REVISED AS OF 05.30.14

ATTACHMENT "D"

to

ITB #060-PP10

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: _____, 2014

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("**Purchase Agreement**") is made and entered into this _____ day of _____, 2014, 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**".

W I T N E S S E T H:

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 Invitation to Bid #060-PP10 ("**ITB**"), issued by Seller, which ITB 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 3.45 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 ITB, Purchaser delivered to the School Board an earnest money deposit equal to **TEN PERCENT (10%)** of the amount proffered by Purchaser in its bid (hereinafter referred to as the "**Bid Amount**"), to be held in escrow by the School Board Attorney's Office (the "**Escrow Agent**") in a non-interest bearing account (hereinafter referred to as the "**Deposit**"). The Deposit 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 July 14, 2014, unless extended by the Seller or its designee, in the Seller's sole discretion, 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 Bid Amount as described in the aforementioned ITB, subject to credits, prorations and adjustments, if any, as provided in the ITB and 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. Credit allowances, if any, proposed by Purchaser shall be subject to School Board approval, and approval thereof shall be in its sole discretion.

4. **Inspections; Title; and Survey**. Purchaser acknowledges that Seller granted Purchaser access to the 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 Property as Purchaser, its counsel, licensed engineers, surveyors, appraisers, or other representatives 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 July 14, 2014, unless such date is extended by the Seller or its designee, in the Seller's sole discretion ("**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 ITB 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 Special Warranty Deed, with no representation or warranty of any kind, subject to conditions, restrictions, easements and all limitations of record. 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 ITB and of this Purchase Agreement.

(c) All information provided and representations made by Purchaser (Successful Bidder) in the above-described ITB 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 July 31, 2014 ("**Closing Date**"), unless extended by the Seller, or its designee, at the sole discretion of the Seller, or as it may be provided in the ITB.

At Closing, the following shall occur:

(a) Seller shall execute and deliver to Purchaser the following documents with respect to the Property: (i) A Special Warranty Deed ("**Deed**") subject to all conditions, easements, restrictions limitations of record; 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 in accordance with wiring instructions provided by the Board Treasurer.

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. 2nd 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. 2nd Avenue, Suite 525

Miami, Florida 33132
Attention: Ana Rijo-Conde, Deputy Chief Facilities and Eco-Sustainability 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 Policies, 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 aforedescribed ITB 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 aforedescribed ITB 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.

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:_____
(Purchaser's Signature)
Printed Name:_____
Title:_____
Printed Address:
Date:_____

SELLER:

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

_____

_____

By:_____
(Seller'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: SW 74 Avenue and theoretical SW 43 Street

Folio: 3040230000197

Legal description: The West ½, of the Southwest ¼, of the Northeast ¼, of the Northwest ¼, of Section 23, Township 54 South, Range 40 East, LESS the North 49.63 feet and LESS the West 25 feet thereof, and LESS the South 120 feet of the East 60 feet thereof, according to Public Records of Miami-Dade County, Florida;

LESS the following:

A portion of land in the Southwest ¼ of the Northeast ¼ of the Northwest ¼ of Section 23, Township 54 South, Range 40 East, Miami- Dade County, Florida, being more particularly described as follows:

BEGIN at the NW Corner of Lot 14, Block 1 of "ALEJANDRE AND ALEJANDRE INDUSTRIAL PARK", according to the Plat thereof, as recorded in Plat Book 109, at Page 41 of the Public Records of Miami-Dade County, Florida; thence N00˚00'00"E along the East Right of Way Line of SW 74th Avenue for 100.00 feet; thence N89˚53'42"E along a line parallel to and 100.00 feet North of the South Line of the West ½ of the Southwest ¼ of the Northeast ¼ of the Northwest ¼ of Section 23, Township 54 South, Range 40 East for 249.45 feet to a point on a line parallel to and 60.00 feet West of the West Boundary Line of Tract "A" of "DAVMOR SUBDIVISION", according to the Plat thereof, as recorded in Plat Book 82, at Page 98 of the Public Records of Miami-Dade County, Florida; thence S00˚00'00"W along said line parallel to and 60.00 feet West of the West Boundary Line of said Tract "A" of "DAVMOR SUBDIVISION" for 100.00 feet; thence S89˚53'42"W along the South Line of the West ½ of the Southwest ¼ of the Northeast ¼ of the Northwest ¼ of said Section 23 for 249.45 feet to the Point of Beginning.

The entire subject Property consists of approximately 3.45 acres, more or less.