

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To: Matthew J. Fertal  
Dept: City Manager  
Subject: APPROVAL OF DENSITY BONUS HOUSING AGREEMENT WITH GARDEN GROVE 12662, LLC.

From: Susan Emery  
Dept: Community Development  
Date: April 23, 2013

OBJECTIVE

To request City Council approval for a Density Bonus Housing Agreement for Garden Grove 12662, 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 December 26, 2012, Garden Grove 12662, LLC (Developer) and the City of Garden Grove entered into a Development Agreement to construct 25 units on the property located at 12662 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 4 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 drive aisle waiver 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.

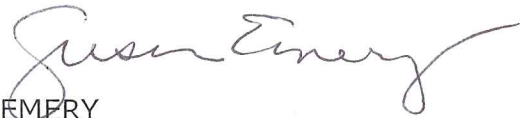
FINANCIAL IMPACT

None.

RECOMMENDATION

It is recommended that the City Council:

- Approve the attached Density Bonus Housing Agreement between the City and Garden Grove 12662, LLC; and
- Authorize the City Manager to execute the Agreement and all other documents necessary to implement the agreement, and to make minor modifications as appropriate thereto.



SUSAN EMERY  
Community Development Director



By: Allison Mills  
Neighborhood Improvement Manager

Attachment: Agreement

**Recommended for Approval**



**Matthew Fertal**  
City Manager

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  
(Garden Grove 12662 Dale, LLC)**

This **DENSITY BONUS HOUSING AGREEMENT (Garden Grove 12662 Dale, LLC)** ("Agreement"), dated for identification purposes only as of \_\_\_\_\_, 2013 ("Date of Agreement"), is entered into by and between the **CITY OF GARDEN GROVE**, a California municipal corporation ("City"), and **GARDEN GROVE 12662 Dale, LLC**, a California limited liability company ("Developer").

**RECITALS**

A. Developer is the owner of approximately 38,622 square feet of real property in the City, generally located at 12662 Dale Street, Garden Grove, California, Assessor's Parcel Number 215-091-25, 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, inclusive of a seven (7) unit density bonus and certain concessions and incentives ("Project").

C. In response to Developer's application, pursuant to Garden Grove Planning Commission Resolution No. 5780-12, the City approved Site Plan No. SP-470-12 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 April 15, 2013 as Instrument No. 2013000224156.

D. Developer and City also entered into that certain Development Agreement No. DA-187-12 for , dated as of December 26, 2012 and recorded in the Official Records of Orange County, California on December 20, 2012, as Instrument No. 2012000790317, with respect to Developer's development of the Project on the Site ("Development Agreement").

E. The Development Agreement and Conditions of Approval provide for City's granting of 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 9.12.030.070 (collectively, "Density Bonus Law"), in exchange for Developer's agreement to restrict four (4) 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 and concessions and incentives granted to the Project, the Density Bonus Law and the Conditions of Approval require Developer to enter into this Agreement with City to implement Developer's affordable housing obligations at the Project. Pursuant to the Density Bonus Law and the Conditions of Approval, 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. Developer and City desire to enter into this Agreement to provide for Developer's rental of four (4) 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.

H. 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.

I. 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 to the unit. "Adjusted for family size appropriate to the unit" has the same meaning as in Health and Safety Code Section 50052.5(h).

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, internet, television or digital access services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and real property 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 four (4) 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) Agreement. Agreement means this Density Bonus Housing Agreement between City and Developer.

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

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

(vi) 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-470-12, with the approval of Planning Commission Resolution No. 5780-12, 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 April 15, 2013 as Instrument No. 2013000224156..

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

(viii) Density Bonus Law. Density Bonus Law means California Government Code Section 65915, *et seq.*, and Garden Grove Municipal Code Section 9.12.030.070. In the event of a conflict between State and City law, Government Code Section 65915 *et seq.* shall control.

(ix) Developer. Developer means Garden Grove 12662 Dale, LLC, a California limited liability company.

(x) Development Agreement. Development Agreement means that certain Development Agreement No. DA-187-12 for Site Plan No. SP-470-12, by and between Developer and City, dated as of December 26, 2012 and recorded in the Official Records of Orange County, California on December 20, 2012, as Instrument No. 2012000790317.

(xi) Housing Units. Housing Units means each of the twenty-five (25) total apartment units to be constructed by Developer at the Site. The Housing Units range in size from 906 to 1,226 square feet, and the Housing Units consist of 16 two-bedroom units and 9 three-bedroom units.

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

(xiii) 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 "Garden Grove 12662 Dale, LLC, Apartments," all in accordance with Site Plan No. SP-470-12, the Development Agreement, the Conditions of Approval, and this Agreement.

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

(xv) Site. Site means that certain approximately 38,622 square feet of real property in the City, generally located at 12662 Dale Street, Garden Grove, California, Assessor's Parcel Number 215-091-25, as more particularly described in the Legal Description attached hereto as Exhibit A and incorporated herein.

(xvi) 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-470-12 for the Project:

(i) Density Bonus. The Garden Grove Municipal Code 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) Side Yard (Northerly) Setback. Garden Grove Municipal Code Section 9.12.040.020(A)(1) requires a minimum side yard setback of ten (10) feet. The Conditions of Approval permit Developer to develop the Site with an 8-foot side yard setback along northerly property line.

(iii) Driving Aisle Waiver. Garden Grove Municipal Code Section 9.12.040.020(A)(2)(e) requires residential units be located within at least 10 feet of a driving aisle. The Conditions of Approval permit Developer a waiver of this requirement in order to cantilever the second and third floors over the driving aisle by seven (7) feet.

(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 (50) parking spaces at the Project, which equals two (2) spaces for each Housing Unit, 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 four (4) of the Housing Units at the Project to Lower Income Households at

an Affordable Rent. The four (4) Affordable Units shall be "floating" units that are not permanently designated; however, at no time shall all four (4) Affordable Units be congregated to a certain section of the Project. The unit size of the Affordable Units shall range in size from 906 to 1,226 square feet. The Affordable Units shall consist of two- and/or three-bedroom units that are part of the Project. In accordance with Garden Grove Municipal Code Section 9.12.030.070(G)(4), at least one (1) three-bedroom unit shall at all times be designated as an Affordable Unit.

(a) A person or family (i.e., a "tenant household") who qualifies as a Lower Income Household at the time he/she/it first occupies an Affordable Unit shall be deemed to continue to be so qualified until such time as a recertification of such tenant household's income in accordance with Section 14 below demonstrates that such tenant 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 for a temporary period until reoccupied, 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 household occupying an Affordable Unit ceases to qualify as a Lower Income Household, the unit occupied by such tenant household 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 household as a Lower Income Household is verified and the tenant household 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 tenant 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 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 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. To the extent permitted by law, a reasonable preference in the leasing of the Housing Units shall be given to prospective tenants on the Garden Grove Housing Authority's Section 8 Housing Vouchers waiting list and Affordable Housing waiting list, and to prospective tenants that live or work in the City.

Prior to the rental or lease of an Affordable Unit to a tenant(s), Developer shall require the tenant(s) 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 household 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 Housing Unit rented to a tenant household 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 four (4) of the Housing Units at the Project shall be Affordable Units not occupied by tenants holding Section 8 certificates. If and to the extent any restrictions in this Agreement 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 Project, 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 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, at City's sole cost and expense, 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 each record of the Project for no less than five (5) years after creation of each such record.

**Section 16. Indemnity.** Developer shall, at its expense, defend (with counsel acceptable to City and subject to approval by Developer), indemnify, and hold harmless 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 Developer's failure to perform Developer's obligations under 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. Prior to recordation of this Agreement, Developer shall provide City with evidence satisfactory to the City that all deeds of trust, liens, encumbrances, or other documents recorded against the Site since October 4, 2012, if any, have been or will be subordinated to this Agreement, at Developer's sole cost and expense.

**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. Third Party Beneficiaries.** No persons or entities other than the parties and their successors and assigns shall have any right of action under this Agreement.

**Section 23. 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 24. 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 transfer.

**Section 25. 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, (iii) mailing in the United States first-class mail, postage prepaid, or (iv) by email, with confirmation of receipt to the intended recipient, 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:              Garden Grove 12662 Dale, LLC  
c/o Brandywine Homes  
16580 Aston Street  
Irvine, CA 92606  
Attention: Jim Barisic  
Email: [jim@brandywine-homes.com](mailto:jim@brandywine-homes.com)

**Section 26. 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 27. 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 28. 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 29. 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 (Garden Grove 12662 Dale, LLC) as of the date first set forth above.


**DEVELOPER:**

**GARDEN GROVE 12662 DALE, LLC,**  
a California limited liability company

By: Brandywine Community Holdings, LLC  
Its: Managing Member

By: Brandywine Homes, a California  
Corporation  
Its: Manager

By:   
Name: David Barisic  
Its: Vice President

By:   
Name: Elzak Whorwood  
Its: Asst. Secretary

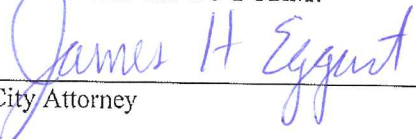
**CITY OF GARDEN GROVE,**  
a California municipal corporation

\_\_\_\_\_  
City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

  
City Attorney

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On 4/18/13 before me, Janine Marie Brazier, Notary  
(Here insert name and title of the officer)

personally appeared David Barisic

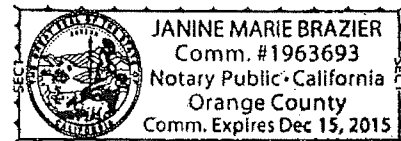
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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.

Janine Marie Brazier  
Signature of Notary Public

(Notary Seal)



CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On 4/18/13 before me, Janine Marie Brazier, Notary  
(Here insert name and title of the officer)

personally appeared Mark Whitehead

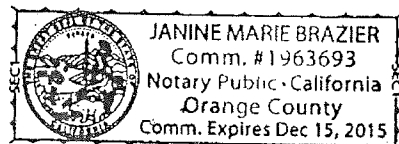
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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)



CORPORATE RESOLUTION

The Board of Directors and Officers of Brandywine Homes at a regular meeting on of the corporation September 19, 2005 resolved the following:

Hereby appoints as officers of the corporation:

Jim Barisic as Chairman and Secretary

Brett Whitehead as President, Chief Financial Officer and Assistant Secretary

Mark Whitehead as Vice President and Assistant Secretary

David Barisic as Vice President and Assistant Secretary

Hereby authorizes any one of the above officers, acting individually, to enter into agreements and contracts binding the corporation without legal or monetary limitation, negotiate the acquisition and/or sale of properties for sale to other entities and/or the general public, arrange for interim and permanent financing and generally conduct the business affairs of the corporation.

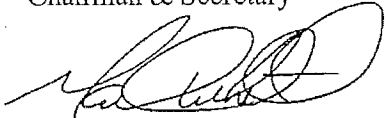
Affirmed and attested to this 26<sup>th</sup> day of September, 2005 at Irvine, California:



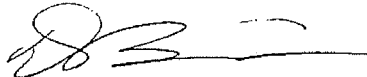
Jim Barisic,  
Chairman & Secretary



Brett Whitehead,  
President & Asst. Secretary



Mark Whitehead,  
Vice President & Asst. Secretary



David Barisic  
Vice President & Asst. Secretary

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:

PARCEL 1:

THE NORTH 132.89 FEET OF THE SOUTH 531.86 FEET OF THE WEST ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER, OF THE SOUTHEAST ONE-QUARTER IN SECTION 36, TOWNSHIP 4 SOUTH, RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN.

PARCEL 2:

1/40 INTEREST IN LOT A, TRACT 1052, AS PER MAP RECORDED IN BOOK 34, PAGE 9 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Assessor's Parcel No. 215-091-25



**EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

<b>Action Item</b>	<b>Status</b>
1. <b>Approval and Execution of Agreement.</b> City shall approve and execute the Agreement.	Within 30 days <sup>1</sup> of submittal of signed Agreement by Developer.
2. <b>Record Agreement.</b> City shall cause the Agreement to be recorded against the Site.	Within 10 days of City approval and execution of Agreement and receipt of evidence of subordination of existing liens and encumbrances pursuant to Section 17 of Agreement.
3. <b>Construction Drawings.</b> Developer shall submit construction drawings for the Project to City for plan check.	Completed.
4. <b>Revision to Construction Drawings.</b> Developer shall revise and resubmit construction drawings to address reasons for conditional approval or disapproval by City.	Completed.
5. <b>Building Permits.</b> Developer shall obtain all required building permits for the Project.	Within 30 days of approval and execution of Agreement by City
6. <b>Management Plan and Marketing Program.</b> 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. <b>Approval of Management Plan and Marketing Program.</b> 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. <b>Revision to Management Plan and Marketing Program.</b> 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.

---

<sup>1</sup> All days are calendar days unless otherwise noted.

Action Item	Status
9. <b>Approval of Revised Management Plan and Marketing Program.</b> 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. <b>Commencement of Construction.</b> Developer shall commence the construction of the Project.	Within 30 days of approval and execution of Agreement by City
11. <b>Progress Reports.</b> 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, but only after execution of Agreement by City.
12. <b>Completion of Construction.</b> Developer shall complete the construction of the Project.	On or before December 31, 2013
13. <b>Off-Site Improvements.</b> Developer shall complete all off-site improvements required in connection with the construction of the Project.	On or before December 31, 2013

EXHIBIT C

TENANT INCOME VERIFICATION FORM

Part I -- General Information

1. Project Location: 12662 Dale Street, Garden Grove, California  
2. Landlord's Name: Garden Grove 12662 Dale, 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 household income (anticipated total annual income from all household members over age 18) 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 household income for a lower income household occupying a [two-bedroom/three-bedroom] unit in Orange County is \$\_\_\_\_\_. The following computation includes all household 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:

<p><b>Monthly Gross Household Income</b>          (All Sources of Income of All Household Members Over Age 18 Must be Listed. Use          Separate Sheet of Paper if Necessary.)</p>
---

Source	Head of Household	Co-Tenant #1	Monthly Total
Name			
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 gross household 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 and/or the City of Garden Grove 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 subject to a Density Bonus Housing Agreement approved by the City of Garden Grove providing for rental of units to 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 density bonus housing project of the City of Garden Grove.

\_\_\_\_\_    \_\_\_\_\_  
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