

ORDINANCE NO. 2826

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
ADOPTING DEVELOPMENT AGREEMENT NO. DA-188-12 BETWEEN THE CITY OF
GARDEN GROVE AND GARDEN GROVE 14051 HOPE, LLC

City Attorney Summary

This Ordinance approves a Development Agreement between the City of Garden Grove and Garden Grove 14051 Hope, LLC, the developer of a 34-unit multiple-family residential development (with 17% reserved for low-income housing) proposed to be located on the west side of Hope Street, south of Westminster Avenue, at 14051 and 14061 Hope Street, Garden Grove. The agreement provides that the developer will be entitled to build the project in accordance with the land use entitlement approved pursuant to Site Plan No. SP-472-12 and Lot Line Adjustment No. LLA-10-12 for a period of 4 years. The agreement further provides for a development agreement payment to the City of Garden Grove in an amount not to exceed \$65,144.00.

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

WHEREAS, the City of Garden Grove has received an application from Garden Grove 14051 Hope, LLC for Development Agreement No. DA-188-12 for the construction of a 34-unit multiple-family residential development (with 17% reserved for low-income housing) on a 47,590 square foot site with related improvements on that certain real property located on the west side of Hope Street, south of Westminster Avenue, at 14051 and 14061 Hope Street, Garden Grove, Assessor's Parcel No. 099-162-21 and 26 (the "Project");

WHEREAS, pursuant to Resolution No. 5783-12, the Planning Commission, following a duly noticed Public Hearing held on November 15, 2012, recommended approval of Development Agreement No. DA-188-12;

WHEREAS, pursuant to a legal notice, a Public Hearing was held by the City Council on January 8, 2013, and all interested persons were given an opportunity to be heard;

WHEREAS, Development Agreement No. DA-188-12 is consistent with the General Plan and R-3 (Multiple-Family Residential) zoning, including the goals and policies of the Garden Grove General Plan; and

WHEREAS, the City Council has determined that an Environmental Review is exempt pursuant to Section 15332 (In-Fill Development Projects) and Section 15305 (Minor Alterations to Land Use Limitations) of the California Environmental Quality Act.

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

Section 1. Recitals. The City Council finds that the above recitations are true and correct.

Section 2. Environmental Review. The City Council has determined that this action is exempt pursuant to Section 15332 (In-Fill Development Projects) and Section 15305 (Minor Alterations to Land Use Limitations) of the California Environmental Quality Act.

Section 3. Approval. Development Agreement No. DA-188-12 is hereby adopted for property located on the west side of Hope Street, south of Westminster Avenue, at 14051 and 14061 Hope Street, Garden Grove, Assessor's Parcel No. 099-162-21 and 26. A copy of Development Agreement No. DA-188-12 is attached to this Ordinance and is on file in the City Clerk's Office.

Section 4. Recording. Pursuant to California Government Code Section 65868.5, the City Clerk shall record a copy of the Development Agreement with the County Recorder for the County of Orange within 10 days after the Development Agreement is executed.

Section 5. 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 6. 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, TERESA POMEROY, Deputy City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on January 8, 2013, with a vote as follows:

AYES: COUNCIL MEMBERS: (4) BEARD, NGUYEN, PHAN, BROADWATER
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)
)
)

(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-188-12

SP-472-12 and LLA-10-12

(Garden Grove 14051 Hope, LLC)

THIS AGREEMENT is made this _____ day of _____, 20___, by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and Garden Grove 14051 Hope, LLC, a California Limited Liability Company (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 34-unit multiple-family residential development (with 17% reserved for low-income housing) on a 47,590 square foot lot with related improvements in conjunction with a Lot Line Adjustment to consolidate two existing lots into one parcel (the "PROJECT") on that certain real property located on the west side of Hope Street, south of Westminster Avenue, at 14051 and 14061 Hope Street, Assessor's Parcel No. 099-162-21 and 26.
- B. The Planning Commission approved Site Plan No. SP-472-12 and Lot Line Adjustment No. LLA-10-12, for the PROJECT, on November 15, 2012.
- 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. This renewal shall not unreasonably be withheld. The effective date of this agreement shall begin on the date first identified above.
2. Permitted Uses/Land Use Entitlements. The following uses are permitted on the PROPERTY: A 34-unit multiple-family residential project with five (5) units (20%) reserved for low-income renters. The units range in size from 771 square feet to 1,226 square feet. The PROJECT has been granted one waiver from the R-3 zone development standards - residential units within 10-feet of a driving aisle. The following land use entitlement has been granted: Site Plan No. SP-472-12 and Lot Line Adjustment LLA-10-12. The Development is subject to the development standards of the City's Multi-Family Residential Development Standards (Chapter 9.12 of Title 9 of the City's Municipal Code) and the base zoning of R-3 (Multiple-Family Residential).
3. Density/Intensity. The density or intensity of the PROJECT is as follows: multiple-family residential project consisting of 34-units with related improvements on a 47,590 square foot site.
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 35-feet and the building area is comprised of approximately 44,467 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-472-12 and Lot Line Adjustment LLA-10-12.
6. Improvements. The improvements described in Planning Commission Resolution No. 5783-12 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-472-12 and Lot Line Adjustment No. LLA-10-12.

7. Scope of PROJECT. The PROJECT shall consist of a multiple-family residential project consisting of 34-units that range in size from 771 square feet to 1,226 square feet, with related improvements.
8. Resolution/Material Terms. All Conditions of Approval as per Resolution No. 5783-12 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 issuance of any building permits.
 - 9.2 Amount. The Developer shall make a contribution of \$1,166 per unit toward the 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 issuance of any building permits.
 - 9.3 Not to Exceed. Payment under this Agreement shall not exceed \$65,144.00.
10. City Agreement. CITY agrees that the sums to be paid to the City, pursuant to Paragraph 9, will provide benefits to the City and public.
11. Payment Due Date. The payment amount of \$65,144.00 shall be due and payable prior to the issuance of building permits 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 of any nature 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. 5783-12 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:
Garden Grove 14051 Hope, LLC
16580 Aston
Irvine, CA 92606
Attn.: Jim 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. 5783-12, 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.
32. Non-Liability of City Officials and Employees. No member, official, employee or agent of the CITY shall be personally liable to the DEVELOPER, or any successor in interest, in the event of any default or breach by the CITY or for any amount that may become due to the DEVELOPER or its successors, or on any obligations under the terms of this Agreement.

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"
Garden Grove 14051 Hope, LLC,
A California Limited Liability Company

Brandynne Community Holdings, LLC
By: *WB*
Jim Borstic
Its: *Member*
Date: *January 3, 2013*
(Signature must be notarized.)

APPROVED AS TO FORM:

Garden Grove City Attorney
Date: _____

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.

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT**

State of California

County of Orange

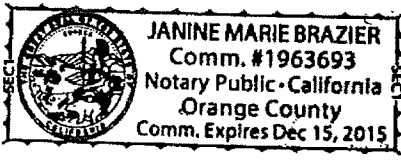
On 11/3/2013 before me, Janine Marie Brazier Notary
(Here insert name and title of the office)

personally appeared James 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.
Janine Marie Brazier
Signature of Notary Public



(Notary Seal)