

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Orange County Community Resources
1501 E. St. Andrew Place, 1st Floor, 92705
Attn: Executive Director

FIRST AMENDMENT TO REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS

By and Between

COUNTY OF ORANGE, a political subdivision of the State of California

and

HELP OUR MENTALLY ILL EXPERIENCE SUCCESS, INC.,
a California non-profit public benefit corporation.

**FIRST AMENDMENT AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY**

THIS FIRST AMENDMENT TO AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (the "**First Amendment**") is made and entered into as of April 13, 2021 by and between the COUNTY OF ORANGE, a political subdivision of the state of California (the "**County**") and Help Our Mentally Ill Experience Success, Inc., a California non-profit public benefit corporation (the "**Grantee**"), collectively, the "**Parties**."

RECITALS

- A. WHEREAS, the Grantee, and the County have previously entered into that certain AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY, recorded June 6, 2002, as Instrument No. 20020476377 ("**Regulatory Agreement**") against that certain real property legally described on Exhibit "A" attached hereto and incorporated herein (the "**Property**"). The Regulatory Agreement ensures that the Project (as such term is defined therein) shall be used and operated in accordance with certain restrictions, regulations and covenants provided for under the Regulatory Agreement.
- B. WHEREAS, relevant to this First Amendment, the County has agreed to give the Grantee, as an affiliate of Jamboree Housing Corporation, a California non-profit public benefit corporation the sum of \$3,243,287.18 in One-Time Housing Funds for Whole Person Care Pilot Program ("**WPC Housing Fund**"), in the form of a grant.
- C. WHEREAS, the County and the Grantee now desire to enter into this First Amendment to set forth their agreement regarding the restrictions and covenants for the Project and to cause said restrictions and covenants to run with the land and to provide for additional remedies for any breach of said restrictions and covenants, including recapture of grant funds.
- D. WHEREAS, unless otherwise noted, all defined terms used in this First Amendment shall have the same meaning as that ascribed to them in the Regulatory Agreement as amended by the First Amendment.

NOW, THEREFORE, the County and the Grantee hereby covenant and agree as follows:

1. **Property Description**. All references to the "six (6) units" in the Regulatory Agreement shall be replaced by "single family residence with accommodations for five (5) individuals."
2. **Rental Housing Requirements**. Section 3 of the Regulatory Agreement is hereby amended to add Section (h), as follows:

“(h) The Parties have entered into that certain grant agreement dated as of April 13, 2021 (the “**Grant Agreement**”), and said Grant Agreement is hereby incorporated herein by this reference. The Grant Agreement provides financial assistance in the form of a grant from the WPC Housing Fund to Grantee in the amount of \$3,243,287.18 for the Grantee to demolish the existing Project on the Property and construct and develop a new single family residence with accommodations for five (5) individuals (“**Transitional Housing**”) for eligible tenants. Notwithstanding subsections (a) through (g), above, from the date of issuance of the Certificate of Occupancy for construction of the Transitional Housing and, for fifteen (15) years forthwith or until depletion of the Operating Reserve, but under no circumstances shall the Transitional Housing be in operation for less than ten (10) years, corresponding to the same month and day as that stated on the Certificate of Occupancy, the Grantee shall:

- i. Adopt written tenant selection policies and criteria that meet the following requirements:
 - A. Are consistent with the purpose of providing housing for Extremely Low Income individuals;
 - B. Are reasonably related to program eligibility, as described in subsection (h)(i)(C); below, and the applicants' ability to perform the obligations of the residency;
 - C. Provide transitional housing rent-free for:
 - i. A selection of individuals who are part of the Target Population through referral from the Orange County Health Care Agency's Behavioral Health Services.
 1. For purposes of this paragraph, “Target Population” means a person who is Homeless or at Risk of Being Homeless and who has a serious mental illness in accordance with WIC § 5600.3(b), verified by a State Licensed Mental Healthcare Professional.
 2. “Homeless or at Risk of Being Homeless” means living on the streets or lacking a fixed and regular night-time residence. This includes living in a shelter, motel or other temporary living situation in which the individual has no tenant rights. “At risk of being homeless” may be due to one of the following situations: (a) transition age youth exiting the child welfare or juvenile justice systems; (b) discharge from crisis and transitional residential settings, a hospital, including acute psychiatric hospitals, psychiatric health facilities, skilled nursing facilities with a certified special treatment program for the mentally disordered, and mental health rehabilitation centers; (c) release from city or county jails, but not a parolee from state prison; (d) temporary placement in a residential care facility upon discharge from (b) or (c) above; and (e) individuals who

have been deemed to be at imminent risk of being homeless.

At the expiration of the fifteen years or depletion of the Operating Reserve, but under no circumstances shall the Transitional Housing be in operation for less than ten (10) years, corresponding to the same month and day as that stated on the Certificate of Occupancy, the Grantee shall resume its obligations under subsections (a) through (g), above, and operate the Transitional Housing under the conditions, restrictions and covenants stated therein.”

3. Material Breach, Additional Remedies.

Section 9 is hereby amended to read as follows:

“9. If there shall be a material breach or failure by Grantee under this Covenant, which breach or failure is not cured within sixty (60) days of Grantee's receipt from the County of written notice of default or failure, then the County may seek any remedy available to it at law or equity, including but not limited to specific enforcement, and in addition the following remedies:

- A. If the default or failure occurs the County shall be entitled accelerate the County Note as set forth in the Loan Agreement; and
- B. Any and all of the remedies set forth in the Loan Agreement.
- C. A prorated recapture of a percentage of the Grant Funds as defined in that certain grant agreement between Jamboree Housing Corporation, the Grantee and the County, dated as of April 13, 2021 (the Grant Agreement and which is the consideration for this First Amendment. The prorated amount shall be calculated in accordance to the Grant Agreement and restated here as follows:
 - a. Years 1-5 from issuance of certificate of occupancy: 90% of Grant Funds.
 - b. Years 6-10 from issuance of certificate of occupancy: 66% of Grant Funds.
 - c. Years 11-15 from issuance of certificate of occupancy: 33% of Grant Funds; and
- D. Any and all of the remedies set forth in the Grant Agreement.
- E. Grantee shall be liable for any attorney’s fees the County expends in enforcing and/or compelling repayment under this Paragraph Section 9.”

4. Notices.

Section 5.8 is amended in its entirety to read, as follows:

“5.8 Notice.

(a) Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Grantee:

H.O.M.E.S.
Chief Financial Officer
17701 Cowan, Suite 200
Irvine, CA 92614

County:

Orange County Community Resources
Housing & Community Development
1501 E. St. Andrew Place, 1st Floor, 92705
Attn: Director

Notice shall be deemed given three business days after the date of mailing.”

5. Recording and Filing. Section 14 is added to the Regulatory Agreement to read, as follows:

“14. Recording and Filing. The Grantee shall cause this First Amendment, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County of Orange and in such other places as the County may reasonably request. The Grantee shall pay all fees and charges incurred in connection with any such recording.”

6. Governing Law. Section 15 is added to the Regulatory Agreement to read, as follows:

“15. Governing Law. The Regulatory Agreement and this First Amendment shall be governed by the laws of the State of California. In the event of any legal action to enforce or interpret the Regulatory Agreement and/or this First Amendment, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.”

7. Amendments. Section 16 is added to the Regulatory Agreement to read, as follows.

“16 Amendments. The Regulatory Agreement shall be amended only by a written instrument executed by the Parties hereto, or their successors in title and duly recorded in the real property records of the County of Orange.”

8. Severability. Section 17 is added to the Regulatory Agreement to read, as follows:

“17. Severability. If any provision of the Regulatory Agreement and/or this First Amendment shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions thereof shall not in any way be affected or impaired thereby.”

9. Additional Terms. Section 18 is added to the Regulatory Agreement to read, as follows:

“18. Additional Terms.

(a) Indemnity. To the fullest extent permitted by law, the Grantee agrees to indemnify, hold harmless and defend the County and its elected officials, officers, governing members, employees, attorneys and agents (collectively, the "Indemnified Parties"), from and against any and all losses, damages, claims, actions, liabilities, costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject to under any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

i. The Regulatory Agreement and/or this First Amendment or the execution or amendment thereof in connection with the transactions contemplated thereby;

ii. Grantee's ownership or operation of the Property and the Transitional Units or any act or omission of the Grantee or any of its agents, contractors, servants, employees or licensees in connection with the Property and the Transitional Units, the operation of the Transitional Units, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, operation or rehabilitation of, the Transitional Units or any part thereof;

iii. any lien or charge upon payments by the Grantee to the County, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the County in respect of any portion of the Transitional Units;

iv. any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Property or the Transitional Units or any part thereof;

v. any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Grantee contained in any 2002 Loan Agreement and Grant Agreement or any of the documents or instruments relating to said documents that the County relied upon in making the Loan and Grant; except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Grantee, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment and payment for of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

(b) Time. Time is of the essence in this First Amendment.

(c) Construction. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

(d) Waiver of Jury Trial. Unless prohibited by Federal, State or local laws, each party to this Regulatory Agreement and First Amendment hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under any Loan Document or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to any Loan Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any Party to Regulatory Agreement and this First Amendment may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

(e) Nonliability. By accepting or approving anything required to be performed or given to County under the Regulatory Agreement and this First Amendment, County shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a

(f) Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of County to Grantee, or any claim by Grantee against County, in connection with this Agreement or otherwise, Grantee hereby

waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Grantee's obligations under the Regulatory Agreement and this First Amendment or (b) to claim that the existence of any such obligation, liability or claim excuses the nonperformance by Grantee of any of its obligations under the Regulatory Agreement and this First Amendment.

(g) Conflict of Terms. Wherever a conflict in the terms, conditions, or covenants of this First Amendment and the Regulatory Agreement exists, the terms, conditions, and covenants of this First Amendment shall prevail. In all other respects, the terms, conditions, and covenants of the Regulatory Agreement not specifically changed by this First Amendment shall remain in full force and effect.

(h) Authority. The Grantee represents, warrants, and agrees it has the full right and authority under the law to enter into this First Amendment and that the representative executing this First Amendment on behalf of each the Grantee has the full right and authority to bind them fully to this First Amendment.”

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date and year first above written.

Signature Pages to Follow

GRANTEE:

HELP OUR MENTALLY ILL EXPERIENCE SUCCESS,
INC., a California nonprofit public benefit corporation

BY:  DocuSigned by:
Michael Massie 2/24/2021
B1936AE1DB034FC...
Michael Massie
Chief Development Officer

Signature Page Follows

COUNTY:

COUNTY OF ORANGE,
a political subdivision of the State of California

By: _____
Dylan Wright, Director,
Orange County Community Resources

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

DocuSigned by:
By Jaqueline Guzman
8452584753D3488...
Deputy

Dated 2/24/2021

Signature Page Follows

**EXHIBIT A
LEGAL DESCRIPTION**

LOT 16 OF TRACT NO. 235, IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 13, PAGE\(S\) 7](#), INCLUSIVE, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 039-131-06

