

ACQUISITION AND SALE AGREEMENT

THIS ACQUISITION AND SALE AGREEMENT ("the "Agreement") is entered into as of September 9, 2020 (the "Effective Date"), by and between the HUNTINGTON BEACH CITY SCHOOL DISTRICT, a California public school district ("District"), and the CITY OF HUNTINGTON BEACH, a California municipal corporation ("City"). District and City are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, District is the owner of certain surplus personal property consisting of three (3) 24' x 40' portable buildings (the "Portable Buildings") (as defined in Section 1.1(a) below); and

WHEREAS, the Portable Buildings are deemed to be surplus and no longer required for school purposes, due to (a) not being certified by DSA, and (b) their deteriorated condition; and

WHEREAS, City desires to acquire and install the Portable Buildings as part of a homeless shelter to be constructed on City's property located at 17631 Cameron Lane, Huntington Beach, California 92647 (the "City Property"); and

WHEREAS, Education Code section 17542 authorizes the sale of personal property belonging to the District to the federal government or its agencies, to the state, to any county, city and county, city or special district, or to any other school district upon such terms of sale fixed by the District, and approved by the county superintendent of schools; and

WHEREAS, the office of the Orange County Superintendent of Schools has approved the sale of the Portable Buildings pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the respective agreements hereinafter set forth, District and City hereby agree as follows:

ARTICLE 1

ACQUISITION AND SALE

1.1 Acquisition and Sale. Subject to the terms, conditions, and provisions of this Agreement, District hereby agrees to sell and convey to City, and City hereby agrees to acquire from District, the following:

(a) Three (3) portable buildings, each measuring 24' by 40' (the "Portable Buildings"), located on a portion of the Isaac L. Sowers Middle School Property, at 9300 Indianapolis Avenue, Huntington Beach, California 92646 (the "School Site"), as more particularly depicted in **Exhibit "A"** together with the Designation and Identification of the Portable Buildings listed in **Exhibit "B"** attached hereto and incorporated herein by this reference.

1.2 Consideration. As consideration for the acquisition of the Portable Buildings, City shall provide licensed and experienced contractor(s) to perform all required work and pay all costs associated with removing and transporting the Portable Buildings from the School Site and installing the Portable Buildings onto the City Property, including, but not limited to, (a) terminating electrical connections from the Portable Buildings, and following removal of the Portable Buildings, installing an electrical ground vault immediately adjacent to the prior location of the Portable Buildings at the School Site; (b) grade and compact soil in area where Portable Buildings are removed and in area immediately adjacent thereto to the condition existing immediately prior to placement of Portable Buildings on School Site; and (c) replace/repair any property at School Site damaged during removal of the Portable Buildings.

1.3 Bill of Sale. District will provide to City a Bill of Sale for the Portable Buildings.

1.4 Term. The term of this Agreement shall commence as of the Effective Date and shall continue until the sooner to occur of sixty (60) calendar days following the Effective Date or the date in which the Portable Buildings have been removed from the School Site (the "Term"), unless the Parties mutually agree to extend the Term.

ARTICLE 2

WARRANTIES AND REPRESENTATIONS

2.1 District Warranties and Representations. District warrants and represents that it is the legal owner of the Portable Buildings, and that the Portable Buildings are free from all liens and encumbrances.

2.2 City Warranties and Representations. City warrants and represents that the following facts are true and correct.

(a) As-Is Condition. City understands and agrees that the Portable Buildings are being sold "**AS-IS WITH ALL FAULTS.**" City understands and agrees that all warranties, expressed or implied, including but not limited to, manufacturer's warranties, warranties of merchantability, and warranties of fitness for any particular purpose are hereby expressly disclaimed by District. District shall be in no way responsible for the proper use and service of the Portable Buildings.

(b) Inspection. City has inspected and is familiar with all matters that it believes pertinent to its ownership and use of the Portable Buildings.

(c) Permits, Licenses, and Inspections. City shall pay for and secure any and all permits, licenses, and /or inspections required by state or local law or regulations in connection with the performance of City's obligations under this Agreement.

(d) Hazardous Materials. City shall not, and shall cause "City's Persons" (as defined in Section 3.1 below) not to, bring, place, treat, or dispose of any Hazardous Material in, under

or about the School Site or License Area. For purposes of this Agreement, the term “Hazardous Material” means any hydrocarbons, petroleum, gasoline, crude oil, or any products, by-products or fractions thereof, asbestos, chlorofluorocarbons, polychlorinated biphenyls (PCBs) and formaldehyde, whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with other materials expected to be on or about the License Area is: (i) potentially injurious to the public health, safety, or welfare, the environment, or the License Area, (ii) regulated or monitored by any governmental authority, or (iii) a basis for liability of District to any governmental agency or third party under applicable statute or common law theory.

(e) Compliance with Laws. City shall, and shall cause City’s Persons to, at no cost and expense to District, promptly comply with all applicable laws, statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, now in effect or which may hereafter come into effect (collectively, “Laws”), during the term of this Agreement, relating in any manner to the entry and activities of any City’s Persons on or about the License Area. District shall have the right to enter the License Area at any time for the purpose of inspecting the condition of the License Area and for verifying compliance by City with this Agreement.

(f) COVID-19 Reporting Responsibilities. City shall respond to all potential COVID-19 exposure events immediately. If a possible COVID-19 infection or potential exposure event occurs involving City’s Persons performing work on the School Site pursuant to the terms of this Agreement, City shall immediately notify District. While the confidentiality of all medical conditions must be maintained in accordance with applicable law, District reserves the right to inform any District staff, employees, students, and/or visitors that an unnamed individual has been diagnosed with COVID-19 if any of District’s staff, employees, students, or visitors might have been exposed to the disease so such individual(s) may take measures to protect their own health.

ARTICLE 3

GRANT OF LICENSE

3.1 Grant of License. District grants City and its employees, contractors, consultants, and agents (collectively referred to as “City’s Persons”) a temporary license during the Term of this Agreement to enter upon that portion of the School Site housing the Portable Buildings as depicted in Exhibit “A” (the “License Area”) for the sole purpose of allowing necessary equipment and personnel to remove and transport the Portable Buildings from the License Area and School Site to the City Property, and to perform such repair and restorative work to the School Site required by Section 1.2 above.

(a) Removal of Portable Buildings. City shall coordinate the timing for the removal of the Portable Buildings and required restorative work to the School Site with the School Site Administrator so as not to interfere with the normal operation or activities at the School Site. As such, City agrees that all removal, restorative and repair work involving the Portable Buildings shall be performed only on Saturdays.

(b) Fingerprint Clearance. In the event the School Site is open for in-person-instruction at any time during the term of this Agreement, City shall ensure that persons who perform services on the School Site have not been convicted of a serious or violent felony as defined in Education Code section 44830.1(c)(1), or sex offense as defined in Education Code section 44010, or controlled substance offense as defined by Education Code section 44011. City shall be required to comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to fingerprinting of employees who may have contact with District's pupils and shall complete the Criminal Records Check Certification form provided by District.

(c) Licensed Contractor. City warrants and represents that only an experienced and appropriately licensed and insured contractor will be used to remove and transport the Portable Buildings. This activity shall include all tasks associated with contracting for the work, issuing notices, overseeing the work on the School Site, and verifying that the School Site/License Area is left in a clean and undamaged condition.

ARTICLE 4

RELEASE

4.1 Release. Excepting therefrom any obligations and liabilities of the Parties under this Agreement, or the breach by District or City of any representations and warranties under Article 2 above, as appropriate, or the fraud or willful misconduct of either Party, the Parties release and discharge each other, and each party's representatives, agents, attorneys, contractors, professional consultants, successors and assigns, and their respective partners, shareholders, members, directors, officers, employees, agents, representatives, parents, affiliates, subsidiaries, predecessors, successors and assigns (collectively, "Parties' Affiliates") from any and all claims, demands, suits, actions, debts, liabilities, obligations, damages, losses, costs, expenses, attorneys' fees, and rights of contribution of every nature, character and description which the Parties have, or may have in the future, whether known or unknown, arising out of, related to, or in any way connected with, the Portable Buildings.

The Parties agree that this release is fully effective regardless of any present lack of knowledge on the part of any party as to any possible claim or any facts or circumstances pertaining to this matter. In connection therewith, the Parties expressly waive the benefits and provisions of Section 1542 of the California Civil Code, and any similar laws of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.


District's Initials

City's Initials

ARTICLE 5

INSURANCE AND INDEMNIFICATION

5.1 Insurance. During the Term of this Agreement, City shall either self-insure or maintain or cause to be maintained, at City's sole cost and expense, a policy of or policies of general liability insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, insuring against injury to persons or property damage resulting from the exercise of the license granted to City by this Agreement, and (ii) an automobile insurance policy in an amount not less than One Million Dollars (\$1,000,000) per occurrence. Such policies shall each name District as an additional insured. City shall also require each of its contractors to provide to District prior to coming onto the License Area, a certificate of the aforementioned insurance. City and its contractors shall also maintain policies of workers' compensation insurance and employee's liability insurance in an amount not less than One Million Dollars (\$1,000,000) for protection of any employees engaged in any work described herein.

5.2 Indemnification. City agrees to defend, indemnify, and hold harmless District, its Board of Trustees, officers, officials, agents, employees, and volunteers from any and all liabilities, claims, suits, actions, penalties, fines, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, whether actual, alleged, or threatened, actual attorney fees incurred by District, courts costs, interest, defense costs, including expert witness fees and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of or arising out of or in any way attributable to the sale, removal and/or use of the Portable Buildings including, but not limited to, any liability, harm, penalty or loss to persons or property, or which may arise from any violation of any laws.

ARTICLE 6

MISCELLANEOUS

6.1 Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) delivery by hand, (ii) one business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) if given by facsimile followed the same day with Federal Express or another reliable overnight courier service for next day delivery, when sent, or (iv) the date of receipt or refusal of delivery if deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to District (Seller): Huntington Beach City School District
8750 Dorsett Drive
Huntington Beach, California 92646
Attn: Gregory Magnuson
Interim Superintendent
(714) 964-8888

With a copy to: Parker & Covert LLP
17862 East Seventeenth Street, Suite 204
Tustin, California 92780-2164
Attn: Douglas N. Yeoman, Esq.
(714) 573-0900
(714) 573-0998 (fax)

If to City (Buyer): City of Huntington Beach
2000 Main Street, 1st Floor
Huntington Beach, California 92648
Attn: Gabriel Munoz-Morris
Associate Civil Engineer
(714) 375-8444

or such other address as either party may from time to time specify in writing to the other.

6.2 Successors, Assigns and Nominees. City shall not have the right to assign this Agreement without the written consent or written approval of District. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors, heirs, administrators and assigns.

6.3 Amendments. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by District and City.

6.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.5 Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the Parties and supersede all prior agreements and understandings between the Parties relating to the subject matter hereof.

6.6 Day or Days. Whenever reference is made to "day" or "days" in this Agreement, all such references shall refer to calendar days unless otherwise specifically stated.

6.7 Timing. For purposes of this Agreement "business day" shall mean any day other than a Saturday, Sunday, California or national holiday or other day on which commercial bankers in California are generally not open for business. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run to and include the next day which is a business day.

6.8 Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

6.9 Counterparts. This Agreement, and any document executed in connection with this Agreement, may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all Parties had signed the same signature page. It shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on a single counterpart, but it shall be sufficient that the signature of, or on behalf of, each Party, appear on one or more of the counterparts. Any signature page of this Agreement, and any document executed in connection with this Agreement, may be detached from any counterpart of this Agreement or such other document and reattached to any other counterpart of this Agreement or such other document identical in form hereto or thereto but having attached to it one or more additional signature pages. This Agreement, and any document executed in connection with this Agreement shall be deemed executed and delivered upon each Party's delivery of executed signature pages of this Agreement or such other document, which signature pages may be delivered by facsimile with the same effect as delivery of the originals.

6.10 No Waiver. Except as specifically provided for in this Agreement, no delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement or under any other instrument or document given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified herein.

6.11 Legal Representation. Each Party has been represented by legal counsel in connection with the negotiation of the transactions herein contemplated and the drafting and negotiation of this Agreement. Each Party and its counsel have had an opportunity to review and suggest revisions to the language of this Agreement. Accordingly, no provision of this Agreement shall be construed for or against or interpreted to the benefit or disadvantage of any party by reason of any party having or being deemed to have structured or drafted such provision.

6.12 Exhibits. All exhibits attached hereto are incorporated herein as though fully set forth herein.

6.13 Signer's Warranty. Each individual executing this Agreement on behalf of an entity hereby represents and warrants to the other Party or Parties to this Agreement that (i) such individual has been duly and validly authorized to execute and deliver this Agreement and any and all other documents contemplated by this Agreement on behalf of such entity; and (ii) this Agreement and all documents executed by such individual on behalf of such entity pursuant to this Agreement are and will be duly authorized, executed and delivered by such entity and are and will be legal, valid and binding obligations of such entity.

6.14 Enforced Delay; Extension of Times for Performance. In the event that either of the Parties are prevented from proceeding with any of their obligations under this Agreement by reason of events beyond that Party's control, such as supernatural causes, strikes, lockouts,

earthquake, war, insurrection, riots, floods, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, delays or inaction of independent contractors, litigation brought against the Portable Buildings, or similar events which are beyond that Party's control, then that Party shall be entitled to an additional grace period or extension of time in which to perform the obligations whose performance is precluded by such event, equal to the period of delay caused by such event beyond that Party's control, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause. A Party wishing to invoke this subparagraph shall notify in writing the other Party to this Agreement of that intention five (5) days of commencement of any such cause for delay and shall, at that time, specify the reasons therefor, the provisions of this Agreement that will be delayed as a result, and the period of such extension, if known, or, if not known, the Party's best estimate thereof. The failure to so notify the other Party within that period as to the cause for delay shall result in the grace period commencing to run from the date of notice rather than from the commencement of the cause for delay.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first above written.

Huntington Beach City School District

By: _____

Its: _____

"District"

City of Huntington Beach

By: _____

Its: _____

"City")

BILL OF SALE AND GENERAL ASSIGNMENT

THIS BILL OF SALE AND GENERAL ASSIGNMENT ("Assignment") is made as of September 9, 2020, by the HUNTINGTON BEACH CITY SCHOOL DISTRICT ("Assignor" or "District").

RECITALS

A. Pursuant to that certain Acquisition and Sale Agreement dated September 9, 2020, ("Acquisition Agreement"), by and between District and the City of Huntington Beach ("Assignee" or "City"), District concurrently with the Effective Date hereby conveys to City, fee simple title to certain personal property, consisting of three (3) portable buildings, each measuring 24' x 40' (the "Portable Buildings"), currently located on a portion of the Isaac L. Sowers Middle School Property, at 9300 Indianapolis Avenue, Huntington Beach, California 92646 (the "School Site"), as more particularly depicted in **Exhibit "A"** together with the Designation and Identification of the Portable Buildings listed in **Exhibit "B"** attached hereto and incorporated herein by this reference.

B. In accordance with Section 1.3 of the Acquisition Agreement, Assignor agrees to provide a Bill of Sale in connection with the conveyance of the Portable Buildings to grant, assign, and sell to Assignee its right, title, and interest in and to the Portable Buildings.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, Assignor agrees as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to any and all rights relating to the Portable Buildings which Assignor may hold.

2. Effective Date. The "Effective Date" of this Assignment shall be the date in which the Portable Buildings have been removed from the School Site and all required restorative and repair work set forth in Section 1.2 of the Acquisition Agreement have been completed, as confirmed by District in writing to City.

3. Inurement. This Assignment shall inure to the benefit of Assignor and Assignee and their respective heirs, assigns and successors in interest.

4. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

5. Counterparts. This Assignment and any documents required to be executed by Assignor and Assignee related to the sale of the Portable Buildings may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

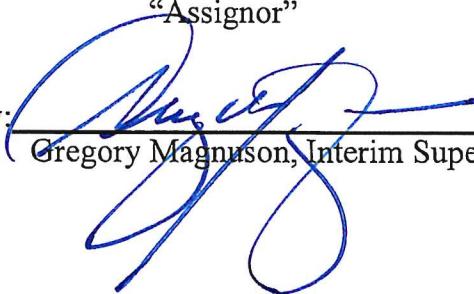
6. Inconsistencies. In the event of any inconsistencies between this Assignment and the Purchase Agreement, the terms of this Assignment shall control.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered as of the date first above written.

HUNTINGTON BEACH CITY SCHOOL DISTRICT

"Assignor"

By:



Gregory Magnuson, Interim Superintendent"

EXHIBIT "A"

MAP OF SCHOOL SITE AND LICENSE AREA

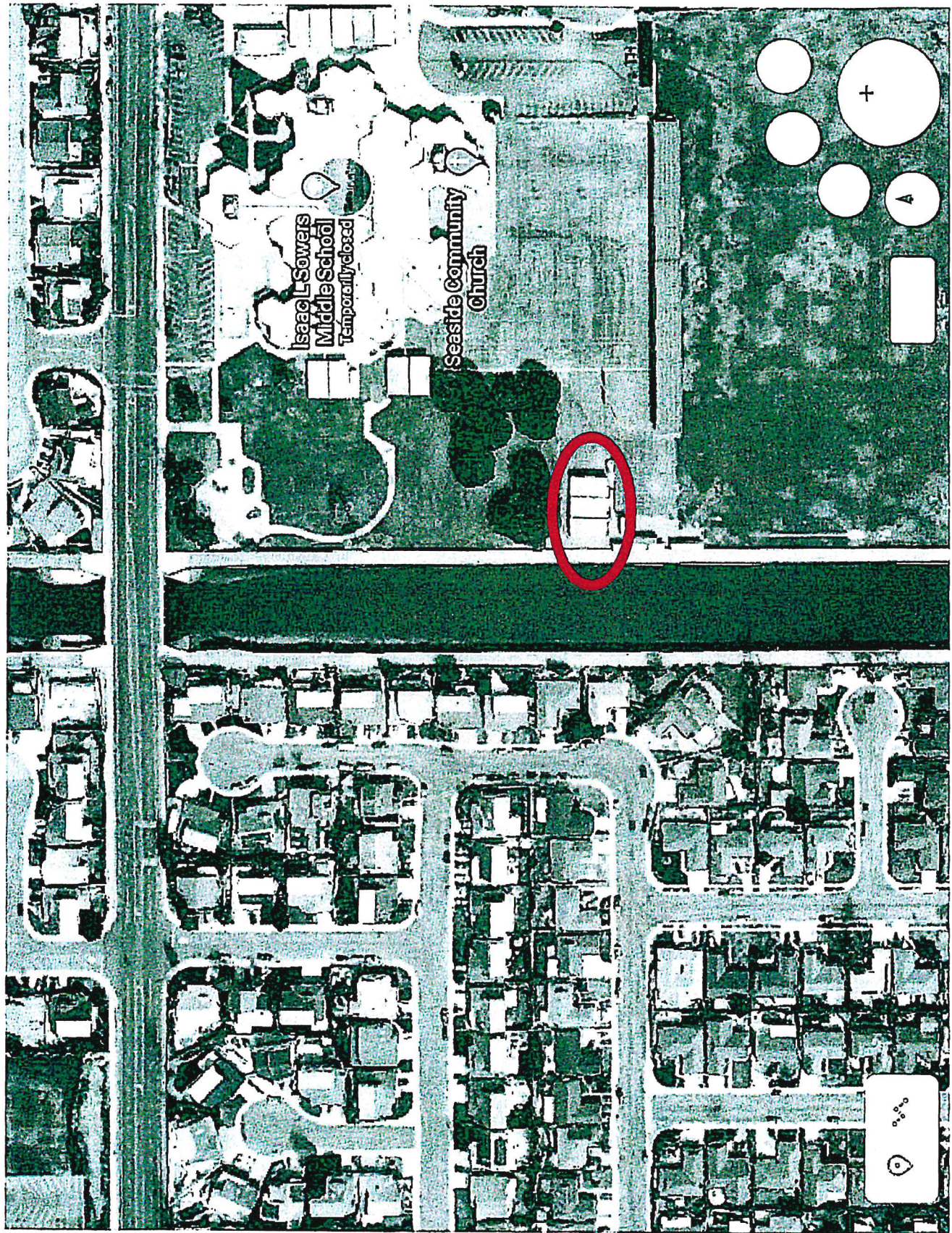


EXHIBIT "B"

DESIGNATION AND IDENTIFICATION OF PORTABLE BUILDINGS

Portable Number	Serial Number/Identification Trailer Number
P-B	56521-04104244
P-H	56519-04104244
P-G	56523-04104244