



City of Newport  
**REQUEST FOR CITY COUNCIL ACTION**

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**To:** Council Chair Charles Holder & Members of the City Council  
**From:** Colin K. Kennedy, MPA, City Manager *Col Kennedy*  
**Date:** December 2, 2024  
**Subject:** Coggeshall School Purchase and Sale Agreement  
**Staff Presentation:** Christopher J. Behan, Esq., City Solicitor

**MATTER BEFORE THE COUNCIL:**

The matter before the Council is a proposed real estate purchase and sale agreement for the Coggeshall School property along with a resolution that if approved by the Council, would allow the Council Chair to sign on behalf of the City.

**BACKGROUND AND FINDINGS:**

In or about March of 2023, the City issued Requests for Proposals for the purchase/lease for reuse of the former Coggeshall School building and grounds located at Van Zandt Avenue and Evarts Street. By Resolution of the Council No. 2023-85 passed on July 12, 2023, the Council accepted the proposal submitted by BCM Realty Partners ("Buyer"). After initial community outreach performed by the Buyer with the City of Newport, negotiations began to arrive at a real estate purchase and sale agreement for the property. The major issues that were addressed in the negotiations included among others the length of rental periods for units, tax exemptions, and restrictions on rents for workforce housing opportunities. The Buyer, in its Executive Summary submitted as part of its response to the City's Request for Proposals, had indicated that the units will be long term rental units and will provide workforce housing. It further stated that all of the one and two bedroom units will qualify as workforce housing, with proposed monthly rents of \$1,800 for a one bedroom unit (qualifying range \$1,866 -\$2,799) and \$2,500 for a two bedroom unit (qualifying range \$2,098 -\$3,147). The City had been pushing for restrictions that would keep rents within workforce housing guidelines. Its most recent proposal was for the inclusion in the agreement of restrictions on rents for the 26 one bedroom units in the school building at 80% of the AMI for the City of Newport as opposed to the Newport-Middletown-Portsmouth area. This was rejected by the Buyer. The Buyer at this time will only agree to the language which is found on Page 2, in Section 3(1) of the proposed agreement that the premises will be used to provide one and two bedroom apartments at market rates for workforce housing opportunities. Under the City proposal, the Buyer would still be able to charge market rates for the six 2-bedroom units in the school building and for the townhouses to be built.

The Buyer's language, although it references workforce housing, will still allow it to rent at market rates. In support of its position, the Buyer states that it will have a great deal of difficulty finding investors and financing if there are restrictions on the rents that can be paid and as a result may not be able to do the project. In addition, since the City is requiring that the historic school building be retained, this results in significant increase in construction costs. The Buyer has requested that the agreement be presented to the Council with its proposed language for the workforce housing condition.

The Buyer has agreed to a condition which requires that any rental of the units be for a minimum of nine months, as well as for tax exemptions which would be less than what may be available to it under Ordinance Section 4.08.110.

**PREVIOUS LEGISLATIVE ACTION**

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  No Fiscal Impact

**SUPPORTING DOCUMENTS**

Resolution  
Proposed Purchase and Sale Agreement.

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Finance Dept. Review: *12/3/2024* Date By: *RJN* (if applicable)

THE CITY OF NEWPORT

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**RESOLUTION  
OF THE  
COUNCIL**  
**No.**

RESOLVED: that the Council Chair is authorized to sign the Real Estate Purchase and Sale Agreement for the purchase and sale of the Coggeshall School property with BCM Realty Partners, LLC as well as a deed of conveyance and any necessary closing documents in connection with the transfer of the property on behalf of the City, upon review by the City Solicitor.

IN COUNCIL  
READ AND PASSED

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LAURA C. SWISTAK  
CITY CLERK

**REAL ESTATE PURCHASE & SALE AGREEMENT**  
Van Zandt Avenue & Evarts Street, Newport Rhode Island  
(Plat 10, Lots 33, 225, 226 and 227)

This Purchase and Sale Agreement (the "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Newport, a municipal corporation organized and existing under the laws of the State of Rhode Island with an address of 43 Broadway, Newport, Rhode Island (the "Seller"), and BCM Realty Partners, LLC, a Rhode Island limited liability company with a mailing address of 39 Thurston Avenue, Newport, Rhode Island (the "Buyer").

**WITNESSETH**

WHEREAS, Seller is the owner of that certain real property located on Van Zandt Avenue and Evarts Street in Newport, Rhode Island being identified as Lots 33, 225, 226 and 227 on Newport Tax Assessor's Plat 10, also known as the Coggeshall School; and

WHEREAS, Seller has accepted Buyer's offer to purchase the aforesaid property and to develop said property in accordance with Buyer's Development Proposal Response to Seller's RFP #23-039.

NOW, THEREFORE, in consideration of the premises and of the agreements and covenants herein contained, the parties hereto agree as follows:

**SECTION 1. Property to be Purchased by Buyer**

**1.01** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all of Seller's right, title and interest in those certain parcels of real estate located on Van Zandt Avenue and Evarts Street in Newport, Rhode Island, being further identified as Lots 33, 225, 226 and 227 on Newport Tax Assessor's Plat 10, as presently constituted. together with all of Seller's right, title and interest in and to all buildings, structures, fixtures and improvements situated on the aforesaid real estate (hereinafter, the aforesaid real estate and buildings, structures, fixtures and improvements collectively referred to as the "Premises").

**SECTION 2. Payment of Purchase Price**

**2.01** The purchase price to be paid by Buyer for the Premises shall be One Million Dollars (\$1,000,000.00) (the "Purchase Price"), subject to the adjustments and pro-rations hereinafter described.

**2.02** The purchase price shall be paid as follows:

- (a) The sum of Forty Thousand Dollars (\$40,000.00) (the "Deposit") has been paid upon execution of this Agreement to the City of Newport;

(b) The sum of Nine Hundred Sixty Thousand Dollars (\$960,000.00) shall be paid by certified or bank check or wire transfer at the time of the Closing as herein set forth.

**2.03** The Deposit shall be held in escrow by the City of Newport and shall be paid to the Seller upon delivery and recording of the deed or duly accounted for as otherwise provided for in this Agreement.

### **SECTION 3. Title; Deeds**

At the Closing, Seller shall convey the Premises to Buyer or Buyer's nominee by a good and sufficient warranty deed in statutory form (hereinafter referred to as the "Deed") conveying good, marketable, and insurable fee simple title, free and clear of all liens and encumbrances, excepting only: (a) easements, encumbrances and restrictions of record which do not impair marketable title to the Premises; (b) provisions of existing building, zoning and subdivision laws; and (c) betterment and other assessments, which assessments shall be adjusted as hereafter provided (hereinafter collectively referred to as the "Permitted Encumbrances").

Buyer shall obtain at its sole expense within forty-five (45) days of the date hereof, a commitment for title insurance (the "Commitment") for the Premises, a copy of which shall be furnished to Seller. Buyer shall immediately determine whether Seller has good and marketable record title in fee simple to the premises, subject only to Permitted Encumbrances. If written objection to title is made by Buyer within forty-five (45) days hereof, Seller shall use Seller's best efforts to seek to cure all such title defects at Seller's sole cost and expense. If such defect(s) is or are not cured by Seller or waived by Buyer within thirty (30) days after the date of receipt by Seller of written notice of Buyer's objection to title as herein above provided, Buyer may terminate this Agreement without incurring any liability whatsoever, whereupon the Deposit shall be promptly returned and this Agreement shall be null and void and of no further force and effect. In the event any lien is filed or encumbrances or any defect or cloud of title arises against the Premises from and after the date of the Commitment through the Closing, Seller shall, at its sole cost and expense, take appropriate action to ensure that no mention of such lien, encumbrances or any defect or cloud is made in the title policy to be issued to Buyer at the Closing pursuant to the Commitment for the Premises, and the Closing Date shall be extended for up to thirty (30) days to allow for any such action by Seller.

The Parties further agrees that the Property shall be conveyed with the following covenants and restrictions which shall run with the land and be binding on all future grantees owning or with an interest in the Property:

1. That the Premises shall be used to provide one (1) and two (2) bedroom apartments at market rates for work force housing opportunities.
2. That the current and planned structures and buildings on the Premises will have no more than a total of Thirty-Two (32) dwelling units and no more than a total of Forty-Four (44) bedrooms.
3. That no structures, buildings or dwelling units on the Premises shall be rented for less

than nine (9) month terms and not used for Guest Facilities as defined in the Newport Zoning Ordinance or for transient lodging accommodations for a period of less than thirty (30) days.

#### **SECTION 4. Closing Date**

**4.01** Unless some other time and place shall be mutually agreed upon in writing, the conveyance of title to the Premises and payment of the unpaid portion of the Purchase Price (the "Closing") shall take place within two Hundred forty (240) days from the date that this agreement is fully executed. The Closing shall take place at Newport City Hall, 43 Broadway, Newport, Rhode Island, or elsewhere as mutually agreed to by the parties hereto.

If the Buyer has diligently pursued zoning approval for the use of the Premises as set forth in Section 12.01 herein and has not obtained such approval as of the date set forth for Closing above, through no fault of the Buyer, then the time set for Closing shall be extended an additional sixty (60) days.

**4.02** Effective with the delivery of the Deed, beneficial ownership and the risk of loss of the Premises shall pass from Seller to Buyer.

#### **SECTION 5. Adjustments**

The following are to be apportioned at the Closing, such apportionment to be through the Closing Date, as follows:

**5.01** Electricity, gas, and other utility charges for periods prior to the Closing Date shall be paid by Seller upon readings (obtained by Seller and furnished at the Closing) made on or immediately prior to the Closing Date; provided, however that Buyer shall be responsible to arrange for the transfer and continuance of such utility services in Buyer's name after the Closing Date and Buyer shall purchase any excess oil in tanks as of the date of closing.

**5.02** Real estate taxes assessed against the Premises on the December 31st preceding the Closing are to be pro-rated on a fiscal year basis, the Seller paying pro-rata for the period from such date of assessment to the Closing and the Buyer paying or assuming the balance of the taxes.

**5.03** Any betterment or other assessments constituting a lien on the Premises which are payable over a period of more than one year shall be apportioned in such manner that Seller shall pay all installments due through the Closing Date and any such installment due thereafter the Buyer shall pay and assume the balance of all such assessments.

#### **SECTION 6. Access to Premises**

Buyer or Buyer's agents or representatives shall have the right at reasonable times for the purposes of performing its Due Diligence as provided for in Section 7 herein, to enter upon the Premises to inspect the Premises, perform tests and measurements, to examine the Premises, to determine its compliance with all environmental laws and regulations, and for any reason pertaining to the proposed development or financing of the Premises. Buyer hereby releases Seller

and its agents, and agrees to indemnify and hold harmless Seller, from and against any and all claims, cost, liabilities, and expenses which Seller incurs arising out of the entry upon the Premises by Buyer or its agents as contemplated by this Agreement. Buyer agrees to promptly repair any damage it may cause resulting from such access to the Premises. Buyer shall comply with all directives and requirements of the Seller pertaining to its access to the Premises. **The provisions of this Section 6 shall survive the Closing.**

#### **SECTION 7. Buyer's Due Diligence**

Buyer and its authorized agents and contractors (collectively, "Buyer's Representatives") have from the mutual execution of this Agreement until ninety (90) days thereafter (the "Due Diligence Period") to perform, in Buyer's sole discretion, any analysis and investigations with respect to the Premises desired by Buyer, including without limitation any desired physical inspections, environmental review, and title review relating to the Premises. Seller shall, at all times, reasonably cooperate with Buyer in connection with such activities. Upon the completion of any inspection or test conducted pursuant to the provisions hereof, the Buyer agrees, at its sole cost and expense, to return the Premises to a condition as near as is reasonably practicable to the condition that existed immediately prior to the commencement of such inspection or test. Buyer shall indemnify Seller from any physical damage to the Property and personal injury resulting from Buyer's and/or Buyer's Representatives' entry on the Premises.

If the Buyer does not terminate this Agreement within the Due Diligence Period, then Buyer shall buy and take the Premises in its existing "As Is" condition, with all deficiencies and hazardous conditions.

During the Due Diligence Period Buyer may terminate this agreement for any reason or no reason by giving Seller written notice of its election to do so (the "Buyer's Notice") on or before the expiration of the Due Diligence Period, whereupon this Agreement shall be immediately terminated, the Deposit shall be promptly returned to Buyer, and the parties hereto shall thereafter be relieved of all liabilities and obligations hereunder.

#### **SECTION 8. Default**

Upon default by the Buyer, the Seller shall have the right to retain the Deposit, such right to be without prejudice to the right of the Seller to require specific performance or the payment of other or further damages, or to pursue any remedy, legal or equitable, which shall accrue by reason of such default. Upon default by the Seller, the Buyer shall have the right to the return of the Deposit, such right to be without prejudice to the right of the Buyer to require specific performance or the payment of other or further damages, or to pursue any remedy, legal or equitable, which shall accrue by reason of such default.

#### **SECTION 9. Condition of Premises**

At the Closing, the Premises shall be in the same condition as at the time of execution of

this Agreement reasonable wear and tear excepted. The Premises are being sold in an "As Is" condition with no representation or warranties as to its condition with all faults and deficiencies.

#### **SECTION 10. Brokerage**

Buyer and Seller represent that they have not dealt with any brokers who claim a commission hereunder. Buyer and Seller both represent and warrant to one another that no other real estate brokers or agents have been used or consulted in connection with the purchase and sale of the Premises and each covenants and agrees to defend, indemnify and save the other harmless from any actions, damages, fees, real estate commissions, costs, and/ or expenses (including reasonable attorneys' fees) resulting from or claimed to be due on account of the purchase and sale of the Premises due to the acts of the indemnifying party.

#### **SECTION 11. Casualty and Fire Insurance**

Notwithstanding anything contained herein to the contrary, in the event that prior to the Closing, any part of the Premises is destroyed or damaged by fire or any other cause whatsoever or condemnation proceedings are initiated against all or any portion of the Premises, Seller shall give notice to Buyer thereof, and whether or not such notice is given, Buyer may, by giving notice to Seller within fifteen (15) days after receiving notice of such damage from Seller or any other third party, terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder, and the Deposit shall be returned to Buyer. If Buyer does not exercise such right to terminate, all proceeds of insurance or condemnation awards paid or payable to Seller by reason of such damage, destruction or condemnation, less any amount expended by the Seller for partial restoration, shall be payable to and assigned and transferred to Buyer at the Closing to be applied as required under the Agreement. The Closing date shall be extended in order to accommodate the 15 day period set forth above.

#### **SECTION 11. Notices**

In the event notice is necessary or desirable under the provisions of this Agreement, it shall be deemed given when given by delivery to the person entitled thereto at the following address, (a) either by hand; (b) by depositing the same in United States mail, certified, return receipt requested, and postage prepaid; or (c) by facsimile with confirmation of transmission, or by email. Any notice provided to Seller shall be given to:

Colin K. Kennedy, City Manager  
Newport, City Hall  
43 Broadway  
Newport, RI 02840  
[ckennedy@cityofnewport.com](mailto:ckennedy@cityofnewport.com)

With a copy to:  
Christopher J. Behan, Esq., City Solicitor  
Newport, City Hall  
43 Broadway  
Newport, RI 02840  
[cbehan@cityofnewport.com](mailto:cbehan@cityofnewport.com)

Any notice provided to Buyer shall be given to:

Conor Melville  
39 Thurston Avenue  
Newport, RI 02840  
[conor@bcmrp.com](mailto:conor@bcmrp.com)

With a copy to:

Peter Brent Regan, Esq.  
Sayer Regan & Thayer, LLP  
130 Bellevue Avenue  
Newport, RI 02840  
[pregan@srt-law.com](mailto:pregan@srt-law.com)

## **SECTION 12. Additional Provisions**

**12.01** Both the Seller and Buyer's performance under this Agreement is conditioned on the following:

- (a) Buyer's ability to obtain all regulatory approvals for the construction of a total of 32 dwelling units at the Premises, with 26 units in the historic school building on Plat 10, Lot 33, and 6 units in 3 duplex structures to be constructed on Plat 10, Lots 225, 226 & 227 (the "Project"), including without limitation, all Zoning and Development Plan Review approvals; and
- (b) Approval by the parties of covenants and restrictions to run with the Premises ensuring its continued use as rental units at market rates for workforce housing opportunities;

The Seller agrees to cooperate with the Buyer in proposing and pursuing zoning and other permitting approvals for the above use which may be needed for the use. Buyer acknowledges that such amendments shall remain subject to City Council approval and other permitting required will be subject to approval by any other boards or commissions having jurisdiction over the same.

If Buyer does not obtain the regulatory approvals required for the use intended by the time set for Closing herein or any extensions thereof agreed to by the parties, then either party may terminate this Agreement which shall become null and void and the deposit paid shall be returned to the Buyer.

**12.02** As additional consideration for the purchase of the Premises, and as an inducement for Seller to enter into this Agreement, Buyer agrees to make improvements to the public park located on Seller's property identified as Lots 39 & 50 on Newport Tax Assessors Plat 10, as set forth on Exhibit "A" attached hereto and made a part hereof, at its sole cost and expense. Such improvements and the development of the Premises shall be in accordance with Buyer's Development Proposal Response to Seller's RFP #23-039. **The provisions of this Section 12.02 shall survive the Closing.**

**12.03** The parties agree that the development of the Premises as described in this Agreement shall not be entitled to a tax exemption under Section 4.08.110 of the City Code entitled "Tax stabilization on capital improvements". However, as an inducement for Buyer to proceed with the development of the Premises, the Seller agrees that the tax assessment of the Premises shall be reduced to One Million Dollars (\$1,000,000.00) at the time of Closing, and that the said assessment shall remain in place until the issuance of a Certificate of Occupancy for the historic school building on Plat 10, Lot 33, and further agrees that Buyer shall be entitled to an eighty percent (80%) exemption on all real property taxes assessed against the Premises for the first full fiscal year following the issuance of the Certificate of Occupancy.

**12.04** If either party institutes an action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the unsuccessful party to such action or proceeding shall reimburse the successful party therein for the reasonable attorney's fees, disbursements and litigation expenses incurred by the successful party.

**12.05** If any clause or provision of this Agreement is illegal, invalid or unenforceable under any present or future law, the remainder of this Agreement shall not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible which would be legal, valid and enforceable.

**12.06** Neither this Agreement or any of the provisions hereof shall be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought, and then only to the extent set forth in such instrument.

**12.07** This Agreement is made and delivered in the State of Rhode Island, is designed and intended to be performed entirely in the State of Rhode Island, and shall be construed and enforced in accordance with the laws of the State of Rhode Island.

**12.08** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall comprise one and the same original. This document shall not be binding on or constitute evidence of a contract between the parties until such time as a counterpart of this document has been executed by each party and a copy thereof has been delivered to the other party to this Agreement.

**12.09** This Agreement embodies and constitutes the entire understanding between the

parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

**12.10** If Seller is unable to convey title to the premises in good faith, Buyer may elect to accept such title as Seller is able to convey without reduction to the purchase price or rescind the agreement and receive the return of the deposit and all interest earned thereon, if any.

**12.11** Each party agrees to provide corporate or other authorized resolutions, Certificates of Good Standing, Encumbrances Certificates and any other matters which may reasonably be requested by a title insurance company or lender, including without limitation certificates of release of corporate or other tax liens which could encumber the Premises.

**12.12** The Seller and Buyer certify that this Agreement accurately reflects the gross sales price as indicated herein. The parties understand and agree that this information shall be disclosed to the Internal Revenue Service as required by law.

**12.13** This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**12.14** Each party represents and warrants to the other that this Agreement has been duly authorized, executed and delivered.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized representatives who have hereunto set their respected hands all as of the day and year first above written.

In the Presence of:

Seller:  
THE CITY OF NEWPORT, RHODE ISLAND  
By: Charles Holder

\_\_\_\_\_

\_\_\_\_\_  
Title: Mayor

Buyer: BCM Realty, LLC  
By:

\_\_\_\_\_

\_\_\_\_\_  
Title:

Approved as to form:

\_\_\_\_\_  
Christopher J. Behan, Esq.