

STATE BOARD OF EDUCATION
Consent Item
July 17, 2017

SUBJECT: Approval of Proposed Purchase and Sale Agreement for the Florida School for the Deaf and the Blind

PROPOSED BOARD ACTION

For Approval

AUTHORITY FOR STATE BOARD ACTION

Section 1002.36(4)(d), Florida Statutes

EXECUTIVE SUMMARY

Section 1002.36(4)(d), Florida Statutes, vests title to all property of the Florida School for the Deaf and the Blind in the State Board of Education, and management of that property in the Board of Trustees of the Florida School for the Deaf and the Blind. The Board of Trustees of the Florida School for the Deaf and the Blind voted to approve the attached proposed purchase and sale contract of one of two out-parcels on a block otherwise owned by the State and managed by the Florida School for the Deaf and the Blind for student housing and open space. Paragraph 7(d) of the agreement makes the purchase subject to Board of Education approval.

Supporting Documentation Included: Purchase and Sale Agreement by and between Florida School for the Deaf and the Blind and France Diacik for purchase of vacant property legally described as Parcel 153800-0000/2-83 Genoply Tract Lot 6, St. Augustine, St. Johns County, Florida

Facilitator: Sidney F. Ansbacher, Esquire, Upchurch, Bailey and Upchurch, P.A., Counsel for Florida School for the Deaf and the Blind

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TRACY WILSON UPCHURCH

FRANK D. UPCHURCH, SR.
(1894-1986)
HAMILTON D. UPCHURCH
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April 18, 2017

VIA EMAIL DELIVERY
dave.jordan@fldoe.org

David L. Jordan, Esq.
Department of Education
325 W Gaines Street
Tallahassee, Florida 32399-6533

Re: Purchase and Sale Agreement by and between Florida School for the Deaf
and the Blind (FSDB) and Frances Diacik

Dear Dave:

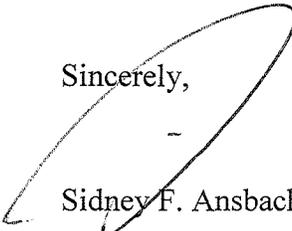
Enclosed is the Purchase and Sale Agreement by and between FSDB and Frances Diacik for purchase of the vacant property legally described as Parcel 153800-0000/2-83 Genoply Tract Lot 6, in St. Augustine, St. Johns County, Florida, subject to Board of Education approval to close, per s. 7(d) of the contract, and s. 1002.36(4)(d), Fla. Stat. The statute provides in pertinent part that “[t]itle to all other property and other assets of the [FSDB] shall rest in the State Board of Education, but the [FSDB] board of trustees shall have complete jurisdiction over the management of the school.”

I leave to your agency’s discretion as to whether to present this before or after our due diligence closes, but I note we have sufficient funds for the FSDB to fund the purchase. As you know, we currently defer to your board, rather than the Board of Trustees of the Internal Improvement Trust Fund, due to the legal interpretation of then-Division of State Lands Counsel, Sandra Stockwell, that s. 1002.36(4)(d) vests title of FSDB in the Board of Education.

The contract provides for possible deposit by the FSDB, but the Seller agreed to payment at closing, with no down payment.

I remain,

Sincerely,


Sidney F. Ansbacher

SFA/cs
Enclosure

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (“**Agreement**”), is dated April 14, 2017 (“**Effective Date**”), by and between FLORIDA SCHOOL FOR THE DEAF AND THE BLIND (together with its successors and/or assigns, “**Purchaser**”), and FRANCES DIACIK (“**Seller**”).

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, all of the following described property (collectively, “**Property**”):

(a) Real Property. That certain real property located in the City of St. Augustine, County of St. Johns, State of Florida, legally described as Parcel 153800-0000/2-83/Genoply Tract Lot 6, together with all tenements, hereditaments, easements, rights-of-way, appurtenances, air rights, oils, minerals, gas and hydrocarbons belonging or in any way pertaining to the same (collectively, “**Real Property**”);

2. Purchase Price. Subject to the adjustments, prorations and credits hereinafter provided, the purchase price for the Property is One Hundred and Fifty Thousand and No/100 Dollars (\$150,000.00) (“**Purchase Price**”), which shall be payable by Purchaser on the Closing Date (as hereinafter defined), in cash, by federal wire transfer, together with such additional funds for Purchaser’s share of closing costs and prorations as may be required pursuant to this Agreement.

3. Escrow and Closing Date. The transaction contemplated by this Agreement shall be consummated by means of a Deed Escrow (“**Escrow**”) to be opened with Sidney F. Ansbacher, Esq., as escrowee (“**Escrow Holder**”), on or prior to July 31, 2017, or such other date as mutually agreed, in writing, by Seller and Purchaser (“**Closing Date**” or “**Closing**”), and subject to subsection 7.(d) of this Agreement, in accordance with the general provisions of the usual form of Deed Escrow Agreement then provided and used by the Escrow Holder (“**Escrow Agreement**”), with such special provisions inserted in the Escrow Agreement as may be required to conform with this Agreement. In the event of any conflict between the Escrow Agreement and this Agreement, the terms of this Agreement shall prevail, unless the Escrow Agreement specifically states it is intended to amend or modify this Agreement. Seller agrees to execute and deliver to Escrow Holder all documentation required to close over the “gap” period between the effective date of the most recent Commitment (defined hereinafter and the recording of the Deed, including, without limitation, personal “gap” undertaking. The Closing shall take place at the offices of Escrow Holder. Possession of the Property shall be delivered to Purchaser on the Closing Date.

4. Title and Survey.

(a) Permitted Exceptions. On the Closing Date, good and indefeasible title to the Real Property shall be conveyed by Seller to Purchaser by a special warranty deed (“**Deed**”), subject only to the Permitted Exceptions (as defined hereafter) and as otherwise reasonably acceptable to Purchaser.

(b) Title Insurance Commitment. Within thirty (30) days after the Effective Date, Seller will obtain and deliver to Purchaser, at Purchaser’s sole cost and expense: (i) a title

commitment (“**Commitment**”) for an ALTA 2006 Owner’s Policy of Title Insurance issued by a title company chosen by Purchaser (“**Title Insurer**”), which shows title to the Property vested in Seller, subject only to general exceptions contained therein (which shall be deleted as of the Closing Date) and the Permitted Exceptions (as defined hereafter); and (ii) to the extent readily attainable at reasonable cost prior to Closing, legible copies of all documents cited, raised as exceptions or noted in the Commitment (collectively, “**Title Documents**”). In the event the Commitment discloses exceptions to title, which are not caused by Purchaser, and to which Purchaser objects and so notifies Seller in writing (“**Unpermitted Exceptions**”) on or prior to the Closing Date, Seller shall have until the Closing Date to have these exceptions removed from the Commitment or, if Purchaser consents, to have the Title Insurer commit to insure against loss or damage occasioned thereby (all exceptions of title not deemed Unpermitted Exceptions (as defined in this Section 4(b) and the following Section 4(d)) shall be defined as “**Permitted Exceptions**”). If Seller fails to have said Unpermitted Exceptions so removed or insured over within the period allowed to Seller set forth above, then Purchaser, at Purchaser’s option, may elect one of the following: (1) to terminate this Agreement, in which event Purchaser shall be entitled to an immediate refund of any Deposit and neither party shall have any further liability hereunder, except for any rights, obligations, or remedies under this Agreement that, by their terms, expressly survive the termination of this Agreement; (2) to consummate the transaction contemplated herein, and take title to the Property as it then is, with the right to deduct from the Purchase Price, liens or encumbrances of a definite or ascertainable amount subject to Seller’s right to insure over any lien or other encumbrance for which Seller has a reasonable dispute; or (3) to extend the time period allowed to Seller to have said exceptions removed or insured over as set forth above (and the scheduled Closing Date, if necessary) for a period acceptable to Purchaser in its sole and absolute discretion. NOTWITHSTANDING THE FOREGOING, any exception to title caused by Purchaser shall constitute Permitted Exceptions.

(c) Policy. As a condition to Closing, Seller, at Purchaser’s sole cost and expense, agrees to cause Title Insurer to issue to Purchaser, as of the Closing Date, Title Insurer’s ALTA 2006 Owner’s Policy of Title Insurance with extended coverage (“**Policy**”) in the amount of the Purchase Price, based on the Commitment, showing fee simple title to the Property vested in Purchaser, subject only to the Permitted Exceptions, with extended coverage over all general exceptions, and, at Purchaser’s sole expense, containing such endorsements as Purchaser or Purchaser’s lender may require.

(d) Survey. Unless Seller has a survey meeting the criteria of this Section 4(d), which may be certified to Purchaser, Purchaser may obtain, at Purchaser’s sole cost and expense, a survey of the Property prepared by a land surveyor licensed in the State of Florida, and certified to have been prepared in accordance with 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and including Table A requirements as shall be reasonably requested by Purchaser for the benefit of Purchaser, Purchaser’s lender, and the Title Insurer (“**Survey**”). The Survey shall show or state: (i) the full legal description and street address of the Property; (ii) that there are no encroachments of buildings or other improvements from adjoining properties; (iii) the location of all easements affecting the Real Property, the location of all utility lines as they service the Property (sewer, water, gas, electric and telephone) and the means or point by which the utilities enter the Property; and (iv) whether or not the Property is in a flood hazard area and, if so, further state the type of hazard area. In the event the Survey reveals there are any title defects, or

there is any other matter adversely affecting the Property unacceptable to Purchaser, including, without limitation, any encroachments of improvements on adjoining land onto the Property, violations of zoning laws, any utilities not entering the Property through adjoining public streets or through valid and indefeasible easements, or the location of the Property in a flood hazard area (individually, defined as an “**Unpermitted Exception**”, collectively, also defined as “**Unpermitted Exceptions**”), then, unless Seller obtains title insurance against loss or damage occasioned by such encroachment or other matter and Purchaser agrees to accept such title insurance, Purchaser, at its option, may terminate this Agreement, in which event neither party shall have any further liability hereunder, except for any rights, obligations, or remedies under this Agreement that, by their terms, expressly survive the termination of this Agreement. NOTWITHSTANDING THE FOREGOING, no condition that would otherwise constitute an Unpermitted Exception shall constitute such an Unpermitted Exception to the extent caused by Purchaser.

(e) Seller Covenant. From the Effective Date through the Closing Date, and provided Purchaser has not breached any of the provisions of this Agreement, Seller covenants that it will not perform any affirmative act that creates a lien, or fail to perform any act where such failure results in the creation of a lien, that is not within the list of Permitted Exceptions on the Property, except as approved or waived in writing by Purchaser, which approval may be withheld in Purchaser’s sole discretion (“**Approved Conditions of Title**”). Any liens other than the Permitted Exceptions or the Approved Conditions of Title encumber title to the Property as of the Closing Date due to the affirmative actions of Seller or Seller’s failure to act after the Effective Date shall be deemed Unpermitted Exceptions as defined in Sections 4(b) and 4(d) above. Seller will cure or remove the Unpermitted Exceptions prior to the Closing Date. If Seller fails to have said Unpermitted Exceptions so removed or insured over within the period allowed to Seller set forth above, then Purchaser, at Purchaser’s option, may elect one of the following: (1) to terminate this Agreement, in which event Purchaser shall be entitled to an immediate refund of any Deposit and neither party shall have any further liability hereunder, except for any rights, obligations, or remedies under this Agreement that, by their terms, expressly survive the termination of this Agreement; (2) to consummate the transaction contemplated herein, and take title to the Real Property and Improvements as it then is, with the right to deduct from the Purchase Price, liens or encumbrances of a definite or ascertainable amount subject to Seller’s right to insure over any lien or other encumbrance for which Seller has a reasonable dispute; or (3) to extend the time period allowed to Seller to have said exceptions removed or insured over as set forth above (and the scheduled Closing Date, if necessary) for a period acceptable to Purchaser in its sole and absolute discretion. NOTWITHSTANDING THE FOREGOING, no act or omission by Purchaser that results in a lien shall constitute an Unpermitted Exception, nor shall any resulting lien.

5. Property Documents; Investigation.

(a) Delivery of Property Documents. Within five (5) days after the Effective Date, Seller shall deliver to Purchaser copies of any of the following that are in the possession of Seller or any of Seller’s agents or representatives: surveys, maps, plats, leases, licenses, agreements, tax bills, utility bills, contracts, permits, approvals, plans, covenants, restrictions, environmental reports, easement agreements, engineering reports, soils reports, wetland reports, and similar written instruments or documents relating to the Property and any written

communications, notices, or demands to or from any governmental agency or neighboring property owners concerning the Property (collectively, “**Property Documents**”).

(b) Inspection Period. The term “**Inspection Period**” shall mean the period commencing on the first date Purchaser has received all of the Property Documents, Commitment, Survey, Title Documents and any Phase 1 (as defined below) and terminating at 5:00 p.m., St. Augustine time, on the date that is the latter of thirty (30) days thereafter or thirty (30) days after the Effective Date of this Agreement. During the Inspection Period, Purchaser shall determine the feasibility and desirability of the Property for Purchaser’s intended use, in its sole and absolute discretion. Except as expressly provided elsewhere herein, Purchaser shall be solely responsible for any and all costs incurred by Purchaser in connection with its review and investigation of the Property. During the Inspection Period, Purchaser may enter the Property to conduct such independent investigations, studies and tests as Purchaser deems necessary or appropriate concerning Purchaser’s proposed use and development of the Property and the suitability of the Property for Purchaser’s intended purposes. Such investigations may include, without limitation, a Phase 1 environmental site assessment (“**Phase 1**”), follow-up environmental site assessments, wetlands, soils and engineering tests, Hazardous Materials (defined below) studies, investigations concerning the approvals from any governmental agencies having jurisdiction over the Property and such economic feasibility and marketing studies, as Purchaser deems appropriate. Seller will cooperate with Purchaser in obtaining any reliance letters, re-certifications or updates of Property Documents originally prepared by third parties for Seller, including, without limitation, reliance letters with respect to any environmental assessments, studies. Purchaser agrees to repair any damage to the Property caused by Purchaser or its agents or independent contractors.

(c) Termination of Inspection Period. Prior to 5:00 p.m., St. Augustine time, on the last day of the Inspection Period, Purchaser shall have the right to terminate this Agreement by written notice to Seller in the event that Purchaser disapproves, in its sole and absolute discretion and for any reason or no reason whatsoever, any aspect of the feasibility or desirability of the Property for Purchaser’s purposes. If Purchaser elects to terminate this Agreement prior to 5:00 p.m., St. Augustine time, on the last day of the Inspection Period, then this Agreement shall automatically terminate, the Deposit shall be immediately returned to Purchaser, and neither Purchaser nor Seller shall have any further right, liability or obligation under this Agreement except for those obligations that specifically survive termination.

6. Closing Documents.

(a) Seller’s Closing Documents to Be Delivered on or Before the Closing Date. Seller shall deliver to Escrow Holder, pursuant to the Escrow Agreement, or to Purchaser, as applicable, and Seller hereby covenants and agrees to deliver to Escrow Holder or to Purchaser, as applicable, on or before the Closing Date, the following instruments and documents, all of which shall be subject to Purchaser’s prior review and approval as to form, scope, and substance, the delivery of each of which shall be a condition to closing:

- (i) The Deed, duly executed and acknowledged by Seller;

(ii) A bill of sale executed by Seller in favor of Purchaser, assigning and conveying any Personal Property to Purchaser free and clear of any and all claims, liens, encumbrances, security interests, restrictions, or other charges;

(iii) A written reaffirmation that Seller's representations and warranties set forth in Section 11 hereof continue to be true and correct as of the Closing Date;

(iv) An Affidavit of Title executed by Seller in favor of Purchaser dated as of the Closing Date, and subject only to the Permitted Exceptions;

(v) ALTA Statements, in duplicate;

(vi) Personal "Gap" Undertaking executed by Seller;

(vii) Such proof of Seller's authority and authorization to enter into this transaction as may be required by Title Insurer;

(viii) Certification of Non-Foreign Status;

(ix) All keys to any Improvements and Personal Property; and

(x) Any other documents customarily required by Title Insurer to issue the Policy and consummate the transaction.

(b) Deliveries by Purchaser On or Before the Closing Date. Purchaser shall deliver to Escrow Holder, pursuant to the Escrow Agreement, or to Seller, as applicable, and Purchaser hereby covenants and agrees to deliver to Escrow Holder, or Seller, as applicable, on or before the Closing Date, the following monies, instruments, and documents:

(i) The Purchase Price, plus or minus Purchaser's share of closing costs and prorations, pursuant to the terms of this Agreement;

(ii) Such proof of Purchaser's authority and authorization to enter into this transaction as may be reasonably required by Title Insurer; and

(iii) Any other documents customarily required by Title Insurer to issue the Policy and consummate the transaction.

(c) Joint Deliveries On or Before the Closing Date. The Escrow Agreement shall provide that the parties shall deliver to Escrow Holder, and the parties hereby covenant and agree to deliver to Escrow Holder on or before the Closing Date, the following instruments and documents, all of which shall be subject to Purchaser's prior review and approval as to form, scope and substance, the mutual delivery of each of which shall be a condition precedent to the Closing:

(i) To the extent required, the real estate transfer tax declaration or other documentary stamp declarations required by the municipality, county, or state in

which the Property is located, and the Parties shall take all reasonable actions in order to obtain exemptions for same where appropriate;

(ii) A closing statement executed by Seller, setting forth the debits and credits in connection with the transaction evidenced by this Agreement; and

(iii) A disbursement statement prepared by Title Insurer.

7. Purchaser's Conditions Precedent to Close. The Closing is subject to the satisfaction or waiver by Purchaser of the following conditions on or before the Closing Date:

(a) The representations and warranties of Seller contained herein shall be true and correct as of the Closing Date.

(b) Seller shall have performed all agreements, undertakings and obligations and complied with all conditions required by this Agreement to be performed or satisfied by Seller on or before the Closing.

(c) Title Insurer shall be unconditionally committed to issue to Purchaser, immediately following the recording of the Deed, the Policy insuring that the fee title to the Property will be vested in Purchaser, subject only to the Permitted Exceptions, and such Policy will include all endorsements reasonably requested by Purchaser.

(d) Approval of the transaction, to the extent required by law, by: the Florida Board of Education, the Board of Trustees of the Internal Improvement Trust Fund, and the Florida State Chief Financial Officer.

8. Seller's Conditions Precedent to Closing. The Closing is subject to the satisfaction or waiver by Seller of the following conditions on or before the Closing Date:

(a) Representations and warranties of Purchaser contained herein shall be true and correct as of the Closing Date; and

(b) Purchaser shall have performed all agreements, undertakings and obligations and complied with all conditions required by this Agreement to be performed or satisfied by Purchaser on or before the closing.

9. Allocation of Closing Costs and Expenses. Seller shall pay for: (a)(i) all transfer taxes, including, without limitation, all state, county, and local, municipal, and city transfer taxes; (ii) the cost to record the deed, together with releases of any liens or encumbrances relating to Seller's existing financing or any Unpermitted Exceptions. Purchaser shall pay for: (b)(i) the cost of the Commitment; (ii) the premium for the Policy, including extended coverage; (iii) the charges for any title insurance endorsements requested by Purchaser; (iv) all recordation charges (except as set forth in (ii) above); and (v) all third party and other costs associated with Purchaser's inspections and tests of the Property, if any. Seller and Purchaser shall split equally the closing escrow costs of Escrow Holder, including the cost of any so-called New York style closing or GAP coverage. Each party shall pay for its own legal costs and expenses. All other costs and expenses will be borne by the party or parties customarily responsible for such costs

and expenses in residential real estate transactions in the local jurisdiction where the Real Property is located.

10. Prorations Seller and Purchaser hereby acknowledge and agree as follows: (i) Seller is responsible for paying all real estate taxes that are due and payable on or before the Closing Date, or that have been levied or have accrued, regardless of the date of such levy or accrual, in connection with Seller's ownership of the Property; (ii) all general real estate taxes and assessments for the year of Closing Date (payable the following year) shall be prorated as of the Closing Date based upon one hundred ten percent (110%) of the Closing Date full year real estate tax bill, minus the amount of the Closing Date taxes (payable the following year) that Seller has paid, if any, on or prior to the Closing Date; (iii) all special taxes and assessments which are certified or become a lien or accrue prior to the Closing Date, whether or not payable in installments; (iv) all water, electricity, sewer, gas and other utility charges based, to the extent practicable, on final meter readings and final full invoices shall be paid by Purchaser to the extent attributable to usage prior to the Closing; otherwise, utility charges shall be prorated on and as of the Closing Date; and (v) such other items that are customarily prorated in transactions of this nature, such as rent or expenses under any existing lease, shall be ratably prorated as of the Closing Date. Any and all prorations shall be made so that Seller is deemed to own the Property for the entire day of the Closing. Any and all prorations made pursuant to this Agreement shall be deemed final.

11. Representations and Warranties of Seller. In order to induce Purchaser to enter into this Agreement, Seller hereby represents and warrants to Purchaser as follows, and all of the foregoing and following representations and warranties shall be true and correct as of the Closing Date (and the truth and accuracy of which shall constitute a condition to the disbursement of the Purchase Price in accordance with the terms of the Escrow Agreement and this Agreement):

(a) Neither the terms of this Agreement nor anything provided to be done by Seller hereunder (including, but not limited to, the conveyance and transfer of the Property) will violate any contract, agreement or instrument to which Seller is a party or which affects the Property or any Applicable Laws, except as may be the result of, or originated during, or is otherwise due to Purchaser's occupancy of the Property. As used herein, "**Applicable Laws**" means all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, executive orders, court orders, rules of common law, and any judicial interpretations thereof, extraordinary as well as ordinary, of all governmental authorities (including, without limitation, Environmental Laws, as defined below), and all rules, regulations and government orders with respect thereto, and of any applicable fire rating bureau, or other body exercising similar functions affecting Seller or the Property. As used herein, "**Environmental Laws**" means all federal, provincial, state and local environmental laws (including common law) regulating or imposing standards of care with respect to the handling, storage, use, emitting, discharge, disposal or other release of Hazardous Materials (as hereinafter defined), including, but not limited to: (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) ("**CERCLA**") or any regulations promulgated under CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) ("**RCRA**") or regulations promulgated under RCRA; (iii) the Clean Air Act, 42 U.S.C. §§7401, et seq.; (iv) the Federal Water Pollution Control Act, 33 U.S.C. §§1251, et seq.; (v) the Emergency Planning and

Community Right to Know Act, 42 U.S.C. §§ 1101, et seq.; (vi) the Oil Pollution Control Act, 33 U.S.C. §§2701, et seq.; and (vii) any successor statutes to the foregoing, or any other comparable local, state or federal statute or ordinance pertaining to protection of human health, the environment or natural resources, including without limitation the preservation of wetlands, and all regulations pertaining thereto, as well as applicable judicial or administrative decrees, orders or decisions, authorizations or permits;

(b) Neither Seller nor any person or entity claiming by, through or under Seller has or will have, at any time or times prior to the Closing, done or suffered anything whereby any lien, encumbrance, claim or right of others has been or will be created on or against the Property or any part thereof or interest therein, except for the Permitted Exceptions;

(c) As of Closing Date, except as created by this Agreement, there will be no obligations or liabilities of any kind or nature whatsoever, actual or contingent, including, but not limited to, any tax liabilities, contract liabilities or tort liabilities for which or to which Purchaser or the Property will be liable or subject, except for non-delinquent obligations and liabilities accrued and thereafter accruing under the Permitted Exceptions, or except as originated or occurred under, during, or are related to Purchaser's occupancy of the Property;

(d) Seller has no actual knowledge of, or notice of, any claims of any governmental agency to the effect that the construction, operation or use of any of the Property is in violation of any Applicable Laws or that any such claim or any investigation with respect thereto is under consideration;

(e) Seller is not or will not at the Closing be in default in respect of any of its obligations or liabilities pertaining to the Property (including, but not limited to, such obligations and liabilities under the Permitted Exceptions, or any contracts or leases affecting the Property) by any other party thereto, and without limitation, to the best knowledge of Seller, no event has occurred which, with the giving of notice or passage of time, or both, would give rise to any such default under any of the same;

(f) There is no litigation pending or to the best of knowledge of Seller, threatened, against Seller or the Property, including, without limitation, proceedings for or involving collections, condemnation, eminent domain, alleged building code or environmental or zoning violations or other violations of Applicable Laws, or personal injuries or property damage alleged to have occurred on the Property of by reason of the condition, use of, or operations on, the Property;

(g) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other Applicable Laws contemplated or filed by Seller or pending against Seller or, to the best of Seller's knowledge, to the Property;

(h) The information with respect to Seller and the Property supplied to Purchaser in connection with and as an inducement to entering into this Agreement does not and did not contain any untrue statement of a material fact or omit to state a fact necessary in order to make the statements therein;

(i) There are no presently pending, and Seller has received no notice of, any special assessments of any nature with respect to the Property or any part thereof, nor has Seller received any notice of any special assessments being contemplated;

(j) Seller has not received any notice from any insurance carrier of, nor is aware of, defects or inadequacies in the Property which if not corrected would result in termination of insurance coverage, increase its cost or otherwise affect the insurability of the Property;

(k) There are no facts material to the use and operation of the Property that Seller has not disclosed to Purchaser;

(l) Seller is not a foreign person as defined pursuant to Section 1445 of the Internal Revenue Code; and

(m) If the transaction contemplated hereby, or any component thereof, shall require authorization or approval of any governmental agency having jurisdiction, all such authorizations and approvals shall have been obtained and shall be in full force and effect on and as of the Closing Date, except for land use and zoning, as discussed at 12, below. If such authorizations and approvals shall not have been obtained on or prior to the last day before the Closing Date, the Closing Date may be deferred, at the election of Purchaser in Purchaser's sole and absolute discretion, for an additional period of time necessary to obtain any authorizations or approvals not then obtained.

All representations and warranties contained in this Agreement shall survive Closing for a period of one (1) year after the Closing Date. If, from and after the date hereof until Closing, Seller discovers or becomes aware of any information which would cause any of the representations or warranties of Seller contained in this Agreement to become inaccurate or false, Seller shall immediately notify Purchaser thereof (or Purchaser shall notify Seller if Purchaser becomes aware of any breach of such warranties or representations). After Seller has obtained notice of a breach hereunder, Purchaser shall allow Seller ten (10) days (and an adjournment of Closing, if consented to by Purchaser in Purchaser's sole and absolute discretion) within which to cure such breach. The foregoing notice and cure shall not extend any deadlines expressly set forth in this Agreement unless otherwise expressly consented to by Purchaser in writing. If Seller is unable to cure a breach prior to the Closing Date, then Purchaser may, in Purchaser's sole and absolute discretion: (i) terminate this Agreement; (ii) waive such breach and proceed to Closing; and/or (iii) pursue any and all remedies at law or in equity, including, without limitation, specific performance. If, from and after the date hereof until Closing, Seller discovers or becomes aware of any information which would cause any of the representations or warranties of Seller contained in this Agreement to become inaccurate or false, Seller shall immediately notify Purchaser thereof. The foregoing notice and cure shall not extend any deadlines expressly set forth in this Agreement.

12. Representations and Warranties of Purchaser. In addition to any other representations and warranties of Purchaser contained herein, the following constitute representations and warranties of Purchaser and all of the foregoing and following representations and warranties shall be true, correct, and complete as of the Closing Date (and

the truth, accuracy and completeness of which shall, at the election of Purchaser, constitute a condition to the delivery of the Deed in accordance with the Escrow Agreement):

(a) Purchaser's Authority. Purchaser has the legal power, right and authority to enter into this Agreement, to consummate the transactions contemplated hereby and to execute and deliver all documents and instruments to be delivered by Purchaser hereunder.

(b) Requisite Action. All requisite action (corporate, trust, partnership or otherwise) has been taken or obtained by Purchaser in connection with the entering into this Agreement and the consummation of the transactions contemplated hereby, or shall have been taken prior to the Closing Date.

13. Defaults and Remedies.

(a) Purchaser's Default. If Purchaser fails to comply with this Agreement beyond any applicable notice, grace, and cure periods hereunder, Seller may, as Seller's sole and exclusive remedy and relief hereunder, Seller hereby waiving any and all other rights and remedies, whether arising at law or in equity, terminate this Agreement and, only if such a default occurred after the expiration of the Inspection Period and continues beyond all applicable notice, grace or cure periods hereunder, receive any Deposit. The provisions of this Section 13(a) shall not limit or affect any of Purchaser's indemnities as provided in other Sections of this Agreement. Seller shall give Purchaser five (5) days' written notice and opportunity to cure any failure by Purchaser to comply with this Agreement prior to Seller terminating this Agreement as a result thereof. The foregoing notice and cure shall not extend any deadlines expressly set forth in this Agreement. Notwithstanding the foregoing, in no event shall Purchaser be liable to Seller for any actual, punitive, speculative, consequential or other damages.

(b) Seller's Default. If Seller fails to perform in accordance with the terms of this Agreement, or if Seller breaches any of the covenants, conditions, agreements, representations, or warranties of this Agreement, or if any information contained herein or in the Exhibits or in any documents or information submitted hereunder for Purchaser's review is false, inaccurate, or misleading in any respect, and such default is not cured by Seller within five (5) days from the date of Purchaser's written notice to Seller of such default (except in the event Seller fails to consummate the transaction contemplated herein, in which case there will be no notice or cure period), then, in any such event, Escrow Holder shall return the Deposit to Purchaser and, in addition, Purchaser shall retain and be entitled to exercise all rights and remedies available at law or in equity, including, without limitation, specific performance.

14. Notices. All notices, demands and requests which may be given or that are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, must be in writing and may be given by: (i) hand delivery; (ii) United States Certified Mail (postage prepaid, return receipt requested); or (iii) Federal Express or other reliable overnight courier service. Notice given in the foregoing manner shall be deemed given upon the first attempted delivery made on a Business Day to the addressee at the addresses designated below (unless changed by similar notice in writing given by the particular person whose address is to be changed) or upon refusal by the addressee.

To Purchaser: Florida School for the Deaf and the Blind
c/o Julia Mintzer
207 San Marco Avenue
St. Augustine, Florida 32084

With a copy to: Upchurch, Bailey and Upchurch, P.A.
Attn: Sidney F. Ansbacher, Esq.
Post Office Drawer 3007
St. Augustine, Florida 32085-3007

To Seller: Frances Diacik
c/o William Davis
115 3rd Street South
Jacksonville Beach, Florida 32250

15. Casualty or Condemnation. Prior to Closing, all risk of loss shall belong to Seller. In the event of fire or other casualty, or condemnation of the Property by any governmental authority, or in the event any notice of such condemnation is received by Seller, Seller shall so advise Purchaser in writing within three (3) days of such event and Purchaser may elect, by written notice to Seller, to terminate this Agreement in which event the Deposit, together with all interest earned thereon, shall be immediately returned to Purchaser, this Agreement shall be of no further force and effect, and the Parties' obligations and rights shall be governed by the Lease. If Purchaser does not so elect, then:

(a) In the event of a fire or other casualty, Purchaser may either (i) require Seller to repair such damage prior to Closing to the reasonable satisfaction of Purchaser (except as required by the Lease), at no cost or expense to Purchaser, in which event the proceeds of any insurance applicable thereto shall be paid to Seller and Closing shall be postponed, if necessary, until five (5) Business Days after all such repairs have been satisfactorily completed; or (ii) elect to proceed to Closing and itself settle the loss under all policies of insurance applicable to the destruction or damage, in which event (A) Purchaser shall be entitled to receive the proceeds of all applicable insurance; and (B) Seller shall pay to Purchaser at Closing the amount of any applicable insurance deductible (except due from Purchaser under the Lease), and at Closing and thereafter execute and deliver to Purchaser all required proofs of loss, assignments of claims and other rights Purchaser may need to collect under the applicable insurance policies; or

(b) In the event of condemnation of the Property by any governmental authority other than Purchaser, Purchaser shall be entitled to receive the condemnation proceeds and Seller shall, at Closing and thereafter, execute and deliver to Purchaser all required assignments of claims and other rights Purchaser may need to collect applicable condemnation proceeds.

16. Brokers. Seller and Purchaser each represent and warrant to the other that neither party has dealt with any broker, finder, or the like, in connection with this Agreement. Seller and Purchaser each agree to defend, indemnify and hold the other harmless from and against all claims by any other broker for fees, commissions or other compensation to the extent such broker alleges to have been retained by the indemnifying party in connection with the execution

of this Amendment. Purchaser's indemnification is limited by s. 768.28, Fla. Stat. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

17. Successors and Assigns: Assignment. This Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns. Purchaser may assign Purchaser's rights under this Agreement without the prior written consent of Seller.

18. Indemnification. Seller agrees to defend (with counsel acceptable to Purchaser), indemnify, save and hold harmless Purchaser from and against, and promptly pay to, or reimburse Purchaser for, all loss, cost, expense and liability Purchaser may suffer or incur (regardless of whether contingent, direct, consequential, liquidated or unliquidated), including, but not limited to, all attorneys' fees and expenses and court costs, incurred by or asserted against Purchaser resulting from, arising out of, relating to or caused by: (i) the breach or inaccuracy of any representation, warranty, agreement or covenant of Seller set forth in this Agreement or in any document or instrument executed in connection with this Agreement; or (ii) the release by Seller of any Hazardous Materials into the outdoor environment at, in, on, at, or under the Property prior to Closing. The terms and conditions of this paragraph 18. shall expressly survive the Closing, shall not merge with the provisions of any closing documents, and shall not be incorporated into the Deed.

19. Required Actions of Purchaser and Seller. Purchaser and Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions hereof in order to consummate the purchase and sale herein contemplated and shall use their best efforts to accomplish the Closing in accordance with the provisions hereof.

20. Section 1445 of the Internal Revenue Code. Seller hereby represents it is not a foreign person as defined pursuant to Section 1445 of the Internal Revenue Code and hereby agrees to indemnify and hold Purchaser harmless from any and all costs or liability to Purchaser as a result of the inaccuracy of the foregoing representation.

21. Miscellaneous.

(a) Notices. From and after the Effective Date, Seller covenants and agrees to promptly deliver to Purchaser true, correct and complete copies of any and all notices, correspondence or other written communication (and written memorandum of any oral communication) received by Seller which affect or relate to the Property.

(b) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(c) Waivers. No waiver of any breach or any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any

obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(d) Survival. Except as specifically set forth herein, the terms and conditions of this Agreement shall not survive the Closing and the delivery and recordation of the Deed.

(e) Attorneys' Fees. If any action or suit at law or in equity, including an action for declaratory relief, is brought by a party hereto against the other party hereto by reason of any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, or any other dispute between the parties concerning this Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether determined by final judgment issued by a court with property jurisdiction or out-of-court settlement, shall be entitled to have and recover from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees, court reporter fees and court costs, and expert witness fees (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section 21.(e), Costs shall include, without limitation, attorneys' fees, costs and expenses incurred in (i) post-judgment motions, (ii) contempt proceeding, (iii) garnishment, levy, and debtor and third party examination, (iv) discovery, and (v) bankruptcy litigation.

(f) Entire Agreement. All Exhibits attached to this Agreement are hereby incorporated herein by reference. This Agreement (including all Exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings, representations, and statements, and all prior written agreements, understandings, letters of intent, and proposals, if any, with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. Other than as expressly set forth in this Agreement, the parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

(g) Time of Essence. Seller and Purchaser hereby acknowledge and agree time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

(h) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of Florida.

(i) Counterparts. This Agreement may be executed in two (2) or more counterpart copies, each of which shall be deemed to be an original and all of which counterparts shall have the same force and effect as if the parties hereto had executed a single copy of this Agreement. The parties to this Agreement acknowledge and agree that notwithstanding any law or presumption to the contrary, an electronic (transmitted by electronic mail in a PDF format) or telefaxed signature of either party to this Agreement (or any amendments thereto) shall be deemed valid and binding and admissible by either party against the other as if same were an

original ink signature. Seller and Purchaser (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

(j) Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

(k) Terms. All references to “Articles” and “Sections,” without reference to a document other than this Agreement are intended to designate articles and sections of this Agreement, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section, unless specifically designated otherwise. As used herein, the singular shall include the plural, the plural the singular and the use of the masculine, feminine or neuter gender shall include all genders, as the context may require. The use of the term “including” shall mean in all cases “including but not limited to,” unless specifically designated otherwise.

(l) Business Days. For purposes of this Agreement, “**Business Day**” shall mean a day that is not (i) a Saturday or Sunday; (ii) a legal holiday as observed by the State of the Illinois; or (iii) a day that Purchaser’s corporate office in Lake Forest, Illinois is not open for business. If the final day of any period or any date of performance under this Agreement falls on a day that is not a Business Day, then the final day of the period or the date of performance shall be extended to the next Business Day.

(m) Construction. Seller and Purchaser each acknowledge and agree that each party and its counsel have received and approved this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or Exhibits hereto.

(n) Recording. At Purchaser’s option, Purchaser and Seller shall execute, and cause to be recorded, at Purchaser’s expense, in the office of the recorder in the county in which the Property is located, a memorandum of this Agreement.

(o) Certification Regarding Terrorism. Seller hereby certifies that to the best of Seller’s knowledge, after making all appropriate inquiries, Seller is in compliance with, and shall use all funds derived from the Sale of the Property with all applicable anti-terrorism laws, regulations, rules and executive orders, including but not limited to, the USA Patriot Act, 18 U.S.C. section 2339-A-C and U.S. Presidential Executive Orders 12947 and 13224.

(p) Purchaser’s performance is contingent upon an annual appropriation by the Legislature.

(q) **WAIVER OF JURY TRIAL. SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties hereby execute this Purchase and Sale Agreement as of the Effective Date provided above.

SELLER:

FRANCES DIACIK

PURCHASER:

**FLORIDA SCHOOL FOR THE DEAF
AND THE BLIND**

By: 

CHRISTOPHER D. WAGNER

Print Name

Its: CHAIR, BOARD OF TRUSTEES

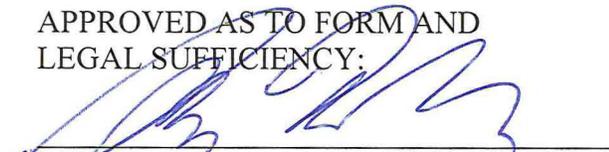
ATTEST:



Jeanne Glidden Prickett
Secretary

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Sidney F. Ansbacher

Attorney for FSDB

IN WITNESS WHEREOF, the parties hereby execute this Purchase and Sale Agreement as of the Effective Date provided above.

SELLER:

Francis Diacik
FRANCES DIACIK

PURCHASER:

**FLORIDA SCHOOL FOR THE DEAF
AND THE BLIND**

By: _____

ATTEST:

Print Name
Its: CHAIR, BOARD OF TRUSTEES

_____, Secretary
(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Sidney F. Ansbacher
Attorney for FSDB