

PURCHASE AGREEMENT

THIS AGREEMENT is made as of _____, 2023 (the “Effective Date”) between **Winona Mall, LLC**, a Minnesota limited liability company (“Seller”), and the **Hiawatha Valley Education District (“HVED”)**, a Minnesota education district under Minnesota Statutes §§ 123A.15 through 123A.19 (as amended) (“Buyer”).

RECITALS:

A. Seller is the fee owner of real and commercial property located in Winona County, Minnesota (“Property”), the legal description of which is as follows:

Lot 1, Block 1, WINONA MALL SECOND SUBDIVISION, according to the plat thereof on file in the office of the County Recorder, Winona County, Minnesota. Has caused the same to be surveyed and platted as WINONA MALL THIRD SUBDIVISION.

[Legal description to be verified by title company.]

[PID _____]

B. Seller wishes to convey, and Buyer wishes to purchase the Property, as illustrated in the attached **Exhibit A**, together with all rights, privileges, easements, and appurtenances belonging thereto.

AGREEMENT:

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Purchase of Property. Seller hereby agrees to sell, and Buyer hereby agrees to purchase the Property including all easements and rights of every kind and nature benefiting or appurtenant to the Property, subject to the Permitted Encumbrances as provided herein, from the Seller on the date of Closing.

2. Purchase Price and Manner of Payment. The total purchase price (“Purchase Price”) to be paid by Buyer to Seller for the Property shall be \$4,500,000.00, and shall be paid to Seller at Closing, subject to the terms of this Agreement.

Earnest Money. Within 14 business days after the Effective Date, Buyer must deposit the sum of \$_____ (the “Earnest Money”) with a title company of its choice (“Escrow Agent”). At Closing, Escrow Agent shall disburse to Seller the Earnest

Money and Buyer shall receive a credit against the Purchase Price in an amount equal to the amount of the Earnest Money.

3. **Buyer Contingencies.** The obligations of Buyer under this Agreement are contingent upon each of the following:

- a. **Available Surveys, Tests, and Reports.** Within ten (10) days following the Effective Date, Seller shall cause to be delivered to Buyer (a) copies of any surveys, soil tests, environmental reports, and any other studies and/or site analyses previously conducted on the Property and in the possession of Seller, (b) copies of existing title work for the Property and in the possession of Seller, (c) copies of leases still effective on the property, including any and all amendments to these leases, and (d) any other documents creating obligations to Seller with respect to tenants (the “Due Diligence Materials”). Seller makes no representations or warranties regarding the accuracy of the Due Diligence Materials. If Buyer so requests, Seller shall request the preparers of any such surveys, soil tests, environmental reports, and any other studies and/or site analyses to re-issue or re-certify the same for the direct benefit of Buyer, at Buyer’s expense except as otherwise provided in this Agreement, so that Buyer may rely on such site analyses or surveys as if prepared for Buyer in the first instance, but Seller makes no representation as to whether any such reissuance or recertification will be available.
- b. **Representation and Warranties.** The representations and warranties of Seller contained in this Agreement must be accurate in all material respects now and on the Closing Date as if made on the Closing Date.
- c. **Title.** Title shall have been found marketable, or been made marketable, in accordance with the requirements and terms of Section 7 below.
- d. **Performance of Seller’s Obligations.** Seller shall have performed all of the obligations required to be performed by Seller under this Agreement as and when required by this Agreement.
- e. **Inspection.** Buyer shall have the right to enter the Property through _____, 2023 (the “Due Diligence Period”) and perform such surveys, tests and investigations as Buyer deems advisable, all at Buyer’s sole expense. Buyer shall keep the Property free from mechanic’s liens arising from such work. Buyer shall be responsible for any property damage or personal injury arising from such work. Buyer shall promptly restore the Property to substantially the same condition in which it existed immediately prior to any physical tests conducted by or on behalf of Buyer. Buyer shall determine, in its sole judgment, whether the condition of the

Property is suitable for Buyer's intended use, and may terminate this Agreement without liability through the end of the Due Diligence Period.

Access Easement. Buyer shall obtain the right to access the Property through Seller's property **naming direction of access easement, pursuant to the Access Easement set forth in Exhibit B.** If any contingency set forth above has not been satisfied on or before the Closing Date, then this Agreement may be terminated, at Buyer's option, by written notice from Buyer to Seller. Upon such termination, the Earnest Money shall be refunded to Buyer and neither party will have any further rights or obligations regarding this Agreement or the Property. All the contingencies set forth in this Section are for the sole and exclusive benefit of the Buyer and the Buyer shall have the right to waive any contingency by written notice to Seller.

4. Closing. The closing of the purchase and sale contemplated by this Agreement ("Closing") shall be held at such place as may be agreed upon by the parties, on or before, , 2023 ("Closing Date"). At the Closing, Buyer shall pay the Purchase Price to Seller and the following closing documents shall be executed and delivered.

- a. Seller shall deliver a warranty deed conveying the Property to Buyer, free and clear of all encumbrances, except the "Permitted Encumbrances" as defined herein.
- b. A title insurance policy, or a suitably marked-up commitment for title insurance initialed by the Title Insurer, in the form required by this Agreement.
- c. An Affidavit by Seller indicating no adverse matters.
- d. A closing statement detailing the financial terms of the closing.
- e. **The Access Easement set forth in Exhibit B.**

d. All other documents necessary to transfer the Property to Buyer free and clear of all encumbrances except the Permitted Encumbrances.

5. Insurance; Risk of Loss. Seller assumes all risk of destruction, loss or damage to the Property prior to the Closing Date. If, prior to the Closing Date, all or any portion of the Property or access thereto is condemned, taken by eminent domain, or damaged by cause of any nature, Seller shall immediately give Buyer written notice of such condemnation, taking or damage. After receipt of written notice of such condemnation, taking or damage (from Seller or otherwise), Buyer shall have the option either (a) to require Seller to (i) convey the Property at Closing (as defined in Section 6) to Buyer in

its damaged condition, upon and subject to all of the other terms and conditions of this Agreement without reduction of the Purchase Price, (ii) assign to Buyer at Closing all of Seller's right, title and interest in and to any claims Seller may have to insurance proceeds, condemnation awards and/or any causes of action with respect to such condemnation or taking of or damage to the Property or access thereto, and (iii) pay to Buyer at Closing by certified or official bank check all payments made prior to the Closing Date under such insurance policies or by such condemning authorities, or (b) to terminate this Agreement by giving written notice of such termination to Seller and thereafter neither party shall have any further obligations or liabilities to the other, except for such obligations as survive termination of this Agreement. If the right to terminate this Agreement is not exercised in writing, such right shall be deemed to have been waived. Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Buyer's prior written consent, which consent shall not be unreasonably withheld.

6. Costs and Prorations. Seller and Buyer agree to the following prorations and allocation of costs:

- a. Title Insurance and Closing Fee.** Seller will pay all costs of issuing the title insurance commitment. Buyer will pay all title insurance premiums and surcharges required for the issuance of any title insurance policy. Buyer and Seller will each pay one half of all reasonable and customary closing fees charged by the Title Insurer.
- b. Documentary Taxes.** Seller shall pay the state tax for the deed to be delivered by Seller under this Agreement.
- c. Real Estate Taxes and Levied and Pending Assessments.** General real estate taxes due and payable in 2023 shall be prorated by Seller and Buyer to the Closing Date based upon a calendar fiscal year. Any deferred property taxes or otherwise unpaid taxes, penalties and interest accrued prior to 2023 shall be paid by Seller. Seller shall pay all special assessments levied or pending against the Property as of the date of this Agreement.
- d. Attorney's Fees.** Each party will pay its own attorney's fees, except that a party defaulting under this Agreement or any closing document will pay the reasonable attorney's fees and court costs incurred by the non-defaulting party to enforce its rights regarding such default.

7. Title.

- a. **Quality of Title.** Seller shall convey good and marketable fee title to the Property to Buyer, subject to no liens, easements, encumbrances, conditions, reservations or restrictions other than the Permitted Encumbrances.
- b. **Title Evidence.** Seller shall obtain a commitment (“Title Commitment”) for the most current form of ALTA owner’s policy of insurance in the amount of the Purchase Price insuring title to the Property subject only to the Permitted Encumbrances. In the event a Survey, or any recertification thereof, shows any encroachments or any improvements upon, from, or onto the Property, or on or between any building setback line, lot line, or any easement, or other condition unacceptable to Buyer, in Buyer’s sole discretion, said encroachment, easement, or other condition shall be treated in the same manner as Title Defect(s). The Title Commitment and Survey, if any, are collectively referred to as Title Evidence.
- c. **Buyer’s Objections.** Within **ten (10)** days after receiving the last of the Title Evidence, Buyer shall make written objections (“Objections”) to the form and or contents of the Title Evidence; provided, however, that Buyer shall not be obligated to object to any mortgages, mechanics and other monetary liens created during Seller’s period of ownership of the Property (collectively, "Monetary Liens"), which Monetary Liens shall be satisfied or released by Seller at or prior to Closing. Buyer’s failure to make Objections within such time will constitute a waiver of Objections. Any matter shown on such Title Evidence and not objected to by Buyer shall be deemed an additional “Permitted Encumbrance” hereunder. Within **ten (10) days** after receipt of Buyer’s Objections (“Response Deadline”), Seller shall notify Buyer if Seller will undertake to cure each of the Objections prior to Closing. If Seller fails to respond by the Response Deadline or notifies Buyer that Seller is unable or unwilling to satisfy one or more Objections (except for Monetary Liens, which Seller hereby agrees shall be removed at or prior to Closing), then Buyer may either (x) terminate this Agreement by providing Seller with a written termination notice **within ten (10) days** after the Response Deadline, in which event the Earnest Money shall be returned to Buyer and this Agreement will be of no further force and effect except as expressly set forth in this Agreement, or (y) waive the objections and proceed to the Closing on the Closing Date, in which case such matters shall be additional “Permitted Encumbrances.” In the event Buyer does not terminate this Agreement within ten (10) days after the Response Deadline, Buyer will be deemed to have elected option (y) herein. If Seller notifies Buyer prior to the Response Deadline that Seller will undertake to cure an Objection, but fails to cure such objection prior to Closing, then Buyer may either terminate this Agreement by providing

Seller with a written termination notice prior to Closing, in which event the Earnest Money shall be returned to Buyer and this Agreement will be of no further force and effect except as expressly set forth in this Agreement, or waive the objections and proceed to the Closing.

- d. **Title Policy.** Title Insurer shall deliver to Buyer at the closing a title policy issued pursuant to the commitment, or a suitably marked-up commitment initialed by the Title Insurer undertaking to issue such a title policy in the form required by the commitment as approved by Buyer.

8. Representations and Warranties by Seller. Seller represents and warrants to Buyer as follows:

- a. **Authority.** Seller has the requisite power and authority to enter into and perform this Agreement.
- b. **Title to Property.** Seller owns the Property and will deliver it free and clear of all encumbrances except the Permitted Encumbrances.
- c. **Rights of Others to Purchase Property.** Seller has not entered into any other contracts for the sale of the Property which remain in effect.
- d. **FIRPTA.** Seller is not a “foreign person,” “foreign partnership,” “foreign trust” or “foreign state” as those terms are defined in § 1445 of the Internal Revenue Code.
- e. **Proceedings.** To Seller’s actual knowledge, without duty to investigate, there is no action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against Seller or the Property.
- f. **Hazardous Materials.** To Seller’s actual knowledge, without duty to investigate, no toxic or hazardous substances (including, with limitation, asbestos, urea foam formaldehyde, the group of organic compounds known as polychlorinated biphenyls, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9601-9657, as amended) have been generated, treated, stored, released, or disposed of, or otherwise deposited in or located on the Property, including with limitation, the surface or subsurface waters of the Property, nor has any activity been undertaken on the Property which would cause (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. § 6901, *et. seq.*, or any

similar state law or local ordinance or any other environmental law; (ii) a release or threatened release of hazardous waste from the Property within the meaning of, or otherwise bring the Property within the ambit of CERCLA, or any similar state law or local ordinance, or any other environmental law; or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air or any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 7401, et.seq., or any similar state law or local ordinance or any other environmental law. To Seller's actual knowledge, without duty to investigate: (i) there are no substances or conditions in or on the Property which may support a claim or cause of action under RCRA, CERCLA, or any other federal, state, or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements, and (ii) no underground deposits which cause hazardous wastes or underground storage tanks are located on the Property.

- g. Wells and Septic Systems.** To Seller's actual knowledge, there are no private sewage systems or wells located on the Property.
- h. Use of Property.** To Seller's actual knowledge, no methamphetamine production has occurred on the Property.

Seller will defend, indemnify and hold harmless Buyer from and against any expenses or damages, including reasonable attorney's fees that Buyer incurs because of the breach of any of the above representations and warranties. Consummation of this Agreement by Buyer with knowledge of any such breach by Seller will constitute a waiver or release by Buyer of any claims due to such breach. Each of the representations and warranties contained herein shall survive the Closing for a period of one (1) year, and any claim arising out of a breach of any representation or warranty in this Agreement or any document referenced in this Agreement not asserted in an action filed and served on or before the first anniversary date of Closing Date shall be barred and deemed waived.

9. Representations and Warranties by Buyer. Buyer has the requisite power and authority to enter into and perform this Agreement. This Agreement is subject to formal approval of HVED Joint Powers Board.

10. Control of Property. Subject to the provisions of this Agreement, until the Date of Closing, Seller shall have full responsibility and the entire liability for any and all damages or injuries of any kind whatsoever to the Property, to any and all persons, whether employees or otherwise, and to any other property from and connected to the Property, except liability arising from Buyer's surveys, tests, and investigations, or the negligence or willful acts of Buyer, its agents, contractors, or employees, and except as may otherwise be provided by separate agreement between the Parties.

11. As-Is, Where-Is. Buyer hereby expressly acknowledges that it has or will have, prior to the end of the Due Diligence Period, thoroughly inspected and examined the Property to the extent deemed necessary by the Buyer in order to enable the Buyer to evaluate the purchase of the property. Buyer represents that it is a knowledgeable buyer of real property such as the Property and that it is relying solely on its own expertise and that of Buyer's consultants, and that Buyer will conduct such inspections and investigations of the Property, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon the same, and, upon closing, shall assume the risk of any adverse matters, including, but not limited to, adverse physical and environmental conditions, that may not have been revealed by Buyer's inspections and investigations. Buyer further acknowledges and agrees that Buyer is acquiring the Property on an as-is, where-is and with all faults basis, without representations, warranties or covenants, express or implied, except as stated herein.

12. Broker's Commission. Seller and Buyer represent and warrant to each other that they have dealt with no broker, finder or other person entitled to a commission, finder's fee or similar fee in connection with this transaction.

13. Assignment. Neither party may assign its rights under this Agreement without prior written consent of the other party. Any such assignment will not relieve such assigning party of its obligations under this Agreement.

14. Survival. All the terms of this Agreement will survive and be enforceable after the Closing.

15. Notices. Any notice required or permitted to be given by any party to the other shall be given in writing, and shall be (i) hand delivered to the specified addressee, or (ii) mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, or (iii) properly deposited with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Seller: John Alexander
 Winona Mall, LLC
 ADDRESS
 Winona, MN

If to Buyer: Debbra C. Marcotte
 Hiawatha Valley Education District
 1410 Bundy Boulevard
 Winona, MN 55987

With copy to: Ratwik, Roszak & Maloney, P.A.

Attention: Christian R. Shafer
444 Cedar St., Suite 2100
St. Paul, MN 55101

Notices shall be deemed effective on the earlier of the date of receipt, or in the case of such deposit in the mail or with an overnight courier, on the first business day following such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party.

16. Entire Agreement. This written Agreement constitutes the complete agreement between the parties and supersedes any and all other oral or written agreements, negotiations, understandings and representations between the parties regarding the Property.

17. Amendment; Waiver. No amendment of this Agreement, and no waiver of any provision of this Agreement, shall be effective unless set forth in a writing expressing the intent to so amend or waive, and the exact nature of such amendment or waiver, and signed by both parties (in the case of amendment) or the waiving party (in the case of waiver). No waiver of a right in any one instance shall operate as a waiver of any other right, nor as a waiver of such right in a later or separate instance.

18. Governing Law. This Agreement is made and executed under and in all respects is to be governed and construed under the laws of the State of Minnesota.

19. Binding Effect. This Agreement binds and benefits the parties and their respective successors and assigns.

20. Remedies.

- a. Default by Buyer.** If Buyer defaults under this Agreement, Seller shall have the right to sue for specific performance of this Agreement or actual damages caused by Buyer's default, or terminate this Agreement by giving a 30-day written notice to Buyer pursuant to Minnesota Statutes § 559.21.
- b. Default by Seller.** If Seller defaults under this Agreement, Buyer may sue for specific performance of this Agreement or actual damages caused by Seller's default, or terminate this Agreement by giving a 30-day written notice to Seller with opportunity to cure such default within such 30-day period.

[Signatures on the next page]

SELLER: Winona Mall, LLC

By: _____
Its:

Date: _____

By: _____
Its:

Date: _____

BUYER: Hiawatha Valley Education District

By: _____
Debra C. Marcotte, Executive Director

Date: _____

By: _____

Date: _____

**EXHIBIT A
TO PURCHASE AGREEMENT**

Illustration

**EXHIBIT B
TO PURCHASE AGREEMENT**

Access Easement – see attached document