SECOND AMENDMENT OF
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF EL SEGUNDO
AND D.R. HORTON CA2, INC.

(540 E. IMPERIAL AVENUE SITE)

This Second Amendment of Development Agreement ("Second Amendment") is entered into this ___ day of __________, 2020, by and between the CITY OF EL SEGUNDO ("City"), a municipal corporation and the D.R. HORTON CA2, INC. ("Developer").

RECATALS

A. City and the El Segundo Unified School District entered into that certain Development Agreement dated May 4, 2012 (City Agreement No. 4271, hereafter "Development Agreement"), which was recorded on May 30, 2012, in the Official Records of Los Angeles County as Document No. 20120798461.

B. On or about September 28, 2016, the City Council approved a First Amendment to the Development Agreement, which was recorded on January 23, 2017, in the Official Records of Los Angeles County as Document No. 20170088928.

C. On or about September 30, 2016, the El Segundo Unified School District sold the 540 E. Imperial Avenue site to Developer. The District assigned its interest in the property, including its obligations under the Development Agreement and First Amendment, to Developer. The assignment took effect upon the close of escrow, September 30, 2016.

D. City and Developer entered into that certain Affordable Housing Agreement dated October 16, 2018, which was recorded on October 16, 2018, in the Official Records of Los Angeles County as Document No. 20181051979. As part of the Affordable Housing Agreement, Developer agreed that the six units designated as affordable units must be sold to qualified households before the City would issue a final Certificate of Occupancy for six unsold market rate units within the same buildings as the affordable units ("Unsold Market Rate Units").
E. Concurrent with consideration of this Second Amendment, City is processing an Amendment to the 540 East Imperial Avenue Specific Plan ("Specific Plan Amendment") to modify the affordable housing requirements for the project site. City and Developer desire to enter into this Second Amendment to allow the Developer to pay the City a fee in lieu of the on-site affordable housing unit requirement.

AGREEMENT

1. Amendment of Development Agreement. The following sections and exhibits of the Development Agreement are hereby amended as follows:

A. Section 1 (Definitions) is hereby amended to add the following defined term in alphabetical order:

"Unsold Market Rate Units" means six market rate units that were referred to in Section 3.e of the Affordable Housing Agreement between the parties. The Affordable Units within a building were to be sold to a qualified household, and escrow must have closed on such affordable units, before the City would issue a final Certificate of Occupancy for the last remaining Unsold Market Rate Units within the same building."

B. Section 5.3 is hereby amended to read as follows:

"5.3 Affordable Housing In-Lieu Fee. Developer shall pay City a fee in the amount of Five Million Three Hundred Thousand U.S. Dollars ($5,300,000) to be used for affordable housing purposes within City’s territorial boundaries ("In Lieu Fee"). Developer’s payment of the In Lieu Fee to City shall satisfy Developer’s obligation to provide affordable housing for the Project under this Development Agreement, the Applicable Rules and the Project Approvals, including but not limited to the Specific Plan Amendment and the Amended Resolution. Developer shall pay the In Lieu Fee no later than the effective date of the City’s ordinance approving the Second Amendment to this Agreement. Upon Developer’s payment of the In Lieu Fee, City agrees that it shall promptly issue all final Certificates of Occupancy for the Unsold Market Rate Units."

C. Subsections 5.3.1 through 5.3.3, inclusive, are hereby deleted in their entirety.

D. Paragraph 4 of Subsection 5.9 is hereby deleted in its entirety.

E. Exhibit "D-1" of the Development Agreement is hereby deleted in its entirety.

2. Good Faith Compliance. This Second Amendment shall constitute the City’s Periodic Review pursuant to Section 8.1 of the Development Agreement and City’s determination that Developer is in substantial compliance with the terms and provisions of the Development Agreement.
3. **Effect of Amendment.** Except as expressly provided in this Second Amendment, the Development Agreement shall not be amended or otherwise modified. In the event there is a conflict between the terms of the Development Agreement, as amended, and the terms of this Second Amendment, the terms provided in this Second Amendment shall control. On and after the date hereof, each reference in the Development Agreement to “this Agreement,” “hereunder,” “hereof,” “hereto,” “herein,” or words of like import referring to the Development Agreement shall mean and be a reference to the Development Agreement as amended by the First and Second Amendments.

4. **Recordation.** This Second Amendment shall be recorded with the County Recorder of the County of Los Angeles by the City Clerk of City.

5. **Counterparts.** This Second Amendment may be executed in one or more counterparts, each of which, taken together, shall constitute one fully executed original.

**IN WITNESS WHEREOF,** Developer and City of El Segundo have executed this Second Amendment on the date first above written.

**CITY:**

CITY OF EL SEGUNDO, a municipal corporation

By: __________________________
    Drew Boyles, Mayor

**ATTEST:**

______________________________
Tracy Weaver, City Clerk

**APPROVED AS TO FORM:**

______________________________
Mark D. Hensley, City Attorney

**DEVELOPER:**
D.R. HORTON CA2, INC.

By: __________________________
Its: __________________________
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 ____________  )

On ________________, before me, ____________________________, a Notary Public, personally appeared ____________________________, 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 ___________________________________________________________________

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 ____________  )

On ________________, before me, ____________________________, a Notary Public, personally appeared ____________________________, 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 ___________________________________________________________________