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LANCASTER, SC

STATE OF SOUTH CAROLINA )

COUNTY OF LANCASTER )

ORDINANCE NO. 2017-1478

**AN ORDINANCE**

**TO APPROVE A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT AVONDALE DEVELOPMENT; TO AUTHORIZE CERTAIN COUNTY OFFICIALS TO EXECUTE AND DELIVER THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT AVONDALE DEVELOPMENT.**

Be it ordained by the Council of Lancaster County, South Carolina:

**Section 1. Findings and Determinations; Purpose.**

A. The Council finds and determines that:

(a) Lancaster County is authorized by the South Carolina Local Government Development Agreement Act, codified as Sections 6-31-10 to -160, Code of Laws of South Carolina 1976, as amended (the "Act"), and by the Development Agreement Ordinance for Lancaster County, South Carolina, Ordinance No. 663, codified as 9.2.18 in Chapter 9 of the Unified Development Ordinance (the "Ordinance"), to enter into development agreements with developers;

(b) Council approved a development agreement for the Avondale development between Sinacori Builders, LLC ("Developer"), and the County of Lancaster and that development agreement, dated November 28, 2016, is recorded in the records of the Lancaster County Register of Deeds in Deed Book 1018, Pages 15-42 (the "Development Agreement");

(c) Developer subsequently assigned it rights under the Development Agreement to D.R. Horton, Inc. ("Subsequent Developer"), pursuant to that certain Assignment and Assumption of Development Agreement dated and recorded January 26, 2017 in the records of the Lancaster County Register of Deeds in Deed Book 1029, Pages 34-38.

(c) the Subsequent Developer has requested Council to approve amendments to the portions of the Development Agreement relating to certain road improvements at the intersection of Calvin Hall Road and Harrisburg Road.

B. It is the purpose of this ordinance to approve an amendment to the Development Agreement with the amendment relating to certain road improvements at the intersection of Calvin Hall Road and Harrisburg Road.

**Section 2. Approval of First Amendment; Authorization to Act.**

A. The Council Chair and Council Secretary are each authorized, empowered and directed to execute, acknowledge and deliver a First Amendment to the Development Agreement Avondale Development between D.R. Horton, Inc., a Delaware corporation and the County of Lancaster (the "First Amendment") in the name and on behalf of the County of Lancaster. The form of the First Amendment is attached hereto as Exhibit A and all terms, provisions and conditions of the First Amendment are incorporated herein by reference as if the First Amendment were set out in this ordinance in its entirety. By adoption of this ordinance, the Council approves the First Amendment and all of its terms, provisions and conditions. The First Amendment is to be in substantially the form as attached to this ordinance and hereby approved, or with such minor changes therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the First Amendment attached to this ordinance.

B. The Council Chair and Council Secretary are each authorized to execute and deliver any related instruments, documents, certificates and other papers as are necessary to effectuate the purpose of this ordinance and the First Amendment. The Council and its duly elected or appointed officers and any other County official are each authorized to take any and all action as may be necessary to effectuate the purposes of this ordinance and the First Amendment.

**Section 3. Severability.**

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

**Section 4. Controlling Provisions.**

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, orders and resolutions, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

**Section 5. Effective Date.**

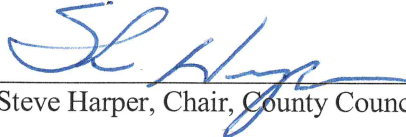
This ordinance is effective upon Third Reading.


SIGNATURES FOLLOW ON NEXT PAGE.

AND IT IS SO ORDAINED

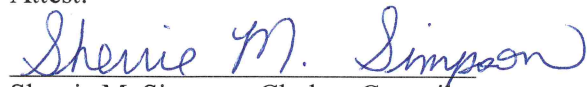
Dated this 27<sup>th</sup> day of November, 2017.

LANCASTER COUNTY, SOUTH CAROLINA

  
Steve Harper, Chair, County Council

  
Larry Honeycutt, Secretary, County Council

Attest:

  
Sherrie M. Simpson, Clerk to Council

Planning Commission Public Hearing: October 17, 2017  
First Reading: October 23, 2017  
Second Reading: November 13, 2017  
Council Public Hearing: November 27, 2017  
Third Reading: November 27, 2017

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**Exhibit A to Ordinance No. 2017-1478**

**First Amendment to the Development Agreement Avondale Development  
between  
D.R. Horton, Inc., and the County of Lancaster**

See attached.

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STATE OF SOUTH CAROLINA	)	FIRST AMENDMENT TO THE
	)	DEVELOPMENT AGREEMENT
COUNTY OF LANCASTER	)	AVONDALE DEVELOPMENT

This **FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE AVONDALE DEVELOPMENT** ("First Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2017, by and between **D.R. HORTON, INC.**, ("Subsequent Developer"), a Delaware corporation, and the **COUNTY OF LANCASTER** (the "County"), a body politic and corporate, a political subdivision of the State of South Carolina.

### **RECITALS**

**WHEREAS**, the Development Agreement dated November 28, 2016 for the Avondale development was entered into by Sinacori Builders, LLC ("Developer"), a North Carolina limited liability company and the County (the "Development Agreement"). The Development Agreement is recorded in the records of the County Register of Deeds in Deed Book 1018, Pages 15-42;

**WHEREAS**, Developer subsequently assigned it rights under the Development Agreement to Subsequent Developer, pursuant to that certain Assignment and Assumption of Development Agreement dated and recorded January 26, 2017 in the records of the County Register of Deeds in Deed Book 1029, Page 34-38;

**WHEREAS**, Subsequent Developer seeks to amend the Development Agreement as it relates to certain road improvements at the intersection of Calvin Hall Road and Harrisburg Road;

**WHEREAS**, Section 5.02 of the Development Agreement provides that amendments to the Development Agreement must be in writing and, for the amendment to be effective, it must be signed by the party against whom the amendment is sought to be enforced;



**WHEREAS**, it is the purpose of this First Amendment to amend provisions of the Development Agreement relating to certain road improvements at the intersection of Calvin Hall Road and Harrisburg Road.

### **FIRST AMENDMENT**

**NOW THEREFORE**, in consideration of the foregoing and the terms and conditions set forth in this First Amendment, the receipt and sufficiency of such consideration being acknowledged by the parties, the parties to this First Amendment intending to be legally bound, agree as follows:

**Section 1.** The above recitals are incorporated in this First Amendment as if the recitals were set out in this First Amendment in their entirety.

**Section 2.** The definitions in Section 1.02 of the Development Agreement are amended by adding definitions for “First Amendment,” “Ordinance No. 2017-\_\_\_\_,” and “Subsequent Developer”:

“(7A) ‘First Amendment’ means the First Amendment to the Development Agreement Avondale Development, dated \_\_\_\_\_, 2017, and approved by passage of Ordinance No. 2017-\_\_\_\_.

(10A) ‘Ordinance No. 2017-\_\_\_\_’ means Ordinance No. 2017-\_\_\_\_ of the County approving the First Amendment.

(15A) ‘Subsequent Developer’ means D.R. Horton, Inc., a Delaware corporation, as successor to the Developer pursuant to an Assignment and Assumption of Development Agreement dated and recorded January 26, 2017 in the records of the County Register of Deeds in Deed Book 1029, Pages 34-38, and its successors in title to the Property who undertake Development of the Property.”

**Section 3.** Section 4.01A. of the Development Agreement, relating to School Payments, is amended to read:

“Section 4.01A. School Payments. (A) Developer agrees to pay to the County for the benefit of the Lancaster County School District THREE HUNDRED SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$365,000.00) on the Effective Date (as defined in Section 5.19 below) (the “School Payment”). Developer acknowledges and agrees that County is responsible only for the remittance of the School Payment to the Lancaster County School District and that the County has no other obligation or responsibility for the School Payment.

(B) County acknowledges (i) receipt from the Developer of the School Payment prior to the date of the First Amendment, (ii) possession of the School Payment as of the date of the First Amendment, and (iii) County’s intention to remit TWO HUNDRED SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$265,000.00) of the School Payment to the Lancaster County School District on a date after the date of the First Amendment.

(C) County and Subsequent Developer each acknowledge that the governing body of the Lancaster County School District has provided County and Subsequent Developer a document,

satisfactory in form and content to County and Subsequent Developer, that evidences the approval of the governing body of the Lancaster County School District for the remittance by the County to Subsequent Developer of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) of the School Payment to defray a portion of the costs of the improvements to be made at the intersection of Calvin Hall Road and Harrisburg Road.

(D) County agrees to remit ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) of the School Payment to Subsequent Developer to defray a portion of the costs of the improvements to be made at the intersection of Calvin Hall Road and Harrisburg Road.”

**Section 4.** Section 4.04(A)(1)(e) of the Development Agreement, relating to the intersection of Calvin Hall Road and Harrisburg Road, is amended to read:

“(e) Provided that the realignment of Calvin Hall Road, as described in Section 4.04(A)(1)(b), is approved by the SCDOT as requested by Developer, Developer’s obligations with respect to the intersection of Calvin Hall Road and Harrisburg Road shall be as follows:

(i) Reserved.

(ii) Subsequent Developer is responsible for all costs of any required transportation improvements to the intersection of Calvin Hall Road and Harrisburg Road, including the costs of a roundabout, and is responsible for the completion of the transportation improvements in accordance with the requirements of the SCDOT. For purposes of this item, transportation improvements include a single lane roundabout which shall be aligned with the realignment of the intersection of Calvin Hall Road and Harrisburg Road. The roundabout must meet the construction requirements of the SCDOT and any requirements of the County Technical Review Committee, as established by Section 9.1.3 of the Unified Development Ordinance adopted November 28, 2016.

(iii) Reserved.

(iv) Developer and Subsequent Developer shall dedicate at no cost to the County or the State of South Carolina right-of-way from the Property that is reasonably required for the construction and maintenance of the required transportation improvements to intersection of Calvin Hall Road and Harrisburg Road.”

**Section 5.** Section 5.01 of the Development Agreement, relating to Notices, is amended by adding at the end:

“To the Subsequent Developer:           D.R. Horton, Inc.  
  Attn: Brian Etheridge  
  8001 Arrowridge Blvd.  
  Charlotte, NC 28273

With Copy to:                               Bagwell Holt Smith P.A.

Attn: Michael R. Ganley  
111 Cloister Court, Suite 200  
Chapel Hill, NC 27514”

**Section 6.** Exhibit E of the Development Agreement, relating to Laws and Land Development Regulations, is amended to read:

“Exhibit E  
Laws and Land Development Regulations

1. Ordinance No. 2015-1369, zoning the Property Planned Development District.
2. Ordinance No. 2015-1370, approving this Development Agreement.
3. The Development Agreement Ordinance for Lancaster County, South Carolina: Ordinance No. 663.
4. Unified Development Ordinance of Lancaster County (UDO): Ordinance No. 309, as amended as of the Agreement Date. The UDO includes Ordinance No. 328, as amended, as of the Agreement Date and which is cited as the Land Development Regulations of Lancaster County. A copy of the UDO is filed in the County Planning Department.
5. Land Development Regulations of Lancaster County: See Unified Development Ordinance of Lancaster County.
6. Article V, Chapter 26, Lancaster County Code of Ordinances, Road Construction Standards.
7. Ordinance No. 2017-\_\_\_\_ approving the First Amendment to this Development Agreement.”

**Section 7.** County agrees to record this First Amendment with the Lancaster County Register of Deeds within fourteen (14) days of the execution of this First Amendment.

**Section 8.** (A)(1) The County represents that it has approved this First Amendment by adoption of Ordinance No. 2017-\_\_\_\_ in accordance with the procedural requirements of the South Carolina Local Government Development Agreement Act, codified as Sections 6-31-10 to -160, Code of Laws of South Carolina 1976, as amended, Lancaster County Ordinance No. 663 and any other applicable law.

(2) The County represents that prior to the final reading of Ordinance No. 2017-\_\_\_\_ that at least two public hearings were held after publication of the required notice and the publication of a notice of intent to consider a proposed development agreement.

(B) Subsequent Developer represents and warrants that the execution, delivery and performance by the individual or entity signing this First Amendment on behalf of Subsequent Developer has been duly authorized and approved by all requisite action on the part of Subsequent Developer.

**Section 9.** This First Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

**Section 10.** This First Amendment is effective upon its execution.



**IN WITNESS WHEREOF**, D.R. Horton, Inc., has caused this instrument to be executed by its duly authorized Division President, all by order and authority duly granted by its corporate board of directors, as of the day and year first above written.

**D.R. HORTON, INC.,**  
a Delaware corporation

\_\_\_\_\_  
Witness #1

By:

\_\_\_\_\_  
Brian Etheridge, Division President

\_\_\_\_\_  
Witness #2

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Brian Etheridge personally appeared before me this day and acknowledged that he is Division President of D.R. Horton, Inc., a Delaware corporation, and that he, being duly authorized to do so, executed the foregoing for and on behalf of said corporation.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

NOTARY SEAL

\_\_\_\_\_  
Signature of Notary Public  
My Commission Expires: \_\_\_\_\_

COUNTY SIGNATURES FOLLOW ON NEXT PAGE.

**IN WITNESS WHEREOF**, the County of Lancaster, South Carolina, has caused this instrument to be executed by its duly authorized Chair and Secretary, as of the day and year first above written.

**COUNTY OF LANCASTER,  
SOUTH CAROLINA**

\_\_\_\_\_  
Witness #1

By:

\_\_\_\_\_  
Steve Harper, Chair, County Council

\_\_\_\_\_  
Witness #2

\_\_\_\_\_  
Witness #1

By:

\_\_\_\_\_  
Larry Honeycutt, Secretary, County Council

\_\_\_\_\_  
Witness #2

STATE OF SOUTH CAROLINA  
COUNTY OF LANCASTER

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Steve Harper personally appeared before me this day and acknowledged that he is Chair of the County Council of Lancaster County, South Carolina, a body politic and corporate, a political subdivision of the state of South Carolina, and that he, being duly authorized to do so, executed the foregoing for and on behalf of said County and that Larry Honeycutt personally appeared before me this day and acknowledged that he is Secretary of the County Council of Lancaster County, South Carolina, a body politic and corporate, a political subdivision of the state of South Carolina, and that he, being duly authorized to do so, executed the foregoing for and on behalf of said County..

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2017.

NOTARY SEAL

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires: \_\_\_\_\_

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