approved pursuant to Section 4.5;

4.6.2 The lien of non-delinquent real and personal property taxes and assessments;

4.6.3 Governmental laws, codes, and ordinances now or hereafter in effect so far as these affect any of the real estate involved herein or any part thereof, including, without limitation, zoning ordinances (and amendments and additions relating thereto).

4.6.5 Covenants, conditions, restrictions, and easements of record.

4.6.6 As to the Hospital Real Estate, the Ground Lease and the month to month lease on the pharmacy, and the Seller shall reserve a license, which is for the benefit of the Seller, or any successor to the Seller, for exclusive use of a room located [**need to describe area in hospital with computer equipment that will stay**] along with the right to run necessary wires for operation of such computer equipment, including, use of satellite dishes located at the hospital, for a period of up to \_\_\_ years after closing. The use of such electricity for the computer equipment shall be separately metered, or submetered, or some other method shall be agreed to by the parties so Seller will be responsible for such costs. The space will be provided with the same level of heating and cooling as exists at closing by the Purchaser. Seller shall be responsible for securing such room and Purchaser will only be entitled to access for security and maintenance obligations.

4.6.7 Pursuant to the Ground Lease, upon the discontinuance of the Hospital Real Estate from being used as a hospital, the ground lessee has the right to acquire the land covered by the ground lease and necessary adjoining parking for its building. To satisfy this requirement, this Agreement shall be subject to the right to the ground lessee under the Ground Lease to acquire the land as set forth on attached Exhibit E hereto shown as Phase 1 of 2.35 acres and

Phase 2 of 0.57 acres at anytime up to five years after the closing on the sale of the Hospital Real Estate. Such purchase may be for all or part of such real estate for the exclusive use of the ground lessee, except for easements for utilities and ingress-egress (but not parking) with the Purchaser. The purchase price will be the same price per square foot as paid by the Purchaser for the real estate in this transaction, with such price increasing by 5% per annum on the annual anniversary of the closing date of the sale of the Hospital Real Estate. Customary allocation of costs and proration of rents will occur on this closing. At the time of closing on the Hospital Real Estate this provision will survive and an agreement will be entered into between Purchaser and the ground lessee, and a memorandum of this right shall be recorded in the Polk County land records.

#### **4.7 Physical Due Diligence.**

**4.7.1** From the Effective Date until the end of the Purchaser's Review Period or Seller's Review Period, as applicable and as defined in 4.4 above, or the date this Agreement is terminated, Purchaser and Seller, shall have the right, at their own expense, to:

**4.7.1.1** perform, or cause to be performed, a physical inspection of the real estate each is acquiring, which shall be conducted by engineers, architects, contractors or comparable professionals or duly authorized representatives selected by the inspecting party and with respect to which the other party agrees to provide such representatives with reasonable access to the property under inspection;

In the event Purchaser or Seller, as applicable, determines, in its sole discretion, and for any reason or for no reason, that the results of its due diligence as described in this Section 4, or otherwise, are unacceptable, they may give notice on or before the end of the applicable Review Period, that it is terminating this Agreement and in the event of termination by Purchaser the Earnest Money (and all interest earned with respect thereto) shall be returned to Purchaser, and, upon such return, the parties shall be released from all further obligations and liabilities hereunder. If Purchaser has not given notice of termination to Seller by the end of Purchaser's Review Period, the Earnest Money shall not be refundable to Purchaser and shall become the property of Seller. All such due diligence with be coordinated through the Seller's appointed representative in order to protect the privacy of patients and minimize disruption of the operation of the Seller's business at the Hospital Real Estate.

**5. Representations and Warranties of Seller.** Seller represents and warrants (which representations and warranties shall be true as of Closing) to Purchaser as follows:

**5.1 Authority.** The execution and delivery of this Agreement and



consummation of the transactions contemplated herein have been duly authorized by all requisite corporate approvals. This Agreement shall be a valid and binding agreement of Seller enforceable against Seller in accordance with its terms.

**5.2 Title to Real Estate.** Except as provided for herein with respect to the Ground Lease Real Estate, Seller owns good and marketable title to the Hospital Real Estate and Seller Parking Lot free and clear of all claims and encumbrances of any kind. Although Seller does not have any actual knowledge of any misstatements in the abstract of title, survey or environmental reports provided to Purchaser by Seller, Seller does not warrant the accuracy of the information contained therein.

**5.3 Environmental Matters.** All activities, businesses and operations of Seller with respect to the Hospital Real Estate and Seller Parking Lot, have been conducted materially in accordance with any and all applicable federal, state, county, municipal or other applicable environmental laws, ordinances, regulations, orders, directives or other requirements of such governmental authorities ("Environmental Requirements"). No change in the facts or circumstances reported or assumed in the application for or granting of such permits or licenses, if any, regarding Environmental Requirements exists, and such permits and licenses are in full effect. Seller has not received notice or other communication concerning any alleged violation of Environmental Requirements, or notice or other communication concerning alleged liability for damages caused by any such violation, and, to Seller's knowledge, there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the ownership, use, maintenance or operation of the Hospital Real Estate and Seller Parking Lot by any person, arising, in each instance, from the alleged violation of Environmental Requirements, nor, to Seller's knowledge, does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed. Seller has not used, stored, handled, disposed of or transferred any hazardous, toxic or radioactive substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any Federal, state or local law, regulation or order ("Hazardous Substances"), or maintained containers or sources thereof, at, on or under the Hospital Real Estate and Seller Parking Lot, including, without limitation, underground storage tanks, asbestos or asbestos-containing building materials and electrical transformers, capacitors, ballasts or other equipment which contains dielectric fluid containing PCBs, except in compliance with Environmental Requirements. Seller has not spilled, discharged, released or emitted any Hazardous Substance in, on or under the Hospital Real Estate and Seller Parking Lot, or caused any Hazardous Substance to migrate from the Hospital Real Estate and Seller Parking Lot, which violates Environmental Requirements.

**5.4 No Violations of Law.** To Seller's knowledge, Seller is in material compliance with all laws, ordinances, rules, regulations and orders (including, but not limited to, those relating to zoning, building and fire, health and safety and environmental control and protection) of any government or any agency, body or subdivision thereof,



and all standards and regulations of appropriate supervising boards of fire underwriters and similar agencies, bearing on construction, operation or use of the Hospital Real Estate or the Seller Parking Lot or any part thereof and Seller has not received notice or knowledge that any such government, agency, body or subdivision thereof, or any employee or official thereof considers the construction or completion of the Hospital Real Estate or the Seller Parking Lot or the operation or use of the same to be in violation of any such law, ordinance, rule, regulation, order, standard or regulation (or that any investigation has been commenced or is contemplated respecting any such possible violation); and all notices, licenses, permits, certificates and authority, required in connection with the construction, completion, use or occupancy of the Hospital Real Estate or the Seller Parking Lot or any part thereof have been obtained and are and on the applicable Closing Date will be in effect and in good standing.

**5.5 No Known Material Misstatements or Omissions of a Material Fact.**

Notwithstanding anything herein to the contrary, (a) Seller represents that it is not aware of any material inaccuracies or misstatements made by Seller to Purchaser in connection with the sale of the Hospital Real Estate or the Seller Parking Lot; and (b) Seller is not aware of any material adverse fact or set of circumstances, unknown by Purchaser, relating to the Hospital Real Estate or the Seller Parking Lot, including any structural or material mechanical problems with the buildings.

**6. Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants to Seller as follows (which such representations and warranties will survive Closing):

**6.1 Authority.** This Agreement is a valid and binding agreement of the Purchaser enforceable against Purchaser in accordance with its terms. Purchaser is acting as principal in this transaction with authority to close the transaction. (Q: Does Purchaser have sufficient authority to make this purchase, and has Purchaser received approval to exceed the \$1 million limit on LP financings as provided in 12.28? Has Purchaser provided the notification required in 8.46?)

**6.2 Title to Real Estate.** Purchaser owns good and marketable title to the Purchaser Parking Lot free and clear of all claims and encumbrances of any kind. Although Purchaser does not have any actual knowledge of any misstatements in the abstract of title, survey or environmental reports provided to Seller by Purchaser, Purchaser does not warrant the accuracy of the information contained therein.

**6.3 Environmental Matters.** All activities, businesses and operations of Purchaser with respect to the Purchaser Parking Lot, have been conducted materially in accordance with any and all applicable federal, state, county, municipal or other applicable environmental laws, ordinances, regulations, orders, directives or other requirements of such governmental authorities ("Environmental Requirements"). No change in the facts or circumstances reported or assumed in the application for or granting of such permits or licenses, if any, regarding Environmental Requirements exists, and

such permits and licenses are in full effect. Purchaser has not received notice or other communication concerning any alleged violation of Environmental Requirements, or notice or other communication concerning alleged liability for damages caused by any such violation, and, to Purchaser's knowledge, there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the ownership, use, maintenance or operation of the Purchaser Parking Lot by any person, arising, in each instance, from the alleged violation of Environmental Requirements, nor, to Purchaser's knowledge, does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed. Purchaser has not used, stored, handled, disposed of or transferred any hazardous, toxic or radioactive substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any Federal, state or local law, regulation or order ("Hazardous Substances"), or maintained containers or sources thereof, at, on or under the Purchaser Parking Lot, including, without limitation, underground storage tanks, asbestos or asbestos-containing building materials and electrical transformers, capacitors, ballasts or other equipment which contains dielectric fluid containing PCBs, except in compliance with Environmental Requirements. Purchaser has not spilled, discharged, released or emitted any Hazardous Substance in, on or under the Purchaser Parking Lot, or caused any Hazardous Substance to migrate from the Purchaser Parking Lot, which violates Environmental Requirements.

**6.4 No Violations of Law.** To Purchaser's knowledge, Purchaser is in material compliance with all laws, ordinances, rules, regulations and orders (including, but not limited to, those relating to zoning, building and fire, health and safety and environmental control and protection) of any government or any agency, body or subdivision thereof, and all standards and regulations of appropriate supervising boards of fire underwriters and similar agencies, bearing on construction, operation or use of the Purchaser Parking Lot or any part thereof and Purchaser has not received notice or knowledge that any such government, agency, body or subdivision thereof, or any employee or official thereof considers the construction or completion of the Purchaser Parking Lot or the operation or use of the same to be in violation of any such law, ordinance, rule, regulation, order, standard or regulation (or that any investigation has been commenced or is contemplated respecting any such possible violation); and all notices, licenses, permits, certificates and authority, required in connection with the construction, completion, use or occupancy of the Purchaser Parking Lot or any part thereof have been obtained and are and on the applicable Closing Date will be in effect and in good standing.

**6.5 No Known Material Misstatements or Omissions of a Material Fact.** Notwithstanding anything herein to the contrary, (a) Purchaser represents that it is not aware of any material inaccuracies or misstatements made by Purchaser to Seller in connection with the conveyance of the Purchaser Parking Lot; and (b) Purchaser is not aware of any material adverse fact or set of circumstances, unknown by Seller, relating to the Purchaser Parking Lot, including any structural or material mechanical problems with the buildings.

**7. Closing Documents.**



**7.1 Purchaser's Obligations for Hospital Real Estate.** Purchaser shall deliver at the Hospital Real Estate Closing the following:

**7.1.1 Purchase Price.** The Purchase Price, subject to satisfaction of the condition set forth in Section 8.14 and, further subject to the adjustments provided in this Agreement.

**7.1.2 Closing Statement.** A duly executed closing statement taking into account all prorations and adjustments required pursuant to the terms of this Agreement.

**7.1.3 Option for Ground Lessee to acquire land.** The Purchaser and the ground lessee under the Ground Lease will have entered into the documents as set forth in Section 4.6.7. hereof.

**7.1.4 Other Documents.** Such additional documents, instruments, assumptions, consents, waivers and releases as may be reasonably necessary to effectuate the transactions contemplated herein or to evidence the capacity and authority of Purchaser to consummate the transactions contemplated herein.

**7.2 Seller's Obligations for Hospital Real Estate.** Seller shall deliver to Purchaser at the Hospital Real Estate Closing the following:

**7.2.1 Warranty Deed.** The duly executed and acknowledged Warranty Deed for the Hospital Real Estate in a form reasonably acceptable to Purchaser naming Purchaser as the grantee.

**7.2.2 Groundwater Hazard Statement.** A properly executed groundwater hazard statement showing no wells, solid waste disposal sites, hazardous wastes, underground storage tanks or burial grounds on the Hospital Real Estate.

**7.2.3 Bill of Sale.** The duly executed and acknowledged Bill of Sale in a form reasonably acceptable to Purchaser naming Purchaser as the grantee.

**7.2.5 Keys.** Keys or codes to all doors to, and equipment and utility rooms located on, the Hospital Real Estate, excluding those relating to the Ground Lease Real Estate.

**7.2.6 Possession.** Possession of the Hospital Real Estate, excluding the building located on the Ground Lease Real Estate.



**7.2.8      Additional Documents.** Such further instruments of conveyance, assignments, approvals, waivers, consents, confirmations, releases, and other documents as may be reasonably necessary to effectuate the sale and transfer of all title, ownership, and possessory rights in and to the Hospital Real Estate to Purchaser, and to otherwise consummate and evidence the capacity and authority of Seller to consummate the transactions contemplated herein; provided, however, the foregoing shall not impose any additional liability or obligation on the part of Seller not otherwise contemplated by the terms of this Agreement.

**7.2.9.      Closing Statement.** A duly executed closing statement taking into account all prorations and adjustments required pursuant to the terms of this Agreement.

**7.3      Parking Lot Closing.** At the Parking Lot Closing Seller shall deliver to Purchaser a duly executed and acknowledged Warranty Deed for the Seller Parking Lot in a form reasonably acceptable to Purchaser naming Purchaser as the grantee, a properly executed groundwater hazard statement showing no wells, solid waste disposal sites, hazardous wastes, underground storage tanks or burial grounds on the Seller Parking Lot and such further instruments of conveyance, assignments, approvals, waivers, consents, confirmations, releases, and other documents as may be reasonably necessary to effectuate the transfer of all title, ownership, and possessory rights in and to the Seller Parking Lot to Purchaser, and to otherwise consummate and evidence the capacity and authority of Seller to consummate the transactions contemplated herein; provided, however, the foregoing shall not impose any additional liability or obligation on the part of Seller not otherwise contemplated by the terms of this Agreement.

At the Parking Lot Closing Purchaser shall deliver to Seller a duly executed and acknowledged Warranty Deed for the Purchaser Parking Lot in a form reasonably acceptable to Seller naming Seller as the grantee, a properly executed groundwater hazard statement showing no wells, solid waste disposal sites, hazardous wastes, underground storage tanks or burial grounds on the Purchaser Parking Lot and such further instruments of conveyance, assignments, approvals, waivers, consents, confirmations, releases, and other documents as may be reasonably necessary to effectuate the transfer of all title, ownership, and possessory rights in and to the Purchaser Parking Lot to Seller, and to otherwise consummate and evidence the capacity and authority of Purchaser to consummate the transactions contemplated herein; provided, however, the foregoing shall not impose any additional liability or obligation on the part of Purchaser not otherwise contemplated by the terms of this Agreement.

**8.      Conditions Precedent to Closing.**

**8.1      Purchaser's Obligation to Close.** The obligations of Purchaser hereunder

shall be subject to the satisfaction of the following conditions precedent:

**8.1.1 Representations and Warranties.** The representations and warranties of Seller contained herein shall be and remain materially true and correct as of the applicable Closing.

**8.1.2 Performance of Covenants and Agreements.** Seller shall have materially performed and complied with all covenants and agreements required to be performed or complied with pursuant to this Agreement prior to or as of the applicable Closing, including with respect to the Hospital Real Estate Closing that the Parking Lot Closing has taken place as contemplated by this Agreement and the parties have exchanged the Seller Parking Lot for the Purchaser Parking Lot.

**8.1.3 Closing Documents.** Seller shall have duly executed and/or delivered the documents and instruments required pursuant to Section 7.2 or 7.3 hereof, as applicable.

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**8.1.4 Financing.** Purchaser's obligation to pay the balance of the Purchase Price as required under Section 2.1.2 is subject to Purchaser's consummation of a lease purchase financing transaction with a third party in order to accomplish the payment of the Purchase Price, upon terms and conditions which are satisfactory to Purchaser in Purchaser's sole discretion. The terms of such lease purchase financing shall be subject to Nonappropriation (as hereinafter defined), and shall not constitute a debt within the meaning of the Constitution and laws of the State of Iowa and nothing in the financing terms shall directly or indirectly obligate the Purchaser, the State of Iowa or any agency of the State of Iowa to any payments thereunder beyond those budgeted and appropriated for said purpose. "Nonappropriation" shall mean the failure by the Iowa General Assembly or the Governor of the State of Iowa ("Governor") to grant authority or to appropriate or approve the appropriation of funds sufficient to enable the Purchaser to pay any lease payment under the lease purchase financing arrangement or to enable the Purchaser to meet or perform any other obligations it may have under the lease purchase financing documents. Nonappropriation shall also include any circumstance in which any funds needed or required to enable Purchaser to pay any lease payments under the lease purchase financing documents or to meet or perform any other obligation of Purchaser under the lease purchase financing documents are: (i) lawfully de-appropriated or



reduced, (ii) not allocated or allotted, or (iii) otherwise insufficient or not legally available. The Seller agrees to cooperate with Purchaser in connection with said lease purchase financing and to execute any documentation required in connection with same.

Should there be additional condition precedents for the following: (a) that there has been no change in law, or change in DAS' authority, that would prevent DAS from consummating the transaction; and (b) there has been no material adverse change with respect to the condition of or title to any of the Hospital Real Estate or Ground Lease Real Estate?

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Each of the conditions contained in this Section 8.1 are intended for the benefit of Purchaser and may be waived, in whole or in part, by Purchaser, but only by an instrument in writing signed by Purchaser. If, prior to the applicable Closing, (i) Seller discloses to Purchaser or Purchaser discovers that title to the applicable real estate is subject to defects, limitations or encumbrances other than the Permitted Exceptions, or (ii) any of the conditions precedent set forth above have failed (including, without limitation, an alleged breach by Seller of the representations and warranties contained herein), then Purchaser shall promptly give Seller written notice of its objection thereto or the failure of any such such condition precedent, as applicable. In such event (except for any failure of the condition precedent described in Section 8.1.4), Seller may (by written notice to Purchaser) elect to postpone the applicable Closing for thirty days in an attempt to permit the cure of any such objection or attempt to satisfy any such condition precedent, as applicable. Thereafter, if the objection is not so cured by Seller, or the condition precedent is not so satisfied, the Purchaser may terminate this Agreement and may utilize any and all other remedies or actions at law or in equity available to Purchaser, and Seller shall return the Earnest Money (and all interest earned with respect thereto) to Purchaser within 5 days of Purchaser's request therefor.

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**8.2 Seller's Obligation to Close.** The obligations of Seller hereunder shall be subject to the satisfaction of the following conditions precedent:

**8.2.1 Representations and Warranties.** The representations and warranties of Purchaser contained herein shall be materially true and correct as of the applicable Closing.

**8.2.2 Performance of Covenants and Agreements.** Purchaser shall have materially performed and complied with all covenants, agreements and conditions required to be performed or complied with pursuant to this Agreement prior to or as of the applicable Closing, including with respect to the Hospital Real Estate Closing that the Parking Lot Closing has taken place as contemplated by this Agreement and the parties have exchanged the Seller Parking Lot for the Purchaser Parking Lot.



**8.2.3      Paving and Improvements to the Purchaser Parking Lot.** Prior to the Parking Lot Closing, Purchaser shall have paved to Seller's reasonable satisfaction, at Purchaser's sole cost, the Purchaser Parking Lot in its entirety with material of a substantially similar quality and nature as used to pave the Seller Parking Lot, and provided similar mechanical control for access to such parking lot as currently exists at Seller Parking Lot. The plans for the parking lot shall be submitted for approval by the Seller prior to the Purchaser undertaking such work. Such work will be done in a good workmanlike condition and any warranties on the work or equipment shall be assigned to the Purchaser.

**8.2.4      Closing Documents.** Purchaser shall have duly executed and/or delivered the documents and instruments required pursuant to Section 7.1 or 7.3 hereof, as applicable.

**8.2.5      Mercy Westlakes Hospital.** If the construction of Mercy Westlakes Hospital does not proceed to completion, or if the Seller is unable to obtain the necessary licenses or approvals to allow Mercy Westlakes Hospital to open for business as a hospital, the Seller shall be entitled to terminate this Agreement upon written notice to Purchaser and upon payment to Purchaser of the Earnest money and all interest earned with respect thereto. However, once the parties have exchanged parking lots, such transfers shall not be affected by the termination of this Agreement.

**8.2.6      Organization Approval.** The Seller will have received all necessary organizational approvals to complete the sale of the Hospital Real Estate. All approvals for the Seller Parking Lot transfer have been obtained.

Each of the conditions contained in this Section 8.2 are intended for the benefit of Seller and may be waived, in whole or in part, by Seller, but only by an instrument in writing signed by Seller. If, prior to Closing, Purchaser discloses to Seller or Seller discovers that any of the conditions precedent set forth above have failed (including, without limitation, an alleged breach by Purchaser of the representations and warranties contained herein), then Seller shall promptly give Purchaser written notice of its objection thereto. In such event, Purchaser may (by written notice to Seller) elect to postpone the Closing for thirty days in an attempt to cure such objection. Thereafter, if not cured by Purchaser, Seller may terminate this Agreement and may utilize any and all other remedies or actions at law or in equity available to Seller.

**10.      Operation of the Assets Pending Closing.** Prior to the applicable Closing Date, the parties agree that:

**10.1      Insurance.** Seller or Seller's agent shall keep or shall cause to be kept the Hospital Real Estate insured against fire and other hazards covered by extended coverage endorsement and comprehensive public liability insurance against claims for bodily injury, death and property damage occurring in, on or about the Hospital Real Estate,

consistent with Seller's prior practices.

**10.2 Operations.** The Hospital Real Estate, as of the date of this Agreement, including buildings, grounds, and all improvements (excluding the building on the Ground Lease Real Estate) will be preserved by Seller in its present condition until the Hospital Real Estate Closing, ordinary wear and tear excepted, the Seller Parking Lot will be preserved by Seller in its present condition until the Parking Lot Closing, ordinary wear and tear excepted, and the Purchaser Parking Lot will be preserved by Purchaser in its present condition (excluding the paving to be performed by Purchaser pursuant to paragraph 8.2.3 above) until the Parking Lot Closing, ordinary wear and tear excepted. The Seller shall enforce the provisions of the Ground Lease Real Estate pursuant to its terms and will not make any material modifications or amendments thereto without the prior written consent of the Purchaser.

**11. Destruction, Damage or Condemnation Prior to Closing.**

**11.1 Risk of Loss.** Seller shall bear the risk of all loss, destruction or damage to the Hospital Real Estate and Seller Parking Lot, or any portion thereof, from any and all causes whatsoever until and including the applicable Closing Date. Purchaser shall bear the risk of all loss, destruction or damage to the Purchaser Parking Lot, or any portion thereof, from any and all causes whatsoever until and including the Parking Lot Closing Date.

**11.2 Damage Over \$200,000.00.** If, prior to the Hospital Real Estate Closing, there shall occur (i) damage to the Hospital Real Estate caused by fire or other casualty which would cost \$200,000.00 or more to repair or replace according to a written estimate reasonably acceptable to Seller, or (ii) the taking or proposed taking by condemnation of all or such portion of the Hospital Real Estate as would, in Purchaser's reasonable opinion, materially interfere with Purchaser's use and enjoyment thereof, then, and in either of such event, Purchaser or Seller may terminate its obligations under this Agreement by written notice given to the other party within seven (7) days after Purchaser has received notice of such casualty or condemnation from Seller, in which event no party shall have any further obligations to the other hereunder. If Purchaser does not so elect to terminate its obligations under this Agreement, then the Hospital Real Estate Closing shall take place as herein provided without abatement of the Purchase Price (except for the amount of the deductible under the applicable casualty policy of insurance), and there shall be assigned to Purchaser at the Closing all interest in any insurance claims and proceeds including, without limitation, any business interruption insurance, or condemnation awards up to the full Purchase Price which may be payable to or available to Seller for any period after the Closing Date on account of any such fire, casualty, or condemnation. In addition, the Purchase Price shall be reduced by the amount of the deductible of the applicable casualty insurance policy.

**11.3 Damage under \$200,000.00.** If, prior to the Hospital Real Estate Closing there shall occur (i) damage to the Hospital Real Estate caused by fire or other casualty



which would cost less than \$200,000.00 to repair or replace, or (ii) the taking or proposed taking by condemnation of a portion of the Hospital Real Estate which, in the Purchaser's reasonable judgment, is not material to the use or enjoyment thereof, then, and in either of such event, Purchaser shall have no right to terminate its obligations under this Agreement, but there shall be assigned to Purchaser at the Hospital Real Estate Closing all interest in any insurance claims and proceeds, including, without limitation, any business interruption insurance, or condemnation awards up to the full Purchase Price which may be payable to Seller for any period after the Hospital Real Estate Closing Date on account of any such fire, casualty or condemnation. In addition, the Purchase Price shall be reduced by the amount of the deductible of the applicable casualty insurance policy.

## **12. Defaults and Remedies.**

**12.1 Seller's Default.** If: (a) Seller fails to perform any of Seller's obligations hereunder for any reason other than (i) the termination of this Agreement by Seller pursuant to any right to terminate expressly set forth in this Agreement, (ii) Purchaser's failure to perform Purchaser's obligations under this Agreement, or (iii) the failure of any of the conditions set forth in Section 8.2 hereof, or (b) any of Seller's representations or warranties set forth herein are determined to be materially inaccurate or untrue; then Purchaser shall have the right to exercise any and all remedies or actions at law or in equity available to Purchaser, including a suit for money damages and/or to enforce specific performance of the obligations of Seller under this Agreement.

**12.2 Purchaser's Default.** If: (a) Purchaser fails to perform any of Purchaser's obligations hereunder for any reason other than (i) the termination of this Agreement by Purchaser pursuant to any right to terminate expressly set forth in this Agreement, (ii) Seller's failure to perform the Seller's obligations under this Agreement, or (iii) the failure of any of the conditions set forth in Section 8.1 hereof, then Seller shall have the right to exercise any and all remedies or actions at law or in equity available to Seller, including a suit for money damages and/or to enforce specific performance of the obligations of Purchaser under this Agreement.

**13. Brokers.** Both parties acknowledge that no real estate broker has been used in this transaction, other than The York Companies, who is representing the Purchaser in the transaction. Purchaser is responsible for payment of all fees or real estate commission to The York Companies. Seller and Purchaser agree to hold the other party harmless against any and all claims arising out of any activity of any firm or person acting or allegedly acting on behalf of such party in the nature of a brokerage commission or finder's fee.

## **14. Expenses.**

**14.1 Seller's Expenses.** Seller shall pay or cause to be paid at no expense to Purchaser:



**14.1.1** All recording costs pertaining solely to the recording of the conveyance documents for the Purchaser Parking Lot and the release of any liens for the Hospital Real Estate and the Seller Parking Lot;

**14.1.2** Any transfer taxes, intangible taxes or documentary stamps assessed on the conveyance or recording for the Hospital Real Estate and the Seller Parking Lot;

**14.1.3** All attorneys' fees incurred by Seller in connection herewith and the Closings; and

**14.1.4** Updating of the abstract of title to show merchantable title in the Seller through closing for the Hospital Real Estate and the Seller Parking Lot;

**14.2** **Purchaser's Costs.** Purchaser shall pay:

**14.2.1** All attorneys' fees incurred by Purchaser in connection herewith and with the Closings;

**14.2.2** All costs of the Survey and Environmental Report;

**14.2.3** All recording costs pertaining solely to the recording of the conveyance documents for the Hospital Real Estate and Seller Parking Lot and the release of any liens for the Purchaser Parking Lot;

**14.2.4** Any transfer taxes, intangible taxes or documentary stamps assessed on the conveyance or recording for the Purchaser Parking Lot, if any;

**14.2.5** Updating of the abstract of title to show merchantable title in the Purchaser through closing for the Purchaser Parking Lot.

**15. General Provisions.**

**15.1** **Notices.** All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement may be served (as an alternative to personal service) by registered or certified mail. Any such notice or demand so served by registered or certified mail shall be deposited in the United States Mail with postage thereon fully prepaid and addressed to the party to be served at the addresses set forth below. Service of any such notice or demand so made by mail shall be deemed complete upon the day of mailing. Further, any such notice may be made by Federal Express (or other reputable overnight courier service), which shall be effective one day after delivery to such overnight courier, at the addresses indicated below.

To Purchaser:

State of Iowa  
Ms. Mollie Anderson

\_\_\_\_\_  
Des Moines, Iowa

With a Copy To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Seller:

Catholic Health Initiatives - Iowa, Corp.  
1111-6<sup>th</sup> Avenue  
Des Moines, Iowa 50314  
Attn: Joseph LeValley, Senior Vice President

With a Copy To:

Davis, Brown, Koehn, Shors & Roberts, P.C.  
4201 Westown Parkway, Ste. 300  
West Des Moines, Iowa 50266  
Attn: Robert J. Douglas, Jr.  
Fax: (515) 243-0654

**15.2 Captions.** The titles and headings of the various Articles and Paragraphs hereof are intended solely for means of reference and are not intended for any purpose whatsoever to modify, explain or place any construction on any of the provisions of this Agreement.

**15.3 Severability.** If any of the provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement by the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**15.4 Waiver.** The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained or available pursuant to applicable law, shall not be construed as



a waiver or relinquishment of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

**15.5 Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, supersedes any oral or written agreements, and may not be modified, amended or otherwise changed in any manner except by a writing executed by the parties hereto.

**15.6 Benefits.** This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. Purchaser may not assign its rights, benefits and obligations under this Agreement without the prior written consent of Seller.

**15.7 Time is of the Essence.** Time is of the essence for the performance of every covenant and provision herein contained.

**15.8 Exhibits.** All exhibits to this Agreement are hereby fully incorporated herein by this reference for all purposes as though fully set forth herein.

**15.9 Applicable Law; Venue.** This Agreement is made and entered into in the Polk County, Iowa, and its interpretation, validity and performance shall be governed by the laws of the State of Iowa. Seller consents to the jurisdiction of any local, state or federal court situated in Polk County, Iowa, and waives any objection which it may have pertaining to improper venue or forum non conveniens to the conduct of any proceeding in any such court.

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**15.10 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same agreement, binding on all parties hereto, whether or not each counterpart is executed by all parties hereto, so long as each party hereto has executed one or more counterparts hereof.

**15.11 Attorneys' Fees.** In the event of any controversy, claim, dispute, or litigation between the parties hereto to enforce or interpret any of the provisions of the Agreement or any right of either party hereto, the non-prevailing party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred therein by the prevailing party, including without limitation, fees incurred during a trial of any action and any fees incurred as a result of an appeal from a judgment entered in such litigation. The State does not typically agree to this clause.

**15.12 Further Assurances.** Seller and Purchaser shall execute and deliver to the other all such other documents and instruments and perform such further acts as

reasonably requested by the other party to effectuate the transactions contemplated hereby.

**15.13 Running of Time Periods.** In the event the last day of any time period set forth and provided for in this Agreement falls on a Saturday, Sunday or national holiday, then the last day of such applicable time period shall be deemed to be the first business day after such Saturday, Sunday or holiday.

**15.14 Taxes and Special Assessments.** All regular real estate taxes assessed against the Hospital Real Estate and Seller Parking Lot shall be prorated as between Seller and Purchaser to the applicable Closing Date, with the Seller paying all taxes which have become due and payable, and giving a credit to Purchaser for any taxes which have accrued but are not yet payable on the applicable Closing Date. The proration shall be based upon the real estate taxes for the year then currently payable. All regular real estate taxes assessed against the Purchaser Parking Lot shall be prorated as between Seller and Purchaser to the applicable Closing Date, with the Purchaser paying all taxes which have become due and payable, and giving a credit to Seller for any taxes which have accrued but are not yet payable on the applicable Closing Date. The proration shall be based upon the real estate taxes for the year then currently payable. Seller shall pay all special assessments which are a lien against the Hospital Real Estate and Seller Parking Lot as of the date of closing. Purchaser shall pay all subsequent special assessments and charges. Purchaser shall pay all special assessments which are a lien against the Purchaser Parking Lot as of the date of closing. Seller shall pay all subsequent special assessments and charges.

[Signature page follows.]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**"SELLER":**

Catholic Health Initiatives - Iowa, Corp.

By: \_\_\_\_\_  
David H. Vellinga, Chief Executive Officer and President

**"PURCHASER":**

State of Iowa

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**HOSPITAL REAL ESTATE**

Lots 12, 13, 14 (except the East 3 feet of Lot 14), 16, 17, and all that part of Lot 15 that lies Westerly of a line beginning at the Northwest Corner of said Lot 15, thence Southeasterly to a point 75 feet North and 35.5 feet East of the Southwest corner of said Lot 15, thence Southeasterly to a point 47 feet East of the Southwest Corner of said Lot 15 on the South line thereof and [except the West 3.00 feet of the East 6.00 feet of Lot 14, the West 3.00 feet of the East 6.00 feet of Lot 15 and the West 3.00 feet of the East 6.00 feet of the vacated alley in Block 25 except that portion of Lot 15 as described in Book 4570, Page 180, in the Polk County Recorder's Office; (said exception containing 533 square feet) (also excludes any direct access to East 14th Street from Lots 14, 15 and vacant alley)], all in Block 25 in Stewart's Addition to the City of Des Moines \*this exception is for land deeded to the State of Iowa in deed recorded in Book 9101, Page 29 of the Polk County Recorder's Office.

Lots 1, 2, 3, 4, 5, and 6 in Block 11 in H. Lyon's Addition to Town of Des Moines

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and the South 32 feet of Lot 11, the South half of Lot 12, and all that part of the 18 foot wide East/West alley that lies Northerly from and adjoins the Northern line of Lots 1 through 6 inclusive, in Block 18 in Stewart's Addition to the City of Des Moines

Lots 1, 2, 3, 4, (except the East 15 feet of Lot 4), 18, 19, 20, 25, 26, 27, and 28 in Block 25 in Stewart's Addition to the City of Des Moines and the vacated East-West Alley in all of Block 25

All that part of the right of way of East 13<sup>th</sup> Street lying South of the Westerly extension of the North line of Lot 28 and lying North of the Westerly extension of the South line of Lot 1, Block 25 in Stewart's Addition to the City of Des Moines

The East 15 feet of Lot 4, Lots 5, 6, 7, 8, 9, 10, 11, 21, 22, 23, 24 in Block 25 in Stewart's Addition to the City of Des Moines



**EXHIBIT B**

**SELLER PARKING LOT**

Lots 1, 2, 3, 4, 5, 6, and 7, in Block 12 in H. Lyon's Addition to the Town of De Moines

Lots 1, 2, 3, 4, 5, 6, and 7, in Block 5 in Stewart's Addition to the City of Des Moines

And the vacated alley adjoining such Lots.

**EXHIBIT C**

**PURCHASER PARKING LOT**

All of Block 10 and Interv Vac Alley H. Lyons Addition;  
Block 19 and Interv Vac Alley Stewart's Addition.



**EXHIBIT D**

**GROUND LEASE REAL ESTATE**

A rectangular shaped tract of land that is located in parts of Lots 1, 2, 3, 4, 25, 26, 27 and 28, AND a part of the Vacated 18.0 Foot Wide East-West Alley that lies between said Lots 1, 2, 3, 4, 25, 26, 27 and 28, all in Block 25, Stewart's Addition, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, all of which is more accurately described as follows: Commencing at the S.W. Corner of Lot 1, Block 11, Lyon's Addition, Des Moines, Polk County, Iowa, thence Easterly, along the Southerly Lines of Lots 1, 2, 3, 4, 5, and 6, in said Block 11, and the Southerly Line of the Vacated East 13<sup>th</sup> Street, and the Southerly Line of Lot 1, in said Block 25, 392.0 feet, thence Northerly, parallel with and 22.0 feet Easterly of the Westerly Line of said Block 25, 111.72 feet, to the POINT OF BEGINNING, thence continuing Northerly, parallel with and 22.0 feet Easterly of the Westerly Line of said Block 25, 108.0 feet, thence Easterly, parallel with and 219.72 feet Northerly of the Southerly Line of said Block 25, 163.0 feet, thence Southerly, parallel with and 185.0 feet Easterly of the Westerly Line of said Block 25, and along the Northerly Extension of the West Line of the East 15.0 feet of Lot 4, in said Block 25, 108.0 feet, thence Westerly, parallel with and 111.72 feet Northerly of the Southerly Line of said Block 25, 163.0 feet, to the Point of Beginning. Said tract of land being subject to and together with any and all easements of record.

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## **Mercy Capitol Acquisition FAQ (10/06)**

- **Why should the State consider purchasing the Mercy Capitol property?**
  1. Mercy Hospital is motivated to sell to the State.
  2. The State needs the property across the street and due west of the hospital to construct a parking ramp for the new state office building.
  3. Portions of the main hospital building are either currently available for, or can be converted into (in the future) office and storage space for state programs located in leased space.
  4. The cost to convert is substantially cheaper than the cost to build.
  5. Other parts of the hospital building can be utilized for DAS Mail Services and DAS State Fleet operations. Relocating DAS Mail Services to the hospital building will create additional opportunity to move leased office and storage space back to the Capitol Complex. In order for the West Capitol Terrace project to be completed, DAS State Fleet Operations must be relocated.
  6. Portions of the hospital property can be utilized for much needed parking on the Capitol Complex and for future state development.
  7. A portion of the hospital property that fronts East 14th Street could be sold (for commercial development) to generate cash needed for the acquisition or to convert the main hospital building into office space.
  8. With minor modification (selling the East 14th Street frontage), the acquisition continues the execution of the Capitol complex master plan.
  9. The hospital cafeteria could be utilized by the tenants of the proposed new office building in lieu of building a cafeteria in the new office building.
  10. The hospital complex offers the opportunity to provide child daycare, adult daycare, health care, and wellness services to state employees.
  11. The purchase potentially reduces the size and cost of the proposed new state office building. Construction of the new state office building is anticipated to begin in March 2008, with an anticipated move-in date of March 2010.
- **What is the State purchasing?**
  1. The entire hospital property consists of approximately 12 acres and is bordered by East 14th Street on the east, East 11th Street on the west, Des Moines Street on the south, and East Lyon Street on the north.
  2. Six buildings are located on the property: the main hospital building, two privately owned medical clinics/offices (land lease to Mercy), a small pharmacy building (land lease), a vacant brick building (Annex), and a small maintenance facility.
- **What problems does it solve on the Capitol Complex?**
  1. Moves state employees out of costly leased space into more affordable Capitol Complex space.
  2. Provides much needed parking for employees and visitors.
  3. Provides an opportunity to complete the West Capitol Terrace project (as planned) and relocating DAS State Fleet operations.
  4. Facilitates the demolition of the Wallace Building.
  5. Improves the Capitol Complex aesthetics.



- **How will the acquisition be financed?**

DAS will pursue financing options through the State of Iowa Treasurer's Office via net cash flow generated by relocating state employees from leased space to the Capitol Complex.

- **What is the timeframe for the various components of the hospital transaction?**

1. Acquisition of the property due west and across the street from the hospital complex should occur on or before January 1, 2008.
2. Acquisition of the property bordering East 14th Street should occur as soon as possible. The selling of this property would permit the State to generate capital necessary to support the project. If the State locates a buyer for this property before it acquires ownership, the proceeds from the sale could be applied toward the purchase price.
3. State occupation of vacant space currently within the main hospital building should occur as soon as possible.
4. State occupation of the balance of the hospital property should occur as soon as Mercy Hospital occupies a new hospital facility in the western suburbs, three to four years from now.

- **What are the next steps?**

1. Finalizing an option to buy agreement with Mercy Hospital.
2. Constructing a return on investment analysis for the acquisition.
3. Meeting with the Treasurer's Office to determine financing feasibility.

- **What has been the nature of property acquisition?**

- 1. How does the state acquire property for the Capitol Complex?**

In general, through appropriated funds. See response to above question. Also, when the option is exercised, a formal offer to buy is signed by both the buyer and seller. Thereafter, the property abstract is updated, a title opinion is rendered by legal counsel, all identified title deficiencies are corrected, a mutually agreeable closing date is determined, and ownership is transferred to the buyer at closing.

- 2. What real estate was acquired during the Vilsack/Pederson administration?**

1022 Des Moines Street, 709 East Locust (pending October 31, 2006 closing), and several single family and multi-family dwellings located on East 10th Street and on Des Moines Street.

- 3. How much funding (recently) has been devoted to real estate acquisition?**

\$610,000 (\$110,000 in FY06, \$500,000 in FY07)

- 4. What funding requests are being considered for real estate acquisition?**

FY08 - \$1,000,000.

- 5. What properties is the State in the process of acquiring?**

707 East Locust and the Mercy Capitol complex.

- 6. What is DAS' statutory authority to acquire property?**

Acquisition of Real Property - 8A.321:

With approval by the executive council or pursuant to other authority granted by law, DAS may acquire real property as follows:

- a. Purchase, lease, option, gift, grant, bequest, devise or otherwise.
- b. Exchange of real property belonging to the state for property belonging to another person.
- c. Selling Real Property Owned by the State - No change to this part of the statutory responsibilities of the director. State-owned real property cannot be sold without a constitutional majority of both houses of the general assembly and approval by the governor.