

**City Of Garden Grove**

# INTER-DEPARTMENT MEMORANDUM

***Garden Grove Agency for Community Development***

To: Matthew Fertal

From: Economic Development

Dept: Director

Subject: CENTURY VILLAGE:  
ASSIGNMENT AND ASSUMPTION  
AGREEMENT FROM CENTURY  
VILLAGE GROUP, LLC TO KB HOME  
COASTAL, INC.

Date: September 13, 2011

## OBJECTIVE

The purpose of this report is for the Garden Grove Agency for Community Development (the "Agency") to consider granting its consent of an Assignment and Assumption Agreement (the "Agreement") between Century Village Group, LLC and KB Home Coastal, Inc. for the development of 53 townhomes at the northwest corner of Century Boulevard and Taft Street (the "Site").

## BACKGROUND/DISCUSSION

On April 13, 2010, the Agency approved a Disposition and Development Agreement (DDA) for the development of a 2.67-acre portion of the Century Triangle. In September 2010, the DDA was amended to allow Century Village Group, LLC to pay a portion of the purchase price over time. The First Amendment required Century Village Group to pay \$3 million at close of escrow and, through a promissory note, \$1 million over time as units were sold. Over the past year Century Village Group has completed the models and has completed approximately 90% of the off-site improvements.

In late August 2011, staff met with representative of both the Century Village Group and KB Home Coastal, Inc. regarding a transfer of the DDA and the First Amendment to KB Home Coastal, Inc. KB Home Coastal, Inc. is taking on all requirements as outlined in the DDA. The \$1 million promissory note will be paid off in full at close of escrow and the Agreement will be conditional on close of escrow.

KB Home has been a part of southern California residential development for over 40 years. Their most recent project in Garden Grove was the Lori Lane project located on Fairview Street just south of the Garden Grove Freeway (SR 22). Other recent KB Home developments in Orange County include projects in Fountain Valley and Irvine. Staff and Agency counsel have reviewed KB Home's qualifications and concluded that this builder is qualified and financially capable of assuming the rights, title and interests in and to the DDA.

FINANCIAL IMPACT

None.

RECOMMENDATIONS

Staff recommends that the Agency:

- Consent to the Assignment and Assumption Agreement between Century Village Group, LLC and KB Home Coastal, Inc. for the Disposition and Development Agreement and the First Amendment to the Disposition and Development Agreement between the Garden Grove Agency for Community Development and Century Village Group, LLC for the development of the 53-unit townhome project in the city of Garden Grove within the area known as the "Century Triangle"; and
- Authorize the Director to execute the Consent of Agency to Assignment, and any other pertinent documents required to effectuate the Assignment and Assumption Agreement.

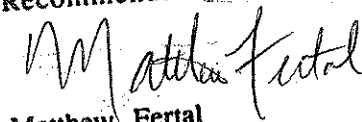


JIM DELLALONGA  
Sr. Project Manager/Dept. Administrative Officer

Attachment: Assignment and Assumption Agreement

mm(h:Staff/JD/Century Village Assign and Assmpt Agmt sr 091311.doc)

Recommended for Approval



Matthew Ferial  
Director

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** ("Assignment") is hereby made as of September 13, 2011, by and between **CENTURY VILLAGE GROUP, LLC**, a California limited liability company ("Assignor"), and **KB HOME COASTAL, INC.**, a California corporation ("Assignee").

### *RECITALS*

A. On or about April 13, 2010, Assignor and the Garden Grove Agency for Community Development ("Agency") entered into a "Disposition and Development Agreement." Agency and Assignor subsequently entered into that certain First Amendment to Disposition and Development Agreement dated as of September 28, 2010 ("First Amendment"; and, together with the Disposition and Development Agreement, the "DDA"). Pursuant to the DDA, Agency conveyed to the Assignor a parcel of real property referred to in the DDA as the "Site," and the Assignor agreed (among other things) to construct certain Developer Improvements thereon. Terms used herein and not expressly defined have the meanings set forth in the DDA.

B. Pursuant to the First Amendment, Agency agreed to accept a "Promissory Note" from Assignor in the original principal amount of One Million Dollars (\$1,000,000) representing a portion of the Purchase Price for the Site. Repayment of the Promissory Note is guaranteed by the Guaranty, executed by the Guarantor in favor of the Agency and attached to the First Amendment.

C. Assignor and Assignee desire to provide by this Assignment for Assignor to assign to Assignee all of its rights and obligations under the DDA and for Assignee to accept such assignment and assume all rights and obligations thereunder.

D. Pursuant to Section 103 of the Disposition and Development Agreement, except for certain permitted Transfers, Agency approval is required for any Transfer of Assignor's interest in the DDA.

E. The parties also desire for Agency to consent to such assignment and assumption and acknowledge that such assignment and assumption is approved by the Agency pursuant to Section 103 of the Disposition and Development Agreement. Agency's obligation to consider approval of this Assignment pursuant to Section 103.4 of the Disposition and Development Agreement is an "enforceable obligation" as defined in Health and Safety Code Section 34167.

**NOW, THEREFORE**, Assignor and Assignee hereby agree as follows:

1. **Assignment and Assumption.** Effective on the Recording Date (as defined below), Assignor hereby assigns to Assignee all of its right, title and interest in and to the DDA, and Assignee hereby accepts such assignment and assumes performance of all terms, covenants and conditions on the part of Assignor to be performed, occurring or arising under the DDA, from and after the Recording Date. On or before the Recording Date, and as a condition precedent to the effectiveness of this Assignment, the Agency shall receive full repayment of all principal, accrued interest, fees and costs (if any) owing under the Promissory Note.

2. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee, their respective successors and assigns, and Agency as third

within, and shall be governed by and construed in accordance with the laws of the State of California.

4. **Further Assurances.** Each party hereto covenants and agrees to perform all acts and things, and to prepare, execute, and deliver such written agreements, documents, and instruments as may be reasonably necessary to carry out the terms and provisions of this Assignment.

5. **Effective Date.** This Assignment shall become effective, if at all, on the date that a grant deed, executed by Assignor and conveying the Site to Assignee, is recorded against the Site in the Official Records of Orange County, California (the "Recording Date"). This Assignment shall be null and void ab initio if the Recording Date does not occur for any reason.

NOW, THEREFORE, the parties hereto have executed this Assignment as of the date set forth above.

**ASSIGNOR:**

**CENTURY VILLAGE GROUP, LLC**  
a California limited liability company

By: Brandywine Homes, a California  
Corporation, its Manager

By: 

Printed Name: Jim Berisic

Title: Chairman & Secretary

**ASSIGNEE:**

**KB HOME COASTAL INC.,**  
a California corporation

By: 

Printed Name: Steve Ruffner

Title: President

## CONSENT OF AGENCY TO ASSIGNMENT

Subject to the following conditions, Agency hereby acknowledges and consents to the above Assignment, and releases Assignor from any further liability under the DDA. The foregoing consent of the Agency is expressly conditioned on and subject to (1) the prior repayment in full to Agency of all principal, accrued interest, fees and costs (if any) owing under that certain Promissory Note executed by Century Village Group, LLC in favor of the Agency, dated as of September 28, 2010, and (2) the conveyance of the Site by Assignor to Assignee, as evidenced by recordation of a grant deed in favor of Assignee against the Site in the Official Records of Orange County, California. As of the date of execution of this consent, Agency hereby acknowledges for the benefit of Assignee that (i) there exists no default or breach by Assignor of any of Assignor's covenants or obligations under the DDA and (ii) no event has occurred which with the giving of notice or the passage of time or both would constitute a default or breach by Assignor under the DDA.

Date: \_\_\_\_\_, 2011.

**GARDEN GROVE AGENCY FOR  
COMMUNITY DEVELOPMENT,**  
a public body, corporate and politic

By: \_\_\_\_\_  
Agency Director

ATTEST:

\_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Stradling Yocca Carlson & Rauth  
Agency General Counsel