



## South Washington County Schools

Keith Jacobus, Ph.D., Superintendent

### District Service Center

7362 E. Point Douglas Rd. S.

Cottage Grove, MN 55016

Phone: 651-425-6300 Fax: 651-425-6318

### ADMINISTRATIVE REPORT

TO: Members of the School Board  
Keith Jacobus, Superintendent

FROM: Michael T. Vogel, Interim Director of Facilities and Construction  
Management

DATE: March 30, 2017

TOPIC/PURPOSE OF REPORT: Sale of real property located at 7362 E. Point Douglas Road,  
Cottage Grove MN.

REFERENCE TO POLICY/STRATEGIC PLAN: MN Statute 123B.51

RECOMMENDED BOARD ACTION: Approve the sale of .74 acres of real property to Java  
companies LLC at a price of \$132,000

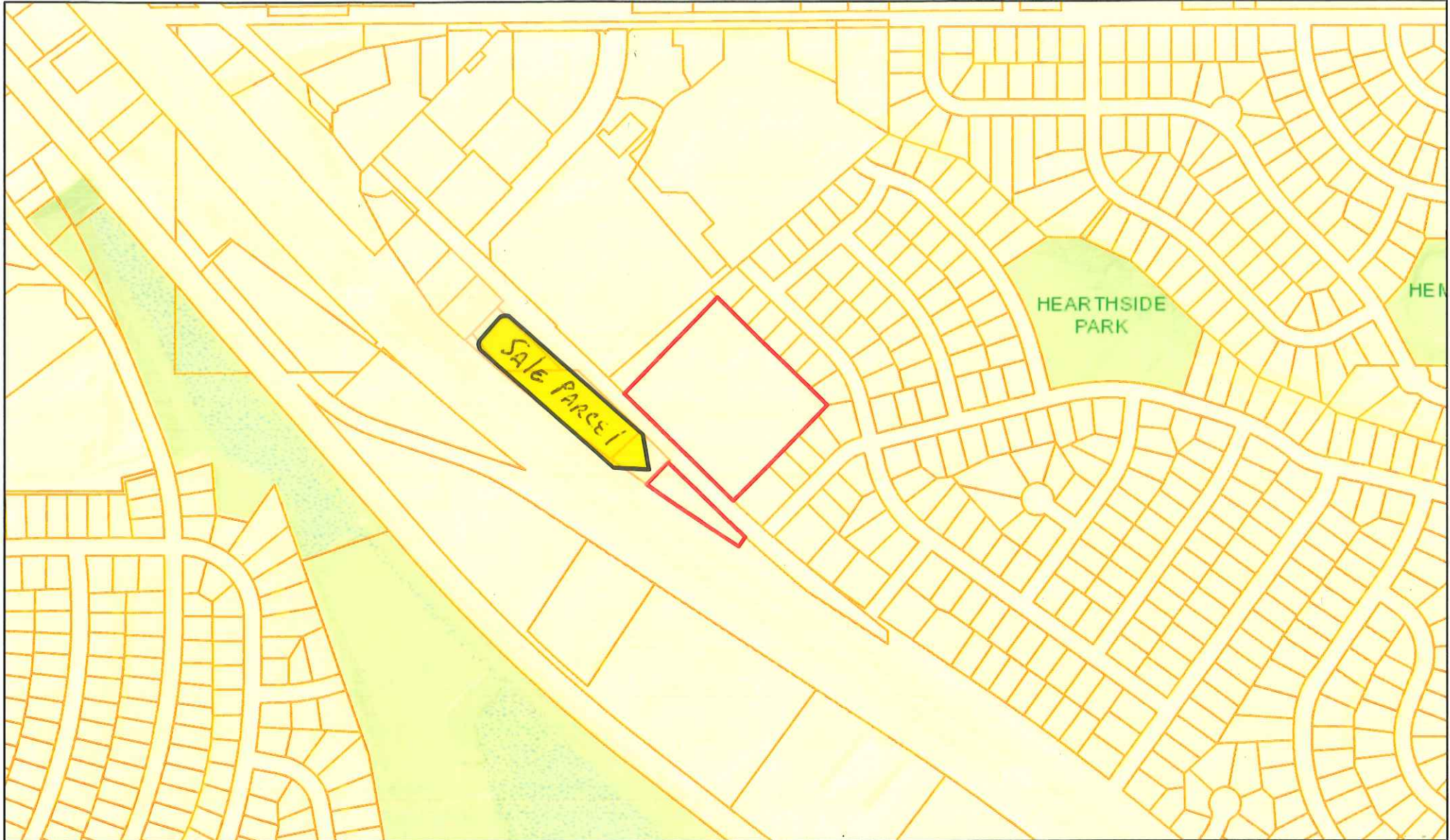
DATE FOR BOARD ACTION: April 6, 2017

### REPORT

Administration has negotiated the sale of .74 acres of unimproved real property located across East Point Douglas Drive, south of the Muffler Doctor site to Java Properties, a commercial property developer. The land is currently vacant and the district has no plans for its future development.

The parameters for the sale of the property are consistent with the parameters of the sale of the DSC parcel of land sold to the city of Cottage Grove to facilitate the HyVee development and those parameters have been incorporated into the purchase agreement. Specifically, the purchase agreement stipulates the Buyers shall be responsible to relocate all public and private utilities necessitated by the project, the Buyer shall install a sleeve around the existing district owned fiber optic cable buried under the property, Buyer shall provide a permanent easement for future maintenance of the fiber optic cable, and buyer shall be responsible for all closing costs.

The purchase agreement has been reviewed and approved by district real estate attorney, Jay Squares of RASW law firm. A copy of the purchase agreement and site map is attached.



**Parcel ID:** 1702721240028

**Parcel Address:**  
7362 EAST POINT DOUGLAS RD S, CITY OF COTTAGE GROVE



**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**

This drawing is the result of the compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

## PURCHASE AGREEMENT

This Purchase Agreement is made and entered into by and between Independent School District No. 833, South Washington County Schools, a Minnesota public school corporation, (“Seller”) and Java Companies, LLC (“Buyer”).

### **RECITALS:**

- A. Seller is the Owner of tax parcel 52040 [inset full PID], depicted on the attached Exhibit A, and consisting of .74 acres of land (the “Property”).
- B. Seller has determined that the Property is not needed for school purposes.
- C. Seller wishes to convey, and Buyer wishes to purchase the Property, together with all rights, privileges, easements, and appurtenances belonging thereto.

### **AGREEMENT:**

In consideration of the mutual covenants and agreements herein contained and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. **Purchase Price and Manner of Payment.** The total purchase price (“Purchase Price”) to be paid by Buyer for the Property shall be One Hundred Thirty Two Thousand and no/100 dollars (\$132,000) payable as follows:
  - a. Upon execution of this Agreement, Five Thousand and no/100 dollars (\$5,000), as earnest money (“Earnest Money”).
  - b. An additional One Hundred Twenty Seven Thousand and no/100 dollars (\$127,000), as adjusted by prorations and credits specified herein, shall be paid in a draft or other immediately available funds on the Closing Date.
- 2. **Condition of Property.** To the best of Seller’s actual knowledge, there are no hazardous materials or substances located on or in the Property. For purposes of this Section, Seller’s actual knowledge shall refer to the knowledge of Keith Jacobus, Superintendent of Schools. Aside from such representation, Seller makes no representations concerning the condition of the Property, environmental matters, or the suitability of the Property for Buyer’s intended uses. Buyer

acknowledges that except as specifically set forth in this Agreement (a) neither Seller, nor any principal, agent, attorney, employee, broker, or other representative of Seller, has made any representation or warranty of any kind whatsoever, either express or implied, with respect to the Property or any matter related thereto, and (b) Buyer is not relying on any warranty, representation, or covenant, express or implied, with respect to the condition of the Property, and that at the time Buyer acquires the Property, and except as set forth in this Agreement, Seller's title to the Property is on an "as-is" condition with all faults.

3. **Inspection.** Buyer shall have the right to enter the Property and perform such surveys, tests and investigations as Buyer deems advisable, all at Buyer's sole expense. Buyer shall keep the Property free from mechanics liens arising from such work. Buyer shall be responsible for any property damage or personal injury arising from such work and shall indemnify and hold Seller harmless from all costs, expenses and liabilities relating to such work.
  
4. **Conditions of Sale.** The Property is being sold to Buyer with the following conditions:
  - a. Septic system: Seller is not aware of the existence of any septic systems on the Property. Seller shall not be liable for any septic systems existing on the Property.
  
  - b. Wells: Seller is not aware of the existence of any wells on the Property. Seller shall not be liable for any wells existing on the Property.
  
  - c. Buyer due diligence items: Buyer is responsible for any surveys, civil site plans, civil engineering plans, architectural plans, appraisals, environmental work, or other studies it wishes to make in its due diligence. Buyer shall provide copies of all such studies to Seller.
  
  - d. Documents in Seller's possession: Seller will provide to Buyer all documents in its possession related to the Property, including copies of easements, surveys, and environmental studies.

- e. Utility relocation: Buyer shall be responsible for all private and public utility relocation necessitated as a result of a project undertaken by it on the Property.
  - f. Fiber optic sleeve: Buyer shall install a sleeve around the existing fiber optic cable so future repairs may be undertaken without disturbing the parking lot. Seller shall have approval rights over the plans for the sleeve. Buyer shall also provide Seller, at closing, a permanent easement for future maintenance of the fiber optic cable line.
  - g. Regulatory approvals: Buyer shall be responsible for obtaining all regulatory approvals for any Project it desires to undertake on the Property. Seller shall reasonably cooperate with Buyer's efforts. "Reasonable cooperation" shall not require Seller to incur expenses, and shall not require Seller to support a Property use that is inconsistent with Seller's mission as determined by Seller.
5. **Closing.** The closing of the purchase and sale of the Property contemplated by this Agreement shall occur on a "Closing Date" which shall occur within one hundred eighty (180) days of the date of this Agreement. The closing shall be conducted by All American Commercial Title at a mutually agreeable time and place. Seller agrees to deliver possession of the Property to Buyer on the Closing Date. At the closing, Buyer shall pay the Purchase Price to Seller (less Earnest Money paid) and the following closing documents shall be executed and delivered.
- a. A limited warranty deed conveying to Buyer fee simple title of the Property, free and clear of all encumbrances, except the following "Permitted Encumbrances":
    - (1) Property taxes and special assessments to be allocated between the parties as provided in Section 6 of this Agreement;
    - (2) Building codes and laws and ordinances relating to zoning, land use and environmental matters;
    - (3) Easements and Restrictions and Covenants of Record; and
    - (4) All encroachments upon the Property, if any.

- (5) The obligations of Buyer under Section 4 of this Agreement that extend beyond closing.
  - b. An Affidavit by Seller indicating no adverse matters.
  - c. A closing statement detailing the financial terms of the closing.
  - d. All other documents necessary to transfer the Property to Buyer free and clear of all encumbrances except the Permitted Encumbrances.
6. **Costs and Prorations.** Seller and Buyer agree to the following prorations and allocations of costs.
- a. **Closing Costs.** Buyer shall pay all closing costs.
  - b. **Documentary Taxes.** Buyer shall pay all state deed tax for the limited warranty deed to be delivered by Seller under this Agreement.
  - c. **Real Estate Taxes and Levied and Pending Assessments.** General real estate taxes due in the year of closing shall be prorated. Seller shall be responsible for any assessments levied or pending as of the date of full execution of this Agreement.
  - d. **Attorney's Fees.** Each Party shall be responsible for its own attorneys fees.
7. **Title.**
- a. **Quality of Title.** Seller shall convey marketable fee title to the Property to Buyer, subject to no liens, easements, encumbrances, conditions, reservations or restrictions other than the Permitted Encumbrances.
  - b. **Title Evidence.** Within ten (10) days after this Agreement is fully executed by the Parties, Buyer shall obtain a commitment ("Title Commitment") for an owner's policy of insurance in the amount of the Purchase Price insuring title to the Property subject only to the Permitted Encumbrances.

- c. **Buyer's Objections.** Within ten (10) days after obtaining the Title Commitment, Buyer shall make written objections ("Objections") to the form and/or contents of the Title Commitment. Buyer's failure to make Objections within such time period will constitute waiver of Objections. Any matter shown on such Title Commitment and not objected to by Buyer shall be deemed an additional "Permitted Encumbrance" hereunder. Seller shall have ninety (90) days after receipt of the Objections to cure the Objections, during which period the Closing will be postponed as necessary. Seller shall not have any obligation to cure the objections, but if the Objections are not cured within such 90-day period, Buyer will have the option to do either of the following:
    - (1) Terminate this Agreement; or
    - (2) Waive the Objections and proceed to close.
8. **Representations and Warranties by Seller.** Seller represents and warrants to Buyer as follows:
- a. **Authority.** Seller has the requisite power and authority to enter into and perform this Agreement.
  - b. **Title to Property.** Seller intends to acquire the Property from South Washington County Schools free and clear of all encumbrances except the Permitted Encumbrances.
  - c. **Rights of Others to Purchase Property.** Seller has not entered into any other contracts for the sale of the Property.
  - d. **FIRPTA.** Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign state" as those terms are defined in § 1445 of the Internal Revenue Code.
  - e. **Proceedings.** To the best knowledge of Seller, except for the tax forfeiture process, there is no action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against the Property.

- f. **Wells and Septic Systems.** Seller represents that it is not aware of any septic systems or wells located on the Property.
- g. **Methamphetamine Production.** Pursuant to Minnesota Statutes section 152.0275, Seller certifies to Buyer that it is not aware of any methamphetamine production that has occurred on the Property.

Except as expressly provided in this Section 8, Seller makes no representations or warranties regarding the condition of the Property, environmental or otherwise. Buyer acknowledges that Buyer is purchasing the Property “as is.”

9. **Representation and Warranties by Buyer.** Buyer represents and warrants to Seller as follows:

- a. **Authority.** Buyer has the requisite power and authority to enter into this Agreement and perform it.
- b. **Blocked persons.** Buyer has not received written notice that Buyer is:
  - (1) listed on the Specifically Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”) pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 Sept. 25, 2001 (“Order”) and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the “Lists”);
  - (2) a person who has been determined by competent authority to be subject to the prohibitions contained in the Order; or
  - (3) owned or controlled by, or acts for or on behalf of, any person or entity who is (i) on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Order, (ii) a citizen of the United States who is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation or Executive Order of the President of the United States, or (iii) an “Embargoed Person,” meaning any person, entity or government subject to trade restrictions under U.S. law, including , but not limited to the International Emergency



Economic Powers Act, 50 U.S.C. § 1701 et seq., the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated under such acts.

10. **Control of Property.** Subject to the provisions of this Agreement, until the Closing Date, Seller shall have full responsibility and the entire liability for any and all damages or injuries of any kind whatsoever to the Property, to any and all persons, whether employees or otherwise, and to any other property from and connected to the Property, except for the following: (1) liability arising from the negligence of Buyer, its agents, contractors, or employees, (2) liability arising from Buyer's storage of fill material on the Property, and (3) except as set forth in Section 9 regarding Buyer's tests and inspections.
11. **Condemnation.** If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, Seller shall immediately give notice to Buyer of such fact and, at Buyer's option (to be exercised within ten (10) days after Seller's notice), this Agreement shall terminate, in which event neither party will have further obligations under this Agreement. If Buyer fails to exercise its option to terminate the Agreement, then there shall be no reduction in the Purchase Price, and 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.
12. **Assignment.** Buyer may not assign its rights under this Agreement without written consent of the Seller which may be granted or withheld at Seller's sole discretion.
13. **Survival.** All of the terms of this Agreement will survive and be enforceable after the Closing.
14. **Notices.** Any notices required or permitted to be given by any party to the other shall be given in writing, and shall be (i) hand delivered to any officer of the receiving party, or (ii) mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, or (iii) properly deposited with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Seller: Independent School District No. 833  
Attn: Superintendent  
7362 East Point Douglas Road S.  
Cottage Grove, MN 55016

With copy to: Rupp, Anderson, Squires & Waldspurger, P.A.  
Attn: Jay T. Squires  
527 Marquette Avenue South, Suite 1200  
Minneapolis, MN 55402

If to Buyer:

[insert address]

Java Companies, Attn: Mark Krogh 333 Washington  
Ave N Ste 401 Minneapolis, MN 55401

Notices shall be deemed effective on the earlier of the date of receipt or in the case of such deposit in the mail or overnight courier, on the first business day following such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party.

15. **Captions.** The 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.
16. **Entire Agreement.** This written Agreement constitutes the complete agreement between the parties and supersedes any and all other oral or written agreements, negotiations, understandings and representations between the parties regarding the Property. There are no verbal or written side agreements that change this Agreement.
17. **Amendment; Waiver.** No amendment of this Agreement, and no waiver of any provision of this Agreement, shall be effective unless set forth in a writing (i) expressing the intent to so amend or waive and the exact nature of such amendment or waiver and (ii) signed by both parties (in the case of amendment) or the waiving party (in the case of waiver). No waiver of a right in any one instance shall operate as a waiver of any other right, nor as a waiver of such right in a later or separate instance.
18. **Governing Law.** This Agreement is made and executed under and in all respects is to be governed and construed under the laws of the State of Minnesota.

19. **Binding Effect.** This Agreement binds and benefits the parties and their respective successors and assigns.
20. **Remedies.**
- a. **Default by Buyer.** If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving a 30-day written notice to Buyer pursuant to Minnesota Statutes section 559.21, as it may be amended for time to time. If Buyer fails to cure such default within thirty (30) days of the date of such notice, this Agreement will terminate, and upon such termination Seller shall retain the Earnest Money as liquidated damages, time being of the essence of this Agreement; or Seller may sue for specific performance of this Agreement or actual damages caused by Buyer's default.
  - b. **Default by Seller.** If Seller defaults under this Agreement, Buyer may sue for specific performance of this Agreement or actual damages caused by Seller's default.
21. **Counterpart/Electronic Signatures.** This Agreement may be executed in any number of counterparts, and, each shall have the same effect as if each copy were signed by all parties. The parties to this Agreement further agree that electronic and/or facsimile signatures on this Agreement or any agreement related hereto shall be treated with the same force and effect as original signatures.
22. **Contingencies.** This Agreement is contingent on Buyer obtaining financing on its Purchase of the Property on terms acceptable to Buyer. Buyer shall provide a letter from Buyer's lender indicating approval of financing within 60 days of the full execution of this Agreement. If no letter is provided, this Agreement shall terminate and Seller shall be entitled to retain the Earnest Money
22. **Extension of Closing.** Buyer may extend the Closing Date once up to an additional one hundred eighty (180) days on written notice to Seller.

**SELLER: INDEPENDENT SCHOOL DISTRICT NO. 833**

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

Dated: \_\_\_\_\_

Its: Board Chair

**BUYER:    JAVA COMPANIES, LLC**

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

Dated: 03/15/17 \_\_\_\_\_

Its: Chief Manger \_\_\_\_\_

Dated: 03/15/17 \_\_\_\_\_

Mark Krogh