

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Agreement (the "Agreement") is made this ___ day of February, 2007 (the "Contract Date"), by and between HERRICK, LLC, an Illinois Limited Liability Company (the "Seller") and the BOARD OF EDUCATION OF WHEATON-WARRENVILLE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 200, DUPAGE COUNTY, ILLINOIS (the "Purchaser"). Collectively, the Seller and the Purchaser shall be referred to herein as the "Parties".

The Parties have engaged in lengthy negotiations in connection with the Purchaser's acquisition of the Subject Property (as hereinafter defined) from the Seller for the planned use of the Subject Property as a school site.

Subject to the terms and conditions set forth herein, and in consideration of the covenants and undertakings of the respective parties herein contained, the Parties hereto mutually agree as follows:

1. **Sale of Subject Property:** The real estate to be conveyed by Seller to Purchaser pursuant to the terms and conditions of this Agreement consists of approximately 18.6 acres of land located in the City of Warrenville, DuPage County, Illinois with the permanent index numbers 04-36-401-021, 04-36-401-028, and 04-36-401-029 (the "Subject Property") and legally described as follows:

LOT 11 IN GALUSHA FARM, IN PART OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 11, 1944 AS DOCUMENT 462197, IN DUPAGE COUNTY, ILLINOIS.

LOTS 18 AND 19, TAKEN AS A TRACT (EXCEPT THEREFROM THAT PART THEREOF LYING WESTERLY OF A LINE THAT IS PARALLEL WITH AND 678.1 FEET EAST OF THE WEST LINE OF SAID LOT 18, AND LYING NORTHERLY OF A LINE THAT IS PARALLEL WITH AND 20.32 FEET SOUTH OF THE SOUTH LINE, AND SAID LINE EXTENDED OF SAID LOT 19), IN GALUSHA FARM, IN PART OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 11, 1944 AS DOCUMENT 462197, IN DUPAGE COUNTY, ILLINOIS.

Purchaser hereby agrees to purchase and Seller hereby agrees to sell the Subject Property at a price of SEVEN MILLION SIX HUNDRED THOUSAND AND NO/100 →DOLLARS (\$7,600,000.00) if a Referendum (as hereinafter defined in Paragraph 8) is approved in February or March of 2008 and at a price of SEVEN MILLION SEVEN →HUNDRED THOUSAND AND NO/100 (\$7,700,000.00) if a Referendum is approved in November of 2008 (collectively, the "Purchase Price") on the terms and conditions set forth herein.

2. Payment of Purchase Price: The Purchaser shall pay the sum of TWO →HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) as earnest money (the "Earnest Money") to be applied at the time of Closing (as hereinafter defined) to the Purchase Price and agrees to pay or satisfy the balance of the Purchase Price, plus or minus prorations, at the time of Closing by cashier's check, certified check or cash.

3. Earnest Money Escrow: The Purchaser shall deposit the Earnest Money into a strict joint order escrow established by Purchaser and Seller with Chicago Title Insurance Company (the "Earnest Money Escrow"). Such Earnest Money deposit shall be →made within seven (7) business days after the Parties have signed this Agreement and established the Earnest Money Escrow. The Earnest Money shall be held in an account for the benefit of the Parties with interest, if any, to be paid to the Purchaser unless otherwise provided by this Agreement. The Earnest Money Escrow, together with any investment earnings thereon, shall be transferred by joint direction of the parties at Closing into the Closing Escrow (as hereinafter defined).

4. Escrow Closing: The sale of the Subject Property shall be closed through a closing escrow jointly established by the Parties with Chicago Title Insurance Company in accordance with the general provisions of a New York-style deed and money escrow agreement consistent with the terms of this Agreement (the "Closing Escrow"). Upon creation of the Closing Escrow, anything in this Agreement between the Parties to the contrary notwithstanding, the payment of the Purchase Price and delivery of the deed and other required documents shall be made through the Closing Escrow. The closing of the sale of the Subject Property pursuant to this Agreement (the "Closing") shall be within forty-five (45) days of a successful Referendum or at such time as mutually agreed upon by →the Parties, in writing (the "Closing Date"). The costs of the Closing Escrow shall be divided equally between the Parties.

5. Possession: Seller shall surrender possession of the Subject Property to Purchaser at the time of Closing, provided this sale has been closed. It is understood between the Parties that the Closing shall not be concluded until Purchaser has conducted a final inspection immediately prior to Closing to satisfy itself that the Subject Property has not been altered or disturbed since the date this Agreement was executed by the Parties in a material manner negatively impacting Purchaser's intended use of the Subject Property.

6. **Conveyance of Title:** Seller agrees to convey title to the Subject Property by a recordable stamped Special Warranty Deed, with provision for release of any homestead rights, to Purchaser. In addition, at the time of Closing, Seller shall provide appropriate Affidavit of Title, appropriate ALTA Statements, appropriate Plat Act Affidavits, if required, and other documents required in this Agreement, including but not limited to real estate transfer tax declaration of exemption, and any other documents deemed necessary for said conveyance that are customary and usual in like arm's-length land sale transactions in DuPage County, Illinois.

7. **Condition of Title:** At Seller's expense, Seller shall deliver or cause to be delivered to Purchaser no later than thirty (30) days prior to Closing, as evidence of title in Seller, a title commitment for an ALTA title insurance policy in the amount of the Purchase Price with an extended coverage endorsement by Chicago Title Insurance Company (hereinafter referred to as the "Commitment"). At Closing, the Commitment shall show Seller in title, subject only to the following exceptions, none of which shall materially negatively impact Purchaser's planned use of the premises as a school site (hereinafter referred to as "Permitted Title Exceptions"):

- a. General real estate taxes not yet due and payable;
- ➔ b. Rights-of-way for drainage ditches, feeders, laterals and drainage tile, pipe or conduit;
- ➔ c. Easements of record as of the date hereof or easements, the existence of which are readily ascertainable from a physical inspection of the premises; and
- d. Conditions, Covenants and Restrictions of Record;
- e. Liens and encumbrances of a definite and ascertainable amount that can be removed by the Seller's payment of cash at Closing;
- ➔ f. That portion of the land used by the public or municipality for roadway purposes; and
- g. Acts done or suffered by Purchaser.

If the Commitment discloses any other title exceptions ("Unpermitted Title Exceptions"), Seller shall have thirty (30) days from the date of delivery thereof to have the Unpermitted Title Exceptions removed from the Commitment or to have Chicago Title Insurance Company commit to insure against loss or damage that may be occasioned by ➔ such exceptions. If at the end of said thirty-day period Seller fails to have the Unpermitted Title Exceptions removed or insured against, Purchaser may elect, upon notice to Seller

within five (5) days after expiration of the thirty-day period, to accept title as it then is with the right to deduct from the Purchase Price at the time of Closing, such liens or encumbrances of a definite or ascertainable amount as set forth in subsection c. above, in which event the defined term Permitted Title Exceptions shall thereafter also include any title exceptions which have been accepted by Purchaser by the notice aforesaid. If Purchaser does not elect to accept title as it then is, at Purchaser's sole election and pursuant to the five-day notice requirement given by Purchaser to Seller, this Agreement shall terminate and all Earnest Money paid by Purchaser hereunder shall be returned to Purchaser. In the event Purchaser does not give Seller notice pursuant to this paragraph, Seller's delivered title commitment shall become the final title commitment subject to a later date, and all title exceptions identified therein shall be included in the Permitted Title Exceptions.

8. Contingency for Passage of Building Referendum: This Agreement is contingent upon, and subject to, the passage of a referendum at the February or March 2008 general primary election relating to the Purchaser's acquisition of the Subject Property and the construction of a school building. In connection herewith, Purchaser agrees to approve and place upon the February or March 2008 general primary election ballot a suitable question seeking voter approval for such acquisition and construction. In the event the February or March 2008 referendum does not pass, Purchaser, at Purchaser's option, shall have thirty (30) days, with the option of a fifteen (15) day extension, to notify Seller in writing whether it will be placing upon the November 2008 general election ballot a substantially similar public question seeking voter approval for such acquisition and construction. In the event Purchaser does not elect to pursue the November 2008 referendum or if both the February/March 2008 and November 2008 referenda are defeated, this Agreement shall terminate and all Earnest Money paid by Purchaser hereunder shall be forfeited to Seller. Collectively, the February/March 2008 and the November 2008 referenda shall be referred to as the "Referendum". In connection with the Referendum, Purchaser agrees to use its best efforts to educate the community regarding its passage, at Purchaser's expense.

9. Contingency for 'NFR' Letter and Risk Assessment Report: This Agreement is contingent upon, and subject to, Seller procuring from the Illinois Environmental Protection Agency ("IEPA") a 'no further remediation' ("NFR") letter and Purchaser's satisfaction with a risk assessment report for the Subject Property within one-hundred-eighty (180) days from the Contract Date, with Seller's option for a one-hundred-twenty (120) day extension thereof to be provided to Purchaser in writing so long as Seller is making good faith progress toward obtaining the NFR letter. In the event Seller does not procure such NFR letter, Purchaser, at Purchaser's option, shall have the right to terminate this Agreement; and, if so terminated, all Earnest Money paid by Purchaser hereunder shall be returned to Purchaser. Any and all costs, expenses and damages in regard to procuring such NFR letter shall be paid for by Seller, and Seller hereby agrees to

hold Purchaser harmless and indemnified in regard thereto. Purchaser has obtained the risk assessment report and is satisfied therewith.

➔ 10. Contingency for Soil Test, Engineering Studies and Report: This Agreement is contingent upon, and subject to, Purchaser, at Purchaser's expense, obtaining within ninety (90) days from the Contract Date reasonable soil borings and soil tests acceptable to Purchaser in regard to the Subject Property which demonstrate that the soil conditions are sufficient and suitable to permit Purchaser to undertake its intended use and development of the Subject Property along with any engineering studies and reports deemed necessary by Purchaser in order to satisfy Purchaser that the development of the Subject Property is feasible from an engineering standpoint. In the event that said soil borings, soil tests, or engineering studies or reports are not acceptable to Purchaser or demonstrate that the soil is not suitable to permit Purchaser to undertake its intended use and development of the Subject Property, Purchaser, at Purchaser's option, shall have the right to terminate this Agreement; and, if so terminated, all Earnest Money paid by Purchaser hereunder shall be returned to Purchaser. Any and all costs, expenses and damages in regard to said soil borings, soil tests, and engineering studies or reports shall be paid for by Purchaser and access shall be subject to the Access Conditions (as hereinafter defined in Paragraph 20).

➔ 11. Contingency for Flood Plain, Flood Hazard or Wet Land Areas: This Agreement is contingent upon, and subject to, Purchaser, at Purchaser's expense, obtaining within ninety (90) days from the Contract Date verification that no part of the Subject Property is located within a flood plain, flood hazard or wet land area, or, if any part of the Subject Property is located within such an area, that it will not materially impair Purchaser's intended use and development of the Subject Property. In the event that any part of the Subject Property is located within a flood plain, flood hazard or wet land area so that it will materially impair Purchaser's intended use and development of the Subject Property, the Purchaser, at Purchaser's option, shall have the right to terminate this Agreement; and, if so terminated, all Earnest Money paid by Purchaser hereunder shall be returned to Purchaser. Any and all costs, expenses and damages in regard to obtaining the verifications set forth in this paragraph shall be paid for by Purchaser and access shall be subject to the Access Conditions.

➔ 12. Contingency for Archeological Survey. Within ninety (90) days from the Contract Date, the Purchaser, at Purchaser's expense, shall have the right to obtain a Level I and/or Level II Archeological Survey of the Subject Property. In the event that a Level II Archeological Survey and inspection of the Subject Property indicates the presence of historic artifacts on the Subject Property, Purchaser, at Purchaser's option, shall have the right to terminate this Agreement; and, if so terminated, all Earnest Money paid by Purchaser hereunder shall be returned to Purchaser. Purchaser shall pay the full cost of

obtaining the Level I and, if deemed necessary by Purchaser, Level II Archeological Survey and any other historic preservation assessment in regard to the Subject Property and access shall be subject to the Access Conditions. Any historic artifacts identified at the Subject Property during the course of the Archeological Survey shall be the property of Seller, except as otherwise required by law.

* 13. **Failure of Purchaser to Satisfy Contingencies:** In the event that Purchaser fails to obtain the necessary audits, studies, surveys, reports, or verifications as set forth in Paragraphs 10, 11, and 12 within ninety (90) days of the Contract Date, or such lesser period of time as is provided herein in particular cases, such contingency or contingencies shall be deemed waived by Purchaser and this Agreement shall remain in full force and effect as if said contingency or contingencies had not been made a part hereof.

14. **Purchaser's Right to Terminate Agreement:** In the event Purchaser elects to terminate this Agreement under paragraphs 8, 9, 10, 11, or 12 above, Purchaser shall notify Seller of its decision in conformity with the 'Notices' provision of this Agreement within two (2) days following the expiration of the applicable contingency period.

→ 15. **Survey:** Seller, at Seller's expense, shall obtain and deliver to Purchaser within sixty (60) days of the Closing Date a current ALTA survey of the Subject Property with those 'Table A' survey components as set forth on Exhibit A to the Agreement. Purchaser shall have forty-five (45) days to review the survey and provide notice to Seller of any Unpermitted Title Exceptions in conformity with the provisions of Paragraph 7.

16. **Representations of Seller:** Seller hereby represents and warrants to Purchaser as follows:

a. That Seller possesses fee simple title to the Subject Property as described in Paragraph 1 above.

b. That there are no outstanding oral or written agreements to sell the Subject Property other than to Purchaser, and Seller agrees to refrain from negotiating with any third parties for the sale of the Subject Property during the term of this Agreement and any extensions thereof.

c. That at Closing, title to the Subject Property shall be transferred to Purchaser in accordance with Paragraph 7.

→ **d.** That to the best of Seller's knowledge the Subject Property is not in violation of any applicable law, ordinance, order, regulation or code of any governmental or quasi-governmental body or agency having jurisdiction over the Subject Property.

~~2~~ e. Except as otherwise provided in this Agreement or as initiated by Purchaser, that no proceeding, suit, administrative action or examination, demand or claim of any type (including, but not limited to, condemnation or eminent domain) has been instituted, contemplated or threatened against the Subject Property (or any part thereof) or which could interfere with Seller's ability to carry out its obligations hereunder, and that Seller has no knowledge of: (i) any pending or threatened litigation, proceedings, → administrative action or examination, demand or claim in which any person or entity alleges the presence, release, threat of release on or in the Subject Property, of any spills or disposal of "Hazardous Substances" that have occurred or are occurring off the Subject Property as a result of any construction on or operation and use of the Subject Property; (ii) the presence of equipment containing polychlorinated biphenyl ("PCB") or the presence of asbestos in use or on the Subject Property, or of the generation, transportation, storage, treatment or disposal at the Subject Property of any "Hazardous Substance," or, (iii) except as provided in the following section, of the presence upon the Subject Property of any "Underground Storage Tank". For the purposes of this Agreement:

→ (aa) The term "Hazardous Substance" shall be defined to include (a) the definition of hazardous waste under the Resources Conservation Recovery Act (RCRA), 42 USC Sections 6901, et seq., (b) the definition of hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9601, et seq., (c) the definition of hazardous substance under Illinois' Environmental Protection Act (IEPA), 415 ILCS 5/1, et seq., (d) petroleum, (e) asbestos, (f) polychlorinated biphenyl, (g) radioactive material, (h) the definition of a hazardous waste under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, (i) any matter giving rise to liability under any common law theory based on nuisance or strict liability, and (j) any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic materials, a hazardous or toxic substance, or other similar term by any Environmental Laws presently in effect or that may be promulgated in the future as Environmental Laws may be amended from time to time through the Closing. Notwithstanding the foregoing, however, the term "Hazardous Substance" shall not be deemed to mean any farm fertilizer, pesticides and/or herbicides which may have been lawfully deposited on the Subject Property as a

result of normal and customary use and operation for agricultural purposes.

→ (bb) The term "Underground Storage Tank" shall mean and include all underground storage tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and for purposes of this Agreement, shall additionally mean and include all underground storage tanks specifically excluded under subparagraphs (a) through (i) of Section 9001 of RCRA, and shall also include any such tanks which would be included in Section 9001(i) of RCRA but for the fact that they contain hazardous wastes.

→ (cc) The term "Environmental Laws" shall mean all statutes specifically described in this Section and all federal, state and local environmental, health, and/or safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Substances or Underground Storage Tanks.

f. That Seller has not, to the best of Seller's knowledge, (i) deposited, released or disposed of any Hazardous Substance as defined above on the Subject Property; or (ii) given written notice to or agreed with any governmental authority or agency (federal, state or local) or any private entity, including, but not limited to, any prior owners of the Subject Property, acknowledging the presence, release, placement on or in the Subject Property, or the treatment or disposal at the Subject Property of any Hazardous Substance as defined above.

* → g. That to the best of Seller's knowledge, after reasonable inquiry, no hazard presently exists or may have previously existed on the Subject Property which would be deemed a violation of any Environmental Laws, and no Hazardous Substances have been deposited on the Subject Property.

* → h. That there are not presently pending any special assessments of any nature with respect to the Subject Property or any part thereof, nor has Seller received any notice of or become aware of any such special assessments being contemplated. The foregoing notwithstanding, any special assessment established for improvements required for and/or benefiting Purchaser's intended use of the Subject Property shall be the responsibility and liability of the Purchaser.

i. That Seller will not enter, during the pendency of this Agreement, into any contracts, agreements or options that would preclude Seller from closing the transaction contemplated herein in conformity with the terms of this Agreement.

j. That Seller has not received any notice from any governmental authority of any zoning, building, fire, environmental or health code violations in respect to the Subject Property, that have not heretofore been corrected.

k. That the execution, delivery of, and performance under this Agreement is pursuant to authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instruction by which Seller or the Subject Property are bound; and will not and does not to the best knowledge and belief of Seller, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of, or agreement with, any governmental instrumentality or court, domestic or foreign, to which Seller or the Subject Property are subject or bound.

l. That all bills and invoices for labor and material for which liens may be filed against the Subject Property pursuant to the Illinois Mechanics' Lien Act have been paid in full, and there are no mechanic's liens or other claims outstanding or available to any party in connection with the Subject Property, as a result of any act of Seller.

* Seller's representations and warranties in subsections d., e., f., g., j., k., and l. above shall be deemed remade as of the date of Closing and shall not merge into the deed, but shall survive for a period of one (1) year thereafter with Purchaser's recovery for the violation of representations and warranties limited to Purchaser's actual damages.

17. **Representations of Purchaser:** Purchaser hereby represents and warrants to Seller as follows:

a. That the execution, delivery of, and performance under this Agreement is pursuant to authority validly and duly conferred upon Purchaser and the signatories hereto, and Purchaser has the power and authority to execute and deliver this Agreement.

