

EXCLUSIVE NEGOTIATING AGREEMENT

35865

THIS EXCLUSIVE NEGOTIATING AGREEMENT (this "Agreement") is entered into as of ~~MAR 11 2021, 2024~~ (the "Effective Date"), by and between the CITY OF LONG BEACH, a municipal corporation ("City"), pursuant to a minute order adopted by its City Council at a meeting on ~~FEB 02 2021, 2024~~ and [GUNDRY PARTNERS, L.P., a California limited partnership, dba Howard CDM ("Developer") (Developer and City are collectively referred to herein as the "Parties").

RECITALS

The following recitals are substantive part of this Agreement:

A. City is the owner of certain real estate and improvements located thereon commonly known as the Armory more particularly described and/or depicted in the Site Map attached hereto as Exhibit "A" (the "Armory").

B. In response to RFP ED20-041 issued by City on May 8, 2020, Developer has expressed an interest in developing the Site as housing and other related uses and has submitted documentation to City detailing its qualifications to so develop and operate.

C. The purpose of this Agreement is to establish a period during which Developer and City shall exclusively negotiate with each other toward a lease or purchase agreement and other related documents, as mutually determined by the parties (collectively, "Lease") for Developer's improvement of the Site (the "Proposed Development").

NOW THEREFORE, the Parties mutually agree as follows:

1. Agreement to Negotiate. City and Developer agree that for the term of the Negotiating Period (as set forth in Section 2) each party shall negotiate diligently and in good faith with respect to the Proposed Development of the Site which may include, without limitation, (i) affordable housing units, (ii) a public benefit component, (iii) performance benchmarks, (iv) reversionary rights to the City in the event of default, (v) an historic designation requirement, (vi) activation of the immediately surrounding neighborhood. In furtherance thereof, Developer shall provide City with its financial statements, financial models showing proposed revenue generation by the Proposed Development and other proformas as City determines reasonably necessary. If acceptable terms are reached, City and Developer agree to negotiate the terms of and prepare a Lease of the Site to Developer and the Proposed Development of the Site for presentation to the City Council for its consideration, action, and approval. The Lease will be in a format to be mutually negotiated by the Parties. City agrees to negotiate exclusively with Developer for the improvement of the Site, and not negotiate with any other person or entity for development and/or disposition of the Site or any portion thereof during the Negotiating Period. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that the City may allow third-parties to

temporarily occupy the Site or portions thereof pursuant to short-term license agreements and that such agreements shall not constitute a violation of this Agreement.

2. Negotiating Period. City and Developer agree to negotiate exclusively for ninety (90) days after the Effective Date (the "Negotiating Period"), subject to one (1) ninety (90) day extension period upon mutual agreement of the Parties, for the purpose of determining whether to enter into a Lease for the Site and, if so, the terms and conditions of such Lease. If, upon expiration of the Negotiating Period, a Lease has not been approved and executed by City and Developer, then (i) this Agreement shall automatically terminate, (ii) Developer shall have no further rights regarding the subject matter of this Agreement or the Site, and (iii) City shall be free to negotiate with any other person or entity with regard to the Site.

3. [Reserved].

4. Due Diligence. Developer and its consultants, at Developer's sole cost and expense, shall have the right to inspect the Site and conduct such engineering, hazardous or toxic material, pollution, seismic or other tests, studies and investigation as Developer may require (collectively, the "Inspections").

(a) Developer shall cause the Inspections to be conducted at times reasonably acceptable to City in a manner that does not materially adversely affect the Site. City may have a representative present at any Inspections of the Site. In conducting its Inspections at the Site, Developer and its agents and representatives shall (i) not damage any part of the Site or any personal property owned or held by any third party, (ii) promptly repair any damage to the Site resulting directly or indirectly from the entry by Developer or its agents, employees, contractors and representatives or from any such inspections, tests, investigations or studies, (iii) not injure or otherwise cause bodily harm to City, or its tenants, agents, guests, invitees, contractors and employees, (iv) comply with all applicable laws, (v) promptly pay when due the costs of all inspections, tests, investigations, and studies done with regard to the Site, and (vi) not permit any liens to attach to the Site by reason of the exercise of Developer's rights hereunder.

(b) As a condition precedent to the effectiveness of this Agreement, Developer shall procure and maintain at Developer's expense for the duration of this Agreement from an insurance company that is admitted to write insurance in the State of California or that has a rating of or equivalent to an A:VIII by A.M. Best and Company the following insurance:

(i) Commercial general liability insurance or self-insurance equivalent in coverage scope to ISO CG 00 01 10 93 naming the City of Long Beach, and its officials, employees, and agents as additional insureds on a form equivalent in coverage scope to ISO CG 20 26 11 85 from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Developer in an amount not less than One Million Dollars (US

\$1,000,000) per occurrence and Two Million Dollars (US \$2,000,000) in general aggregate.

(ii) Workers' compensation coverage as required by the Labor Code of the State of California and Employer's liability insurance with minimum limits of One Million Dollars (US \$1,000,000) per accident or occupational illness. The policy shall be endorsed with a waiver of the insurer's right of subrogation against the City of Long Beach, and their officials, employees, and agents.

(iii) Automobile liability insurance equivalent in coverage scope to ISO CA 00 01 06 92 in an amount not less than Five Hundred Thousand Dollars (US \$500,000) combined single limit (CSL) covering Symbol 1 ("any auto").

(iv) Professional liability or errors and omissions liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim and in aggregate covering the architectural, engineering, planning, or other professional services provided pursuant to this Agreement.

Any self-insurance program or self-insurance retention must be approved separately in writing by City and shall protect the City of Long Beach, and its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City. Developer shall deliver to City certificates of insurance and original endorsements for approval as to sufficiency and form prior to the start of performance hereunder. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims-made" policies are not acceptable unless City Risk Manager determines that "Occurrence" policies are not available in the market for the risk being insured. In a "Claims-made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days. Such insurance as required herein shall not be deemed to limit Developer's liability relating to performance under this Agreement. City reserves the right to require complete certified copies of all said policies at any time. Any modification or waiver of the insurance requirements herein shall be made only with the approval of City Risk Manager. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification provisions of this Agreement.

(c) Promptly upon completion of each Inspection, Developer shall cause the portion of the Site subject to such Inspection to be restored to the condition existing immediately prior to such Inspection. Developer shall provide City, at no additional charge, with copies of the results of each Inspection made by or for Developer concurrently with Developer's receipt of such results. Such information shall be furnished without any representation or warranty whatsoever as to the truth or accuracy or

completeness of such information and City shall rely on such information at its sole risk and expense with no recourse against Developer or its consultants.

(d) Developer hereby indemnifies, defends, and holds harmless City and its officers, employees, directors, shareholders, agents, representatives, affiliates, contractors, invitees and tenants, and the heirs, executors, successors and assigns of all of the foregoing, and the Site, free and harmless from and against any and all claims, damages, liabilities, demands, actions, liens, stop notices, losses, costs and expenses (including without limitation reasonable attorneys' fees and court costs) arising from or as a result of Developer's occupancy of the Site (including without limitation the conduct of inspections at the Site), except to the extent caused by an indemnified party's gross negligence, recklessness or intentional misconduct.

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

5. No Predetermination of City Discretion. The Parties agree and acknowledge that nothing in this Agreement in any respect does or be construed to affect or prejudice the exercise of City's discretion concerning consideration of the Proposed Development or the Lease, or any submittal by Developer. The Parties do not intend this Agreement to be a development agreement, lease, purchase agreement or other agreement for the lease or other conveyance of land or the construction or development of improvements thereon. The parties acknowledge that they have not agreed upon the essential terms of the subject matter of an agreed transaction, and that such essential terms will be the subject matter of further negotiations. City does not intend by this Agreement to commit to a definite course of action with respect to the Proposed Development or the Lease. City retains full discretion with respect to the Proposed Development and the Lease, any CEQA documentation with respect to the Proposed Development and the Lease, and any mitigation measures or alternatives to the Proposed Development pursuant to CEQA, including a decision not to proceed with the Lease.

6. Costs and Expenses. All fees and expenses for engineers, architects, financial consultants, legal, planning and other consultants and contractors, retain by Developer to perform Developer's obligations under this Agreement, shall be the sole responsibility of Developer. City shall not be obligated to pay or reimburse any costs or fees incurred by Developer in performance of any of the obligations of Developer under this Agreement, whether or not this Agreement is terminated, extended, or results in the execution of the Lease.

7. Change in Developer. The qualifications of Developer are of particular interest to City. Consequently, 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 City, which approval City may grant, withhold or deny at its 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.

8. Address for Notices. Any notices pursuant to this Agreement shall be in writing and sent (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the following addresses:

To City: City of Long Beach
411 West Ocean Boulevard, 10th Floor
Long Beach, California 90802
Attn: City Manager

To Developer: HOWARD CDM
17434 BELLFLOWER BLVD SUITE 300
BELLFLOWER CA 90706
Attn: STEVEN C. PHILLIPS

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 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.

9. Default. Failure by either party to negotiate in good faith or to perform any other of its duties 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 10.

10. Remedies for Breach of Agreement. In the event of an uncured default under this Agreement, the sole remedy of the non-defaulting party shall be to terminate this Agreement and seek damages, if any, pursuant to Section 4(d). 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 the failure to reach agreement on a Lease despite its good faith efforts, and each party hereby waives and releases any such rights or claims it may otherwise have at law or at equity with respect to such failure. ~~Furthermore, Developer knowingly agrees that under no circumstance, including an uncured default by City under this Agreement, shall Developer have the right to specific performance for conveyance of any right, title or interest in the Site or any portion thereof and Developer shall not file a lis pendens with respect to the Site or any portion thereof. The Parties' rights and obligations under this Section 10 shall survive the expiration or termination of this Agreement.~~

11. 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.

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

13. Agreement Does Not Constitute Development Approval. City reserves final discretion and approval as to any Lease 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 the Proposed Development or any other project on the Site. All design and building plans for the Proposed Development (if any) shall be subject to the review and approval of City. By its execution of this Agreement, City is not committing itself to or agreeing to undertake the disposition of the Site to Developer, or any other acts or activities requiring the subsequent independent exercise of discretion by City or any agency or department thereof.

14. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

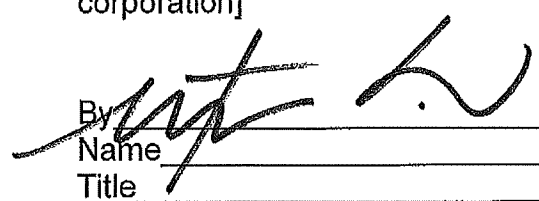
15. Amendments. This Agreement may not be altered, amended, changed, waived, terminated or modified in any respect or particular unless the same shall be in writing and signed by or on behalf of the Party to be charged therewith.

16. 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.

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

[GUNDRY PARTNERS, LP, a California corporation]

_____, 2021

By 
Name _____
Title _____

"Developer" 

CITY OF LONG BEACH, a municipal corporation

March 11, 2021

By Sinda J. Jackson
City Manager

"City"

This Agreement is approved as to form on January 27, 2021.

CHARLES PARKIN, City Attorney

By 
Deputy

EXHIBIT "A"
SITE DEPICTION



Subject Property:
 854 E 7th St
 Council District : 1

Attachment

