PURCHASE AGREEMENT

BETWEEN THE TOWN OF DULUTH
AND
ABC OF NORTH SHORE COMMUNITY SCHOOL, INC.
FOR PROPERTY LOCATED AT
5926 RYAN ROAD, DULUTH, MN 55804

Section One: Parties

The parties to this agreement are the Town of Duluth (the "Town") and ABC of North Shore Community School, Inc. ("ABC"). The Property to be sold is known generally as 5926 Ryan Road, Duluth, MN 55804.

Section Two: Premises

ABC is a Minnesota non-profit corporation created as a supporting organization (under IRS rules) to North Shore Community School (the "School"). Since June 2002 the School has been the tenant of the Town, has occupied and operated the Property as a public school, and intends to continue occupying and operating the Property as a public school. Under current Minnesota law, the School cannot own its own property, has created ABC pursuant to Minn. Stat. § 124D.10, subd. 17a (c) to function as the Property's owner, and intends to lease the Property from ABC for use as a public school or for purposes directly related to the operation of a public school.

The Town has owned the Property since June 2002, has leased it to the School, and has used it as a community center. The Town believes a transfer of the Property to ABC, for purposes of a public school or purposes directly related to the operation of a public school, is in the Town's best interest so long as the Town retains (1) ongoing rights to use the Property as a community center pursuant to a written Use Agreement and (2) an opportunity to attempt to reacquire the Property if the Property is no longer used as a public school or for purposes directly related to the operation of a public school.

Section Three: Agreement

In light of the foregoing premises, the parties agree as follows:

1. **The Property.** For purposes of this Agreement, "the Property" means:

a. The real property consisting of approximately 40 acres legally described as Parcel A and Parcel B on Exhibit A ("Land") attached hereto, each consisting of approximately 20 acres, together with all buildings and improvements constructed or located on the Land ("Buildings") and all easements and rights benefiting or appurtenant to the Land (collectively "Real Property");

b. All equipment, machinery, supplies, fixtures or other personal property owned by or belonging to the Town which is on the land or within the buildings and structures as of the date of Closing except as identified in Addendum 1.

2. **Prohibition of Mortgages on Parcel B.** ABC hereby agrees that it shall never mortgage Parcel B nor any portion of Parcel B. For purposes of this paragraph, "mortgage" means a mortgage or any other type of voluntary lien, encumbrance, or similar interest granted by ABC to a third party pursuant to which the third party acquires an interest in Parcel B or any portion of Parcel B as collateral. No such restrictions apply to Parcel A.

During the negotiations for this Purchase Agreement, the parties discussed whether dividing the Land into two 20 acre parcels would create any violations under the Duluth Township Zoning Ordinance. The parties specifically discussed whether creating the two 20-acre parcels would result in any lot coverage violations. The 40 acre parcel has been and currently is zoned MUNS-4 and is allowed to have up to 14% lot coverage under the Zoning Ordinance because it has a storm water management plan. The Town represents to ABC that the division of the Land into two 20 acre parcels does not result in any violations of the Town's Zoning Ordinance, and specifically does not and will not result in any lot coverage violations because the Town's application and interpretation of its Zoning Ordinance is to treat abutting parcels in common ownership as a single parcel for purposes of calculating lot coverage. The Town represents that (1) so long as the two 20-acre parcels remain in common ownership, the Land will be treated by the Town as a 40 acre parcel for purposes of calculating lot coverage, (2) the allowable lot coverage under the Town's Zoning Ordinance is 14% as long as ABC maintains a storm water management plan, (3) the Land is "grandfathered-in" against subsequent amendments to the Town's Zoning Ordinance which might decrease the allowable amount of lot coverage, and (4) the Town by entering into this Purchase Agreement is estopped from taking a position about lot coverage inconsistent with this representation. Nothing herein prevents ABC, in the future, from seeking to obtain a variance in an attempt to increase the lot coverage to something in excess of 14% or requires the Town to grant such a variance if an application is made.

ABC agrees it will never subdivide or alter the boundaries of Parcel B. ABC may subdivide or alter the boundaries of Parcel A, but shall not merge Parcel A or any part of Parcel A with Parcel B.

3. **Documentation.** A contingency to be satisfied on the closing date is that the Town shall deliver a Warranty Deed to ABC, in a form reasonably satisfactory to ABC conveying the Real Property, free and clear of all encumbrances, for good and valuable, not nominal, consideration consisting of $2,500 and the execution of a Use Agreement by ABC and North Shore Community School that preserves for the Town the right to continue to use the Property as a community center as described in the Use Agreement.

4. **Closing Date.** This Agreement shall be effective upon (A) its signing by the Town and ABC, and (B) the signing of the Use Agreement by the Town, ABC, and North Shore Community School. The closing date shall occur on or before July 29, 2013.

5. **Town's Right Of First Refusal.** Sections 8, 9, 10, 11, and 15 of the Use Agreement deal with contingencies which may arise in the future under which ABC must offer to sell the Property, or portions of the Property, to the Town for one dollar under the procedures described therein, which procedures can generally be referred to as a right of first refusal. The provisions of Sections 8, 9, 10, 11, and 15 of the Use Agreement, which is attached hereto as Exhibit D, are hereby expressly incorporated into this Purchase Agreement.

6. **ABC's Obligations.** The obligations of ABC to accept the Property at closing are contingent upon the following:

a. ABC shall have determined that it is satisfied with the results of all matters disclosed by any soil tests, well tests, engineering inspections, hazardous waste and environmental reviews of the Property, all such tests, inspections and reviews to be obtained at the cost and expense of ABC. The Town grants ABC access to the Property for the purpose of ABC's testing and investigation of the same.

b. Title shall have been found acceptable to ABC. At ABC's expense, ABC may, but at its sole option may choose not to, obtain any of the following at its own cost and expense:

(1) A commitment ("Title Commitment") for an Owner's Policy of Title Insurance on a current ATLA form insuring title to the Real Property. If the Real Property is abstract property, ABC may also obtain an Abstract of Title to the Real Property certified to a current date to include all appropriate judgment and bankruptcy searches.

(2) A survey prepared by a registered land surveyor licensed to practice in the state where the Real Property is located showing the Real Property and location of all buildings and easements thereon.

(3) A report of UCC Searches made of the Uniform Commercial Code records of the Secretary of State of Minnesota, made by said Secretary of State, or by a search firm acceptable to ABC, showing no UCC filings regarding any of the Property.

If ABC has any objections to such title evidence, ABC may terminate this Agreement and the Use Agreement or waive such objections and proceed to closing. The Town shall have no obligation to cure such title objections, except that the Town must record all documents and pay all costs associated with the recording necessary to place record title in the name of ABC.

c. ABC shall satisfy itself that, by agreeing never to mortgage Parcel B, it has not significantly impaired or affected its ability to mortgage Parcel A. If ABC determines, prior to closing, that its ability to mortgage Parcel A would be significantly impaired or affected, it may

refuse to close, and terminate this Agreement and the Use Agreement.

7. **Taxes/Special Assessments.** The Town shall pay, on or before the Closing Date, all special assessments levied, pending or constituting a lien against the Real Property as of the Closing Date, including without limitation any installments of special assessments, including interest payable with general real estate taxes in 2012, and all prior years. General real estate taxes and installments of special assessments payable therewith payable in 2013 shall be prorated by the Town and ABC as of the Closing Date. General real estate taxes and installments of special assessments payable therewith after the Closing Date shall be paid by ABC. The Town shall pay all deferred real estate taxes or special assessments which may become payable as a result of the sale contemplated hereby.

8. **Johnson Controls Contract.** The Town, as owner of the Property, is currently a party to a contract with Johnson Controls for certain aspects of Property maintenance. The Town shall continue to pay Johnson Controls under that contract up to and including the Closing Date. As a contingency of closing, on or prior to the Closing Date, ABC shall present to the Town evidence or documentation, satisfactory to the Town, that it has (A) fully assumed any and all of the Town's obligations under the Johnson Controls contract by an assignment agreed to by Johnson Controls and the Town, (B) secured a complete termination of any and all of the Town's obligations under the contract between the Town and Johnson Controls, in a form or manner satisfactory to the Town and, if necessary, with the Town's reasonable cooperation in achieving that termination, or (C) agree, in a form and manner satisfactory to the Town, to fully reimburse the Town for any and all of the Town's obligations under that contract until its expiration date.

9. **Property Maintenance.** During the period from the date of this Agreement to the Closing Date, the Town and North Shore Community School shall operate and maintain the Property in accordance with their obligations under the current lease agreement as though it were still in effect, 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, the Town shall execute no contracts, leases or other agreements regarding the Property during that period which are not terminable on or before the Closing Date, without the written consent of ABC, which consent may be withheld by ABC at its sole discretion.

10. **Third Party Contracts.** The Town warrants and represents that, with the exception of the Johnson Controls contract described in paragraph 8 above and with the two exceptions described in this paragraph, the Town has not executed any contracts, leases or other agreements regarding the Property that are not terminable on or before the Closing Date. The Town has entered into a contract with J. R. Sundberg for work on the grounds near the skating rink warming facility, will complete at its expense the work under that contract even if said work is not completed at the time of closing, and ABC agrees that the Town may complete said work at the Town's expense even if completion occurs after closing. The Town has entered a verbal agreement with the School for rental of office space for the Town's recreational director, and ABC agrees to assume and continue that agreement after closing, with the terms to be renegotiated between the Town and ABC on or after January 1, 2014. With the exception of the Johnson Controls contract described in paragraph 8 above, ABC shall not assume, pay, perform

or discharge any liabilities, expenses, or obligations of the Town whatever they may be, unless expressly agreed by the parties in a separate writing.

ABC recognizes that rules and regulations regarding emergency preparedness may require the Property to be made available as an emergency shelter in the event of a disaster, and agrees that under lawful circumstances the Property may be used for that purpose.

11. **Well Disclosure.** The Town represents that there is one or more "Wells" within the meaning of Minn. Stat. § 103I.235 on the Property, and in connection therewith, delivers to ABC, and ABC acknowledges receipt of, the Minnesota Well Disclosure Statement attached hereto.

12. **Storage Tanks/Asbestos**. The Town represents that:

a. No above-ground or underground tanks are located in or about the Property with the exception of one underground propane tank owned and maintained by Como;

b. No above-ground or underground tanks have been located under, in or about the Property that have subsequently been removed or filled; and

c. To the extent storage tanks exist on or under the Real Property 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.

The Town states and ABC acknowledges that asbestos presently exists within the buildings on the Property. ABC agrees that the Town is not responsible for any remediation and that any remediation required after Closing will be ABC's obligation to cure at its sole cost.

13. **As-Is Purchase.** ABC is purchasing the Property based upon its own investigation and inquiry and is not relying on any representation of the Town or other person and is agreeing to accept and purchase the Property "as is, where is" subject to the conditions of examination herein set forth and the express warranties and representations herein contained. ABC will save and hold harmless the Town, its successors and/or assigns, to the extent permitted by law, from any and all liability for any environmental problems associated with the Property.

14. **ABC's Authority to Execute.** ABC represents and warrants to the Town that it is a Minnesota Non-Profit Corporation properly and duly formed under Minnesota Statutes Chapter 317A solely as an affiliated building corporation of North Shore Community School under Minnesota Statute § 124D.10, subd. 17a, and that all acts, conditions and things required by the Constitution and the laws of the State of Minnesota to be done and performed preliminary to the execution of the Agreement in order to make it a valid and binding obligation have been done and performed. ABC has secured all necessary approvals to execute this Agreement and undertake its obligations set out herein.

15. **Town's Authority to Execute.** The Town represents and warrants to ABC that it

is a Minnesota Township and that all acts, conditions, and things required by the Constitution and the laws of the State of Minnesota to be done and performed preliminary to the execution of the Agreement in order to make it a valid and binding obligation of the Town in accordance with its terms have been done and performed. Further, the undersigned Chair has been duly authorized to execute this Agreement, the closing documents referenced in this Agreement and any other documents reasonably necessary to effectuate the transfer of the Property to ABC.

16. **Condemnation/Property Damage.** If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, the Town shall immediately give notice to ABC of such fact and at either party's option (to be exercised within thirty (30) days after the Town's notice), this Agreement and the Use Agreement shall terminate, in which event, neither party will have further obligations under this Agreement and the Use Agreement.

If, prior to the Closing Date, all or any part of the Property is substantially damaged by fire, casualty, the elements or any other cause, the Town shall immediately give notice to ABC of such fact and at ABC's option (to be exercised within thirty (30) days after the Town's notice), this Agreement and the Use Agreement shall terminate, in which event neither party will have any further obligations under this Agreement and the Use Agreement. If ABC fails to elect to terminate this Agreement despite such damage, or if the Property is damaged but not substantially, the Town shall promptly commence to repair such damage or destruction and return the Property to its condition prior to such damage. The Town shall have no obligation to repair such damage or destruction to the extent that insurance proceeds are unavailable for that purpose.

17. **Assignment**. Neither party may assign its rights under this Agreement without the prior written consent of the other party, before or after the Closing.

18. **Post-Closing.** All of the terms of this Agreement will survive and be enforceable after the Closing.

19. **Notices.** Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if it is directed to the Town by delivering it personally or by United States mail to

Duluth Township Clerk
6092 Homestead Rd.
Duluth, MN 55804

Cc: Tim A. Strom
Hanft Fride, a Professional Association
1000 U.S. Bank Place
130 W. Superior St. Duluth, MN 55802

or if it is directed to ABC, by delivering it personally or by United States mail to

Board Chair
ABC of North Shore Community School, Inc.
5926 Ryan Road
Duluth, MN 55804

Cc: John A. Cairns
John Cairns Law, P.A.
2751 Hennepin Ave.
Minneapolis, MN 55408

Notices shall be deemed effective on the earlier of the date of actual receipt or the date of deposit in the U.S. mail as aforesaid; provided, however, that if notice is given by deposit in the U.S. mail, the time for response to any notice by the other party shall commence to run three business days 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 the manner above specified, 10 days prior to the effective date of such change.

20. **Entire Agreement.** This written Agreement, together with its exhibits, attachments, and addendum (including but not limited to the attached Use Agreement) constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver or amendment of any of its terms will be effective unless in a writing executed by the parties.

21. **Binding Agreement.** This Agreement binds and benefits the parties and their successors and assigns.

22. **Minnesota Law Applies.** This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.

23. **Document Drafting.** This Agreement has been negotiated between the parties with the assistance of their legal counsel, and in the event of a dispute regarding the construction, interpretation, or meaning of this Agreement, the Agreement shall not be construed against either party as drafter.

Dated as of the 25th of June, 2013.

TOWNSHIP OF DULUTH, SELLER	ABC OF NORTH SHORE COMMUNITY SCHOOL, INC.
BY ITS Chair	BY DIRECTOR
ATTESTED: BY CLERK OF TOWNSHIP BOARD	

EXHIBIT A

Pursuant to Section Three, paragraph 1 (a) of the Agreement, the description of the Real Property is:

Parcel A: The West One-Half of the Southwest Quarter of the Southwest Quarter of Section 32, Township 52, Range 12.

Parcel B: The East One-Half of the Southwest Quarter of the Southwest Quarter of Section 32, Township 52, Range 12.

ADDENDUM 1

Pursuant to the Use Agreement attached to and associated with this Purchase Agreement, and pursuant to Section 1 b of this Purchase Agreement, the Town is transferring to ABC "all equipment, machinery, supplies, fixtures or other personal property owned by or belonging to the Town which is on the land or within the buildings and structures as of the date of Closing except as identified in Addendum 1."

The following are the items of equipment, machinery, supplies, fixtures, or other personal property that are excluded from those provisions and that shall continue to be owned by the Town:

KIFCO SPRINKLER SYSTEM - WATER REEL T-180
SERIAL NUMBER# 470873
JOHN DEERE RIDING LAWNMOWER/SWEEPER - X-728 ULTIMATE
SERIAL NUMBER#350089880000001000A80431
SIMPLICITY RIDING LAWNMOWER - REGENT 24 HP
SERIAL NUMBER#090210YG91571
1 SIMPLICITY SNOW BLOWER - SNOW AWAY
SERIAL NUMBER#8HMSK801553615
1 SNAPPER SNOW BLOWER - 11 HP
SERIAL NUMBER#50230444
1 JOHN DEERE PULL BEHIND CART - MODEL# 17P
QTY 1 BLACK FILING CABINET - 5 DRAWERS
QTY 1, 2-DRAWER LOCKING FILE CABINET CURRENTLY LOCATED IN THE CONFERENCE ROOM
1 GRASS SEED DISPENSER PUSH CART
1 ATHLETIC MARKING FIELD PUSH CART
QTY 2 VOLLEYBALLS - MAKE (TACHIKARA)
TEN BASKETBALLS - SPALDING INDOOR/OUTDOOR NEVER FLAT
QTY 1 VOLLEYBALL NET - MODEL#VB400
QTY 4 FOOTBALLS - WILSON (LEATHER 1005)
QTY 7 BASEBALL BATS - 2 CYCLONES, 2 DESIGNATOR PRO STYLE, 1 BRUISER, 1 HAMMER AND 1 REFLEX - ALL ORDERED FROM GOPHER INC.
QTY 12 SOFTBALLS - WORTH PROTAC(GOLD DOT)
SEVEN PULL OVER PENNIES (YELLOW AND RED)
QTY 25 FLAG FOOTBALL BELTS/FLAGS
QTY 1 SAFETY KIT - 326 PIECE TOTAL RESOURCE INC.
QTY 11 SNOW SHOVELS
QTY 2 PUSH BROOMS

MINNESOTA DEPARTMENT OF HEALTH
WELL DISCLOSURE CERTIFICATE
PLEASE TYPE OR PRINT ALL INFORMATION

Indicate Total Number of Wells on Property 1

Fill out a separate well information page if more than **two** wells are located on the property.

E. WELL LOCATION LEGAL DESCRIPTION

WELL #1 – If the property legal description has more than one section, township, or range number; quarter (or government lot); or lot or block number; provide specific legal description information regarding the physical location of this well.

County	Section No.	Township No.	Range No.	Quarter (or Government Lot)
St. Louis	32	52	12	SW

Lot No.	Block No.	Addition Name	Outlot	Tract	MN Unique Well No. or Sealing Record No.

WELL STATUS (Check only one box)
WELL IS: ☒ In Use (1) ☐ Not in Use (2) ☐ Sealed by Licensed Well Contractor (3)*
***Call MDH to verify sealing record is on file.**

If the well has been sealed by someone other than a licensed well contractor or a licensed well sealing contractor, check the well status as not in use. Also see "IMPORTANT NOTE" on page 1.

Date of Well Construction or Sealing 7/22/08

Name of Licensed Well Contractor Jim Madison Madison Pump Service

If well is not in use, is there an MDH variance for this well? ☐ Yes ☐ No
If yes, provide the variance tracking number (TN) _____

If the well is not in use, is there an MDH maintenance permit for this well? ☐ Yes ☐ No
If yes, provide the permit number _____

WELL #2 – If the property legal description has more than one section, township, or range number; quarter (or government lot); or lot or block number; provide specific legal description information regarding the physical location of this well.

County	Section No.	Township No.	Range No.	Quarter (or Government Lot)

Lot No.	Block No.	Addition Name	Outlot	Tract	MN Unique Well No. or Sealing Record No.

WELL STATUS (Check only one box)
WELL IS: ☐ In Use (1) ☐ Not in Use (2) ☐ Sealed by Licensed Well Contractor (3)*
***Call MDH to verify sealing record is on file.**

If the well has been sealed by someone other than a licensed well contractor or a licensed well sealing contractor, check the well status as not in use. Also see "IMPORTANT NOTE" on page 1.

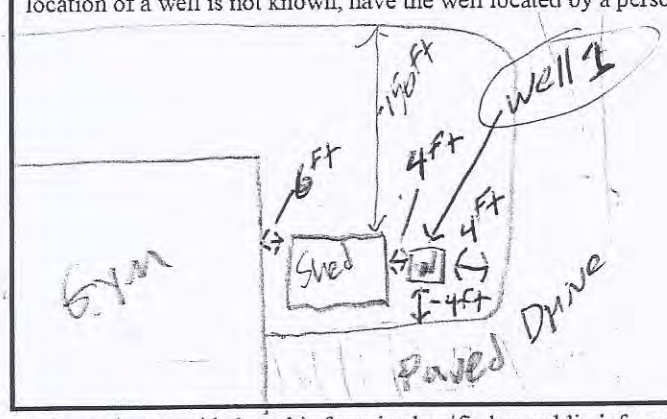
Date of Well Construction or Sealing

Name of Licensed Well Contractor

If well is not in use, is there an MDH variance for this well? ☐ Yes ☐ No
If yes, provide the variance tracking number (TN) _____

If the well is not in use, is there an MDH maintenance permit for this well? ☐ Yes ☐ No
If yes, provide the permit number _____

SKETCH MAP – Sketch the location of the well(s) and include estimated distances from roads, streets, and buildings. **If more than one well on property, use the well location number above to identify each well.** The location of the well(s) must be provided. If the location of a well is not known, have the well located by a person qualified to locate wells, such as a licensed well contractor.



Information provided on this form is classified as public information under Minnesota Statutes, Chapter 13.
To request this document in another format, call 651-201-4600. Deaf and hard-of-hearing: TTY 651-201-5797.
Visit the MDH Well Management Section, Well Disclosure Program website at: www.*health.state.mn.us/divs/eh/wells/disclosures.*

EXHIBIT C