

FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO THE REAL ESTATE PURCHASE AGREEMENT (the "First Amendment"), is made as of the 14 day of March, 2023 ("Effective Date"), by and between Michael Pagnotta Architecture P.C., a New Jersey professional corporation, and or assigns (the "Buyer" or "Pagnotta") with an address at 342 West 9th Street, Ship Bottom, New Jersey 08008 and the Long Beach Island Board of Education, a New Jersey board of education (the "Seller" or the "Board") with a mailing address of 201 20th Street, Ship Bottom, New Jersey 08008. Pagnotta and the Board shall be collectively referred to as the "Parties".

Witnesseth:

WHEREAS, the Parties entered into a Real Estate Purchase Agreement (the "Contract") with a stipulated execution date of October 4, 2022, for Pagnotta to purchase from the Board the property located at 201-267 West 20th Street, Ship Bottom, New Jersey, also identified as Block 48, Lot 1 on the Tax Map of the Borough of Ship Bottom, Ocean County, New Jersey and also known as the Long Beach Island Grade School (the "Property"); and

WHEREAS, the Buyer's purchase of the Property is contingent upon Pagnotta procuring either (i) a change in the zoning for the Property from the Borough of Ship Bottom from the existing "P" Public Zone to R-2 or a combined R-2/OR designation consistent with the surrounding zoning; or (ii) the requisite local, county and state land use approvals, including those from the Ship Bottom Land Use Board, to permit 24 conforming residential lots on the Property as set forth in Exhibit A (the Schoolyard) annexed hereto; and

WHEREAS, pursuant to Section 4.6A(i) of the Contract, Pagnotta had ninety (90) business days within which to perform any negotiations and discussion with the Governing Body of Ship Bottom to secure preliminary site development approval including a change of zoning; and

WHEREAS, Pagnotta has made diligent efforts to meet with the Governing Body of Ship Bottom to discuss a change in zoning and it appearing that the Governing Body currently has a lack of interest in engaging with Pagnotta regarding either land use approvals or a zone change; and

WHEREAS, the Board is currently involved in litigation with the Borough of Ship Bottom and Borough of Ship Bottom Land Use Board (Docket No. OCN-L-1179-21)(the "Litigation") regarding a challenge to the zoning amendment to the "P" Zone as set forth in Borough Ordinance 2021-05 entitled "Ordinance Amending Chapter 16.20 of the Code of the Borough of Ship Bottom, Entitled P Public District to Define the Intent and Purpose of the P Public District and Specify Prohibited Uses Therein" (hereinafter the "Ordinance"); and

WHEREAS, the Parties agree that it is prudent to allow the Litigation to conclude before the Superior Court, Law Division, Ocean County Vicinage before Pagnotta proceeds with attempting to fulfill the contingencies set forth in the Contract; and

WHEREAS, the Parties also want to use this opportunity to clarify certain other points in the Contract; and

WHEREAS, this First Amendment hereby memorializes the revisions and additions to the Contract; and

NOW, THEREFORE, for good and valuable consideration the receipt of which is acknowledged by the Parties, Seller and Purchaser hereby agree as follows:

1. **Recitals**. All Recitals above are incorporated herein and made a part hereof.

2. **Tolling of Dates**. This First Amendment shall extend and toll all dates under the Contract until such time as the Litigation has concluded before the Superior Court, Law Division, Ocean County Vicinage.

3. **Deposit Dates**:
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, which shall be tolled due to the Litigation defined herein Referred collectively as "Deposit" herein.	\$350,400.00
---	--------------

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).	<u>\$13,315,200.00</u>
--	------------------------

TOTAL:	\$14,016,000.00
--------	-----------------

4. **Revision to Due Diligence Section**.

a. Section 4.1 of the Contract is hereby revised to add the following information, which is bolded and double-underlined therein:

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 or thirty (30) business days after the date in which a final Order is entered in the Litigation, whichever is later (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.

- b. Section 4.6(A)(i) of the Contract is hereby revised to add the following information, which is bolded and double-underlined therein:

Buyer shall have a period of ninety (90) business days, starting five (5) business day after the date in which a final Order is entered in the Litigation ("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 [Docket No. OCN-L-11789-21] 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.

- c. Section 4.7 of the Contract is hereby revised to add the following:

Under no circumstances shall Buyer engage the services of a LSRP to perform any due diligence activities. "LSRP" shall mean a Licensed Site Remediation Professional as such term is defined in the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 et seq., the regulations promulgated thereunder, and any amendments to such legislation or regulations.

- d. Section 4.7 of the Contract is hereby revised to add the following:

5. Revision to Government Approvals Section. The Contract is hereby amended/revised as follows: (i) the Parties acknowledge Pagnotta has complied with Section 4.6(A)(i) of the Contract and therefore the Buyer's Governing Board Due Diligence Period and the obligations thereunder have been satisfied and are no longer applicable; (ii) Section 4.6(B) is revised to add the following language: Buyer agrees that upon the conclusion of the Litigation, it shall diligently and in good faith pursue the necessary Government Approvals from the Ship Bottom Land Use Board. Seller hereby agrees to cooperate with Buyer's pursuit of the Government Approvals.

6. **Deletion of Section 5.4.** Section 5.4(iii) of the Contract required, as a condition of closing, that Seller conclude the Litigation by way of a final and binding settlement agreement. The Parties acknowledge that the Board has attempted to mediate and/or otherwise settle the Litigation to no avail. Accordingly, Section 5.4(iii) is hereby removed from the Contract.

7. **Tidelands Claim.** The Contract is hereby revised to provide for the following:

Notwithstanding the contingencies set forth in the Contract as revised by the First Amendment, Buyer reaffirms and acknowledges that pursuant to Section 7.1 of the Contract, the Property is being sold "As-Is, Where-Is." This includes the fact that approximately fifteen (15%) percent of the Property is subject to a Tidelands Claim. It shall be Buyer's responsibility at its sole cost and expense to either: (i) resolve the Tidelands Claim with the State Tidelands Resource Council or; (ii) obtain the consent of the Borough of Ship Bottom to accept a dedication of the portion of the Property which is subject to the Tidelands Claim as Open Space. At no point during the Contract or post-Closing, shall the Board be responsible for resolving the Tidelands Claim.

8. The Parties agree that except as modified by this First Amendment, all provisions, covenants, addendums, terms and conditions set forth in the Contract shall remain in full force and effect and are hereby ratified (pursuant to Board Approval) and confirmed in all respects. The Parties further agree that the covenants, amendments, terms and conditions contained in this First Amendment shall bind and inure to the benefit of the Parties hereto and their respective successors and assigns.

9. **Miscellaneous.**

- A. No provision of this First Amendment may be amended, changed or waived orally, but only by an instrument in writing signed by the Parties. This First Amendment supersedes all prior and contemporaneous representations, agreements, and understandings, whether written or oral.
- B. Each party acknowledges that it has participated, with the advice of counsel, in the preparation of this First Amendment. No party is entitled to any presumption with respect to the interpretation of any provision hereof or the resolution of any alleged ambiguity based on any claim that the other party drafted or controlled the drafting of this First Amendment.
- C. Any paragraph, Article or Article headings or captions contained in this First Amendment shall be for reference purposes only and shall not affect the construction or interpretation of any provision in this First Amendment.
- D. This First Amendment shall be governed by New Jersey law without regard to its conflict of law principles and any dispute shall be venued in the Superior Court of New Jersey, Ocean County vicinage, unless otherwise agreed to by the Parties.


- E. **Jury Trial Waiver.** Seller and the Buyer hereby waive their rights to a trial by jury in any action or proceeding concerning the breach or enforcement of this First Amendment.
- F. **Severability.** If any term, covenant or condition of this First Amendment or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this First Amendment, or the application of such term, covenant or condition to parties or circumstances other than those to which it is held invalid, illegal, or unenforceable, is not affected thereby and each term, covenant, and condition of this First Amendment remains valid and enforceable to the fullest extent permitted by law, but only if the essential terms and conditions of this First Amendment for each party remain valid, binding and enforceable.
- G. **Counterparts.** The parties may execute this First Amendment in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by email is as effective as executing and delivering this First Amendment in the presence of the other parties to this First Amendment. This First Amendment is effective upon delivery of one executed counterpart from each party to the other parties. In proving this First Amendment, a party must produce or account only for the executed counterpart of the party to be charged. Any party delivering an executed counterpart of this First Amendment by email shall also deliver a manually executed counterpart of this First Amendment, but the failure to do so does not affect the validity, enforceability, or binding effect of this First Amendment.
- H. **Waiver.** Each party shall have the right, in its sole discretion, for any reason or for no reason, to waive any condition precedent or contingency contained in this First Amendment for the benefit of said party, provided that such waiver shall be in writing and if any such waiver occurs, this First Amendment shall be interpreted and construed as if such condition precedent or contingency had never been a party of this First Amendment, except to the extent that said condition precedent or contingency is stated in this First Amendment to be also for the benefit of the other party.
- I. **Authority to Execute.** The parties executing this First Amendment represent and warrant that they have full authority and/or have been duly authorized by their respective corporations to do so on behalf of such corporations.
- J. **Date of First Amendment.** The date of this First Amendment shall be the date on which a signed copy by Buyer is approved by the Board, which date will be inserted at the top of the first page hereof

K. Attorney Fees. In the event any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, or to seek rescission of this First Amendment for default contemplated herein, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include, but without limitation, the obligation to pay costs of defense in the form of court costs and attorneys' fees.

(Signature page follows)

IN WITNESS WHEREOF, each party has caused this First Amendment to be executed as of the date set forth below and pending full ratification by the Long Beach Island Board of Education.

WITNESS/ATTEST



WITNESS/ATTEST

SELLER

**LONG BEACH ISLAND
BOARD OF EDUCATION**

Colette E Southwick

BUYER

**MICHAEL PAGNOTTA
ARCHITECTURE P.C.**


ID g1d76udwJkZGLfNN6SgjWTGC

eSignature Details

Signer ID:	g1d76udwJkZGLfNN6SgjWTGC
Signed by:	Michael Pagnotta
Sent to email:	mpagnotta731@gmail.com
IP Address:	69.141.137.92
Signed at:	Mar 4 2023, 6:37 pm EST