

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the "Agreement") is entered into as of June __, 2022 (the "**Effective Date**"), by and between the **HUNTINGTON BEACH HOUSING AUTHORITY**, a public body, corporate and politic ("**Authority**"), and **JAMBOREE HOUSING CORPORATION**, a California corporation ("**Developer**"). Authority and Developer may be individually referred to herein as a "**Party**" and collectively referred to herein as the "**Parties**".

RECITALS

The following recitals are a substantive part of this Agreement.

A. Authority is the owner of fee title to certain real property commonly described as 17642 Beach Boulevard, in the City of Huntington Beach ("City"), County of Orange, State of California, consisting of Assessor Parcel Numbers 167-472-08; and -09, shown on Exhibit A and incorporated by this reference (the "Property"). The Property is approximately 1.6 acres located within the Beach and Edingers Corridor Specific Plan ("BECSP") – Affordable Housing Overlay and improved with a temporary homeless shelter.

B. Authority desires to explore the possibility of repurposing the Property and issued a *Request for Qualifications for Real Estate Developers* (the "**RFQ**") on March 22, 2022, (attached as Exhibit B) in order to identify a qualified development partner to develop, finance, and manage a new mixed-use development consisting of a permanent homeless shelter, a sobering center, support services (physical and behavioral healthcare, housing navigation, and employment), and transitional and low-income housing at various income levels (a "**Healing Center**").

C. Developer is an experienced developer of affordable and supportive rental housing development. Developer submitted a response to the RFQ (attached as Exhibit C), including proposed service partners **Mercy House**, a homeless shelter, housing and supportive services provider and **Be Well**, a behavioral health treatment and services organization.

D. Authority found the Developer to be a qualified partner and communicated the Developer had been selected as the recommended developer in the RFQ process.

E. Developer is interested in negotiating with Authority for purposes of determining the feasibility, and potential terms, for Developer's acquisition of a leasehold or fee-simple interest in the Property.

F. The purpose of this Agreement is to establish a period during which the Developer may perform studies and investigations and other due diligence activities within the Property and other feasibility and financial analysis to determine the feasibility

of Developer's acquisition of the Property for a Healing Center and the Parties shall exclusively negotiate with each other in an attempt to agree on the terms of an affordable housing agreement, including a fee-simple acquisition, ground lease, or other disposition (an "**Affordable Housing Agreement**").

NOW THEREFORE, the Parties mutually agree as follows:

1. Agreement to Negotiate in Good Faith. Authority and Developer agree that for the term of the "Negotiating Period" (as defined in Section 2 hereof) each Party shall diligently and in good faith attempt to negotiate the terms of an Affordable Housing Agreement for consideration by the Authority. During the Negotiating Period, Authority agrees to negotiate exclusively with Developer, and not to negotiate with any other person or entity, with regard to the sale or other disposition of the Property.

2. Negotiating Period. The negotiating period (the "**Negotiating Period**") shall be for a period of three hundred sixty (360) days, commencing on the Effective Date. The Executive Director of Authority, or his or her designee, shall have the right, in his or her sole discretion, to extend the Negotiating Period for up to an additional one hundred eighty (180) days, resulting in a total potential Negotiating Period of up to Five Hundred Forty (540) days. Upon the expiration of the Negotiating Period, or upon the Parties' signing an Affordable Housing Agreement for the Property, this Agreement shall automatically terminate, without further written notice or action by either Party. Upon such automatic termination, the Parties acknowledge and agree that neither Party shall have any further rights or remedies as to the other, except as specifically set forth herein.

3. Due Diligence. During the Negotiating Period, Developer and its employees, contractors, agents, representatives, architects, engineers and consultants (collectively, the "**Developer Entities**"), at Developer's sole cost and expense, shall have the right to enter and inspect the Property, make surveys and conduct such soils, engineering, hazardous or toxic material, pollution, seismic or other tests, studies and investigation as Developer may require (collectively, the "**Inspections**"), pursuant to the terms of this Section 3.

(a) Developer shall cause the Inspections to be conducted during regular business hours (7:00 a.m. to 6:00 p.m., Monday through Friday) upon not less than twenty-four (48) hours' prior written notice to Authority. Authority may have a representative present at any Inspections of the Property.

(b) In conducting its Inspections at the Property, Developer and the Developer Entities shall: (i) not damage any part of the Property (other than invasive testing conducted in accordance with Sections 3(c) and (d) below) or any personal property owned or held by any third party; (ii) promptly repair any damage to the Property resulting from the entry by Developer or the Developer Entities or from any such Inspections; (iii) comply with all applicable laws; and (iv) not permit any liens to attach to the Property by reason of the exercise of Developer's rights hereunder.

(c) Notwithstanding anything to the contrary in this Section 3, Developer

shall not undertake any invasive testing, including, without limitation, taking samples of any kind or type from the Property, without Authority's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

(d) Promptly upon completion of each Inspection, Developer shall cause the portion of the Property subject to such Inspection to be restored to the condition existing immediately prior to such Inspection, to the extent reasonably practicable. Developer shall provide Authority, at no additional charge and without representation or warranty of any kind, with copies of non-proprietary reports prepared by third parties for Developer in connection with the Inspections within three (3) business days of Developer's receipt of the same.

(e) Developer hereby indemnifies, defends, and holds harmless Authority and City and Authority's and City's officers, officials, members, employees, directors, agents, representatives, contractors, and volunteers (collectively, the "Authority and City and Authority and City Personnel"), and the Property, free and harmless from and against any and all claims, damages, liabilities, demands, injury, actions, liens, stop notices, losses, costs and expenses (including without limitation reasonable attorneys' fees and court costs) to the extent arising from or as a result of the conducting of Inspections, except to the extent caused by an indemnified party's active negligence, recklessness or intentional misconduct.

(f) Developer's obligations under this Section 3 shall survive the expiration or termination of this Agreement.

4. Insurance. Without limiting Developer's indemnification obligations under this Agreement, Developer shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Developer and/or the Developer Entities, including without limitation Developer's conducting of the Inspections. In the event that Developer subcontracts any portion of the work, the contract between Developer and such subcontractor shall require the subcontractor to maintain the same types (with the same endorsements) and amounts of insurance that Developer is required to maintain pursuant to this Section.

A. Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Developer's performance of this Agreement, including without limitation Developer's conducting of the Inspections. Such insurance shall be endorsed to:

- (1) Name the Authority/City and Authority/City Personnel as additional insureds for claims arising out of Developer's performance of this Agreement, including without limitation Developer's conducting of the Inspections.

- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to Authority/City.

B. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

- (1) Name the Authority/City and City Personnel as additional insureds for claims arising out of Developer's performance of this Agreement, including without limitation Developer's conducting of the Inspections.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to Authority/City.

C. Workers' Compensation Insurance in accordance with the Labor Code of California and covering all employees of Developer providing any service in the performance of this Agreement. Such insurance shall be endorsed to waive the insurer's right of subrogation against the Authority/City Personnel.

D. Evidence of Insurance: Developer shall provide to Authority/City a Certificate(s) of Insurance evidencing such coverage, together with copies of the required policy endorsements, no later than five (5) business days prior to commencement of any inspections and prior to the expiration of any policy. ***Statements on an insurance certificate will not be accepted in lieu of the actual endorsements required.*** Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to Authority by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

E. Acceptability of Insurers. Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by Authority.

5. No Predetermination of City Discretion. The Parties acknowledge and agree that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of Authority/City's discretion concerning the consideration of an Affordable Housing Agreement. The Parties do not intend for this Agreement to be an Affordable Housing Agreement, development agreement, or other agreement for the lease or other conveyance, or the development, of the Property. The Parties acknowledge and agree that they have not agreed upon the essential terms of the subject

matter of a transaction, and that such essential terms will be the subject matter of further negotiations. The Parties acknowledge and agree that any final agreement, if an agreement is reached, would be in the form of an Affordable Housing Agreement, and any such Affordable Housing Agreement would not be effective until it has been considered and formally approved by the Huntington Beach Housing Authority Board of Directors and Developer, and thereafter has been executed by authorized representatives of each of the Parties. Notwithstanding anything in this Agreement to the contrary, Authority does not intend by this Agreement to commit to a definite course of action with respect to the Property, and Authority retains full discretion with respect to (i) the Property, (ii) an Affordable Housing Agreement, (iii) any determination under the California Environmental Quality Act of 1970, Public Resources Code Section 21000, *et seq.* ("**CEQA**") with respect to the consideration of an Affordable Housing Agreement and/or any proposed development of the Property.

6. Costs and Expenses. Each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Agreement.

7. Lead Negotiators. The Executive Director, or his or her designee, shall be the lead negotiator for the Authority with respect to the subject matter of this Agreement. The Chief Development Officer of Developer, or his or her designee, shall be the lead negotiator for Developer with respect to the subject matter of this Agreement.

8. Change in Developer. The qualifications of Developer are of particular interest to Authority. Consequently, with the exception of an "Affiliate" (as defined below), no person or entity, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement, nor shall Developer assign all or any part of this Agreement, without the prior written approval of Authority. Any such approval by Authority may be granted, withheld or denied at Authority's sole and absolute discretion. Any other purported transfer, voluntarily or by operation of law, shall be absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee. As used in this Agreement, the term "**Affiliate**" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer. The term "control" as used in the immediately preceding sentence, means, with respect to a person or entity that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person or entity that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person or entity.

9. Property Documents; Authority Cooperation. Within fifteen (15) days after the Effective Date, Authority shall provide or cause to be provided to Developer all documents relating to the physical or environmental condition of the Property (including, but not limited to, environmental, property physical condition, geological studies, engineering and structural analyses, and geotechnical reports and soil tests and analyses) to the extent reasonably known to be in the Authority's or City's possession.

10. Address for Notices. Any notices pursuant to this Agreement shall be in writing and delivered (i) in person, (ii) by reputable overnight delivery service that provides a receipt with the time and date of delivery, such as Federal Express, or (iii) by United States Mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

To Authority: Huntington Beach Housing Authority
 2000 Main Street
 Huntington Beach, CA 92648
 Attn.: Executive Director

With a copy to: City of Huntington Beach
 2000 Main Street
 Huntington Beach, CA 92648
 Attn: City Attorney

To Developer: Jamboree Housing Corporation
 17701 Cowan, Suite 200
 Irvine, CA 92614
 Attn: Laura Archuleta, CEO

With a copy to: Rutan & Tucker, LLP
 18575 Jamboree Road
 9th Floor
 Irvine, CA 92612
 Attn: Pat McCalla

Any Party may designate a different address for itself by notice similarly given. Any notice, demand or document so given, delivered or made by United States mail, shall be deemed to have been given seventy-two (72) hours after the same is deposited in the United States mail as registered or certified mail, addressed as above provided, with postage thereon fully prepaid. Any notice, demand or document delivered by overnight delivery service shall be deemed complete upon actual delivery or attempted delivery, provided such attempted delivery is made on a business day. Any such notice, demand or document not given by registered or certified mail or by overnight delivery service as aforesaid shall be deemed to be given, delivered or made upon receipt of the same by the Party to whom the same is to be given or delivered.

11. Default. Failure by either Party to negotiate in good faith or to perform any other of its obligations as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the action required to cure the default. If the default remains uncured fifteen (15) days after the date of such notice,

the non-defaulting Party may exercise the remedies set forth in Section 12 of this Agreement.

12. Remedies for Breach of Agreement. In the event of an uncured default under this Agreement, the sole remedies of the non-defaulting Party shall be to (a) terminate this Agreement, (b) institute an action for specific performance of this Agreement, or (c) institute legal action to recover actual damages for the default (limited to actual, documented out-of-pocket costs incurred by the non-defaulting Party as a result of such default). Following the termination of this Agreement, neither Party shall have any further rights, remedies or obligations under this Agreement, except as specifically set forth herein. Neither Party shall have any liability to the other for monetary damages for failure to reach agreement on an Affordable Housing Agreement, and each Party hereby waives and releases any such rights or claims it may otherwise have at law or at equity. The Parties' rights and obligations under this Section 12 shall survive the expiration or termination of this Agreement.

13. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

14. Time of Essence. Time is of the essence of every portion of this Agreement in which time is a material part.

15. Agreement Does Not Constitute Development Approval. City and Authority reserve final discretion and approval as to any proposed development of the Property and any Affordable Housing Agreement and all proceedings and decisions in connection therewith. This Agreement shall not be construed as a grant of development rights or land use entitlements to construct a Healing Center or any other project on the Property. All design, architectural, and building plans for any proposed development shall be subject to the review and approval of City and any other Federal, State or local entity with jurisdiction over the Property and/or proposed development. By its execution of this Agreement, Authority is not committing itself to or agreeing to undertake any disposition of the Property to Developer, or any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof.

16. Governing Law. This Agreement shall be construed in accordance with the internal laws of the State of California, without regard to conflict of law principles.

17. Amendments. This Agreement may not be altered, amended, changed, waived, terminated or modified in any respect or particular unless the same shall be in writing and signed by the Parties.

18. Implementation of Agreement. The Authority shall maintain authority to implement this Agreement through the Executive Director (or his or her designee). The Executive Director shall have the authority to make approvals, waive provisions and/or

enter into certain amendments of or implementing agreements for this Agreement on behalf of Authority so long as such actions do not materially or substantially change the substantive business terms of this Agreement, or add to the costs incurred or to be incurred by Authority or City as specified herein. All other material and/or substantive approvals, waivers, or amendments shall require the consideration, action and written consent of the Huntington Beach Housing Authority Board of Directors.

21. Real Estate Commissions. Each of the Parties represents and warrants to the other Party that no real estate commission, broker's fees, or finder's fees which may accrue by means of the acquisition of the Property is due to any person, firm or entity. Authority shall indemnify, protect, defend and hold harmless Developer from any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees) incurred by reason of any broker fee, commission or finder's fee that is payable or alleged to be payable to any broker or finder which results from any act or agreement of Authority. Developer shall indemnify, protect, defend and hold harmless Authority from any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees) incurred by reason of any broker fee, commission or finder's fee that is payable or alleged to be payable to any broker or finder which results from any act or agreement of Developer.

22. Conflict of Interest. No member, official or employee of Authority/City having any conflict of interest, direct or indirect, related to this Agreement shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

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

[End of Agreement- Signature page follows]

NOW THEREFORE, Authority and Developer have executed this Exclusive Negotiating Agreement as of the date first set forth above.

CITY:

**HUNTINGTON BEACH HOUSING
AUTHORITY**, a public body, corporate and
politic

By: _____

ATTEST:

_____, Authority Secretary

APPROVED AS TO FORM:

_____, City Attorney *W*

DEVELOPER:

JAMBOREE HOUSING CORPORATION, a
California corporation

By: *[Signature]*
Its: Chief Development Officer

By: *[Signature]*
Its: Chief Impact Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Real property located in the City of Huntington Beach, County of Orange, State of California, described as follows:

EXHIBIT "B"
REQUEST FOR QUALIFICATIONS

EXHIBIT "C"
DEVELOPER QUALIFICATION STATEMENT

[Untitled]

Final Audit Report

2022-05-31

Created:	2022-05-31
By:	Brian Miles Garibay (bgaribay@jamboreehousing.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAARsaH4asaME18mASB-1t6QN2qZKqOHmJf

"[Untitled]" History

-  Document created by Brian Miles Garibay (bgaribay@jamboreehousing.com)
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-  Document e-signed by Michael Massie (mmassie@jamboreehousing.com)
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