

REVISED SEPTEMBER 24, 2021

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT (“**Agreement**”) is made and entered into this 427th day of ~~October~~September, 2021, by and between _____ (“**Purchaser**”) and the Board of Education of Downers Grove Grade School District No. 58, DuPage County, Illinois (“**Seller**”).

WITNESSETH:

WHEREAS, Seller currently holds title to the real estate located at 1435 Prairie Avenue, Downers Grove, Illinois 60515, Illinois, DuPage County, commonly known as the Longfellow Elementary School, and further identified as P.I.N.s 09-07-209-001 and 09-07-209-016 and legally described on Exhibit “A” attached hereto and made a part hereof (said real estate, together with all improvements, fixtures, easements, appurtenances and benefits pertaining thereto being hereinafter referred to as the “**Real Estate**”); and

WHEREAS, Purchaser desires to purchase the Real Estate from Seller, and Seller desires to sell the Real Estate to Purchaser, upon the terms and conditions hereinafter set forth; and

WHEREAS, pursuant to Section 5-22 of the *School Code* (105 ILCS 5/5-22), Seller has the authority to transfer title of the Real Estate to Purchaser; and

WHEREAS, Seller has determined, by two-thirds of its Board of Education, that the Real Estate is unnecessary, unsuitable and inconvenient.

NOW, THEREFORE, in consideration of the mutual covenants and promises of Seller and Purchaser, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Seller and Purchaser hereby covenant and agree as follows:

1. **Sale and Purchase.** Seller agrees to sell and Purchaser agrees to purchase the Real Estate on the terms and conditions herein set forth at a price of _____ (\$_____) (“**Purchase Price**”), plus or minus prorations at the time of Closing, as hereinafter defined. Within two (2) business days of the execution of this Agreement by the Seller, Purchaser shall pay One Hundred Thousand Dollars (\$100,000.00) as earnest money (hereinafter “**Earnest Money**”). The Earnest Money shall be applied to the Purchase Price at the Closing, as defined in Paragraph 6 below. The Earnest Money shall be held by the Title Company, as hereinafter defined, in a strict joint order escrow, for the mutual benefit of the parties. The cost of the joint order escrow shall be borne by Purchaser. In the event that this Agreement is terminated or the transaction herein described is not consummated for a reason other than a default of the Purchaser, the Earnest Money, together with any interest earned thereon, shall be refunded to Purchaser as its sole remedy, subject to the provisions of Paragraph 11.1.B. Purchaser shall pay the balance of the Purchase Price, as adjusted by prorations as described in the Agreement, at the Closing by certified or cashier’s check or check from the Title Company.

2. **Conveyance.** At the Closing, Seller shall convey or cause to be conveyed to Purchaser or Purchaser's nominee by recordable ~~Quit Claim~~Warranty Deed (the “**Deed**”) the Real Estate, subject

only to (a) general real estate taxes not due and payable as of the date of the Closing; (b) acts of Purchaser; and (c) covenants, conditions and restrictions of record; all easements; special governmental taxes or assessments for improvements not yet completed; and unconfirmed special governmental taxes or assessments (the “**Permitted Exceptions**”). Items which are not permitted exceptions specifically detailed herein shall be considered Unpermitted Exceptions.

3. **Survey.** ~~Purchaser acknowledges that it has been Seller agrees to provided Purchaser, within thirty (30) days of the Effective Date, with an updated ALTA survey of the Real Estate prepared in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, prepared by Civil & Environmental Consultants, Inc., which is dated not more than six (6) months prior to the date of Closing, a copy of which is attached to this Agreement as Exhibit B. If required by the Title Company to issue the final title policy to be provided by Seller under this Agreement, Seller shall provide Purchaser at the Closing with an Affidavit of No Change regarding the survey. Once the survey has been provided to Purchaser, Purchaser shall provide notice of any Unpermitted Exceptions revealed by such survey as required by Paragraph 5.~~

4. **Evidence of Title.** Seller shall deliver, or cause to be delivered, to Purchaser within thirty (30) days from the ~~date hereof~~ Effective Date, a current title commitment from a title company of Seller’s choice (the “**Title Company**”) for an ALTA owner's title insurance policy in the amount of the Purchase Price. The aforesaid commitment shall show title in the intended grantor or in Purchaser, subject only to the title exceptions set forth in Paragraph 2 hereof. The title commitment shall be conclusive evidence of good title as therein shown as to all matters to be insured by the title policy subject only to the exceptions therein stated. The Seller shall pay for the costs of the title policy provided hereunder, which shall include extended coverage; however, should the Purchaser require any additional endorsements to the title insurance policy, ~~including, but not limited to, an endorsement over the general exceptions to title~~, the Purchaser shall pay for the cost of such endorsements. All costs of obtaining the aforesaid commitment and title policy shall be paid by Seller, unless otherwise agreed pursuant to Paragraph 5. ~~The cost of any endorsements or extended coverage shall be borne by Purchaser.~~

5. **Correction of Defects.** If the title commitment ~~or survey herein~~ required discloses Unpermitted Exceptions, and ~~Seller-Purchaser~~ provides written notice to ~~Purchaser-Seller~~ of those Unpermitted Exceptions to which it objects within five (5) business days of the receipt of the title commitment ~~or survey, as the case may be~~, Seller shall have thirty (30) days from the date of delivery thereof to have the exceptions removed from the title commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, and, in such event, the Closing shall be extended to a date fifteen (15) days after delivery of the corrected commitment or the time specified in Paragraph 6 hereof, whichever is later. If Purchaser fails to provide written notice of any Unpermitted Exceptions within the time provided, all items raised on the title commitment and all items disclosed on the survey shall become Permitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed, or in the alternative, to obtain the commitment for title insurance specified above, as to such exceptions within the specified time, Purchaser may, upon five (5) days prior written notice, terminate this Agreement and receive ~~its~~ a full refund of the Earnest Money as its sole remedy.

6. **Closing.** The closing of the transaction herein described (the “**Closing**”) shall be on January 10, 2022 or on a date that is mutually agreeable to the parties (or on the date to which such time is extended by reason of Paragraph 5 or Paragraph 11 hereof, whichever date is later) at the offices of

the Title Company or at such other location as the parties hereto mutually agree. The transaction herein contemplated may, upon election of either party, be closed through an escrow with the Title Company, in accordance with the general provisions of the usual form of a Deed and Money escrow then in use by said Title Company, with such special provisions inserted in the escrow agreement as may be required to conform with this Agreement. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, payment of the consideration and delivery of the Deed shall be made through the escrow and the cost of said escrow shall be equally divided between Seller and Purchaser.

7. **Delivery of Possession.** Seller shall deliver possession and control of the Real Estate on the day of the Closing.

8. **Closing Adjustments.** Seller will provide evidence satisfactory to Purchaser at the Closing that all general real estate taxes for which bills have been issued have been paid in full or that the Real Estate is exempt from real estate taxes through the date of Closing. In the event the Real Estate is not exempt from real estate taxes through the date of Closing, Purchaser shall receive a credit at the Closing for general real estate taxes and any other applicable charge levied against the Real Estate not yet due or payable or due but not yet paid. The amount of any general real estate taxes not then ascertainable shall be credited on the basis of One Hundred Five Percent (105%) of the amount of the most recently ascertainable taxes. All prorations shall be final. Any stamp tax imposed by law by the State of Illinois, the County of DuPage, and any municipality, on the transfer of title shall be paid in accordance with local custom or as provided by law or ordinance.

9. **Covenants, Representations, and Warranties.** In order to induce Purchaser to enter into this Agreement, Seller hereby represents to Purchaser as of the date hereof and as of the date of Closing that, to Seller's knowledge:

A. **Authority of Seller.** Seller has full power to execute, seal, acknowledge and deliver this Agreement, and to consummate each and all of the transactions contemplated hereby.

B. **Violation of Laws.** Seller has not received any notice relating to any violations of applicable laws, ordinances, statutes, rules, regulations and restrictions pertaining to or affecting the Real Estate.

C. **Notice of Legal Proceedings.** Seller has not received any notice relating to any legal actions, suits, or other legal or administrative proceedings, including pending assessments, condemnation, eminent domain, or quiet title cases, pending or threatened, against the Real Estate.

D. **Foreign Status of Seller.** Section 1445 of the Internal Revenue Code (the "**Code**") does not apply to this transaction in that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations). On or before the date of the Closing Seller shall provide Purchaser with an affidavit of compliance with Section 1445, as set forth in the Code and applicable Regulations. If Seller fails to provide the necessary affidavit and/or documentation of exemption on or before the date of Closing, or if Purchaser has reason to believe such affidavit is false or incorrect, Purchaser shall have the right to proceed with the withholding provisions as set forth in Section 1445 of the Code.

E. Notice of Action. From the date hereof through the Closing, Seller shall promptly comply with and forthwith give notice to Purchaser of all notices received by Seller relating to the Real Estate given pursuant to any threatened or actual litigation or any state, city, or municipal law, ordinance, regulation, or order, including, but not limited to, any notices received concerning the potential placement of the Real Estate and its improvements on the National Register of Historic Places from the Illinois Department of Natural Resources and shall comply with the requirements of any authority, state, city or municipal department or other governmental entity having jurisdiction over the Real Estate or the use thereof.

10. **Provisions with Respect to the Closing.** At the Closing, or as provided otherwise below, Seller shall deliver (in addition to the Deed referred to in paragraph 2 above) to the Purchaser the following fully executed documents (“Closing Documents”):

A. A non-foreign affidavit in accordance with Section 1445 of the Internal Revenue Code;

B. Affidavit of Title in customary form;

C. Closing Statement executed by the parties;

D. Applicable Real Estate Transfer Declarations;

E. ~~Quit Claim Warranty~~ Deed in customary form conveying the Real Estate to Purchaser subject only to the Permitted Exceptions;

F. An ALTA Statement in customary form;

G. An ATLA owner’s title insurance policy in accordance with the requirements of Paragraph 4, delivered in normal and due course by the Title Company at or after Closing;

H. An Affidavit of No Change as required in Paragraph 3; and

~~I.~~ All such further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents and any and all such further instruments and documents as are reasonably required by the Title Company to issue the Title Commitment described in Paragraph 4 hereof.

11. **Conditions to Purchaser's Obligations to Close.** Purchaser shall have no obligation to consummate the transaction provided for by this Agreement (but Purchaser shall be entitled to consummate the transaction provided hereby) unless each and every one of the following conditions shall have been satisfied:

A. This Agreement shall not have been previously terminated pursuant to any other provision hereof.

B. The Seller shall be prepared to deliver to Purchaser all instruments and documents to be delivered to Purchaser at the Closing pursuant to the terms and provisions hereof.

C. No eminent domain or condemnation proceeding shall have been initiated which might result in the taking of any part of the Real Estate. Seller shall immediately notify Purchaser in writing of the occurrence of any eminent domain proceedings, or the receipt of a written notice stating that such an action is contemplated.

D. There shall have been no material change in, damage to, or casualty suffered by the Real Estate. In the event of any casualty the provisions of the *Uniform Vendor and Purchaser Risk Act* of the State of Illinois shall be applicable to this Agreement.

11.1 **Due Diligence.**

A. Due Diligence Period. Commencing on the “Effective Date” (as hereinafter defined in Paragraph 23), Purchaser shall have a period of twenty-one (21) days (the “**Due Diligence Period**”) in which to conduct any and all studies, tests, evaluations, investigations and to file any permits and pursue any use or zoning approvals, and to take such other action as Purchaser deems necessary or desirable by Purchaser in connection with Purchaser’s contemplated use, construction, development and/or operation of the Real Estate (“**Due Diligence**”). Prior to commencing any Due Diligence on the Real Estate, and for the duration of the Due Diligence period, the Purchaser shall maintain commercial general liability insurance, on an occurrence basis, in such amounts as the Purchaser may require, but in no event less than \$1,000,000.00 per occurrence and \$5,000,000.00 in the aggregate, naming the Seller, its individual board members, agents and employees as additional insureds thereon on a primary and non-contributory basis. The Purchaser shall provide evidence of such insurance to the Seller in a form reasonably satisfactory to Seller prior to commencing any Due Diligence. The Purchaser may use any combination of commercial general liability and umbrella or excess insurance to meet the required limits, however, to the extent that the Purchaser utilizes umbrella or excess insurance to meet the required limits, Purchaser shall also name the Seller, its individual board members, agents and employees as additional insureds the umbrella or excess liability insurance on a primary and non-contributory basis, and such insurance shall follow the form of the underlying policy.

B. Termination of Agreement. Purchaser shall proceed to conduct its inspections and seek any permits and use or zoning approvals and otherwise conduct any Due Diligence with reasonable promptness and in good faith. If Purchaser determines in its sole discretion that the Property is not suitable for Purchaser’s intended purposes, Purchaser may terminate this Agreement by written notice given to Seller during the Due Diligence Period, and Seller shall be entitled to retain \$10,000.00 of the Earnest Money to offset the costs it incurred related to the sale of the Real Estate. Thereupon, Purchaser shall be entitled to the return of ~~\$90,000.00~~ the balance of the Earnest Money from the Title Company plus any accrued interest and less the escrow fee, and the parties shall be relieved of liability to each other except as specifically set forth herein. If Purchaser terminates this Agreement under this Paragraph, Purchaser shall provide Seller, with the termination notice required herein, with copies of all reports and assessments generated during the Due Diligence Period pertaining to the Real Estate.

C. Indemnification. During the Due Diligence Period, Purchaser shall, at its sole cost and expense, repair any damage done to the Real Estate or any improvements thereon in the

course of its Due Diligence, and return the same to substantially the same condition they were in prior to such Due Diligence. Moreover, Purchaser agrees to indemnify, defend and hold Seller, its individual board members, agents and employees harmless from and against any and all claims, damages, liabilities, losses and or causes of action arising out of, relating to or connected with any act, occurrence or omission of Purchaser, its employees, agents or independent contractors on the Real Estate, specifically including, but not limited to, mechanics liens or other claims for the providing of material or services upon the Real Estate.

12. **Notices.** Any notices and communications required to be given under this Agreement shall be in writing and, except as otherwise expressly provided, shall be (i) mailed by registered or certified mail, return receipt requested, postage prepaid, (ii) sent by electronic facsimile transmission, (iii) sent by a nationally recognized overnight delivery service with proof of delivery, or (iv) personally delivered by hand against receipt therefore to the parties at the address set forth below, or such other address as any party may designate to the others by notice hereunder. All such notices shall be deemed to have been received on the date of personal delivery, electronic facsimile transmission, or, if mailed or by overnight delivery, on the date of receipt.

If to Seller: Todd Drafall
 Downers Grove Grade School District No. 58
 1860 63rd Street
 Downers Grove, Illinois 60516
 Electronic Facsimile Transmission No. (630) 719-9857

with a copy to: James S. Levi, Esq.
 Hodges, Loizzi, Eisenhammer, Rodick & Kohn
 3030 Salt Creek Lane, Suite 202
 Arlington Heights, Illinois 60005
 Electronic Facsimile Transmission No. (847) 670-7334

If to Purchaser: _____

 Electronic Facsimile Transmission No. (____) _____

with a copy to: _____

 Electronic Facsimile Transmission No. (____) _____

13. **Time.** Time is of the essence of this Agreement.

14. **Governing Law and Interpretation.** This Agreement shall be governed by the laws of the State of Illinois, notwithstanding its choice of law provisions. Any action to enforce this Agreement shall be brought in the DuPage County Circuit Court or the U.S. District Court, Northern District of Illinois, Eastern Division. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this Agreement. Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and the words

importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, joint ventures, and other legal entities, including public bodies, as well as natural persons. The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to.”

15. **Business Days.** If the date for Closing, or performance of an obligation falls on a Saturday, Sunday or state or federal holiday, the date shall be deferred until the first business day following such a date. This Agreement contains the entire agreement between the parties hereto relative to the sale of the Real Estate. No amendments, modifications or changes shall be binding upon a party unless set forth in a duly executed document.

16. **Broker.** Seller hereby represents to Purchaser that Seller has not had any dealings with respect to the Real Estate and this Agreement with any broker or real estate dealer.

17. **Waiver.** Purchaser and Seller reserve the right to waive any of the conditions precedent to its obligations hereunder. No such waiver, and no modification, amendment, discharge or change of this Agreement, except as otherwise provided herein, shall be valid unless the same is in writing and signed by the party against which the enforcement of such waiver, modification, amendment, discharge or change is sought.

18. **Binding Effect and Survival.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

19. **Captions.** The captions of this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

20. **Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart; provided, however, that this Agreement shall not be binding upon any party or signatory hereto until each person or entity which is to execute this Agreement has so executed a counterpart thereof.

21. **Entire Agreement.** This Agreement represents the entire Agreement between the parties to the subject matter hereof and supersedes any prior negotiations between the parties.

22. **Amendment.** This Agreement may only be amended by written agreement of both parties.

23. **Effective Date.** Effective Date shall mean the last date on which both the Seller and the Purchaser have executed this Agreement.

24. **Attorneys' Fees.** In the event the Seller takes legal action against the Purchaser to enforce the terms and conditions of this Agreement and substantially prevails in such action, Seller shall be entitled to recover from the Purchaser all costs, fees and expenses it incurred in bringing such action, which shall include, but are not limited to, attorneys' fees, court costs and expert witness fees.

25. **Assignment.** Neither party shall have the right to assign this Agreement without the express written consent of the other party, which may be withheld for any or no reason. Provided, however, at Closing, Purchaser has the right, with at least seven (7) days advanced written notice thereof to Seller, to assign this Agreement without Seller's consent to Purchaser's assignee or nominee that Purchaser maintains an ownership share of or is an affiliate of Purchaser or which Purchaser has incorporated and created specifically for closing and holding title of the Real Estate.

IN WITNESS WHEREOF, the parties hereto have executed this Real Estate Purchase Agreement as of the day first above written.

SELLER:

PURCHASER:

**BOARD OF EDUCATION OF
DOWNERS GROVE GRADE
SCHOOL DISTRICT NO. 58
DUPAGE COUNTY, ILLINOIS**

By: _____
Its: President
Dated: _____

By: _____
Its: _____
Dated: _____

ATTEST:

By: _____
Its: Secretary
Dated: _____

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

Lots 45, 46, 47, 48, 49, 50 and 71, 72, 73, 74, 75 and 76 in Branigar Brothers Wooded Homesites, being a subdivision in the North Half (N ½) of Section Seven (7), Township Thirty-eight (38) North, Range Eleven (11) East of the Third Principal Meridian, and the North Half (N ½) of Section Twelve (12), Township thirty-eight (38) North, Range Ten (10) East of the Third Principal Meridian, situated in the County of DuPage, in the State of Illinois.

Permanent Index Numbers: 09-07-209-001 and 09-07-209-016

Common Address: 1435 Prairie Avenue, Downers Grove, IL 60515

EXHIBIT B

SURVEY

732227_42.DOC