

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ADOPTING AN AMENDED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GARDEN GROVE AND CYNTHIA CIRCLE DEVELOPMENT, L.P., (DEVELOPER), FOR PROPERTY LOCATED AT THE END OF THE CYNTHIA CIRCLE CUL-DE-SAC ON THE EAST SIDE OF EUCLID STREET, NORTH OF WESTMINSTER AVENUE, AT 11031 CYNTHIA CIRCLE, GARDEN GROVE, PARCEL NO. 100-391-22

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

Section 1. The amended Development Agreement is hereby adopted allowing for a three-year time extension until December 13, 2013, for all land use entitlements, including Site Plan No. SP-410-06, for property located at the end of the Cynthia Circle cul-de-sac, at 11031 Cynthia Circle, Garden Grove. A copy of the amended 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 December 14, 2010, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BROADWATER, DO, JONES, NGUYEN, DALTON  
NOES: COUNCIL MEMBERS: (0) NONE  
ABSENT: COUNCIL MEMBERS: (0) NONE

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**

**SP-410-06 and TT-17035**

(Cynthia Circle Development L. P.)

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and CYNTHIA CIRCLE DEVELOPMENT L. P. (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 multi-family residential project consisting of 144 dwelling units to be constructed on a 6.82-acre site and related improvements (the "PROJECT") on that certain real property located at the end of the Cynthia Circle cul-de-sac on the east side of Euclid Street, between Westminster Avenue and Woodbury Road, at 11031 Cynthia Circle, Parcel No. 100-391-22.
- B. The Planning Commission approved Site Plan No. SP-410-06 and Tentative Tract Map No. TT-17035, for the PROJECT, on September 21, 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 November 13, 2006. Thirty days after the adoption date, on December 13, 2006, the Development Agreement and all Land Use Entitlements became effective and had a four-year expiration date of December 13, 2010.**
- E. **The applicant requested a time extension for the project in a letter dated September 7, 2010.**
- F. **At the November 4, 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 December 13, 2013. This approval extends the timeframe for Site Plan No. SP-410-06 to be consistent with the Tentative Tract Map No. TT-17035, which benefited from automatic extensions totaling three (3) years granted by State legislation.**
- G. The PROJECT is a development requiring certain discretionary approvals by the CITY before it may be constructed.
- H. 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.
- 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 **on December 13, 2013 which is seven (7) years** from its effective date **of December 13, 2006**, 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 multi-family residential project consisting of one, four-unit three-story building, ten, six-unit three-story buildings, and ten, eight-unit three-story buildings, for a total of 144 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-410-06 and Tentative Tract Map No. TT-17035. The Development is processed in conjunction with a zone change to Planned Unit Development No. PUD-116-06.

3. Density/Intensity. The density or intensity of the PROJECT is as follows: Multi-family residential project consisting of one, four-unit three-story building, ten, six-unit three-story buildings, and ten, eight-unit three-story buildings, for a total of 144 dwelling units with related improvements on a 6.82-acre 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 of approximately 37 feet and the building area is comprised of 144 dwelling units with a combined square footage of 205,056 square feet for the proposed development, 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-410-06 and Tentative Tract Map No. TT-17035.
6. Improvements. The improvements described in Planning Commission Resolution No. 5569 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-410-06 and Tentative Tract Map No. TT-17035.
7. Scope of PROJECT. The PROJECT shall consist of a multi-family residential project consisting of one, four-unit three-story building, ten, six-unit three-story buildings, and ten, eight-unit three-story buildings, for a total of 144 dwelling units with related improvements.
8. Resolution/Material Terms. All conditions of approval as per Resolution No. 5569 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.
  - 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.

9.3 Not to Exceed. Payment under this Agreement shall not exceed \$275,904.00.

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 \$275,904.00 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. 5569 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:  
Cynthia Circle Development L.P.  
20 Corporate Park, Suite 240  
Irvine, CA 92606  
Attn.: Jeff Weber
  - 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. 5569, 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. 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"**  
**Cynthia Circle Development L.P.**

By: Van Cleve Development, General Partner  
By: [Signature]  
Its: Russell G. Van Cleve, President  
Date: 12/2/10  
(Signature must be notarized.)

**APPROVED AS TO FORM:**

[Signature]  
Garden Grove City Attorney  
Date: 12/3/10

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



State of California

County of Orange

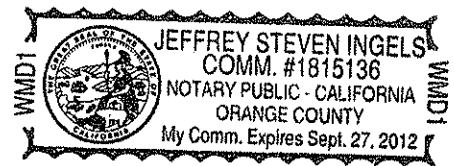
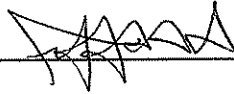
On December 2, 2010 before me, Jeffrey Steven Ingels, Notary Public, personally appeared  
Russell G Van Cleave

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

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

WITNESS my hand and official seal.

Signature



**ACTION BY WRITTEN CONSENT  
OF BOARD OF DIRECTORS  
OF  
VAN CLEVE DEVELOPMENT,  
a California Corporation**

The undersigned, being the sole director (the "Board of Directors") of Van Cleve Development, a California corporation (the "Corporation"), acting pursuant to the authority of Section 307(b) of the California General Corporation Law and the Bylaws of the Corporation, does hereby adopt, ratify and approve the following resolutions and direct the Secretary of the Corporation to place a copy hereof in the Corporation's book of minutes:

**APPROVAL OF ASSIGNMENT OF PARTNERSHIP INTEREST IN CYNTHIA CIRCLE DEVELOPMENT LP**

WHEREAS, the undersigned has been presented with a proposal that it enter into an Assignment of Partnership Interest (the "Assignment Agreement") in Cynthia Circle Development LP, a California limited partnership (the "Partnership") dated April 19, 2010 (the "Effective Date"), by and between Empire Homes, Inc., a California corporation ("Assignor") and the Corporation pursuant to which, in anticipation of the liquidation of Assignor, Assignor desires to assign to the Corporation all of Assignor's general partnership interest in the Partnership and the Board of Directors of the Corporation deems it to be in the best interests of the Corporation to accept such assignment, together with a corresponding interest in capital accounts, profits, losses, and distributions, effective as of the Effective Date.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors has determined the Assignment Agreement to be fair and equitable and deems it to be in the best interests of the Corporation to enter into the Assignment Agreement.

RESOLVED FURTHER, that the form, terms and provisions of the Assignment Agreement be, and the same hereby are, approved and adopted in all respects.

RESOLVED FURTHER, that the President of the Corporation be, and hereby is authorized and directed, in the name and on behalf of the Corporation, to execute, deliver and perform all obligations of the Corporation under and pursuant to the Assignment Agreement, and all agreements, instruments and documents relating thereto, or required by or contemplated under any of the foregoing.

RESOLVED FURTHER, all changes and amendments to the form of the Assignment Agreement referred to in these resolutions, as compared to the Assignment Agreement in the form presented to the undersigned, shall be deemed approved upon execution by any officer of the Corporation, when the final form of such Assignment Agreement has been executed by such officer.

**APPROVAL OF WELLS FARGO GUARANTY, NATURAL HAZARD INDEMNITY AGREEMENT AND OTHER LOAN DOCUMENTS**

WHEREAS, there has been presented to and considered by the Board of Directors a proposed Wells Fargo Bank ("Lender"): (i) Repayment Guaranty; and (ii) Hazardous Materials Indemnity Agreement (Unsecured) and such further instruments and documents associated with that certain extension of a loan to be entered into with Wells Fargo Bank (collectively, the "Loan Agreements"), substantially in the form presented to the undersigned.

WHEREAS, the Board of Directors has determined to be fair and equitable and deems it to be in the best interests of the Corporation to guaranty the repayment of any indebtedness of the Partnership to Lender in an amount or amounts not to exceed at any one time the sum of ~~Thirteen Million Four Hundred Forty Seven Thousand Five Hundred and 00/100ths Dollars (\$13,447,500)~~ for principal, plus all interest accrued thereon, and costs and expense pertaining thereto; to mortgage, convey, pledge grant, transfer, assign or otherwise hypothecate or encumber all or any part of this Corporation real or personal property for the purpose of securing payment of said indebtedness of Borrower and/or this Corporation's guaranties and endorsements thereof; to execute and deliver to Lender such guaranties, continuing guaranties, indemnities, endorsements, deeds of trust, mortgages, consents to future modification of Partnership's obligations, pledge agreements, security agreements and/or other related documents, all in form and substance satisfactory to Lender, as Lender may request, together with such other contracts or instruments as lender deems necessary or convenient to accomplish the purposes of this resolutions and/or to perfect or continue the rights, remedies and security interests to be given to Lender hereunder.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors has determined the Loan Agreements to be fair and equitable and deems it to be in the best interests of the Corporation to enter into the Loan Agreements.

RESOLVED FURTHER, that the form, terms and provisions of the Loan Agreements be, and the same hereby are, approved and adopted in all respects.

RESOLVED FURTHER, that the President of the Corporation be, and hereby is authorized and directed, in the name and on behalf of the Corporation, to execute, deliver and perform all obligations of the Corporation under and pursuant to the Loan Agreements, and all agreements, instruments and documents relating thereto, or required by or contemplated under any of the foregoing.

RESOLVED FURTHER, all changes and amendments to the form of the Loan Agreements referred to in these resolutions, as compared to the Loan Agreements in the form presented to the undersigned, shall be deemed approved upon execution by any officer of the Corporation, when the final form of such Loan Agreements has been executed by such officer.

### GENERAL AUTHORITY

RESOLVED FURTHER, that the officers of the Corporation be, and each of them hereby is, authorized and directed to take all such actions and to execute and deliver, in the name and on behalf of the Corporation and under its seal or otherwise, any and all documents, certificates and instruments, and to pay all such expenses, as they or any of them may deem necessary or advisable to carry out the purposes of the foregoing resolutions; and that the taking of each such action, the execution and delivery of each such document or instrument, and the payment of each such expense shall be conclusive evidence of its necessity or advisability, and that any such action previously taken by any officer of the Corporation in this respect hereby is approved, ratified, adopted and confirmed.

RESOLVED, FURTHER, that any and all actions by, on behalf of and in the name of the Corporation for the purposes of the foregoing resolutions, taken prior to the adoption of these resolutions be, and they hereby are ratified, confirmed and approved in all respects and for all purposes.

*[signature page follows]*

IN WITNESS WHEREOF, the undersigned, being the sole director of this Corporation, does hereby execute the foregoing resolutions on or about April 19, 2010.



\_\_\_\_\_  
Russell Van Cleve, Director