

**SECOND AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT**

**THIS SECOND AMENDMENT TO THE REAL ESTATE PURCHASE AGREEMENT** (the "Second Amendment"), is made as of the 23<sup>rd</sup> day of July 2024 ("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 **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**, on March 14, 2023, the Parties executed a First Amendment to Real Estate Purchase Agreement (the "First Amendment") memorializing certain revisions and additions to the Contract as agreed to by the Parties; 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**, the Board 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"), is resolved by way of the Court's December 18, 2023 Order; and is subject to any pending appeals by the Borough of Ship Bottom;

**WHEREAS**, pursuant to Section 4.6A(i) of the Contract, as amended by the First Amendment, Pagnotta had ninety (90) business days, starting five (5) business days after the date in which a Final Order is entered in the Litigation, within which to perform any negotiations and discussions with the Governing Body of Ship Bottom to secure preliminary site development approval including a change of zoning. Pursuant to the Contract, Pagnotta is actively engaged in negotiations with the Governing Body of Ship Bottom to achieve a collaborative site plan for the property and continues in the final stages of said negotiations;

**WHEREAS**, the Governing Body, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented to date (the “Redevelopment Law”), has designated the property as an area in need of rehabilitation; and

**WHEREAS**, pursuant to the Redevelopment Law, the Governing Board introduced and adopted an ordinance creating superseding zoning controls for the Property to allow for a combination of recreational open space and residential uses; and

**WHEREAS**, Pagnotta is anticipated to be designated as the Redeveloper at the July 23, 2024 Governing Body meeting; and Pagnotta and the Governing Body is actively negotiating a Redevelopment Agreement for Rehabilitation based on a conceptual site plan for the development of single-family homes and recreational open space on the Property containing a maximum of twenty-one (21) residential units, along with grading and stormwater improvements; and the Governing Body and Pagnotta anticipate the Agreement to be finalized between the parties within 30 days and then adopted by way of resolution and ordinance by the Governing Body;

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

**WHEREAS**, this Second 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. **Contract Purchaser the “Buyer”**. Contract Purchaser, **Michael Pagnotta Architecture P.C.**, a New Jersey professional corporation, and or assigns (the "Buyer" or "Pagnotta"), shall be amended to **Fortuna Park LLC**, sole member

Nautilus Custom Construction LLC, whose sole member is Michael Pagnotta, whose address is 342 West 9th Street, Ship Bottom, New Jersey 08008, referred to herein as “the Buyer” or “Pagnotta” or “Fortuna.”

3. **Tolling of Dates.** This Second Amendment shall extend and toll all dates under the Contract until Pagnotta has executed a Redevelopment Agreement for Rehabilitation with the Governing Body and the same is adopted by way of Ordinance, and the final conclusion of all appeals associated with the litigation.

4. **Contract Price.** The Contract Price shall be reduced to \$13,216,000.00 reflecting a concession of \$800,000.00 made by the Seller.

5. **Revision to Purchase Price and Manner of Payment:**

a. Section 3.1 of the Contract is hereby revised as follows:

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 LUB Subdivision Approval Memorialization detailed in lines 1-4, section 4.6 B, referred collectively as "Deposit" herein.

Deposit shall be held in an Interest Bearing Account. \$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). \$12,515,200.00

TOTAL: \$13,216,000.00

b. Section 3.2 of the Contract is hereby revised as follows, with removed language struck through while added language is bolded and underlined therein:

Deposit Monies. All deposit monies shall be deposited into an interest-bearing attorney trust or escrow account of Seller's attorneys, Chasan Lamparello Mallon & Cappuzzo, PC (the "Escrow Agent") until the Closing, at which time the deposit shall be applied on account of the Purchase Price to the Buyer. 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 and interest earned 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. **Revision to Due Diligence Section.** Section 4.7 of the Contract is hereby revised to add the following language, which is bolded and underlined therein:

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, with the exception of the previously disclosed 2,000-gallon unleaded gasoline underground storage tank located at the southern side of the intersection of West 19<sup>th</sup> Street and East Bay Terrace in Ship Bottom, New Jersey, 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.

With respect to the disclosed 2,000-gallon tank believed to be decommissioned, Seller consents for Buyer to remove the same by a licensed and permitted professional at such a time so as not to unreasonably not disturb or disrupt students' activities. Buyer will coordinate such effort through counsel. Buyer's responsibility for the removal and remediation of this tank shall be capped at \$75,000.00. Any costs in excess shall be treated as above within the stated contingency amount.

6. **Revision to Closing Title Section.**

a. Section 5.1 of the Contract is hereby amended to reflect a revised Closing Date of June 15, 2025.

b. The Contract is hereby amended/revised to add a Section 5.5 concerning "Use and Occupancy" as follows:

(i) **Seller to Remain.** The Buyer agrees to allow the Seller to remain on the Property pursuant to the terms of this agreement and subject to the approval of the Buyer's lender. Seller may continue to use the Property as a public school subject to this agreement for a period of time not to exceed one (1) month, unless otherwise agreed to by the Parties.

(ii) **Initial Term.** From the June 15, 2025, Closing Date for thirty (30) days through July 15, 2025, the Seller may occupy the Property and will cover the cost of all utilities, per diem taxes, and for the period of occupancy all insurance policies that the Buyer is required by their lender/investors to maintain that are directly associated with Seller's occupancy, including liability, fire hazard and flood insurance.

- (iii) Notice. The Seller will be responsible for all damage to the Property that occurs during the Seller's occupancy.
- (vi) Insurance and Indemnity. The Seller will indemnify and hold the Buyer harmless from all claims and expenses including attorney's fees, which arise as a result of the Seller's use or occupancy of the Property. The Seller will keep adequate insurance in force to cover all such possible claims and damages.
- (vii) Inspection. The Buyer may inspect the Property during the Seller's occupancy, upon reasonable notice, and upon termination of the Seller's occupancy. Following the firm conclusion of the school year, Buyer may have complete access to the exterior grounds of the building to commence initial site work on the property, including but not limited to the removal of the playground equipment, recreational area blacktops, demolition of the bus garage, etc.

6. The Parties agree that except as modified by this Second 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 Second Amendment shall bind and inure to the benefit of the Parties hereto and their respective successors and assigns.

7. **Miscellaneous.**

- A. No provision of this Second Amendment may be amended, changed or waived orally, but only by an instrument in writing signed by the Parties. This Second 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 Second 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 Second Amendment.
- C. Any paragraph, Article or Article headings or captions contained in this Second Amendment shall be for reference purposes only and shall not affect the construction or interpretation of any provision in this Second Amendment.
- D. This Second 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 Second Amendment.

- F. Severability.** If any term, covenant or condition of this Second Amendment or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this Second 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 Second Amendment remains valid and enforceable to the fullest extent permitted by law, but only if the essential terms and conditions of this Second Amendment for each party remain valid, binding and enforceable.
- G. Counterparts.** The parties may execute this Second 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 Second Amendment in the presence of the other parties to this Second Amendment. This Second Amendment is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Second 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 Second Amendment by email shall also deliver a manually executed counterpart of this Second Amendment, but the failure to do so does not affect the validity, enforceability, or binding effect of this Second 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 Second Amendment for the benefit of said party, provided that such waiver shall be in writing and if any such waiver occurs, this Second Amendment shall be interpreted and construed as if such condition precedent or contingency had never been a party of this Second Amendment, except to the extent that said condition precedent or contingency is stated in this Second Amendment to be also for the benefit of the other party.
- I. Authority to Execute.** The parties executing this Second 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 Second Amendment.** The date of this Second 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 Second 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 Second 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



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SELLER

LONG BEACH ISLAND  
BOARD OF EDUCATION



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WITNESS/ATTEST



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Dean Heminghaus

BUYER

MICHAEL PAGNOTTA  
ARCHITECTURE P.C.



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