

Recording Requested By and
When Recorded Return to:

City Clerk
City of Visalia
425 E. Oak Avenue
Visalia, CA 93292

DRAFT DEVELOPMENT AGREEMENT
Pratt Family Ranch Specific Plan and Tentative Subdivision Map No. 5583

This Development Agreement, hereinafter referred to as “Agreement”, is entered into as of this ___ day of _____, 2023, by and between the CITY OF VISALIA, a municipal corporation of the State of California, hereinafter referred to as the “City”, and DR HORTON CA3, INC., hereinafter referred to as “Developer”, and who has interest in real property, herein call the “Property”, which is more particularly described in Exhibit “A” and is situated in the City of Visalia, County of Tulare, State of California, and;

WHEREAS, applications have been filed by the Developer to facilitate the creation, annexation, and development of the Pratt Family Ranch Specific Plan (hereinafter referred to as the “Specific Plan”), which will result in the development of approximately 541 single-family dwellings and approximately 8 acres of park uses on land designated for Low and Medium Density Residential and Parks/Recreation, adjacent to the intersection of Pratt Avenue, Mooney Boulevard, and River Way Avenue, adjacent to the Visalia City limits and;

WHEREAS, on August 14, 2023, the Planning Commission of the City of Visalia passed Resolution No. 2023-36 approving Pratt Family Ranch Tentative Subdivision Map No. 5583 for the Property, wholly located with Urban Growth Development Boundary Tier II (herein referred to as “Tier II”) and;

WHEREAS, on September 5, 2023, the City Council of the City of Visalia passed and adopted Specific Plan No. 2021-06 and General Plan Amendment No. 2021-05, establishing the Pratt Family Ranch Specific Plan and changing the General Plan land use designations within the Property to conform to the land use designations specified in the Specific Plan, and;

WHEREAS, the development project, consisting of the Property and the applicable terms, conditions, policies, and standards of the Specific Plan, and the approved resolutions for Pratt Family Ranch Tentative Subdivision Map No. 5583, is hereinafter call the “Development” and;

WHEREAS, this Development Agreement is being carried out as part of the City of Visalia General Plan's Land Use Policy No. LU-P-22, which allows for parcels under common ownership or unified control that are within multiple Urban Growth Boundary Tiers to be annexed and developed in accordance with a master plan and development agreement that details the overall site plan development while maintaining the City of Visalia's interest in maintaining concentric growth through the Urban Growth Boundary Tiers, and;

WHEREAS, currently, the Development is situated in Growth Tiers II and III as defined in the City of Visalia General Plan. In accordance with Policy No. LU-P-22, the Development may be allowed to annex and develop in Tier III while the City is still limiting development approvals to land within the Tier II designation, subject to the terms and conditions stated in this Agreement, and;

WHEREAS, the Developer has requested to allow the Specific Plan development to begin growth in the Tier II area and to have continuous growth into the Tier III portion of the plan. The proposal of "continuous growth" infers not being interrupted by the requirement of meeting citywide expansion criteria as stated in Land Use Policy LU-P-21. The reasoning for the request is that the proposed Project has been designed as one cohesive neighborhood with parks, a walking trail, and other amenities that connect development situated in Tiers II and III, and;

WHEREAS, City will proceed with initiating annexation of the entire Property, including portions situated within Tier III in accordance with the terms and conditions of this Agreement, and;

WHEREAS, City will allow for development of the portions of the Property situated within Tier II at any time, provided that the property is annexed into the City of Visalia and has secured all proper entitlements, and;

WHEREAS, City will only allow for development of the portions of the Property situated within Tier III only at such time when the terms and conditions of this Agreement have been fulfilled by Developer to the satisfaction of the City. The development of the portions of the Property situated within Tier III will also require the installation of all public improvements within the respective areas as different phases of this development move forward, and;

WHEREAS, City shall periodically review this Agreement, and Developer agrees the City may modify or terminate the Agreement, if the Developer has not complied with the terms and conditions, and;

WHEREAS, Developer agrees that when a building permit or any other type of entitlement or permit for the Development is sought, all applicable processing and impact fee amounts, conditions, and standards that the City has in effect at the time of entitlement is requested by the Developer shall be applied to the requested permits, and;

WHEREAS, nothing in this Agreement shall prohibit Developer from selling their portion of the Development provided any such sale is subject to and incorporates the terms and conditions of this Agreement, and;

WHEREFORE, the City and Developer do enter into this Agreement and for and in consideration of the mutual covenants, duties and obligations herein set forth, do agree as follows:

ARTICLE I LEGAL AUTHORITY

1.1 This Agreement is made pursuant to and in accordance with the provisions of California Government Code Section 65864 and Visalia Municipal Code, Chapter 17.60.

1.2 This Agreement shall remain in effect for a period of ten (10) years from the date of execution subject to the terms and conditions set forth herein.

1.3 Developer hereby acknowledges that it is in escrow to buy and develop all residential portions of the Development and it is responsible for all rights and duties contained in the Specific Plan and the Development. No other party or individual has a development interest in the Development.

1.4 City shall periodically review this Agreement pursuant to Visalia Municipal Code Section 17.60.070 and may modify or terminate this Agreement if Developer has not in good faith complied with the terms and conditions of this Agreement. If City terminates this Agreement, then City may pass a moratorium of further development under Section 17.60.090 or seek other available relief and Developer agrees that all costs expended by the City, including attorney fees, may be charged by the City to Developer for violations of this Agreement.

1.5 Developer acknowledges that no vesting rights have been granted with the Development and this agreement will not vest any rights beyond those stated in the Specific Plan and the Development.

ARTICLE II BUILDING PROGRESS WITHIN TIER II

2.1 Before the City allows for the processing of a tentative subdivision map within the portion of the Property situated within Tier III, final maps that comprise all phases and lots specified in the Pratt Family Ranch Tentative Subdivision Map No. 5583 shall be recorded with the Tulare County Recorder.

2.2 Before the City allows for the recording of a final subdivision map pertaining to any portion of the tentative subdivision map within the portion of the Property situated within Tier III, building permits for new dwelling units shall be issued for 85% of lots located Tier III, which equates to 209 residential lots.

2.3 A tentative subdivision map for the Tier III area can be filed and reviewed by the Site Plan Review Committee, and can subsequently be filed with the City of Visalia, but cannot be scheduled for hearing until Articles 2.1 and 2.2 are met.

ARTICLE III IMPROVEMENTS

3.1 Developer shall dedicate and construct Mooney Boulevard between the Property's south boundary and the entire project frontage of Sub Phase 2 of Phase 1. Mooney Boulevard shall be constructed as an 84' collector roadway as shown in the Street Cross Section figures in the Specific Plan and in accordance with current City Development Standards.

3.2 Developer shall dedicate and construct Pratt Avenue between the Property's west boundary to Mooney Boulevard. Pratt Avenue shall be constructed as an 84' collector roadway as shown in the Street Cross Section figures in the Specific Plan and in accordance with current City Development Standards.

3.3 Developer shall construct a pedestrian trail and landscaping within the 20' wide landscape easements along all portions of Pratt Avenue, Mooney Boulevard, and Zachary Street contained within Tier 2, as identified in Figure 5-1 of the Specific Plan.

3.4 Mooney Boulevard and Pratt Avenue roadway designs shall incorporate Class II bike lanes.

3.5 Developer shall submit to the City landscape and irrigation plans associated with all Outlots identified within the Pratt Family Ranch Tentative Subdivision Map No. 5583 that are to be maintained by and Landscape and Lighting District, including the lots labeled as the "HOA Park" within the gated community identified as Sub Phase 2 of Phase 1 and the "Dog Park" on the east side of Mooney Boulevard, and shall improve and install all affiliated amenities on said Outlots in accordance with the approved plans.

3.6 Street lighting plans shall be submitted with the final plat application. All the outdoor lighting shall meet City standards or as defined in the Specific Plan.

3.7 Developer shall design, construct, and improve the intersection of Mooney Boulevard and River Way Avenue to the City's satisfaction. The intersection has been shown on the Specific Plan

and Development Plan in the form of a round-about; however, the City recognizes that additional design work to be borne by the Developer is required for the installation of a round-about and must be approved by the City Engineer and the City Planner. Should the installation of a round-about be found infeasible at this location due to site constraints, safety requirements, or other reasons, the Developer shall proceed with designing the roadways and improving the intersection to City standards.

3.8 Utility relocations, as needed, shall be completed where the final roadway and round-about alignment may require such.

3.9 All local streets within Phase 1 of the Development, as shown on the Pratt Family Ranch Tentative Subdivision Map No. 5583, shall be installed in accordance with City standards prior to the recording of any final map or issuance of building permits in Tier III.

3.10 The Developer shall prepare and submit improvement plans for street, drainage, water, sewer, and landscaping improvements to the City Engineer for approval for their respective portions of the Development. The improvement plans must be approved by the City for conformance with applicable City standards prior to Developer beginning work on these public improvements.

3.11 The Developer shall prepare and submit improvement plans for the required landscape and lighting district to the City Engineer for approval for their respective portions of the Development. The City must approve the improvement plans prior to the formation of the district. The landscape and lighting district applies to all outlots identified on the subdivision map, but does not apply to the gated community's streets, parks, and other common features which will be maintained by a homeowners association.

3.12 Maintenance of landscaping (including temporary irrigation) and furnishings in all public rights-of-way, parks, and open spaces shall be the responsibility of the Developer until formal acceptance by the City Council. Upon acceptance by the City, such parks, open space and landscape easement areas shall become a part of the City's public system.

3.13 Developer shall establish a Homeowners Association (HOA) applicable to the gated communities (i.e., Medium Density Residential land uses) wherein the Developer shall prepare the Articles of Incorporation and the Bylaws for the Homeowners Association. All common areas must be conveyed to the HOA before any lot is sold, or provide for maintenance of common areas through an agreement made between all the property owners.

3.14 No change in the use or restrictions specified in this Agreement shall be allowed or changed without modification of this Agreement. In the event Developer changes or expands the use permitted by this Agreement or fail to comply with the restrictions in this Agreement, without formal modification of this Agreement, then Developer shall be in default.

**ARTICLE IV
AFFIDAVIT OF PROPERTY OWNERS**

4.1 The signatures of all owners of the Development agreeing to submit the Development to this Agreement and to the provisions set forth in California Government Code Section 65864 et seq. and Visalia Municipal Code, Chapter 17.60 shall be provided and are incorporated into this Agreement.

**ARTICLE V
DEFAULT**

5.1 In the event Developer, its successors, assigns or subsequent owners of the Development or any other person acquiring an interest in the Development, fail to faithfully and materially comply with all of the terms and conditions included in this Agreement, such failure to comply will be deemed a default hereunder. In that event, City shall have the following options:

(a) This Agreement and the commitments contained herein may be terminated, and the zoning designation reversed, if City provides written notice of Developer default, and provides the hearing required by California Government Code Section 65868. Provided, however, no such termination or reversal shall occur unless City provides written notice of the default and Developer fails to cure such default within ninety (90) days after mailing or delivery of said notice.

(b) Enforcement of this Agreement may be sought in an action at law or in equity in a court of competent jurisdiction located in Tulare County, California.

(c) A waiver by City of any default by Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of City or apply to any subsequent breach of any covenants or conditions.

(d) Notwithstanding anything to the contrary herein, in the event of a material default of the Agreement, the parties agree that City and/or Developer shall have thirty (90) days after delivery of notice of such default to correct the same prior to the non-defaulting party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (90) day period, if the defaulting party shall commence curing the same within the thirty (90) day period and prosecute the curing of same with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same, but in any event not to exceed (6) months; and provided further, however, no default by a subsequent owner of a portion of the Development shall constitute a default by Developer for the portion of the Development still owned by Developer.

(e) In the event the performance of any obligation to be performed hereunder by any party hereto is delayed for causes that are beyond the reasonable control of the party responsible for such performance, which shall include, with limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

(f) In addition to the remedies set forth above, in the event of a default by Developer, or any other party claiming an interest herein, City may withhold building permits for any lots within the Development until such time as the default is cured.

ARTICLE VI UNENFORCEABLE PROVISIONS

6.1 If any term, provision, commitment or restriction of this Agreement or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.

ARTICLE VII ASSIGNMENT AND TRANSFER

7.1 After its execution, this Agreement shall be recorded in the office of the County Recorder. Each commitment and restriction on the development subject to this Agreement, shall be a burden on the Development, shall be appurtenant to and for the benefit of the Development, and shall run with the land. This Agreement shall be binding on the City, the Developer, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided, each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels or lots within the Development. The new owner of the Development or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

ARTICLE VIII GENERAL MATTERS

8.1 Amendments. Any alteration or change to this Agreement shall be made only after complying with the notice and hearing provisions of California Government Code Section 65868 and Visalia Municipal Code, Chapter 17.60.

8.2 Paragraph Headings. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

8.3 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Tulare County, California.

8.4 Notices. Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below

City:
City Clerk
City of Visalia
425 E. Oak Avenue
Visalia, CA 93292

Developer:
DR Horton CA3, Inc.

or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

ARTICLE IX MISCELLANEOUS

9.1 This Agreement may be modified only by means of a subsequently executed and acknowledged written agreement.

9.2 In the event Developer fails to comply with the commitments set forth herein, within one hundred twenty (120) days of written notice of such failure from the City, in addition to any other remedies which the City may have available to it, the City shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Agreement, and to collect the direct costs associated with such action from Developer.

9.3 In the event that a judicial dispute arises regarding the enforcement or breach of this Agreement, then the prevailing party in such dispute shall be entitled to recover its attorney's fees and costs reasonably incurred, including fees and costs incurred on appeal.

9.4 The applicable building codes for structures shall be the codes in effect when a complete application for a building permit is filed. Development impact fees, if imposed by ordinance, or amended shall be payable as specified in said ordinance or amendment even if the effective date is after the date of this Agreement or the annexation and/or rezone thereto.

9.5 Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, effective on the day and year first above written.

DR Horton CA3, Inc.

Signature Date

Print Name

DR Horton CA3, Inc.

Company Name

Title

CITY OF VISALIA

Leslie Caviglia
City Manager/City Clerk Date

ATTEST:

Deputy City Clerk

Date

APPROVAL AS TO FORM:

City Attorney

Date