

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	Susan Emery
Dept:	City Manager	Dept:	Community Development
Subject:	COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) RESERVATION AGREEMENT WITH JAMBOREE HOUSING CORPORATION	Date:	May 22, 2012

OBJECTIVE

To request City Council approve a Community Housing Development Organization (CHDO) Reservation Agreement with Jamboree Housing Corporation.

BACKGROUND

The HOME Investment Partnership Act (HOME) Final Rule requires that at a minimum 15 percent of a grantee's HOME annual allocation must be reserved for investment in housing developed, sponsored, or owned by a CHDO.¹ The HOME Final Rule (24 CFR 92.2) defines a CHDO as a non-profit, community based service organization that has administrative capacity to develop affordable housing within the community it services.

Furthermore, all HOME funds, except an annual 10 percent reservation for HOME administrative costs, must be committed within 24 months of the grantee's grant agreement with the U.S. Department of Housing and Urban Development (HUD). Otherwise, those funds are susceptible to recapture by HUD and the City's HOME grant reduced proportionately.

A mid-year review of HOME financial records determined that:

- Approximately \$170,092 in Fiscal Year 2010-11 and \$150,188 in Fiscal Year 2011-12 HOME funds have been reserved for a CHDO;
- There are \$37,292 allocated to activities in prior years that were not used (\$4,060 from Fiscal Year 2007-08, \$16,252 from Fiscal Year 2008-09, and \$16,980 from Fiscal Year 2009-10) and must be allocated to a new activity;

¹ A Community Development Housing Corporation is a nonprofit organization committed to providing low-income affordable housing with a governing board that includes low-income representation.

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- In addition, \$1,600,025 in HOME funds (\$849,085 from Fiscal Year 2010-11 and \$750,940 from this program year) need to be obligated; and
- Program Income of \$52,964 will need to be used prior to expending other HOME funds.

DISCUSSION

It is within this context that City staff recommends that the City Council approve a CHDO Reservation Agreement with Jamboree Housing Corporation. The Developer recently submitted an unsolicited proposal to acquire and rehabilitate substandard rental properties in one of the City's focus neighborhoods, with HOME funds serving as gap financing. The City has previously contracted with the Developer to acquire, rehabilitate and operate several other affordable housing projects: Grove Park (103 rental units), Stuart Drive (42 rental units), and the Buena Clinton (16 rental units) focus neighborhood. These are well maintained and absent substantive findings during monitoring.

The CHDO Reservation Agreement is the mechanism to conditionally commit HOME funds with a CHDO and thereby preserve HOME funds from being recaptured by HUD. The City and the selected Developer will be afforded sufficient time then to identify a housing site and to negotiate the salient terms of a subsequent Affordable Housing Agreement for future City Council consideration.

FINANCIAL IMPACT

This project advances the City of Garden Grove's stated obligation to utilize HOME funds provided through the Federal Department of Housing and Urban Development (HUD) to preserve and expand the supply of quality affordable housing. City Council has consistently set aside a portion of the City's annual HOME entitlement grant towards affordable housing of this type in the City.

The total amount of HOME funds committed under the CHDO Reservation Agreement is \$2,010,561 (the total amount later obligated under an Affordable Housing Agreement would be predicated upon the amount of warranted assistance to develop a project). This amount represents HOME program income plus the remaining balance of five program years of HOME allocations, less administrative funds. Expenditure of HOME funds pursuant to the CHDO Reservation Agreement is contingent upon the following:

- Selection of a mutually acceptable property within the city;
- City Council approval of an Affordable Housing Agreement between the City and Jamboree Housing Corporation;
- The CHDO Reservation Agreement terminates should the City and CHDO not successfully negotiate an Affordable Housing Agreement within the six-month negotiating period, unless extended by mutual agreement; and

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- By entering into a CHDO Reservation Agreement, the City avoids the recapture of HOME monies earmarked for a CHDO, as well as all other HOME project-related funds required to be committed within 24 months of the HOME agreement between the City and HUD.

RECOMMENDATION

It is recommended that City Council:

- Approve the attached Community Housing Development Organization (CHDO) Reservation Agreement for \$2,010,561 between the City and Jamboree Housing Corporation; and
- Authorize the City Manager to execute the Agreement and all other documents necessary to implement the Agreement, and make minor modifications as appropriate, on behalf of the City.



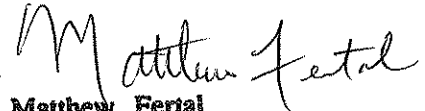
SUSAN EMERY
Community Development Director



By: Monica Covarrubias
Sr. Program Specialist

Attachment 1: CHDO Reservation Agreement

Recommended for Approval



Matthew Ferial
City Manager

COMMUNITY DEVELOPMENT HOUSING ORGANIZATION RESERVATION AGREEMENT

THIS HOME FUND RESERVATION AGREEMENT (the "Agreement") is hereby entered into as of _____, 2012, by and between the **CITY OF GARDEN GROVE**, a California municipal corporation (the "City"), and Jamboree Housing Corporation, a California nonprofit public benefit corporation (the "Developer").

RECITALS

A. Developer is a nonprofit corporation duly organized under the laws of the State of California, which represents that it is experienced in the acquisition, development rehabilitation and operation of housing, which is affordable to persons of low- and moderate-income. Developer has further represented to the City that it satisfies all of the requirements for designation as a Community Housing Development Organization, as that term is defined in 24 CFR 92.2.

B. The City is a municipal corporation which has received funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the federal HOME Program, 42 U.S.C. Section 12701, et seq., to be used for the purposes of providing decent, safe and sanitary housing to the citizens of Garden Grove in accordance with the HOME Program.

C. The City proposes to extend gap financing in HOME funds for mixed-income households at affordable rents.

D. By this Agreement, and subject to the terms and conditions herein, the City desires to reserve financial assistance from the HOME Program to Developer in the amount of Two Million Ten Thousand Five Hundred Sixty One Dollars (\$2,010,561), and the parties desire to negotiate an Affordable Housing Agreement whereby the Developer would acquire, rehabilitate and operate one or more existing apartment buildings within one of the City's Focus Neighborhoods (the "Property"), and lease some or all of the apartment units therein to Very Low Income families and Lower Income families at an Affordable Rent (as those terms are defined in the HOME Program).

NOW, THEREFORE, the parties hereto agree as follows:

1. **Reservation of Funds.** The City hereby reserves the sum of Two Million Ten Thousand Five Hundred Sixty One Dollars (\$2,010,561) from the funds allocated to the City in Fiscal Years 2010-11 and 2011-12 and all available program income pursuant to the HOME Program, for the use of the Developer. The delivery of such funds to or on behalf of the Developer is expressly conditioned upon (i) the City's determination that the Developer is a Community Housing Development Organization pursuant to the HOME Program, (ii) the selection of a mutually acceptable site within one of the City's Focus Neighborhoods (the "Property"), and (iii) the execution by the parties of a mutually acceptable Affordable Housing

Agreement which meets all of the requirements of Section 2 below. This reservation of funds shall terminate and be of no further force or effect in the event that the parties do not enter into the Affordable Housing Agreement by the time set forth in this Agreement. The City intends that the reservation of funds which is made pursuant to this Section shall qualify as a "commitment" of funds pursuant to 24 CFR 92.2, as a written agreement reserving a specific amount of funds to a Community Housing Development Organization.

2. **Negotiating Period.** The City agrees to diligently and in good faith negotiate with the Developer, and the Developer agrees to diligently and in good faith negotiate with the City, for a six (6) month period from the date of execution of this Agreement ("Negotiating Period"), in order to jointly select a mutually acceptable property within one of the City's Focus Neighborhoods, and to agree upon a mutually acceptable Affordable Housing Agreement for the Developer's acquisition of the Property, the rehabilitation of the existing apartment units upon the Property, and the operation of the rehabilitated property. The Affordable Housing Agreement shall contain, but not be limited to, such negotiated matters as the total amount of assistance to be made, whether the assistance will be in the form of a grant or a loan, eligible uses of the assistance, security for repayment of the assistance, conditions to disbursement of the assistance, whether any repayment proceeds must be returned by the Developer to the City or retained for HOME Program activities, the scope and schedule of the rehabilitation work, the number and size of affordable units, ongoing maintenance and operation requirements, a recordable regulatory agreement, other HOME Program requirements, specifically including without limitation the requirements of 24 CFR 92.300 and 24 CFR 92.504(c)(3), and such other matters as the parties find necessary or appropriate.

Except as this Agreement is extended pursuant to the following paragraph or is amended by mutual written agreement of the parties, if at the end of the Negotiating Period the Developer has not signed and submitted an Affordable Housing Agreement mutually acceptable to the Developer and the City Manager or his designee, then this Agreement shall automatically expire and terminate. Upon such expiration and termination both parties knowingly agree that neither party shall have any further rights or obligations to the other under this Agreement. If an Affordable Housing Agreement mutually acceptable to the Developer and the City Manager or his designee is signed and submitted by the Developer within the Negotiating Period, then the term of the Negotiating Period and this Agreement shall automatically be extended, subject to the termination provisions of Section 4 hereof, for a period of forty-five (45) days from the date of such submittal to enable the City's staff to take and coordinate the actions necessary to bring such Affordable Housing Agreement before the City for consideration, action, and authorization to sign, if such is approved. Subject to the termination provisions of Section 4 hereof, the parties by mutual written agreement of the Developer and the City Manager or his designee may extend the Negotiating Period for up to two additional periods of thirty (30) days each.

3. **City Cooperation.** The City further agrees to cooperate with the Developer in identifying suitable sites within one of the City's Focus Neighborhoods (the "Property"), negotiating with the owners of those sites, and supplying the Developer with any information and analyses the City has which are pertinent to the subject matter of this Agreement.

4. **Nature of Agreement; Termination of Agreement.** This Agreement is not intended to constitute a binding agreement to pay any money or convey any real property to the Developer nor is it intended to constitute a binding agreement to enter into an Affordable Housing Agreement or any other contract. Neither party shall be legally bound to consummate the acquisition, rehabilitation or operation of the Property as outlined herein unless and until an Affordable Housing Agreement or other contract has been executed and delivered by both parties. Each party reserves the right to, upon the default of the other party which has not been cured by the time set forth in Section 6 hereof, terminate this Agreement upon thirty (30) days prior written notice to the other party, thereby withdrawing from such negotiations without any liability to the other party.

5. **Relocation Assistance.** The Affordable Housing Agreement shall provide for the allocation between the parties of the cost of relocation of the occupants of the Property, if any, in accordance with all applicable relocation laws, statutes, regulations and other requirements. The Developer shall not contact, negotiate with or enter into any agreements with any owners or managers of real property in the city without the prior approval of the City Manager or his designee. Until and unless the parties enter into an Affordable Housing Agreement or other Agreement with respect to relocation costs, the Developers shall indemnify defend and hold harmless the City and its officers, employees, agents, representatives and volunteers from any claims, actions, judgments, damages costs, or liabilities that arise or payments which are required as a result of the displacement of any person in connection with the Developer's activities under this Agreement or which otherwise arise in connection with this Agreement.

6. **Conditional HOME Commitment.** Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on the City's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

7. **Default.** Except to the extent required by law or otherwise permitted by this Agreement failure or delay by any party to perform any obligation imposed by this Agreement constitutes a default under this Agreement. Prior to a failure or delay being deemed a default hereunder or the period to cure correct or remedy being deemed to have commenced the nondefaulting party shall serve the defaulting party with notice of default. Upon receipt of notice of default, the party who so fails

or delays to perform must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days. If the failure or delay is not cured, corrected or remedied within the required period of time, the defaulting party shall be liable for any damages caused by such default and the nondefaulting party may thereafter commence an action for damages with respect to such default or for specific performance of this Agreement.

8 **Notices.** Any notices, requests or approvals given under this Agreement from one party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, to the address of the other party as stated in this paragraph, and shall be deemed to have been given at the time of personal delivery or three (3) days after the date of deposit for mailing. Notices shall be sent to:

City: City of Garden Grove
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842

Developer: Jamboree Housing Corporation
17701 Cowan Avenue, 200
Irvine, California 92614
Attention: Laura Archuleta

9 **Governing Law.** The laws of the State of California shall govern this Agreement. Any legal action brought under this Agreement must be instituted in the Superior Court of Orange County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.

10. **Attorneys' Fees.** If any legal action is brought to enforce, construe, interpret or invalidate the terms of this Agreement, the prevailing party shall be entitled to all costs and expenses incurred in any such action, including court costs and reasonable attorneys' fees, in addition to any other relief to which such party may be entitled.

11. **Interpretation.** This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each party participated equally in its drafting. Captions are for reference only and are not to be used in construing meaning.

12. **Assignment Prohibited.** In no event shall the Developer assign or transfer any portion of Developer's rights or obligations under this Agreement without the prior express written consent of the City, which consent may be withheld in the City's sole and absolute discretion. The parties understand and acknowledge that the assignability of this Agreement and the HOME Program funds reserved hereunder is governed by the requirements of the HOME Program.

13. **Amendment of Agreement.** No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by the Developer and the City.

14. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the City and the Developer concerning all or any part of the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

DEVELOPER:

Jamboree Housing Corporation,
a California nonprofit corporation

By: Maceys Jove

Its: President CHIEF FINANCIAL OFFICER

CITY:

CITY OF GARDEN GROVE, a municipal
corporation

By: _____
City Manager

ATTEST:

City Clerk

Approved as to Form:

[Signature]
City Attorney