

AGREEMENT FOR ACQUISITION BY DONATION

This AGREEMENT FOR ACQUISITION BY DONATION ("Agreement") is made and entered into as of this 1 day of January, 2024, and constitutes an agreement by which Charles B. Kimball ("Seller"), agrees to donate, and the CITY OF HUNTINGTON BEACH, a California municipal corporation ("Buyer"), agrees to accept on the terms and conditions hereinafter set forth:

That certain real property described in Exhibit "A" attached hereto, bearing Orange County Assessor's Parcel Numbers 110-184-10 and 110-164-06 ("Property").

The terms and conditions of this Agreement are as follows:

1. Donation. Seller agrees to donate the Property to Buyer, and Buyer agrees to accept the Property from Seller, upon the terms and conditions herein set forth.
2. Purchase Price. The purchase price ("Purchase Price") for the Property shall be ZERO DOLLARS (\$0.00). This sum shall be full payment for the Property and for all damages of every kind and nature, including, but not limited to, pre-condemnation damages, loss of rental income and severance damages suffered, any and all claims suffered, or to be suffered, by reason of the acquisition of the Property.
3. Acknowledgment of Full Benefits and Release.
 - a. By execution of this Agreement, Seller, on behalf of himself and his respective successors and assigns, hereby acknowledges that this Agreement provides full payment for the acquisition of the Property by Buyer, and Seller hereby expressly and unconditionally waives any and all claims for damages, relocation assistance benefits, severance damages, interest, loss of goodwill, claims for inverse condemnation or unreasonable pre-condemnation conduct, or any other compensation or benefits, other than as already expressly provided for in this Agreement, it being understood that this is a complete and full settlement of all acquisition claims, liabilities or benefits of any type or nature whatsoever relating to or in connection with Buyer's acquisition of the Property.
 - b. This Agreement arose out of Seller's efforts to donate the Property on a voluntary basis. Seller acknowledges and agrees that said purchase price is just compensation at fair market value for said real property and includes any and all fixtures and equipment, goodwill (if any) and severance. Seller, on behalf of himself and his successors and assigns, hereby fully releases Buyer, its successors, agents, representatives, and assigns, and all other persons and associations, known or unknown, from all claims and causes of action by reason of any damage which has been sustained, or may be sustained, as a result of Buyer's efforts to acquire the Property or to construct works of improvement thereon, or any preliminary steps thereto. Seller further releases and agrees to hold Buyer harmless from any and all claims by reason of any leasehold interest in the Property.

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and mechanical systems and leased areas) as Buyer may elect to make or obtain. The failure of Buyer to disapprove said results on or prior to the expiration of the Due Diligence Period shall be deemed to constitute Buyer's approval of the results. The cost of any such inspections, tests and studies shall be borne by Buyer. Buyer, its agents, contractors and subcontractors shall have the right to enter upon the Property, at reasonable times during ordinary business hours, to make any and all inspections and tests as may be necessary or desirable in Buyer's sole judgment and discretion. Buyer shall use care and consideration in connection with any of its inspections. Buyer shall indemnify and hold Seller and the Property harmless from any and all damage arising out of, or resulting from the negligence of Buyer, its agents, contractors and/or subcontractors in connection with such entry and/or activities upon the Property.

(5) Council Approval. The completion of this transaction, is contingent upon the specific acceptance and approval of the Buyer by action of the Buyer's City Council.

(6) Condition of Property. The Property is donated in its present condition as of the date of acceptance subject to the Buyer's investigation rights.

(7) Reserved.

b. Conditions to Seller's Obligation. For the benefit of Seller, this transaction shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions):

(1) Buyer's Obligations. Buyer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Buyer, and

(2) Buyer's Representations. All representations and warranties made by Buyer to Sellers in this Agreement shall be true and correct as of the Close of Escrow.

9. Deposits by Seller. Within five (5) business day following Buyer's request, Seller shall deposit or cause to be deposited with Buyer the following documents and instruments:

a. Reserved.

b. Grant Deed. The Grant Deed conveying the Property to Buyer duly executed by Seller, acknowledged and in recordable form.

10. Reserved.

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11. Costs and Expenses. The cost and expense of the Title Policy attributable to CLTA coverage shall be paid by Buyer. Buyer shall pay all documentary transfer taxes, if any, payable in connection with the recordation of the Grant Deed. The amount of such transfer taxes shall not be posted on the Grant Deed, but shall be supplied by separate affidavit. Penalties for prepayment of bona fide obligations secured by any existing deed of trust or mortgage shall be waived pursuant to Civil Code Procedures Section 1265.240.

12. Reserved.

13. Reserved.

14. Seller's Representations and Warranties. In consideration of Buyer entering into this Agreement, and as an inducement to Buyer to accept the Property, Seller makes the following representations and warranties, each of which is material and is being relied upon by Buyer (and the continued truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder):

a. Authorization. This Agreement has been duly and validly authorized, executed and delivered by Seller, and no other action is requisite to the execution and delivery of this Agreement by Seller.

b. Threatened Actions. There are no actions, suits or proceedings pending against, or, to the best of Seller's knowledge, threatened or affecting the Property in law or equity.

c. Third Party Consents. No consents or waivers of, or by, any third party are necessary to permit the consummation by Seller of the transactions contemplated pursuant to this Agreement.

d. No Violation of Law. To the best of Seller's knowledge, there is no violation of law or governmental regulation by Seller with respect to the Property.

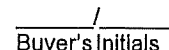
e. Condemnation. There is no pending, or, to the best of Seller's knowledge, threatened proceedings in eminent domain or otherwise, which would affect the Property or any portion thereof.

f. Compliance with Law. To the best of Seller's knowledge, all laws, ordinances, rules, and requirements and regulations of any governmental agency, body, or subdivision thereof bearing on the Property have been complied with by Seller.

g. Agreements. There are no agreements (whether oral or written) affecting or relating to the right of any party with respect to the possession of the Property, or any portion thereof, which are obligations which will affect the Property or any portion thereof subsequent to the recordation of the Grant Deed, except as may be reflected in the Condition of Title, which shall have been approved by Buyer pursuant to the terms of this Agreement.



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h. Documents. To the best of Seller's knowledge, all documents delivered to Buyer pursuant to this Agreement are true and correct copies of originals, and any and all information supplied to Buyer by Seller is true and accurate.

i. Licensed Permits. To the best of Seller's knowledge, Seller has acquired all licenses, permits, easements, rights-of-way, including without limitation, all building and occupancy permits from any governmental authority having jurisdiction.

j. Hazardous Substances. Except as revealed by Seller to Buyer herein, Seller has no actual knowledge that there are hazardous substances (as defined below) in existence on or below the surface of the Property, including without limitation, contamination of the soil, subsoil or groundwater, which constitutes a violation of any law, rule, or regulation of any governmental entity having jurisdiction thereof, or which exposes Buyer to liability to third parties. Seller has not used the Property, or any portion thereof, for the production, disposal, or storage of any hazardous substances, and Seller has no actual knowledge that there has been such prior use of the Property, or any portion thereof; or that there has been any proceeding or inquiry by any governmental authority with respect to the presence of such hazardous substances on the Property or any portion thereof. Without limiting the other provisions of this Agreement, Seller shall cooperate with Buyer's investigation of matters relating to the foregoing provisions of this paragraph, and provide access to, and copies of, any data and/or documents dealing with potentially hazardous substances used at the Property and any disposal practices followed. Seller agrees that Buyer may, with Seller's prior approval, make inquiries of governmental agencies regarding such matters, without liability to Seller for the outcome of such discussions. For purposes of this Agreement, the term "hazardous substances" means: (i) any substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environment Response, Compensation and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Hazardous Material Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage or Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing


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liability or standards of conduct concerning any hazardous or toxic substance hereafter in effect; (ii) any substance, product, waste, or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (iv) asbestos.

k. Reserved.

l. Pollutants. No pollutants or waste materials from the Property have ever been discharged by Seller into any body of water, and Seller has no actual knowledge of any such pollution emission by any other person or entity.

m. Waste Disposal. No portion of the Property has ever been used by Seller as a waste storage or disposal site, and Seller is not aware of any such prior uses.

n. No Notices. Seller has received no written notice of any change contemplated in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent landowners, or natural or artificial conditions upon the Property which would prevent, impede, limit, or render more costly Buyer's contemplated use of the Property.

15. Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement, and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations and warranties, each of which is material and is being relied upon by Seller (the continued truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder):

a. This Agreement and all documents executed by Buyer under this Agreement which are to be delivered to Seller are, or at the time of conveyance to Buyer will be, duly authorized, executed, and delivered by Buyer, and are, or at the conveyance to Buyer will be legal, valid, and binding obligations of Buyer, and do not, and at the conveyance of Buyer will not violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.

b. The representations and warranties of Buyer set forth in this Agreement shall be true on and as of the conveyance to Buyer as if those representations and warranties were made on and as of such time.

16. Damage or Condemnation Prior to Closing. Seller shall promptly notify Buyer of any knowledge by Seller of casualty to the Property or any condemnation proceeding commenced prior to the conveyance to Buyer. If any such damage or proceeding relates to, or may result in, the loss of any material portion of the Property, Seller or Buyer may, at their option, elect either to:



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(a) terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder, or

(b) continue the Agreement in effect, in which event upon the conveyance to Buyer, Buyer shall be entitled to any compensation, awards, or other payments or relief resulting from such casualty or condemnation proceeding.

17. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, or (b) if mailed, four business days after the date of posting by the United States Post Office.

The Buyer's mailing address is:

The Seller's mailing address is:

City of Huntington Beach
Public Works Department
Attn: William Krill
2000 Main Street, P.O. Box 190
Huntington Beach, CA 92648

Charles B. Kimball
2460 Francisco Street
San Francisco, CA 94123-1815

Notice of change of address shall be given by written notice in the manner detailed in this paragraph. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request, or communication sent.

18. Legal Fees. In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

19. Assignment. Seller may not assign, transfer or convey its rights or obligations under this Agreement without the prior written consent of Buyer, and then only if Seller's assignee assumes in writing all of Seller's obligations hereunder; provided, however, Seller shall in no event be released from its obligations hereunder by reason of such assignment.

20. Seller's Indemnification. Seller hereby agreed to indemnify, defend and hold harmless Buyer from and against any and all obligations, liabilities, claims, liens, encumbrances, losses, damages, costs and expenses, including without limitation, attorneys' fees, whether direct, contingent, or consequential, incurred by Buyer relating to the Property and arising or accruing from acts, occurrences, or matters that take place on or before the conveyance to Buyer resulting from any breach by Seller of his representations, warranties and covenants contained in this Agreement.



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21. Brokerage Commissions. Upon close of escrow, Seller agrees to pay compensation to his Broker, if any, as specified in separate written agreement between Seller and Broker. Seller agrees that should any claim be made for brokerage commissions or finder's fees by any broker, agent, finder or similar entity, by, through or on account of any acts of Seller or its agent, employees or representatives, Seller will indemnify, defend and hold the Buyer free and harmless from and against any and all loss, liability, cost, damage and expense (including attorneys' fees and court costs) in connection therewith. Seller agrees to pay, at their sole cost and expense, when due, any and all brokerage commissions incurred by Seller heretofore or hereafter incurred prior to close of escrow.

22. Miscellaneous.

a. Survival of Covenants. The covenants, representations and warranties of both Buyer and Seller set forth in this Agreement shall survive the recordation of the Grant Deed.

b. Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated, and shall use their best efforts to accomplish the conveyance to Buyer in accordance with the provisions hereof.

c. Time of Essence. Time is of the essence of each and every term, condition, obligation, and provision hereof.

d. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

e. Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

f. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

g. Exhibits and Schedules. The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference.

h. Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

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i. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

j. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with the exception of definitions to be construed under Federal laws cited in Paragraph 14(j).

k. Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

l. Entire Agreement. This Agreement supersedes any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

m. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

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n. Leases. Seller warrants that there are no tenants or written or oral leases on all or any portion of the property and Seller further agrees to hold Buyer harmless and reimburse Buyer for any and all of its losses and expenses, including relocation assistance costs, occasioned by reason of any lease of said property held by any tenant of Seller.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DATED: 30 Oct 2024

Seller:

Charles B. Kimball
Charles B. Kimball

DATED: _____

Buyer:

CITY OF HUNTINGTON BEACH
A California municipal corporation

Mayor

City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

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REVIEWED AND APPROVED:

City Manager

INITIATED AND APPROVED:

[Signature]
Director of Public Works

[Signature]
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EXHIBIT A
LEGAL DESCRIPTION
(APN 110-184-10 and 110-164-06)

That certain real property in the City of Huntington Beach, County of Orange, State of California, described as follows:

Parcel 1: Lot 22 of Tract 145, as per map thereof recorded in Book 9,
Page 34 of Miscellaneous Maps, Records of Orange County, California.
(Assessor's Parcel Number 110-184-10).

Parcel 2: Lot 19, Tract 44A, Fairview Addition, Records of Orange County,
California (Assessor's Parcel Number 110-164-06).

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