

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ADOPTING A REVISED DEVELOPMENT AGREEMENT BETWEEN LV DEVELOPMENT, INC., (DEVELOPER), AND THE CITY OF GARDEN GROVE FOR PROPERTY LOCATED ON THE WEST SIDE OF NELSON STREET, NORTH OF STANFORD AVENUE, AT 12661 NELSON STREET, GARDEN GROVE, PARCEL NOS. 089-101-11, 12, 14, 15, and 27

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

Section 1. A revised Development Agreement is hereby adopted allowing for a three-year time extension until September 21, 2013, for all entitlements, including Site Plan No. SP-393-06, Variance No. V-138-06, Tentative Tract Map No. TT-17022, for property located on the west side of Nelson Street, north of Stanford Avenue, at 12661 Nelson Street, Garden Grove. A copy of the revised Development Agreement is on file in the City Clerk's Office.

Section 2. 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 3. 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 November 23, 2010, with a vote as follows:

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

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**

**SP-393-06, V-138-06, and TT-17022**

(LV Development, Inc.)

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and LV Development, Inc., ("DEVELOPER/PROPERTY OWNER").

**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 small-lot, single-family residential subdivision on a 1.3-acre site; a Site Plan in order to construct twelve, detached, two-story and three-story single-family residential units; a Variance approval to deviate from the minimum lot size for a residential planned unit development; and a Tentative Tract Map for the residential subdivision for land located on the west side of Nelson Street, north of Stanford Avenue at 12661 Nelson Street, Parcels Nos. 089-101-11, 12, 14, 15, and 27.
- B. The Planning Commission approved Site Plan No. SP-393-06, Variance No. V-138-06 and Tentative Tract Map No. TT-17022, for the PROJECT, on

May 4, 2006, conditioned upon DEVELOPER entering into a 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 City Council adopted the Development Agreement on August 22, 2006. Thirty days after the August 22, 2006 meeting, the Development Agreement and all Land Use Entitlements became effective and had a four-year expiration date of September 21, 2010.**
- E. **The applicant requested a time extension for the project in a letter dated July 8, 2010.**
- F. **At the October 21, 2010 meeting, the Planning Commission approved the request for a time extension and made the recommendation to the City Council to approve a Time Extension to Amend Section 1 of the Development Agreement, extending the approval of the project until September 21, 2013.**
- G. The PROJECT is a development requiring certain discretionary approvals by the CITY before it may be constructed.
- H. The Development Agreement Statute, Government Code Section 65864 et. seq., provides the authority for CITY to enter into binding development agreements with a developer having a legal and equitable interest in real property.
- I. 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 **seven (7)** years from its effective date on **September 21, 2013**, 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.
2. Permitted Uses/Land Use Entitlements. The following uses are permitted on the PROPERTY: A single-family residential project consisting of twelve, detached, single-family residential dwelling units with related improvements

such as a recreation area and open space. The PROJECT has been granted the following land use entitlements: Site Plan No. SP-393-06, Variance No. V-138-06, and Tentative Tract Map No. TT-17022. The Development is processed in conjunction with a zone change to Planned Unit Development No. PUD-111-06.

3. Density/Intensity. The density or intensity of the PROJECT is as follows: Single-family residential project consisting of twelve, detached, single-family residential dwelling units on a 1.3 acre site.
4. Maximum Height and Building Size. The maximum height and building sizes are as follows: The maximum building height shall be nine units at two-stories and three units at three-stories not to exceed a height of 35 feet, floor areas of approximately 2,000 square feet up to 2,600 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-393-06.
6. Improvements. The improvements described in Planning Commission Resolution No. 5542, which shall remain in effect under this time extension Development Agreement approval, 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-393-06.
7. Scope of PROJECT. The PROJECT shall consist of a small lot, single-family residential project consisting of twelve, detached, single-family residential dwelling units each having an attached two-car garage on a 1.3-acre site.
8. Resolution/Material Terms. All conditions of approval as per Resolution No. 5542, which shall remain in effect under this time extension Development Agreement approval, 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 Fee. DEVELOPER shall pay a development fee to the CITY as follows:
  - 9.1 Amount. \$750 per unit and shall be paid prior to issuance of any building permits (total: \$9,000.00).
  - 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 issuance of any building permits (total: \$13,992.00).

- 9.3 Not to Exceed. Payment under this Agreement shall not exceed the combined total of 9.1 and 9.2 above which equals: \$22,992.00.
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 \$22,992.00 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 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. 5542 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:  
LV Development, Inc.  
9912 Miloann Street, ~~Suite 400~~  
Temple City, CA 91780
  - 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. 5542, which shall be incorporated herein by this reference and which shall remain in effect under this time extension Development Agreement approval. 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 excepting that Planning Commission Resolution No. 5542 and its accompanying conditions of approval for the approved entitlements Site Plan No. SP-393-06, Variance No. V-138-06, and Tentative Tract Map No. TT-17022 shall remain in effect under this time extension Development Agreement approval. This Agreement may be modified only by subsequent mutual written agreement executed by CITY, and the DEVELOPER.
26. 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 not 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





**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"**  
**LV Development, Inc.**

By: *Thuong Nguyen*  
THUONG NGUYEN

Its: \_\_\_\_\_

Date: 11/16/10  
(Signature must be notarized.)

**APPROVED AS TO FORM:**

*James H. Regent*  
Garden Grove City Attorney

Date: 11/5/2010

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

State of California }  
County of \_\_\_\_\_ } ss.

Subscribed and sworn to (or affirmed) before me  
on this 11 day of 04, 2010  
by \_\_\_\_\_  
proved to me on the basis of satisfactory evidence  
to be the person(s) who appeared before me.

*Thuong Nguyen*

