

FACILITIES COMMITTEE  
Tuesday, April 13, 2010 8:30 AM

Boardroom / Teleconference  
1820 Xenium Ln N  
Minneapolis, MN 55441-3790

## **Agenda**

1. North Education Center (NEC) Facilities Committee Agenda for April 13, 2010
2. Charge Statement and Levels of Authority
3. Financing
4. Levels of Authority
5. Purchase Agreement
6. Best Value vs. Low Bid
7. Future Meeting Dates

# Intermediate District 287

RESPONSIVE. INNOVATIVE. SOLUTIONS.

**GROUP:** Facilities Committee

**DATE:** April 13, 2010

**TIME:** 8:30 – 10:00 a.m.

**LOCATION:** DSC Board Room

**PROTOCOLS:**

Decisions will be made via consensus on the agenda items.

**CONVENER:** Tom Shultz

**FACILITATOR:** Peyton Robb

**ATTENDING:** Steve Antolak, Colleen Baumtrog, Don Draayer, Janet Johnson, Linda Johnson, Michèle Kunz, Sandy Lewandowski, Peyton Robb, Tom Shultz,

## LONG TERM PURPOSE

The Facilities Committee for the North Education Center project will provide oversight and direction to administration and bring recommendations to the full Board for approval as needed.

AGENDA ITEMS	OUTCOMES	TIME BUDGETED	ACTION
1. Charge Statement	<ul style="list-style-type: none"><li>Committee members will review the Facilities Committee Charge Statement and revise as needed.</li></ul>	15 minutes 8:30 – 8:45	<ul style="list-style-type: none"><li></li></ul>
2. Financing	<ul style="list-style-type: none"><li>Committee members will discuss the implications of the Qualified School Construction Bond Award.</li></ul>	20 minutes 8:45 – 9:05	<ul style="list-style-type: none"><li></li></ul>
3. Levels of Authority	<ul style="list-style-type: none"><li>Committee members will review and discuss Levels of Authority and revise as needed.</li></ul>	20 minutes 9:05 – 9:25	<ul style="list-style-type: none"><li></li></ul>
4. Purchase Agreement	<ul style="list-style-type: none"><li>Committee members will review and recommend approval of the Purchase Agreement for the purchase of land for NEC.</li></ul>	10 minutes 9:25 – 9:35	<ul style="list-style-type: none"><li></li></ul>
5. Best Value Procurement	<ul style="list-style-type: none"><li>Committee members will discuss the Best Value conference and determine if 287 will use this method for NEC</li></ul>	30 minutes 9:35 – 10:05	<ul style="list-style-type: none"><li></li></ul>

6. Future Meeting Dates	<ul style="list-style-type: none"> <li>The Committee members will agree on future dates &amp; times for meetings.</li> </ul>	10 minutes 10:05 – 10:15	<ul style="list-style-type: none"> <li></li> </ul>
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**HANDOUTS**

1. Draft Charge Statement
2. Original 8/6/06 Levels of Authority doc for SEC showing recommended changes for NEC
3. Proposed new Levels of Authority with final format
4. Purchase Agreement
5. Draft Best Value Pro – Con list

**INFORMATIONAL ITEMS/DATES TO REMEMBER:**

# Intermediate District 287

**RESPONSIVE. INNOVATIVE. SOLUTIONS.**

**Draft 4-13-10**

## **Charge Statement Board Facilities Committee**

The purpose of the Board Facilities Committee is to provide direction and fiscal oversight for the North Education Center, (NEC) construction project. The Committee will act on elements of the strategic plan, promoting the mission and vision of Intermediate District 287.

Recommendations made by the Board Facilities Committee will be considered for action by the Intermediate District 287 School Board for implementation by the staff and administration of Intermediate District 287. The Levels of Authority decision making process for change orders will be followed.

The Committee will be comprised of five representatives of the Intermediate District 287 School Board.

Expectations of members include regular meeting attendance and active, constructive participation in discussions. Most decisions will be made through discussion to arrive at a consensus. The Committee may use a voting process if a consensus cannot be reached or if the magnitude of the decision warrants such action.

Board Approved 11/9/06  
Board Approved 9/11/07

## **N.E.C. Construction Project**

### **Levels of Authority**

The following is the outline of level of authority, responsibility and corresponding decisions to be made associated with the construction of the North Education Center.

#### **District 287 School Board**

District 287 School Board provides the overall direction and decision making for the project. This includes:

- Approval of the **N.E.C.** project budget.
- Approval of contract awards resulting from the formal bid **or Best Value** process.
- Approval of add-alternate bids.
- Approval of bids that come in over budget.
- Approval of professional contracts. (Architects, **CM, Arizona Best Value** etc.)
- Approval of project change orders less than \$25,000. By consent agenda as approved by the Facilities Committee, and/or Administration.
- Approval of changes to the contingency fund. By consent agenda as approved and recommended by the Facilities Committee.
- Formal full Board approval of change orders **in excess of \$25,000**. Requested action items will appear with the Board Facility Committee report. ~~In the event a regularly scheduled Board meeting is not timely for a change order approval a special meeting of the Executive Committee will be called.~~
- Approval of project payments after review and recommendation by the **Facilities Administrator and Architect and construction manager via the Board consent agenda with treasurer bills**).

#### **District 287 Board Facilities Committee**

A Board Facilities Committee will act as the working body for the Intermediate District #287 School Board. It is established to ~~reduce the project time commitment of the school board members~~ provide oversight and direction to administration regarding the NEC project. It will meet regularly as required to keep abreast of project status.

The Board Facilities Committee is made up of the following individuals and entities:

- Board Facilities Committee Chair
- Committee Member
- Committee Member
- Committee Member
- Sandy Lewandowski, Superintendent
- Colleen Baumtrog, Executive Director of Administrative Services
- **Thomas W. Shultz, Facilities Manager**
- **Janet Johnson, Director of Finance**

Board Facilities Committee Responsibilities include:

- **Review and recommend of the Architect contract.**
- **Review and recommend of the Best Value procurement vs low bid methodology.**
- Review and recommend of project budget.
- Establish priorities for project scope changes within set budget.

- Recommendation for approval at the end of each of the following design phases provided the design is within the overall project budget approved by the #287 School Board.
  - Schematic Design
  - Design Development
  - Construction Documents
- Review and recommend contract awards to the District 287 School Board.
- Monitor construction progress.
- Review running list of change orders on a monthly basis.
- Approval of change orders in **greater than \$10,000 but less than \$25,000**. The Board Facilities committee would provide approved changes to the District 287 School Board for board consent agenda approval during the construction phase.
- Recommend for approval changes to contingencies.
- Public relations.

### **District 287 Administrative Project Team**

The project team is made up of the following parties:

- Sandy Lewandowski, Superintendent
- Colleen Baumtrog, Executive Director of Administrative Services
- Jane Holmberg, Executive Director of Teaching and Learning
- Laura Keller-Gautsch, Executive Director of Special Education
- **Thomas W. Shultz, Facilities Manager**
- **Janet Johnson, Director of Finance**
- **Chad Maxa, IT Manager**
- TSP Architects
- ~~3D/I Construction Manager~~
- General Contractor
- **Owner's Representative**

Responsibilities include:

- Administration of project functions.
- Approval of discussion items and decisions of the various groups.
- Recommendation of project expenditures (construction, furnishings and equipment) within project budget and limits.
- Approval of change orders **up to and including \$10,000**. Approval of change orders at this level is through **Thomas W. Shultz, Facilities Manager** and the Administrative Project Team. Approved changes would be provided to District 287 board facilities committee for review and subsequently to the District 287 school board for board consent agenda approval during the construction phase.
- Recommendation of interior and exterior building finishes, layout, elevations, site development, etc. at each phase of design.
- Development and recommendation of overall project schedule within guidelines approved by the Board Facilities Committee.
- Liaison between School Board, Board Facilities Committee, and other entities involved in the project.

# Intermediate District 287

## RESPONSIVE. INNOVATIVE. SOLUTIONS.

### N.E.C. Construction Project

#### Levels of Authority

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Original Document Approved by Board August 8, 2006

## PURCHASE AGREEMENT

**THIS AGREEMENT**, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **INTERMEDIATE SCHOOL DISTRICT NO. 287**, a body politic and corporate under the laws of the State of Minnesota ("Buyer"), and **INDEPENDENT SCHOOL DISTRICT NO. 281**, a body politic and corporate under the laws of the State of Minnesota ("Seller").

**WHEREAS**, Seller is the fee simple owner of a tract or parcel of land situated in Hennepin County, Minnesota, and comprising approximately 20 acres, all as more particularly described on Exhibit A attached hereto (Seller's Property), together with various improvements thereon, including without limitation the Hosterman school building located at 5530 Zealand Avenue North, New Hope, Minnesota (the "Hosterman Building"); and

**WHEREAS**, pursuant to that Lease, dated June 19, 2009 (the "Hosterman Lease"), by and between Seller, as landlord, and Buyer, as tenant, Buyer currently leases from Seller the Hosterman Building wherein Buyer operates the Sun-Hosterman School, consisting of special education programming for grade levels from kindergarten through twelfth grade (the "Sun-Hosterman School"); and

**WHEREAS**, Buyer wishes to purchase the westerly ten (10) acres of Seller's Property (the "Development Parcel"), as generally depicted on Exhibit B attached hereto (the "Site Plan"), including without limitation the Hosterman Building and such other improvements as shall be located on or in the Development Parcel (all such improvements collectively referred to herein as the "Improvements"), all for purposes of demolition of the Hosterman Building and redevelopment of the Development Parcel; and

**WHEREAS**, in connection with the aforementioned demolition of the Hosterman Building and redevelopment of the Development Parcel, Buyer wishes to terminate its lease of the Hosterman Building and temporarily lease, and relocate the Sun-Hosterman School to, Seller's Sandburg Middle School property located at 2400 Sandburg Lane, Golden Valley, MN (the "Sandburg Middle School Building") pending the completion of Buyer's redevelopment of the Development Parcel;

**WHEREAS**, in furtherance of the foregoing, Seller has agreed to sell and Buyer has agreed to purchase the Development Parcel, all on the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Purchase of Development Parcel. Seller hereby agrees to sell and Buyer hereby agrees to purchase the Development Parcel free and clear of liens and encumbrances (except such encumbrances or other exceptions as may be provided for, or waived or consented to by Buyer) pursuant to in this Agreement (collectively, "Permitted Exceptions"), including the following:

(a) The Development Parcel, together with all buildings and improvements constructed or located on the Development Parcel, and all easements and rights of every kind and nature benefiting or appurtenant to the Premises; and

(b) Subject to Seller's salvage rights pursuant to Section 21(a) of this Agreement, all of the personal property owned by Seller and abandoned on the Development Parcel or in the Hosterman Building as of the Closing Date (the "Personal Property").

2. Purchase Price, Manner of Payment, and Allocation. The total purchase price ("Purchase Price") to be paid by Buyer to Seller for the Development Parcel shall be One Million One Hundred Seventy-five Thousand and No/100ths Dollars (\$1,175,000.00). The Purchase Price shall be payable as follows:

(a) Fifty Thousand and No/100ths Dollars (\$50,000.00) as earnest money ("Earnest Money") upon execution of this Agreement, payable directly by Buyer, which Earnest Money shall be held by First American Title Insurance Company ("Title") in a noninterest bearing account in accordance with an escrow agreement among Buyer, Seller, and Title.

(b) The balance of the Purchase Price in the amount of One Million One Hundred Twenty-five Thousand and No/100ths Dollars (\$1,125,000.00), in cash or by wire transfer of U.S. Funds (subject to such further allocations and adjustments as are specified in Section 5 to the extent not separately paid outside of the Closing (provided reasonable evidence of such payments is furnished to all parties and Title on or before the Closing) to be received in the trust account of Title in US Bank National Association, a national banking association, before 4:00 p.m. on the Closing Date (as herein defined).

3. Closing and Possession. The closing ("Closing") shall be held at the offices of Henson & Efron, P.A., in Minneapolis, Minnesota, or at such other place as may be agreed upon, on or before \_\_\_\_\_ (the "Closing Date").

(a) Seller's Closing Obligations. On the Closing Date, Seller shall execute and/or deliver to Buyer the following (collectively "Seller's Closing Documents") in form reasonably satisfactory to Buyer:

(i) A Warranty Deed (the "Deed") conveying the Premises to Buyer, free and clear of all encumbrances (excluding Permitted Exceptions), and subject to restrictive covenants on use and disposition of Development Parcel.

(ii) A Bill of Sale, conveying the Personal Property to Buyer, free and clear of all encumbrances;

(iii) An Affidavit of Title by Seller indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Premises; that there has been no skill, labor or material furnished to the Premises for which payment has not been made or for which mechanics' liens could be filed; and that there are no other unrecorded interests in the Premises; together with whatever standard owner's affidavit and/or indemnity which may be required by Title to issue an Owner's Policy of Title Insurance with the standard exceptions waived;

(iv) A non-foreign affidavit, properly executed and in recordable form, containing such information as is required by IRC Section 1445(b)(2) and its regulations;

(v) A Designation Agreement (the "Designation Agreement") designating the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594;

(vi) A Well Certificate in the form required by law disclosing all wells located on the Development Parcel;

(vii) If the Development Parcel contains or contained a storage tank, an affidavit with respect thereto, as required by Minn. Stat. § 116.48;

(viii) If there exists an "individual sewage treatment system", as that term is defined under Minn. Stat. § 115.55, a certificate of compliance with respect thereto, dated not greater than 3 years prior to the Closing Date;

(ix) A Termination Agreement, terminating the Hosterman Lease (the "Termination Agreement");

(x) A Lease Agreement (the "Sandburg Lease"), pursuant to which Buyer, as tenant, shall lease from Seller, as landlord, the Sandburg Middle School Building;

(xi) A Right of First Refusal Agreement (the "Right of First Refusal Agreement"), pursuant to which Seller shall be granted rights of first refusal with respect to any sale by Buyer of all or any portion of the Development Parcel;

(xii) All other documents, if any, as may be reasonably necessary to satisfy Seller's obligation to correct Buyer's Final Objections under Section 6 of this Agreement; and

(xiii) A Clerk's Certificate attaching thereto the resolutions of Seller's school board authorizing Seller to enter into this Agreement and perform Seller's obligations hereunder, and under all other deeds, documents and other agreements executed and delivered in connection herewith.

(b) Buyer's Closing Obligations. On the Closing Date, Buyer will perform the following obligations and execute and/or deliver to Seller, in form reasonably satisfactory to Seller, the following documents (collectively "Buyer's Closing Documents"):

(i) Subject to such allocations, prorations and adjustments as are provided for in this Agreement, the Purchase Price;

(ii) Such Affidavits of Purchaser, Certificates of Value or other documents as may be reasonably required by Title in order to record the Seller's Closing Documents and issue the Title Insurance Policy required by this Agreement.

(iii) The Designation Agreement;

(iv) The Termination Agreement;

(v) The Sandburg Lease;

(vi) The Right of First Refusal Agreement; and

(vii) A Clerk's Certificate attaching thereto the resolutions of Buyer's school board authorizing Buyer to enter into this Agreement and perform Buyer's obligations

hereunder, and under all other deeds, documents and other agreements executed and delivered in connection herewith.

4. Pre-Closing Obligations. At least 5 business days prior to the Closing Date, Seller and Buyer shall use best efforts to furnish to the other a draft of each document, instrument, statement, report, or commitment such party is required to deliver at the Closing.

5. Allocations, Prorations and Adjustments. Seller and Buyer agree to the following prorations and allocation of costs regarding this Agreement:

(a) Buyer shall pay for all costs of the Title Evidence obtained and furnished by Seller pursuant to Section 6(a) below. Buyer shall pay for all costs of Title Evidence obtained and furnished by Buyer pursuant to Sections 6(b) and (c) below. Buyer shall also pay the premium for any owner's title policy. Seller and Buyer will each pay one-half of any reasonable and customary closing fee and charge imposed by any closing agent designated by Title.

(b) Seller shall pay all state deed tax regarding the Warranty Deed to be delivered by Seller under this Agreement. Buyer shall pay all Mortgage Registry Tax regarding the recording of any mortgage securing any Buyer's loan.

(c) General real estate taxes, if any, payable in the calendar year preceding the calendar year in which the Closing occurs, and all years prior thereto, will be paid by Seller. General real estate taxes, if any, payable in the calendar year within which the Closing occurs shall be prorated by Seller and Buyer as of the Closing Date based upon a calendar fiscal year. General real estate taxes, if any, payable in the calendar year following the calendar year in which the Closing occurs, and all years subsequent thereto, will be paid by Buyer. Seller shall pay all deferred real estate taxes which may become payable as a result of the sale contemplated hereby.

(d) Scheduled installments of special assessments levied against the Seller's Property and due and payable in the calendar year preceding the calendar year in which the Closing occurs, and all years prior thereto, will be paid by Seller. With respect to special assessments as shall be levied, pending or constituting a lien against the Seller's Property in the calendar year in which the Closing occurs and thereafter, the following shall apply:

(i) Seller and Buyer shall jointly submit to and file with the City of New Hope (the "City") a written application and/or request for a proportionate split, allocation, assumption and continuation of the then remaining assessments, as of the Closing Date and after giving effect to the sale of the Development Parcel by the Seller to the Buyer, until such assessments shall be paid in full in accordance with the terms thereof;

(ii) In the event of a favorable response by the City to such application and/or request, thereby allowing such proportionate split, allocation, assumption and continuation of the then remaining assessments, and after giving effect thereto by the City, Seller and Buyer shall be and remain separately responsible for their proportionate share of such then remaining assessments, such that (A) scheduled installments of special assessments levied against the Development Parcel and due and payable in the calendar year in which the Closing occurs shall be prorated by Seller and Buyer as of the Closing Date based upon a calendar fiscal year, and scheduled installments of special assessments levied against the Development Parcel and due and payable in the calendar year subsequent to the calendar year in which the Closing occurs, and all years subsequent thereto, will be paid by Buyer; and

(B) scheduled installments of special assessments levied against the Retained Parcel and due and payable in the calendar year in which the Closing occurs, and in the calendar year subsequent to the calendar year in which the Closing occurs, and all years subsequent thereto, will be paid by Buyer; and

(iii) In the event of an unfavorable response by the City to such application and/or request, thereby requiring an acceleration of such then remaining assessments, the then remaining unpaid balance of the then remaining assessments shall be prorated between Seller and Buyer as of the Closing Date, prior to giving effect to such acceleration, and each of Seller and Buyer shall pay in full at Closing their respective share of such unpaid balance of the then remaining assessments.

(e) Seller will pay the cost of recording all documents necessary to place record title in the condition warranted and represented by Seller in this Agreement. Buyer will pay the cost of recording all other documents.

(f) All operating costs of the Development Parcel, will be allocated between Seller and Buyer as of the Closing Date, so that Seller pays that part of such other operating costs payable before the Closing Date, and Buyer pays that part of such operating costs payable from and after the Closing Date.

(g) Buyer shall pay all broker and attorney fees incurred by any brokers or attorneys employed by or on behalf of Buyer in connection with this transaction.

(h) Seller shall pay all broker and attorney fees incurred by any brokers or attorneys employed by or on behalf of Seller in connection with this transaction.

(i) Seller shall pay all state deed tax regarding the Deed to be delivered by Seller under this Agreement.

6. Evidence of Title and Title Examination. Seller and Buyer shall obtain and furnish to each other the following (collectively the "Title Evidence"):

(a) Within seven (7) days after the execution of this Agreement by both parties, Seller shall furnish an abstract of title (the "Abstract") or commitment for an owner's title insurance policy (the "Commitment") issued by Title insuring title to the Seller's Property, in the amount of the Purchase Price. In the case of a Commitment, the Commitment shall include proper searches covering bankruptcies, state and federal judgments and liens and levied and pending special assessments. The Commitment shall also be accompanied by copies of all recorded documents affecting the Seller's Property.

(b) In the event Seller furnishes an Abstract for Seller's Property pursuant to Section 6(a) above, in lieu of a Commitment, then within 15 (fifteen) days after receipt of the Abstract, Buyer shall obtain the Commitment for its own benefit and promptly furnish the same to Seller. The Commitment shall include proper searches covering bankruptcies, state and federal judgments and liens and levied and pending special assessments. The Commitment shall also be accompanied by copies of all recorded documents affecting the Seller's Property.

(c) Within 20 days after the receipt by Buyer of the Commitment pursuant to Section 6(a) or (b) above, Buyer shall obtain for its own benefit, and cause to be simultaneously furnished to Seller, a current ALTA survey of the Seller's Property prepared by a duly licensed

land surveyor in Minnesota (the "Preliminary Survey"). The Preliminary Survey shall show all then existing improvements to the Seller's Property, and shall set forth and contain such certifications as Buyer or Title may require, and shall include such other detail and requirements as Buyer may require in Buyer's sole discretion.

(d) Following receipt by Buyer of the Commitment and Preliminary Survey, Buyer may furnish to Seller Buyer's then existing written objections (the "Buyer's Preliminary Objections"), if any, to the form or content of title to the Development Parcel (based on Buyer's good faith estimate as to the location and configuration of the easterly lot line of the Development Parcel), which Buyer's Preliminary Objections, if any, shall be solely for the purpose of providing Seller with an opportunity for early commencement of removal or satisfaction of such Buyer's Preliminary Objections prior to receipt of the "Final Survey" (as hereinafter defined), and any failure by Buyer to furnish such Buyer's Preliminary Objections shall not operate to bar Buyer from later furnishing all of Buyer's objections, if any, to the form or content of title to the Development Parcel as part of Buyer's "Final Objections" (as hereinafter defined).

(e) Within 15 days after Seller and Buyer reach final agreement as to the location and configuration of the easterly lot line of the Development Parcel, Buyer shall obtain for its own benefit, and cause to be simultaneously furnished to Seller, an updated current ALTA survey of the Seller's Property prepared by a duly licensed land surveyor in Minnesota (the "Final Survey"). The Final Survey shall show all then existing improvements to the Seller's Property, shall depict the easterly lot line of the Development Parcel consistent in all respects with Seller's and Buyer's final agreement, shall include certified legal descriptions for the Development Parcel and the remainder of the Seller's Property (the "Retained Parcel"), certified to Buyer, Seller and Title, and shall set forth and contain such other certifications as Buyer or Title may require, and shall include such other detail and requirements as Buyer may require in Buyer's sole discretion.

The Buyer shall have 10 days after receipt of both the Commitment and the Final Survey to furnish to Seller all then remaining written objections (including without limitation all deletions or modifications with respect to such of Buyer's Preliminary Objections as shall no longer be applicable based upon any of Seller's corrective actions and/or the Final Survey) (the "Buyer's Final Objections") to the form or content of title to the Development Parcel. Buyer's failure to make Buyer's Final Objections within such 10-day period shall constitute a waiver of such Buyer's Final Objections. Seller shall have 60 days after receipt of such Buyer's Final Objections to have such objections removed or satisfied, during which period the Closing will be postponed; provided, however, in the case of any Buyer's Preliminary Objections as may be furnished after receipt by Buyer and Seller of the Preliminary Survey and prior to the parties' receipt of the Final Survey, and with respect to which early commencement of resolution of such Buyer's Preliminary Objections may be reasonably possible under the circumstances, Seller may in Seller's sole discretion make reasonable efforts to commence early removal or satisfaction of such Buyer's Preliminary Objections.

If Seller shall fail to have such Buyer's Final Objections removed or satisfied within such 60-day period, Buyer may, at its sole election: (i) terminate this Agreement without any liability on its part in which event the Earnest Money with accrued interest shall be promptly paid over to Buyer; (ii) if the Buyer's Final Objections are liens (other than assessments which have been proportionately split, allocated, assumed and continued pursuant to Section 5(d)(ii) of this Agreement) that may be removed by the payment of sums of money, take title to the Development Parcel pursuant to the terms of this Agreement, and discharge any such liens and

deduct the same from the cash due and payable to Seller on the Closing Date (provided, however, if any such liens are disputed by Seller, and if so requested by Seller, Seller and Buyer shall escrow with Title from the Purchase Price not less than 125% of the aggregate then unpaid amount of such disputed liens, inclusive of interest and penalties, if any, and Seller shall have 120 days following the Closing Date within which to deliver to Title duly executed releases of such liens in full, after which, and in the absence of Title's receipt of such lien releases, Title shall be directed under the terms of such escrow to automatically pay and discharge all such liens up to the amount so escrowed, with any deficiency to be promptly paid by Seller to Buyer and any surplus to be promptly remitted by Title to Seller), or (iii) waive such Buyer's Final Objections in writing and proceed to closing with the understanding that such uncured Buyer's Final Objections shall be deemed Permitted Exceptions at closing. Seller agrees to use Seller's reasonable efforts to remove or satisfy promptly any such Buyer's Final Objections at Seller's sole cost and expense.

7. Operation Prior to Closing. During the period from the date of Seller's acceptance of this Agreement to the Closing Date (the "Executory Period"), Seller shall operate and maintain the Development Parcel in the ordinary course of business, including the maintenance of adequate liability insurance and insurance against loss by fire, windstorm and other hazards, casualties and contingencies, including vandalism and malicious mischief. However, Seller shall execute no contracts, leases, or other agreements regarding the Development Parcel during the Executory Period that are not terminable on or before the Closing Date, without the written consent of Buyer, which consent may be withheld by Buyer at its sole discretion.

8. Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement are contingent upon satisfaction of each of the following conditions:

(a) Buyer shall have obtained the authorization by Buyer's board of the execution and delivery by Buyer of, and performance by Buyer under, this Agreement.

(b) Buyer shall have determined, subject to "Seller's Hosterman Building Hazardous Materials Reports" (as hereinafter defined), on or before the Contingency Date, that it is satisfied with the results of and matters disclosed by any soil tests, well tests, engineering inspections, and hazardous waste and environmental reviews of the Development Parcel, all such tests, inspections and reviews (except such studies, assessments, reviews, and reports as shall have been furnished to Buyer under Section 8(d)(ii), below) to be obtained at Buyer's sole cost and expense, and written notice of such determination shall have been furnished to Seller. For purposes of this Agreement, "Seller's Hosterman Building Hazardous Materials Reports" shall mean such environmental report or reports as shall have been obtained by Seller for purposes identifying all hazardous materials with respect to which removal by Seller shall be required pursuant to Section 21(b) of this Agreement. For purposes of this Agreement, Seller's Hosterman Building Hazardous Materials Reports shall include the following: \_\_\_\_\_

(c) Buyer shall have obtained, at Buyer's sole cost and expense, and with Seller's reasonable cooperation, a lot split of Seller's Property, consistent in all respects with the boundary designations for the Development Parcel and Retained Parcel, as required to be shown on the Final Survey, said costs and expenses to include without limitation all such costs and expenses for compliance with any platting requirements for Seller's Property, and/or other approvals, as may be required by the City or otherwise for purposes of achieving a legal split of the Seller's Property into two distinct tax parcels.

(d) Seller shall have performed the following:

(i) Seller shall allow Buyer, and Buyer's agents, access to the such of the Seller's Property as shall comprise the Development Parcel without charge and at all reasonable times for the purposes of Buyer's investigation and testing of the Development Parcel, provided that Buyer shall furnish to Seller such written hold harmless, indemnifications and restoration agreements as Seller may reasonably request, and provide a liability insurance certificate to Seller naming Seller as an additional insured, in an amount equal to \$1,000,000.00; and

(ii) Within 20 days following the date of this Agreement, Seller shall deliver to Buyer true and correct copies of all environmental studies and assessments, test results, engineering studies and reports relating to the Development Parcel.

The "Contingency Date" shall be sixty (60) days from and after the date of this Agreement. If any of the contingencies set forth above have not been satisfied on or before the Contingency Date, then this Agreement may be terminated, at Buyer's option, by written notice delivered from Buyer to Seller at any time on or before the Contingency Date. Upon such termination the Earnest Money and any interest accrued thereon shall be paid over to Buyer and upon such payment, neither party will have any further rights or obligations regarding this Agreement or the Property. All the contingencies set forth in this Section 8 are specifically stated and agreed to be for the sole and exclusive benefit of the Buyer and the Buyer shall have the right, at its sole option, to waive any contingency by written notice to Seller.

9. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer that:

(a) Seller has the requisite legal capacity to enter into and perform this Agreement, and those Seller's Closing Documents and Other Closing Documents signed by Seller; that such documents do not conflict with or result in a violation of any agreement, judgment, order or decree of any court or arbiter to which Seller is a party; that such documents are valid and binding obligations of Seller, enforceable in accordance with their terms.

(b) Seller owns the Property in fee simple.

(c) Seller is not, to the best of Seller's actual knowledge and belief, in default concerning any of Seller's obligations or liabilities regarding the Property.

(d) Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

(e) There is no action, litigation, investigation, condemnation or proceeding of any kind pending or to the actual knowledge of Seller threatened against Seller or any portion of the Property.

(f) The Seller certifies and warrants that there are no "individual sewage treatment systems" on the Premises, as that term is defined by Minn. Stat. § 115.55. In addition, Seller will disclose at closing all wells located on the Property, and Buyer shall be responsible for any and all costs incurred in sealing or capping the wells.

(g) To Seller's actual knowledge, no above ground or underground tanks are located in or about the Property, or have been located under, in or about the Property and have subsequently been removed or filled. To the extent storage tanks exist on or under the Premises such storage tanks have been duly registered with all appropriate regulatory and governmental bodies and otherwise are in compliance with applicable federal, state and local statutes, regulations, ordinances and other regulatory requirements.

10. Buyer's Representations and Warranties. Buyer is an independent school district under the laws of the State of Minnesota; Buyer has the requisite power and authority to enter into and perform this Agreement and those Closing Documents and Other Documents signed, or to be signed, by it; such documents have been duly authorized by all necessary school board action on the part of Buyer, and have been, or will be, duly executed and delivered; such execution, delivery and performance by Buyer of such documents will not conflict with or result in a violation of any agreement, judgment, order, or decree of any court or arbiter to which Buyer is a party; such documents are, or when fully executed and delivered will be, valid and binding obligations of Buyer, and are, or will be, enforceable in accordance with their terms. Buyer will indemnify Seller, Seller's heirs, successors and assigns, against, and will hold Seller, and Seller's heirs, successors and assigns, harmless from, any expenses or damages, including without limitation reasonable attorneys fees, that Seller incurs because of the breach of any of the above representations and warranties, whether such breach is discovered before or after closing.

11. Condemnation. If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Development Parcel by other than Buyer, Seller shall immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within thirty days after Seller's notice) either (a) this Agreement shall terminate, in which event neither party will have further obligations under this Agreement and the Earnest Money, together with any accrued interest, shall be paid over to Buyer; or (b) Seller shall assign to Buyer at the Closing Date all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings. Prior to the Closing Date, Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Buyer's prior written consent.

12. Fees and Commissions. Seller and Buyer represent and warrant to each other that they have dealt with no brokers, finders or the like in connection with this transaction, and agree to indemnify each other and to hold each other harmless against all claims, damages, costs or expenses of or for any other such fees or commissions resulting from their actions or agreements regarding the execution or performance of this Agreement, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorneys' fees.

13. Assignment. Neither party may assign its or their rights under this Agreement.

14. Survival. All of 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 upon the other is given in accordance with this Agreement by delivering it personally to the specified addressee; or if mailed by United States registered or certified mail, return receipt requested, postage prepaid; or if transmitted by facsimile, copy followed by mailed notice as above required; or by overnight courier; in each case properly addressed as follows:

If to Seller: Robbinsdale Area Schools  
4148 Winnetka Avenue N.  
New Hope, MN 55427  
Attn: Lonnie Smith

With copy to: Jeffrey D. Carpenter, Esq.  
Henson & Efron, P.A.  
220 South 6th Street  
Minneapolis, MN 55402

If to Buyer: Intermediate District 287  
1820 Xenium Lane North  
Plymouth, MN 55441  
Attn: \_\_\_\_\_

With copy to: Sarah J. Sonsalla, Esq.  
Kennedy & Graven Chartered  
470 U.S. Bank Plaza  
200 South 6th Street  
Minneapolis, MN 55402

Notice shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, that the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.

16. Captions. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

17. Modification. No verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.

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

19. Controlling Law. This Agreement has been made under the laws of the State of Minnesota.

20. Remedies. If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice of such election to Buyer, which notice shall specify the default. If Buyer fails to cure such default within 15 days of the date of such notice, Seller may terminate this Agreement and retain the Earnest Money as Seller's liquidated damages, time being of the essence of this Agreement. The termination of this Agreement (and retention of the Earnest Money) will be the sole remedies available to Seller for such default by Buyer, and Buyer will not be further liable for damages. If Seller defaults under this Agreement, Buyer shall have the right (i) to terminate this Agreement (in which case Buyer shall be entitled to a refund of the Earnest Money), or (ii) to enforce and recover from Seller specific performance of this Agreement. The termination of this Agreement (and refund of the Earnest

Money), or the enforcement and recovery from Seller of specific performance of this Agreement, shall be the sole remedies available to Buyer for such default by Seller, and Seller shall not be further liable for damages.

21. Seller's Additional Pre-closing and Post Closing Rights and Obligations.

(a) Hosterman Building Hazardous Waste Remediation. Within \_\_\_ days from and after the date of this Agreement, and at Seller's sole cost and expense, Seller shall make reasonable efforts to submit for public bid, and contract with, a hazardous materials contractor for purposes of conducting removal and remediation of all hazardous materials located in the Hosterman Building and specified in Seller's Hosterman Building Hazardous Materials Reports. Seller shall endeavor to require Seller's hazardous materials contractor (the "Hazardous Materials Contractor") to commence and complete all such applicable hazardous materials removal and remediation on or before the Closing Date.

(b) Hosterman Building Salvage. At all times from and after the date of this Agreement, through and including thirty (30) days prior to Buyer's commencement of demolition of the Hosterman Building (the "Removal Deadline"), the following shall apply:

(i) Seller shall be entitled to leave items of Buyer's furnishings, fixtures and personalty (collectively, "Fixtures and Personalty") within the Hosterman Building for subsequent removal, prior to the Removal Deadline, by Seller. During such period, (A) Buyer shall ensure that the Hosterman Building is and remains fully locked and secured from entry by third parties not expressly granted rights of entry by Buyer; (B) Seller shall be entitled to reasonable access to the Hosterman Building for purposes of removing any and all such Fixtures and Personalty, and in connection therewith Seller shall furnish to Buyer such written hold harmless and indemnification agreements as Buyer may reasonably request; and (C) as of the Removal Deadline, or upon such other date as Seller and Buyer may mutually agree in writing, the following shall apply: (1) Seller's rights access to the Hosterman Building shall terminate; (2) all then remaining Fixtures and Personalty, as may be located therein, shall be deemed abandoned by Seller and shall become the property of Buyer; and (3) Buyer may, in Buyer's sole discretion, keep and retain any such abandoned Fixtures and Personalty, or dispose of such Fixtures and Personalty separately or in connection with Buyer's demolition of the Hosterman Building.

[The balance of this page has been intentionally left blank.]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the date first written above.

**BUYER:**

**INTERMEDIATE SCHOOL DISTRICT NO. 287**

By \_\_\_\_\_  
Its \_\_\_\_\_

**SELLER:**

**INDEPENDENT SCHOOL DISTRICT NO. 281**

By \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT A**

**Seller's Property**

(Legal Description)

**EXHIBIT B**

**Site Plan**