

**ATTACHMENT "D"**

**DRAFT OF PROPOSED PURCHASE AND SALE AGREEMENT**

**NOTE: THE SCHOOL BOARD RESERVES THE RIGHT TO REVISE**

**AGREEMENT OF PURCHASE AND SALE**

**BY AND BETWEEN**

**THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA ("Seller")**

**AND**

**Dated:** \_\_\_\_\_, 2010

## AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT OF PURCHASE AND SALE** ("Purchase Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida** ("Seller" and "Property Owner" and "School Board") and \_\_\_\_\_ ("Purchaser" and "Successful Bidder"). The School Board and Purchaser are sometimes referred to herein individually as a "Party", and collectively as the "Parties".

### WITNESSETH:

**WHEREAS**, Seller is the fee simple owner of the Realty (hereinafter defined); and

**WHEREAS**, Seller desires to sell the Property (hereinafter defined) to Purchaser, and Purchaser desires to purchase the Property from Seller, in accordance with and subject to the terms and conditions hereinafter set forth; and

**WHEREAS**, Purchaser is the Successful Bidder pursuant to that certain Request for Bids #038-KK10 ("RFB"), issued by Seller, which RFB and all attachments thereto is incorporated herein by reference.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants contained herein, and the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

1. **Purchase and Sale; Realty.** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, all that certain parcel of real property consisting of approximately 3 acres, more or less, situate, lying and being in the County of Miami-Dade ("County"), State of Florida, and of which the legal description is set forth in Attachment "A", attached hereto and made a part hereof ("Realty"), in fee simple, together with the following property and rights (the Realty and such property and rights are referred to herein collectively as the "Property");

(a) All surveys, plans, plats, soil tests, engineering studies, environmental studies and all other documents, studies, title policies, licenses, permits, authorizations, approvals, soil and ground water reports and asbestos material surveys, and any other intangible rights pertaining to the ownership and/or operation of the Realty, if any (collectively, the "Documents");

(b) All easements, privileges, riparian and other water rights, lands underlying any adjacent streets or roads, improvements located on the Realty and appurtenances pertaining to or accruing to the benefit of the Realty, if any; and

(c) All improvements thereon, if any.

2. **Deposit.** Upon execution of the Due Diligence Agreement, as stipulated in the RFB, Purchaser delivered to the School Board an earnest money deposit of (\$ \_\_\_\_\_), which is equal to **TEN PERCENT (10%)** of the amount proffered by Purchaser in its bid (hereinafter referred to as the "Highest Bid"), to be held in escrow by the School Board Attorney's Office (the "Escrow Agent") in an interest bearing account (hereinafter referred to as the "Deposit"). The Deposit and any accrued interest shall be credited against the Purchase Price at Closing and shall be otherwise subject to the terms and conditions contained herein. The Parties agree that upon the expiration of the Due Diligence Period and the execution by both Parties of the Purchase Agreement, on or before \_\_\_\_\_, 2010, the Deposit shall be deemed non-refundable.

3. **Purchase Price; Manner of Payment.** The purchase price ("Purchase Price") to be paid by Purchaser to Seller for the Property shall be (\$ \_\_\_\_\_), which is the sum representing the Highest Bid as described in the aforementioned RFB, subject to credits, prorations and adjustments, if any, as provided in this Purchase Agreement. The Purchase Price shall be payable by Purchaser to Seller at the Closing (as hereinafter defined) by wire transfer to a School Board account, pursuant to wiring instructions provided to Purchaser by Board Attorney within ten (10) days prior to Closing. Purchaser agrees that its acquisition of the subject property is for cash only, and is not subject to financing ("All-Cash"), and no mortgage or other financing shall be provided by the Seller.

4. **Inspections; Title; and Survey.** Purchaser acknowledges that Seller granted Purchaser access to the subject property, with full right to: (a) inspect the Property, and (b) conduct any and all inspections, investigations and tests thereon, including, but not limited to, soil borings and hazardous waste studies, and (c) obtain evidence of title and complete its title examination, and (d) obtain and review surveys which Purchaser deemed necessary, and (e) make such other inspections and examinations with respect to the subject property as Purchaser, its counsel, licensed engineers, surveyors, appraisers, or other representative may have deemed necessary ("Due Diligence Investigations"). Purchaser also acknowledges that all Due Diligence Investigations had to be completed on or before 5:00 PM on June 21, 2010 ("Inspection Completion Date"). Purchaser hereby acknowledges and represents that as of the date of the execution of this Purchase Agreement, Purchaser has had the opportunity to complete its required Due Diligence Investigations and to fully review and evaluate this transaction and, based solely on its Due Diligence Investigations, decides to proceed with the purchase of subject Property.

5. **Seller's Representations.** The Purchaser agrees that it is accepting the subject Property in its "AS-IS", "WHERE-IS" condition and basis with all faults, and that the Seller makes no representations or warranties whatsoever, either expressed or

implied, as to the suitability or efficacy of the subject Property for any particular purpose or use, nor as it relates to condition of title nor the physical condition of the subject Property. Purchaser, by executing the Due Diligence Agreement, as described in the RFB and this Purchase Agreement, acknowledges and agrees that the Seller has made no representation whatsoever, as stated herein, nor as to the environmental condition of the subject Property. The Purchaser represents that it is relying and will continue to rely solely on its own investigations of the subject Property in its decision to purchase it, and Purchaser further acknowledges and agrees that the Seller shall not indemnify the Purchaser in any way with respect to the subject Property.

Title to the subject Property shall be conveyed to the Purchaser by a Quit-Claim Deed, with no representation or warranty of any kind, subject to conditions, restrictions, easements, zoning and all limitations of record, if any.

The provisions of this Paragraph 5 shall survive the Closing or the earlier termination of this Purchaser Agreement.

6. **Purchaser's Representations.** As a material inducement to Seller to enter into this Purchase Agreement, Purchaser warrants and represents to and covenants with Seller that the following matters are true as of the Effective Date (as hereinafter defined), and that they will also be true as of Closing Date. Purchaser agrees to indemnify and hold harmless Seller from any and all claims, costs, judgments, damages, fees (including attorney's fees), repairs, or expenses incurred as a result of any breach of any warranty and representation.

Purchaser represents, warrants and covenants unto Seller and agrees with Seller as follows:

(a) The execution, delivery and performance of this Purchase Agreement by Purchaser has been duly authorized, and no consent of any other person or entity to such execution, delivery and performance is required to render this document a valid and binding instrument enforceable in accordance with its terms.

(b) The Purchaser has the legal and financial capability of Closing this transaction pursuant to terms and conditions of the RFB and of this Purchase Agreement.

(c) All information provided and representations made by Purchaser (Successful Bidder) in the above-described RFB and documents related thereto, is true and correct and incorporated herein by reference.

The provisions of this Paragraph 6 shall survive the Closing or the earlier termination of this Agreement.

7. **Default.** An event of default shall be deemed to have occurred by either Party to this Purchase Agreement if such Party fails to observe or perform any covenant, condition or agreement of this Purchase Agreement, or breaches a representation contained herein, and such failure or breach continues for a period of ten (10) days after written notice specifying such default and requesting that it be remedied is sent to the defaulting Party by the non-defaulting party. If an event of default shall have occurred and shall continue, the non-defaulting Party shall be entitled to all remedies available at law or in equity, which may include, but not be limited to, the right to damages and/or specific performance.

8. **Prorations.** Seller is legally exempt from payment of real estate taxes, consequently there will be no prorations.

9. **Closing Costs.** The Purchaser shall be responsible for all costs relating to the closing of this transaction ("Closing Costs"), including without limitation:

(a) the recording cost of the Deed, (b) the cost of the Survey (if obtained by Purchaser), (c) the cost of all abstracting, evidence of title, Title Commitment and the premium for the Title Policy obtained by Purchaser, (d) the cost of the rest of Purchaser's Due Diligence Investigations, (e) documentary stamp taxes, surtaxes and other transfer charges in connection with the recordation of the deed, (f) costs of curing any defects, (g) the costs in connection with any curative instruments relating to any defects, (h) the Commission as hereinafter defined, if any, and (i) Purchaser's legal fees.

The Seller shall be responsible for payment of its own legal fees relating to Closing of this transaction, except as provided for in Paragraph 5 of the Due Diligence Agreement by and between the Parties.

10. **Closing.** It is mutually understood that the execution of this Purchase Agreement by Seller constitutes conditional acceptance and is subject to approval by the School Board of Miami-Dade County, Florida ("School Board") pursuant to the necessary vote at a duly called, regular School Board meeting. Notice of final School Board action shall be provided to Purchaser after the School Board meeting at which this matter is presented for approval. The Closing shall, at the option of Seller, be held at the office of the Miami-Dade County Public School Board Attorney, located at 1450 NE 2 Avenue, Suite 430 Miami, Florida 33132, commencing at 1:00 PM on June 30, 2010 ("Closing Date"), unless extended by mutual agreement of the Parties.

At Closing, the following shall occur:

(a) Seller shall execute and deliver to Purchaser the following documents with respect to the Property: (i) A Quit-Claim Deed ("Deed") subject to all conditions, easements, restrictions, zoning and limitations of record, if any; and (ii) a School Board Resolution authorizing the sale of subject Property.

(b) Purchaser shall deliver to Seller the Purchase Price in the manner set forth in this Purchase Agreement.

(c) Seller and Purchaser shall each execute counterpart closing statements in a customary form together with such other documents as are reasonably necessary to consummate the Closing.

(d) Both Parties shall pay their respective costs by wire transfer or by cashier's check drawn on a bank reasonably acceptable to the School Board Attorney.

11. **Brokers.** The Parties each represent and warrant to the other that the School Board shall have no responsibility for any real estate brokers, salesmen or finders involved in this transaction. Purchaser shall have the responsibility of paying the authorized broker, if any, a commission pursuant to any separate agreement between Purchaser and authorized broker ("Commission"). If any other claim for a brokerage fee or commission in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of one of the Parties hereto ("Indemnitor"), Indemnitor shall indemnify, defend and hold harmless the other Party hereunder ("Indemnitee"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees and expenses whatsoever with respect to said claim for brokerage, to the limit of Section 768.28, Florida Statutes. Notwithstanding the foregoing, each Party shall be responsible for its own attorney's fees and court costs through all trial and all appellate levels relating to claims in accordance with this Paragraph.

The provisions of this Paragraph shall survive the Closing and any cancellation or earlier termination of this Agreement.

12. **Assignability.** This Purchase Agreement may not be assigned.

13. **Notices.** Any notices required or permitted to be given under this Purchase Agreement shall be in writing and shall be deemed given if delivered by hand, sent by recognized overnight courier (such as Federal Express), transmitted via email, facsimile transmission or mailed by certified or registered mail, return receipt requested, in a postage pre-paid envelope, and addressed as follows:

If to Seller at:

The School Board of Miami-Dade County, Florida  
1450 N.E. 2<sup>nd</sup> Avenue, Suite 400  
Miami, Florida 33132  
Attention: Walter J. Harvey, Esq.  
Phone: (305) 995-1304  
Fax: (305) 995-1412



with a copy to: The School Board of Miami-Dade County, Florida  
1450 N.E. 2<sup>nd</sup> Avenue, Suite 525  
Miami, Florida 33132  
Attention: Ana Rijo-Conde, Planning Officer  
(305) 995-7285 phone  
(305) 995-4760 fax

If to Purchaser:

With a copy to:

Notices personally delivered or sent by overnight courier shall be deemed given on the date of receipt, notices sent via email or facsimile transmission shall be deemed given upon transmission, and notices sent via certified mail in accordance with the foregoing shall be deemed given two (2) days following the date upon which they are deposited in the U.S. Mails.

14. **Risk of Loss.** If, prior to Closing, the Property or any material portion thereof is destroyed or damaged or taken by eminent domain, Seller shall promptly notify Purchaser and Purchaser shall have the option of either: (i) canceling this Purchase Agreement by delivery of written notice to Seller, and both Parties shall be relieved of all further obligations under this Purchase Agreement; or (ii) Purchaser may proceed with the Closing, whereupon Purchaser shall be entitled to (and Seller shall assign to Purchaser all of Seller's interest in) all insurance and/or condemnation payments, awards and settlements applicable to the Property. In the event Purchaser elects option (ii) above in connection with casualty to the Property in which insurance proceeds are or will be paid and assigned to Purchaser, then Purchaser shall receive a credit against the Purchase Price for any insurance deductible that must be paid.

15. **Miscellaneous.**

(a) This Purchase Agreement shall be construed and governed in accordance with laws of the State of Florida and School Board Rules, and in the event of any litigation hereunder, the venue for any such litigation shall be in Miami-Dade County. All of the Parties to this Purchase Agreement have participated fully in the negotiation and preparation hereof and, accordingly, this Purchase Agreement shall not be more strictly construed against any one of the Parties hereto.

(b) In the event any provision of this Purchase Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as such authority

determines, and the remainder of this Purchase Agreement shall be construed to be in full force and effect.

(c) In the event of any litigation between the Parties under this Purchase Agreement, each Party shall be responsible for its own attorney's fees and court costs through all trial and appellate levels. The provisions of this subparagraph shall survive the Closing and any termination or cancellation of this Purchase Agreement.

(d) In construing this Purchase Agreement, the singular shall be deemed to include the plural, the plural shall be deemed to include the singular and the use of any gender shall include every other gender and all captions and paragraph headings shall be discarded.

(e) The aforescribed RFB and all of the attachments thereto, the Due Diligence Agreement and all of the attachments thereto, and all attachments to this Purchase Agreement are incorporated herein and made a part of this Purchase Agreement by reference.

(f) This Purchase Agreement, the Due Diligence Agreement and all documentation relating to the aforescribed RFB constitute the entire agreement by and between the Parties for the sale and purchase of the Property, and supersedes any other agreement or understanding of the Parties with respect to the matters herein contained. This Purchase Agreement may not be changed, altered or modified except in writing signed by the Party against whom enforcement of such a change would be sought. This Purchase Agreement shall be binding upon the Parties hereto and their respective legal representatives and successors.

(g) The term "Effective Date" or such other similar term is the date on which the last of the Parties initials or signs this Purchase Agreement. Time is of the essence for all provisions of this Purchase Agreement. All time periods will be computed in calendar days (a "Calendar Day" is every calendar day including Saturday, Sunday and national legal holidays). However, if any deadline falls on a Saturday, Sunday or national legal holiday, performance will be due the next business day. All time periods will end at 5:00pm, Miami time, of the appropriate day.

(h) This Purchase Agreement and any subsequent amendments hereto may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original, and all of which shall be deemed to be one and the same instrument. Facsimile transmission signatures shall be deemed original signatures.

(i) The descriptive headings in this Purchase Agreement are for convenience only and shall not control nor affect the meaning nor the construction of any of the provisions of this Purchase Agreement.



(j) RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(k) ENERGY-EFFICIENCY RATING INFORMATION. Purchaser acknowledges that it has received a copy of The Florida Building Energy Efficiency Rating System Brochure as provided by the State of Florida, Department of Community Affairs, as required by Section 553.996, Florida Statutes.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, the Parties have executed this Purchase Agreement by their respective and duly authorized officers, the day on which the last of the Parties executes this Purchase Agreement.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PURCHASER:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Seller's Signature)

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

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

Printed Address: \_\_\_\_\_

Date: \_\_\_\_\_

**SELLER:**

**THE SCHOOL BOARD OF MIAMI-  
DADE COUNTY, FLORIDA**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
(Purchaser's Signature)

Printed Name: Alberto M. Carvalho.

Title: Superintendent of Schools

Printed Address: 1450 NE 2 Avenue #912  
Miami, Florida 33132

Date: \_\_\_\_\_

**TO THE BOARD:  
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

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

Printed Name: Walter J. Harvey, Esq.

Title: School Board Attorney

Date: \_\_\_\_\_

**ATTACHMENT "A"**

**Description of The Site:**

**Location:** 29 NW 13 Street, Miami, FL (Miami-Dade County)  
**Folio:** 01-3136-009-0420  
**Legal description:** Legal description to be determined by the parties based on Survey to be ordered by Bidder, certified to all parties to the transaction.

Subject to: All conditions, restrictions, easements, zoning and other limitations of record, if any.