

ORDINANCE NO. 2779

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ADOPTING A NEGATIVE DECLARATION AND ADOPTING DEVELOPMENT AGREEMENT NO. DA-181-10 BETWEEN BRANDYWINE HOMES (DEVELOPER) AND THE CITY OF GARDEN GROVE

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, pursuant to the Planning Commission Resolution No. 5714, at a Public Hearing held on July 1, 2010, recommended approval of Development Agreement No. DA-181-10 between Brandywine Homes and the City of Garden Grove; and

WHEREAS, pursuant to a legal notice a Public Hearing was held by the City Council on August 10, 2010, and all interested persons were given an opportunity to be heard.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Garden Grove has considered the proposed Negative Declaration together with comments received during the public review process. The record of proceedings on which the City Council of the City of Garden Grove decision is based is located at the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, California. The custodian of record of proceedings is the Director of Community Development. The City Council of the City of Garden Grove finds on the basis of the whole record before it, including the initial study and comments received, that there is no substantial evidence that the project will have a significant effect on the environment. The City Council further finds that the adoption of the Negative Declaration reflects the City Council's independent judgment and analysis. Therefore, the City Council of the City of Garden Grove, in Regular Session assembled on August 10, 2010, does hereby adopt a Negative Declaration, for land located on the northwest corner of Century Boulevard and Taft Street, at 13031, 13035, 13051, 13061, 13063, and 13081 Taft Street, 13082 Century Boulevard, 10671, 10681, and 10691 Walnut Street, Parcel Nos. 099-091-20, 21, 22, 23, 24, 25, 26, and 31; 099-092-01, 02, 04, 05, and 06.

Section 2. A Development Agreement is hereby adopted for Site Plan No. SP-457-10 and Tentative Tract Map No. TT-17369 for property located on the northwest corner of Century Boulevard and Taft Street, at 13031, 13035, 13051, 13061, 13063, and 13081 Taft Street, 13082 Century Boulevard, 10671, 10681, and 10691 Walnut Street, Parcel Nos. 099-091-20, 21, 22, 23, 24, 25, 26, and 31; 099-092-01, 02, 04, 05, and 06. A copy of Development Agreement No. DA-181-10 is on file in the City Clerk's Office.

Section 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words, or portions thereof be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the \_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS:  
CITY OF GARDEN GROVE )

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on August 10, 2010, with a vote as follows:

AYES: COUNCIL MEMBERS: (4) BROADWATER, DO, NGUYEN, DALTON  
NOES: COUNCIL MEMBERS: (0) NONE  
ABSENT: COUNCIL MEMBERS: (1) JONES

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
  
City Clerk's Office )  
City of Garden Grove )  
11222 Acacia Parkway )  
Garden Grove, CA 92840 )  
)  
)

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(Space above for Recorder.)

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

Dated: \_\_\_\_\_

**DEVELOPMENT AGREEMENT NO. DA-181-10**

**SP-457-10 and TT-17369**  
(Brandywine Homes)

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and Brandywine Homes (DEVELOPER).

**RECITALS**

The following recitals are a substantive part of this Agreement:

- A. The CITY and DEVELOPER desire to enter into this DEVELOPMENT AGREEMENT for the construction of a townhouse multi-family residential project consisting of fifty-three (53) townhouse dwelling units to be constructed on a 3-acre site and related improvements (the "PROJECT") on that certain real property located on the northwest corner of Taft Street and Century Boulevard, at 13031, 13035, 13051, 13063, and 13081 Taft Street, 13082 Century Boulevard, and 10671, 10681, and 10691 Walnut Street, Parcel Nos. 099-091-20, 21, 22, 23, 24, 25, 26, & 31 and 099-092-01, 02, 04, 05, & 06.
- B. The Planning Commission approved Site Plan No. SP-457-10 and Tentative Tract Map No. TT-17369, for the PROJECT, on July 1, 2010, subject to this Development Agreement.

- C. The CITY and DEVELOPER desire to enter into this DEVELOPMENT AGREEMENT for the construction of the PROJECT pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the California Government Code (the "Development Agreement Statute").
- D. The PROJECT is a development requiring certain discretionary approvals by the CITY before it may be constructed.
- E. The Development Agreement Statute provides the authority for CITY to enter into binding development agreements with a developer having a legal and equitable interest in real property.
- F. DEVELOPER has an equitable interest in the PROPERTY.

### **AGREEMENT**

#### **THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. DURATION. This Agreement and Land Use Entitlements described in Section 2 shall expire four (4) years from its effective date, unless any duty specified remains executory, in which case this Agreement may be renewed for a successive one year term at discretion of CITY, pursuant to law, until all duties are performed. Renewals shall not unreasonably be withheld.
2. Permitted Uses/Land Use Entitlements. The following uses are permitted on the PROPERTY: The project consists of fifty-three (53) three-story townhomes. The project will consist of four different floor plans. Plan 1 is a 1,691 square foot, 3 bedroom, 3 ½ bathroom home with an attached two-car garage; Plan 2 is a 1,738 square foot, 3 bedroom, 2 ½ bathroom home with an attached two-car garage; Plan 3 is a 1,945 square foot, 4 bedroom, 3 ½ bathroom home with an attached two-car garage; and Plan four is a 2,259 square foot, 4 bedroom, 3 ½ bathroom home with an attached two-car garage. The development will also include passive open space areas that include the creation of an urban trail that is in part public open space. The PROJECT has been granted the following entitlements: Site Plan No. SP-457-10 and Tentative Tract Map No. TT-17369. The development is processed in conjunction with a zone change to Planned Unit Development No. PUD-125-10. The PUD is subject to the development standards that have been approved through the PUD process and the associated entitlements. The base zoning for the project is CCSP-CC43 (Community Center Specific Plan-Community Commercial District).
3. Density/Intensity. The density or intensity of the PROJECT is as follows: townhouse multi-family residential development consisting of fifty-three (53) townhouses with related improvements on 2.67-acres. The site area is 3-acres, which includes an urban trail, which is designated as part of the development.

4. Maximum Height and Building Size. The maximum height and building sizes are as follows: The maximum building height shall be three stories with an overall height not to exceed 37 feet and the homes range in size from 1,691 to 2,259 square feet, as indicated on the site plan and elevations.
5. Reservation or Dedication. The reservation of easements or dedication of property to the City to allow the construction of the proposed residential development shall be as shown on and/or conditioned in the approved Site Plan No. SP-457-10 and Tentative Tract Map No. TT-17369.
6. Improvements. The improvements described in Planning Commission Resolution No. 5715 shall be constructed prior to the occupancy of the proposed development or the issuance of any certificate of occupancy for any unit of the development, all in accordance with the terms and conditions of Site Plan No. SP-457-10 and Tentative Tract Map No. TT-17369.
7. Scope of PROJECT. The PROJECT shall consist of a townhouse multi-family residential subdivision consisting of fifty-three (53) three-story townhomes with related improvements, including development of the urban trail.
8. Resolution/Material Terms. All conditions of approval as per Resolution No. 5715 attached hereto and incorporated herein as "Exhibit A," are material terms of this Agreement. Breach of any condition of approval shall be deemed to be a breach of this Development Agreement.
9. Development Agreement Payment. DEVELOPER shall pay a development agreement payment to the CITY as follows:
  - 9.1 Amount. \$750 per unit and shall be paid prior to building permit finals and issuance of any certificates of occupancy.
  - 9.2 Amount. The Developer shall make a contribution of \$1,166 per unit toward construction of a Fire Station, including, but not limited to, related equipment, furnishings, and fixtures, etc. as part of this Development Agreement and shall be paid prior to building permit finals and issuance of any certificates of occupancy.
  - 9.3 Not to Exceed. Payment under this Agreement shall not exceed \$101,548.00.
10. City Agreement. CITY agrees that the sums to be paid to the City, pursuant to Paragraph 9, will reimburse CITY for the cost of certain CITY services required by the PROJECT that are not otherwise being reimbursed to CITY.
11. Payment Due Date. The payment amount of \$101,548 shall be due and payable prior to building permit finals and issuance of any certificates of occupancy for the PROJECT.

12. Termination Provisions. This Agreement may be terminated upon the happening of any of the following events:
  - A. Failure of Developer to perform any of the provisions of this Agreement, or
  - B. Mutual agreement of the parties.
13. Periodic Review. CITY shall review DEVELOPER'S performance every twelve (12) months at the anniversary of the adoption of this Agreement. DEVELOPER shall demonstrate good faith compliance with the terms of this Agreement. If as a result of the review CITY finds and determines, based upon substantial evidence, that DEVELOPER has not complied in good faith with terms or conditions of this Agreement, CITY may terminate the Agreement. This review shall be conducted by the Director of the Community Development Department.
14. City Discretion. So long as the Agreement remains in effect, DEVELOPER shall have the full vested right to construct and complete development of the PROJECT and the use of the PROPERTY consistent with the land use entitlements identified in Paragraph 2. Otherwise, CITY retains its right and discretion, under all applicable Codes, to approve or disapprove any item related to this PROJECT that it has not specifically agreed to via this Agreement. DEVELOPER acknowledges that it shall comply with all CITY requirements for applications and permits that apply to the PROJECT and the PROPERTY on or before of the Commencement Date and that this Agreement does not relieve DEVELOPER of the necessity of filing applications for and obtaining any such permits.
15. Improvement Schedule. The following improvements shall be constructed by the stated dates:

All repairs and improvements to the public right-of-way required in Planning Commission Resolution No. 5715 shall be completed prior to the issuance of any certificates of occupancy or release of any public utilities.
16. Developer Breach. Failure of DEVELOPER to construct improvements as specified, or to pay amounts specified in a timely fashion, shall result in the withholding of building permits, any other permit or certificate of occupancy until the breach is remedied.
17. Non-Liability of Officials and Employees of the City. No official or employee of CITY shall be personally liable to DEVELOPER in the event of any default or breach by CITY, or for any amount that will become due to DEVELOPER, or any obligation under the terms of this Agreement.

18. Notices. All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.
- A. Address of DEVELOPER is as follows:  
Brandywine Homes  
16580 Aston, Suite 240  
Irvine, CA 92606  
Attn: James Barisic
- B. Address of CITY is as follows:  
City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92840
19. DEVELOPER'S Proposal. The PROJECT shall include DEVELOPER's proposal, as modified by Planning Commission and City Council, including all conditions of approval contained in Planning Commission Resolution No. 5715, which shall be incorporated herein by this reference. In the event of any inconsistency between terms of the proposal and this Agreement, this Agreement shall govern.
20. Licenses, Permits, Fees, and Assessments. At its sole expense, DEVELOPER shall obtain all licenses, permits, and approvals as may be required by this Agreement, or by the nature of the PROJECT.
21. Time of Essence. Time is of the essence in the performance of this Agreement.
22. Successor's In Interest. The provisions of this Agreement shall be binding upon and inure to successors in interest of the parties and shall be specifically binding upon and for the benefit of any future lessees or other owners of an interest in PROPERTY.
23. Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
24. Indemnification. DEVELOPER agrees to protect, defend, and hold harmless CITY and their elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by DEVELOPER, DEVELOPER'S agents, officers or employees, subcontractors hired by DEVELOPER.
25. Modification. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written, regarding the

subject matter set forth herein. This Agreement may be modified only by subsequent mutual written agreement executed by CITY, and the DEVELOPER.

26. Recordation. The City Clerk shall cause this Agreement to be recorded against the PROPERTY when DEVELOPER or its permitted successor in interest becomes the owner in fee of the PROPERTY.
27. Remedies. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.
28. Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or default are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.
29. Attorney's 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, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorney's fees.
30. Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each other and every such right, power, remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.
31. Waiver of Terms and Conditions. The CITY may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any



covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

**IN WITNESS WHEREOF**, these parties have executed this Agreement on the day and year shown below.

Date: \_\_\_\_\_

**"CITY"**  
**CITY OF GARDEN GROVE**

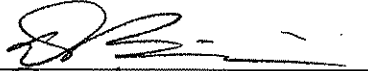
BY \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
CITY CLERK  
DATE: \_\_\_\_\_

**"DEVELOPER"**  
**BRANDYWINE HOMES**

See Attached  
Notary Public Document

By:   
David Barisic

Its: Vice President

Date: 7-20-10

(Signature must be notarized.)

**APPROVED AS TO FORM:**

  
Garden Grove City Attorney

Date: 7-29-10

If DEVELOPER is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

ACKNOWLEDGMENT

State of California  
County of Orange

On 7/20/10 before me, TORU HORIMACHI, Notary Public  
(insert name and title of the officer)

personally appeared David Barisic  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~  
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in  
his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)

