

AGREEMENT FOR SALE OF SURPLUS REAL PROPERTY BY AND BETWEEN THE
CITY OF HUNTINGTON BEACH AND BONANNI DEVELOPMENT COMPANY IV

This Sale Agreement ("Agreement") is made and entered into on the ____ day of June, 2022, by and between the City of Huntington Beach, a California municipal corporation ("City") and Bonanni Development Company IV ("Buyer") collectively the "Parties."

WHEREAS, the City owns that certain real property located in the City of Huntington Beach, Orange County, California, generally located at Lot 33, of Block A of Garfield Street (APN 159-281-04), which pursuant to Huntington Beach Municipal Code Chapter 3.06 has been determined to be surplus property and available for disposal; and

The City Council authorized the disposal of the surplus real property on _____, 2022.

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the Parties agree as follows:

1. PROPERTY

1.1 Property. City agrees to sell and convey to Buyer, and Buyer agrees to purchase from City, the real property (Property), hereinafter described, subject to the terms and conditions set forth in this Agreement. The real property that is the subject of this offer consists of approximately 2,846 square feet located in the City of Huntington Beach, County of Orange, State of California and legally described in the attached Exhibit A.

2. PURCHASE PRICE

2.1 Purchase Price. The total purchase price to be paid by Buyer to City for Property shall be Sixteen Thousand Eight Hundred Seventy Five 00/100 Dollars (\$16,875).

2.2 Buyer agrees that no escrow company will be used in this transaction, and further agrees to assume any risk or liability associated with failure to use an escrow company during this transaction.

2.3 Payment of the Purchase Price. The Purchase Price for the Property shall be payable by Buyer as follows: Buyer shall deposit or cause to be deposited with City Treasurer, in cash or by a certified or bank cashier's check made payable to City of Huntington Beach or a confirmed wire transfer of funds, the Purchase Price which includes all closing costs, pro-rations and charges payable pursuant to this Agreement. All recording and title insurance costs to be paid by Buyer. Upon receipt of funds the City will provide an executed Grant Deed to Buyer.

3. CONDITIONS OF SALE

3.1 Buyer's Costs. On or before July 7, 2022, Buyer shall pay all applicable costs associated with transfer, recording fees, documentary transfer taxes, policies of title insurance, and any other costs connected with the closing of this transaction.

3.2 Documents. Buyer and City agree to execute and deliver all further documents and instruments reasonably required by this Purchase and Sale Agreement. City shall deliver or cause to be delivered to Buyer at the closing an original ink signed Grant Deed, duly executed and in recordable form, conveying fee title to the Property to Buyer.

3.3 Conditions of Title. It shall be a condition to the Close of Sale and a covenant of City that title to the Property shall be conveyed to Buyer by City by the Grant Deed, with no warranties or covenants as to Conditions of Title ("Approved Condition of Title"):

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

(a) **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

(b) **Buyer's Representations.** All representations and warranties made by Buyer to City in this Agreement shall be true and correct as of the Close of Sale.

(c) **Deposits by Buyer.** Buyer shall deposit, or cause to be deposited with the City, the funds which are to be applied toward the payment of the Purchase Price in the amounts and at the times if designated herein (as reduced or increased by the pro-rations, debits and credits hereinafter provided).

3.6. Costs and Expenses. The cost and expense, if any, 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.

4. CITY'S REPRESENTATIONS, WARRANTIES, AND DISCLOSURES.

In addition to any express agreements of City contained herein, the following constitute representations and warranties of City to Buyer, of this Agreement:

4.1 Reliability of Information. City obtained the information contained in this Agreement from sources deemed reliable; however, City makes no guarantees as to the accuracy of the information provided.

4.2 Authority of State. City is a government entity, duly organized and validly existing under the laws of the State of California. City has full power and authority to own, sell, and convey the Property to Buyer and to enter into and perform its obligations pursuant to this Agreement.

4.3 Taxes. City is exempt from property taxes and assessments and none are or will be owing at close of sale.

4.4 Disclosures. Buyer acknowledges that Buyer is purchasing the Property solely in reliance on Buyer's own investigations. No representations or warranties of any kind whatsoever, expressed or implied, have been made by City, City's agents, or employees, including in any investigations, studies or. Buyer further acknowledges and warrants that as of the close of sale Buyer will be aware of all zoning regulations, other governmental requirements, site and physical conditions (including the presence of hazardous materials or other adverse environmental conditions), and other matters affecting the use and condition of the Property including any investigations, studies, and documents. Buyer agrees to purchase the Property in the condition that it is in at close of sale, subject, however, to Buyer's right to terminate should the Property be damaged or destroyed by causes other than causes attributable to Buyer's entry on the Property and inspections ordered by Buyer prior to close of sale. Buyer shall be responsible at Buyer's sole expense for any or all remediation required to make Property usable for Buyer's intended purpose.

4.5 As-Is Purchase. Buyer specifically acknowledges and agrees that City will sell and Buyer will purchase the Property on an "as-is with all faults" basis, and that having been given the opportunity to inspect the Property and review information and documentation affecting the Property, Buyer is not relying on any representations or warranties of any kind whatsoever, express or implied, from City or its agents as to any matters concerning the Property, including without limitation: (i.) the quality, nature, adequacy, and physical condition of the Property including soils, geology, and any groundwater; (ii.) the existence, quality, nature, adequacy, and physical condition of utilities serving the Property; d(iii.) the development potential of the Property and the Property's use, merchantability, fitness, suitability, value, or adequacy of the Property for any particular purpose; (iv.) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property; (v.) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions. and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi.) the presence of hazardous materials on, under, or about the Property or the adjoining or neighboring property; (vii.) the condition of title to the Property; and (viii.) the economics of the operation of the Property.

4.6 Absence of Fraud and Misleading Statements. To the best of City's knowledge, no statement of City in this Agreement or in any document, certificate, or schedule furnished or to be furnished to Buyer pursuant hereto or in connection with the transaction contemplated hereby contains any untrue statement of material fact.

5. BUYER'S REPRESENTATIONS AND WARRANTIES. In addition to any express agreements of Buyer contained herein, the following constitute representations and warranties of Buyer to City; of this Agreement:

5.1 Representations Regarding Buyer's Authority.

(a) Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(b) The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(c) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by Buyer in connection with this Agreement are and shall be, duly authorized, executed and delivered by Buyer and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms.

(d) All requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with the entering into this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, authority other party is required.

(e) Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, Deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Buyer is a party or affecting the Property.

5.2 General Representation. No representation, warranty or statement of Buyer in this Agreement or in any document, certificate or schedule furnished or to be furnished to City pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading. Buyer's representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date of the close of sale with the same force and effect as if remade by Buyer in a separate certificate at that time. The truth and accuracy of Buyer's representations and warranties made herein shall constitute a condition for the benefit of City to the close of sale (as elsewhere provided herein) and shall not merge into the close of sale or the recordation of the Grant in the Official Records, and shall survive the close of sale.

6. DUE DILIGENCE.

6.1 Buyer's Investigation of Property Condition. Real property often contains defects and conditions which are not readily apparent and which may affect the value or desirability of the Property. Therefore, it is the affirmative duty of Buyer to exercise reasonable care to discover those facts which are unknown to Buyer or within the diligent attention and observation of Buyer. Buyer agrees to provide to City, at no cost, upon request of City, complete copies of all inspection reports obtained by Buyer concerning the Property.

6.2 Buyer's Acceptance of Property Condition. Buyer's acceptance of the condition of the Property is a contingency of this Agreement; accordingly, Buyer shall have the right to conduct inspections, investigations, tests, surveys, and other studies at Buyer's expense. Buyer is strongly advised to exercise these rights and select professionals with appropriate qualifications to conduct inspections of the entire Property. If Buyer does not exercise these rights, Buyer is acting against the advice of City.

6.3 Scope of Buyer's Investigations. Buyer agrees and warrants, or by the failure to do so shall have waived any rights to do so hereunder, that at close of sale Buyer shall have investigated the condition and suitability of all aspects of the Property and all matters affecting the value or desirability of the Property, including but not limited to the following:

6.3.1 Condition of systems and components. Foundation, plumbing, siding, electrical, heating, mechanical, roof, air conditioning, built-in appliances, security, and any other structural or nonstructural systems and components, and the energy efficiency of the Property.

6.3.2 Size and age of improvements. Room count, room dimensions, square footage in improvement, lot size, and age of the improvements.

6.3.3 Lines and boundaries. Property lines and boundaries.

6.3.4 Waste disposal. Type, size, adequacy, and condition of sewer and/or septic systems and components.

6.3.5 Governmental requirements and limitations. Availability of required governmental permits, inspections, certificates, or other determinations affecting the Property, including historical significance. Any limitations, restrictions, zoning, building size requirements, or other requirements affecting the current or future use or development of the Property.

6.3.6 Rent and occupancy controls. Any restrictions that may limit the amount of rent that can legally be charged and the maximum number of persons who can lawfully occupy the Property.

6.3.7 Water and utilities; well systems and components. Availability, adequacy, and condition of public or private systems.

6.3.8 Environmental hazards. The presence of asbestos, formaldehyde, radon, methane, other gases, lead based paint, other lead contamination, fuel or chemical storage tanks, waste disposal sites, electromagnetic fields, and other substances, materials, products, or conditions.

6.3.9 Geological conditions. Geologic/seismic conditions, soil stability/suitability, and drainage.

6.3.10 Neighborhood, area, subdivision requirements. Neighborhood or area conditions including schools; proximity and adequacy of law enforcement;

proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development which may affect noise, view or traffic; airport noise; and noise or odor from any source, wild or domestic.

6.3.11 Matters of record. Covenants, conditions, and restrictions; Deed restrictions; easements; and other title encumbrances of record.

6.3.12 Other matters. Any and all other matters such as availability of suitable public infrastructure, assessment, other special service districts, and soil or other conditions on the Property, not herein listed, which are or may be pertinent to Buyer's purpose for acquiring the Property.

7. **INDEMNIFICATION.** Buyer shall defend, indemnify, and hold the City harmless from and against any and all claims, liabilities, obligations, losses, damages, costs, and expenses, including, but not limited to, attorney's fees, court costs, and litigation expenses that City may incur or sustain by reason of or in connection with any misrepresentation made by the Buyer pursuant to this Agreement.

8. **MINERAL RESERVATIONS.** City shall retain all mineral rights in the Property, and the Grant Deed shall contain the following language:

"EXCEPTING therefrom all oil, gas and other hydrocarbon substances and minerals lying below a depth of 500 feet from the surface of said land, but without the right of surface entry at any time upon said land or within the top 500 feet thereof, for the purpose of exploiting, developing, producing, removing and marketing said substances."

9. **PRIOR AGREEMENTS.** This Agreement, in effect as of the Date of Agreement, supersedes any and all prior agreements (if any) between City and Buyer regarding purchase and sale of the Property.

10. **NOTICES.** Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed or sent by wire or other telegraphic communication in the manner provided in this Agreement, to the following persons:

If to City:

City of Huntington Beach
Attn: Steve Holtz
2000 Main Street, 5th Floor
Huntington Beach, CA 92647

If to Buyer:

Bonanni Development Company IV
Attn: Ed Bonanni
5500 Bolsa Avenue, Ste 120
Huntington Beach, CA 92649

11. **CALCULATION OF TIME.** Under this Agreement, when the day upon which performance would otherwise be required or permitted is a Saturday, Sunday or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or

holiday. The term "holiday" shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.

12. **TIME OF ESSENCE.** Time is of the essence of this Agreement and each and every provision hereof.

13. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire understanding and agreement of the Parties hereto regarding the purchase and sale of the Property and all prior agreements, understandings, representations or negotiations are hereby superseded, terminated and canceled in their entirety, and are of no further force or effect.

14. **AMENDMENTS.** This Agreement may not be modified or amended except in writing by the Parties.

15. **APPLICABLE LAW.** The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall in all respects be governed by the laws of the State of California.

16. **SEVERABILITY.** Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the Parties have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

17. **SEPARATE COUNTERPARTS.** This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

18. **EXHIBITS.** The following Exhibits are attached to this Agreement and incorporated by reference herein:

Exhibit A: Map of Property

Exhibit B: Legal Description

Exhibit C: Plat Vacation of Public Right of Way

19. **SURVIVAL.** All terms and conditions in this Agreement, which represent continuing obligations and duties of the Parties, that have not been satisfied prior to close of sale shall survive close of sale and transfer of title to Buyer and shall continue to be binding on the respective obligated party in accordance with their terms. All representations and warranties and statements made by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the close of sale, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the

execution and delivery of this Agreement and the close of sale, or, to the extent the context requires, beyond any termination of this Agreement.

20. 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.

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

22. BROKERAGE COMMISSIONS. Buyer represents to City that there has been no broker, real estate agent, finder or similar entity engaged in connection with this Agreement or the sale of the Property from the City to Buyer, if consummated as contemplated hereby. Buyer 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 Buyer or its agent, employees or representatives, Buyer will indemnify, defend and hold City free and harmless from and against any and all loss, liability, cost, damage and expense (including attorneys' fees and court costs) in connection therewith. Buyer agrees to pay, at its sole cost and expense, when due, any and all brokerage commissions incurred by Buyer heretofore or hereafter incurred prior to close of sale.

23. MISCELLANEOUS.

23.1. 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.

23.2. 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.

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


23.4. 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.

23.5. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized offices the day, month and year first above written.

BUYER:
BONANNI DEVELOPMENT COMPANY IV


CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of California

By: 
ED BONANNI

print name

ITS: (circle one) Chairman/President/Vice President

AND

By: 
BRET BONANNI

print name

ITS: (circle one) Secretary/Chief Financial Officer

Asst. Secretary – Treasurer

Mayor

City Clerk

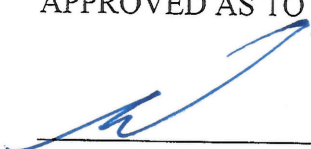

INITIATED AND APPROVED:

Director of Community Development

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:


City Attorney 

BUYER:
BONANNI DEVELOPMENT COMPANY IV

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of California

By: _____

print name

Mayor

ITS: (circle one) Chairman/President/Vice President
AND

City Clerk

By: _____

print name

INITIATED AND APPROVED:



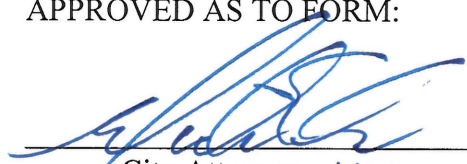
Director of Community Development

ITS: (circle one) Secretary/Chief Financial Officer/
Asst. Secretary – Treasurer

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:



City Attorney NW

Exhibit A
Legal Description

LOT 33 (ALLEY), IN BLOCK "A" OF THE GARFIELD STREET ADDITION TO HUNTINGTON BEACH, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON THE MAP FILED IN BOOK 7, PAGES 27 AND 28 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN 159-281-04