REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE: DECEMBER 20, 2016

TITLE:
PUBLIC HEARING – FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 2015-03 FOR THE HERITAGE VILLAGE MIXED-USE DEVELOPMENT AT 2001 EAST DYER ROAD – PAMELA SAPETTO, APPLICANT {STRATEGIC PLAN NO. 5, 3}

[Signature]
CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED
☐ As Recommended
☐ As Amended
☐ Ordinance on 1st Reading
☐ Ordinance on 2nd Reading
☐ Implementing Resolution
☐ Set Public Hearing For

CONTINUED TO

FILE NUMBER

RECOMMENDED ACTION

STAFF RECOMMENDATION

Approve the First Amendment to Development Agreement No. 2015-03.

PLANNING COMMISSION RECOMMENDATION

Deny the First Amendment to Development Agreement No. 2015-03. At its regular meeting on November 14, 2016, staff recommended that the Planning Commission recommend that the City Council approve the applicant’s request to amend the recorded development agreement. However, after receiving public testimony on the proposal, the Planning Commission voted to recommend that the City Council deny the First Amendment to Development Agreement No. 2015-03 by a vote of 5:1 (Gartner opposed, Bacerra abstained). Approval of the amendment would have added language to the agreement to allow the payment of the required inclusionary housing funds per each phase of development instead of a single lump sum as required by the Housing Opportunity Ordinance. The Planning Commission made no other changes to the terms of the agreement as outlined in the attached staff report (Exhibit A).

DISCUSSION

The developer of the Heritage Village mixed-use development is proposing to amend their approved and recorded development agreement to alter the timing of their payment for their inclusionary housing in-lieu fees. Currently, the Santa Ana Municipal Code (SAMC) requires the housing in-lieu fee to be paid at issuance of the first building permit, which would require a payment of approximately $9,700,000 when the first building permit is issued. The applicant is proposing to allow the housing in-lieu fees be paid as permits are issued for each of the three phases of the development. This would result in an initial payment of about $2,700,000 when the first permit is issued, which is tentatively planned for December 2016. The remaining $7,000,000

75B-1
in in-lieu fees will be paid as permits are issued for each subsequent phase of development. Table 1, below, provides a breakdown of the inclusionary housing fees and the approximate date of payment of the fees.

<table>
<thead>
<tr>
<th>Project Phase</th>
<th>Estimated Fee</th>
<th>Estimated Payment Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1</td>
<td>$2,700,000</td>
<td>January 2017</td>
</tr>
<tr>
<td>Phase 2</td>
<td>$3,250,000</td>
<td>Summer 2017</td>
</tr>
<tr>
<td>Phase 3</td>
<td>$3,700,000</td>
<td>Winter 2017</td>
</tr>
<tr>
<td>Total</td>
<td>$9,650,000</td>
<td>N/A</td>
</tr>
</tbody>
</table>

After receiving public testimony and deliberating the merits of the applicant’s request, the Planning Commission stated their desire that the applicant comply with the terms of the Housing Opportunity Ordinance.

STRATEGIC PLAN ALIGNMENT

Approval of this item supports the City’s efforts to meet Goal #5 - Community Health, Livability, Engagement and Sustainability, Objective #3 (facilitate diverse housing opportunities and support efforts to preserve and improve livability in Santa Ana neighborhoods).

FISCAL IMPACT

There is no fiscal impact associated with this action.

Hassan Haghani, AICP  
Executive Director  
Planning and Building Agency

VF:rb  
vfreport\The Heritage\Amend DA15-03.cc

Exhibit: A. Planning Commission Staff Report
EXHIBIT

ORDINANCE

75B-3
ORDINANCE NO. NS-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA ANA AND HERITAGE VILLAGE LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

A. The City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certainty for both City and owner in the development process.

B. The City enters into this Amendment to the Development Agreement pursuant to the provisions of the Government Code and applicable City policies.

C. This Amendment to the Development Agreement came before the Planning Commission for a duly noticed public hearing on November 14, 2016. The Planning Commission, on a vote of 5:1, with one abstention, made a motion to recommend denial of the Amendment to the Development Agreement.

D. Entering into this First Amendment to the Development Agreement would provide the City with significant benefits that are of regional significance, relate to existing deficiencies in public facilities, and require the owner of the Heritage Village to contribute toward public benefits.

E. The City Council has held a noticed public hearing on this Ordinance and has considered all testimony presented thereto.

F. The previously adopted and certified Final Environmental Impact Report EIR for the property, EIR No. 2015-01, including the Mitigation Monitoring Program, Findings of Fact and Statement of Overriding Considerations, have been previously approved and certified by this Council.

G. The proposed project will not adversely affect the General Plan, as is expressly set forth in the Request for Council Action dated December 20, 2016.
together with all supporting documents, including but not limited to, proposed resolutions, which are incorporated herein by this reference.

Section 2. The First Amendment to the Development Agreement, a true and correct copy of which is attached hereto as Exhibit 1, is hereby approved, and the City Manager and Clerk of the Council are authorized to execute it on behalf of the City with such non-substantive changes as may be authorized by the City Manager and City Attorney. The Clerk of the Council is hereby authorized and directed to cause this Development Agreement to be recorded with the County Recorder’s Office.

Section 3. If any section, subsection, sentence, clause, phrase 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 of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

ADOPTED this _____ day of ______________, 2016.

__________________________________________
Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

By: _______________________________________
Lisa Storck
Assistant City Attorney
AYES:  Councilmembers

NOES:  Councilmembers

ABSTAIN:  Councilmembers

NOT PRESENT:  Councilmembers

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXX to be the original ordinance adopted by the City Council of the City of Santa Ana on ____________, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: ________________  Clerk of the Council

City of Santa Ana
EXHIBIT

AMENDMENT TO
DEVELOPMENT AGREEMENT

75B-7
EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code §§6103 and 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Clerk of the Council
City of Santa Ana
20 Civic Center Plaza M-30
P.O. Box 1988
Santa Ana, California 92702

AMENDMENT NO. 1 TO
DEVELOPMENT AGREEMENT
by and between

THE CITY OF SANTA ANA

and

HERITAGE VILLAGE OC, LLC
A DELAWARE LIMITED LIABILITY COMPANY

Dated: ______________, 2016
AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SANTA ANA AND
HERITAGE VILLAGE OC, LLC,
a Delaware limited liability company

This Amendment No. 1 to the DEVELOPMENT AGREEMENT is entered into between THE CITY OF SANTA ANA, a charter city and municipal corporation duly authorized under the Constitution and laws of the State of California ("City") and Heritage Village OC, LLC, a Delaware limited liability company ("Owner"). The City and Owner are referred to jointly in this Development Agreement as the "Parties" and individually as a "Party."

1. RECITALS. This Amendment No. 1 to the Development Agreement is entered into with reference to the following facts:

1.1. Development Agreement. A Development Agreement by and between the City of Santa Ana and Heritage Village OC, LLC (the "Development Agreement"), was approved by the City Council on February 2, 2016 and was recorded on June 28, 2016 as Instrument No. 201600293512 in the Official Records, Orange County. The Development Agreement establishes vested development rights for the Heritage Village Project (the "Project") on an 18.84 acre parcel located at the northwesterly corner of East Dyer Road and Redhill Avenue in the City.

1.2. Amendment to Development Agreement. Section 4.3 of the Development Agreement provides that the Development Agreement may be amended from time to time by the mutual consent of the parties provided it is done in a manner consistent with California Government Code Section 65868. Government Code Section 65868 requires that an amendment to a development agreement be subject to a public hearing held by both the Planning Commission and the City Council pursuant to appropriate notice and that the amendment be approved by ordinance and be consistent with the general plan and any applicable specific plan.

1.3. Phasing of In Lieu Fees. Pursuant to Section 5.8 of the Development Agreement, the Project will be developed in three phases as more fully described in the Development Agreement. Pursuant to Section 5.9 of the Development Agreement the Owner is obligated to pay the City an in lieu fee of $9.35 per square foot of habitable space in order to fulfill its inclusionary housing requirement. Section 5.9 does not indicate when the in lieu fees are to be paid. Section 41.1904(c)(3) of the City Zoning Code addresses the payment of such fees and states that: "The developer shall pay any in lieu fees allowed by this section in full before issuance of the first building permit for any portion of the residential project, including any non-residential portions of a mixed use development." Both the Owner and the City have determined that it is in the best interest of both parties to allow for a phased payment of the in lieu fees pursuant to the terms of this Amendment No. 1 to the Development Agreement.
1.4. **Remainder of Development Agreement.** All of the provisions of the Development Agreement, other than the amended language in Section 2 below, shall remain the same.

1.5. **Interest of Owner.** Owner represents that it has approved this Amendment No. 1 to the Development Agreement and is authorized to enter into this Amendment No. 1 to the Development Agreement.

1.6. **Public Hearings.** This Amendment No. 1 to the Development Agreement was the subject of the following public hearings:

   (a) **Planning Commission.** On November 14, 2016, the Planning Commission, after giving notice pursuant to Government Code Sections 65090 and 65091, held a public hearing to consider the Owner's application for this amendment to Development Agreement and the environmental documentation evaluating the potential impacts of the proposed project.

   (b) **City Council.** On ____________, 2016 the City Council, after providing notice as required by law, held a public hearing to consider Owner's Application for this Development Agreement and the proposed project.

   (c) **Environmental Analysis.** Before approving this Amendment No. 1 to the Agreement, the Planning Commission and the City Council reviewed the proposed action and concluded no further environmental review is required pursuant to California Resources Code Section 21160 and CEQA Guidelines section 15162.

1.7. **City Council Findings.** The City Council finds that this Amendment No. 1 to the Development Agreement is consistent with the General Plan, as amended by General Plan Amendment No. 2015-03, applicable specific plan(s), applicable zoning regulations, and all other applicable ordinances, plans, policies and regulations of the City.

1.8. **City Ordinance.** On ____________, 2016, the City Council adopted Ordinance No. NS-______ approving this Amendment No. 1 to the Development Agreement. That ordinance becomes effective thirty (30) days after the date of adoption.

2. **Revised Development Agreement Section 5.9.** Section 5.9 of the Development Agreement is hereby amended to now read as follows:

"5.9 **Inclusionary Housing.**

(a) Owner's project qualifies as a 'pipeline project' under the Amended Housing Opportunity Ordinance (Article XVIII.1 of Chapter 41 of the Santa Ana Municipal Code) and shall pay the City an in lieu fee of $9.35 per square foot of habitable space in order to fulfill the inclusionary housing requirement. Owner may express a preference for how these funds may be used, but the final decision regarding use of the inclusionary housing funds lies solely
with the Executive Director of the Community Development Agency.

(b) Owner's payment of the in lieu fees shall be paid in phases consistent with the phases of development set forth in Section 5.8. The Owner shall pay the applicable in lieu fee for each phase of the project, based on the habitable space within that phase of the project, prior to the issuance of the first building permit for that phase of the project.

IN WITNESS WHEREOF, this Amendment No. 1 to the Development Agreement has been executed by the City of Santa Ana and by the Owner.

Dated this _____ day of ______________, 2016

ATTEST:

CITY OF SANTA ANA

Maria Huizar, Clerk of the Council

David Cavazos, City Manager

APPROVED AS TO FORM:
SONIA CARVALHO
City Attorney

Lisa Storck, Assistant City Attorney

HERITAGE VILLAGE OC, LLC
a Delaware limited liability company

By: ____________________________

Name: __________________________

Title: __________________________

RECOMMEND APPROVAL:

75B-11
Hassan Haghani, Executive Director
Planning & Building Agency
EXHIBIT

PLANNING COMMISSION

STAFF REPORT

75B-13
REQUEST FOR
Planning Commission Action

PLANNING COMMISSION MEETING DATE:
NOVEMBER 14, 2016

TITLE:
PUBLIC HEARING – FILED BY PAM SAPETTO
FOR THE FIRST AMENDMENT TO DEVELOPMENT
AGREEMENT NO. 2015-03 FOR THE HERITAGE
VILLAGE MIXED-USE DEVELOPMENT AT 2001
EAST DYER ROAD {STRATEGIC PLAN NO. 3, 2}

Prepared by  Vince Fregoso

RECOMMENDED ACTION

Recommend that the Planning Commission recommend that the City Council approve the First Amendment to Development Agreement No. 2015-03.

Request of Applicant

Pam Sapetto, on behalf of Heritage Village OC LLC, is requesting approval of the first amendment to the development agreement for the Heritage Village mixed-use development at 2001 East Dyer Road. Specifically, the applicant is proposing to add language to the agreement to allow the payment of the required inclusionary housing funds per each phase of development instead of a single lump sum as required by the Housing Opportunity Ordinance.

Project Description

The Housing Element of the General Plan identifies the long range plans for housing throughout the City. The Housing Opportunity Ordinance was established to implement one of the goals of the Housing Element to promote the construction of affordable housing within the City. The applicant is proposing to amend the approved and recorded development agreement and establish the timing of the payment of the required inclusionary housing in-lieu fees for the development. Specifically, the proposal would allow the payment of the in-lieu fees prior to issuing the first building permit for each phase of development instead of payment of the total project in-lieu fee at the issuance of the first building permit.

Project Background

On November 28, 2011, the City Council adopted the Housing Opportunity Ordinance (HOO). The ordinance requires certain residential projects to provide 15 percent of the total number of units as affordable, whether the project is for sale or rent. The ordinance applies to those developments

EXHIBIT A

75B-14
First Amendment to DA No. 2015-03
November 14, 2016
Page 2

requesting a zoning or general plan amendment modifying the designation in one of the following ways: changing a non-residential use to a residential use (including City-initiated amendments), increasing the residential density, enacting the residential provision of an overlay zone, or converting apartments to condominiums.

In 2015, the HOO was updated to make the inclusionary housing requirements more predictable for housing developers and to increase affordable housing production in conjunction with new market-rate housing development. The changes included simplifying the in-lieu fee calculation, modifying the "moderate income" definition to be either "low income" or "very low income," and creating incentives that allow developers the option of providing inclusionary housing either on or off-site.

In July 2016, the applicant applied for a zoning ordinance amendment to amend the HOO to allow the payment of the housing in-lieu fee in phases, which is identical to the current proposal. However, the applicant decided to withdraw that application and is proposing to modify only the approved development agreement, thus modifying the in-lieu payment timing for this project only.

**Project Analysis**

In February 2016, the Heritage Village project received their entitlements for the development of 1,221 residential units and ancillary commercial services at 2001 East Dyer Road. One of the approved project entitlements was a development agreement, which included the ability to construct the project as a three phase development. Per the HOO, the developer is required to pay the in-lieu fee for the project “before issuance of the first building permit for any portion of the residential development.” This requires the applicant to pay an in-lieu fee of approximately $9,700,000 for all three phases at issuance of the first building permit, which is planned for December. The project applicant is requesting approval to amend the development agreement and allow the payment of the fee as permits are issued for each construction phase, which is in keeping with customary development fee practices. Currently, all development projects pay fees related to building permits, fire facilities mitigation, parks impacts and other development fees on a per dwelling unit basis or per square foot of construction.

The requirement for payment of the total in-lieu fee at the time of first building permit was included in the original 2011 Housing Opportunity Ordinance to encourage the development of affordable housing on-site to promote a mix of affordable housing options in the development. The proposed amendment would allow the project to pay in-lieu fees by construction phase consistent with other development fees, while maintaining incentives for future developers to construct new on-site or off-site affordable housing versus defaulting to in-lieu payments to the City. Approval of this amendment is a logical and business friendly approach to payment of in-lieu fees, reduces uncertainty for developers who contribute to the City’s in-lieu funds, and would allow the applicant to pay an initial fee of approximately $2,735,000 for the first phase, as opposed to $9,700,000 that is currently required for the project.

75B-15
Public Outreach and Notification

The project site is not located within the boundaries of an established neighborhood association. Staff has notified all interested parties by mail a minimum of 10 days prior to the public hearing. The project site itself was posted with a notice advertising this public hearing, a notice was published in the Orange County Reporter and mailed notices were sent to all property owners and occupants within 500 feet of the project site. At the time of this printing, no correspondence, either written or electronic, had been received from any members of the public.

In addition, all parties that participated in the various meeting related to amending the Housing Opportunity Ordinance were notified of this meeting, including those in attendance at the July 2016 Advisory Committee meeting, the July 2016 Planning Commission public hearing to amend the HOO, and those attending the October 2016 Development and Transportation City Council Subcommittee meeting. More specifically, staff held phone discussions with those individuals that attended any of the meetings identified above.

CEQA Analysis

In accordance with the California Environmental Quality Act, the proposed project is exempt from further review pursuant to Section 15061(b)(3) as there is no potential for causing a significant impact on the environment due to the adoption of the development agreement modification related to the collection of fees. Categorical Exemption Environmental Review No. 2016-76 will be filed for this project.

Strategic Plan Alignment

Approval of this item supports the City's efforts to meet Goal No. 5 Community Health, Livability, Engagement and Sustainability, Objective No. 3 (facilitate diverse housing opportunities and support efforts to preserve and improve livability in Santa Ana neighborhoods).

Conclusion

Based on the analysis provided within this report, staff recommends that the Planning Commission recommend that the City Council adopt an ordinance approving the First Amendment to Development Agreement No. 2015-03.

Vince Fregoso, AICP
Principal Planner
First Amendment to DA No. 2015-03
November 14, 2016
Page 4

Attachments:
Exhibit 1 – First Amendment to Development Agreement
Exhibit 2 - Development Agreement No. 2015-03
AMENDMENT NO. 1 TO
DEVELOPMENT AGREEMENT
by and between
THE CITY OF SANTA ANA

and

HERITAGE VILLAGE OC, LLC
A DELAWARE LIMITED LIABILITY COMPANY

Dated: _____________, 2016
AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SANTA ANA AND
HERITAGE VILLAGE OC, LLC,
a Delaware limited liability company

This Amendment No. 1 to the DEVELOPMENT AGREEMENT is entered into between THE CITY OF SANTA ANA, a charter city and municipal corporation duly authorized under the Constitution and laws of the State of California ("City") and Heritage Village OC, LLC, a Delaware limited liability company ("Owner"). The City and Owner are referred to jointly in this Development Agreement as the "Parties" and individually as a "Party."

1. RECITALS. This Amendment No. 1 to the Development Agreement is entered into with reference to the following facts:

1.1. Development Agreement. A Development Agreement by and between the City of Santa Ana and Heritage Village OC, LLC (the "Development Agreement"), was approved by the City Council on February 2, 2016 and was recorded on June 28, 2016 as Instrument No. 2016000293512 in the Official Records, Orange County. The Development Agreement establishes vested development rights for the Heritage Village Project (the "Project") on an 18.84 acre parcel located at the northwesterly corner of East Dyer Road and Redhill Avenue in the City.

1.2. Amendment to Development Agreement. Section 4.3 of the Development Agreement provides that the Development Agreement may be amended from time to time by the mutual consent of the parties provided it is done in a manner consistent with California Government Code Section 65868. Government Code Section 65868 requires that an amendment to a development agreement be subject to a public hearing held by both the Planning Commission and the City Council pursuant to appropriate notice and that the amendment be approved by ordinance and be consistent with the general plan and any applicable specific plan.

1.3. Phasing of In Lieu Fees. Pursuant to Section 5.8 of the Development Agreement, the Project will be developed in three phases as more fully described in the Development Agreement. Pursuant to Section 5.9 of the Development Agreement the Owner is obligated to pay the City an in lieu fee of $9.35 per square foot of habitable space in order to fulfill its inclusionary housing requirement. Section 5.9 does not indicate when the in lieu fees are to be paid. Section 41.1904(c)(3) of the City Zoning Code addresses the payment of such fees and states that: "The developer shall pay any in lieu fees allowed by this section in full before issuance of the first building permit for any portion of the residential project, including any non-residential portions of a mixed use development." Both the Owner and the City have determined that it is in the best interest of both parties to allow for a phased payment of the in lieu fees pursuant to the terms of this Amendment No. 1 to the Development Agreement.
1.4. **Remainder of Development Agreement.** All of the provisions of the Development Agreement, other than the amended language in Section 2 below, shall remain the same.

1.5. **Interest of Owner.** Owner represents that it has approved this Amendment No. 1 to the Development Agreement and is authorized to enter into this Amendment No. 1 to the Development Agreement.

1.6. **Public Hearings.** This Amendment No. 1 to the Development Agreement was the subject of the following public hearings:

(a) **Planning Commission.** On November 14, 2016, the Planning Commission, after giving notice pursuant to Government Code Sections 65090 and 65091, held a public hearing to consider the Owner’s application for this amendment to Development Agreement and the environmental documentation evaluating the potential impacts of the proposed project.

(b) **City Council.** On ____________, 2016 the City Council, after providing notice as required by law, held a public hearing to consider Owner’s Application for this Development Agreement and the proposed project.

(c) **Environmental Analysis.** Before approving this Amendment No. 1 to the Agreement, the Planning Commission and the City Council reviewed the proposed action and concluded no further environmental review is required pursuant to California Resources Code Section 21166 and CEQA Guidelines section 15162.

1.7. **City Council Findings.** The City Council finds that this Amendment No. 1 to the Development Agreement is consistent with the General Plan, as amended by General Plan Amendment No. 2015-03, applicable specific plan(s), applicable zoning regulations, and all other applicable ordinances, plans, policies and regulations of the City.

1.8. **City Ordinance.** On _____________, 2016, the City Council adopted Ordinance No. NS-_______ approving this Amendment No. 1 to the Development Agreement. That ordinance becomes effective thirty (30) days after the date of adoption.

2. **Revised Development Agreement Section 5.9.** Section 5.9 of the Development Agreement is hereby amended to now read as follows:

"5.9 **Inclusionary Housing.**

(a) Owner's project qualifies as a 'pipeline project' under the Amended Housing Opportunity Ordinance (Article XVIII.I of Chapter 41 of the Santa Ana Municipal Code) and shall pay the City an in lieu fee of $9.35 per square foot of habitable space in order to fulfill the inclusionary housing requirement. Owner may express a preference for how these funds may be used, but the final decision regarding use of the inclusionary housing funds lies solely
with the Executive Director of the Community Development Agency.

(b) Owner's payment of the in lieu fees shall be paid in phases consistent with the phases of development set forth in Section 5.8. The Owner shall pay the applicable in lieu fee for each phase of the project, based on the habitable space within that phase of the project, prior to the issuance of the first building permit for that phase of the project."

IN WITNESS WHEREOF, this Amendment No. 1 to the Development Agreement has been executed by the City of Santa Ana and by the Owner.

Dated this ____ day of ____________, 2016

ATTEST: ___________________________ CITY OF SANTA ANA

Maria Huizar, Clerk of the Council ___________________________ David Cavazos, City Manager

APPROVED AS TO FORM:
SONIA CARVALHO
City Attorney

Lisa Storck, Assistant City Attorney ___________________________

HERITAGE VILLAGE OC, LLC
a Delaware limited liability company

By: ___________________________

Name: ___________________________

Title: ___________________________

RECOMMEND APPROVAL:
Hassan Haghani, Executive Director
Planning & Building Agency
DEVELOPMENT AGREEMENT

by and between

THE CITY OF SANTA ANA

and

HERITAGE VILLAGE OC, LLC,

A DELAWARE LIMITED LIABILITY COMPANY

Dated: FEBRUARY 2, 2016

EXHIBIT 2

75B-23
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SANTA ANA AND
HERITAGE VILLAGE OC, LLC,
a Delaware limited liability company

This DEVELOPMENT AGREEMENT is entered into between THE CITY OF SANTA ANA, a charter city and municipal corporation duly authorized under the Constitution and laws of the State of California ("City") and Heritage Village OC, LLC, a Delaware limited liability company ("Owner"). The City and Owner are referred to jointly within this Development Agreement as the "Parties" and individually as a "Party."

1. RECITALS. The Development Agreement is entered into with reference to the following facts:

1.1 The Property. The real property which is the subject of this Development Agreement is located at 2001 East Dyer Road in Santa Ana, California ("Property"). The Property is more particularly described in Exhibits A and B to this Development Agreement.

The Property is an 18.84 acre parcel that is located at the northwesterly corner of East Dyer Road and Red Hill Avenue. The property contains a single building approximately 355,000 square feet in size that was constructed in 1972. The building is currently occupied by a variety of uses, including a data center that is occupying approximately 10,000 square feet, and various temporary uses utilizing a small portion of the existing warehouse space. Approximately 430 parking spaces are currently on-site. Regional access to the project site is generally provided via State Route 55 at the Dyer Road exit. Access to the project site is provided by Red Hill Avenue and Dyer Road, the latter of which becomes Barranca Parkway in the City of Irvine. The project site is located within the City of Santa Ana limits; however it is adjacent to the Cities of Irvine and Tustin. Areas across from Red Hill Avenue (to the east) are within the City of Tustin and are part of the former Tustin Marine Corps Air Station, now known as the Tustin Legacy. Areas across from Dyer Road (to the south) are in the City of Irvine within the Irvine Business Complex.

1.2 Purpose of this Development Agreement.

(a) The purpose of this Development Agreement is to facilitate the development of the Property.

(b) Owner's proposed project would redevelop the project site to provide three mixed used buildings that would provide 1,221 multi-family apartments, 12,675 square feet of retail commercial space and 5,415 square feet of restaurant space. The existing 355,000 square foot office/warehouse building would be reduced in size by removing the warehouse portion of the structure to provide a two-
story 56,000 square foot office building and a 102 space surface parking lot. The exterior of the office building would be renovated to be consistent with the proposed architectural design of the new mixed-use buildings. The existing office portion of the structure provides 36,000 square feet of employee generating space and 20,000 square feet of data center use that contains only computer equipment.

(c) The residential units would range in size from 512 square foot studios to 1,290 square foot one-bedroom and two-bedroom units. Three parking structures would also be developed, one structure for each mixed-use building. The proposed project includes both public and private (for residents) open space and recreations facilities on the project site. A 1.01 acre public central park, including various amenities, would be developed and would connect to open space areas along the northern and eastern boundaries. In addition, approximately 327,302 square feet of private open space, as well as private recreation amenities would be provided for residents.

1.3 Code Authorization. City is authorized pursuant to Government Code Sections 65864 through 65863.5 to enter into Development Agreements with persons having legal or equitable interests in real property for the purpose of establishing development certainty for both the City and Owner in the development process. City enters into this Development Agreement pursuant to the provisions of the Government Code and applicable City policies. The Parties acknowledge:

(a) This Development Agreement is intended to assure adequate public facilities at the time of development.

(b) This Development Agreement is intended to assure development in accordance with City’s General Plan, and any applicable Specific Plans.

(c) This Development Agreement will permit achievement of goals and objectives as reflected in the City’s General Plan, and any and all applicable Specific Plans.

(d) Owner is required by existing City regulations to provide mitigation for certain identified impacts and pay certain regulatory fees as conditions of approvals through the regulatory process.

(e) This Development Agreement will allow City to realize extraordinary and significant public infrastructure facilities and other supplemental benefits in addition to those available through the existing regulatory process.
(f) Many of the extraordinary and significant benefits identified as consideration to City for entering into this Development Agreement are of regional significance, relate to existing deficiencies in public facilities, require Owner to contribute a greater percentage of benefits than would otherwise be required, and represent benefits which would not otherwise be required as part of the development process.

1.4 Ownership. Owner represents and warrants that it has a legal or equitable interest in the Property.

1.5 Interest of Owner. Owner represents that it has approved this Development Agreement and is authorized to enter into this Development Agreement.

1.6 Public Hearings. The Development Agreement was the subject of the following public hearings:

(a) Planning Commission. On October 12, 2015, the Planning Commission, after giving notice pursuant to Government Code Sections 65060 and 65091, held a public hearing to consider the Owner’s application for this Development Agreement and the environmental documentation evaluating the potential impacts of the proposed project.

(b) City Council. On February 2, 2016, the City Council, after providing notice as required by law, held a public hearing to consider Owner’s application for this Development Agreement and the proposed project.

(c) Environmental Analysis. Before approving this Development Agreement, the Planning Commission and the City Council reviewed the Environmental Impact Report, and the City Council certified Final Environmental Impact Report No. 2015-01.

1.7 City Council Findings. The City Council finds that this Development Agreement is consistent with the General Plan, as amended by General Plan Amendment No. 2015-03, applicable specific plan(s), applicable zoning regulations, and all other applicable ordinances, plans, policies and regulations of the City.

1.8 City Ordinance. On February 2, 2016, the City Council adopted Ordinance No. NS-2892 approving this Development Agreement. That ordinance becomes effective thirty (30) days after the date of adoption.

2. DEFINITIONS. In this Development Agreement, unless the context otherwise requires:
2.1 "Applicable Rules" means all rules, regulations, ordinances and official plans and policies of the City in force as of the Effective Date, as included within the Santa Ana Municipal Code ("SAMC"), Specific Development Plan No. 88 as adopted by Amendment Application No. 2014-04, this Development Agreement and the Entitlements, as defined below.

2.2 "Effective Date" means March 17, 2016, the date upon which the ordinance approving the Development Agreement becomes effective.

2.3 "Entitlements" means this Development Agreement No. 2015-03, Final Environmental Impact Report No. 2015-01, General Plan Amendment No. 2015-03, Vesting Tentative Tract Map No. 2015-03, Amendment Application No. 2014-04, and any changes to these to which Owner has consented in writing.

2.4 "Owner" means Heritage Village OC, LLC, a Delaware limited liability company.

2.5 "Project" is the development on the Property of a 1,221-unit multiple family residential apartment development, 12,675 square feet of retail commercial space, and 5,415 square feet of restaurant space, as generally set forth in the Entitlements.

2.6 "Property" means the real property described in Exhibit A and referred to in Exhibit B.

2.7 "Public Art" is defined in Section 5.1.7.

2.8 "Public Art Fee" is defined in Section 5.1.7.

2.9 "Public Art Plan" is set forth in Exhibit C to this Development Agreement.

2.10 "Reserved Powers" means the rights and authority excepted from this Development Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date that are not in conflict with the Applicable Rules or that may be in conflict with the Applicable Rules, but: (a) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health and/or safety; (b) are Uniform Codes; (c) are required to comply with mandates under state and federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court, or (d) relate to increases in development impact fees occurring after the Effective Date.

2.11 "Uniform Codes" means those building, electrical, mechanical, fire and other similar regulations which are based on recommendations of a multi-
state professional organization and become applicable throughout the City, such as, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, or the California Fire Code (including those amendments to the promulgated Uniform Codes which reflect local modification to implement the published recommendations of the multi-state organization and which are applicable City-wide).

2.12 "Utility Release" means the formal approval of the City Building Department, following its inspection, that residential unit(s) may be released for initial connection to the electrical power system, water service system, gas service system, and sanitary sewer system. Utility Release(s) do not include temporary utility service provided to any structure during construction.

3. EXHIBITS. The following documents referred to in this Development Agreement are attached to this Development Agreement and are identified as follows:

<table>
<thead>
<tr>
<th>Exhibit Designation</th>
<th>Description</th>
<th>Referred to in Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Property Legal Description</td>
<td>1.1, 2.6</td>
</tr>
<tr>
<td>B</td>
<td>Property Graphical Description</td>
<td>1.1</td>
</tr>
<tr>
<td>C</td>
<td>Public Art Plan</td>
<td>2.9, 5.1.7</td>
</tr>
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4. GENERAL PROVISIONS.

4.1 Term of Development Agreement ("Term"). This Development Agreement shall have a six (6) year term beginning on the Effective Date of March 17, 2016, and ending on March 17, 2022. The Term shall be automatically extended for an additional three (3) years if Phase 1 and Phase 2 are deemed complete. In order to be deemed complete, all permits must have been finalized, utilities should have been released and a Certificate of Compliance must have been issued for Phase 1 and Phase 2. If a building permit has not been issued for Phase 3 prior to the end of the initial 6 year term of the Development Agreement, the architectural, façade treatment and landscaping plans for Phase 3 shall be subject to Staff level design review prior to issuance of the building permit for Phase 3 to determine whether the exterior design needs any updating. Should updates be required by the Executive Director, the Owner shall prepare plans accordingly, which may be administratively approved by the Director. The Executive Director shall also have the authority to approve any necessary minor modifications to the project requested at the time of the Term extension. Any dispute pertaining to any extension shall be
brought before the Planning Commission for review and City Council for final determination.

4.2 Assignment. Owner shall have the right to transfer or assign the Property, in whole or in part, to any person, entity (public or private), partnership, joint venture, firm or corporation at any time during the term of this Development Agreement; provided, however, the rights of Owner under this Development Agreement may not be transferred or assigned unless the written consent of the City Council is first obtained, and any transfer or assignment of the rights under this Development Agreement shall include in writing the assumption of the duties, obligations, and liabilities arising from this Development Agreement, if the City grants written consent to transfer the rights. Nor shall the rights of the Owner hereunder be subject to assignment by attachment, execution, or proceedings under any provision of the Bankruptcy Act, and any such assignment or transfer of the rights under this Development Agreement shall be wholly void and of no force and effect unless such written consent thereto be obtained from the City Council. A transfer or assignment of the rights under this Development Agreement without the consent of the City Council shall not relieve Owner of any accrued duty, obligation or liability to City. No consent shall be required for sale of units to condominium unit buyers.

During the term of this Development Agreement, any approved assignee or transferee of the rights under this Development Agreement shall observe and perform all of the duties and obligations of Owner contained in this Development Agreement as such duties and obligations pertain to the portion of the Property transferred or assigned. Any and all approved successors and assignees of Owner shall have all of the same rights, benefits, duties, obligations, and liabilities of Owner under this Development Agreement. If the Property is subdivided, any subdivided parcel may be sold, mortgaged, hypothecated, assigned, or transferred to persons for development by them in accordance with the provisions of this Development Agreement. Upon assignment or transfer of the rights of Owner under this Development Agreement, the obligations of Owner and the transferee or assignee shall be joint and several. Should the Project be developed as or later converted to condominiums, individual condominium unit buyers shall not have any liability or obligation pursuant to this Development Agreement.

4.2.1 Permitted Assignments. The prohibition against transfer of ownership of the Property as defined in section 4.2 above, shall not apply to, and the City hereby consents to the following:

a. Transfers to associations, including limited partnerships, limited liability companies, or joint ventures with other entities for the
purpose of performing the Owner’s obligations under this Agreement, provided Owner may be in common control with the transferee or retains primary operational and managerial control of the transferee so long as the Owner retains at least 51% interest at all times.

b. Easements or temporary permits to facilitate the development of the Property.

c. Deeds of trust or other financing documents executed for the purpose of securing loans to Owner made to finance development of the Property, and transfers to any person or entity pursuant to a foreclosure or deed in lieu of foreclosure of such deed of trust or other, similar financing documents and any subsequent transfer by any such person or entity.

4.3 Amendment or Cancellation of Development Agreement. This Development Agreement may be amended from time to time or cancelled by the mutual consent of the Parties, but only in the manner required by Government Code Section 65868.

4.4 Enforcement. Notwithstanding Government Code Section 65865.4, this Development Agreement is enforceable by either Party in any manner provided by law. The remedies provided in Section 7.4 shall not include, and City shall not be liable for, any action in damages or any costs or attorney’s fees resulting from any dispute, controversy, action or inaction, or any legal proceeding arising out of this Development Agreement.

4.5 Indemnification by Owner. Owner agrees to and shall indemnify, defend (through its own counsel) and hold City, its officers, agents, employees, consultants, and representatives harmless from liability for damages, attorney’s fees, restitution, judicial or (to the extent legally possible) equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from construction activities with respect to the Project by the Owner or their contractors, subcontractors, agents, employees, or other persons acting on their behalf. Owner further agrees to indemnify, defend (through its own counsel) and hold City, its officers, agents, employees, consultants, and representatives harmless from any Litigation, as hereinafter defined. For purposes of this paragraph, “Litigation” shall mean any lawsuit, action or cross-action, challenging the validity of this transaction, the Project as defined in Section 2.5, or any portion thereof or the rights of either party hereunder and/or the rights of either party to engage in the acts and transactions contemplated by this Development Agreement. Notwithstanding any other provision of this Development Agreement, this indemnity and duty to defend shall be limited as follows.
(a) In the event of any Litigation the parties agree to affirmatively cooperate in defending said action.

(b) Owner shall have approval of any settlement if, (i) it will affect Owner’s project, or (ii) Owner will be required to pay (or reimburse) any amounts (regardless of type) in connection with the settlement (including attorney’s fees and costs).

(i) If City determines to settle over Owner’s objections, then Owner may upon thirty (30) days written notice terminate defense of the action.

(ii) If City rejects a settlement offer that Owner deems reasonable, then Owner may upon thirty (30) days written notice terminate defense of the action.

(c) Owner shall be allowed to terminate its defense if it determines to abandon defense of its project application; provided, however, that in such circumstance Owner shall be solely liable for award, if any, of costs or attorney’s fees to plaintiff/petitioner incurred prior to the effective date of termination.

4.6 Binding Effect of Development Agreement. To the extent not otherwise provided in Section 4.2 of this Development Agreement, the burdens of this Development Agreement bind, and the benefits of the Development Agreement inure, to the parties’ successors in interest, transferees and assigns.

4.7 Relationship of the Parties. The contractual relationship between City and Owner arising out of this Development Agreement is one of independent contractor and not agency. This Development Agreement does not create any third party beneficiary rights.

4.8 Notices. Any notice, tender, demand, delivery, or other communication pursuant to this Development Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by telefacsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

If to City, to:

City Manager
City of Santa Ana
20 Civic Center Plaza M-31
P.O. Box 1988
Santa Ana, California 92702

75B-31
and

City Attorney, City of Santa Ana
20 Civic Center Plaza M-29
P.O. Box 1988
Santa Ana, California 92702

If to Owner, to:

Heritage Village OC
1945 Port Chelsea Place
Newport Beach, CA 92660
Attention: General Counsel

and

Allen Matkins
1900 Main Street, 5th Floor
Irvine, CA 92614
Attention: William R. Devine

A Party may change its address by giving notice in writing to the other party. Thereafter, any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If sent by mail, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting telefacsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County, or city holidays shall be excluded.

5. DEVELOPMENT OF THE PROPERTY.

5.1 City Obligations. In consideration for Owner entering into this Development Agreement and performing its obligations hereunder, and in order to effectuate the purposes and intentions set forth in this Development Agreement and the Development Agreement Act, the City hereby agrees during the Term as follows:

5.1.1 Vested Right to Develop. Owner is hereby granted the vested right to develop the Project subject to the terms and
conditions of the Applicable Rules and the Reserved Powers.

5.1.2 Non-Application of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in the General Plan, zoning ordinance, subdivision ordinance, or building regulation adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of ordinance, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever, however denominated, and adopted by the City Council, Planning Commission or any City Agency, or by the electorate, as the case may be, which would, absent this Development Agreement, otherwise be applicable to the Project and which would conflict with the Applicable Rules, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers or are otherwise expressly allowed by this Development Agreement. In the event that state or federal laws or regulations enacted after this Development Agreement has been entered into, prevent or preclude compliance with one or more provisions of this Development Agreement, such provisions of this Development Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

5.1.3 Agreed Changes and Other Reserved Powers. This Development Agreement shall not preclude application to the Project of rules, regulations, ordinances and officially adopted plans and policies in conflict with the Applicable Rules where such additional rules, regulations, ordinances and officially adopted plans and policies: (a) are mutually agreed to in writing by Owner and the City, or (b) result from the Reserved Powers.

5.1.4 Subsequent Development Approvals. The City shall require Owner to obtain only those Subsequent Development Approvals that are required by the Applicable Rules or the Reserved Powers. City agrees that it shall condition any Subsequent Development Approvals based only on the Applicable Rules and/or Reserved Powers.

5.1.5 Moratoria. In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates to the rate, amount,
timing, sequencing, or phasing of the development or construction of the Project on all or any part of the Property, City agrees that, unless required by applicable state or federal law, such ordinance, resolution or other measure shall not apply to the Project, Property or this Development Agreement, unless such changes are adopted pursuant to the City’s exercise of its Reserved Powers or other applicable provision of this Development Agreement.

5.1.6 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Because the California Supreme Court held in Pardue Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 455 that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the parties’ intent to cure that deficiency by acknowledging and providing that, except as provided in and subject to Section 5.8, Owner shall have the right to develop the Property at such rate and at such time as Owner deems appropriate within the exercise of its subjective business judgment.

5.1.7 Development, Construction, and Completion of Public Art. Owner shall include within the Project a single or grouped permanent work of public art consistent with the Public Art Plan (collectively, “Public Art”), attached herewith and incorporated herein as Exhibit C, at a cost of not less than one half of 1% of the total construction costs which is approximately One Million Three Hundred Twelve Thousand Dollars ($1,312,000) (the “Public Art Fee”). The actual amount of the Public Art Fee shall be determined at building plan check submittal.

5.2 Exclusion from Existing Rules, Regulations and Policies.

(a) Pursuant to Government Code Section 65866 and Pardue Construction Co. v. City of Camarillo (1984) 37 Cal.3d 465, City retains the right to enact police power regulations on matters not covered by Section 5.1 of this Development Agreement, including without limitation:
(i) Municipal laws and regulations which do not interfere with Owner’s vested rights to develop and use the Property in accordance with Section 5.1 of this Development Agreement. Owner and its successors and assigns and all persons and entities in occupation of any portion of the Property shall comply with such non-conflicting laws and regulations as may from time to time be enacted or amended hereafter. Specifically, but without limitation on the foregoing, such non-conflicting laws and regulations include the following:

- Taxes, assessments, fees and charges, except as otherwise specifically provided in this Development Agreement;

- Building, electrical, mechanical, fire and similar codes based upon uniform codes incorporated by reference into the Santa Ana Municipal Code;

- Laws, including zoning code provisions, which regulate the manner in which business activities may be conducted or which prohibit any particular type of business activity on a city-wide basis; and

- Procedural rules of general City-wide application.

5.3 Construction Standards and Specifications. The construction standards (e.g., the Uniform Codes) and specifications for all Project construction shall be subject to applicable construction standards and guidelines in effect at the time that any development approval shall be sought for the Project or any unit or structure contained within the Project.

5.4 FAA and ALUC Approval. Owner shall obtain and maintain, during the term of this Development Agreement, any and all necessary approvals from the Federal Aviation Administration (FAA) and the Airport Land Use Commission (ALUC) for the Project. Should such approvals lapse and not be reinstated or reapproved prior to the issuance of the first building permit, the City shall have the right to terminate this Development Agreement.

5.4.1 Avigation Easement. The Owner shall, prior to issuance of the first building permit for the Project, execute an avigation easement in a form approved by the City Attorney, which shall be recorded with the Orange County Recorder’s Office. The avigation easement shall prohibit any and all claims, actions or lawsuits of any kind or type for nuisance or interference with use and enjoyment of the underlying Property or the Project, including but not limited to noise, sound, vibration, fumes, fuel particles, dust, discomfort or other environmental effects incident to aircraft operations as well as any inconvenience or annoyances caused by
the operations of the John Wayne Airport (SNA). The avigation easement shall grant the right to enter or penetrate into or transmit through the airspace above, on or in the vicinity of the Property for the unobstructed use, passage or operation of all types of aircraft and the right to create or generate all things and consequences to the Property that may be, or may be alleged to be, incident to or resulting from the use of said airspace and any and all related aircraft and airport operation. The City shall be the benefited party in the avigation easement, but said easement shall be assignable by the City to a third party, including but not limited to John Wayne Airport (SNA), without consent of Owner.

5.5 Processing Fees. All fees and charges intended to cover City costs associated with processing development of the Property, including, but not limited to, fees and charges for applications, processing, inspections, plan review, plan processing, and/or environmental review, which are existing or may be revised or adopted during the term of this Development Agreement, shall apply to the development of the Property.

5.6 Amendments or Additions to Citywide Fee Programs. This Development Agreement shall not preclude the inclusion of and changes to fee programs, taxes whether special or general, or assessments (hereafter collectively referred to as "fees") adopted by the City after the effective date of this Development Agreement, which shall be applicable to the Project on the Property provided that they (1) are standard fees applicable to all development in the City (although actual fee rates may vary within the City where bona fide Citywide fee zones have been established), (2) are not applicable primarily or only to this Project, or (3) are not imposed to either (a) mitigate, offset or compensate for Project impacts which were analyzed in the environmental impact report prepared for the Project, or (b) duplicate any project design features conditions of approval, agreements, or mitigation measures contained in this Development Agreement.

5.7 Open Space. All common area open space on Lots A and B of Vesting Tentative Tract Map No. 17962 must be built in the first phase.

5.8 Phasing of Project. The parties agree and acknowledge that the Project may be built in three (3) phases, but that, except as otherwise expressly stated herein, all conditions and mitigation measures shall be implemented as part of the initial phase; provided, however that Owner may propose to delay to the second phase on-site conditions (e.g., sidewalks) that could be damaged by future construction. Additionally, Owner shall build all private streets and the central park in the first phase. Prior to issuance of the first building permit for the Project, Owner shall submit a proposed Phasing Plan to the City, for review and approval by the Executive Director of the Planning and Building Agency. The proposed Phasing Plan shall contain those items Owner deems
necessary, but shall include the timing for first and second phase
collection and interim site improvements (i.e., landscaping, internal
circulation) between the phases. The approved Phasing Plan must be
implemented within six (6) months after completion of the first phase (i.e.,
isuance of first Utility Release). Generally, the phases shall proceed as
follows:

Phase 1

The first phase of the project would consist of 335 apartment homes within
two five-story apartment buildings wrapping a parking structure. This
phase would be built on the south side of the parcel facing Dyer Road.
Five different unit types and nine different floor plans are proposed for the
project, with the units ranging from studio to three bedroom units. This
phase also includes approximately 9,700 square feet of commercial and
restaurant space. The units would be wrapped around a 6 ½-level garage
that will contain 646 parking spaces, with another 18 spaces on the private
drive. Parking is provided at a rate of approximately 1.8 parking stalls per
unit, which includes guest and commercial parking.

Also to be renovated within this phase is the two-story, 56,000 square foot
office building that will house the current data center tenant as well as
other future office uses. A total of 102 parking spaces have been
allocated to this component of the project.

Phase 2

The second phase of the project would consist of 403 apartment units
situated within two five-story buildings wrapping a parking garage. This
phase would be built on the west side of the parcel with the southern
elevation facing Dyer Road. Six different unit types and nine different floor
plans are proposed for the project, with units ranging from studio to three
bedroom units. In addition, approximately 4,100 square feet of
commercial and restaurant space would be incorporated into this phase of
the project. The units would be wrapped around a 6-level garage
containing 722 parking spaces, with another 15 spaces to be located on
the private drive. Parking for this phase has been provided at a rate of
approximately 1.83 parking stalls per unit, which includes guest parking.

Phase 3

The third and final phase of the project would consist of 483 apartment
homes within three five-story apartment buildings wrapping a parking
garage. This phase would be built at the northern area of the parcel, with
the eastern elevation facing Redhill Avenue. Six different unit types and
nine different floor plans are proposed for the project. The project units
would consist of studio, live/work, and one to three bedroom units. The
units would be wrapped around a 6 ½-level garage that would contain 809 parking spaces, with another 21 spaces to be located on the private drive. Parking for this phase has been provided at a rate of approximately 1.72 parking stalls per unit, which includes guest parking.

5.9 **Inclusionary Housing.** Owner's project qualifies as a "pipeline project" under the amended Housing Opportunity Ordinance (Article XVIII.I of Chapter 41 of the Santa Ana Municipal Code) and shall pay the City an in-lieu fee of $9.35 per square foot of habitable space in order to fulfill the inclusionary housing requirement. Owner may express a preference for how these funds may be used, but the final decision regarding use of the inclusionary housing funds lies solely with the Executive Director of the Community Development Agency.

5.10 **Covenants, Conditions, and Restrictions.** Prior to the issuance of the first building permit for the Project, Owner shall provide to the City the proposed Covenants, Conditions, and Restrictions ("CC&R's") to be recorded against the Property. Those CC&R's must be approved by the Executive Director of the Planning and Building Agency. The City's review and approval of the CC&R's shall be limited to determining inclusion of the following restrictions within the CC&R's:

(a) Allocation of responsibility for repair of perimeter walls and common areas, including landscaping, will be specified in the CC&R's in the event of damage.

(b) Notice of the urban character of the City and this area, including but not limited to: (i) the permitted uses of the property and buildings in the immediate area of the development; and (ii) the flight path for the airport.

(c) The release of the City from all claims which may arise from or relate to the urban character of the City and this area.

(d) The need for the approval of the City to any proposed modifications to the provisions of the CC&R's identified in this Section 5.10.

5.11 **Conditions of Discretionary Approvals.** The requirements imposed as conditions of any discretionary approval received through the City's existing regulatory process shall be governed by the terms of those approvals, and in no event shall such conditions be affected by the termination, cancellation, rescission, revocation, or default or expiration of this Development Agreement (although such conditions must comply with the Applicable Rules).

5.12 **Compliance with Governmental Requirements.** Owner shall carry out the design, construction, and operation of the Project in substantial conformity with all applicable laws, ordinances, statutes, codes, rules,
regulations, orders, and decrees of the United States, the State of California, the County of Orange, the City, or any other political subdivision in which the Property is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the City, Owner or the Property, including all applicable federal, state, and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, applicable prevailing wage requirements, the City zoning and development standards, City permits and approvals, building, plumbing, mechanical and electrical codes, as they apply to the Property and the Project, and all other provisions of the City and its Municipal Code (as they apply to the Property and the Project), and all applicable disabled and handicapped access requirements, including, without limitation, the Americans With Disability Act, 42 U.S.C. § 12101 et seq., Government Code§ 4450 et seq., and the Unruh Civil Rights Act, Civil Code§ 51 et seq. (collectively, “Governmental Requirements”).

6. **ANNUAL REVIEW.**

6.1 **City and Owner Responsibilities.** City shall, at least every twelve (12) months during the term of this Development Agreement, review the extent of good faith substantial compliance by Owner with the terms of this Development Agreement. Pursuant to Government Code Section 65865.1, as amended, Owner shall have the duty to demonstrate by substantial evidence its good faith compliance with the terms of this Development Agreement at the periodic review.

6.2 **Review Letter.** If Owner is found to be in compliance with this Development Agreement after annual review, City shall, upon written request by Owner, issue a Review Letter to Owner (the “Letter”) stating that based upon information known or made known to the City Council, the City Planning Commission and/or the Executive Director of the Planning and Building Agency, this Development Agreement remains in effect and Owner is not in default. Owner may record the Letter in the Official Records of the County of Orange.

6.3 **Failure to Conduct Annual Review.** City’s failure to review at least annually Owner’s compliance with the terms and conditions of this Development Agreement shall not constitute or be asserted by any Party as a breach of this Development Agreement by Owner or City.

7. **DEFAULT.**

7.1 **Events of Default.** Owner is in default under this Development Agreement upon the happening of one or more of the following events or conditions:

75B-39
(a) If a warranty, representation, or statement made or furnished by Owner to the City is false or proves to have been false in any material respect when it was made,

(b) A finding and determination made by the City Council following a periodic review under the procedure provided for in Government Code Section 65865.1 that upon the basis of substantial evidence the Owner has not complied in good faith with one or more of the terms or conditions of this Development Agreement;

(c) Failure to comply with Governmental Requirements;

(d) Any other event, condition, act, or omission which materially interferes with the intent and objectives of this Development Agreement.

7.2 Procedure upon Default. The following principles and procedures shall be applied in the determination of any Default:

(a) Upon the occurrence of default, City shall give Owner (the "defaulting party") thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured. After proper notice and expiration of said thirty (30) day cure period without cure, City may terminate or amend this Development Agreement in accordance with the procedure adopted by the City as to all defaults that may be cured within said thirty (30) day cure period. For defaults that cannot be cured within said thirty (30) day cure period, City may terminate or amend this Development Agreement in accordance with the procedure adopted by the City should at any time Owner fail to diligently proceed in curing the default. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default.

(b) City does not waive any claim of defect in performance by Owner, if on periodic review the City does not propose to modify or terminate this Development Agreement.

(c) Non-performance shall not be excused because of failure of a third person.

(d) An express repudiation, refusal, or renunciation of the contract, if the same is in writing and signed by the Owner, shall be sufficient to terminate this Development Agreement and a hearing on the matter shall not be required.

(e) Adoption of a law or other governmental activity making performance by the Owner unprofitable or more difficult or more
expensive does not excuse the performance of the obligation by the Owner.

(f) All other remedies at law or in equity which are not inconsistent with the provisions of this Development Agreement are available to the parties to pursue in the event there is a breach.

7.3 Damages upon Termination. In no event shall Owner be entitled to any damages against City upon termination of this Development Agreement.

7.4 Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Development Agreement, or to enjoin any threatened or attempted violation of this Development Agreement; or to obtain any remedies consistent with the purpose of this Development Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of California, or in the Federal District Court in the Central District of California, Southern Division.

8. MORTGAGEE PROTECTIONS

8.1 Right to Owner/Notice/Multiple Mortgagees. Owner shall have the absolute right to encumber Owner's right, title and interest in, to and under this Development Agreement and the Property pursuant to one or more Mortgages. Because certain portions of the Project may be developed by one or more assignees, the Parties acknowledge and agree that different Mortgages may encumber the Property and that there may be a separate Mortgage in effect with respect to separate parcels within the Property. It is the intention of the Parties that the rights and protections granted in this Section 8 to each Mortgagee shall only apply to the parcels upon which such Mortgagee's Mortgage is a lien (each a "Mortgage Parcel"), and to the rights, privileges and obligations under this Development Agreement relating to such Mortgage Parcel.

8.2 Notice of Breach to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Owner as provided herein, whenever the City delivers any Notice or demand to Owner with respect to any Breach by Owner under this Development Agreement, and if Owner fails to cure the Breach within the time set forth herein, the City shall deliver to each Mortgagee a copy of such notice or demand accompanied by a writing to the effect that Owner has failed to cure a Breach ("Mortgagee Notice"); provided that Owner or Mortgagee has provided City with addresses for such purpose. Each such Mortgagee shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the Mortgagee Notice, to cure or remedy or commence to cure or remedy and thereafter to pursue
with due diligence the cure or remedy of any such Breach and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, however if the Mortgagee is legally prevented from curing such Breach because of a bankruptcy by the Owner then the thirty (30) day period shall be tolled until such bankruptcy is confirmed or rejected. Nothing contained in this Development Agreement shall be deemed to permit or authorize such Mortgagee to take advantage of Owner’s rights hereunder, or any portion thereof, without first having expressly assumed Owner’s obligations to the City by written agreement reasonably satisfactory to the City. It is understood that a Mortgagee shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy Owner default which requires title and/or possession of the Property (or portion thereof) if and to the extent any such Mortgagee has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the Mortgagee diligently pursues such proceedings to completion and cures or remedies the Breach, provided that, in such event, all noncurable Defaults shall be waived.

8.3 Mortgagee Not Obligated Under this Development Agreement. Unless a Mortgagee expressly assumes Owner’s Obligations to the City in accordance with Section 8.2, no Mortgagee shall in any way be obligated by the provisions of this Development Agreement, nor shall any covenant or any other provision in this Development Agreement be construed to obligate such Mortgagee. Nothing in this Development Agreement shall be deemed to construe, permit or authorize any such Mortgagee to devote the Mortgage Parcel to any uses or to construct any improvements on the Mortgage Parcel, other than those uses or improvements provided for or authorized by this Development Agreement.

8.4 No Liability. No Mortgagee shall have any liability beyond its interest in the Mortgage Parcel acquired through enforcement of its Mortgage for the performance or payment of any covenant, liability, warranty or obligation under this Development Agreement. City agrees that it shall look solely to the interests of such Mortgagee in such Mortgage Parcel for payment or discharge of any such covenant, liability, warranty or obligation.

8.5 No Amendment or Termination. This Development Agreement shall not, without the prior written consent of all Mortgagees holding Mortgages on any portion of the Property, be amended to (a) terminate this Development Agreement prior to the expiration of the Term (except as expressly provided above) or (b) change any provision of this Development Agreement which, by its terms, is specifically for the benefit of Mortgagees. No amendment to this Development Agreement affecting the Property or any part thereof, made without the consent of any Mortgagees holding a Mortgage on such Property, or any part thereof, shall be binding upon such Mortgagee or its successors in interest should it become a party hereto.

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8.6 Condemnation or Insurance Proceeds. Nothing in this Development Agreement shall impair the rights of any Mortgagee, pursuant to its Mortgage, to receive insurance and/or condemnation proceeds which are otherwise payable to Owner granting such Mortgage.

8.7 Title by Foreclosure. Except as otherwise set forth herein, all of the provisions contained in this Development Agreement applicable to any of the Mortgage Parcel shall be binding on and for the benefit of any person who acquires title to the property, or any part thereof, by foreclosure under a Mortgage or transfer by deed in lieu.

8.8 Delegation to Mortgagee. Owner may delegate and/or assign irrevocably to any Mortgagee the non-exclusive authority to exercise any or all of Owner's obligations and/or rights hereunder with respect to the Mortgage Parcel, but no such delegation shall be binding upon the City unless and until either Owner or such Mortgagee shall give to the City a true and correct copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case service upon the other Party of an executed counterpart or conformed copy of said Mortgage, together with written notice specifying the provisions therein which delegates such authority to said Mortgagee, shall be sufficient to give such other Party notice of such delegation. No such delegation or assignment shall relieve the Owner of that Mortgage Parcel of any of its obligations hereunder with respect to such Mortgage Parcel.

8.9 No Obligation to Cure. Nothing herein contained shall require any Mortgagee to cure any default of Owner referred to above.

8.10 Separate Agreement. The City shall, upon request, execute, acknowledge and deliver to each Mortgagee requesting same, an agreement prepared at the sole cost and expense of Owner, in form satisfactory to such Mortgagee and the City, between the City and the Mortgagees, agreeing to all of the provisions hereof, provided Owner pays for all legal and other consulting costs incurred by City in reviewing same.

8.11 Estoppel Certificate. Within thirty (30) days after written request therefore, the City shall execute and deliver to any proposed Mortgagee in connection with its new Mortgage and to such Mortgagee thereafter from time to time an estoppel certificate in form and substance satisfactory to Owner and such Mortgagee ("Estoppel Certificate"). The City hereby agrees to reasonably cooperate in including in any such Estoppel Certificate from time to time any provision which may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Section 8 and allowing such Mortgagee reasonable means to protect or preserve the lien and security interest of its Mortgage hereunder. clarifying the non-
applicability of the provisions of this Development Agreement to such Mortgagee as it relates to parcels other than the Mortgage Parcel, and/or such other terms and provisions as are customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or ratings agencies) in connection with any such financing, provided, however, that no such Estoppel Certificate shall in any way materially adversely affect any rights of the City or increase any obligations of City under this Development Agreement.

8.12 Conflicts. If there is any conflict between this Section 8 and any other provision contained in this Development Agreement, this Section 8 shall control.

9. MISCELLANEOUS PROVISIONS.

9.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Development Agreement, their obligations are joint and several.

9.2 Entire Agreement, Waivers and Amendments. This Development Agreement constitutes the entire understanding and agreement of the Parties with respect to the matters set forth in this Development Agreement. This Development Agreement supersedes all negotiation or previous agreements between the Parties respecting this Development Agreement. All waivers of any provision of this Development Agreement must be in writing and signed by the appropriate authorities of City or of Owner. All amendments to this Development Agreement must be in writing signed by the appropriate authorities of City and Owner, in a form suitable for recording in the Official Records of Orange County, California. Upon the completion of performance of this Development Agreement or its revocation or termination, an appropriate Certificate of Completion acknowledging such occurrence signed by the appropriate agents of Owner and City shall be recorded in the Official Records of Orange County, California.

9.3 Project as a Private Undertaking. It is specifically understood by the parties that: (a) the Project is a private development for purposes of Government Code Section 65864 et seq.; (b) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property or in connection with the Project, and (c) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Development Agreement.

9.4 Incorporation of Recitals. The Recitals set forth in Section 1 of this Development Agreement are part of this Development Agreement.
9.5 Captions. The captions of this Development Agreement are for convenience and reference only, and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Development Agreement.

9.6 Consent. Where the consent or approval of a Party is required by or necessary under this Development Agreement, the consent or approval shall not be unreasonably withheld.

9.7 Covenant of Cooperation. The Parties shall cooperate with and deal with each other in good faith. They will assist each other to the extent needed in the performance of the provisions of this Development Agreement.

9.8 Time of Essence. Time is of the essence for each provision of this Development Agreement of which time is an element.

9.9 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the Party's control. If any such events shall occur, the Term of this Agreement and the time for performance by either Party of any of its obligations hereunder may be extended by the written agreement of the Parties for the period of time that such events prevented such performance, provided that the Term of this Agreement shall not be extended under any circumstances for more than five (5) years.

9.10 Conflicts of Law. In the event that state or federal laws or regulations enacted after this Development Agreement has been entered into or the action or inaction of any other affected governmental jurisdiction prevent or preclude compliance with one or more provisions of this Development Agreement or require changes in plans, maps, or permits approved by the City, the parties shall provide the other party with written notice of such state or federal restriction, provide a copy of such regulation or policy, and a statement of conflict with the provisions of this Development Agreement. The Parties shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Development Agreement to comply with such federal or state law or regulation. Thereafter, regardless of whether the parties reach an agreement on the effect of such federal or state law or regulation upon this Development Agreement, the matter shall be scheduled for hearing before the City Council. Public notice of such hearing shall be given pursuant to Government Code Section 55854.5. The City Council, at such hearing, shall determine the exact modification or suspension which shall be necessitated by such federal
or state law or regulation pursuant to Government Code Section 65869.5. At the hearing Owner shall have the right to offer oral and written testimony.

9.11 **Severability.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Development Agreement.

9.12 **Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Development Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

9.13 **Jurisdiction and Venue.** Any action at law or in equity arising under this Development Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

9.14 **Counterparts.** This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

9.15 **Recording.** The City Clerk shall cause a copy of this Development Agreement to be recorded with the Office of the County Recorder of Orange County, California, within ten (10) days following the effective date of this Development Agreement.
IN WITNESS WHEREOF, this Development Agreement has been executed by the City of Santa Ana and by Owner.

Dated this 22nd day of June, 2016.

ATTEST:

Maria Huizar, Clerk of the Council

THE CITY OF SANTA ANA

David Cavazos, City Manager

APPROVED AS TO FORM:

Lisa Storck, Assistant City Attorney

HERITAGE VILLAGE OC, LLC
a Delaware limited liability company

By: ____________________________

Name: ____________________________

Title: Designated Representative

RECOMMEND APPROVAL:

Hassan Haghani, Executive Director
Planning & Building Agency
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

On June 24, 2019, before me, Rosa A. Flores, Notary Public, personally appeared David Cauzias, 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

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Document Date:

Number of Pages: Signer(s) Other Than Named Above:

Capacity(ies) claimed by Signer(s)

Signer’s Name:

☐ Corporate Officer — Title(s):

☐ Partner — Limited General

☐ Individual — Attorney in Fact

☐ Trustee — Guardian or Conservator

☐ Other:

Signer is Representing:

Signer’s Name:

☐ Corporate Officer — Title(s):

☐ Partner — Limited General

☐ Individual — Attorney in Fact

☐ Trustee — Guardian or Conservator

☐ Other:

Signer is Representing:
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On May 26, 2016 before me, Ruth Flamenco, Notary Public
(insert name and title of the officer)

personally appeared Marc Chasman
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  
(Seal)
EXHIBIT A

Property Legal Description

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREBIN BELOW IS SITUATED IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1. AS SHOWN ON EXHIBIT "B-2" ATTACHED TO LOT LINE ADJUSTMENT 97-023 RECORDED JUNE 11, 1999 AS INSTRUMENT NO. 98-168021 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF SANTA ANA FOR PUBLIC RIGHT-OF-WAY BY GRANT DEED RECORDED JUNE 18, 2010 AS INSTRUMENT NO. 201000289229 OF OFFICIAL RECORDS.

EXCEPTING ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREBINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREOF AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREBINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREBINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE OR OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREBINABOVE DESCRIBED, AS RESERVED BY THE IRVINE COMPANY IN DEED RECORDED OCTOBER 14, 1977 IN BOOK 12415, PAGE 997 OF OFFICIAL RECORDS, AND THE IRVINE INDUSTRIAL COMPLEX IN A DEED RECORDED DECEMBER 30, 1972 IN BOOK 19439, PAGE 221 OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM THAT PORTION INCLUDED WITHIN PARCEL 4, AS SHOWN ON A MAP FILED IN BOOK 48, PAGE 34 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, ANY AND ALL WATER RIGHTS OR INTERESTS IN WATERS RIGHTS AND ANY AND ALL GEOTHERMAL RIGHTS OR INTERESTS IN GEOTHERMAL RIGHTS, NO MATTER HOW ACQUIRED BY GRANTOR, AND OWNED OR USED BY GRANTOR IN CONNECTION WITH OR WITH RESPECT TO THE LAND, WHETHER SUCH WATER RIGHTS SHALL BE REPAIRED, OVERLYING, APPROPRIATE, PERCOLATING, PRESCRIPTIVE OR CONTRACTUAL, BUT WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF THE LAND IN THE EXERCISE OF SUCH RIGHTS, AS RESERVED BY THE IRVINE COMPANY IN DEED RECORDED OCTOBER 13, 1978 IN BOOK 13881, PAGE 184 OF OFFICIAL RECORDS.

APN: 439-221-24 AND 430-231-01

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EXHIBIT C

Public Art Plan

1. The Public Art shall be designed, constructed, and installed by Owner.

2. A Final Design Plan for the Public Art shall be submitted to the Executive Director of the Planning and Building Agency within thirty (30) days prior to the issuance of a Final Certificate of Occupancy for the first unit of the Project. The Executive Director of the Planning and Building Agency shall have sole discretion to approve or deny said Final Design Plan for the Public Art. The Final Design Plan shall (i) identify one (1) or more specific items of Public Art for one (1) or more specific locations and/or application, and (ii) specify the timing of the installation of the Public Art. The installation shall occur no later than 180 days after the first utility release for the Project. Owner shall expend approximately One Million Three Hundred Twelve Thousand Dollars ($1,312,000.00) in total in connection with the Public Art. The actual amount shall be determined at building plan check submittal.

3. The Public Art should invite participation and interaction, inspire, add local meaning, interpret the community by revealing its culture or history, and/or capture or reinforce the unique character of the new place.

4. The Public Art should be constructed using durable materials and finishes, including, but not limited to, stone or metal.

5. The Public Art should be comprised of a single or grouped permanent work(s) at a prime location visible to the public and sited to complement features such as plaza or architectural components so that the Public Art is an integral part of the development site.

6. No Public Art shall include advertising of any type, including, but not limited to, products, services, or businesses.

7. All Public Art shall be properly maintained at all times, be free of any graffiti, and shall not incorporate any flashing or distracting form of illumination.

8. The Owner may assign ownership, maintenance and/or repair responsibilities of the Public Art to one or more Owners’ Association(s).

9. All Public Art shall remain on the Property and may not be removed without the approval of the Executive Director of the Planning and Building Agency.

10. Expenses not included in the Public Art Fee:

    a. Expenses to locate the artist(s) (e.g., airfare for artist interviews, etc.)
b. Architect and Landscape Architect fees incurred in connection with the Public Work(s) of Art.

c. Landscaping around Public Work(s) of Art that is not included as part of the artist's sculpture furnishings, including, but not limited to, functional structures, prefabricated water or electrical features not created by the artist, and ornamental enhancements.

d. Utility fees associated with activating electronic or water generated artwork.

e. Lighting elements not integral to the illumination of the Public Art.

f. Publicity, public relations, photographs, educational materials, business letterhead or logos bearing artwork image.

g. Dedication ceremonies, including sculpture unveilings or grand openings.
ORDINANCE NO. NS-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA ANA AND HERITAGE VILLAGE LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

A. The City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certainty for both City and owner in the development process.

B. The City enters into this Amendment to the Development Agreement pursuant to the provisions of the Government Code and applicable City policies.

C. This Amendment to the Development Agreement came before the Planning Commission for a duly noticed public hearing on November 14, 2016. The Planning Commission, on a vote of X:X, made a motion to recommend approval of the Amendment to the Development Agreement.

D. Entering into this First Amendment to the Development Agreement would provide the City with significant benefits that are of regional significance, relate to existing deficiencies in public facilities, and require the owner of the Heritage Village to contribute toward public benefits.

E. The City Council has held a noticed public hearing on this Ordinance and has considered all testimony presented thereto.

F. The previously adopted and certified Final Environmental Impact Report EIR for the property, EIR No. 2015-01, including the Mitigation Monitoring Program, Findings of Fact and Statement of Overriding Considerations, have been previously approved and certified by this Council.

G. The proposed project will not adversely affect the General Plan, as is expressly set forth in the Request for Council Action dated December 6, 2016, together

Ordinance No. NS-XXX
Page 1 of 3
with all supporting documents, including but not limited to, proposed resolutions, which are incorporated herein by this reference.

Section 2. The First Amendment to the Development Agreement, a true and correct copy of which is attached hereto as Exhibit 1, is hereby approved, and the City Manager and Clerk of the Council are authorized to execute it on behalf of the City with such non-substantive changes as may be authorized by the City Manager and City Attorney. The Clerk of the Council is hereby authorized and directed to cause this Development Agreement to be recorded with the County Recorder's Office.

Section 3. If any section, subsection, sentence, clause, phrase 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 of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

ADOPTED this _____ day of ____________, 2016.

_____________________________
Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

By: ________________________
Lisa Storck
Assistant City Attorney
AYES: 

Councilmembers 

NOES: 

Councilmembers 

ABSTAIN: 

Councilmembers 

NOT PRESENT: 

Councilmembers 

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXX to be the original ordinance adopted by the City Council of the City of Santa Ana on ____________, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: ___________________________ 

Clerk of the Council
City of Santa Ana

Ordinance No. NS-XXX
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