

OPTION TO LEASE AGREEMENT

THIS OPTION TO LEASE AGREEMENT (this “**Agreement**”) is entered into as of the ____ day of _____, 2024 (the “**Effective Date**”), by and between CITY OF COSTA MESA, a California municipal corporation (“**Optionor**” or “**City**”), and JHC-ACQUISITONS LLC, a California limited liability company (“**JHC**”). Optionor and JHC are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Optionor currently owns fee title to that certain real property located at 695 W. 19th Street (APN 424-211-01), in the City of Costa Mesa (“**City**”), County of Orange (“**County**”), State of California, as more particularly described on Exhibit “A” attached hereto (the “**City Property**”). The City Property is improved with the Costa Mesa Senior Center and adjoining parking lot.

B. JHC desires to develop and operate on an approximately one and five tenths (1.5) (net) acre portion of the parking lot portion of the City Property (the “**Property**”) a senior affordable rental housing development apartment community containing approximately seventy (70) dwelling units, one (1) of which 70 units shall be an unrestricted manager’s unit, with approximately thirty-four (34) of the rental units set aside as permanent supportive housing for seniors experiencing homelessness, and the balance of the rental units restricted for seniors earning 60% or less of the area median income, (the “**Affordable Housing Project**”).

C. Optionor and Jamboree Housing Corporation, a California nonprofit public benefit corporation (“**Jamboree**”), which serves as the Manager of JHC, previously entered into that certain Exclusive Negotiating Agreement, dated May 26, 2021 (the “**ENA**”), pursuant to which Optionor and Jamboree agreed to negotiate in good faith on the terms of an affordable housing agreement and associated ground lease (collectively, an “**AHA**”). The City Manager of the City extended the “Negotiating Period” under the ENA to September 19, 2022.

D. Optionor and JHC desire to enter into this Agreement to provide for Optionor to grant to JHC and for JHC to obtain from Optionor an option to lease the Property upon the terms more particularly set forth in this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE, AND THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. Grant of Option.

(a) Option. Optionor hereby grants to JHC the option (the “**Option**”) to lease the Property on the terms and conditions set forth in this Agreement.

(b) AHA Form. Prior to the exercise of the Option, Optionor and JHC shall reach agreement on the final form, terms and conditions of the AHA, which AHA shall incorporate the basic terms set forth on Exhibit “B” attached hereto, and such other terms as the Parties deem

appropriate. Upon the mutual agreement of the final form, terms and conditions of the AHA, the Parties shall attach the form of the AHA, to this Agreement as a substitute Exhibit “B”. If Optionor and JHC do not agree in writing on the form, terms and conditions of the AHA prior to the expiration of the “Term” (as hereinafter defined), this Agreement and the Option shall automatically terminate, without the need of any notice or documentation, and neither Party shall have any further rights or obligations hereunder.

2. Term of Option.

(a) Term. The term of the Option shall be for a period commencing on the Effective Date and ending 5:00 p.m. (California time) on October 31, 2024 and any authorized extension thereof (the “**Term**”).

(b) Exercise of Option. At any time during the Term after the Parties have agreed on the terms and conditions of the AHA, and the City Council of the City has considered and approved the AHA, JHC may exercise the Option by giving written notice to Optionor of its exercise of the Option (the “**Option Notice**”). Promptly after the exercise of the Option, JHC and Optionor shall execute and deliver the AHA.

(c) Expiration. The Option shall expire at 5:00 p.m. (California time) on the last day of the Term.

3. Option Consideration. The Option is granted in consideration of JHC’s payment to Optionor of the sum of Ten Dollars (\$10.00). JHC shall pay such amount to Optionor upon the execution of this Agreement.

4. Right of Entry on the Property. During the Term, at JHC’s sole cost and expense, JHC and its designated agents, representatives, contractors, architects, consultants, engineers and employees (collectively, the “**JHC Entities**”) 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 JHC may require (collectively, the “**Inspections**”), pursuant to the terms of this Section 4.

(a) JHC 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 (24) hours’ prior written notice to City. City may have a representative present at any Inspections of the Property.

(b) In conducting its Inspections at the Property, JHC and the JHC Entities shall: (i) not damage any part of the Property (other than invasive testing conducted in accordance with Sections 4(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 JHC or the JHC 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 JHC’s rights hereunder.

(c) Notwithstanding anything to the contrary in this Section 4, JHC shall not undertake any invasive testing, including, without limitation, taking samples of any kind or type from the Property, without City’s prior written approval, which approval shall not be unreasonably

withheld, conditioned, or delayed.

(d) Promptly upon completion of each Inspection, JHC 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 maximum extent reasonably commercially feasible. JHC shall provide City, at no additional charge and without representation or warranty of any kind, with copies of non-proprietary reports prepared by third parties for JHC in connection with the Inspections within three (3) business days of JHC's receipt of the same.

(e) JHC's obligations under this Section 4 shall survive the expiration or termination of this Agreement.

5. Optionor's Cooperation in Seeking Permits and Approvals. During the Term, JHC may meet, as allowed by applicable law, with all city, county, district and other governmental entities to discuss JHC's proposed development of, and other matters relating to, the development of the Property and may obtain all project approvals that JHC may deem necessary or advisable in connection therewith. Provided Optionor does not incur any liabilities or out-of-pocket costs except those authorized by Optionor and without binding the Property prior to the execution and delivery of the AHA in any way, Optionor agrees to reasonably cooperate with JHC in any such matters and execute any and all documents or join in any applications if allowed by law that may be required to obtain all such project approvals in connection with the development of the Property. However, the Parties agree that this Agreement shall not be binding on the City Council, the Planning Commission, the Zoning Administrator, the Building Official, City Attorney or City Engineer of the City regarding any approvals of the Affordable Housing Project required by such bodies or officers, including but not limited to compliance with the provisions of CEQA. JHC obtains no right to develop the Affordable Housing Project on the Property by virtue of this Agreement. Optionor acknowledges JHC may have to process a parcel map to subdivide the Property from the balance of the City Property. As of the Effective Date, the proposed configuration of the Property is as depicted in Exhibit "C" attached hereto.

6. Notices. All notices or other communications made pursuant to this Agreement shall be in writing and shall be served to the Parties at the following addresses (i) mailed by certified mail, postage prepaid, return receipt requested; (ii) sent by express delivery service, charges prepaid with a delivery receipt; or (iii) personally delivered with a delivery receipt:

Optionor: City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626
Attention: City Manager

With a copy to: Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Attention: Kimberly Hall Barlow

JHC: JHC-Acquisitions LLC
c/o Jamboree Housing Corporation
17701 Cowan, Suite 200

Irvine, CA 92614
Attention: Tish Kelly

With a copy to:

Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attention: Patrick D. McCalla

All notices shall be deemed received on the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable. Either Party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other Party in the manner provided in this Section.

7. Assignment of Option. With ten (10) days prior written notice to Optionor, JHC may assign its rights and obligations under this Agreement to a limited partnership in which a limited liability company managed by Jamboree is the general partner (“**Partnership**”), provided that such assignment is consistent, in the reasonable discretion of the City Manager, with the intent of this Agreement. Except as provided in the preceding sentence, JHC may not assign its rights or obligations under this Agreement without the prior written consent of Optionor.

8. Binding Effect. This Agreement and its terms and conditions shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective successors and permitted assigns.

9. Time. Time is of the essence of this Agreement.

10. Further Documents. Upon the reasonable request of the other Party, each Party will execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement, including escrow instructions.

11. Exhibits. All exhibits attached to this Agreement and referred to in this Agreement are incorporated into this Agreement by this reference as though they were fully set forth in this Agreement.

12. Commission. Each Party to this Agreement represents to the other Party that it has not engaged or used the services of any person, firm or corporation that may claim a broker’s commission or finder’s fee upon execution of this Agreement, the exercise of the Option or the execution of the AHA, and each Party hereto agrees to hold the other Party harmless from any loss, damage, expense or liability, including attorney’s fees, resulting from any claim by any person, firm or corporation based upon its having acted as broker or finder on behalf of said indemnifying Party.

13. Captions. The captions of the sections/paragraphs of this Agreement are for convenience and reference only, and the words contained in the captions shall in no way be held to explain, modify, amplify or aid in the interpretations, constructions or meaning of the provisions of this Agreement.

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

15. Attorney's Fees. In any action between JHC and Optionor to enforce or interpret any of the terms of this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys' fees and expert witness fees.

16. Entire Agreement. This Agreement contains the entire agreement between the Parties respecting the matters set forth herein, and supersedes all prior agreements between the Parties respecting such matters.

[END OF AGREEMENT - SIGNATURES ON FOLLOWING PAGE]

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

“Optionor”

CITY OF COSTA MESA, a California municipal corporation

By: _____
City Manager

ATTEST:

Brenda Green, City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow, City Attorney

“JHC”

JHC-ACQUISITIONS LLC, a California limited liability company

By: Jamboree Housing Corporation, a California nonprofit public benefit corporation

By: _____

Name: Michael Massie

Title: Executive Vice President and Chief Development Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF THE CITY PROPERTY

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

Lot 501, Newport Mesa Tract, as per map recorded in Book 5, Page 1 of Miscellaneous Maps in the office of the County Recorder of said county.

Except the easterly 160 feet.

Also except one-half of all oil, gas, minerals and hydrocarbon substances in or under all of the above described land; however, no right is reserved to enter on the surface of said property for the purpose of exploring for or extracting oil, gas and minerals, as reserved in the deeds from Elizabeth W. Farrar and others, recorded August 11, 1953 in Book 2553, pages 624 and 628 of official records, and in Book 2554, pages 23 and 10 of official records.

APN 424-211-01

EXHIBIT "B"

TERMS OF AHA

1. The "**Closing Date**" shall mean and refer to the date which is the later of the following: (a) five (5) business days following the date JHC has obtained its entitlements for the development of the project, (b) five (5) business days following the date the final map creating a separate legal parcel for the Property has been recorded (applicable only if final map is required by either Party), or (c) one hundred eighty (180) days after JHC has received written binding commitments for the financing required for development of the Affordable Housing Project. Notwithstanding the foregoing, JHC shall have the right to extend the Closing Date for a maximum of an additional ninety (90) days by delivering written notice of such election to Optionor not later than five (5) days prior to the then scheduled Closing Date; provided JHC has timely satisfied or waived its financing contingency.

2. The Parties will cause the title company to issue the Partnership an ALTA leasehold owner's extended coverage policy of title insurance with liability in the amount required by the tax credit investor showing title to the leasehold estate in the Property vested in the Partnership free and clear of exceptions and encumbrances except non-delinquent general and special real property taxes and assessments, easements, encumbrances, covenants, conditions, restrictions, rights of way and other matters of record approved by JHC and the standard preprinted exceptions of exclusions from coverage set forth in the title policy along with such endorsements as may be reasonably requested by JHC.

3. All items of income and expense related to the Property, including non-delinquent real property taxes and assessments shall be prorated to the Closing Date.

4. Optionor agrees to negotiate as to whether it shall pay any portion of the escrow fee, documentary transfer taxes and title insurance premiums for that portion of the owner's leasehold title policy which would be incurred for a standard CLTA form of owner's leasehold title insurance policy. JHC shall pay a minimum of one-half (1/2) of the escrow fee, all title insurance premiums associated with any title insurance coverage required by any lender, and all of that portion of the owner's title policy premium which is attributable to the additional cost of ALTA extended coverage, if applicable, the cost of any survey of the Property requested by JHC and the cost of any title endorsements requested by JHC and the cost of any recording fees charged in connection with the transaction.

5. The AHA shall contain representations and warranties from Optionor and JHC to be agreed to by the Parties. Otherwise, the leasehold estate in the Property shall be acquired by the Partnership in its AS-IS, WHERE-IS and SUBJECT TO ALL FAULTS condition.

6. The AHA shall require the Partnership to construct and thereafter operate the Affordable Housing Project on the Property, pursuant to the terms of a regulatory agreement to be recorded against the Partnership's leasehold estate.

7. The AHA shall contain such other terms and conditions as agreed to by the Parties.

8. The leasehold estate shall be established through a ground lease, the form of which will be attached to the AHA (the “**Lease**”), which Lease shall contain the following terms:

a. The term of the Lease will be for ninety-nine (99) years if authorized by law unless a different term is required by the tax credit investor or any lender.

b. The annual rent shall be \$1.00.

c. The Lease shall be on a triple-net basis with tenant being responsible for all expenses of the Property.

d. The Lease will permit the Partnership to encumber the leasehold estate and will contain customary mortgagee protection provisions acceptable to the Partnership’s construction and permanent lender and tax credit investor.

e. The Lease may not be terminable by the Optionor for any reason during the initial construction period and the tax credit compliance period.

f. The Lease will contain the TCAC prescribed form of Ground Lease Rider, and any other rider required by a project lender.

g. The commencement date of the Lease shall mean and refer to the date that the tax credit and construction financing for the proposed project closes.

h. The Lease shall contain such other terms and conditions as agreed to by the Parties.

EXHIBIT "C"

PROPOSED CONFIGURATION OF PROPERTY

