

## **REAL PROPERTY PURCHASE AND SALE AGREEMENT**

**THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT** (this "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between **BOARD OF EDUCATION OF HOPKINS COUNTY, KENTUCKY**, an agency of the Commonwealth of Kentucky established under KRS §160.160 ("Seller"), and **WILLIAM E. GROVES CONSTRUCTION, LLC**, a Kentucky limited liability company, or its successor, assign or nominee ("Buyer").

### **Recitals:**

The following recitals are true and correct and made a part of this Agreement:

- A. Seller is the owner of the Property (defined in Section 1 below).
- B. Upon the satisfaction of, and subject to, the terms and conditions set forth in this Agreement, Seller has agreed to sell the Property to Buyer, and Buyer has agreed to purchase the Property from Seller.

### **Agreement:**

**NOW, THEREFORE**, for and in consideration of the Property, the mutual promises, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

**1. AGREEMENT TO SELL AND PURCHASE.** Subject to and in accordance with the terms and conditions contained in this Agreement, (i) Seller agrees to sell, assign, convey, and transfer to Buyer all of Seller's right, title and interest in and to that certain parcel of real property, consisting of approximately 12 acres, Parcel Number MAP-108-12-3, located in Madisonville, Hopkins County, Kentucky, as legally described on Exhibit "A" attached hereto and incorporated herein by this reference, and which was conveyed to Seller by Deed dated June 18, 2018, of record at Deed Book 766, Page 56, in the Office of the Clerk of Hopkins County, Kentucky, together with all rights, titles and interests (including development rights) and appurtenances thereto (the "Property"), and (ii) Buyer hereby agrees to purchase and accept the Property in its "AS IS, WHERE IS" condition, subject to all faults.

**2. PURCHASE PRICE; EARNEST MONEY.** The total purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Property shall be **Four Hundred Twenty Five Thousand and 00/100 Dollars** (\$425,000.00). Within five (5) business days after the Effective Date, Buyer shall also deliver a deposit to a title company acceptable to Buyer (sometimes referred to interchangeably in its capacity as the "Title Company" or the "Escrow Agent"), in the form of immediately available funds payable to the Title Company in the amount of **Five Thousand and 00/100 Dollars** (\$5,000.00) (the "Deposit"). The Deposit shall remain refundable to the Buyer in the event Buyer terminates this Agreement, for any reason or no reason at all, prior to the

Closing (as hereafter defined), but shall be applied to the Purchase Price upon the Closing.

**3. INSPECTION.** In order for Buyer to conduct investigations of the Property, as long as this Agreement is in effect, Buyer and its agents shall have the right and license to enter upon the Property for the purpose of surveying the Property, conducting environmental and other studies (including, without limitation a Phase II environmental site assessment), doing civil engineering work, conducting site and geotechnical (soil) analysis, assessing utility capacities, assessing roadway entrances, making test borings, and inspecting or conducting any other tests Buyer may deem necessary, in Buyer's sole discretion. The access gravel access road to the Property is currently impassable. Within ten (10) business days of the Effective Date, Seller will repair the gravel road so that Buyer can access the Property with drill rigs and other equipment for the purpose of performing its due diligence investigation. Within five (5) calendar days after the Effective Date, Seller shall provide to Buyer complete copies of all records or documents relating to the Property.

**4. TITLE MATTERS.** Prior to Closing, Buyer shall obtain a commitment (the "Commitment") for the issuance of an owner's title insurance policy underwritten by the Title Company (the "Title Policy") for the Property, in the amount of the Purchase Price. The Commitment shall show that Seller is vested with good and indefeasible title to the Property in fee simple, free and clear of all liens and encumbrances and any other items shown on the Commitment, except: (a) the lien of real estate taxes and assessments, if any, not yet due at the time of Closing; (b) zoning ordinances, covenants, restrictions, conditions and easements of record which in Buyer's sole judgment do not interfere with Buyer's intended use, construction, development and operation of the Property; and (c) legal highways or other rights of way (collectively, the "Permitted Exceptions").

**5. SELLER'S REPRESENTATIONS AND WARRANTIES REGARDING TITLE.** Seller represents and warrants to Buyer as of the date hereof, and which shall be considered to be restated as of the Closing, and which shall survive Closing, Seller is the sole owner of the Property. Seller has and at the Closing will convey to Buyer fee simple title to the Property, free and clear of all liens and encumbrances other than the Permitted Exceptions. Seller has not been informed of any title claims which would be adverse to Seller's good and indefeasible fee simple title to the Property. There are (i) no adverse parties in possession of any part of the Property, (ii) no mechanics or other liens or claims against the Property (and no work has been performed or materials delivered which may give rise to any such liens or claims), except as otherwise may be disclosed in the Commitment and released or otherwise removed by Seller prior to Closing, (iii) no leases currently in effect for all or any part of the Property, and (iv) no rights of first refusal, rights of first offer, options to purchase or lease, restriction to sale or transfer, or any similar rights or options to purchase or transfer any portion of, or rights in, any of the Property.

**6. COVENANTS OF SELLER PRIOR TO THE CLOSING.** Seller hereby covenants with Buyer that during the term of this Agreement:

**6.1 No Further Encumbrances, Liens or Leases.** Seller shall not (and shall not enter into or negotiate any agreement to) sell, grant, convey, lease, license, mortgage, encumber or dispose of the Property or any part thereof or interest therein or any improvements located thereon or the appurtenances thereunto belonging, nor shall Seller grant

or create (or allow to be created) any liens, claims, demands, easements, restrictions or covenants regarding the Property or any interest therein or apply for any zoning change or subdivision approval with respect thereto, except as requested by Buyer.

**6.2 Approval from KDE.** Seller shall diligently pursue all consents or other approvals required to be granted by the Kentucky Department of Education to permit Seller to consummate the transactions contemplated by this Agreement.

**7. BUYER'S RIGHT TO TERMINATE.** Buyer may terminate this Agreement in its sole discretion, for any reason or no reason whatsoever, on or before the Closing, in which event the Deposit will be returned to Buyer, and the parties will no longer have any obligations to one another under this Agreement except those that expressly survive Closing.

**8. CONDITIONS PRECEDENT.**

**8.1 Seller's Conditions Precedent.** Seller's obligation to sell is expressly conditioned upon each of the following:

(a) Buyer shall have performed all of the obligations and covenants of Buyer in this Agreement.

(b) Buyer shall have delivered the items described in Section 10.1 hereunder.

(c) Receipt of the Purchase Price, in immediately available funds, and any adjustments due from Seller under Section 11 or any other provision of this Agreement at the Closing in the manner herein provided.

(d) Seller shall have received approval of the transactions contemplated by this Agreement from the Kentucky Department of Education.

**8.2 Buyer's Conditions Precedent.** Buyer's obligation to purchase is expressly conditioned upon each of the following:

(a) Seller shall have performed all of the obligations and covenants of Seller in this Agreement, including, without limitation, the approval required by the Kentucky Department of Education to consummate the transactions contemplated by this Agreement.

(b) There shall not have occurred a material adverse change in Seller's title to, or the condition of, the Property, including, without limitation, a casualty event impacting the Property.

(c) Seller shall have delivered the documents described in Section 10.2 hereunder.

(d) All of Seller's representations and warranties shall be true and correct as of the Closing.

**9. ASSIGNMENT OF CONTRACT OF PURCHASE AND SALE.** Buyer shall have the right, without Seller's consent, to freely assign this Agreement, or any of its rights or obligations

hereunder, to: (i) any affiliated entity which controls, is controlled by, or is under common control with Buyer; or (ii) any entity in which Buyer owns a substantial ownership interest and in which Buyer is the managing general partner (if a partnership) or the managing member (if a limited liability company).

**10. CLOSING.** The "Closing" shall be held at the offices of the Escrow Agent or at such other location as may be agreed by Buyer and Seller, on such date and time as is agreed in writing by Buyer and Seller, or may be conducted remotely as an "escrow closing," if the parties so elect. The Closing shall take place within ninety (90) days following the Effective Date.

**10.1 Buyer's Deliverables.** At the Closing, Buyer shall deliver:

(a) The balance of the Purchase Price, by wire transfer of immediately available funds, as described in Section 2 hereof to Seller, less the amount of the Deposit, and any prorated amounts to which Buyer is entitled;

(b) A duly executed closing statement setting forth all prorations, fees, credits, and disbursements associated with the transactions contemplated by this Agreement, in form and substance mutually acceptable to Buyer and Seller (the "Closing Statement");

(d) A duly executed General Warranty Deed, in form and substance mutually acceptable to Buyer and Seller, conveying fee simple title to the Property to Buyer subject only to any Permitted Exceptions stated therein (the "Deed"); and

(e) Any other document required by or customary under Kentucky law or reasonably requested by Seller or Title Company to consummate the sale of the Property.

**10.2 Seller's Deliverables.** At the Closing, Seller shall provide and deliver the following to Buyer:

(a) A duly executed counterpart of the Deed;

(b) A duly executed affidavit certifying to the Title Company: (i) that there are no mortgages, judgment liens or other encumbrances of any nature whatsoever affecting the Property except as set forth in the Commitment; (ii) that there are no rights of parties in possession, use or otherwise, outstanding in third persons by reasons of unrecorded leases, land contracts, sales contracts, options or other documents; (iii) that no unpaid contracts for improvements have been made, or materials, machinery or fuel delivered to the Property which might form the basis of a mechanic's lien upon the Property; and (iv) other matters customarily contained in seller affidavits;

(c) A duly executed Certificate of Non Foreign Status regarding compliance with Internal Revenue Code Section 1445 and the Regulations promulgated thereunder;

(d) Evidence, satisfactory to the Title Company, of Seller's authority to enter into and consummate the transactions contemplated by this Agreement;

(e) Exclusive possession of the Property, subject only to the Permitted Exceptions;

(f) A duly executed counterpart of the Closing Statement; and

(g) Any other documents required by Kentucky law or which are reasonably requested by Buyer or the Title Company to consummate the sale of the Property.

**11. TAXES AND ASSESSMENTS.** Any real property taxes, water rates, sewer charges and rents shall be prorated and adjusted on the basis of the actual days in the calendar year, Seller to have the last day, to the date of Closing. If Closing occurs before the tax rate is fixed for the then-current year, taxes will be apportioned using the taxes and assessments for the prior year and such apportionment shall be a full and final settlement of all tax and assessment apportionment between the parties as to such taxes and assessments. Seller shall be responsible for any "rollback" taxes assessed against the Property. The provisions of this Section 11 shall survive Closing.

**12. CLOSING COSTS.** At Closing, Seller shall be responsible for payment of transfer taxes, and costs associated with releasing any lien against the Property. Buyer shall be responsible for payment of any recording fees for the Deed, the Escrow fees, if any, and costs of the Commitment, the title insurance premium and surcharge, and any endorsements to the Title Policy to be obtained by Buyer or Buyer's lender. Each party shall pay for its own attorney's and/or consultant's fees. Any other Closing costs shall be allocated between Seller and Buyer in the customary manner for similar sales of real estate in Madisonville, Hopkins County, Kentucky, except as may be otherwise provided in this Agreement.

### **13. REMEDIES.**

**13.1 Buyer Default.** If Buyer materially defaults under this Agreement, Seller shall be entitled to terminate this Agreement, in which case the Deposit will be returned to Buyer.

**13.2 Seller Default.** If Seller defaults under this Agreement, Buyer may either (a) seek specific performance; (b) terminate this Agreement and receive the Deposit (and any interest on the Deposit); or (c) pursue any other remedy available to it at law or equity.

### **14. MISCELLANEOUS.**

**14.1 Notices.** All notices and other communications required or agreed to be given hereunder shall be sufficient if personally delivered or given by certified or registered mail, postage prepaid, return receipt requested, or recognized overnight service such as FedEx, or e-mailed to the parties at the following addresses:

If to Buyer:	William E. Groves Construction, LLC
	3135 Grapevine Road
	Madisonville, Kentucky 42431
	Attention: President
	Phone:
	Email:

With a copy to: Quanta Services, Inc.  
2727 North Loop West  
Houston, Texas 77008  
Attn: Real Estate Portfolio Manager  
Phone: 713.335.7780  
Email: [mellisfelder@quantaservices.com](mailto:mellisfelder@quantaservices.com)

With a copy to: G. Brian Wells, Esq.  
Jake E. Smith, Esq.  
Wyatt, Tarrant & Combs, LLP  
250 West Main Street, Suite 1600  
Lexington, Kentucky 40507  
Phone: 859.288.7639  
Email: [bwells@wyattfirm.com](mailto:bwells@wyattfirm.com)  
Email: [jeldemiresmith@wyattfirm.com](mailto:jeldemiresmith@wyattfirm.com)

If to Seller: Board of Education of Hopkins County, Kentucky  
320 S. Seminary  
Madisonville, Kentucky 42431  
Attention:  
Phone:  
Email:

With a copy to: J. Keith Cartwright, Esq.  
Frymire, Evans, Peyton, Teague & Cartwright, PLLC  
One South Main Street, Third Floor  
P.O. Box 695  
Madisonville, Kentucky 42431  
Phone: 270.821.6165  
Email: [kcartwright@feptc.com](mailto:kcartwright@feptc.com)

Either party hereto may from time to time designate in writing any other address to which notices shall be delivered.

**14.2 Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto pertaining to its subject matter, and supersedes all prior or contemporaneous agreements, undertakings and understandings of the parties, oral or written, in connection with the subject matter hereof. This Agreement may not be amended or modified except in a writing signed by both Buyer and Seller.

**14.3 Brokers; Commissions.** Buyer and Seller represent one to the other that no brokers have been involved in the purchase of the Property. In the event either Buyer or Seller engage the services of a broker at any point in this transaction, Buyer and Seller hereby indemnify each other from and against any and all claims by any brokers or other agents claiming any commission by, through, or under the indemnifying party. This Section shall survive Closing or termination of this Agreement.

**14.4 Attorneys' Fees.** Each party shall bear its own attorneys' fees and other fees and expenses in connection with this transaction not specifically addressed herein.

**14.5 Binding Effect; Further Acts.** The covenants, conditions and agreements made and entered into by the parties to this Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their successors and assigns. In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

**14.6 Risk Of Loss.** All risk of loss of any kind with respect to the Property shall remain with Seller until the Closing.

**14.7 Survival of Closing.** Notwithstanding any presumption to the contrary, all representations and warranties contained in this Agreement shall survive the date of Closing only as expressly stated and/or limited herein.

**14.8 Governing Law; Jurisdiction and Venue.** The provisions of this Agreement shall be construed, enforced and governed in all respects by the laws of the Commonwealth of Kentucky, without regard to conflicts of law principles.

**14.9 Time Of The Essence.** Time shall be of the essence in the performance by Buyer and Seller of all of their respective obligations under this Agreement.

**14.10 Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The last day of any period of time described herein shall be deemed to end at 11:59 p.m., eastern standard time.

**14.11 Counterparts.** This Agreement may be executed in any number of original, facsimile or pdf counterparts, each of which shall be deemed an original, but such counterparts together shall constitute one and the same original instrument. Facsimile signatures and pdf signatures shall be binding on the party who executed same.

**14.12 Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

**15. CONFIDENTIALITY.** Buyer and its agents and representatives shall keep all information and reports obtained from Seller or relating to the Property or the proposed transaction confidential and shall not disclose any such confidential information to any other person or entity without obtaining the prior written consent of Seller. The parties specifically acknowledge that Seller is a

public agency and to the extent possible this matter shall remain confidential. However, the parties further specifically understand that once the parties execute this Agreement and the Deed, this matter shall be disclosed in the minutes and agenda of Seller. Seller is a public agency and is subject to the Kentucky Open Records Act and public disclosure.

**16. CONDEMNATION.** If at any time prior to the Closing, all or any part of the Property is taken, threatened to be taken, or appropriated by virtue of eminent domain or similar proceedings, or is condemned for any public or quasi-public use, then Buyer may terminate this Agreement, whereupon Escrow Agent shall return the Deposit (together with any interest thereon) in its entirety to Buyer, and thereafter neither party will have any further obligations hereunder except those that expressly survive termination of this Agreement.

[Remainder of page intentionally left blank; signatures to follow]



**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the date first written above.

**BUYER:**

**WILLIAM E. GROVES CONSTRUCTION, LLC,**  
a Kentucky limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

**BOARD OF EDUCATION OF HOPKINS COUNTY,**  
**KENTUCKY**, an agency of the Commonwealth of  
Kentucky established under KRS §160.160

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Signature Page to Real Property Purchase and Sale Agreement*

2/17/2023 1:48 PM:

**EXHIBIT A**  
**(Legal Description of Property)**

All bearings and coordinates referred to herein are based on the Kentucky State Plane Coordinate Grid, NAD83 South Zone, U.S. Survey Foot. Unless stated otherwise, any monument referred to herein as an iron pin set or a reference iron pin set are a 5/8" diameter rebar, 24" in length with a 1.5" diameter aluminum cap stamped "AEI LPLS 3405".

A tract of land which lies along the West side of Kentucky Hwy. 336 (Grapevine Road) opposite the Southbound ramp of the Pennyrile Parkway at Earlington, Kentucky which is more particularly described as follows:

Beginning at a point in the West right-of-way line of Kentucky Hwy. 336 (Grapevine Road), said point being in the West access control fence 80 feet left of approximate Hwy. right-of-way station 70+42 and lies North 58°36'24" East a distance of 1.00' from a reference iron pin set; thence with the West right-of-way of Kentucky Hwy. 336 the next three (3) calls:

1. South 31°25'07" East a distance of 241.53 feet to an existing right-of-way fence post which lies 80 feet left of approximate Hwy. right-of-way station 68+00;
2. South 35°02'38" East a distance of 299.35 feet to an existing right-of-way fence post which lies 60 feet left of approximate Hwy. right-of-way station 65+00;
3. South 29°50'09" East a distance of 208.40 feet to a point in said right-of-way which lies North 56°30'09" East a distance of 1.00 foot from a reference iron pin set;

Thence with a new division the next eight (8) calls:

1. South 56°30'09" West a distance of 721.24 feet to an iron pin set, said iron pin having Kentucky State Plane Coordinates of North: 1,994,007.365 and East 1,141,262.108;
2. North 26°04'11" West a distance of 304.92 feet to an iron pin set;
3. With a curve turning to the left with an arc length of 168.23', with a radius of 1030.00', with a chord bearing of North 30°44'55" West, with a chord length of 168.04, to an iron pin set;
4. North 35°25'39" West a distance of 238.34 feet to an iron pin set;

5. With a curve turning to the right with an arc length of 54.99', with a radius of 35.00', with a chord bearing of North 09°34'59" East, with a chord length of 49.51', to an iron pin set;

6. North 54°35'38" East a distance of 370.67 feet to an iron pin set;

7. With a curve turning to the right with an arc length of 67.94', with a radius of 970.00', with a chord bearing of North 56°36'01" East, with a chord length of 67.92', to an iron pin set;

8. North 58°36'24" East a distance of 223.73 feet to the point of beginning, having an area of 522,720.00 square feet or 12.000 acres according to a survey performed by Marshall G. Curry. L.P.L.S. No. 3405 of Associated Engineers, Inc. on March 15, 2010.

Being a portion of the same property conveyed to the Hopkins County School District Finance Corporation, a Kentucky non-profit corporation, by deed dated March 15, 2011, and of record in Deed Book 699, Page 496, in the Hopkins County Court Clerk's Office.