

ORDINANCE NO. NS-2911

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 Amendment to 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 17th day of January, 2017.



Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

By: 

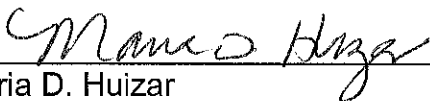
Lisa Storck
Assistant City Attorney

AYES:	Councilmembers	<u>Benavides, Pulido, Solorio, Tinajero,</u> <u>Villegas (5)</u>
NOES:	Councilmembers	<u>Martinez (1)</u>
ABSTAIN:	Councilmembers	<u>None (0)</u>
NOT PRESENT:	Councilmembers	<u>Sarmiento (1)</u>

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-2911 to be the original ordinance adopted by the City Council of the City of Santa Ana on January 17, 2017, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 1/24/2017



Maria D. Huizar
Clerk of the Council
City of Santa Ana

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

(Space Above For Recorder's Use)

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: _____, 20__

**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 _____, 20__ 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 _____, 20__, 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 _____, 20__

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

RECOMMEND APPROVAL:

HERITAGE VILLAGE OC, LLC
a Delaware limited liability company

Hassan Haghani, Executive Director
Planning & Building Agency

By: _____

Name: _____

Title: _____