

**Naming Rights Agreement between the City of Long Beach, New York and John A. Carbona,
Individual.**

THIS NAMING RIGHTS AGREEMENT ("Agreement") made this 4th day of October 2021, between the City of Long Beach, a municipal corporation of the State of New York with a principal place of business at 1 West Chester Street, Long Beach, Nassau County, State of New York 11561 ("City"), and John A. Carbona, a natural person and resident of the State of Florida, with an address at P.O. Box 2568, Fort Myers, FL 33902 ("Donor"). In this Agreement, Donor and the City shall sometimes be referred to individually as "Party" and collectively as "Parties".

Recitals

1. The City owns and operates a structure on the Ocean Beach Park on Riverside Boulevard, which is intended for use by the City's lifeguards and is situated in the City of Long Beach, County of Nassau, State of New York ("Facility"). The specific description and depiction of the Riverside Lifeguard Pavilion is annexed as Exhibit A.
2. Donor has offered to the City a contribution in the amount of \$300,000.00 in exchange for right to have his name, his family name or the name of another member of his family as Donor may designate from time to time appear on the Facility.
3. After extensive negotiation between Donor and the City, the Parties wish to enter into this Agreement pursuant to which the City will grant Donor the naming rights with respect to the Facility.

ACCORDINGLY, the Parties agree as follows:

Article I: Incorporation of Recitals

1. **Incorporation.** The foregoing preamble and all other recitals set forth above are hereby incorporated into and made a part of this Agreement.

Article II: Term and Termination

1. **Commencement.** This Agreement shall commence on the date all Parties, after the adoption of a resolution by the City Council of the City of Long Beach authorizing this Agreement, have signed same and shall continue for a term of fifty (50) years thereafter.
2. **Renewal.** Upon ninety (90) days' notice to the other Party, either Party may renew this Agreement for an additional fifty (50) years upon the same terms and conditions. However, if the Facility is no longer standing or has reached the end of its useful life, the Parties may renew upon different terms and conditions.
3. **Prohibition on Other Offer(s).** From and after the execution of this Agreement by Donor, the City shall not solicit, receive or accept any offer from any individual or entity seeking the same or similar naming rights with respect to the Facility set forth in this Agreement.
4. **Termination for Disparagement and/or Reputation.** If either Party commits any act after the execution of this Agreement which, in the reasonable and good faith opinion of the other Party, would disparage or impair in any material respect the reputation and integrity of the other Party, the other Party has the right to terminate this Agreement upon not less than thirty (30) days written notice. As to the Donor, such acts include, but are not limited to, being convicted of any violent felony or a felony involving moral turpitude, or other crime involving moral turpitude. As to the City, such acts include the conviction of an appointive and/or elective officer of the City, as defined in the City's Charter and Code of Ordinances for a violent felony, a felony involving moral turpitude, or other crime involving moral turpitude while holding office. As to Donor, only Donor shall be subject to the terms of this Section 4, unless another Name is chosen pursuant to Article IV and then that individual, or those individuals, shall be subject to the terms of this Section 4.
5. **Termination for Default.** The following shall constitute a "Default" under this Agreement:
 - 5.1. If the City uses a Name on the Facility other than that of Donor without Donor's prior written consent;
 - 5.2. If any petition shall be filed by or against the City to declare the City bankrupt or to delay, reduce or modify the City's debts or obligations, or to reorganize or modify the City's capital structure; any

assignment of the City's property shall be made for the benefit of creditors; or a receiver or trustee is appointed for the City or its property. Notwithstanding the foregoing, if any such legal process, petition, assignment or appointment was not initiated by the City, any such event shall not be a Default unless same is not removed or vacated within sixty (60) days from the date of its creation, service or filing; or

- 5.3. If either Party fails to comply with any of its material obligations under this Agreement, and that failure continues for a period of thirty (30) days after the non-defaulting Party notifies the other in writing of same. However, if such failure is not reasonably curable within thirty (30) days from receiving written notice of default, the defaulting Party shall be afforded a reasonable period of time to cure or remedy such failure so long as the defaulting Party has promptly commenced the cure of same and is continuously attempting to cure same in good faith.
6. **Remedies.** Upon the occurrence of a Default, the Parties shall have the right to any of the following remedies:
 - 6.1. For Donor:
 - 6.1.1. Termination of the Agreement; and/or
 - 6.1.2. Refund of a pro-rata portion of the Donor's contribution based upon the number of calendar years remaining in the term of the Agreement at the time of termination.
 - 6.2. For City:
 - 6.2.1. Termination of the Agreement; and/or
 - 6.2.2. Retention of all of the Donor's contribution with no further obligation to perform under this Agreement.
7. **Removal of Equipment and Name.** Upon the effective date of the termination of this Agreement pursuant to this Article, Donor shall remove any equipment and/or property from the Facility, and the City shall remove the Name and/or Logo (as defined herein) and/or related signage and/or labeling from the Facility.

Article III: Payment and Consideration

1. **Contribution.** In consideration for the City's granting Donor the naming rights for the Riverside Lifeguard Pavilion as set forth in this Agreement, Donor agrees to abide the terms and conditions set forth herein and issue a one-time contribution of three hundred thousand dollars (\$300,000.00) to the City. Such payment shall be issued to the City by certified bank check in one lump sum within thirty (30) calendar days after the commencement of this Agreement as described in Section 1 of Article II hereof. To the fullest extent permitted by applicable local, state and federal law, the Parties intend that the contributions made by Donor under this Agreement shall be deductible from federal, state and local income taxes. Any findings or rulings regarding the deductibility of the contributions by Donor shall not affect the validity of this Agreement.
2. **Signage Costs.** The City shall be solely responsible for all signage costs and related expenses.
3. **Late payment.** If a payment is not received when due under this Agreement, the City shall send Donor a late payment notice. If the City receives no payment within thirty (30) calendar days of date indicated on the late payment notice, then Donor shall pay a late penalty equal to the lesser of (i) \$1,000.00 and (ii) 1.5% of the total amount due under this Agreement.

Article IV: Name of Facility; Signage; References to Facility

1. **Name.** The Parties agree that the Facility initially shall be named the "Carbona Family Long Beach Lifeguard Pavilion" ("Name"), subject to any changes which (i) the Donor may request in connection with changing the Name as provided in Recital No. 2 above or (ii) otherwise may be mutually agreed upon in writing by the Parties. The Facility shall be so named for the term of this Agreement (and any extension thereof) or until the Agreement is terminated in accordance with the provisions herein. Notwithstanding this Section, any name other than the "Carbona Family Long Beach Lifeguard Pavilion" shall be subject to Article II, Section 4.
2. **Alternative Name(s).** Upon receipt of Donor's written consent (which consent may be revoked, withdrawn or terminated at any time by subsequent written notice of revocation), the City may use alternative names when referencing the Facility.
3. **Signage.** The Name shall be displayed by mounting signage conspicuously on or near the Facility's north-facing façade. The City agrees to display the approved art and/or signage concept for the Facility's Name,

which is annexed and made a part of this Agreement as Exhibit B, in accordance with the graphics and color guidelines established by the City. Donor understands and agrees that the entirety of the signage concept, including but not limited to text placement, proportion and design as reflected on Exhibit B, is acceptable and suitable for the purposes of this Agreement.

4. **Signage procurement, maintenance and replacement.** All approved art and/or signage displayed on the Facility shall be maintained in a first-class condition and also to the reasonable satisfaction of Donor. The City shall bear the costs and expenses of procuring, installing, and maintaining the initial signage on the Facility. In the event Donor designates another Name for the Facility thereby requiring the signage to be changed, Donor shall bear the costs and expenses of procuring and installing the signage on the Facility. The City shall bear the costs of maintaining and replacing, if necessary, any subsequently installed signage.
5. **Prohibition on Use.** For the duration of this Agreement, Donor shall not use the combined signage and/or logo(s) described in this Article for any purpose which, in the City's reasonable opinion, is for the direct sale, advertisement and/or promotion of Donor's business ventures and/or any of his business-related products and services. The Parties agree that nothing in this Agreement provides or implies any endorsement by the City or any other entity and is solely between the Donor and the City.
6. **No rights granted.** Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of either Party.
7. **City references to Facility.** When making reference to the Facility in public service announcements, the City shall use the Name and no other. The City shall also use the Name on all printed materials referencing the Facility to the extent that the preparation or purchase of such printed materials are originated by the City.
8. **References by Non-parties.** In all other instances, the City will use commercially reasonable efforts to ensure that the Facility is referred to by its Name.

Article V: Representations

1. **The City represents that:**
 - 1.1. it has the full right, power, and authority to enter into this Agreement and this Agreement is fully enforceable against the City in accordance with its terms; and
 - 1.2. it has been given a list of Donor's current living family members, has inquired into the background and moral character of Donor and his family, and the City is satisfied that the Donor family name is one of suitable reputation for the purposes of this Agreement.
2. **Donor represents that:**
 - 2.1. He has the full right, power, and authority to enter into this Agreement and this Agreement is fully enforceable against him in accordance with its terms;
 - 2.2. He has the financial means to carry out the obligations set forth in this Agreement;
 - 2.3. The list of Donor's current living family members provided to the City is exhaustive;
 - 2.4. He has not been convicted or found guilty of any crime involving moral turpitude; and
 - 2.5. He has not been found culpable of any ethical violations or any other act of moral turpitude that would materially disparage or materially adversely impair the reputation and integrity of the City.

Article VI: Covenants

1. **Donor covenants that:**
 - 1.1. For the duration of his natural life, he will immediately report to the City any conviction, finding or determination against him as described in Article V, Sections 2.4 or 2.5.
2. **City covenants that:**
 - 2.1. If the Facility is destroyed or damaged beyond repair, it will coordinate with Donor and, to the extent practicable, the City shall repair, rebuild, restore or otherwise build the Facility anew and ensure that the signage for the Name is restored to the Facility. In the event that the City does not repair, rebuild or restore the Facility in accordance with the terms hereof, the City shall promptly refund to Donor a pro rata portion of the payment described in Section 1 of Article III hereof based upon the number of calendar years then remaining in the initial or extended term of this Agreement.

2.2. During the entire term of this Agreement (and any extension thereof), no name (other than the Name) or other designation or sign shall be displayed on or affixed to the Facility, except for signs related to the City's operation and/or regulation of the Facility or the Ocean Beach Park.

Article VII: Force Majeure

1. A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, acts and threatened acts of terrorism, labor strikes, explosions, actions of the elements, floods, tidal surges, hurricanes, super-storms, pandemics, equipment failure or damage reasonably beyond the control of its owner, or other similar events beyond the control of either Party which makes performance of this Agreement, even with the exercise of reasonable diligence, impracticable, illegal, or impossible. The City shall provide the Donor with written notice of any force majeure occurrence as soon as practicable. Neither Party shall be liable to the other for any delay in or failure of performance under the Agreement due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages.

Article VIII: Limitation of Liability

1. **Limitation of Liability.** Under no circumstances shall one Party to this Agreement be liable to the other Party for any special, consequential, indirect, or incidental damages, including lost profits, arising out of or in connection with this Agreement, or any activities performed in connection with this Agreement, regardless of whether a claim made by that Party is based on contract or tort.

Article IX: Best Efforts

1. **Best Efforts of the Parties.** The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Agreement, and any other steps and efforts that may become necessary by order of a court or otherwise, to effectuate this Agreement.

Article X: Governing Law and Venue

1. **Governing Law.** This Agreement is to be governed by and construed in accordance with the Laws of the State of New York, without regard to its conflict of law principles.
2. **Venue.** In the event that any Party breaches any provision of this Agreement, the Parties mutually consent to the jurisdiction and venue of the Supreme Court of the State of New York, County of Nassau.

Article XI: Assignment; Amendments; Waiver

1. **Assignments, Amendments and Waivers.** This Agreement and the rights and obligations hereunder may not be in whole or part assigned, transferred or disposed of, amended, waived, or subcontracted, without the prior written consent of both Parties. Any purported assignment, other disposal or modification without all such prior written consents shall be null and void. The failure of any Party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

Article XII: Successors and Assigns

1. **Successors and Assigns.** This Agreement binds and benefits the Parties and their respective permitted successors and assigns.

Article XIII: All Legal Provisions Deemed Included; Severability; Supremacy; Construction

1. **Severability.** Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form, then: (i) such provision shall be deemed inserted into or referenced by this

Agreement for purposes of interpretation and (ii) upon the application of any Party to this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either Party.

2. **Supremacy.** In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
3. **Construction.** Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

Article XIV: Merger; No Sole Drafter and Headings

1. **Complete Understanding.** This Agreement represents the complete understanding and accord between the Parties and supersedes all prior agreements (whether written or oral) of the Parties relating to the subject matter of this Agreement.
2. **Negotiation and Preparation of Agreement.** Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against any Party as drafter.
3. **Exhibits.** The exhibits referenced herein shall be deemed a part of this Agreement as if fully set forth in the body of this Agreement.
4. **Titles and Headings.** The titles and headings to the articles and/or sections of this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Article XV: Notice

1. **Notices.** All notices pursuant to this Agreement shall be sent by USPS First Class Mail or Certified Mail, Return Receipt Requested to:
 - 1.1. If to the City:
City of Long Beach,
1 West Chester Street
Long Beach, NY 11561
Attn: City Manager
 - 1.2. If to Donor:
John A. Carbona
P.O. Box 2568
Fort Myers, FL 33902

Article XVI: Executory Approval

1. Notwithstanding any other provision of this Agreement:
 - 1.1. Approval and Execution. Except as provided in Section 3 of Article II hereof, no Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all approvals have been obtained, including, if required, approval by the City Council and (ii) this Agreement has been executed by Donor and the City Manager.

This space left intentionally blank.

IN WITNESS WHEREOF, the City by its City Manager, and Donor, have hereunto set their hands and respective seals, if any, the day and year first above mentioned.

Seal of the City of Long Beach:

CITY OF LONG BEACH

By: [Signature]
Donna M. Gayden
City Manager

Attest:
By: [Signature]
David Fraser
City Clerk

JOHN A. CARBONA
By: [Signature]
John A. Carbona

STATE OF NEW YORK :
COUNTY OF NASSAU : ss.:

On this 4th Day of October 2020, before me, the subscriber, personally appeared Donna M. Gayden who, being by me duly sworn, deposes and says: That she is the City Manager of the City of Long Beach (the "City"), a municipal subdivision of the State of New York named in and which executed the above and within Instrument; that she knows the seal of said City and that the seal affixed to said Instrument is the seal of the City; that it was so affixed by the order of the City Council of the City, and that she signed her name thereto by like order;

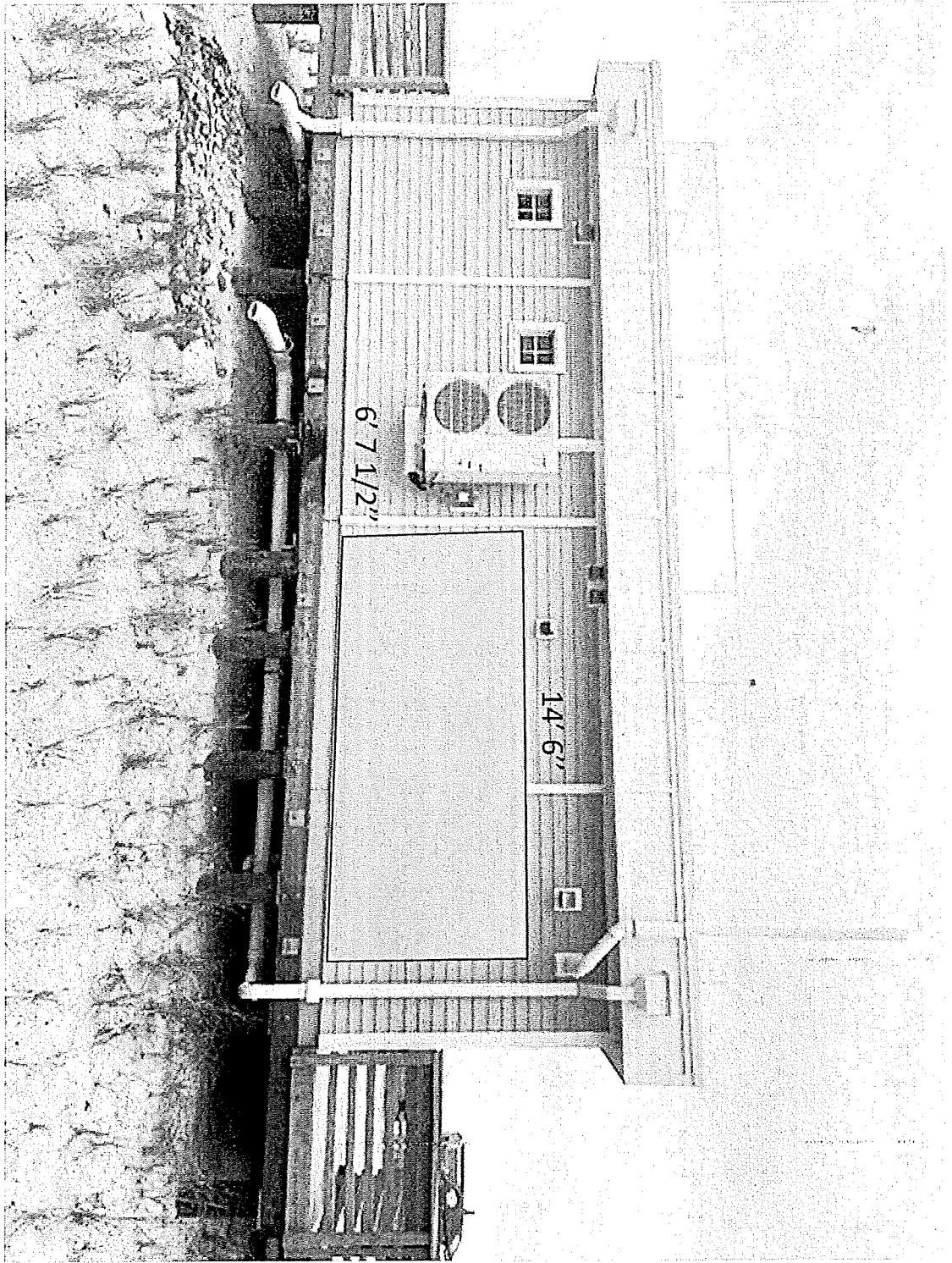
And on the same day before me personally came and appeared David Fraser, Clerk of the City of Long Beach, who, being by me duly sworn, deposes and says: That he is the Clerk of the City; that he knows the seal of said City and that the seal affixed to said Instrument is the seal of the City; that it was affixed by order of the City Council of the City of Long Beach; that said Donna M. Gayden is the City Manager of said City and that the signature on said Instrument is the signature of said Donna M. Gayden, as City Manager.

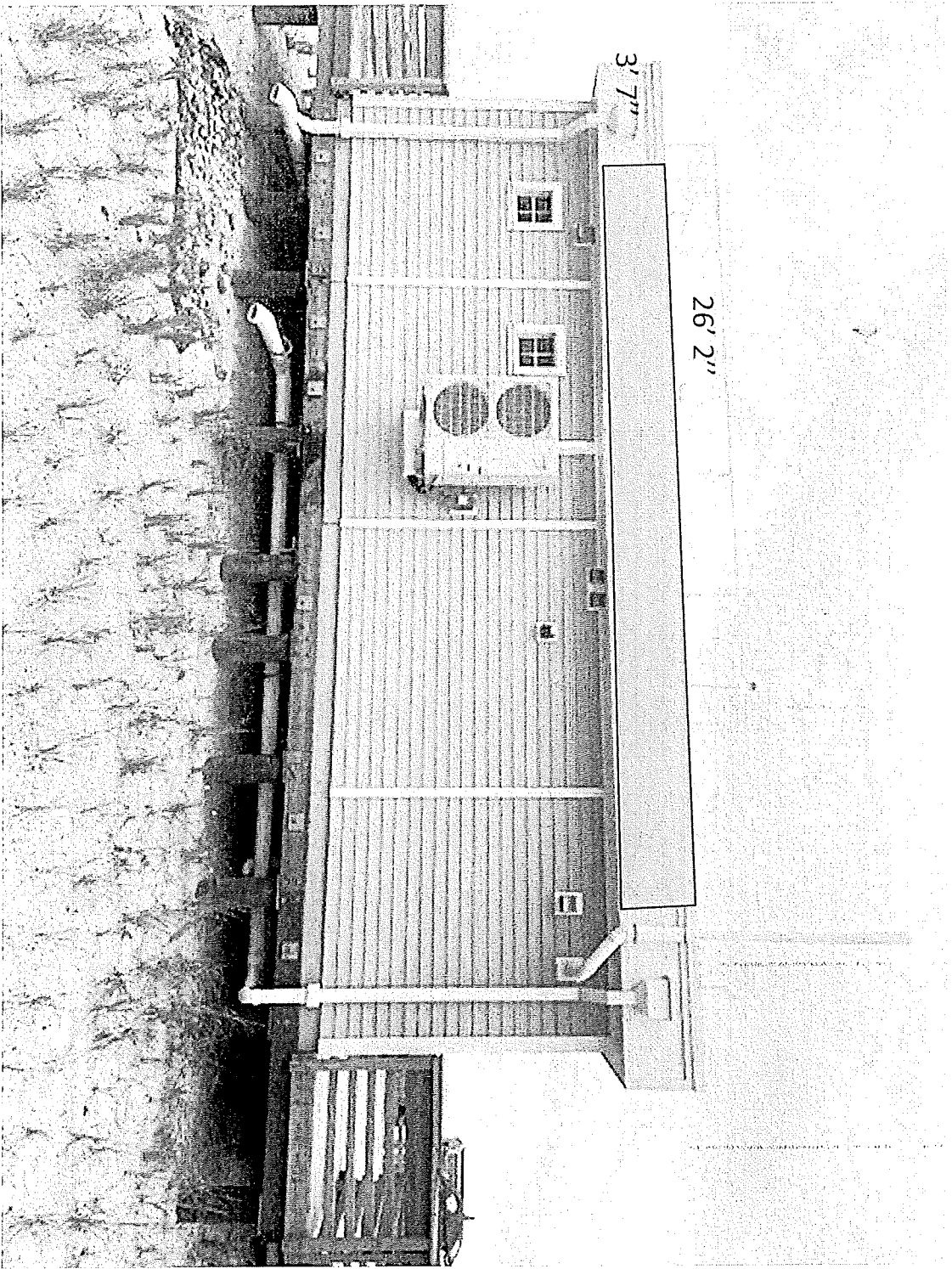
[Signature]
Notary Public

Authorizing Resolution Detail: #68121



EXHIBIT “A”





3' 7"

26' 2"

EXHIBIT “B”



* CARBONA FAMILY *

**LONG BEACH LIFEGUARD
HEADQUARTERS**

April 20, 2021

Item No. 5
Resolution No. 68/21

The following Resolution was moved by Mr. Delury
and seconded by Ms. Treston :

Resolution Authorizing the City Manager to Accept a
Charitable Donation and to Enter into a Naming Rights Agreement.

WHEREAS, the City of Long Beach has erected a new Lifeguard Pavilion on the
Ocean Beach Park at Riverside Boulevard, which it owns and operates; and

WHEREAS, Mr. John A. Carbona (Donor), a private citizen, has offered a
donation to the City in the amount of \$300,000 in exchange for the right to have his name, his
family name or the name of another member of his family, as the Donor may designate, to
appear on the Lifeguard Pavilion, for a term of fifty (50) years; and

WHEREAS, the City of Long Beach is a Municipal Corporation and pursuant to
Section 3 of the Charter of the City of Long Beach, the City may take by gift, grant, bequest and
devise said financial donation;


NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York, that the
City Manager is hereby authorized to accept the donation of \$300,000 from John A. Carbona;
and be it further

RESOLVED, by the City Council of the City of Long Beach, New York, that the
City Manager is hereby authorized to enter into a Naming Rights Agreement between the City of
Long Beach and John A. Carbona for the right to have the name of John A. Carbona, his family
name or the name of another member of his family, as the Donor may designate, to appear on the
Lifeguard Pavilion, for a term of fifty (50) years; and be it further

RESOLVED, that said Agreement shall contain such other terms and conditions
as the City Manager shall deem proper.

APPROVED:



City Manager-Donna M. Gayden

APPROVED AS TO FORM & LEGALITY:



Acting Corporation Counsel-Richard Berrios

VOTING:

Council Member Delury - AYE
Council Member Mandel - AYE
Council Member Treston - AYE
Vice President McInnis - AYE
President Bendo - AYE