

THE SCHOOL DISTRICT OF PHILADELPHIA

SCHOOL REFORM COMMISSION

440 NORTH BROAD STREET - THIRD FLOOR
PHILADELPHIA, PENNSYLVANIA 19130

OFFICE OF GENERAL COUNSEL

SUSAN FETTERMAN
DIRECT DIAL: (215) 400-5630
E-MAIL: SCOSTELLO@PHILASD.ORG

TELEPHONE (215) 400-4120
FAX (215) 400-4121

April 29, 2013

Pita Oxholm
Nueva Esperanza, Inc.
4261 North 5th Street
Philadelphia, PA 19140

Re: *Agreement of Sale*
Project: Nueva Esperanza, Inc.
OGC Contract No.: 461/F13

Dear Pita Oxholm,

Enclosed is a fully executed Agreement of Sale for the project listed above.

If you have any questions, please do not hesitate to contact me.

Yours truly,



Susan Fetterman
Assistant General Counsel

Enclosure

AGREEMENT OF SALE
EXHIBIT "A"
SCHEDULE "Restrictions"

Conveyance of the Property granted by this Special Warranty Deed to the Grantee is under and subject to the following restrictions, conditions and covenants, which restrictions, conditions and covenants shall survive delivery of this Special Warranty Deed to the Grantee and shall run with the land:

1. **Covenant of Use.** For the period ending 5 years after the date of this Special Warranty Deed (the "Minimum Use Period"), Grantee shall not use, and shall not permit the Property to be used, for any purpose other than low income housing project (which may contain retail/commercial uses on the first floor of the building, provided such retail/commercial uses not to exceed, in aggregate, 33% of the total square footage of the building) (the "Permitted Use"). Within ten (10) days after Grantee's request, which may be made anytime and from time to time during the Minimum Use Period, Grantee shall certify to Grantor in writing that the Property is being used solely for the Permitted Use.

2. **Damages for Failure to Demolish.** Within 1 year after the date of this Special Warranty Deed (the "Covenanted Period"), Grantee shall cause all buildings currently on the Property to have been lawfully demolished, with all demolition debris lawfully removed from the Property, all in preparation for the construction of a building or buildings for the Permitted Use (the "Demolition").

Prior to the expiration of the Covenanted Period, Grantee shall provide Grantor with documentary evidence, and such additional information or documentation as Grantor may reasonably require, evidencing that Grantee has completed the Demolition ("Evidence"). If by the end of the Covenanted Period Grantee has not both (i) completed the Demolition, and (i) delivered the Evidence to Grantor, Grantee shall pay to the Grantor \$1,000 per month for each month after the end of the Covenanted Period that Grantee has not completed the Demolition or provided the Evidence (the "Monthly Payment"). The Monthly Payment shall be prorated on a per diem basis for any partial month in which Grantee has completed Demolition or provided the Evidence. The Monthly Payment shall be paid to the Grantor within ten days after the end of each month.

Grantee's obligation to pay the Monthly Payment shall be secured by a mortgage encumbering the Property (the "Grantor Mortgage") executed and delivered at Closing and/ or, in Grantor's sole discretion, a guaranty and suretyship agreement in favor of the Grantor. If, in connection with its acquisition of the Property, the Demolition, and/or construction of improvements, Grantee obtains a loan the proceeds of which are to be used by Grantee for one or more of the foregoing purposes (the "Third Party Mortgage"), the Grantor shall subordinate the Grantor Mortgage to the lien of the Third Party Mortgage.

3. **Anti-Speculation.** Within 4 years after the date of this Special Warranty ("Restriction Period"), Grantee shall not Transfer the Property without the prior written approval of the Grantor. For these purposes, a "Transfer" shall include a fee sale of the Property; a lease for more than 50% of the Property; or an assignment or transfer of any of the ownership interests in Grantee or of the entities that own such interests (but excluding transfers between the affiliates or partners of Grantee as of the date of this Special Warranty Deed).

Not fewer than thirty (30) days prior to any Transfer during the Restriction Period, the Grantee shall furnish to the Grantor (i) an appraisal, conducted by a licensed appraiser of the Grantor's choice, certifying that the consideration for the

Transfer represents fair market value of the Property or, as applicable, the interest conveyed; (ii) a written description of the interest that is the subject of the Transfer; (iii) the identity of the transferee of the interest that is the subject to the Transfer; (iv) a copy of the agreement of sale, lease or other agreement pursuant to which the Transfer is to be made. If the Grantor does not approve the Transfer, then the Transfer may not occur. If Grantor approves the sale, then on the effective date of the Transfer Grantee shall pay to Grantor (i) 100% of the Net Profits from the Transfer, if the Transfer is made within 1 year after the date of this Special Warranty Deed (the "Deed Date"); (ii) 75% of the Net Profits from the Transfer if made within 2 years after the Deed Date; (iii) 50% of the Net Profits from the Transfer, if made within 3 years after the Deed Date; and (iv) 25% of the Net Profits from the Transfer if made within 4 years after the Deed Date. Net Profits shall be defined as the amount by which the consideration that Grantee is to receive for the Property or transferred interest and the Grantee's Basis. "Grantee's Basis" means the (i) consideration paid by Grantee to Grantor as set forth in this Special Warranty Deed plus (ii) the cost of the improvements to the Property made by the Grantee (which shall include both hard and soft construction costs incurred by Grantee in connection with the construction or renovation of the Property) plus (iii) the customary transactional costs incurred by Grantee in buying and selling the Property or applicable interest, all as based on accepted accounting principles and the submission to the Grantor of reasonable evidence of Grantor's expenditures.

4. **Right of Entry/Power of Termination.** Grantee recognizes that, inter alia, Grantor agreed to convey the property by this Special Warranty Deed on the understanding that (i) it would be developed and used for the purpose of the Permitted Use and not for speculation in landholding or other uses and (ii) Grantee shall diligently develop the Property for the Permitted Use. Accordingly, if (a) Grantee fails to complete the Demolition within 1 year after the date of this Special Warranty Deed ("Development Period") or (b) Grantee fails to use the property for the Permitted Use during the Minimum Use Period (other than during construction of the Improvements/Renovations or due to force majeure), then Grantor shall have at any time after the Development Period and/or Minimum Use Period, as applicable, the right to reenter and retake the Property.
5. The time periods set forth in Sections 1,2,3,4 shall not be modified except by Resolution approved by a majority vote of the School Reform Commission at a public meeting.

AGREEMENT OF SALE
EXHIBIT "A"
SCHEDULE "Conditions"

For purposes of this Schedule, the "Project" means a low income housing project.

1. **Demolition Bids.** Promptly after the Effective Date, Buyer shall seek at least three (3) bids from reputable contractors for the demolition the existing structures on the Property, promptly providing Seller with copies of all bids obtained by Buyer with respect to such demolition. If Buyer is unsatisfied, in its discretion, with the cost of such demolition as reflected in such bids, Buyer may terminate this Agreement by providing written notice to Seller on or before the 180th calendar day after the Effective Date, time being of the essence ("**Demolition Termination Notice**"). If Buyer does not deliver the Demolition Termination Notice to Seller on or before the aforesaid date, Buyer's right to terminate the Agreement in accordance with this paragraph shall lapse and become null and void. If Buyer timely delivers the Demolition Termination Notice, this Agreement shall terminate and neither party shall have any further obligations hereunder, except those obligations that survive the expiration or termination of this Agreement.

2. **Zoning.** Promptly after the Effective Date, Buyer shall apply for and diligently seek all zoning approvals required to construct and operate the Project ("**Zoning Approvals**"). Buyer shall inform Seller in writing of the date on which it has made such application and shall keep Seller reasonably informed of the progress in obtaining the Zoning Approvals. Provided Buyer has used prompt, commercially reasonable efforts to obtain the Zoning Approvals (understanding that Buyer shall have no obligation to appeal any ruling of the Philadelphia Board of Zoning Adjustment), then if Buyer has not obtained the Zoning Approvals, Buyer may terminate this Agreement by providing written notice to Seller within 300 calendar days after the Effective Date, time being of the essence ("**Zoning Termination Notice**"). If Buyer does not deliver the Zoning Termination Notice to Seller on or before the aforesaid date, Buyer's right to terminate the Agreement in accordance with this paragraph shall lapse and become null and void. If Buyer timely delivers the Zoning Termination Notice, this Agreement shall terminate, and neither party shall have any further obligations hereunder, except those obligations that survive the expiration or termination of this Agreement.

4. **Financing.** Promptly after the Effective Date, Buyer shall promptly apply for and diligently seek (i) the next available round of low income housing tax credits ("**LIHTC**") (the application for which is currently anticipated to be due in October 2013) for the Project from the Pennsylvania Housing Finance Agency ("**PHFA**"); and (ii) such other sources of financing as Buyer, in its discretion, deems prudent or necessary to complete the Project (collectively, "**Financing**").

a. Provided that Buyer has made a full, complete timely, and good faith application for the LIHTC, if Buyer has not obtained Financing satisfactory to it in its sole discretion on or before the Financing Deadline, Buyer shall have the right to terminate this Agreement (the "**Financing Termination Right**") by providing written notice to Seller ("**Financing Termination Notice**"), time being of the essence. For avoidance of doubt, the parties understand and agree that the Financing Termination Right may be exercised if Buyer has not obtained the LIHTC or any other Financing.

b. "**Financing Deadline**" means the earlier of (i) the submission deadline for the next available round of LIHTC, if Buyer has failed to make a full and complete application to PHFA for the applicable LIHTC; (ii) five days after the denial of by PHFA of the LIHTC or (iii) 90 days after the approval by PHFA of LIHTC, provided that the applicable foregoing period may be extended as follows:

i. Denial of LIHTC

A. First Extension Option. If Buyer, in its sole discretion, wishes to extend the Financing Deadline until the announcement of the approval or denial of the next LIHTC cycle (the "**Second Round**") (but not more than 1 year after the initial Financing Deadline), it must (i)

demonstrate to Seller that it is diligently pursuing an application for the LIHTC for the Second Round and (ii) pay an additional \$10,000 deposit (the "**First Extension Deposit**") to the School District, which will become non-refundable if the Financing Termination Option is not exercised. Buyer must exercise the First Extension and pay the First Extension Deposit within ten (10) days after denial of the LIHTC, time being of the essence. Provided Buyer has complied with the foregoing, the Financing Deadline will be extended to either (i) the submission deadline for the Second Round if Buyer has failed to make a full and complete application to PHFA for the applicable LIHTC; (ii) five days after the denial of by PHFA of the Second Round LIHTC or (iii) 90 days after the award of the Second Round LIHTC.

B. Second Extension Option. If Buyer, in its sole discretion, wishes to extend the Financing Deadline until the announcement of the approval or denial of the next LIHTC cycle (the "**Third Round**") but not more than 1 year after the previously amended Financing Deadline), it must (i) demonstrate to Seller that it is diligently pursuing an application for the LIHTC for the Third Round and (ii) pay an additional \$10,000 deposit (the "**Second Extension Deposit**") to the School District, which will become non-refundable if the Financing Termination Option is not exercised. Buyer must exercise the Second Extension and pay the Second Extension Deposit within ten (10) days after denial of the LIHTC, time being of the essence. Provided Buyer has complied with the foregoing, the Financing Deadline will be extended to either (i) the submission deadline for the Third Round if Buyer has failed to make a full and complete application to PHFA for the applicable LIHTC; (ii) five days after the denial of by PHFA of the Third Round LIHTC or (iii) 90 days after the award of the Third Round LIHTC.

C. Third Extension Option. If Buyer is denied the LIHTC in the Third Round, either party may immediately terminate this Agreement. If neither party terminates this Agreement, then, if Buyer, in its sole discretion, wishes to extend the Financing Deadline until the announcement of the approval or denial of the next LIHTC cycle (the "**Fourth Round**") (but not more than 1 year after the previously amended Financing Deadline), it must (i) demonstrate to Seller that it is diligently pursuing an application for the LIHTC for the Fourth Round and (ii) pay an additional \$10,000 to the School District (the "**Third Extension Payment**"), which Third Extension Payment will become non-refundable immediately upon payment thereof, regardless of whether the Financing Termination Option is exercised. Buyer must exercise the Third Extension and pay the Third Extension Payment within ten (10) days after denial of the LIHTC, time being of the essence. Provided Buyer has complied with the foregoing, the Financing Deadline will be extended to either (i) the submission deadline for the Fourth Round if Buyer has failed to make a full and complete application to PHFA for the applicable LIHTC; (ii) five days after the denial of by PHFA of the Fourth Round LIHTC or (iii) 90 days after the award of the Fourth Round LIHTC.

ii. Award of LIHTC.

A. By way of background, the parties understand that after an award of the LIHTC, Buyer will need to obtain an investor with respect to the same in order to provide funding for the Project.

B. Accordingly, in the event the LIHTC is awarded to Buyer, Buyer shall have the right to extend the Financing Deadline by up to 270 days after the approval by PHFA of LIHTC, by providing written notice to Seller ("**Investor Extension Notice**"), and (ii) paying an additional \$10,000 to the School District (the "**Investor Extension Payment**"), which Investor Extension Payment will become non-refundable immediately upon payment thereof, regardless of whether the Financing Termination Right is exercised. Subject to the foregoing, the Financing Deadline will be extended to the time set forth in the Investor Extension Notice (but not more than 180 days). The Investor Extension Payment must be delivered to Seller and the Investor Extension Payment paid to Seller within sixty (60) days after award of the LIHTC, time being of the essence.

iii. For avoidance of doubt, Buyer's failure to timely deliver the applicable written notices described above, and to timely make the corresponding payment, shall result in the loss of

the applicable extension right and such right, and all subsequent extension rights, if any, shall be deemed null and void.

c. If Buyer does not deliver the Financing Termination Notice to Seller on or before the Financing Deadline, as it may be extended in accordance with the above, Buyer's right to terminate the Agreement pursuant to the Financing Termination Right shall lapse and become null and void. If Buyer timely delivers the Financing Termination Notice, then this Agreement shall terminate and neither party shall have any further obligations hereunder, except those obligations that survive the expiration or termination of this Agreement. Further, for avoidance of doubt, the parties understand:

(i) if Buyer duly delivers the Financing Termination Notice after the First Extension, then only the First Extension Deposit shall be refunded to Buyer;

(ii) if Buyer duly delivers the Financing Termination Notice after the Second Extension, then only the Second Extension Deposit (but not the First Extension Deposit) shall be refunded to Buyer;

(iii) if Buyer duly delivers the Financing Termination Notice after the Third Extension, then no deposit or payment shall be refunded to Buyer; and

(iv) if Buyer duly delivers the Financing Termination Notice after exercising the Investor Extension, the Investor Extension Payment is non-refundable and

(A) If Buyer has exercised only the First Extension Option, then only the First Extension Deposit shall be refunded to Buyer;

(B) IF Buyer has exercised the Second Extension Option (but not the Third Extension Option), then only the Second Extension Deposit shall be refunded to Buyer; and

(C) IF Buyer has exercised the Third Extension Option, no deposit or payment shall be refunded to Buyer.

d. If Closing occurs as required under this Agreement, then, if paid, the amount of the First Extension Deposit, the Second Extension Deposit, the Third Extension Payment, and the Investor Extension Payment shall be credited against the Transaction Costs.

**AGREEMENT OF SALE
EXHIBIT "B"
DESCRIPTION OF PROPERTY**

The "Property" is that certain approximately 6.263 acre parcel of ground legally described hereinafter, with all buildings, structures and improvements thereon, and together with all easements, rights of way, licenses, privileges, hereditaments and appurtenances, if any, belonging to or inuring to the benefit of the such ground.

The Property is located in the following zoning district: I-2 (Medium Industrial)

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected.

SITUATE in the 7th Ward of the City of Philadelphia and described according to a Plan and Survey made by Joseph E. Delany, Surveyor and Regulator of the 5th Survey District dated November 29th, 1954 to wit:

BEGINNING at the intersection of the Easterly side of 5th Street (60 feet wide) with the Southerly side of Lucerne Street (70 feet wide); thence extending South 78 degrees 39 minutes East along the said Southerly side of Luzerne street 289 feet 2 inches to a point of curve; thence extending on the arc of a circle curving to the right having a radius of 20 feet the arc distance of 42 feet 4 5/8 inches to a point of tangent on the Northwesterly side of Rising Sun Avenue (70 feet wide); thence extending South 42 degrees 45 minutes 45 seconds West along the said Northwesterly side of Rising Sun Avenue 384 feet and 5/8 of an inch to a point on the Northerly side of a 3 feet wide alley which extends Eastwardly into Rising Sun Avenue and Westwardly into a second 3 feet wide alley which extends Northwardly; thence extending North 78 degrees 39 minutes West along the Northerly side of the first above mentioned alley 28 feet and 7/8 of an inch to a point on the Easterly side of the second above mentioned 3 feet wide alley; thence extending North 11 degrees 21 minutes East along the said Easterly side of a second above mentioned 3 feet wide alley 45 feet 2 1/8 inches to a point; thence extending North 78 degrees 39 minutes West 78 feet to a point on the Easterly side of 5th Street and thence extending North 11 degrees 21 minutes East along the said Easterly side of 5th Street 313 feet to the point of intersection of said Easterly side of 5th Street with the Southerly side of Luzerne Street being the first mentioned point and place of beginning.

BEING No. 3921-61 North 5th Street.

BEING the same premises which Honeywell Inc. (A Delaware Corp.) by indenture bearing date the 17th day of March A.D. 1967, and recorded at Philadelphia, Penna. in Deed Book CAD No. 930 page 320 &c., granted and conveyed to Lawrence Katz and Samuel Rosenblum Co-Partners in fee

**AGREEMENT OF SALE
EXHIBIT "C"**

RESERVED

**AGREEMENT OF SALE
EXHIBIT "D"
SPECIAL WARRANTY DEED**

Prepared By:

Return To:

Parcel # _____

SPECIAL WARRANTY DEED

THIS INDENTURE is made the ___ day of _____ between School District of Philadelphia (hereinafter called the Grantor), of the one part, and _____ (hereinafter called the Grantee), of the other part.

WITNESSETH, that the Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto it well and truly paid by the Grantee, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain and sell, alien, enfeoff, release and confirm unto the Grantee, its respective successors and assigns,

ALL THAT CERTAIN lot or parcel of land situate in the City of Philadelphia, Philadelphia County, Commonwealth of Pennsylvania, bounded and described as set forth in the legal description attached to this Deed as Exhibit "A" and incorporated by reference.

UNDER AND SUBJECT to all covenants, conditions, restrictions, easements, rights of way, reservations, agreements, liens, exceptions, and other encumbrances of record, to the extent still valid, subsisting and enforceable, including, but not limited to those matters of record set forth in Exhibit "B" attached to this Special Warranty Deed and incorporated by reference, and further under and subject to those restrictions, covenants and conditions set forth in Exhibit "C" attached to this Special Warranty Deed and incorporated by reference.

TOGETHER with all and singular the buildings, improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the Grantor, in law, equity, or otherwise howsoever, of, in and to the same and every part thereof (collectively, the "Property").

TO HAVE AND TO HOLD the said lot or piece of ground above described with the buildings and improvements thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the Grantee, its successors and assigns, to and for the only proper use and behoof of the Grantee, its successors and assigns forever.

UNDER AND SUBJECT, as aforesaid.

AND the Grantor, for itself and its successors and assigns, does covenant, promise and agree, to and with the Grantee, its successors and assigns, by these presents, that it, the Grantor, and its successors and assigns, all and singular the buildings, hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the Grantee, its successors and assigns, against the Grantor and its successors and assigns, and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under it or any of them, shall and will, subject as aforesaid, WARRANT and forever DEFEND.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal. Dated the day and year first above written.

SCHOOL DISTRICT OF PHILADELPHIA

By: _____
Pedro A. Ramos, Esq.
Chairman
School Reform Commission

COMMONWEALTH OF PENNSYLVANIA :
 : SS
COUNTY OF PHILADELPHIA :

On this _____ day of August, 20___, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledgment him/herself to be the _____ of the School Reform Commission, acting on behalf of the School District of Philadelphia, a political subdivision of the Commonwealth of Pennsylvania, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the District by him/herself as such officer.

In Witness Whereof, I hereunto set my hand and official seal.

_____[SEAL]
Notary Public

My Commission Expires:

SPECIAL WARRANTY DEED
Exhibit "A"

Legal Description

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected.

SITUATE in the 7th Ward of the City of Philadelphia and described according to a Plan and Survey made by Joseph E. Delany, Surveyor and Regulator of the 5th Survey District dated November 29th, 1954 to wit:

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BEING No. 3921-61 North 5th Street.

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SPECIAL WARRANTY DEED
Exhibit "B"

All matters of record to the extent valid and subsisting, including but not limited to the following:

SPECIAL WARRANTY DEED
Exhibit "C"

Restrictive Covenants and Rights

Conveyance of the Property granted by this Special Warranty Deed to the Grantee is under and subject to the following restrictions, conditions and covenants, which restrictions, conditions and covenants shall survive delivery of this Special Warranty Deed to the Grantee and shall run with the land:

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2. **Damages for Failure to Demolish.** Within 1 year after the date of this Special Warranty Deed (the "Covenanted Period"), Grantee shall cause all buildings currently on the Property to have been lawfully demolished, with all demolition debris lawfully removed from the Property, all in preparation for the construction of a building or buildings for the Permitted Use (the "Demolition").

Prior to the expiration of the Covenanted Period, Grantee shall provide Grantor with documentary evidence, and such additional information or documentation as Grantor may reasonable require, evidencing that Grantee has completed the Demolition ("Evidence"). If by the end of the Covenanted Period Grantee has not both (i) completed the Demolition, and (i) delivered the Evidence to Grantor, Grantee shall pay to the Grantor \$1,000 per month for each month after the end of the Covenanted Period that Grantee has not completed the Demolition or provided the Evidence (the "Monthly Payment"). The Monthly Payment shall be prorated on a per diem basis for any partial month in which Grantee has completed Demolition or provided the Evidence. The Monthly Payment shall be paid to the Grantor within ten days after the end of each month.

Grantee's obligation to pay the Monthly Payment shall be secured by a mortgage encumbering the Property (the "Grantor Mortgage") executed and delivered at Closing and/ or, in Grantor's sole discretion, a guaranty and suretyship agreement in favor of the Grantor. If, in connection with its acquisition of the Property, the Demolition, and/or construction of improvements, Grantee obtains a loan the proceeds of which are to be used by Grantee for one or more of the foregoing purposes (the "Third Party Mortgage"), the Grantor shall subordinate the Grantor Mortgage to the lien of the Third Party Mortgage.

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Not fewer than thirty (30) days prior to any Transfer during the Restriction Period, the Grantee shall furnish to the Grantor (i) an appraisal, conducted by a licensed appraiser of the Grantor's choice, certifying that the consideration for the

Transfer represents fair market value of the Property or, as applicable, the interest conveyed; (ii) a written description of the interest that is the subject of the Transfer; (iii) the identity of the transferee of the interest that is the subject to the Transfer; (iv) a copy of the agreement of sale, lease or other agreement pursuant to which the Transfer is to be made. If the Grantor does not approve the Transfer, then the Transfer may not occur. If Grantor approves the sale, then on the effective date of the Transfer Grantee shall pay to Grantor (i) 100% of the Net Profits from the Transfer, if the Transfer is made within 1 year after the date of this Special Warranty Deed (the "Deed Date"); (ii) 75% of the Net Profits from the Transfer if made within 2 years after the Deed Date; (iii) 50% of the Net Profits from the Transfer, if made within 3 years after the Deed Date; and (iv) 25% of the Net Profits from the Transfer if made within 4 years after the Deed Date. Net Profits shall be defined as the amount by which the consideration that Grantee is to receive for the Property or transferred interest and the Grantee's Basis. "Grantee's Basis" means the (i) consideration paid by Grantee to Grantor as set forth in this Special Warranty Deed plus (ii) the cost of the improvements to the Property made by the Grantee (which shall include both hard and soft construction costs incurred by Grantee in connection with the construction or renovation of the Property) plus (iii) the customary transactional costs incurred by Grantee in buying and selling the Property or applicable interest, all as based on accepted accounting principles and the submission to the Grantor of reasonable evidence of Grantor's expenditures.

4. **Right of Entry/Power of Termination.** Grantee recognizes that, inter alia, Grantor agreed to convey the property by this Special Warranty Deed on the understanding that (i) it would be developed and used for the purpose of the Permitted Use and not for speculation in landholding or other uses and (ii) Grantee shall diligently develop the Property for the Permitted Use. Accordingly, if (a) Grantee fails to complete the Demolition within 1 year after the date of this Special Warranty Deed ("Development Period") or (b) Grantee fails to use the property for the Permitted Use during the Minimum Use Period (other than during construction of the Improvements/Renovations or due to force majeure), then Grantor shall have at any time after the Development Period and/or Minimum Use Period, as applicable, the right to reenter and retake the Property.
5. The time periods set forth in Sections 1,2,3,4 shall not be modified except by Resolution approved by a majority vote of the School Reform Commission at a public meeting.

SPECIAL WARRANTY DEED

SCHOOL DISTRICT OF PHILADELPHIA,
Grantor

to

Grantee

Premises: _____

Parcel #: _____

The address of the within-named Grantee is:

By: _____, Grantee

AGREEMENT OF SALE
EXHIBIT "E"

RIGHT OF ENTRY

Approved by the School Reform Commission

By Resolution A-18

On December 20, 2012

[Copy attached as Exhibit "A"]

Subject Property: Former Roberto Clemente Middle School
3921-3961 N. 5th Street
Philadelphia, PA

Licensee: Nueva Esperanza, Inc., a Pennsylvania corporation

Licensee's Address for Notice purposes:
Nueva Esperanza, Inc
4261 North 5th Street
Philadelphia, PA 19140
Attn: Pita Oxholm

With required copy to:

Art Haywood
Haywood LLC
21 S. 12th Street, 11th Floor
Philadelphia, PA 19107

Commencement Date: _____, 201_

RIGHT-OF-ENTRY AGREEMENT ("Agreement" or "Right-of-Entry")

The School District of Philadelphia ("School District") hereby authorizes Licensee, its agents, employees, consultants and contractors to enter upon the Subject Property, other than the Prohibited Areas (defined below), exclusively for the purpose of Environmental Testing, physical inspection, or property survey on the Subject Property. The Environmental Testing shall be made in such manner so that no adverse environmental impact will be made to the Subject Property or any other adjacent properties.

Notwithstanding anything herein to the contrary, Licensee may not enter areas designed by the Licensor's Office of Environmental Management as unsafe without protective gear (collectively, "Prohibited Areas.")

This Right-of-Entry is a non-transferable exclusive license only and no legal title or leasehold interest in the Subject Property shall be deemed or construed to have been created or vested in the Licensee by anything contained herein.

This Right-of-Entry shall commence upon the later of the Commencement Date or the execution of this Agreement by School District and continue from month to month until either party provides written notice of termination seven (7) days in advance (hereinafter "License Term") except that it shall expire of its own terms without notice 30 days after the date of execution of this agreement, and be automatically revoked if Licensee uses the Subject Property for any purposes other than those specified herein. Further, if Licensee and School District have entered into an agreement of sale for the Subject Property, this Right-of-Entry shall automatically be revoked if such agreement is terminated for any reason.

Exhibit E

Page 1

This Right-of-Entry is subject to the following conditions:

1. Reports. Licensee shall provide School District with one copy of all written reports, both preliminary and final, resulting from environmental surveys and all tests on the Subject Property conducted pursuant to this Right-of-Entry, including but not limited to what are commonly referred to as Phase I and Phase II environmental studies.

2. Indemnification.

A. General

(a) The Licensee for itself and on behalf of its contractors, subcontractors, employees, agents, invitees and sublicensees, shall, at their sole cost and expense, release, indemnify, defend, and satisfy all judgments and hold harmless the School District and its respective officers, agents, representatives, and employees from and against all claims, demands, suits, actions, judgments, costs, penalties, liabilities, damages, delays, losses and expenses (including attorneys' fees, defense costs, court costs and costs of suit), for or on account of death, injury, damage or loss to persons and/or property (including but not limited to employees of such Licensee or any of its contractors, subcontractors, employees, agents, invitees or sublicensees), or economic loss, damage or expense, in any way arising out of or resulting from work done in or on the Subject Property under this Agreement, or through the negligence of the Licensee or caused, in whole or in part, by any acts or omissions of the Licensee or any of its contractors, subcontractors, employees, agents, invitees or sublicensees, or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable (including Sub-subcontractors and material suppliers), regardless of whether or not it is caused in part by a party indemnified hereunder, or from the use of facilities or equipment furnished to the Licensee and/or any of his Subcontractors in connection with the performance of such work of such Licensee, and/or its contractors, subcontractors, employees, agents, invitees or sublicensees (including but not limited to all claims arising out of the operation of any law imposing liability out of the use of scaffolds, hoists, cranes, stays, ladders, supports or other mechanical contrivances, or any site conditions or site use).

(b) In any and all claims against the School District, the Licensee, its contractors, subcontractors, employees, agents, invitees or sublicensees, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or types of damages, compensation, or benefits payable by or for the Licensee, its contractors, subcontractors, employees, agents, invitees or sublicensees under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This indemnity provision is intended, inter alia., to protect the School District, its officers, agents, representatives and employees from all claims of employees or workers of the Licensee, its contractors, subcontractors, employees, agents, invitees or sublicensees who are injured on School District real property or as a result of School District personal property, from the commencement to the completion of this Contract, whether the death, injury, damage or loss to persons and/or property, or the economic loss, damage or expense, is due to School District negligence, in whole or in part, and is not limited to death, injury, damage or loss to persons or property, or economic loss, damage or expense, which occur in actual performance of this Agreement, nor is this indemnity provision limited by the Pennsylvania Worker's Compensation Act.

(c) No provision of this Paragraph shall give rise to any duties on the part of the School District, or any of their agents, representatives, or employees.

(d) Obligations of the Licensee, its contractors, subcontractors, employees, agents, invitees or sublicensees arising under this Paragraph shall survive termination or expiration of this Agreement.

(e) This indemnity provision is independent of whether or not the Licensee, its contractors, subcontractors, employees, agents, invitees or sublicensees has (have) insurance. This indemnity provision shall apply, particularly but not exclusively, to the claims of the Licensee and all of its contractors, subcontractors, employees, agents, invitees or sublicensees, and all of their respective

officers, agents, representatives and employees, against the School District and all its officers, agents, representatives and employees. Any violation of any of the provisions of this Paragraph by the Licensee and/or any of its contractors, subcontractors, employees, agents, invitees or sublicensees shall be deemed a material breach of this Agreement. The Licensee and all of its contractors, subcontractors, employees, agents, invitees or sublicensees and all their respective officers, agents, representatives and employees, shall have no claim against the School District, its officers, agents, representatives and employees for the acts, failures to act or negligence of the School District, directly or indirectly, or its officers and employees; and should this exculpatory clause be declared invalid by law, such invalidity shall in no manner affect or invalidate any or all other foregoing provisions in this Paragraph.

(f) Licensee shall be responsible for all damage caused to the Subject Property and for restoring the site to its original condition as may be determined by School District upon Licensee's vacating the site voluntarily or upon expiration of the term of this Agreement or upon revocation of this License because of use of the site for an unauthorized purpose.

B. Environmental. Licensee shall comply with and shall indemnify, defend and hold School District harmless from and against any action by any of its contractors or consultants which results in a release into the ground, air or water of any "Hazardous Substances" (defined below) (collectively referred to as the "Applicable Laws"). For purposes of this Agreement the term "Hazardous Substances" shall mean the following: (i) asbestos, flammables, volatile hydrocarbons, petroleum products, natural gas, and synthetic gas and shall include, but not be limited to, substances defined as "hazardous substances", "hazardous wastes", "toxic substances", "pollutants", or "contaminants" as those terms are used in any Applicable Laws; (ii) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine from time to time are harmful, toxic or dangerous or are otherwise required to be removed, cleaned up or remediated.. For purposes of this Agreement, the term "Contamination" shall mean the uncontained presence of Hazardous Substances in or on the Subject Property, or arising at any time from the Subject Property, which may require remediation or removal under any of the Applicable Laws. Licensee also shall indemnify, defend and hold the School District harmless from and against any fine which may be imposed on School District by any governmental agency as a result of the activities undertaken by Licensee under this agreement, and for the costs of any clean up or remediation of any condition found on the Subject Property which must be removed because the existence of same on the Subject Property violates any Federal, state or local laws governing the environment. Licensee shall contact School District's Environmental Manager with its plan for conducting environmental tests on the Subject Property prior to entry onto the site.

3. Insurance. Licensee shall carry and maintain or cause to be carried and maintained primary (not excess) policies of comprehensive public liability insurance for personal injury, death and property damage occurring on or to the Subject Property, with a contractual liability endorsement, professional liability and environmental liability insurance, as required in Exhibit "B." Except for Professional Liability Insurance, such policies shall be written on an occurrence (not claims made) basis and shall name School District as an additional insured. Said policy shall not be modified or permitted to expire without at least thirty (30) days prior written notice to School District and shall not expire prior to the expiration of the Statute of Limitations. All insurance shall be procured from reputable insurers who are financially responsible and authorized to do business on an admitted basis in the Commonwealth of Pennsylvania or which is otherwise acceptable to the School District's Office of Risk Management/Worker's Compensation.

4. Certificates of Insurance. Upon execution of this Agreement and prior to entry on the site, Licensee shall furnish School District certificates and policy endorsements evidencing the existence of the insurance required to remain in full force and effect during the License Term. The obligation to insure is separate and apart from any obligation by Licensee to indemnify, defend and hold School District harmless pursuant to Paragraph 2.

5. Condition of Premises; Release.

(a) Licensee acknowledges and agrees that Licensee's exercise of the License granted herein is subject to the "AS IS" condition of the Subject Property, including without limitation all defects

latent and patent; neither School District nor any other indemnified party make any representation as to the condition of the Subject Property.

(b) In consideration of the License granted to Licensee under this Agreement, Licensee does hereby remise, quitclaim, release and forever discharge, and by these presents does for Licensee's administrators, successors, and assigns, and Licensee's agents, employees, officers, board, contractors and subcontractors, and any person claiming under or through them hereby remise, quitclaim, release and forever discharge School District, its successors, assigns, agents, employees, officers and boards (acting officially or otherwise and whether or not any of them were negligent), from any and all, and all manner of, actions and cause of action suits, claims and demands whatsoever in law or in equity which Licensee, or any of them may have against School District, its successors, assigns, agents, employees, officers, or boards, relating in any way whatsoever to any and all access by Licensee, its agents, employees, contractors, subcontractors, officers, and/or board, in and/or on the Subject Property. Licensee hereby voluntarily assumes all risk of loss, damage, or injury, including death, that may be sustained by Licensee, its agents, employees, contractors, subcontractors, officers, or board while in, on or about the Subject Property, irrespective of cause.

6. Failure To Comply. If Licensee fails to comply with any provision of this Agreement, School District may automatically revoke this License without prior notice to Licensee.

7. No Agency. This Agreement shall not be deemed or construed to establish any agency relationship between School District and Licensee.

8. Miscellaneous.

(a) This Agreement sets forth all agreements and understandings between Licensee and School District relating to the subject matter hereof and there are no agreements or understandings, either oral or written, between them other than as are set forth in this Agreement. Any agreement hereafter made shall be ineffective to change, modify or amend this Agreement in whole or part unless such agreement has been executed by both School District and Licensee. No oral representations, whenever made, by any School District official or employee, or by any employee, agent or contractor of Licensee shall be effective to modify the terms of this Agreement.

(b) Notice provided for herein shall be in writing, delivered personally or mailed first class, postage prepaid addressed:

If to School District:

Office of Real Property Management
Philadelphia Education Center
440 N. Broad Street, Room 3152
Philadelphia, PA 19130
Attn: William Fox, Jr., Director

With a copy to:

Office of General Counsel
Philadelphia Education Center
440 N. Broad Street – Suite 313
Philadelphia PA 19130
Attn: Susan J. Fetterman, Assistant General Counsel

If to Licensee:

The address or addresses first set forth above.

(c) Governing Law. In the event of a dispute, this Agreement shall be construed under and governed by the laws of the Commonwealth of Pennsylvania. The Licensee also agrees that the situs of any court proceeding which may result from this Agreement shall be the Commonwealth of Pennsylvania.

[The Rest of This Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and their respective seals affixed hereto, and intending to be legally bound hereby, as of the _____ day of _____, 201_.

School District
SCHOOL DISTRICT OF PHILADELPHIA

By: _____

—
Pedro A. Ramos, Esq.
Chairman
School Reform Commission

Approved as to form only:

Susan J. Fetterman, Esquire
Attorney for the School District of Philadelphia

Licensee

By: _____
Name: _____
Title: _____

Witness

RIGHT OF ENTRY
EXHIBIT "A"

Resolution

RIGHT OF ENTRY
EXHIBIT "B"

Insurance Requirements

INSURANCE REQUIREMENTS: The Licensee shall, at its own expense, procure and maintain the types and minimum limits of insurance specified below covering the performance of the work and activities at the Subject Property. All insurance shall be procured from reputable insurers who are financially responsible and authorized to do business on an admitted basis in the Commonwealth of Pennsylvania or otherwise acceptable to the School District's Office of Risk Management. All insurance must be afforded by an insurance carrier with at least an A- (Excellent) rating from a reputable agency (e.g., A.M. Best). All insurance herein, except the professional liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall work be performed until the required evidence of insurance has been provided. The insurance shall provide for at least thirty (30) days prior written notice to be given to the School District in the event coverage is materially changed, cancelled or non-renewed. The School District of Philadelphia and its officers, employees and agents shall be named as additional insureds on the general liability insurance policy, and the policy shall be so endorsed. An endorsement is required stating that the coverage afforded the School District and its officers, employees and agents as additional insureds will be primary to any other coverage available to them and, that no act or omission of the School District or its officers, employees and agents shall invalidate the coverage, other than an act or omission that would constitute willful misconduct or gross negligence.

- a. **Workers' Compensation and Employer's Liability.**
 - i. Workers' Compensation: Statutory Limits.
 - ii. Employers' Liability: \$500,000 Each Accident - Bodily Injury by Accident; \$500,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
 - iii. Other states insurance coverage and Pennsylvania endorsement.
- b. **General Liability Insurance.**
 - i. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury;
 - ii. \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations. The School District may require higher limits of liability if, in the School District's sole discretion, the potential risk so warrants.

Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).

- iii. The School District may require higher limits of liability if in the School District's sole discretion, the potential risk so warrants.

- c. **Automobile Liability Insurance.**
 - i. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
 - ii. Coverage: Owned, non-owned, and hired vehicles.
- d. **Professional Liability Insurance.**
 - i. Limit of Liability: \$2,000,000 with a deductible not to exceed \$100,000.
 - ii. Coverage: Environmental contractors errors and omissions, including liability assumed under this Contract.
 - iii. Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of the performance of the services required under this Contract shall be maintained in full force and effect for a retroactive date prior to work and an extending reporting period of 36 months.

e. **Excess Umbrella Liability.**

- i. Limit of Liability: at least \$3,000,000.00 combined single limit, and at least \$3,000,000.00 aggregate limit with an additional insured endorsement for the School District on the liability policy.
- ii. Coverage: Limits in excess of underlying limits in underlying primary insurance policies and broader coverage than combined scope of underlying primary insurance policies.

f. **Environmental Liability/Contractor's Pollution Insurance.**

- i. Limit of Liability \$1,000,000 with a deductible not to exceed \$100,000
- ii. Coverage: Pollution Liability
 - (1) Remediation 5 Years Completed Operations
 - (2) Pay on behalf of in lieu of indemnity
 - (3) Occurrence form – Gradual and Sudden/Accidental Pollution
 - (4) Covered operations – all those performed by or on behalf of the Named Insured

g. **Certificates.** Certificates of Insurance evidencing the required coverages must specifically reference the School District contract number set forth on the first page of the Agreement for Services (the contract number can be typed in the 'Description' section of the certificate). The original certificate shall be submitted to the address below:

School District of Philadelphia
Office of Risk Management
Attn.: Jeffrey Marshall, Risk Manager
Philadelphia Education Center
440 N. Broad Street — Room 325
Philadelphia, Pa 19130

The certificate of insurance must be submitted to the School District at least ten (10) days before any contractual services or renewal term begins. Under no circumstances shall Licensee actually begin services (or continue services, in the case of renewal) without providing the evidence of insurance. School District reserves the right to require Licensee to provide certified copies of the original policies of all insurance required under this contract at any time upon ten (10) days written notice to the Licensee.

h. **Self-Insurance.** The Licensee may not self-insure any of the coverages required under this Contract without the prior written approval of the School District Risk Manager. In the event that the Licensee desires to self-insure any of the coverages listed above, it shall submit to the School District's Risk Manager, prior to the commencement of Services hereunder, a certified copy of the Contractor's most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., state approval) as may be requested by the School District's Risk Manager. In the event such approval is granted, it is understood and agreed that the School District, its commission members, board directors, officers, employees and agents shall be entitled to receive the same coverages and benefits under the Licensee's self-insurance program that they would have received had the insurance requirements been satisfied by a reputable insurance carrier authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the School District Risk Manager. If at the time of commencement of the Initial Term of this Contract, the Licensee self-insures its professional liability or workers' compensation and employers' liability coverage, the Licensee may, in lieu of the foregoing, furnish to the School District Risk Manager and School District a current copy of the State certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this Contract by the Licensee to the School District, or to limit the Licensee's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by the Licensee hereunder.

AGREEMENT OF SALE

THIS AGREEMENT OF SALE is made on 29 day of March 2013, between School District of Philadelphia ("**Seller**" or "**District**"), a political subdivision of the Commonwealth of Pennsylvania whose administrative offices are located at 440 N. Broad Street, Philadelphia, PA 19130, acting by and through the School Reform Commission ("SRC"), and Nueva Esperanza, Inc. ("**Buyer**"), a Pennsylvania nonprofit corporation, whose principal place of business is located at 4261 North 5th Street, Philadelphia, PA 19140. The words "Buyer" and "Seller" are individually sometimes referred to herein as "Party" and collectively as "Parties," and respectively include all Buyers and Seller listed above.

Background

A. By the SRC Resolution more fully described in Exhibit "A", attached to, and incorporated into, this Agreement (the "Resolution"), the school or District property identified as the "**Property**" in Exhibit "B," attached to and incorporated into this Agreement, was determined to be unused and unnecessary property for the School District.

B. The SRC authorized the District to list the Property for sale with a real estate broker identified in Exhibit "A" (the "Seller's Broker") who solicited interest in and marketed the Property. The School District subsequently solicited proposals for the purchase of the Property pursuant to School District Request for Proposal Number RFP00336CLM issued June 26, 2012 ("**RFP**").

C. Following an evaluation of all offers received under the foregoing process, the SRC determined that it had received the best offer from the Buyer.

D. Pursuant to the Resolution, the SRC authorized the District to sell the Property to Buyer, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the following mutual covenants, the Buyer and Seller intending to be legally bound, do covenant and agree as follows:

1. **Agreement to Sell and Purchase.** Subject to the terms and conditions of this Agreement, and in accordance with the Resolution, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller the Property.

2. **Purchase Price; Transaction Costs; Deposits.**

2.1 **Purchase Price.** The Purchase Price for the Property is set forth in Exhibit "A." The Purchase Price is payable subject to adjustments and credits expressly provided in this Agreement, shall be paid by Buyer at Closing. Notwithstanding anything herein to the contrary, there shall be no adjustments in Purchase Price with respect to any condition on or of the Property, including but not limited to environmental matters as further described below, discovered by Buyer during its environmental due diligence. Buyer's sole remedy for any environmental condition of the Property which is not satisfactory to Buyer is to terminate this Agreement by or prior to the end of the Environmental Due Diligence Period.

2.2. **Transaction Costs.**

i. At Closing, Buyer shall pay to Seller the Transaction Costs (defined below), provided that (i) if Closing occurs within one year after the Effective Date, Buyer's obligation to

pay the Transaction Costs shall not exceed \$50,000; (iii) if Closing occurs in the second year after the Effective Date, Buyer's Obligation to pay the Transaction Costs shall not exceed \$100,000; (iii) if Closing occurs in the third year after the Effective Date, Buyer's Obligation to pay the Transaction Costs shall not exceed \$150,000; and (iv) so on in the same way.

ii. "Transaction Costs" are (i) the Seller's reasonable, actual expenses for maintenance and security of the Property and all improvements thereon, including but not limited to Seller's personnel time; (ii) the cost of the appraisals and court costs for the application for approval of the sale of the Property to Buyer or a Permitted Assignee of Buyer in accordance with this Agreement by the Court of Common Pleas, as required by the School Code ; and (iii) reasonable additional costs, including but not limited to legal fees, incurred by the Seller in connection with the transaction.

2.3. Execution Deposit; Failure to Pay Deposits.

2.3.1. In acknowledgement of the costs to be incurred by Seller in connection with the sale of the Property, including, without limitation, the costs of maintaining the Property during the pendency of closing under this Agreement, and as a condition of Seller's willingness to enter into this Agreement, Buyer shall make the Execution Deposits described on Exhibit "A."

2.3.2. All deposits and payments shall be paid to Seller and applied as provided in this Agreement.

2.3.3 Buyer's failure to pay any deposit or payment to Seller as and when required in accordance with Exhibit "A", shall constitute a default under this Agreement, and Seller shall be entitled to exercise all rights and remedies available at law or in equity. Without limiting the foregoing or Seller's rights set forth in Article 15, Seller shall have the right, at its election, to terminate this Agreement by written notice to Buyer, where upon this Agreement shall be null and void and of no further force or effect, except for those obligations expressly stated to survive the termination of this Agreement, and neither Seller nor Buyer shall have any further liability or obligation to the other under this Agreement, except for those obligations expressly stated to survive the termination of this Agreement. Without limiting the foregoing, all deposits and payments made pursuant to Exhibit "A" prior to such default and termination of this Agreement, and all interest accrued thereon, if any, shall be retained by Seller. In the event that Seller terminates this Agreement, this Agreement shall become null and void and of no further force or effect, except for those obligations expressly stated to survive the termination of this Agreement, and neither Seller nor Buyer shall have any further liability or obligation to the other under this Agreement, except for aforesaid damages and those obligations expressly stated to survive the termination of this Agreement

3. Closing. Closing shall be held on the Closing Date, set forth in Exhibit "A," or such a date as Seller and Buyer shall mutually agree in writing at the office of Saul Ewing LLP, 1500 Market Street, Philadelphia, provided that the Conveyance Authorization has been obtained no fewer than 30 days prior to Closing.

4. Condition of Title.

4.1. Fee simple title to the Property shall be conveyed to Buyer in accordance with all of the provisions of this Agreement by a special warranty deed in the form attached hereto as Exhibit "D" (the "**Deed**"). Such title shall be good and marketable and shall be free and clear of all liens, judgments, assessments, encumbrances, easements, and encroachments, except as provided in Paragraph 14 and Deed Notices, if any, shown on Schedule "*Restrictions*" to Exhibit "A," and further excepting the following: existing building restrictions of record, ordinances, easements of record, privileges or rights of public service companies of record, if any. Except as provided herein, title to the Property shall be good and marketable or such as will be insured by a licensed title company at regular rates.

4.2. In the event Seller shall not be able to convey title to the Property on the date of Closing in accordance with the foregoing provisions of this Agreement, then Buyer shall have the option exercisable by written notice to Seller at or prior to the Closing of (a) accepting at Closing such title as

Seller is able to convey with no deduction from or adjustment of the Purchase Price or (b) declining to proceed to Closing; and in the latter event all obligations, liabilities and rights of the parties under this Agreement shall terminate, and the Deposit and all interest accrued thereon shall be returned to Buyer.

5. Condition of Property.

5.1. The Property is being conveyed "**As Is, Where Is,**" and Buyer hereby acknowledges and agrees that Buyer will accept the Property in its current condition based on its own environmental investigation of the Property without any representations or warranties from Seller or any consultant or contractor of Seller, express or implied, with respect to the condition of the Property, including but not limited to the environmental condition of the Property. Buyer further acknowledges that its offer to purchase the Property is based on Buyer's own inspection of the Property and not because of, or in reliance upon, any reports on the past or current condition of the Property which District may provide to Buyer.

5.2. Buyer shall have the right, during the Due Diligence Period to review the Due Diligence Documents (defined below). Seller agrees to make the Due Diligence Documents available to Buyer for inspection and copying, at the offices of Seller, at all reasonable times on Business Days during the Due Diligence Period upon at least twenty-four (24) hours prior written notice to Seller. Seller has not verified the accuracy of any statements or information contained in the Due Diligence Documents or any method used to compile the Due Diligence Documents. Seller has not made and does not make any representation or warranty of any kind whatsoever, whether oral or written, express or implied, statutory or otherwise with respect to the Due Diligence Documents. Buyer acknowledges it is not purchasing the Property based on any representations of District, the SRC, or their members, officers or administrators, employees, consultants, contractors, licensees or invitees, or any of its subconsultants or subcontractors, including, without limitation, the contents of the Due Diligence Documents. Buyer fully releases and will hold the District and SRC, their officers or administrators, employees, harmless from any liability with respect to any statements, omissions, inaccuracies or misrepresentations which may be contained in any of the Due Diligence Documents or any other materials supplied by District to Buyer, including, without limitation, marketing materials.

6. Release from Liability/Environmental Matters. Buyer, for itself and its successors and assigns:

6.1. releases and will defend and indemnify Seller from and against all claims which may hereafter be made against Seller by Buyer, its successors or assigns, for any cost or loss which may result from any violation of federal, state or local laws or regulations governing any hazardous or toxic substances or other contamination which may exist upon the Property on and after Closing including but not limited to costs or loss associated with the removal of any solid waste, asbestos, lead paint or above ground or underground storage tanks containing or at any time having contained hydrocarbon, the proper removal and disposal of any oil or contaminated soil, with the proper removal and disposal of all PCB's which exist in the transformers in or on the Property, and from any claim asserted by third parties who allege injury, including death, as a result of exposure to such contamination, at or subsequent to Closing. "Contamination" shall be defined as "the uncontained presence of asbestos or hazardous substances, including hydrocarbons, which may require remediation clean under applicable environmental law."

6.2. releases Seller from, and covenants not to sue Seller for, any right Buyer, its successors or assigns may have to seek contribution for remediation of any adverse environmental condition which may be assessed against Buyer, its successors and assigns under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 41 U.S.C.A. Section 9601 et seq. or from any other federal, state or local law or regulation, governing the environmental condition of the Property subsequent to Closing.

6.3. releases and will defend and indemnify Seller from and against all claims which may hereafter be made against Seller by any federal, state or local governmental entity for any cost or

loss which may result from any violation of federal, state or local laws or regulations governing any hazardous or toxic substances or other contamination created subsequent to Closing including but not limited to costs or loss associated with the removal of any solid waste, asbestos, lead paint or above ground or underground storage tanks containing or at any time having contained hydrocarbon and the proper disposal or any oil or contaminated soil, the removal and proper disposal of PCB's, and from any claim asserted by third parties who allege injury, including death, as a result of exposure to such contamination, at or subsequent to Closing.

6.4. Paragraphs 6.1, 6.2 and 6.3 shall survive Closing.

7. Due Diligence.

7.1. Provided Buyer has executed and delivered to Seller the Right of Entry Agreement in the form attached hereto as Exhibit "E" (or such other form as is mutually agreeable to Seller and Buyer), then as more fully provided in *Schedule "Conditions"* to Exhibit "A," but subject to the Right of Entry Agreement, Buyer shall, at its own expense, conduct any environmental tests, property inspections, or surveys of the Property which it deems sufficient to protect its interests. Copies of all reports shall be provided to Seller no later than (30) days prior to Closing. In the event Buyer elects to terminate the Agreement of Sale on or before the expiration of the Environmental Due Diligence Period as provided below, Buyer shall provide Seller with true and complete copies of all reports together with its notice of termination. Buyer for itself and on behalf of its employees, contractors and consultants, agrees to hold all information obtain with respect to the property in strictest confidence, except for those disclosures required by law. Buyer shall defend, indemnify and hold the Seller harmless from any loss Seller sustains or claims which may be filed against is as a result of buyer's breach of this confidentiality provision, which obligation shall survive Closing.

7.2. If Buyer's inspections and reviews, in Buyer's sole discretion, reveal unacceptable environmental conditions during the Environmental Due Diligence Period, Buyer may terminate this Agreement on or before the expiration of the Environmental Due Diligence Period by giving Seller written notification of such election ("Termination Notice") and this Agreement shall become null and void and of no force and effect and neither Seller nor Buyer shall have any further liability or obligation to the other under this Agreement, except for those obligations expressly stated to survive the termination of this Agreement. If Buyer does not deliver the Termination Notice to Seller within such period, the foregoing termination right shall be deemed to be, and shall be irrevocably, waived and Seller and Buyer shall proceed to Closing as set forth in this Agreement.

7.3. In addition to Buyer's release of, or indemnification of Seller, as may be set forth elsewhere in this Agreement, Buyer, for itself, its employees, contractors and consultants hereby further agrees to indemnify, defend, and hold the Seller harmless from and against all claims for personal injury or property damage or claims for releases or discharge of hazardous or toxic substances which result from Buyer's tests or inspections of the Property as specified in more detail in the Right of Entry Agreement. This provision shall survive Closing.

7.4. Buyer shall be required to provide Seller for itself and shall require any of its consultants and contractors to provide Seller with Certificates of Insurance evidencing the coverage contained in the Insurance Requirements attached to the Right of Entry Agreement.

8. Expenses; Apportionment.

8.1. Buyer shall bear any and all expenses made necessary by reason of this transaction, or desired by Buyer in condition therewith, including any surveys, plots plans or legal descriptions, title searches, title insurance, Buyer's normal settlement costs, recording of the Deed, 100% of all state and local real estate transfer taxes, and any property taxes assessed against the Property for the calendar tax year during which Closing occurs. Seller is exempt from payment of both the state and city real estate transfer tax under Section 19-1404 of the Philadelphia Code and under 72 P.

S. 8102-C.2 of the Tax Reform Code of 1971, however, Seller's exemption does not relieve any other party to a transaction from liability for the tax imposed by law.

8.2. Seller shall bear any and all expenses incurred in seeking the Conveyance Authorization. Nothing herein, however, shall modify or limit Buyer's obligation to pay the Transaction Costs.

8.3. Charges for water and sewer rent shall be prorated on a per diem basis as of Closing. If the consumption of any of the foregoing is measured by meters, then Seller shall (subject to the cooperation of the utility provider), not earlier than two (2) days preceding the date of Closing, obtain a reading of each such meter and Seller shall pay all charges. If the bills for any of the foregoing have not been issued prior to the date of Closing, the charges therefore will be adjusted at the Closing on the basis of reading by the parties and shall be further adjusted when bills for the current period are issued. Seller and Buyer shall cooperate to cause the transfer of the Property's utility accounts from Seller to Buyer.

9. **No Contingencies.** Except as expressly set forth, if at all, on Exhibit "A", this Agreement is expressly made with no zoning, mortgage, or financing contingencies. Seller makes no representation that the Property is free and clear of any L & I violations or any violations of other, federal, state or local laws.

10. **Conveyance; Conveyance Authorization.**

10.1. Provided that Buyer has delivered the Deposits, if applicable, then upon the expiration of the Due Diligence Period, Seller shall, at its sole cost and expense, diligently and in good faith seek the Conveyance Authorization. This Agreement is expressly contingent upon the obtaining of the Conveyance Authorization in a final, unappealable form.

10.2. At Closing Seller shall deliver to Buyer the Deed duly executed by the proper officers of the Seller.

11. **Zoning and Subdivisions.** Buyer shall be solely responsible for obtaining all necessary zoning, subdivision, sewage disposal or other approvals necessary for Buyer's use of the Property for its intended purpose.

12. **Covenants, Representations and Warranties of Seller.** Seller covenants, represents and warrants to Buyer as follows:

12.1. Seller has the power and authority to sell, transfer, convey and deliver the Property to be sold and purchased hereunder, subject only to receipt of the Conveyance Authority.

12.2. The execution and delivery of this Agreement, the consummation of the transaction provided for herein and the fulfillment of the terms hereof will not result in a breach of any of terms or provisions of or constitute a default under any agreement of Seller or any instrument to which Seller is a party or by which Seller or the Property is bound, or any judgment, decree or order of any court or government body, or any applicable law, rule or regulation.

12.3. All representations and warranties of Seller contained in this Agreement shall have been true and correct when made and correct on the date of Closing.

13. **Representations and Warranties of Buyer.** Buyer represents and warrants to Seller as follows:

13.1. If Buyer is indicated on Exhibit "A" to be a Charitable Organization, then Buyer represents and warrants that (i) Buyer is a Charitable Organization as comprehended by The Public School Code, 24 P.S. 7-701(7.1); (ii) Buyer has not received any notice that its status as a Charitable Organization is or will be revoked or is threatened to be revoked; and (ii) to Buyer's knowledge there are

no facts or circumstances that with the passage of time or the giving of notice would jeopardize its status as a Charitable Organization.

13.2. Buyer has the power, authority and will have the financial resources to purchase the Property hereunder in accordance with the terms of this Agreement.

13.3. The execution and delivery of this Agreement, the consummation of the transaction provided for herein and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of or constitute a default under any agreement of Buyer or any instrument to which Buyer is a party or by which Buyer is bound or of any court or governmental body or any applicable law, rule or regulation.

13.4. Buyer intends to use the Property for the Intended Use, as defined in Exhibit "A" for at least the Minimum Period, as defined in Exhibit "A."

13.5. All representations and warranties of Buyer contained in the Agreement shall have been true and correct when made and shall be true and correct on the date of Closing.

14. Post-Closing Covenants Respecting the Property. Buyer acknowledges that Seller is relying on the representation set forth in Section 13 with respect to the Intended Use and Minimum Period, and in that regard Buyer agrees to the Restrictions And Rights set forth in Exhibit "A," if any.

15. Default.

15.1. In addition to Seller's rights and remedies set forth in Section 2.2, in the event that the Buyer shall default in its obligation to acquire the Property as herein provided (and Seller is ready, willing and able to convey title as required herein), and fails to cure a monetary default within five (5) days or a non-monetary default within thirty (30) days of notice of such default to Buyer, but in no event any later than the date of Closing, then and in that event, as Seller's exclusive remedies: (i) any payments or deposits made to the Seller that were not already non-refundable shall become non-refundable and retained by Seller, and (ii) Buyer shall pay the Transaction Costs (without cap) to Seller, all as full liquidated damages, and thereafter, this Agreement shall terminate and be null and void and of no further force or effect, except for those obligations expressly stated to survive the termination of this Agreement

15.2. In the event the Seller shall default in its obligation to convey title and exclusive possession of the Property, or otherwise, except as may be herein otherwise provided, and fails to cure such default within thirty (30) days) of notice of such default to Seller, then and in that event, but in no event any later than the date of Closing, as Buyer's exclusive remedy, Buyer shall have the right to terminate this Agreement and receive a prompt refund (if paid) of the Execution Deposit, First Extension Deposit, the Second Extension Payment, the Investor Extension Payment, and the Good Faith Proposal Deposit, and thereafter, this Agreement shall terminate and be null and void and of no further force or effect, except for those obligations expressly stated to survive the termination of this Agreement.

16. Damage or Destruction.

16.1. Risk of loss to the Property from fire or other casualty shall be borne by Seller until Closing. If the Property or any portion thereof is damaged or destroyed by fire or other casualty prior to Closing and Seller is unable or fails to restore by the date established for Closing the damaged portion of the Property to a condition equivalent to that which existed immediately prior to the casualty, Buyer shall have the option to terminate this Agreement, in which event any payments or deposits that are not otherwise non-refundable to the Buyer, shall be returned to the Buyer and this Agreement shall be deemed null and void and the parties hereto shall have no further obligation to or recourse against each other with respect to the matters provided for herein, except for those obligations expressly stated to survive the termination of this Agreement. If Buyer elects not to terminate this Agreement as provided in this Paragraph, the transaction shall proceed as contemplated herein (without reduction of Purchase

Price) in which event Buyer shall be entitled to receive all insurance proceeds and/or an assignment of rights thereto to which Seller shall be entitled (to the extent such proceeds do not exceed the Purchase Price). These rights expressly set forth in this Paragraph shall be the Buyer's sole remedies in the event of fire or other casualty.

16.2. All existing casualty insurance policies respecting the Property shall be maintained and kept in full force and effect by Seller pending Closing. Seller makes no representations with respect to the sufficiency of such policies.

17. **Guaranty.** If Exhibit "A" indicates that Buyer's obligations under this Agreement are guaranteed by Guarantor, then Buyer acknowledges that Seller would not have executed this Agreement with Buyer unless Guarantor agreed to execute the Guaranty described in Exhibit "A" and, further, Seller shall not be obligated under this Agreement unless and until the Guaranty is duly executed by Guarantor and delivered to Seller.

18. **Notices.** Any notices required or permitted to be given under this Agreement shall be given in writing and shall be delivered (a) in person, (b) by a commercial overnight courier that guarantees next day delivery and provides a receipt, or (c) email (followed by hard copy sent concurrently with such email, in accordance with preceding subsections (a) or (b)), and such notices shall be addressed as follows:

If to Seller:

William Fox Jr., Director
Real Property Management
School District of Philadelphia
Philadelphia Education Center
440 N. Broad Street – Room 3152
Philadelphia, PA 19130
Email: wfox@philasd.org

With copies to:

Susan J. Fetterman, Assistant General Counsel
Office of General Counsel
School District of Philadelphia
Philadelphia Education Center
440 N. Broad Street – Room 313
Philadelphia, PA 19130
Email: scostello@philasd.org

If to Buyer:

The address or addresses set forth on Exhibit "A".

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon receipt (or refusal by the intended recipient to accept delivery). Notice given by email shall be effective upon receipt of such email (subject to the requirement that hard copy be sent concurrently in accordance with this Section); however, if the email is received after 5:00 p.m. prevailing local time at the time of receipt, notice by email shall not be effective until the next business day.

19. **Time of the Essence.** All times provided for herein are and shall be of the essence of this Agreement, and each extension of any such tie or times shall continue to be of the essence of this Agreement.

20. Brokers. Seller and Buyer represent and warrant to each other that no broker or finder other than Seller's Broker and, if indicated on Exhibit B, Buyer's Broker, was instrumental in arranging or bringing about this transaction and that there are no claims or rights for commissions, finders' fees or other compensation (collectively, "compensation") by any person or entity other than the Seller's Broker and Buyer's Broker. Pursuant to a separate agreement between Seller and Seller's Broker, Seller shall be solely responsible for all compensation payable to Seller's Broker and Seller shall have no obligation to pay any compensation to Buyer's Broker. Buyer shall be solely responsible for payment of all compensation owing to Buyer's Broker, except to the extent Seller's Broker has, by separate arrangement, agreed to pay some or part of such compensation. If any broker or finder asserts a claim for compensation based upon any actual or alleged contact, dealings or communication with Buyer or Seller, then the party through whom such broker or finder makes its claim shall indemnify and hold the other party (the "Indemnified Party") harmless from and against any and all claims, damages, judgments, suits, liabilities, losses, costs and expenses (including without limitation, reasonable attorneys' fees and court costs) suffered or incurred by or brought against the Indemnified Party in connection with such claim for compensation. The provisions of this Article 20 shall survive the Closing or, if the Closing does not occur, any termination of this Agreement.

21. Miscellaneous.

21.1. The captions in this Agreement are inserted for reference only and do not define or limit any of the provisions hereof.

21.2. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, and legal representatives. Neither Party may assign its rights under this Agreement without the written consent of the other Party.

21.3. Any public announcement made in regard to this Agreement, including without limitation, any press releases, shall be subject to the prior written approval of Seller.

21.4. Each Party if it has not done so, shall prior to Closing, advise the other Party of their Taxpayer Identification Number.

21.5. This Agreement shall not be recorded.

21.6. This Agreement and the Right-of-Entry Agreement, if applicable, are the entire and only Agreement between the Buyer and Seller and contains the entire understanding and agreement between the Parties. This Agreement replaces and cancels any previous agreements between the Buyer and Seller. This Agreement can only be changed by an agreement in writing signed by both Buyer and Seller.

21.7. Whenever the singular number is used herein, the same shall include the plural where appropriate and words of any gender shall include each other gender where appropriate.

21.8. Exhibits referred to herein are incorporated herein and made a part hereof.

21.9. Formal tender of an executed deed and purchase money are hereby waived.

21.10. Except as otherwise expressly stated in this Agreement, all liabilities, obligations, covenants, representations and warranties of Seller shall be deemed to merge with the deed, and shall not survive the Closing.

21.11. *Patriot Act; Executive Order 13224; Anti-Money Laundering Act.* Buyer represents and warrants that (a) no Benefited Party is a Prohibited Person, and (b) no Benefited Party is in violation of the Executive Order, the Patriot Act, the Anti-Money Laundering Act, or any order, rule, regulation or recommendation promulgated under or in connection with the Executive Order, the Patriot Act or the Anti-Money Laundering Act. This representation and warranty shall be continuing and shall be

deemed remade by Buyer as of the Closing Date, with the same force and effect as if made on, and as of, the Closing Date. Seller shall have the right to terminate this Agreement in the event of any breach of the foregoing representation and warranty. "Prohibited Person" shall mean any person or entity with whom US persons or entities are prohibited or restricted from doing business pursuant to (a) the Executive Order and the Annex thereto, (b) the regulations of the Office of Foreign Asset Control of the Department of the Treasury (including the Specially Designated Nationals and Blocked Persons List, as updated from time to time, or (c) any other statute, law, executive order, rule, regulation or other governmental action. "Benefited Party" shall mean (a) Buyer, (b) any officer, director, shareholder, partner or member of Buyer, (c) any direct or indirect holder of any equity interest in Buyer, and (d) any Affiliate of Buyer. "Executive Order" shall mean Executive Order 13224 signed on September 24, 2001 and titled "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism." "Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (as amended). "Anti-Money Laundering Act" shall mean the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 (as amended).

21.12. *Governing Law; Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. For the purposes of any suit, action or proceeding involving this Agreement, Buyer and Seller hereby expressly submit to the jurisdiction of the state courts for Philadelphia County, Pennsylvania and the federal courts for the Eastern District of Pennsylvania, as well as all courts from which an appeal may be taken from the aforesaid courts, and agree that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered or certified mail or by personal service, provided that a reasonable time for appearance is allowed. Buyer and Seller agree that such courts shall have the exclusive jurisdiction over any such suit, action or proceeding commenced by any party. In furtherance of such agreement, Buyer and Seller agree upon the request of the other party to discontinue (or agree to the discontinuance of) any such suit, action or proceeding pending in any other jurisdiction. Each party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any of the afore referenced courts and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

21.13. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21.14. *Transmission of Agreement by Facsimile or PDF.* The transmission of a signed counterpart of this Agreement by facsimile or by portable document file ("PDF") shall have the same force and effect as delivery of an original signed counterpart of this Agreement, and shall constitute valid and effective delivery for all purposes. Without limiting the generality of the foregoing, transmission by facsimile or PDF shall have the same force and effect as delivery of an original signed counterpart of this Agreement for purposes of determining the Effective Date. If either party delivers a signed counterpart of this Agreement by transmission of a facsimile or PDF, it shall also send promptly thereafter by overnight courier or personal delivery a signed original counterpart of this Agreement to the other party, but failure to do so shall not render this Agreement void or voidable by either party.

21.15. *Automatic Extension.* In the event that the date for performance of any duty or obligation, exercise of any right or option or giving of any notice shall occur upon a Saturday, Sunday or legal holiday, the due date for such performance, exercise or giving of notice shall be automatically extended to the next succeeding business day.

21.16. **WAIVER OF TRIAL BY JURY. EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT, THE ASSETS, OR ANY**

CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS PERTAINING HERETO OR TO ANY OF THE FOREGOING.

21.17. *Joint and Several Liability.* If more than one Person has signed this Agreement as Buyer, the liability of such Persons shall be joint and several, subject, however, to any limitations on liability set forth in this Agreement.

21.18. *Real Estate Tax Assessment.*

a. Subject to the Conditions set forth in Subsection 21.18(b) below, prior to Closing, Seller agrees that Buyer shall have the one-time right, at its sole cost and expense, to appeal the Property's real estate tax assessment to the Board of Revision of Taxes of the City of Philadelphia ("BRT"). Seller agrees to cooperate, at Buyer's expense, as may be reasonably necessary to file and prosecute such appeal, including, without limitation, signing such reasonable written authorization as may be required to afford Buyer standing in such appeal. Notwithstanding the foregoing, however, Seller shall not be obligated to provide witnesses, testimony, or to participate in the appeal process, except as Seller may agree in its sole discretion. The foregoing is limited to Buyer's appeal of the Property's assessment before the BRT, and shall not apply with respect to any subsequent appeal of the BRT's decision, except in Seller's sole discretion.

b. Seller's agreement to permit Buyer to pursue the appeal is conditioned on the following (collectively, "Conditions"): (i) Buyer shall not be in default of this Agreement; (ii) simultaneously with filing the appeal application with the BRT, and any amendments or supplements thereto, Buyer shall provide Seller with true and complete copies of the same; (iii) Buyer shall keep Seller informed with respect to the status of the appeal application, including, without limitation, providing Seller with prompt written notice of the date, time and location, of all BRT hearing(s) regarding the appeal; (iv) Buyer shall make no representations or warranties on behalf of the Seller; (v) Buyer shall not enter into any settlement agreement with the BRT, the City of Philadelphia, or any other person or entity with respect to the Property's real estate tax assessment without Seller's prior consent, which consent, which shall not be unreasonably withheld. If this Agreement is terminated for any reason, Buyer shall, at its sole cost and expense, promptly withdraw the appeal or, at Seller's request, permit Seller to assume the prosecution of the appeal, in which event the costs thereafter incurred shall be the responsibility of Seller.

21.19 *Drafts not an Offer to Enter into a Legally Binding Contract.* The submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Assets. The parties shall be legally bound with respect to the purchase and sale of the Assets pursuant to the terms of this Agreement only if and when Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement.

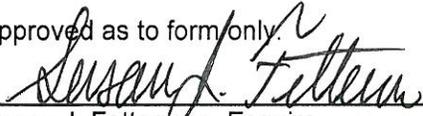
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year first above written.

Seller:

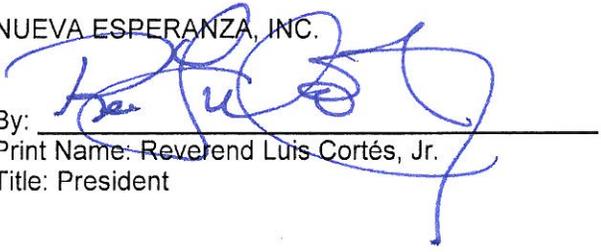
SCHOOL DISTRICT OF PHILADELPHIA

By: 
Pedro A. Ramos, Esq.
Chairman
School Reform Commission

Approved as to form only.

Susan J. Fetterman, Esquire
Attorney for the School District of Philadelphia

Buyer:

NUEVA ESPERANZA, INC.

By: 
Print Name: Reverend Luis Cortés, Jr.
Title: President

AGREEMENT OF SALE

EXHIBIT "A"

ADDITIONAL PROVISIONS AND TERMS

1. **Resolution:** Pursuant to Resolution #A-18, approved December 20, 2012, the Property was determined to be unused and unnecessary property for the School District. The Property is more fully described in Exhibit B, attached to, and incorporated in, this Agreement.

2. **Resolution:** A copy of the Resolution is attached to this Exhibit "A" as *Schedule "Resolution"*.

3. **Brokers**

Seller's Broker: Concordis Real Estate Advisors of PA-NJ-DE, LLC
Buyer's Broker: None

4. **Purchase Price:** One Dollar (\$1.00)

5. **Execution Deposit:**

Buyer shall pay to Seller a \$10,000 deposit ("**Execution Deposit**") by wire transfer of immediately available funds, on the first Business Day following the date on which this Agreement has been executed by both Parties ("**Effective Date**"). The Execution Deposit is non-refundable, regardless of whether Buyer terminates this Agreement in accordance with any right granted under this Agreement; however, if Closing occurs, the amount of the Execution Deposit will be credited against Transaction Costs.

6. **Good Faith Proposal Deposit.** Seller is in receipt of a Good Faith Proposal Deposit in the sum of \$2,500.00, which was paid to Seller pursuant to the RFP process. Buyer has no right, claim or interest in the Good Faith Proposal Deposit, nor to any interest thereon, except that if Closing occurs, the amount of the Good Faith Proposal Deposit will be credited against Transaction Costs.

7. **INTENTIONALLY DELETED.**

8. **Closing Date:** Thirty (30) days after the expiration of the Financing Deadline (defined in *Schedule "Conditions"* to this Exhibit "A"), as the same may be extended from time to time.

9. **Charitable Organization:** [Check if applicable]

Buyer is a Charitable Organization holding exempt status under Section 501(c)(3) of the Internal Revenue Code, as comprehended by The Public School Code, 24 P.S. 7-7-7(7.1).

10. **Conveyance Authorization:** [Check as applicable]

Not applicable

Seller will seek an unappealable court order authorizing Seller to convey the Property to Buyer as provided by The Public School Code, 24 P.S. 7-707(3).

_____ Seller has received the approval to convey the Property to Buyer in accordance with this Agreement by two-thirds of the members of the SRC as provided by The Public School Code, 24 P.S. 7-701(7.1).

Other: If, and as, required by applicable law or as determined by the SRC, Seller shall have received the approval to convey the Property to Buyer and/or to Permitted Assignee, in accordance with this Agreement (i) by two-thirds of the members of the SRC as provided by The Public School Code, 24 P.S. 7-701(7.1); and/or (ii) an unappealable court order authorizing Seller to convey the Property to Buyer as provided by The Public School Code, 24 P.S. 7-707(3).

11. **Deed Notices:** [Check if applicable]

_____ In addition to any notices required by law or under the Agreement, the Deed shall contain the notices set forth in the *Schedule "Deed Notices"* attached to this Exhibit "A."

12. **Environmental Due Diligence Period.** The period from the Effective Date through and including ninety (90) days thereafter.

13. **Conditions.** The Agreement is subject to the following conditions: [if nothing checked, then none]

Financing Contingency attached to this Exhibit "A" as *Schedule "Conditions."*

Other Contingency attached to this Exhibit "A" as *Schedule "Conditions."*

14. **Uses.**

Intended Use: A low income housing project which may include retail/commercial uses on the first floor of the building (such retail/commercial uses not to exceed, in aggregate, 33% of the total square footage of the building)

Minimum Period: Five (5) years after the delivery of the Special Warranty Deed.

15. **Restrictions and Rights.** [Check if applicable]

Title to the Property shall be subject to the restrictions and rights set forth in *Schedule "Restrictions"* attached to this Exhibit "A," and such restrictions and rights shall be incorporated in the Deed as Exhibit C thereto.

16. **Guarantor.** [Check if applicable]

_____ Buyer's obligations under this Agreement are guaranteed by _____ in accordance with the Guaranty attached to this Exhibit "A" as *Schedule "Guaranty."*

17. **Buyer's Address for Notice purposes.**

Nueva Esperanza, Inc
4261 North 5th Street
Philadelphia, PA 19140
Attn: Pita Oxholm

With required copy to:
Art Haywood
Haywood LLC
21 S. 12th Street, 11th Floor
Philadelphia, PA 19107

18. **Permitted Assignment.** Notwithstanding the provisions of Section 21.2 of the Agreement to the contrary, Buyer may assign this Agreement to a Permitted Assignee (defined hereinafter). Buyer shall provide Seller with written notice of an assignment to a Permitted Assignee ("Assignment Notice"), which Assignment Notice shall include (i) a full, complete and true copy the fully executed assignment document (the "Assignment"); and (ii) shall contain reasonable evidence that such assignee is a Permitted Assignee. The Assignment Notice shall be delivered to Seller not more than two (2) business days after full execution of the Assignment. A "Permitted Assignee" is (Y) an entity controlled by Buyer or under common control with Buyer or an entity that is limited partnership whose general partner is controlled by, or under common control with, with Buyer; and (Z) and entity formed to take ownership of the Property for the specific purpose of facilitating LIHTC equity investment funding for the Project. Without limiting any other provisions of this Agreement, Buyer shall be solely responsible for any realty transfer tax that may arise or become due in connection with any assignment of this Agreement by Buyer or its assignees.

**AGREEMENT OF SALE
EXHIBIT "A"
SCHEDULE "Resolution"**

[Attached]

To: Members of the School Reform Commission

From: William D. Fox, Jr.
Director, Real Property Management

Date: December, 2012

Subject: Sale of School District surplus property located at 3921-3961 N. 5th Street, known as the former Roberto Clemente Middle School

Resolved, that the School Reform Commission (the "SRC") hereby declares that certain 2.3 acre parcel of ground, including a six-story building of approximately 239,072 square feet, located at 3921-3961 N. 5th Street, also known as the "Roberto Clemente Middle School" (the "Property"), to be unused and unnecessary to the present and future needs of the School District of Philadelphia within meaning of Section 707 of the Public School Code of 1949, as amended, 24 P.S. Sec. 7-707 (hereinafter referred to as "Section 707"); and be it

Further Resolved, that the School Reform Commission may, pursuant to Section 7-707(3), sell surplus real estate at private sale. The sale is subject to the approval of the Court of Common Pleas on petition of the SRC, which petition shall include, among other things, an affidavit of appraisers familiar with the Property that the price offered therefore is a fair and reasonable one and is a better price than could be obtained at a public sale; and be it

Further Resolved, that the School Reform Commission (SRC) authorizes the School District of Philadelphia ("Seller"), through the Superintendent or his designee, to:

1. Execute an Agreement of Sale (the "Agreement") for the sale of the Property on an "AS IS" basis to a for-profit entity to be formed and owned by principals of Nueva Esperanza, LLC (the "Buyer") for \$1.00 and other good and valuable consideration, representing an amount higher than the most current appraisal, and under certain terms and conditions which may be negotiated between the parties, subject to the requirements of Pennsylvania law and the further provisions of this Resolution;
2. Include in the Agreement of Sale and Deed covenants regarding (i) the prompt demolition and construction of a new building on the Property by the Buyer in accordance with its proposal subject to delay payments in the amount of \$1,000.00 per month if milestones are not met and (ii) an anti-speculation provision requiring some or all of the net profits from the re-sale of the Property by the Buyer within a 4 year period after the closing to be paid to the School District;

3. Convey clear fee simple title via a special warranty deed to be executed at closing, require the Buyer to pay for or reimburse the School District for certain expenses incurred in connection with the transaction, including, the payment of all state and local real estate transfer taxes, if applicable, and to execute such other documents as may be necessary to accomplish the foregoing, it being conclusively presumed from any action thereby that is authorized on behalf of the SRC; and,
4. Execute, concurrently with the Agreement, a separate Right of Entry Agreement with the Seller permitting the Buyer, its employees and/or agent, after presenting evidence of required insurance, to enter upon the Property to perform due diligence tests and investigations, including, but not limited to environmental investigations, demolition estimates and zoning approvals for a period not to exceed ten (10) months to determine whether the Property is satisfactory to the Buyer and an additional period to obtain financing, during which time the Buyer may terminate the Agreement of Sale and receive a refund of its deposit.

Description of Project

The School District owns the property known as the former Roberto Clemente Middle School located at 3921-3961 N. 5th Street, Philadelphia, PA. The School District acquired the property in 1968 and established the Pennsylvania Advancement Middle School, an innovative program (magnet) school. The name of the school was later changed to the Roberto Clemente Middle School and the school operated continuously until it was closed by the School District in 1998, because the age and condition of the facility presented limitations on providing a modern day instructional environment and a new Clemente School was built. After the closure, the building was used for several years for the storage of equipment, furniture and books. The Clemente School building is currently vacant and has numerous environmental and engineering/building challenges.

The most recent appraisal of the Clemente School building by a Pennsylvania Board Certified Appraiser has determined that the appraised value of the Property is \$0.00 when its environmental and other building issues are taken into account. The Buyer has offered to purchase the Property for \$1.00 on an "AS IS" basis. The Buyer has asked for a LIHTC financing contingency which will take anywhere from 1 to 3 years to expire, however, Buyer has agreed to pay a non-refundable deposit of \$10,000.00 each year for each year the financing contingency is still in effect. The Buyer has also agreed to reimburse the School District for actual carrying costs of the building (including security, maintenance and other transactional costs) at closing. There were no other bids on the Property.

Justification

The School Reform Commission adopted the Adaptive Sale and Reuse Policy in June, 2011. The policy applies to current surplus properties and future buildings closed under the Facilities Master Plan initiative. The procedure set forth in the policy allows for the timely disposition of buildings through a competitive RFP solicitation process by (i) saving and generating revenue by getting unused properties off School District books and receiving sale proceeds; (ii) promoting meaningful development in neighborhoods; and, (iii) minimizing the threat of future blight. The offices of Real Property Management, Capital Projects and General Counsel oversee the implementation of the Adaptive Sale and Reuse Policy procedures which include a competitive solicitation process, pre-qualification of buyers based on their financial strength and proposed plan for reuse or development of surplus properties and establish a role for communities to participate in the evaluation of proposals. The Property was included along with eleven (11) other surplus properties that were listed for sale with real estate brokers in January, 2012 and for which offers were solicited in a series of RFP's released by the Procurement Department in June, 2012.

Evaluation Method

One proposal was received in response to the RFP for this Property. This proposal was reviewed by an Evaluation Team comprised of School District staff from the Office of Real Property Management and the Office of General Counsel, staff members from the Philadelphia City Planning Commission and members of civic/community organizations representing the area where the property is located. The Buyer's proposal was scored Exemplary by the Evaluation Team. School District Procurement Department staff notified the Buyer that they were a finalist and the Office of General Counsel and Office of Real Property Management are in the process of finalizing negotiations of further terms and conditions of the sale as set forth in the Resolution.