

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is made and effective as of _____, 2022, by and between **Michael Pagnotta Architecture P.C.**, a New Jersey professional corporation, and or assigns, (the "Buyer") with an address at 342 West 9th Street, Ship Bottom, New Jersey 08008 and **Long Beach Island Board of Education**, a New Jersey board of education (the "Seller"), with a mailing address of 201 20th Street, Ship Bottom, New Jersey 08008.

RECITALS

- A. Seller is the owner of a certain parcel of real estate located at and with an address of 201-267 West 20th Street, Ship Bottom, New Jersey 08008, also known as Block 48, Lot 1 on the Tax Map of the Borough of Ship Bottom, Ocean County, New Jersey (the "Property").
- B. Seller agrees to sell and convey and Buyer agrees to accept and purchase the Property for the purchase price of FOURTEEN MILLION AND SIXTEEN THOUSAND DOLLARS (\$14,016,000.00) (the "Purchase Price"), which Purchase Price is to be paid as stipulated in this Agreement, and also in consideration of the terms, covenants and agreements to be performed by Seller and Buyer under this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto mutually covenant and agree as follows:

1. DEFINITIONS

All capitalized terms shall have the meanings set forth in this Agreement.

2. SALE AND PURCHASE OF THE PROPERTY

The Property consists of the real property and all of Seller's rights relating thereto. The Property includes any and all buildings, parking areas, improvements, fixtures and landscaping now situated thereon.

3. PURCHASE PRICE AND MANNER OF PAYMENT

- 3.1 Purchase Price. The Purchase Price will be paid by the Buyer to the Seller in the following manner:

Deposit ("First Deposit") due five (5) days following the execution of the Agreement by both Buyer and Seller. \$350,400.00

Deposit ("Second Deposit") due on Upon Conclusion of Buyer's Governing Board Due Diligence Period set forth in Section 4.6 \$350,400.00

Referred collectively as "Deposit" herein.

Balance to be paid at closing of title (the "Closing"),

in cash or by electronic wire transfer (subject to adjustments, as provided in Section 6 of this Agreement). \$13,315,200.00

TOTAL: \$14,016,000.00

- 3.2 Deposit Monies. All deposit monies shall be deposited into a non-interest bearing attorney trust account of Seller's attorneys, Sciarrillo, Cornell, Merlino, McKeever & Osborne, LLC (the "Escrow Agent") until the Closing, at which time the deposit shall be applied on account of the Purchase Price. In the event that the Buyer cancels or terminates this Agreement for any reason permitted herein, and except as provided in Section 4.1 of this Agreement, the deposit monies shall be returned to the Buyer and the parties shall have no further liabilities to each other. Buyer and Seller each agree to indemnify and hold harmless the Escrow Agent with respect to the disposition of the deposit monies, unless the Escrow Agent shall act with gross negligence or intentional malfeasance. Furthermore, in the event of a dispute regarding the disposition of the deposit monies, the Escrow Agent is authorized to continue to hold the deposit monies in escrow in its attorney trust account or, if agreed to by Buyer and by Seller, to place the deposit with the Clerk of a Court of competent jurisdiction.

4. DUE DILIGENCE INQUIRIES

- 4.1 Buyer shall have a period of thirty (30) business days ("Buyer's Due Diligence Period") within which to perform any and all due diligence investigations with respect to the Property as Buyer may desire, including, but not limited to, the environmental and physical condition of the Property, as well as to review title, lien and judgment searches. Buyer's Due Diligence Period shall be deemed to have commenced at the conclusion of the Buyer's Governing Board Due Diligence Period set forth in Section 4.6, and following the date in which the Seller provides the buyer with all documents, records, and testing reports (in any form) related to any and all environmental conditions or hazards known to the Board or its agents, and shall terminate at 5:00 PM, New Jersey time, on thirtieth (30th) business day after the dates on which said documents are transferred, beginning with the business day after all said documents have been provided by the Seller to the Buyer (the "Due Diligence Termination Date"). If any condition is found which frustrates the intended development of the land, excluding asbestos-related conditions, the Agreement may be cancelled. This contingency shall be void if not exercised by the conclusion of the Due Diligence Termination Period.
- 4.2 Buyer covenants, both on behalf of itself and on behalf of its inspectors, agents, testing companies, etc., that the results of any and all physical inspections shall remain confidential and shall not be revealed to any third parties or governmental authorities whatsoever unless required by applicable law, which covenant and obligation shall survive the Closing or the termination of this Agreement.
- 4.3 Buyer hereby acknowledges that Buyer has not relied upon, and will not rely upon, either directly or indirectly, any information, representation or warranty of Seller, and further acknowledges that no such representations or warranties have been made. Subject to the

terms of this Agreement, Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate, and that it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property. Buyer expressly acknowledges that Buyer shall rely solely on its own independent investigation and inspection of the Property. As a courtesy to the Buyer only, and not by way of representation or warranty, Seller agrees that, in the event that Seller receives any written communication from the New Jersey Department of Environmental Protection between the signature date of this Agreement and the Due Diligence Termination Date, Seller will provide a copy thereof to Buyer's attorney within five (5) business days after the Seller receives said communication. Buyer has conducted and Buyer shall conduct such further inspections and investigations of the Property as Buyer may deem necessary. Buyer hereby further acknowledges that Buyer has been advised by Seller that adverse environmental conditions may exist on and at the Property, without any independent investigation on Seller's part. Upon Closing, Buyer shall assume the risk that adverse matters including, but not limited to, adverse physical and environmental conditions, may not have been revealed by Buyer's inspections and investigations.

- 4.4 In the event that Buyer is delayed by Seller's review, comment or approval of Buyer's proposed sampling plan, then Buyer's Due Diligence Period shall be extended for a period of time (day-for-day) equivalent to the length of such delay, provided that Buyer shall notify Seller in writing of the number of days of the extension. In the event that Buyer's inspections reveal the existence of any environmental condition which may impose an obligation upon Buyer or its consultants or experts to report such condition to any federal, state or local agency, Buyer agrees that, subject to applicable law, neither Buyer nor any of Buyer's consultants or experts shall make such a report to any such agencies without providing Seller with prior notice of its obligation and intent to make such a report and further providing Seller with prior opportunity to timely review such information underlying Buyer's determination in order to determine whether Seller has an obligation to report and an opportunity for Seller to timely make such report.
- 4.5 If Buyer fails to provide Seller with written notice on or prior to the Due Diligence Termination Date that Buyer is terminating this Agreement, then Buyer shall be obligated to proceed with the purchase of the Property.
- 4.6 Buyer's purchase of the property shall be contingent upon:
- A. Buyer securing a change of zoning approval from the Ship Bottom Land Use Board changing the existing zoning from "P" Public to R-2 or a combined R-2/OR designation consistent with the surrounding zoning and Buyer's ability to secure all local, county and state land use approvals for 24 conforming lots.
- i. Buyer shall have a period of ninety (90) business days ("Buyer's Governing Board Due Diligence Period") within which to perform any negotiations and discussions with Governing Board/Counsel of Ship Bottom or applicable governing body purposed to secure preliminary site development approval including a change of zoning approval from the Ship Bottom Land Use Board changing the existing zoning from "P" Public to R-2 or a

combined R-2/OR. Seller shall provide Buyer any necessary consents to discuss the pending litigation [Add Docket Reference] with the Governing Board/Counsel of Ship Bottom or applicable governing body and to enter into a settlement agreement, expressly conditioned on Seller's approval, to resolve the current litigation. Seller agrees to participate in good faith with Buyer in the effort to resolve the litigation and secure a final preliminary site development approval including a change of zoning approval. Buyer's Governing Board Due Diligence Period shall commence immediately following Buyer's receipt of any necessary consents from Seller to discuss the pending litigation with the Governing Board/Counsel of Ship Bottom or applicable governing body.

B. Subdivision and CAFRA Permitting Contingency. This Contract of Sale is strictly contingent upon Buyer obtaining minor subdivision approval from the Borough of Ship Bottom to create twenty-four (24) single family residential lots along with any variances or waivers required by the Township. This Contract of Sale is further contingent upon Buyer securing all necessary CAFRA approval and permits, if needed. All subdivision and CAFRA approvals shall collectively be referred to as the "Governmental Approvals" and the within contingency shall be referred to as the "Approvals Contingency".

- i. The Buyer shall have 300 calendar days from the conclusion of Buyer's Due Diligence Period obtain all Government Approvals (the "Approvals Contingency Period"). The Approvals Contingency Period shall be inclusive of the forty-five (45) day appeal period following the receipt of the Governmental Approvals. If the government Approvals are not obtained on or before the expiration of the Approvals Contingency Period, or if the Buyer has not otherwise waived the Approvals Contingency by that date, then in that event, either party may terminate the Contract. Seller agrees to cooperate in signing any documents necessary for the Buyer to submit the applications for the municipal and state approvals. Buyer agrees to promptly retain the necessary professionals to apply for the subdivision and to diligently pursue the approval at Buyer's sole cost.
- ii. Building and Zoning Laws. Buyer assumes responsibility for compliance with all building and zoning laws and regulations for obtaining subdivision approval and any other governmental approvals, including CAFRA, which may be required to subdivide the Property into twenty-four (24) conforming lots. All costs of such approval will be borne by the Buyer including, without limitation, attorney's fees, engineering fees, survey fees, application fees and any other fees and expenses reasonably related thereto. Seller agrees to execute any consent which may be required in order for Buyer to apply for required approvals.
- iii. Time for Approvals. Buyer shall proceed expeditiously following the conclusion of the Buyer's Due Diligence Period and apply for and obtain all necessary subdivision, building and zoning approvals and permits, including CAFRA, and any other governmental approvals which may be required in order to consummate this transaction. Buyer shall have a period of Three-Hundred (300) calendar days after the conclusion of Buyer's Due

Diligence Period to make an application for subdivision approval for Buyer's intended use of the Property. Buyer shall diligently pursue the Government Approvals. For purposes of this Paragraph, the term "diligently pursue the government Approvals" shall mean that Buyer has filed a complete application for Subdivision Approval within the allotted time-frame and appeared at all scheduled municipal hearings ready to proceed with the application. During the Approvals Contingency Period, Buyer shall prepare all necessary plans for the Property and shall have the right to meet with authorities, boards and bodies having jurisdiction to determine whether all approvals required for the Property can be obtained. During the Approvals Contingency Period, Buyer shall have the right to apply for all state, county and local approvals, permits, certificates and/or the like which are required to permit Buyer to subdivide the Property as intended by Buyer. Seller shall consent to all applications for the Approvals. If, at any time prior to the expiration of the Approvals Contingency Period, Buyer, using its commercially reasonable business judgement, determines that any Government Approvals required for subdivision cannot be obtained, then Buyer shall have the right to terminate the Contract upon written notice to Seller, whereupon the Contract shall terminate, the Deposit returned to Buyer and there shall be no further obligation or liability of either of the parties hereto, except as otherwise expressly set forth herein.

- 4.7 Within the time frame set forth in Section 4.01 "Due Diligence", Buyer shall perform a Phase I and Phase II environmental study which includes an underground tank sweep of the Property. In the event a tank sweep or other known hazard is located, Buyer shall be solely responsible for the removal and remediation of the same with the cost to be deducted from the agreed upon purchase price, up to a total of \$200,000.00. In the event any remediation cost is estimated, and such remediation work cannot be completed prior to closing, \$100,000.00 shall be withheld from the Board's proceeds of sale and held in escrow in the manner described under Section 3.2 of the Agreement, pending the finalization of any remediation.
- 4.8 If Buyer fails to provide Seller with written notice on or prior to the Due Diligence Termination Date that Buyer is terminating this Agreement, then Buyer shall be obligated to proceed with the purchase of the Property.
- 4.9 It is understood and agreed between the parties that due diligence periods may run simultaneously in order to effectuate an expeditious closing of sale.

5. CLOSING OF TITLE

- 5.1 Date and Place of Closing. The Closing will take place at the offices of the Buyer's attorney or by mail. The date of the Closing (the "Closing Date") cannot be made final at this time. The Closing shall take place on or after September 26, 2023 or the completion of any of the contingencies included within, whichever is later. This date may be modified, by

mutual agreement of the parties, to accommodate the transition of the school and staff members.

5.2 Limited Liability Company Formation: Buyer will take possession of the Property in a Limited Liability Company (LLC) formed in the State of New Jersey (the "Limited Liability Company"), formed for the purpose of taking ownership of the Property, and to which the Buyer will be a managing member.

5.3 Closing Deliveries. At the Closing, Seller will deliver to Buyer:

- A. An executed Bargain and Sale Deed with Covenants Against Grantor's Acts (the "Deed").
- B. An Affidavit of Title.
- C. A closing statement reflecting all closing adjustments.
- D. The Seller's Residency Certification/Exemption (Form GIT-Rep 1).
- E. A Foreign Investment in Real Property Tax Act affidavit.
- F. All formation documents related to the Limited Liability Company, including, but not limited to, the Limited Liability Company's bylaws and all filings with the State of New Jersey.
- G. All documents related to the finding and removal of two underground storage units (the "Storage Units") in the garage/westerly area of the Property on or about 1988 along with all records of soil and or water testing conducted on the Property.
- H. Such other documents, certificates, and instruments reasonably necessary in order to effectuate the transaction described herein.

5.4 Conditions at Closing:

- A. Buyer's obligation to complete Closing under this Agreement is expressly conditioned upon the following, and Buyer shall have the further right, exercisable at any time and from time to time, to waive any one or more of such conditions without affecting any of Buyer's other rights, conditions or obligations:
 - (i) all representations and warranties of Seller herein being true and correct in all material respects at the time of such Closing; and
 - (ii) seller having performed all of its covenants and obligations hereunder in all material respects;
 - (iii) seller having concluded current litigation by way of final and binding settlement agreement; and

- (iv) the receipt of all other unappealable approvals, permits (including by way of example but not limitation any permits required by the New Jersey Department of Environmental Protection, licenses, easements (including by way of example but not limitation any required easements over adjacent properties, if any), variances, certificates, exceptions, authorizations, approvals, resolutions, and agreements as may be required to permit the lawful construction, installation, maintenance, operation, marketing and sale (as applicable) of not less than the Minimum Number of Lots and the site improvements related thereto as well as the satisfaction of any discretionary conditions of the Preliminary Approval and the Final Approval and resolutions memorializing the same (including the approval by Ship Bottom Township of a developer's agreement, if applicable), such that all items that are a pre-requisite for the issuance of building permits for no less than the Minimum Number of Lots have been satisfied, provided that said approvals shall not include the issuance of building permits (Re-Zoning, the COAH Confirmations, the Preliminary Approval, the Final Approval, and the Utility Approvals, the "Approvals").
- B. The requirements set forth herein shall be unappealable at the time of Closing and shall be subject only to such conditions as Buyer may approve in Buyer's sole discretion.
- C. Seller shall use diligent, commercially reasonable efforts to satisfy the conditions set forth in herein. In the event of a failure of the conditions set forth in Section 5.4(i)-(iii), Buyer shall be entitled to treat such failure as Seller's Default to exercise the remedies set forth in Section 11.1 below.
- D. Buyer shall provide copies of all development applications and submissions to Seller at the time that Buyer files the same with the appropriate governmental and/or quasi-governmental or other such third-party authority(ies), provided that all surveys, plans, specifications, reports and other engineering work product prepared by Buyer or Buyer's agents shall be solely owned by Buyer.
- E. Seller hereby agrees to cooperate in good faith with Buyer's pursuit of the satisfaction of all conditions to Closing hereunder and agrees to promptly execute all approval applications and related documentation required to be signed by the owner of the Property. In the event Seller does not execute and return to Buyer any filings for which its signature is required within five (5) business days of the date of receipt thereof, then Buyer may execute the same on Seller's behalf, as attorney-in-fact and/or bring an injunction (or such other action at law or in equity, as Buyer deems necessary) to compel Seller to execute the same, and the Deadlines under this Agreement shall be tolled for the period of any resulting delay.

F. In addition to any other rights of Buyer set forth in this Agreement, notwithstanding anything contained in this Agreement, if at any time it becomes commercially unreasonable (as determined by Buyer in Buyer's reasonable discretion) to expect to receive the Approvals required to support the satisfaction of the conditions to Closing set forth above (for example, there is an adverse rezoning, or the Township denies a request for development approvals, or the Township otherwise expresses a negative sentiment towards the proposed community), then Buyer shall have the unilateral right to immediately terminate this Agreement upon written notice to the Seller and shall receive the Deposit then in escrow.

6. REAL ESTATE TAXES AND OTHER ADJUSTMENTS AT CLOSING

- 6.1 Real Estate Taxes. Buyer shall receive a credit for any accrued but unpaid real estate taxes applicable to any period before the Closing Date, even if such taxes are not yet due and payable. Seller shall receive a credit for any unaccrued but paid real estate taxes applicable to any period subsequent to the Closing Date, even if such taxes are not yet due and payable. This provision shall survive Closing.
- 6.2 Payment of Liquidated Claims. Seller may permit that any person with a claim or right affecting the Property be paid out of the proceeds of this sale, up to the Purchase Price, or that an appropriate escrow be established to secure such payment.
- 6.3 Closing Expenses. Buyer shall pay the New Jersey Realty Transfer Fee relating to the sale of the Property. Buyer will pay the Transferee's/Grantee's Fee on Class 4A commercial properties if it is applicable to the sale of the Property. Buyer shall pay all filing fees and costs with respect to the obtaining of the discharge and satisfaction of any and all liens. Each party shall be responsible for paying the fees and costs of its own legal counsel. The parties shall pro-rate any and all other items of income and expense in the manner set forth in this Agreement or otherwise adjusted on a pro-rata per diem basis calculated on the entire yearly charge.
- 6.4 Assessments for Municipal Improvements. Certain municipal improvements such as sidewalks and sewers may result in the municipality charging property owners to pay for the improvement. Any unpaid charges (assessments) against the Property for work completed prior to the Closing Date will be paid by Seller at or before the Closing. If the improvement is completed, but the amount of the charge (assessment) is not determined, then Seller will pay an estimated amount at the Closing. When the amount of the charge is finally determined, Seller will promptly pay any deficiency to Buyer (if the estimate proves to have been too low), or Buyer will promptly return any excess to Seller (if the estimate proves to have been too high). This provision shall survive Closing.

7. DISCLAIMERS

- 7.1 SALE OF PROPERTY "AS IS". THE PROPERTY IS BEING SOLD "AS IS, WHERE IS," WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER BY SELLER. SELLER DOES NOT MAKE ANY CLAIMS OR PROMISES ABOUT THE

CONDITION OR VALUE OF ANY OF THE PROPERTY AND ANY IMPLIED REPRESENTATION OR WARRANTY IS HEREBY EXPRESSLY DISCLAIMED BY SELLER. BUYER FURTHER ACKNOWLEDGES THAT ITS DECISION TO PURCHASE THE PROPERTY IS MADE IN EXCLUSIVE RELIANCE UPON ITS RIGHT TO INSPECT THE PROPERTY, AS PROVIDED IN SECTION 4 OF THIS AGREEMENT.

- 7.2 Without limiting the generality of this Section 7, Seller does not make, has not made, and specifically disclaims, any representation or warranty, express or implied (except for the warranty of title as set out in the Deed), regarding:
- (A) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology;
 - (B) the income to be derived from the Property;
 - (C) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon;
 - (D) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
 - (E) the manner or quality of the construction or materials, if any, incorporated into the Property, or the manner, quality, state of repair or lack of repair of the Property;
 - (F) any environmental condition (each an "Environmental Condition") at, on, under or about the Property or compliance or non-compliance of the Property or any such Environmental Condition relating to Environmental Laws (defined in Section 7.3);
 - (G) zoning to which the Property or any portion thereof may be subject;
 - (H) the availability of any utilities to the Property or any portion thereof, including, without limitation, water, sewage, gas and electric;
 - (I) usages of any adjoining property;
 - (J) access to the Property or any portion thereof;
 - (K) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, durability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights of claims on or affecting or pertaining to the Property or any part thereof;
 - (L) the condition or use of the Property or compliance of or by the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or

laws, building, fire or zoning ordinances, codes or other similar laws of any applicable governmental authority or body;

- (M) the existence or non-existence of underground storage tanks;
- (N) any other matter affecting the stability or integrity of the land or improvements;
- (O) the potential for future development of the Property;
- (P) the existence of vested land use, zoning or building entitlements affecting the Property; or
- (Q) any other matter with respect to the Property.

7.3 For purposes of this Agreement, "Environmental Laws" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the New Jersey Industrial Site Recovery Act ("ISRA"), the New Jersey Spill Compensation and Control Act, the New Jersey Solid Waste Management Act, the New Jersey Freshwater Wetlands Protection Act, the New Jersey Coastal Wetlands Protection Act, the New Jersey Coastal Area Facilities Review Act, including any administrative or judicial interpretation or any of the foregoing and any and all other applicable federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions regulating, relating to or imposing liability (including strict liability) or standards of conduct in regard to the environment or to emissions, discharges, releases or the presence of pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint, chemicals or other industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint, chemicals or other industrial, toxic or hazardous substances or wastes or the cleanup or other remediation thereof.

8. SELLER'S DOCUMENTATION

Upon Seller's execution of this Agreement, if available to Seller, Seller shall deliver to Buyer the following documentation:

- (1) a copy of the most recent title report or policy with respect to the Property; and
- (2) a survey of the Property.

9. BROKER FEES

[INTENTIONALLY DELETED]

10. CONDEMNATION

Buyer may, upon written notice to Seller, terminate this Agreement in its sole discretion if, at any time prior to Closing, all or any part of the Property is taken, or threatened to be taken in the exercise of the power of eminent domain by any public or private authority. If Buyer elects to proceed to Closing, any condemnation awards pertaining to any portion of the Property being purchased by Buyer will be the sole property of the Buyer and Seller will, at Closing, assign all of his right, title and interest to the awards.

11. EFFECT OF TERMINATION OF AGREEMENT

11.1 If this transaction fails to close as a result of the Seller's default (other than pursuant to Section 4), then Seller shall be liable to Buyer for damages incurred or suffered by Seller as a result of such breach solely in an aggregate amount of \$250,000.00 plus Buyer's reasonable attorneys' fees and expenses incurred with respect to this Agreement certified consistent to Court Rule R. 4:42 and the criteria of R.P.C. 1.5, as liquidated damages (it being agreed that specific damages may be difficult to prove).

11.2 If this transaction fails to close due to the default of Buyer, then Buyer shall be liable to Seller for damages incurred or suffered by Seller as a result of such breach solely in an aggregate amount of \$250,000.00 plus Seller's reasonable attorneys' fees and expenses incurred with respect to this Agreement certified consistent to Court Rule R. 4:42 and the criteria of R.P.C. 1.5, as liquidated damages (it being agreed that specific damages may be difficult to prove).

12. PUBLIC SPACE DONATION

Buyer shall grant by way of Deed to the Borough of Ship Bottom two parcels of land consisting of approximately 12,400 and 12,425 square feet.

- (1) One parcel shall front Central Avenue on the north side for approximately 100 feet continuing westerly 125 or more feet;
- (2) the other shall be located on the south side with frontage commencing 150 feet from the corner of Central Avenue and continuing for 125 or more feet and by 100 feet deep.
- (3) The final size, location and configuration of the Public Space Donation shall be subject to modification based upon a final agreement reached with the Governing Board/Counsel of Ship Bottom or applicable governing body. To the extent the Public Donation space requested by the Governing Board/Counsel of Ship Bottom or applicable governing body is in excess of the total square footage set-forth herein, Buyer reserves the right to terminate the within Contract of Sale consistent to section 4 above.

The Borough of Ship Bottom would be free to develop each open space in a manner to best serve the needs of the community. The donated parcels shall be subject to any existing tideland claim impacting the land.

13. MISCELLANEOUS

- 13.1 Entire Agreement. This Agreement and any Exhibits or Schedules annexed (or to be annexed) embody the entire agreement between the parties in connection with this transaction. There are no oral or parol agreements representations, or inducements existing between the parties relating to this transaction which are not expressly stated and covered in this Agreement. This Agreement may not be modified except by a written agreement executed by all parties.
- 13.2 Exclusivity of Dealings: To the fullest extent permitted by law, Seller shall not solicit, market or otherwise engage in any effort, discussion, communication, negotiation or any other action intentioned, either directly or indirectly, to secure an alternate purchaser, buyer, potential owner or investor of/to the subject property for so long as the within Agreement remains in effect. Both parties acknowledge that the within Agreement is the product of significant time, effort and due diligence between the parties and the parties have in good faith reached an Agreement as to all relevant terms which is reflective of the parties' good faith dealings over a significant course of time.
- 13.3 Binding Effect. This Agreement is binding upon and inures to the benefit of the respective parties, their respective heirs, legal representatives, administrators, successors, and assigns.
- 13.4 Waiver. A waiver by any party to this Agreement will constitute a waiver only for that one occasion and will not be deemed a permanent waiver. If any action by any party requires the consent or approval of another party, the consent or approval on any one occasion will not be deemed a consent or approval of any other action on the same or any subsequent occasion.
- 13.5 Notices. Any notice which is required to be given pursuant to this Agreement shall be given by delivery of such notice by personal delivery, Federal Express or equivalent service or by certified mail, return receipt requested (the actual delivery of the notice by express mail service or the posting of which notice with the U.S. mails shall be deemed sufficient for this purpose), and the notices shall be to the parties in care of the addresses set forth on the first page of this Agreement (or such other address as the parties may direct by written notice to the other party) with copies to their respective attorneys as follows:

SELLER'S ATTORNEY:

If by U.S. Mail and/or Overnight Express Courier:

Dennis McKeever, Esq.
Cornell, Merlino, McKeever & Osborne, LLC
238 St. Paul Street
Westfield, New Jersey 07090

Phone: (908) 481-5000
If by Email: dmcckeevent@cmmolaw.com

BUYER'S ATTORNEY:

If by U.S. Mail and/or Overnight Express Courier:

Kara A. Schultz, Esq.
P.O. Box 2281
Long Beach Township, NJ 08008
Phone: (609) 339-5707
If by Email: karaschultzlegal@yahoo.com

- 13.6 Captions. The captions and other headings contained in this Agreement are inserted for convenience of reference only and are not to be construed as part of this Agreement or as limitations on the scope of any particular article, section, paragraph or other subdivision. The captions may not affect the interpretation or meaning of this Agreement.
- 13.7 Governing Law. This Agreement will be controlled, construed and enforced in accordance with the laws of the State of New Jersey.
- 13.8 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document.
- 13.9 Parity. This Agreement will be construed on a parity basis. The Agreement is the result of negotiation between the Buyer and the Seller and the identity of the draftsman shall not be utilized in the interpretation of any provision of this Agreement.
- 13.10 Further Assurances. From time to time at the request of either Seller or Buyer (whether before, at or after Closing), the other party shall execute, acknowledge and deliver such other and further documents as the requesting party may reasonably request to better effectuate the provisions of this Agreement; provided, however, that such documents are reasonable and customary for this type of transaction.
- 13.11 Authority. The officers or agents executing this Agreement on behalf of any corporation, limited liability company, or trust are authorized to execute this Agreement by:
- A. in the case of a trust, in accordance with the trust agreement; and
 - B. in the case of a corporation or limited liability company, pursuant to a validly adopted corporate or limited liability company resolution.

Upon request, the Seller will provide a copy of the trust agreement creating the trust and the Buyer will provide a copy of the corporate resolution demonstrating the authority of the signatory to this Agreement.

14. SURVIVAL

Unless expressly stated otherwise in this Agreement, the covenants, representations and warranties of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or thereto or in connection herewith or therewith shall not survive the Closing.

15. 1031 EXCHANGE

Seller shall have the right, but not the obligation, to include the sale of the Property as part of a tax deferred exchange under Section 1031 of the Internal Revenue Code of 1986 ("Exchange Transaction"), for the benefit of Seller, at no cost, expense or liability to Buyer. Buyer agrees to reasonably cooperate with Seller in any manner necessary to facilitate such Exchange Transaction, including but not limited to the execution of any and all documents (subject to the approval of Buyer's legal counsel, which approval shall not be unreasonably withheld, delayed or conditioned) as shall be reasonably necessary in connection therewith, all at no cost, expense or liability to Buyer. Buyer acknowledges that, in order to facilitate the Exchange Transaction, Seller may be required to assign its rights under this Agreement to a qualified intermediary, and Buyer hereby agrees to such assignment. Nothing herein, however, shall be deemed to modify the terms of this Agreement, to obligate Buyer to pay any additional sums or incur any additional costs as a result of the Exchange Transaction, to expose Buyer to any additional obligations or liability as a result of the Exchange Transaction or to waive any of Buyer's rights under this Agreement.

SIGNED AND AGREED TO BY:

SELLER:

WITNESS/ATTEST:

LONG BEACH ISLAND BOARD OF EDUCATION

By: _____

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