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LANCASTER, SC

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STATE OF SOUTH CAROLINA

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ORDINANCE NO. 2018-1491

COUNTY OF LANCASTER

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**AN ORDINANCE**

**TO APPROVE A SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT AVONDALE DEVELOPMENT; TO AUTHORIZE CERTAIN COUNTY OFFICIALS TO EXECUTE AND DELIVER THE SECOND 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, and by the Development Agreement Ordinance for Lancaster County, South Carolina, Ordinance No. 663, codified as Section 9.2.18 in Chapter 9 of the Unified Development 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.

(d) at the request of the Subsequent Developer, Council passed Ordinance No. 2017-1478, which approved the First Amendment to the Development Agreement Avondale Development (the "First Amendment") and the First Amendment, among other things, approved amendments relating to certain road improvements at the intersection of Calvin Hall Road and Harrisburg Road.

(e) Subsequent Developer has acquired additional property which Subsequent Developer is requesting Council to include in the Development Agreement

B. It is the purpose of this ordinance to approve a second amendment to the Development Agreement with the amendment providing for additional property of Subsequent Developer to be included in the Development Agreement.

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

A. The Council Chair and Council Secretary are each authorized, empowered and directed to execute, acknowledge and deliver a Second Amendment to the Development Agreement Avondale Development between D.R. Horton, Inc., a Delaware corporation and the County of Lancaster (the "Second Amendment") in the name and on behalf of the County of Lancaster. The form of the Second Amendment is attached hereto as Exhibit A and all terms, provisions and conditions of the Second Amendment are incorporated herein by reference as if the Second Amendment were set out in this ordinance in its entirety. By adoption of this ordinance, the Council approves the Second Amendment and all of its terms, provisions and conditions. The Second 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 Second 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 Second 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 Second 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.**

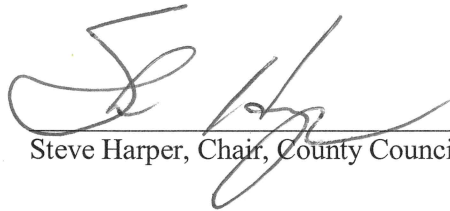
This ordinance is effective upon Third Reading.

SIGNATURES FOLLOW ON NEXT PAGE.

AND IT IS SO ORDAINED

Dated this 14<sup>th</sup> day of May, 2018.

LANCASTER COUNTY, SOUTH CAROLINA

  
Steve Harper, Chair, County Council

  
Larry Honeycutt, Secretary, County Council

Attest:

  
Sherrie Simpson, Clerk to Council

Planning Commission Public Hearing:	March 20, 2018
First Reading:	April 9, 2018
Second Reading:	April 23, 2018
Council Public Hearing:	April 23, 2018
Third Reading:	May 14, 2018

**Exhibit A to Ordinance No. 2018-1491**

**Second 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	)	SECOND AMENDMENT TO THE
	)	DEVELOPMENT AGREEMENT
COUNTY OF LANCASTER	)	AVONDALE DEVELOPMENT

This **SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE AVONDALE DEVELOPMENT** ("Second Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2018, 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**, at the request of Subsequent Developer, the First Amendment to the Development Agreement Avondale Development was approved by the County by passage of Ordinance No. 2017-1478 and the First Amendment, among other things, approved amendments relating to certain road improvements at the intersection of Calvin Hall Road and Harrisburg Road. The First Amendment is recorded in the records of the County Register of Deeds in Deed Book 1126, Pages 216-221;

**WHEREAS**, Subsequent Developer has acquired additional property which Subsequent Developer is requesting to be included in the Development Agreement;



**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 Second Amendment to amend provisions of the Development Agreement so as to include additional property of Subsequent Developer.

## **SECOND AMENDMENT**

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

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

**Section 2.** The first recital to the Development Agreement is amended to read:

“WHEREAS, Developer has obtained the right to acquire certain real property consisting of approximately ~~179.35~~ 188.975 acres, more or less, located between Calvin Hall Road and Harrisburg Road in the Indian Land section of the County and known as the Avondale development.”

**Section 3.** The definitions in Section 1.02 of the Development Agreement, as last amended by the First Amendment, are further amended by adding definitions for “Ordinance No. 2018-1490,” “Ordinance No. 2018-1491,” and “Second Amendment”:

“(11A) ‘Ordinance No. 2018-1490’ means Ordinance No. 2018-1490 of the County zoning the land identified as Tax Map No. 0005-00-090.00 as Planned Development District (PDD-27).

(11B) ‘Ordinance No. 2018-1491’ means Ordinance No. 2018-1491 of the County approving the Second Amendment.

(14A) ‘Second Amendment’ means the Second Amendment to the Development Agreement Avondale Development, dated \_\_\_\_\_, 2018, and approved by passage of Ordinance No. 2018-1491.”

**Section 4.** Section 1.05 of the Development Agreement, relating to zoning, is amended to read:

“The Property is zoned Planned Development District pursuant to Ordinance No. 2015-1369 and Ordinance No. 2018-1490.”

**Section 5.** Exhibit A of the Development Agreement, relating to property description, is amended to read:

“Exhibit A  
Property Description

Avondale Development

Tax Map No. 1 – 0005-00-077.00  
Tax Map No. 2 – 0005-00-076.00  
Tax Map No. 3 – 0005-00-075.01  
Tax Map No. 4 – 0005-00-075.00  
Tax Map No. 5 – a portion of 0005-00-074.03  
Tax Map No. 6 – 0005-00-093.04  
Tax Map No. 7 – 0005-00-093.05  
Tax Map No. 8 – 0005-00-092.00  
Tax Map No. 9 – 0005-00-091.03  
Tax Map No. 10 – 0005-00-091.00  
Tax Map No. 11 – 0005-00-089.00  
Tax Map No. 12 – 0005-00-089.01  
Tax Map No. 13 – 0005-00-083.00  
Tax Map No. 14 – 0005-00-079.01  
Tax Map No. 15 – 0005-00-078.00  
Tax Map No. 16 – 0005-00-090.00 (owned by Subsequent Developer)”

**Section 6.** Exhibit E of the Development Agreement, as last amended by the First Amendment, 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. 2017-1478 approving the First Amendment to this Development Agreement.
8. Ordinance No. 2018-1490, zoning the land identified as Tax Map No. 0005-00-090.00 as Planned Development District (PDD-27).
9. Ordinance No. 2018-1491, approving the Second Amendment to this Development Agreement.”

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

**Section 8.** (A)(1) The County represents that it has approved this Second Amendment by adoption of Ordinance No. 2018-1491 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. 2018-1491 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 Second 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 Second 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.** Upon submission of appropriate documentation of the expenditure, Subsequent Developer agrees to reimburse the County, not later than May 31, 2018, for the County's reasonable unreimbursed actual costs related to this Second Amendment. The cost reimbursement is limited to County payments to third-party vendors and service providers, including, but not limited to, attorneys.

**Section 11.** Upon execution of this Second Amendment by the parties, the Development Agreement consists of the Development Agreement as originally executed and recorded as amended by the First Amendment and this Second Amendment.

**Section 12.** This Second Amendment is effective upon its execution.

SIGNATURES FOLLOW ON NEXT PAGE.



**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: **THIS IS AN EXHIBIT AND NOT FOR EXECUTION**  
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 \_\_\_\_\_, 2018.

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: **THIS IS AN EXHIBIT AND NOT FOR EXECUTION**  
Steve Harper, Chair, County Council

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

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

By: **THIS IS AN EXHIBIT AND NOT FOR EXECUTION**  
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 \_\_\_\_\_, 2018.

NOTARY SEAL

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

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