

Special Meeting

Monday, August 28, 2023 6:00 PM

R-P Schools Forum Room, 1000 Pine Meadows Lane, Rushford, Minnesota 55971

1. **Call to Order**

2. **Pledge of Allegiance**

3. **Roll Call**

4. **Adoption of Agenda**

5. **Public Input on Hiawatha Valley Education District's (HVED) Potential Building Purchase and Renovation.**

6. **Hiawatha Valley Education District Joint Powers Agreement**

7. **INFORMATION**
Strategic Plan: Listening/Work Session - Monday, September 18, 2023 - 5:00 p.m in the Forum Room
Regular Monthly Meeting - Monday, September 18, 2023 - 6:00 p.m. in the Forum Room

8. **ADJOURNMENT**

Hiawatha Valley Education District

Sources and Uses of Funds
Proposed 2023 Purchase of Winona Mall

August 16, 2023

Building & Land Purchase Price	\$4,200,000
Building Renovation Costs	\$9,380,118
Total Project Cost	\$13,580,118
Term	15
Dated Date	12/21/2023
Lease Amount	<u>\$15,000,000</u>
Sources of Funds	
Par Amount	15,000,000
Reofering Premium ¹	136,825
Investment Earnings ²	33,524
Total Sources	15,170,349
Uses of Funds	
Underwriter's Discount ¹	240,000
Capitalized Interest ³	1,159,056
Legal and Fiscal Costs ⁴	191,175
Net Available for Project Costs	13,580,118
Total Uses	15,170,349
Proceeds Deposited to Construction Fund	13,546,594

- 1 The underwriter may receive a premium (price paid that is more than the principal amount). The underwriter's discount amount shown above is the compensation to the underwriter. Ehlers provides independent municipal advisory services as part of the issuance process and is not an underwriting firm.
- 2 Estimated investment earnings are based on an average interest rate of 0.50% and a construction timeframe of 12 months.
- 3 The first year's interest payment will be financed with proceeds of the issuance.
- 4 Amount includes fees for municipal advisor, rating agency, trustee and bond counsel.

PRELIMINARY INFORMATION - FOR DISCUSSION ONLY

Hiawatha Valley Education District

August 16, 2023

Pay 2025 Lease Levy Capacity and Estimated Tax Impact for Lease Purchase Payments

Lease Purchase (COP)

15 Year Term

District	ISD No.	Proportion ate Share	Annual Lease Payment Allocation	Co-op Lease Levy Limit \$65 per pupil	Current Approved Joint Leases	Available Co-op Authority	Use of Co-Op Lease Levy Authority	Remaining Co-op Authority	Additional Payment	Regular Lease Levy Limit \$212 per pupil	Current Approved Non-Joint Leases	Available Regular Authority	Use of Regular Lease Levy Authority	Remaining Regular Lease Levy Authority	General Fund Subsidy
Chatfield	227	9.08%	\$140,964.53	\$64,142	\$2,894	\$61,248	\$61,248	\$0	\$79,716	\$209,202	\$0	\$209,202	\$79,716	\$129,485	-
Lanesboro	229	4.75%	73,664.21	29,042	1,303	27,739	27,739	0	45,925	94,722	4,500	90,222	45,925	44,296	-
Mabel-Canton	228	4.20%	65,257.77	17,758	694	17,064	17,064	0	48,194	57,918	0	57,918	48,194	9,724	-
Rushford-Peterson	239	6.91%	107,174.20	45,188	2,061	43,127	43,127	0	64,047	147,382	0	147,382	64,047	83,335	-
Spring Grove	297	4.37%	67,792.55	24,804	1,105	23,699	23,699	0	44,094	80,899	0	80,899	44,094	36,805	-
Caledonia	299	9.47%	147,019.90	51,064	1,992	49,072	49,072	0	97,948	166,547	0	166,547	97,948	68,599	-
La Crescent-Hokah	300	11.87%	184,182.94	75,699	3,435	72,264	72,264	0	111,919	246,895	0	246,895	111,919	134,976	-
Dover-Eyota	533	9.66%	149,913.68	80,366	3,409	76,957	76,957	0	72,957	262,117	0	262,117	72,957	189,160	-
Wabasha-Kellogg	811	6.91%	107,178.04	35,035	2,950	32,085	32,085	0	75,093	114,268	0	114,268	75,093	39,175	-
Lewiston- Altura	857	8.13%	126,158.85	43,420	2,098	41,322	41,322	0	84,837	141,616	0	141,616	84,837	56,779	-
St. Charles	858	10.14%	157,312.78	75,192	1,115	74,077	74,077	0	83,236	245,242	0	245,242	83,236	162,006	-
Plainview-Elgin-Millville	2899	14.53%	225,468.06	104,078	4,688	99,390	99,390	0	126,078	339,454	0	339,454	126,078	213,376	-
		100%	\$1,552,088	\$645,788	\$27,744	\$618,044	\$618,044		\$934,044	\$2,106,262	\$4,500	\$2,101,762	\$934,044	\$1,167,719	

Note: Pupil unit estimates and lease levy capacity as of the taxes payable 2023 levy certification worksheets.

** Taxes payable 2023 values are final, taxes payable 2025 assumes a 5% growth in pay 2024 and 0% in pay 2025.

Hiawatha Valley Education District
Analysis of Tax Impact, 15 Year Term

August 16, 2023

		Chatfield	Lanesboro	Mabel-Canton	Rushford-Peterson	Spring Grove	Caledonia	La Crescent-Hokah	Dover-Eyota	Wabasha-Kellogg	Lewiston-Altura	St. Charles	Plainview-Elgin-Millville
Type of Property	Estimated Market Value	Estimated Impact on ANNUAL Taxes Beginning in Taxes Payable 2025											
Residential Homestead	\$75,000	\$6	\$8	\$6	\$6	\$9	\$8	\$7	\$8	\$5	\$7	\$7	\$7
	100,000	9	11	8	9	13	11	10	11	7	10	10	9
	125,000	12	15	12	13	18	16	14	16	10	14	14	13
	150,000	16	20	16	17	24	21	19	21	13	19	19	17
	175,000	20	25	19	21	30	26	23	26	16	23	23	21
	200,000	24	29	23	24	35	31	27	30	19	27	27	25
	225,000	28	34	26	28	41	36	32	35	22	32	32	29
	250,000	31	39	30	32	47	41	36	40	25	36	36	33
	300,000	39	48	37	40	58	51	45	50	31	45	45	41
	400,000	54	67	52	56	80	70	62	69	43	62	62	56
	500,000	69	85	66	71	103	90	79	88	55	79	79	72
Commercial/Industrial	\$50,000	\$10	\$13	\$10	\$11	\$15	\$14	\$12	\$13	\$8	\$12	\$12	\$11
	100,000	21	26	20	21	31	27	24	27	17	24	24	22
	250,000	59	73	57	61	88	77	68	75	47	68	68	62
	500,000	129	158	123	132	191	167	147	164	102	147	147	134
	750,000	198	244	190	203	294	257	227	253	158	227	227	206
Agricultural Homestead** (average value per acre of land & buildings)	\$2,000	\$0.14	\$0.17	\$0.13	\$0.14	\$0.21	\$0.18	\$0.16	\$0.18	\$0.11	\$0.16	\$0.16	\$0.14
	4,000	0.28	0.34	0.27	0.29	0.41	0.36	0.32	0.35	0.22	0.32	0.32	0.29
	6,000	0.42	0.51	0.40	0.43	0.62	0.54	0.48	0.53	0.33	0.48	0.48	0.43
	8,000	0.56	0.68	0.53	0.57	0.82	0.72	0.64	0.71	0.44	0.64	0.64	0.58
	10,000	0.70	0.86	0.67	0.71	1.03	0.90	0.80	0.89	0.55	0.80	0.80	0.72
	12,000	0.83	1.03	0.80	0.86	1.24	1.08	0.96	1.06	0.66	0.96	0.96	0.87
Agricultural Non-Homestead** (average value per acre of land & buildings)	\$2,000	\$0.28	\$0.34	\$0.27	\$0.29	\$0.41	\$0.36	\$0.32	\$0.35	\$0.22	\$0.32	\$0.32	\$0.29
	4,000	0.56	0.68	0.53	0.57	0.82	0.72	0.64	0.71	0.44	0.64	0.64	0.58
	6,000	0.83	1.03	0.80	0.86	1.24	1.08	0.96	1.06	0.66	0.96	0.96	0.87
	8,000	1.11	1.37	1.07	1.14	1.65	1.44	1.28	1.42	0.89	1.27	1.27	1.16
	10,000	1.39	1.71	1.33	1.43	2.06	1.81	1.59	1.77	1.11	1.59	1.59	1.45
	12,000	1.67	2.05	1.60	1.71	2.47	2.17	1.91	2.13	1.33	1.91	1.91	1.74

* Estimated tax impact includes principal and interest payments. The amounts in the table are based on school district taxes for this project only, and do not include tax levies for other purposes. Tax increases shown above are gross increases, not including the impact of the homeowner's Homestead Credit Refund ("Circuit Breaker") program. Owners of homestead property may qualify for a refund, based on their income and total property taxes. This will change the net effect of the proposed bond issue for those property owners.

** For all agricultural property, estimated tax impact includes a 70% reduction due to the School Building Bond Agricultural Credit. Average value per acre is the total estimated market value of all land & buildings divided by total acres. If the property includes a home, then the tax impact on the house, garage, and one acre of land will be calculated in addition to the taxes per acre, on the same basis as a residential homestead or non-homestead property. If the same property owner owns more than approximately \$3.5 million of agricultural homestead land and buildings, a portion of the property will be taxed at the higher non-homestead rate.

JOINT POWERS AGREEMENT

EDUCATION FACILITY IN WINONA, MINNESOTA

This Agreement is made and entered into this ____ day of _____ 2023, by and among Independent School District No. 299 (Caledonia); Independent School District No. 227 (Chatfield); Independent School District No. 533 (Dover-Eyota); Independent School District No. 300 (La Crescent-Hokah); Independent School District No. 229 (Lanesboro); Independent School District No. 857 (Lewiston-Altura); Independent School District No. 238 (Mabel-Canton); Independent School District No. 2899 (Plainview-Elgin-Millville); Independent School District No. 239 (Rushford-Peterson); Independent School District No. 297 (Spring Grove); Independent School District No. 858 (St. Charles); Independent School District No. 811 (Wabasha-Kellogg), and the Hiawatha Valley Education District (hereinafter referred to as the “HVED”), all being school districts and governmental units of the State of Minnesota. Each of the foregoing independent school districts shall hereinafter be referred to as a “Participating Independent District” or collectively the “Participating Independent Districts.” The Participating Independent Districts and the HVED shall hereinafter collectively be referred to as the “Collaborating Districts.”

RECITALS

WHEREAS, the HVED provides special education and related services, alternative education programs and other education-related programs and services to children who are enrolled in the Participating Independent Districts; and

WHEREAS, the Participating Independent Districts are members of the HVED; and

WHEREAS, the parties hereto desire to cooperatively and jointly exercise their powers to establish a framework to finance (i) the acquisition of land and an existing building located in

the City of Winona, Minnesota, and (ii) the construction, renovation and equipping of the existing building into a new education facility (hereinafter the “Education Facility”) which shall be used by the HVED to provide special education and related services, alternative education programs and other services to the Participating Independent Districts, pursuant to the terms and conditions described below.

NOW, THEREFORE, in consideration of the promises and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

(The remainder of this page is intentionally left blank.)

ARTICLE I

AUTHORITY; PURPOSE

Section 1. AUTHORITY. This Agreement is entered into by and among the Collaborating Districts pursuant to Minn. Stat. § 471.59, as amended, which authorizes two or more governmental units, by agreement entered into through action of their governing bodies, to jointly or cooperatively exercise any power common to the contracting parties or any similar powers.

Section 2. PURPOSE. The purpose of this Agreement is to establish a framework to finance the acquisition of real property and the construction, renovation and equipping of the Education Facility, which shall be used by the HVED to provide special education and related services, alternative education programs and other education-related programs and services to the Participating Independent Districts.

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ARTICLE II

GOVERNANCE

Section 1. GOVERNING BOARD. The HVED was created pursuant to a Joint Powers Agreement dated September 1, 1988, as amended (the “HVED Agreement”). The member school districts of the HVED are the Participating Independent Districts in this Agreement. The control and management of the HVED is vested in a Governing Board established pursuant to the HVED Agreement. The Governing Board has the authority to function as an entity separate and apart from any of the Participating Independent Districts and generally to act in furtherance of the Participating Independent Districts’ joint interests and intentions hereunder.

Section 2. POWERS OF THE GOVERNING BOARD. The Governing Board has the general charge of the business of the HVED and the ownership of its facilities, fixtures and personal property. The Governing Board shall take such action as it deems necessary and proper to accomplish the purposes of the HVED, or any other action necessary and incidental to the implementation of said purposes or actions. The Governing Board shall have such additional powers as specified in this Agreement, including all powers necessary to provide recommendations on issues relating to the acquisition, establishment, operation, management and control of the Education Facility.

(The remainder of this page is intentionally left blank.)

ARTICLE III

ACQUISITION OF PROPERTY; MAINTENANCE AND UTILITIES; CONSTRUCTION CONTINGENCY FUND

Section 1. PURCHASE AND SALE OF REAL PROPERTY. Subject to approval by the governing board of the HVED and the satisfaction or waiver contingences set forth in the purchase agreement, Winona Mall, LLC, a Minnesota limited liability company, (hereinafter “Seller”) shall convey to the HVED, and the HVED will purchase from the Seller, for the purchase price of \$4,200,000.00, land and an existing building located in the City of Winona, Minnesota, and more particularly described in the attached **EXHIBIT A** (hereinafter the “Property”) which is incorporated herein by reference. The existing building that is to be constructed, renovated, improved and equipped to serve as the Education Facility is located on the Property.

Section 2. MAINTENANCE OF EDUCATION FACILITY GROUNDS. The HVED shall provide usual and customary lawn mowing and lawn maintenance services on the Property. HVED shall maintain the parking lots, driveways, and the sidewalks of the Education Facility in reasonable repair which shall include such activities as seal coating, striping, crack filling and similar maintenance, resurfacing, or reconstruction. HVED shall provide snow removal for the parking lots, driveways and sidewalks located on the Property. The foregoing maintenance costs for the Education Facility shall be apportioned between all the Participating Independent Districts as operating costs in the manner set forth in Article V, Section 4(a).

Section 3. UTILITY COSTS. The HVED will be responsible for utility costs for the Education Facility. The utility costs for the Education Facility shall be apportioned between all the Participating Independent Districts as operating costs in the manner set forth in Article V, Section 4(a).

Section 4. CONSTRUCTION CONTINGENCY FUND. The HVED shall use funds on hand (not proceeds from the lease-purchase financing described in Article IV hereof) to establish a construction contingency fund in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) (the “Contingency Fund”). Funds in the Contingency Fund may be allocated by the HVED to pay for unforeseen or unexpected costs related to the construction, renovation, improvement and equipping of the Education Facility. Any funds remaining in the Contingency Fund upon final completion of the project shall be transferred to the general fund.

ARTICLE IV

PROJECT FINANCING AND PARAMETERS; RIGHTS SUBORDINATE TO LEASE AGREEMENT

Section 1. LEASE-PURCHASE FINANCING; RIGHTS OF THE LESSOR OR TRUSTEE. It is mutually agreed and understood that the Property, including the Education Facility, is contemplated to be acquired, constructed, renovated, improved and equipped by entering into a Lease-Purchase Agreement (the “Lease Agreement”) between the HVED and a lessor or an indenture trustee (the “Trustee”) to be named, to finance said acquisition, construction, renovation, improvement and equipping. The rights of the parties under this Agreement shall be subject to and subordinate to the rights of the lessor or the Trustee under the Lease Agreement.

Section 2. FINANCING PARAMETERS. It is mutually agreed and understood that the principal amount of the Lease Agreement shall not exceed Fifteen Million Dollars (\$15,000,000) and the term of the Lease Agreement shall not exceed fifteen (15) years. The provisions of this section shall not apply to any refunding of the Lease Agreement.

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ARTICLE V

LEASE PAYMENT ALLOCATION; CONTINUING CAPITAL COSTS; OPERATING COSTS; DISSOLUTION

Section 1. LEASE PAYMENT ALLOCATION. The lease payments on the Lease Agreement described in Article IV hereof shall be apportioned among the Participating Independent Districts using the method of apportionment specified in **Exhibit B**, attached hereto and fully incorporated herein by reference. Each Participating Independent District may pay its share of the payments under the Lease Agreement from proceeds of a lease levy or from other school district fund sources. To the extent lease levy authority is exercised by one or more of the Participating Independent Districts in any year during the term of the Lease Agreement, prior to August 15 of each year, the HVED shall give written notice to each Participating Independent District of the maximum amount of the leasing levy, calculated based on the formula specified in **Exhibit B**, authorized to be certified by that Participating Independent District under this section for the following fiscal year. This section may be amended by resolutions adopted by the school boards of the Collaborating Districts if the amendment does not violate the provisions of the Lease Agreement or other documents relating to financing for the Property, including the Education Facility.

Section 2. TITLE AFTER PAYMENT OF LEASE. Unless this Agreement is amended to the contrary, at the termination of the Lease Agreement and after the repayment of the financing described above, the title to the real and personal property financed shall vest in the HVED.

Section 3. OBLIGATION TO MAKE LEASE PAYMENTS; TIMING OF PAYMENTS TO HVED. The Collaborating Districts recognize that the payments under the Lease Agreement will be paid by the Participating Independent Districts through lease levies

and other fund sources pursuant to the formula in Article V Section 1, hereof. Lease payments pursuant to the Lease Agreement which are not eligible for the lease levy shall be paid by the Participating Independent Districts using other fund sources. Each Participating Independent District shall pay to the HVED one-half of the amount of its apportioned share of that year's payment under the Lease Agreement by not later than August 15, and one-half of its apportioned share of that year's payment under the Lease Agreement by not later than January 15. Each payment may consist of proceeds from a lease levy, funds from other school district fund sources, or both.

Section 4. CONTINUING CAPITAL COSTS; OPERATING COSTS

(a) The Participating Independent Districts shall be apportioned operating costs for the Education Facility and the Property in accordance with the HVED's current practice and procedure for allocating operating costs.

(b) The Participating Independent Districts shall be apportioned continuing capital costs for the Education Facility and the Property pursuant to the formula set forth in **Exhibit B**, attached hereto.

Section 5. DISSOLUTION OF HVED AFTER TERMINATION OF THE LEASE AGREEMENT. In the event the HVED elects to dissolve after repayment of the financing described above, the Property, including the Education Facility, shall be sold and the proceeds of the sale apportioned in accordance with the HVED Agreement, as amended, or such other written agreement of all Collaborating Districts. The terms of this section shall survive the withdrawal of any Participating Independent District from this Agreement or the termination of this Agreement.

ARTICLE VI

DURATION; MEMBERSHIP; TERMINATION; BREACH; LIABILITY; INSURANCE

Section 1. DURATION. This Agreement shall be perpetual in duration unless terminated pursuant to provisions of this Agreement, as amended, or any state law terminating the Agreement.

Section 2. ADDITION OF OTHER DISTRICTS; REALLOCATION. An independent school district seeking membership in the HVED shall, as a condition of being approved as a member pursuant to applicable state law and the HVED Agreement, agree in writing to be added to this Agreement as a Participating Independent District and to be bound by the terms of this Agreement. Upon becoming a Participating Independent District under this Agreement, the percentages apportioned pursuant to Article V, Section 1 of this Agreement shall be adjusted to account for the additional Participating Independent District.

Section 3. WITHDRAWAL OF PARTICIPATING INDEPENDENT DISTRICTS.

Subdivision, 1. Procedure. A Participating Independent District may only withdraw from this Agreement if it also withdraws as a member school district of the HVED in the manner provided in the HVED Agreement. Subject to the terms of Article VI, Section 3, Subdivision 2, below, a Participating Independent District may withdraw from this Agreement effective at the end of any fiscal year by resolution adopted by a majority vote of the full membership of its school board and by formal written notice to the school board of each other Participating Independent District and to the Executive Director of the HVED (the “Executive Director”). Such formal written notice shall be provided to each school board and the Executive Director no less than six (6) months prior to the effective date of withdrawal. The notice shall

include a certified copy of the adopted withdrawal resolution. A withdrawal shall only be permitted as specified in this section.

Subdivision 2. No Withdrawal Permitted During Lease Term.

A Participating Independent District shall not be permitted to withdraw from this Agreement prior to June 30 of the year in which full payment of the Lease Agreement, or any refunding of the Lease Agreement, is made.

Subdivision 3. No Distribution to Withdrawing Participating Independent District. Except as provided in this Article VI, Section 3, Subdivision 3, a withdrawing Participating Independent District shall not be eligible for the distribution of any property or assets at the time of withdrawal. A Participating Independent District who has withdrawn from this Agreement shall be entitled to receive its apportioned share of the proceeds from the sale of the Education Facility (and the Property) in accordance with Article V, Section 5, hereof.

Section 4. TERMINATION OF AGREEMENT. After the payment in full of the Lease described in Article IV hereof, this Agreement may be terminated if the boards of all Collaborating Districts adopt written resolutions approving such termination. Upon termination, all funds and property remaining after payment of all outstanding debts and obligations, including the Education Facility, the Property, and equipment of any nature, shall become the property of the HVED. To the extent permitted by law, the termination shall not affect the continuing liability of present or former Collaborating Districts for indebtedness incurred prior to the termination, or for other continuing obligations, including unemployment compensation.

Section 5. BREACH OF AGREEMENT; MEET AND CONFER. Any Collaborating District breaching this Agreement and given written notice of the breach and the

nature thereof shall have fifteen (15) days in which to cure the breach. The breaching Collaborating District shall be liable for any expenses incurred by any other Collaborating District to enforce the provisions of this Agreement and any damages incurred by other Collaborating Districts as a result of the breach. In the event a breach of this Agreement involves the failure by a Participating Independent District to pay any or all of its apportioned share of any payment under the Lease Agreement, representatives of each Collaborating District shall meet as soon as practicable following said breach and determine how to address any resulting shortfall in the ability to make payments under the Lease Agreement. The unpaid apportioned share of the breaching Participating Independent District shall be apportioned among the non-breaching Participating Independent Districts in the manner set forth in Article V, Section 1, hereof. The payment of the breaching Participating Independent District's apportioned share by the non-breaching Participating Independent Districts shall not relieve the breaching Participating Independent District from liability for payment of the unpaid share or from any damages incurred by a Participating Independent District as a result of the breach.

Section 6. LIABILITY. No Participating Independent District shall be liable for the acts or omissions of the HVED and the HVED shall not be liable for the acts or omissions of a Participating Independent District. Except as provided in Article VI, Section 5, hereof, no Participating Independent District shall be liable for the acts or omissions of another Participating Independent District. The liability and the monetary limits of liability of the HVED, the Participating Independent Districts, their officers, employees, representatives, and agents shall be governed by the Municipal Tort Claims Act, (Minnesota Statutes, Chapter 466, as amended) and other applicable law.

Section 7. INSURANCE.

Subdivision 1. Property Insurance. The HVED shall maintain at its expense property insurance on the Education Facility and its personal property, which will be an operating cost under Article V, Section 4(a) of this Agreement.

Subdivision 2. Liability Insurance. The HVED shall maintain at its expense liability insurance in not less than the statutory maximum liabilities for school districts, which will be an operating cost under Article V, Section 4(a) of this Agreement.

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ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 1. CAPTIONS. The captions of the provisions of this Agreement are for convenience only and shall not be considered or referred to concerning questions of interpretation or construction.

Section 2. AMENDMENTS TO THIS AGREEMENT. Amendments to this Agreement may be proposed by the board of any Collaborating District. Notice of proposed amendments shall be sent to all Collaborating Districts. The proposed amendment shall not become effective until it has been approved and executed by not less than two-thirds of all the Collaborating Districts. An amendment approved under this Section shall be an addendum to this Agreement.

Section 3. SAVINGS CLAUSE. Should any provision or article of this Agreement be found unlawful, the other provisions of this Agreement shall remain in full force and effect if by doing so the purposes of this Agreement, taken as a whole, can be made operative. Should any such provision or article be found unlawful, representatives of the boards of the Collaborating Districts shall meet for the purpose of arriving at an agreement on a lawful provision to replace the unlawful provision or article. The newly agreed upon provision or amendment must be approved by the boards of the Collaborating Districts by resolutions adopted in the manner specified in this Article VII for the adoption of amendments.

Section 4. NOTICES. All notices required or permitted to be given by a Collaborating District shall be given by the clerk of its board. The notice shall be in writing and shall be sent by first class mail or electronic mail to the administrative offices of the board of a Collaborating District. A notice shall be timely if postmarked or emailed on the day it is due.

In the case of a notice requiring board action, a certified copy of the resolution, motion or minutes of the school board specifying the board action shall be sent with the notice.

Section 5. ENTIRE AGREEMENT; APPLICABLE LAW. This Agreement contains the entire agreement between the parties. No party has relied upon any statements or promises that are not stated in this Agreement. This Agreement shall be construed and interpreted in accordance with and be subject to the laws of the State of Minnesota.

Section 6. EXECUTION IN COUNTERPARTS; ELECTRONIC SIGNATURES; EFFECTIVE DATE OF AGREEMENT. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together shall constitute the same and whole instrument. This Agreement shall become effective upon its approval by the boards of each Collaborating District. The electronic signatures of the Board Chair and the Clerk to this Agreement shall be as valid as an original signature of such party and shall be effective to bind the Collaborating District.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts
have signed this Agreement by authority of their respective boards.

Approved at a meeting of the
Governing Board thereof held
on the _____ day of
_____, 2023

HIAWATHA VALLEY EDUCATION DISTRICT

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 299
(CALEDONIA)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 227
(CHATFIELD)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 533
(DOVER-EYOTA)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 300
(LA CRESCENT-HOKAH)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 229
(LANESBORO)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 857
(LEWISTON-ALTURA)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 238
(MABEL-CANTON)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 2899
(PLAINVIEW-ELGIN-MILLVILLE)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 239
(RUSHFORD-PETERSON)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 297
(SPRING GROVE)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 858
(ST. CHARLES)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 811
(WABASHA-KELLOGG)**

By: _____
Board Chair

By: _____
Clerk

EXHIBIT A

DESCRIPTION OF REAL ESTATE

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.

EXHIBIT B

ALLOCATION FORMULA

Each of the lease payments on the Lease Agreement described in Article IV, hereof, shall be apportioned among the Participating Independent Districts using the following method of apportionment:

1. A dollar amount representing twenty percent (20%) of each annual lease payment shall be evenly divided among the Participating Independent Districts; and

2. A dollar amount representing eighty percent (80%) of each annual lease payment shall be allocated among the Participating Independent Districts based on the average of each Participating Independent District's percentage of the total adjusted pupil units and unduplicated child count of all Participating Independent Districts.

3. In the event that the number of Participating Independent Districts changes, the "12" in this equation will be changed to reflect the then current number of Participating Independent Districts.

4. For purposes of this Exhibit B, the number of "Adjusted Pupil Units" for each Participating Independent District shall be obtained from the most recent report of actual (not estimated) adjusted pupil units in the General Education Report (or any successor report or document providing the same information) prepared by the Minnesota Department Education ("MDE"). By way of example, currently (as of July 17, 2023) the most recent report of actual (not estimated) adjusted pupil units is MDE's General Education Report dated December 2022.

5. For purposes of this Exhibit B, the "Unduplicated Child Count" for each Participating Independent District shall be obtained from the December 1 child count maintained by MDE for the calendar year prior to the year that a Lease Payment is made. By way of example, if a Lease Payment were made in calendar year 2023, the December 1 unduplicated child count report by MDE for the 2022 calendar year would be used.

The following mathematical formula illustrates foregoing allocation method:

$$(.2 \times \text{Amount of Annual Lease Payment} / 12)^{+} + (.8 \times \text{Amount of Annual Lease Payment} \times (\text{Adjusted Pupil Units}\%^{2} + \text{Unduplicated Child Count}\%^{3}) / 2).$$

By way of example, and assuming that there are twelve Participating Independent Districts, if a Participating Independent District has twelve percent (12%) percent of the Participating Independent Districts' total adjusted pupil units and ten percent (10%) percent of the Participating Independent Districts' total unduplicated child count, the Participating Independent District will be responsible for one twelfth (1/12) of the first twenty percent (20%) percent of the lease payment

and the Participating Independent District's allocation of the remaining eighty percent (80%) of the lease payment will be eleven percent (11%).

EXTRACT OF MINUTES OF MEETING
OF THE SCHOOL BOARD OF
INDEPENDENT SCHOOL DISTRICT NO. ____
([DISTRICT NAME])
_____ COUNTY[Y][IES], MINNESOTA

Pursuant to due call and notice thereof, a [regular][special] meeting of the School Board of Independent School District No. ____ ([DISTRICT NAME]), _____ Count[y][ies], Minnesota, was duly held in the School District on _____, 202____, commencing at _____ o'clock p.m.

The following members were present:

and the following were absent:

Member _____ introduced the following resolution and moved its adoption:

**RESOLUTION APPROVING A JOINT POWERS AGREEMENT FOR THE
ACQUISITION AND BETTERMENT OF AN EDUCATION FACILITY IN
WINONA, MINNESOTA; AND TAKING OTHER ACTIONS WITH RESPECT
THERE TO**

BE IT RESOLVED by the School Board (the "Board") of Independent School District No. ____ ([DISTRICT NAME]), _____ Count[y][ies], Minnesota (the "District"), as follows:

1. Background.

(a) The District is a member of the Hiawatha Valley Education District (the "HVED"). HVED is an education district duly formed and organized pursuant to Minnesota Statutes, Sections 123A.15-123A.19, and a Joint Powers Agreement dated September 1, 1988, as amended.

(b) The members of HVED (including the District) are: Independent School District No. 299 (Caledonia); Independent School District No. 227 (Chatfield); Independent School District No. 533 (Dover-Eyota); Independent School District No. 300 (La Crescent-Hokah); Independent School District No. 229 (Lanesboro); Independent School District No. 857 (Lewiston-Altura); Independent School District No. 238 (Mabel-Canton); Independent School District No. 2899 (Plainview-Elgin-Millville); Independent School District No. 239 (Rushford-Peterson); Independent School District No. 297 (Spring Grove); Independent School District No. 858 (St. Charles); Independent School District No. 811 (Wabasha-Kellogg) (collectively, the "Member Districts").

(c) The HVED provides special education and related services, alternative education programs and other education-related programs and services to children who are enrolled in the Member Districts.

(d) The governing board of the HVED (the “Governing Board”) has determined that it is in the best interests of the HVED and the Member Districts to (i) acquire land and an existing building located in the City of Winona, Minnesota (the “Property”), and (ii) construct, renovate, improve and equip the existing building and site to serve as a new education facility (hereinafter the “Education Facility”) which will be used by the HVED to provide special education and related services, alternative education programs and other services to the Member Districts.

(e) The Governing Board has proposed that each of the Member Districts and the HVED enter into a certain Joint Powers Agreement (the “Joint Powers Agreement”) to establish a framework for financing the acquisition, betterment, and maintenance of the Education Facility through a lease-purchase financing (the “Lease Agreement”).

(f) The Board has been informed by the administration and the HVED of the terms and conditions of the Joint Powers Agreement, including the requirement that the lease payments on the Lease Agreement shall be apportioned among the Member Districts using the method of apportionment specified in the Joint Powers Agreement, and the requirement that no Member District shall be permitted to withdraw from the Joint Powers Agreement prior to June 30 of the year in which the full payment of the Lease Agreement, or any refunding of the Lease Agreement, is made.

(g) The Board hereby finds and determines that it is necessary and expedient to the sound financial management of the affairs of the District to enter into the Joint Powers Agreement for the purpose of financing the acquisition, betterment, and maintenance of the Education Facility in accordance with the terms and conditions of the Joint Powers Agreement. The Board further finds that execution of the Joint Powers Agreement and the District’s performance of its obligations thereunder are necessary and desirable and are in the best interests of the District.

2. Approval of Joint Powers Agreement. The Joint Powers Agreement is hereby approved in substantially the form now on file with the Board, subject to modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all modifications therein. The Board Chair and Clerk are hereby authorized and directed to execute and deliver the Joint Powers Agreement on behalf of the District.

3. Concurrence with Lease Agreement. The Board concurs with the financial obligation represented by the Lease Agreement, including any refunding of the Lease Agreement, as set forth in the Joint Powers Agreement.

4. No Closing; Resolution Void. If the purchase and sale of the Property contemplated by the Joint Powers Agreement does not close, this Resolution shall automatically be deemed null and void without further action by the Board.

The motion for the adoption of the foregoing resolution was duly seconded by Member _____ . The vote of the Board members is recorded as follows:

The following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

STATE OF MINNESOTA)
)
COUNT[Y][IES] OF _____) ss.
[AND _____]
)
INDEPENDENT SCHOOL)
DISTRICT NO. _____)

I, the undersigned, being the duly qualified and acting Clerk of Independent School District No. ____
([DISTRICT NAME]), _____ Count[y][ies], Minnesota (the "District"), hereby certify that I have
carefully compared the attached and foregoing extract of minutes of a [regular][special] meeting of the
School Board of the District held on _____, 202__, with the original minutes on file in my office
and the extract is a full, true and correct copy of the minutes insofar as they relate to approving a joint
powers agreement for the acquisition and betterment of an education facility in Winona, Minnesota.

WITNESS My hand as Clerk this ____ day of _____, 202__.

Clerk of the School Board
Independent School District No. ____
([DISTRICT NAME]),
_____ Count[y][ies], Minnesota

]

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.

[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 \$4,200,000.00, 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.

f. Government Approvals

- (1) **Contingency.** Buyer's obligation to purchase the Property is expressly subject to and contingent upon Buyer obtaining all final and unappealable approvals from the City and any other governmental authority having jurisdiction over the Property as Buyer may deem necessary to proceed with Buyer's intended use of, and improvements to, the Property ("***Governmental Approvals***").
- (2) **Buyer's and Seller's Obligations.** From the date hereof, Buyer shall proceed with the application for Governmental Approvals. Notwithstanding any provisions of this Agreement to the contrary, the extent to which Buyer undertakes activities, decisions, effort, expense and any other matter with respect to Buyer's application for Governmental Approvals shall be at Buyer's sole and absolute discretion, including, but not limited to, the schedule for obtaining the Governmental Approvals, the level and type of Governmental Approvals Buyer seeks to obtain, and the amount of money Buyer expends to obtain such Governmental Approvals. At any time through the end of the Due Diligence Period, Buyer shall have the right to terminate this Agreement for any reason, in Buyer's sole and absolute discretion, by written notice to Seller. Upon any termination of this Agreement, any obligation of Buyer to seek Governmental Approvals for any portion of the Property shall also terminate with no remedy of any kind to Seller. To the extent required by the Government, Seller shall, as the property owner, execute applications required for Buyer to obtain necessary approvals.
- (3) **Notice of Governmental Approvals.** If said Governmental Approvals are achieved within sixty (60) days after the effective date of this Contract (the "***Governmental Approvals Period***") or Buyer elects to waive such matters, Buyer shall send written notice ("***Notice of Governmental Approvals***") to Seller on or before the expiration of the Governmental Approvals Period.
- (4) **Termination.** If (i) Buyer fails to send Seller the Notice of Governmental Approvals on or before the last day of the Governmental Approvals Period, or (ii) Buyer sends to Seller written notice terminating this Contract prior to the expiration of the Governmental Approvals Period, this Contract shall automatically terminate.

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g. 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.

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h. Parking Lot Easement. Seller shall obtain an agreement with the owner of the property directly to the south, the legal description of which is Lot 3, Block 1, Winona Mall Subdivision, Winona County, Minnesota (hereinafter, "Lot 3"), on terms and conditions acceptable to Buyer, providing access to existing parking spaces on the south side of the Property.

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, [REDACTED], 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: _____
Debbra C. Marcotte, Executive Director

Date: _____

By: _____

Date: _____

**EXHIBIT A
TO PURCHASE AGREEMENT**

Illustration

**EXHIBIT B
TO PURCHASE AGREEMENT**

Access Easement – see attached document