

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Susan Emery
Dept:	City Manager	Dept:	Community Development
Subject:	DENSITY BONUS HOUSING AGREEMENT FOR DALE APARTMENTS, LLC	Date:	January 12, 2010

OBJECTIVE

To request City Council approval for a Density Bonus Housing Agreement for Dale Apartments, LLC.

BACKGROUND/DISCUSSION

As of January 1, 2005, in an effort to promote affordable housing, the State's Density Bonus law went into effect. As a result, the City of Garden Grove amended Municipal Code Section 9.12.30.070—Density Bonuses and other Incentives for Affordable Housing, to bring the code into compliance with State law. The Density Bonus law promotes development of affordable housing through increased density, concessions and incentives.

DISCUSSION

On January 24, 2006, Dale Apartments, LLC (Developer) and the City of Garden Grove entered into a Development Agreement to construct 25 units on the property located at 12632 Dale Street. The Development Agreement and the Conditions of Approval provide a density bonus to the project in exchange for the Developer's agreement to restrict 6 of the 25 units for rental to, and occupancy, by lower-income households at an affordable rent. The Development Agreement and Conditions of Approval also provide for a reduced setback, a reduced building separation and reduced parking.

In exchange for the aforementioned increased density and concessions, the Conditions of Approval require the Developer to enter into this Density Bonus Housing Agreement. This Agreement details how the affordable housing provisions of this project will be implemented.

FINANCIAL IMPACT

None.

COMMUNITY VISION IMPLEMENTATION

The Density Bonus Housing Agreement furthers the City's Strategic Plan goal of ensuring quality housing opportunities in the community, without unduly burdening existing residents.

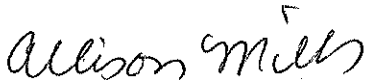
RECOMMENDATION

It is recommended that the City Council:

1. Approve the attached Density Bonus Housing Agreement between the City and Dale Apartments, LLC; and
2. Authorize the City Manager to execute the agreement and all other documents necessary to implement the agreement.



SUSAN EMERY
Community Development Director



By: Allison Mills
Senior Project Manager

Recommended for Approval


Matthew Ferial
City Manager

Attachment: Density Bonus Housing Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Clerk

This document is exempt from payment of a recording fee
pursuant to Government Code Sections 6103 and 27383.

**DENSITY BONUS HOUSING AGREEMENT
(Dale Apartments, LLC)**

This **DENSITY BONUS HOUSING AGREEMENT (Dale Apartments, LLC)** ("Agreement"), dated for identification purposes only as of _____, 2009 ("Date of Agreement"), is entered into by and between the **CITY OF GARDEN GROVE**, a California municipal corporation ("City"), and **DALE APARTMENTS, LLC**, a California limited liability company ("Developer").

RECITALS

A. Developer is the owner of approximately 38,629 square feet of real property in the City, generally located at 12632 Dale Street, Garden Grove, California, Assessor's Parcel Number 215-091-26, as more particularly described in the Legal Description attached hereto as Exhibit A and incorporated herein ("Site").

B. Developer submitted an application to City for approval of a site plan to construct a twenty-five (25) unit apartment complex on the Site ("Project").

C. Developer and City entered into that certain Development Agreement—Alwin Lee—Site Plan No. SP-384-05, dated as of January 24, 2006 and recorded in the Official Records of Orange County, California on March 3, 2006 as Instrument No. 2006000144434 with respect to Developer's development of the Project on the Site ("Development Agreement").

D. In response to Developer's Site Plan application, by Resolution No. 5522, City issued a discretionary permit for the Project, subject to certain "Conditions of Approval" which were accepted by Developer, as evidenced by Developer's execution of a "Notice of Agreement with Conditions of Approval and Discretionary Permit Approval" and recordation of such notice in the Official Records of Orange County on November 12, 2008 as Instrument No. 2008000528966.

E. The Development Agreement and Conditions of Approval provide a density bonus and other concessions and incentives to the Project pursuant to California Government Code Section 65915, *et seq.*, and Garden Grove Municipal Code Section 9.12.30.070 (collectively, "Density Bonus Law"), in exchange for Developer's agreement to restrict six (6) of the twenty-five (25) Housing Units at the Site to rental to and occupancy by Lower Income Households at an Affordable Rent (as those terms are defined below).

F. In connection with the density bonus granted to the Project, the Conditions of Approval require Developer to enter into this Agreement with City to implement Developer's affordable housing obligations at the Project. This Agreement must be executed and recorded against the Site in the Official Records of Orange County, California prior to City's issuance of building permits for the Project.

G. Concurrently herewith, Developer is entering into an Affordable Housing Agreement with the Garden Grove Agency for Community Development ("Agency") pursuant to which Agency has agreed to make a loan of Two Hundred Thousand Dollars (\$200,000) to Developer in exchange for Developer's conveyance to Agency of certain covenants restricting rental of and occupancy to six (6) of the Housing Units at the Project to Lower Income Households at an Affordable Rent for a term of not fewer than fifty-five (55) years.

H. Developer and City desire to enter into this Agreement to provide for Developer's rental of six (6) of the Housing Units at the Site to Lower Income Households at an Affordable Rent, as required by the Density Bonus Law, the Conditions of Approval, and the Development Agreement, in accordance with the terms, conditions, and restrictions set forth below in this Agreement.

I. This Agreement shall be recorded, prior to the issuance of building permits for the Project, in the Official Records of Orange County, California, as senior, non-subordinate covenants and as an encumbrance running with the land for the full Term (defined below) of this Agreement. In no event shall this Agreement be made junior or subordinate to any deed of trust or other documents providing financing for the construction or operation of the Project, or any other lien or encumbrance whatsoever for the entire Term of this Agreement. Nor shall this Agreement be made junior or subordinate to any extension, amendment, or modification of any lien or encumbrance recorded against the Site prior to the date hereof.

J. The foregoing Recitals are true and correct and constitute a substantive part of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the City and Developer agree as follows:

Section 1. Definitions.

(i) Affordable Rent. Affordable Rent means an affordable rent for Lower Income Households, as defined in California Health and Safety Code Section 50053. For Lower Income Households whose gross incomes exceed the maximum income for very low income households (as defined in Health and Safety Code Section 50105), Affordable Rent means the product of thirty (30) percent times sixty (60) percent of the Area Median Income for Orange County adjusted for family size appropriate for the unit. All of the Housing Units shall be two (2) bedroom units; thus, solely for purposes of calculating Affordable Rent pursuant to this Agreement, a "family size appropriate to the unit" shall be three persons.

For purposes of this Agreement, "Affordable Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities

not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

(ii) Affordable Units. Affordable Units means the six (6) Housing Units at the Project which are required to be made available for, rented to, and occupied by Lower Income Households paying an Affordable Rent, as set forth in more detail below.

(iii) Agency. Agency means the Garden Grove Agency for Community Development, a public body, corporate and politic, and a redevelopment agency duly formed, existing, and exercising powers pursuant to the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.*

(iv) Agreement. Agreement means this Density Bonus Housing Agreement (Dale Apartments, LLC) between City and Developer.

(v) Area Median Income. Area Median Income means the median income as determined and published annually for each county in California by HCD.

(vi) City. City means the City of Garden Grove, a California municipal corporation.

(vii) Conditions of Approval. Conditions of Approval means the conditions imposed by the City in connection with the approval of Developer's Site Plan No. SP-384-05, as referenced in that certain "Notice of Agreement with Conditions of Approval and Discretionary Permit Approval" recorded in the Official Records of Orange County on November 12, 2008 as Instrument No. 2008000528966.

(viii) Date of Agreement. Date of Agreement means the date set forth in the first paragraph of this Agreement.

(ix) Density Bonus Law. Density Bonus Law means California Government Code Section 65915, *et seq.*, and Garden Grove Municipal Code Section 9.12.30.070.

(x) Developer. Developer means Dale Apartments, LLC, a California limited liability company.

(xi) Development Agreement. Development Agreement means that certain Development Agreement—Alwin Lee—Site Plan No. SP-384-05, by and between Developer and City, dated as of January 24, 2006 and recorded in the Official Records of Orange County, California on March 3, 2006 as Instrument No. 2006000144434.

(xii) Housing Units. Housing Units means each of the twenty-five (25) apartment units to be constructed by Developer at the Site. Each of the Housing Units shall have two (2) bedrooms and two (2) bathrooms. Each of the Housing Units shall be the same size (approximately 960 square feet).

(xiii) Lower Income Household. Lower Income Household has the meaning set forth in California Health and Safety Code Section 50079.5.

(xiv) Project. Project means the apartment complex to be constructed by Developer on the Site, which shall consist of twenty five (25) Housing Units in a single three (3) story residential structure, referred to as the "Dale Apartments," all in accordance with Site Plan No. SP-384-05, the Development Agreement, the Conditions of Approval, and this Agreement.

(xv) Schedule of Performance. Schedule of Performance means the Schedule of Performance attached hereto as Exhibit B and incorporated herein.

(xvi) Site. Site means that certain approximately 38,629 square feet of real property in the City, generally located at 12632 Dale Street, Garden Grove, California, Assessor's Parcel Number 215-091-26, as more particularly described in the Legal Description attached hereto as Exhibit A and incorporated herein.

(xvii) Term. Term means the term of effectiveness of this Agreement, which shall continue for thirty (30) years from the date the final certificate of occupancy is issued for the Project.

Section 2. Density Bonus and Development Concessions and Incentives. As set forth in the Conditions of Approval, the Development Agreement, and the Density Bonus Law, Developer petitioned for and was granted the following concessions and incentives as part of the approval of Developer's Site Plan No. SP-384-05 for the Project:

(i) Density Bonus. Garden Grove Municipal Code Section 9.16.070 permits a maximum density of eighteen (18) residential units on property within the Multi-Family Residential (R-3) Zone of between 37,800 square feet and 39,599 square feet, such as the Site. The Density Bonus Law, the Development Agreement, and the Conditions of Approval permit Developer to develop the Site with an additional density of thirty five percent (35%), for a total of twenty-five (25) Housing Units.

(ii) Front (west) Setback. Garden Grove Municipal Code Section 9.16.050 requires a minimum front setback of twenty (20) feet. The Conditions of Approval permit Developer to develop the Site with a fifteen (15) foot front setback.

(iii) Building Separation. Garden Grove Municipal Code Section 9.16.070 requires the residential structure constructed at the Site to be separated from the vehicular access way by a minimum of ten (10) feet (including upper stories). The Conditions of Approval permit Developer to construct the Project with second and third story cantilevers over the drive aisle, leaving only seven (7) feet between those upper portions of the structure and the drive aisle.

(iv) Parking. Garden Grove Municipal Code Section 9.16.250 requires a minimum of 2.5 parking spaces per dwelling unit to be provided in connection with multifamily residential developments similar to the Project. Developer has agreed to construct fifty-two (52) parking spaces at the Project, which equals two (2) spaces for each Housing Unit, plus two (2) visitor spaces, in compliance with the Density Bonus Law and the Conditions of Approval.

Section 3. No Further Incentives or Waivers. Developer acknowledges and agrees that the waivers and incentives set forth in Section 2 above fully satisfy any duty City may have under the

Garden Grove Municipal Code, the Density Bonus Law, or any other law or regulation applicable to the Project, to provide any development incentive or to waive any building, zoning, or other requirement. By this Agreement, Developer releases any and all claims Developer may have against City in any way relating to or arising from City's obligation to waive requirements of or provide development incentives pursuant to any state, federal, or local law, rule, or regulation applicable to the Project.

Section 4. Affordable Units. Developer hereby agrees to make available, restrict occupancy to, and rent six (6) of the Housing Units at the Project to Lower Income Households at an Affordable Rent. The six (6) Affordable Units shall be "floating" units that are not permanently designated; however, at no time shall all six (6) Affordable Units be congregated to a certain section of the Project.

(a) A tenant who qualifies as a Lower Income Household at the time he or she first occupies an Affordable Unit shall be deemed to continue to be so qualified until such time as a recertification of such individual's or household's income in accordance with Section 14 below demonstrates that such individual or household no longer qualifies as a Lower Income Household. Moreover, a unit previously occupied by a Lower Income Household and then vacated shall be considered occupied by such Lower Income Household until reoccupied, other than for a temporary period, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days.

(b) At such time as a tenant occupying an Affordable Unit ceases to qualify as a Lower Income Household, the unit occupied by such tenant shall cease to be an Affordable Unit. Developer shall replace each such Affordable Unit by designating the next available unit and any necessary units thereafter as an Affordable Unit. For purposes of this Agreement, such designated unit will be considered an Affordable Unit if it is held vacant and available for occupancy by a Lower Income Household and, upon occupancy, the income eligibility of the tenant as a Lower Income Household is verified and the tenant pays an Affordable Rent.

(c) In the event a tenant household occupying an Affordable Unit initially qualifies as a Lower Income Household but the income of such household increases, such increase shall not be deemed to result in a violation of the restrictions of this Agreement concerning limitations upon income of occupants, provided that the occupancy by such household is for a reasonable time of not to exceed one year (measured from the time the income of the household ceases to qualify as a Lower Income Household), at which time the Housing Unit shall cease to be an Affordable Unit and the provisions of the immediately preceding paragraph shall apply.

Section 5. Use of the Site. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement and the Development Agreement, shall conform to all applicable provisions of the Garden Grove Municipal Code and other applicable federal, state, and local laws, rules, and regulations. The Project shall at all times during the term of this Agreement be used as an apartment complex and none of the Housing Units in the Project shall at any time be utilized on a transient basis, nor shall the Site or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium or rest home, or be converted to condominium ownership. All of the community facilities and any social programs provided to the Project's residents shall be available at all times on an equal, non-discriminatory basis to residents of all Housing Units at the Project.

Section 6. Duration of Affordability Requirements. The six (6) Affordable Units shall be subject to the requirements of this Agreement throughout the entire Term of this Agreement.

Section 7. Schedule of Performance. The Affordable Units shall be constructed and completed concurrently with the non-restricted Housing Units in the Project. Construction of the Project shall be completed in accordance with the Schedule of Performance attached hereto as Exhibit B and incorporated herein.

Section 8. Occupancy Limits. The maximum occupancy for each of the Housing Units shall not exceed five (5) persons per Housing Unit, constituting two persons per bedroom, plus one, as set forth in the Conditions of Approval.

Section 9. Maintenance. Developer shall maintain or cause to be maintained the interior and exterior of the Project and the Site in a decent, safe and sanitary manner, and in accordance with the standard of maintenance of first class multifamily rental apartment complexes within Orange County. If at any time Developer fails to maintain the Project or the Site in accordance with this Agreement and such condition is not corrected within five days after written notice from City with respect to graffiti, debris, and waste material, or thirty days after written notice from City with respect to general maintenance, landscaping and building improvements, then City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Project or the Site and perform all acts and work necessary to protect, maintain, and preserve the Project and the Site, and to attach a lien upon the Site, or to assess the Site, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a reasonable administrative charge, which amount shall be promptly paid by Developer to City upon demand.

Section 10. Marketing Program. Each Affordable Unit shall be leased to Lower Income Households selected by Developer who meet all of the requirements provided herein. Within the time set forth in the Schedule of Performance, Developer shall prepare and obtain City's approval, which approval shall not be unreasonably withheld, of a marketing program for the leasing of the Housing Units at the Project ("Marketing Program"). The leasing of the Housing Units shall thereafter be marketed in accordance with the Marketing Program as the same may be amended from time to time with City's prior written approval, which approval shall not unreasonably be withheld. Developer shall provide City with periodic reports with respect to the leasing of the Housing Units in accordance with Sections 14 and 15.

Section 11. Management Plan. Within the time set forth in the Schedule of Performance, Developer shall submit for the reasonable approval of City a "Management Plan" which sets forth in detail Developer's property management duties, a tenant selection process in accordance with this Agreement, a security system and crime prevention program, the procedures for the collection of rent, the procedures for eviction of tenants, the rules and regulations of the Site and manner of enforcement, a standard lease form, an operating budget, the identity of the professional property management company to be contracted with to provide property management services at the Site ("Property Manager"), and other matters relevant to the management of the Site. The Management Plan shall require Developer to adhere to a fair lease and grievance procedure. The management of the Site shall be in compliance with the Management Plan as approved by City.

If City determines that the performance of the Property Manager is deficient based upon the standards set forth in the approved Management Plan and in this Agreement, City shall provide

notice to Developer of such deficiencies and Developer shall use its best efforts to correct such deficiencies. In the event that such deficiencies have not been cured within the time set forth in Section 19 hereof, City shall have the right to require Developer to immediately remove and replace the Property Manager with another property manager or property management company which is reasonably acceptable to the City Manager, which is not related to or affiliated with Developer, and which has not less than five (5) years experience in property management, including significant experience managing housing facilities of the size, quality and scope of the Project.

Section 12. Selection of Tenants. Developer shall be responsible for the selection of tenants for the Housing Units in compliance with lawful and reasonable criteria and the requirements of this Agreement. A reasonable preference in the leasing of the Housing Units shall be given as follows:

(i) First, to prospective tenants who have been displaced by Agency's redevelopment activities in the implementation of the Agency's Redevelopment Plan, to the extent authorized by applicable federal, state or local laws or regulations;

(ii) Second, to prospective tenants on the Garden Grove Housing Authority's Section 8 Housing Vouchers waiting list and Affordable Housing waiting list; and

(iii) Third, to prospective tenants that live or work in the City.

Prior to the rental or lease of an Affordable Unit to a tenant, Developer shall require the tenant to execute a written lease and to complete a Tenant Income Verification Form (in substantially the form attached hereto as Exhibit C) certifying that the tenant(s) occupying the Affordable Unit is/are a Lower Income Household and otherwise meet(s) the eligibility requirements established for the Affordable Unit. Developer shall verify the income of the tenant(s) as set forth in Section 14 below.

Section 13. Provisions regarding Section 8 Vouchers. Developer shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor; provided, Developer shall not rent one of the Affordable Units to a tenant holding a Section 8 certificate unless none of the Housing Units not restricted to occupancy by Lower Income Households pursuant to this Agreement are available. If the only available Housing Unit is an Affordable Unit, Developer shall no longer designate the Apartment Unit rented to a tenant holding a Section 8 certificate as an Affordable Unit, shall designate the next-available Housing Unit as an Affordable Unit, and shall make available, restrict occupancy to, and rent such newly designated Affordable Unit to a Lower Income Household at an Affordable Rent pursuant to this Agreement, such that at all times reasonably possible six (6) of the Housing Units at the Project shall be Affordable Units not occupied by tenants holding Section 8 certificates. If and to the extent the foregoing restrictions conflict with the provisions of Section 8 of the United States Housing Act of 1937 or any rules or regulations promulgated thereunder, the provisions of Section 8 of the United States Housing Act of 1937 and all implementing rules and regulations thereto shall control. Developer shall not apply selection criteria to Section 8 certificate holders which are more burdensome than criteria applied to any other prospective tenants.

Section 14. Income Verification and Certification. Following the initial lease-up of the Apartment Complex, and annually thereafter throughout the Term of this Agreement, Developer

shall submit to City, at Developer's expense, a summary of the income, household size and rent payable by each of the tenants of the Affordable Units. At City's request, Developer shall provide to City completed income computation and certification forms, in substantially the form of the Tenant Income Verification Form attached hereto as Exhibit C and incorporated herein or such other form as may reasonably be requested by City, for any Lower Income Households renting the Affordable Units at the Project. Developer shall obtain, or shall cause to be obtained by the Property Manager, a certification from each household leasing an Affordable Unit demonstrating that such household meets the applicable income requirements and eligibility requirements established for a Lower Income Household renting such Affordable Unit. Developer shall verify, or shall cause the Property Manager to verify, the income certification of the Lower Income Household.

Section 15. Monitoring and Recordkeeping. Throughout the Term of this Agreement, Developer shall comply with all applicable recordkeeping and monitoring requirements set forth in California Health and Safety Code Section 33418 and shall annually complete and submit to City a Certification of Continuing Program Compliance in the form provided by City. Representatives of City shall be entitled to enter the Site, upon at least thirty-six (36) hours notice, to monitor compliance with this Agreement, and shall be entitled to inspect the records of the Project and to conduct an independent audit or inspection of such records at a location within the City that is reasonably acceptable to the City Manager. Developer agrees to cooperate with City in making the Site and the records of the Project available for such inspection or audit. Developer agrees to maintain records for the Project in a businesslike manner, and to maintain such records throughout the Term of this Agreement.

Section 16. Indemnity. Developer shall, at its expense, defend (with counsel acceptable to City), indemnify, and hold harmless Agency, City, and their officers, agents, employees and representatives from any and all losses, liabilities, claims, lawsuits, causes of action, judgments, settlements, court costs, attorneys' fees, expert witness fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other damages of whatsoever nature arising out of or in connection with, or relating in any manner to this Agreement, Developer's ownership or operation of the Site, or the development of the Project, except that arising from the gross negligence or willful misconduct of City.

Section 17. Agreement to be Recorded; Priority. This Agreement shall be recorded, prior to the issuance of building permits for the Project, in the Official Records of Orange County, California, as senior, non-subordinate covenants and as an encumbrance running with the land for the full Term of this Agreement. In no event shall this Agreement be made junior or subordinate to any deed of trust or other documents providing financing for the construction or operation of the Project, or any other lien or encumbrance whatsoever for the entire Term of this Agreement. Nor shall this Agreement be made junior or subordinate to any extension, amendment, or modification of any lien or encumbrance recorded against the Site prior to the date hereof.

Section 18. Mortgage Protection. No breach or default under this Agreement shall defeat, terminate, extinguish, render invalid or otherwise affect the lien of any junior mortgage or deed of trust encumbering the Site, the Project, or any part thereof or interest therein.

Section 19. Default. An event of default occurs under this Agreement when: (a) there is a breach of any condition, covenant or promise set forth herein; (b) written notice thereof has been given to the defaulting party; and (c) such breach has not been cured within thirty (30) days after such notice was given to the defaulting party or, if such breach cannot reasonably be cured within

such thirty (30) day period, the defaulting party fails to commence to cure the breach and/or fails thereafter to diligently proceed to complete such cure. A waiver by either party of any such breach shall not be construed as a waiver of any succeeding breach of the same or other condition, covenant or promise.

Section 20. Remedies. The occurrence of an event of default hereunder shall give the non-defaulting party the right to proceed with any and all remedies available at law or equity. Such remedies may include an action for damages, an action or proceeding for specific performance, and/or an action or proceeding for injunctive relief. Such actions or proceedings may require the defaulting party to pay damages, to perform its obligations and covenants under this Agreement, and to enjoin or cease and desist from acts which may be unlawful or in violation of the provisions of this Agreement.

Section 21. Time of Essence. Time is expressly made of the essence with respect to the performance by City and Developer of each and every obligation and condition of this Agreement.

Section 22. Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any of the documents executed in connection herewith, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees and reasonable attorneys' fees.

Section 23. Third Party Beneficiaries. Agency and its successors and assigns shall be intended third party beneficiaries of this Agreement. Agency shall have full right and ability (but no obligation) to enforce each and every covenant and restriction in this Agreement. No other person(s) or entity(ies) shall have any right of action hereunder.

Section 24. City Approvals and Actions. City shall maintain authority of this Agreement and the authority to implement this Agreement through City Manager (or his duly authorized representative). City Manager (or his designee) shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of City so long as such actions do not materially or substantially change the uses or development permitted on the Site, or materially or substantially add to the costs incurred or to be incurred by City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City.

Section 25. Successor and Assigns. This Agreement shall run with the land, and all of the terms, conditions, restrictions, and covenants contained in this Agreement shall be binding upon Developer, City, their permitted successors and assigns, and all successors in interest to all or any portion of the Site or the Project. Whenever the terms "Developer" or "City" are used in this Agreement, such terms shall include any other successors and assigns as herein provided. Not later than thirty (30) days prior to a transfer of any interest in the Site or the Project or any interest in Developer, Developer shall provide written notice to the City of such proposed transfer.

Section 26. Notices. Any approval, disapproval, demand, document or other notice which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the

United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by notice:

If to the City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Attention: Community Development Director

If to the Developer: Dale Apartments, LLC
16509 Brookhurst Street, Suite A
Fountain Valley, CA 92708
Attention: Alwin Lee **[Please confirm]**

Section 27. Amendment. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. Each alteration, change, or modification to this Agreement shall be recorded against the Site in the Official Records of Orange County, California.

Section 28. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

Section 29. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

Section 30. Exhibits. This Agreement includes the following exhibits, each of which is attached hereto and incorporated herein by this reference:

- (i) Exhibit A: Legal Description of Site
- (ii) Exhibit B: Schedule of Performance
- (iii) Exhibit C: Tenant Income Verification Form

[Signatures appear on following page.]

IN WITNESS WHEREOF, City and Developer have executed this Density Bonus Housing Agreement (Dale Apartments, LLC) as of the date first set forth above.

DEVELOPER:

DALE APARTMENTS, LLC,
a California limited liability company



Alwin Lee, Manager

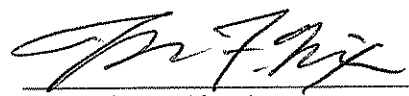
CITY OF GARDEN GROVE,
a California municipal corporation

Matthew Fertal, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:



Tom Nixon, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF SITE

That certain real property located in the City of Garden Grove, County of Orange, State of California, described as follows:

THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 4 SOUTH, RANGE 11 WEST, SAN BERNARDINO BASE & MERIDIAN.

EXCEPT THE SOUTH 531.56 FEET THEREOF.

ALSO EXCEPT THE WEST 20 FEET LYING IN DALE STREET AS NOW ESTABLISHED.

Assessor's Parcel No. 215-091-26

EXHIBIT B

SCHEDULE OF PERFORMANCE

	Action Item	Status
1.	Approval and Execution of Agreement. City shall approve and execute the Agreement.	Within 30 days ¹ of submittal of signed Agreement by Developer.
2.	Record Agreement. Developer shall cause the Agreement to be recorded against the Site.	Within 10 days of City approval and execution of Agreement.
3.	Construction Drawings. Developer shall submit construction drawings for the Project to City for plan check.	Completed.
4.	Revision to Construction Drawings. Developer shall revise and resubmit construction drawings to address reasons for conditional approval or disapproval by City.	Completed.
5.	Building Permits. Developer shall obtain all required building permits for the Project.	Completed.
6.	Management Plan and Marketing Program. Developer shall submit its proposed Management Plan and Marketing Program to City for review and approval.	Within 90 days of approval and execution of Agreement by City.
7.	Approval of Management Plan and Marketing Program. City shall review and approve, conditionally approve, or disapprove Developer's proposed Management Plan and Marketing Program.	Within 30 days of receipt of a complete submittal from Developer.
8.	Revision to Management Plan and Marketing Program. Developer shall revise the Management Plan and/or Marketing Program to address reasons for conditional approval or disapproval by City.	Within 30 days of conditional approval or disapproval by City.
9.	Approval of Revised Management Plan and Marketing Program. City shall review and approve or disapprove revised Management Plan and Marketing Program.	Within 30 days of receipt of revised Management Plan and Marketing Program from Developer.
10.	Commencement of Construction. Developer shall commence the construction of the Project.	Completed.

¹ All days are calendar days unless otherwise noted.

	Action Item	Status
11.	Progress Reports. During the construction of the Project, Developer shall prepare and submit to City monthly written progress reports.	Commencing 30 days after start of construction and continuing until completion of construction.
12.	Completion of Construction. Developer shall complete the construction of the Project.	On or before March 31, 2010.
13.	Off-Site Improvements. Developer shall complete all off-site improvements required in connection with the construction of the Project.	On or before March 31, 2010.

EXHIBIT C

TENANT INCOME VERIFICATION FORM

Part I -- General Information

1. Project Location: Dale Apartments; 12632 Dale Street, Garden Grove, California
2. Landlord's Name: Alwin Lee; Dale Apartments, LLC

Part II -- Unit Information

- | | | | | | | | |
|----|----------------|----|-----------------------|----|-----------------|----|------------------------|
| 3. | Unit
Number | 4. | Number of
Bedrooms | 5. | Monthly
Rent | 6. | Number of
Occupants |
| | _____ | | _____ | | _____ | | _____ |

Part III -- Affidavit of Tenant

1. I, _____, and I, _____, as applicants for rental of an apartment unit at the above-described location, do hereby represent and warrant that **(my/our) gross income (anticipated total annual income) does not exceed the maximum income set forth for a lower income household in Orange County, adjusted for a household size appropriate to the Apartment Unit**, as published from time to time by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the current maximum income for a lower income household occupying a two bedroom unit in Orange County is \$_____. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an apartment unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

Tenant Initials

2. Tenants qualifying above must complete the following:

Monthly Gross Income (All Sources of Income of All Adult Household Members Must be Listed)

Source	Head of Household	Co-Tenants	Total
Gross amount, before payroll deductions, of wages, salaries, overtime pay, commissions, fees, tips and bonuses			
Interest and/or dividends			
Net income from business or from rental property			
Social security, annuities, insurance policies, pension/retirement funds, disability or death benefits received periodically			
Payment in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay			
Alimony, child support, other periodic allowances			
Public assistance, welfare payments			
Regular pay, special pay and allowances of members of Armed Forces			
Other			

Total: _____

Total x 12 _____ = Gross Annual Household Income

Note: The following items are **not** considered income: casual, sporadic or irregular gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payments such as inheritances,

insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses; educational scholarships paid directly to the student or educational institution; government benefits to a veteran for education; special pay to a serviceman head of family away from home and under hostile fire; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; relocation payments under federal, state, or local relocation law; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs, SCORE, ACE, Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

3. This affidavit is made with the knowledge that it will be relied upon by the Landlord to determine maximum income for eligibility and (I/we) warrant that all information set forth in this document is true, correct and complete and based upon information (I/we) deem reliable and that the statement contained in paragraph 1 and the information contained in paragraph 2 of this Part III is reasonable and based upon such investigation as the undersigned deemed necessary.
4. (I/We) will assist the Landlord in obtaining any information or documents required to verify the statements made in this Part III and have attached hereto copies of (my/our) federal income tax return(s) for the most recent tax year in which a return was filed (past two years federal income tax returns for self-employed persons).
5. (I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) agreement with the Landlord to rent the unit and will additionally enable the Landlord, the City of Garden Grove and/or the Garden Grove Agency for Community Development to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

(I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct.

Date

Tenant

Date

Tenant

INCOME VERIFICATION
(for employed persons)

The undersigned employee has applied for a rental unit located in a project financed under a multifamily housing program of the City of Garden Grove and the Garden Grove Agency for Community Development for lower income households. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages	_____
Overtime	_____
Bonuses	_____
Commissions	_____
Total current income	_____

I hereby certify that the statements above are true and complete to the best of my knowledge.

_____ Signature	_____ Date	_____ Title
--------------------	---------------	----------------

I hereby grant you permission to disclose my income to _____ in order that they may determine my income eligibility for rental of an apartment located in their project which has been financed under a multifamily housing program of the City of Garden Grove and the Garden Grove Agency for Community Development.

_____ Signature	_____ Date
--------------------	---------------

Please send to:

INCOME VERIFICATION
(for self-employed persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Signature

Date