LLP Draft 7/25/22

Instrument Prepared By [__________________]
Brief Description for Index: Haywood Glen Phase 4
Parcel Identification Number: 1755-94-0339
Parcel Identifier: Deed Book 017010, Page 02347

Mail After Recording to: Jason Brown, Director of Development Services, Town of Knightdale, 950 Steeple Square Ct., Knightdale, NC 27545

STATE OF NORTH CAROLINA

WAKE COUNTY

SECOND AMENDMENT TO OLD KNIGHT ROAD SUDIVISION UTILITY ALLOCATION AGREEMENT

This Second Amendment to the Utility Allocation Agreement for Haywood Glen Subdivision (the "Amendment") is made to be effective this ______ day of _________________, 2022, by and between the Town of Knightdale, a municipal corporation existing under the laws of the State of North Carolina ("Town"), and D.R. HORTON – TERRAMOR, LLC, a Delaware limited liability company ("Developer").

W I T N E S S E T H:

WHEREAS, D.R. HORTON – TERRAMOR, LLC is the developer of Haywood Glen subdivision in Knightdale, NC (the "Project") and possesses rights and obligations set out in the Utility Allocation Agreement ("UAA"), dated October 25, 2018 and recorded in Book 17276, Page 0100, Wake County Registry, as amended by that First Amendment to Old Knight Road Subdivision Utility Allocation Agreement, dated September 15, 2021 and recorded in Book 18755, Page 2601, Wake County Registry; and

WHEREAS, Developer, by deed recorded in Book [_______], Page [_____], Wake County Registry, is the fee simple owner of one or more parcels of land consisting of 36.30 acres, more or less, identified as Wake County PIN 1755-94-0339, within or to be annexed to the corporate limits of the Town concurrently with execution of this Amendment, more particularly

described on **Exhibit A**, (the “Property”), and Developer shall warrant and defend the Property against the claims of all persons whomsoever; and

WHEREAS, the Property lies across Old Knight Road from the Haywood Glen Subdivision developed by Terramor Homes LLC, and the Town and Developer agree that the Property should be annexed to and be developed as Phase 4 of the Haywood Glen Subdivision and be subjected to the provisions of this Amendment and the UAA dated October 25, 2018 recorded in Book 17276, Page 0100, Wake County Registry; and

WHEREAS, the terms of this Amendment imposing obligations upon Developer to develop the Property shall not become effective until its annexation, which must occur on or before **[______]** 30, 2023, or this Amendment shall terminate, become void and of no further effect; and

WHEREAS, the Town has approved a Planned Unit Development (“GR-3 PUD” and “RMX-PUD”) rezoning (ZMA-4-21) and subdivision plan for the subject Property, by Ordinance #22-02-16-001, said Ordinance and associated GR-3 PUD and RMX-PUD documents (collectively “the Master Subdivision Plan”), being on file with the Town Planning Department, and the Town zoning and plan approval being conditioned upon annexation of the Property to the Town corporate limits, and conditioned further upon the Property becoming Phase 4 of the adjacent Project; and

WHEREAS, the amendment of the Haywood Glen Subdivision UAA to include the subject Property and these mutual agreements and obligations is the purpose of this Amendment; and

WHEREAS, the Master Subdivision Plan proposes a residential subdivision of not more than 103 residential dwelling units and a ±1.36-acre non- residential village square compliant with all Town ordinances and development standards, to be built as Phase 4 of the Haywood Glen Subdivision, and Town has agreed to allocate utilities for the development; and

WHEREAS, Developer has committed to Property enhancements as shown on the Master Subdivision Plan and as described in this Amendment in order to satisfy the Town's Water Allocation Policy and to supplement the tax base of the Town and contribute to the quality of life of current and future Town residents.

NOW, THEREFORE, in consideration of Developer’s development of the Property in accordance with the terms hereof and Town's allocation of water and wastewater capacity as described herein for the same, and other mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. The Property as described on **Exhibit A** is hereby annexed to Haywood Glen Subdivision as Phase 4 and the UAA dated October 25, 2018 is hereby amended to provide for such annexation.

SECTION 2. The Property as described on **Exhibit A** shall be subject to the obligations and be entitled to the benefits of the UAA, except:

The Town shall reserve water and sewer capacity in an amount sufficient to serve 103 residential dwellings and a ±1.36-acre non- residential village square to be developed and constructed in Phase 4 on the Property described **Exhibit A**; this reservation shall be in addition to capacity reserved for previous Phases of Haywood Glen Subdivision, and shall be allocated to Developer upon recordation of the Phase 4 Subdivision Plan shown on **Exhibit B**.

SECTION 3. Developer Filings.

A. Annexation & Phasing. Developer acknowledges that the Project is not currently within the corporate limits of the Town, and that a petition in proper form has been filed for the Property to be annexed. Developer warrants that the Property, upon annexation, will be developed as Phase 4 of Haywood Glen Subdivision in accordance with the Phasing Plan incorporated herein as **Exhibit C**.

B. Master Subdivision Plan Approval Schedule. Town approved a Master Subdivision Plan for the Property, deemed to be a "Site Specific Development Plan" pursuant to Section 15.18 of the Unified Development Ordinance of Town, and thus Developer is entitled to "Vested Rights" as set forth in such Ordinance. Developer intends to develop the Property in accordance with the Phase 4 Master Subdivision Plan, and Town shall not unreasonably deny a submitted site plan or other permit application that substantially conforms to the approved Master Subdivision Plan and Standard Specifications. Without limiting the generality of the foregoing, it is expressly acknowledged that Town determination as to whether Infrastructure required to be provided by Developer is sufficient to meet the requirements of any subdivision site plan, the applicable calculation shall be made based on the approved Master Subdivision Plan for the Project as a whole. However, the amount of improved open space dedicated or proposed to be dedicated by each subdivision site plan shall equal or exceed the amount of open space required to be dedicated under the terms of the UDO, taking into account the previously dedicated open space submitted for site subdivision plan approval.

SECTION 4. Infrastructure to be Provided by Developer. Except as set forth in this Agreement, Developer shall design, construct, and install at its expense all required Infrastructure in accordance with the design criteria set forth in the Standard Specifications.

A. Procedure. The plans for Infrastructure shall be prepared by a licensed engineer employed by Developer and approved by Town, with such approval not to be unreasonably withheld. Developer shall obtain, at its expense, all required permits and approvals from all governmental agencies prior to commencing construction of the Infrastructure. Town agrees to cooperate with and reasonably assist Developer in its efforts to obtain necessary permits, approvals, or licenses from other governmental entities necessary or beneficial for the development of the Property in accordance with this Agreement and as otherwise approved by Town.

B. As-Built Drawings. Developer shall provide Town a complete set of as-built drawings showing all the Infrastructure, if any, and any easements as located by a North Carolina licensed surveyor and certified by Developer's engineer of record. The as-built drawings shall be submitted in a digital format compatible with the Town's GIS system and approved by the Town Manager prior to final acceptance of all public infrastructure.

C. Contracts for Public Infrastructure. Developer will ensure that all contracts for engineering, design, construction, and/or construction management for Public Infrastructure include specific language that provides (1) that the contract does not limit any warranties provided under operation of statute or common law concerning the engineering, design, construction, adequacy, or performance of the Improvements; (2) the contract does not limit or shorten any statute of limitations provided by law regarding claims concerning the engineering, design, construction, adequacy, or performance of the Improvements; (3) the Town is named a third-party beneficiary of the contract for the purpose of making any claims regarding the engineering, design, construction, adequacy, or time of installation of the Improvements; and (4) all warranties available to the Developer under the contract are, in addition to, available and assignable to the Town. Developer shall provide or acquire all easements and/or right-of-way necessary for all Infrastructure.

D. City of Raleigh and State of North Carolina Approval of Utility Plans. Sanitary sewer lines and water distribution infrastructure to serve the Haywood Glen Phase 4 development shall be constructed at Developer's sole expense in accordance with plans approved by the State of North Carolina, City of Raleigh and Town. Town shall facilitate any discussions required with the City of Raleigh or State of North Carolina with respect to the Sewer and Water Infrastructure.

E. Public Road Improvements. The required public right-of-way dedication and street improvements related to Haywood Glen Phase 4 development shall be governed by this Section 4(E) and, where applicable, the requirements of the North Carolina Department of Transportation, the approved Master Subdivision Plan and the Standard Specifications.

F. Easements. The parties acknowledge that the installation of the public infrastructure may require Developer to acquire certain easements or rights-of-way located outside the Property (the "Off-site Easements") or North Carolina Department of Transportation (NCDOT)

Right-of-Way Encroachment Agreements. Developer shall acquire the Off-site Easements at its sole cost and expense; provided that if, after reasonable efforts, Developer is not able to acquire one or more of the Off-site Easements or rights-of-way, Developer may, at its discretion and by written notice to the Town, request the Town to acquire those Off-site Easements or rights-of-way through its exercise of eminent domain or similar proceedings. The request shall describe the easement or right-of-way needed and include copies of offers or other evidence of unsuccessful acquisition efforts. After notice to the affected property owner and upon finding that the easement or right-of-way is needed by the Town or other public authority for extension of street, water, sewer or other public facilities, the Town may exercise its power of eminent domain to acquire the same. All expenses incurred by the Town in acquiring the easements, including the purchase price or court- awarded compensation, appraisal fees, attorneys' fees and court costs, shall be reimbursed by Developer on demand. The Off-site Easements and NCDOT Encroachment Agreements acquired by Developer shall be in a form reasonably acceptable to the Town and shall, in any event, be dedicated to the Town or another public agency designated by Town.

SECTION 5. Single-Family Dwelling Construction Standards. Dwellings constructed on the Property shall comply with those standards set forth on **Exhibit D**.

SECTION 6. Non- Residential Village Square Standards. The non-residential village square shall comply with those standards set forth in **Exhibit E**.

SECTION 7. Community Design Exceptions. Developer hereby agrees that the following zoning conditions were granted or included by the Town in the approved Master Subdivision Plan:

7.1 Single-family dwelling lots accessed via a driveway that connects to the fronting public right-of-way may be a minimum of 60 ft. wide. Side setbacks for front-loaded units shall be a minimum of 5 feet. Additionally, all dwellings will be served by driveways that are a minimum length of 25 feet.

7.2 Mass grading is permitted on 34 front-load lots, not including Lots 16-23 and 89-92, which either border a Neuse River Buffer or a preserved tree stand in Phase 2.

7.3 The maximum allowable density of the GR3 zoning district may be exceeded from 3 units per acre to 3.37 units per acre.

7.4 The active recreational open space requirement for the development may be reduced by 0.15 acres. The applicant will provide 2.09 acres of active open space, rather than the UDO requirement of 2.24 acres.

7.5 A 10 foot Type A landscape buffer yard will be provided between the RMX and GR3 zoning districts, rather than the UDO required 20 foot Type B buffer. A stained split rail fence, consistent in design and color with previous phases of Haywood Glen will be installed along adjoining residential lot lines. The buffer and fence will be installed prior to first phase plat recordation.

SECTION 8. Community Amenities: On-Site Recreational Amenities for Phase 4. Developer acknowledges that Town requires on-site amenities for the residents of the Property and Project for the following reasons, among others: (i) the size, scope, and location of the Project; (ii) to ensure a suitable tax base to support the increase in municipal services as a result of the Project; and (iii) to increase the desirability of the Property for residents and potential residents of Town. All onsite recreational amenities shall be provided at the expense of Developer and shall be maintained by Developer or the Project's Owners' Association as successor to Developer's responsibilities and liabilities for maintenance of the amenities as provided herein. Developer's proposed amenities for the Property shall include at a minimum the following, which shall be deemed Private Infrastructure unless designated otherwise below:

A. Approximately 7.26 acres (3.59 acres of active [2.09 acres of active excluding the RMX-PUD] and 3.67 acres of passive open space) consisting of IPEMA Certified Playground Equipment, great lawn, benches, fitness course, pavilions, landscaping and replanting in substantially the locations shown on the Master Subdivision Plan.

B. All Onsite Amenities will be owned and maintained by Developer or transferred to an Owners' Association, that shall be responsible for its maintenance. If Developer or any successor in interest desires to materially change, substitute, and/or remove any community amenity included in an approved Master Subdivision Plan and/or Site Plan, Town first must consent in writing to such change or removal, such consent not to be unreasonably withheld, conditioned, or delayed.

SECTION 9. Reimbursements. Any reimbursements or credits available to Developer hereunder for costs related to providing Infrastructure will be provided in accordance with Town and/or City of Raleigh policies in effect at the time of completion of such Infrastructure. Town makes no representation, expressed or implied, that any reimbursement or credit will be available to or applied for Developer's benefit.

SECTION 10. Water and Sewer Capacity Reservation, Allocation & Fees.

A. Water and sewer allocation from the Town for the Property shall be reserved in an amount appropriate to serve 103 residential dwellings and a ±1.36 a non- residential village

square. Such reserved capacity from the Town shall be allocated to new development on the Property once Developer's Master Subdivision Plan for Phase 4 of Haywood Glen is recorded.

B. Subject to denial of approval from another superior governmental agency, and conditioned upon the timely performance by Developer of its obligations set forth described in Sections 4 and 8 of this Agreement, Town shall maintain the water and sewer allocation available for the Property in accordance with time periods established in the approved Phasing Schedule. The Town Development Services Department shall maintain a public list of all assigned flows and the Town's available capacity for allocation of water and sewer.

C. The amount of flow assigned for a development shall be the average flow requirement for the type of development as determined by Town and/or the City of Raleigh sufficient to support the development approved, which is currently 250 gallons per day per unit.

D. Developer and Town acknowledge that the Master Subdivision Plan was submitted under the Town's Water Allocation Policy (Ordinance # 13-06-19-001) then in effect, which required a project be awarded at least 50 total points to merit water allocation. Developer and Town further acknowledge that the development of the Property is a continuing phase of an existing development which previously achieved compliance, and thus shall also be considered in compliance.

SECTION 11. **Force Majeure.** The parties hereto shall not be liable for any failure to perform hereunder as a result of an external event or events beyond the control of the party claiming force majeure, including acts of the United States of America, acts of the State of North Carolina (including the denial of or delay in granting permits that Developer or Town has, respectively, pursued in good faith), embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism, civil riots, or acts of terrorism provided, the party claiming such force majeure (i) shall notify in writing the other party promptly upon becoming aware that the performance of any duty or obligation required under this Agreement will be delayed or prevented by a force majeure and (ii) shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete performance in as timely a manner as possible. Notwithstanding the foregoing, the Town's provision of municipal services, including water and sewer, to the Property is conditioned upon Developer's timely performance of its obligations hereunder.

SECTION 12. **Indemnification of Town.**

A. As used in this Section, "Charges" means claims, lawsuits, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included within "Charges" are (1) interest; (2) reasonable attorney's fees; and (3) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations,

ordinances, rules, or orders, including any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). In this Indemnification, "Town" includes Town and its officers, officials, employees, independent contractors, and agents, but shall not be construed to include Developer.

B. Indemnification. To the maximum extent allowed by law, Developer shall defend, indemnify, and save harmless Town from and against all claims for loss of life, personal injury and property damage, as well as Charges that arise in connection with this Agreement or as a result of negligent or willful acts or omissions of Developer or Developer's contractors or subcontractors or anyone directly or indirectly employed by or contracting with any of them or anyone for whose acts any of them may be liable in accordance with this Section. In performing its duties under this Section, Developer shall, at is sole expense, defend all claims with legal counsel reasonably acceptable to Town.

C. Other Provisions Separate. Nothing in this Section shall affect any warranties in favor of Town that are otherwise provided in or arise out of this Agreement. This Section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

D. Survival. With respect to Indemnification for which Developer is responsible pursuant to Section 10(B), which are caused by third-parties *(i.e.,* by parties other than Town), this Section shall remain valid despite termination of this Agreement (whether by expiration of the term or otherwise) for one (1) year after expiration of the applicable statute of limitations (and for the duration of any claims brought within the time period specified above) for such third-party claims. This Section shall automatically terminate after four (4) years following the termination of this Agreement (whether by expiration of the term or otherwise) with respect to all other Charges.

E. Limitations of Developer's Obligation. Subsections "A" and "B" above shall not require Developer to indemnify or hold harmless Town against liability for Charges resulting from the negligence or willful act or omission of Town.

SECTION 13. Written Consents from Town. Where this Amendment refers to written approvals or consents to be given by Town and the person or position that may give consent is not identified, the authority to give such approvals shall be deemed to be with the Town Manager or his designee and Developer may rely on such authority and approvals to no detriment of their own. approval required by this Amendment shall not be effective unless

given in writing. Unless provided otherwise herein, the written approvals or consents required by Town shall not be unreasonably withheld, conditioned, or delayed.

SECTION 14. No Waiver of Governmental Authority or Discretion. Nothing in this Amendment shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Knightdale Town Council in a manner not permitted by law. Town shall incur no liability to Developer for any losses or damages it may incur as result of or in connection with Town's exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination regarding the same.

SECTION 15. Miscellaneous.

A. Choice of Law and Forum. This Amendment shall be deemed made in Wake County, North Carolina. This Amendment shall be governed by and construed in accordance with the laws of North Carolina. Except for any cause of action for which a federal court has exclusive jurisdiction, the exclusive forum and venue for all actions arising out of this Amendment shall be the North Carolina General Court of Justice, in Wake County. Such actions shall neither be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

B. Waiver. No action or failure to act by either party shall be deemed to constitute a waiver of any of its rights or remedies that arise out of this Amendment, nor shall such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

C. Severability. If any provision of this Amendment shall be determined by a court of competent jurisdiction to be unenforceable, the unenforceable provisions shall be severed from the remainder of this Amendment, which shall remain enforceable in accordance with its terms, and the severed provision shall be deemed to be replaced with an amended provision that is as near to achieving the intent of the parties hereto as the severed but is not unenforceable.

D. No Third-Party Rights Created. This Amendment is intended for the benefit of Town and Developer and their successors and assigns as permitted under this Amendment and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement under this Amendment.

E. Principles of Interpretation and Definitions. In this Amendment, unless the context requires otherwise: (1) the singular includes the plural and the plural, the singular. The pronouns "it" and "its" include the masculine and feminine. References

to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "includes," and "including" are to be read as if they were followed by either the phrase "without limitation" or "but not limited to." (2) References to a "Section" or "section" shall mean a section of this Amendment. (3) "Contract and "Amendment," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day. (9) Attorneys for all parties have participated in the drafting of this document, and no future interpretation shall favor or disfavor one party over another on account of authorship. (10) All exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein.

F. Covenant of Good Faith and Fair Dealing. The Town and Developer shall cooperate and act in good faith to perform their obligations under this Amendment and shall refrain from any action inconsistent with their contractual rights or obligations that would prejudice or injure the other party's rights to receive the benefits of this Amendment.

G. Consideration. The parties hereto agree that this Amendment is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time saving a substantial amount of money for the development by relieving it of certain infrastructure expenses for which it would otherwise have been obligated. The major subdivision, single-family dwelling construction standards and the project enhancements required pursuant to the Town's Water Allocation Policy (Ordinance # 16-09-06-001) are considered by the parties to be the minimum additions to the Town's corporate tax basis sufficient to enable the Town to finance the provision of municipal services to the Property. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement.

H. Construction of Amendment. This Amendment amends the UAA dated October 25, 2018 between Town and Developer in order to add Phase 4 to the Haywood Glen subdivision. In the event of a conflict or inconsistency between this Amendment and any currently existing agreement between Town and Developer, the provisions of this Amendment shall control. In the event of a conflict or inconsistency between

this Amendment and the Standard Specifications, the provisions of this Amendment shall control.

I. Amendment. This Amendment shall not be modified in any manner except in writing, signed by each of the parties.

J. Applicability of Amendment. This Second Amendment amends the October 25, 2018 UAA, as amended by the First Amendment, dated September 15, 2021, and shall be applicable to the Property and the Master Subdivision Plan as approved by Town and as the same shall thereafter be amended or modified by agreement of the then-owner(s)/developer(s) of the Property and Town in writing.

K. Preambles. The preambles to this Amendment are a part of the agreement of the parties as set forth in this Amendment and shall be binding upon the parties in accordance with their terms.

L. Acreages. Where specific acreages and distances are set forth herein, such amounts are subject to change based on actual conditions on the Property and necessary or desirable adjustments made during construction.

M. Further Assurances. Town and Developer shall, at the request of the other, take such further actions and enter into such further agreements as are reasonably required to effectuate the intent of this Agreement.

N. Multiple Originals and Counterparts. This Amendment may be executed in multiple originals and separate counterparts each of which shall constitute an original and all of which taken together shall constitute the whole Amendment. Facsimile signatures shall be deemed to have the same effect as originals.

SECTION 16. **Term.** The term of this Amendment shall be a period of six (6) years following execution by both parties. Unless otherwise agreed by the parties, the rights and interests conveyed by the Town to Developer pursuant to this Amendment shall terminate on or about **[_______] [___],** 2028.

SECTION 17. **Real Covenant: Delegation of Duties.** This Amendment shall be recorded in the office of the Register of Deeds of Wake County, North Carolina and shall be a real covenant running with and appurtenant to the Property, and any portion thereof, as it may be subdivided or recombined, and shall apply to the development of all or any portion of the Property. Developer may assign all or a portion of its interest in this Amendment and/or be released from all or a portion of its obligations under this Amendment only upon the assumption of all or a portion of Developer's obligations hereunder by a successor in title to

the Property and only with the prior written consent of Town. Town's consent shall not be unreasonably withheld, conditioned or delayed and in any event shall not be withheld if the party assuming all or a portion of Developer's obligations possesses adequate financial resources, ownership interests and development expertise needed to complete the requirements of this Amendment being assigned, and provided Developer delegates, and proposed assignee assumes and agrees to fulfill, in writing, all of Developer's duties set forth in this Amendment which are being assigned.

SECTION 18. **Consideration: Authority to Enter Agreement**. The parties hereto agree that this Amendment is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time relieving Town of the expense of constructing additional infrastructure and providing for a predictable increase in the real property tax base with development of the Property as provided herein. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement. This Amendment was ratified by the Town Council at an open meeting on **[________] [___]**, 2022 following any notice required by applicable law, if any. Such ratification shall be deemed to satisfy any requirements for Town Council approval of any item contained herein whether or not specifically stated in such ratification.

SECTION 19. **Default by Developer.** The Town's Development Services Director or his designee shall conduct an annual investigation on each anniversary date of recording this Amendment to determine if Developer is in compliance with the construction obligations attached hereto. In addition to other remedies provided for in this Amendment or by law or equity, any material breach which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance shall entitle the Town to require specific performance of Developer's obligations thereunder, to require Developer to engage another developer and to recover such damages as to which the Town may be entitled, plus reasonable attorneys' fees and all costs of any litigation to enforce the Town's rights and interests as set out herein. Furthermore, the Town may halt and enjoin further development activities on the Property by withholding the issuance of permits, map recordings, and/or utility extension or connections for any period of time within which the development remains in material breach which is uncured for a period of thirty (30) days after receipt of written notice of non-compliance form the Town. Any failure of the Town to exercise any right or remedy as provided for herein shall not be deemed a waiver of the Town's right to strictly enforce Developer's obligations in any other instance.

SECTION 20. **Default by Town.** In the event of a default by the Town in performance of its obligations hereunder, Developer's sole relief and remedy shall be limited to a suit for specific performance of this Amendment and the UAA dated October 25, 2018, as amended

by the First Amendment, dated September 15, 2021. No monetary damages or costs shall be recoverable from Town.

SECTION 21. **<u>Mutual Estoppel</u>.** As consideration for entering into this Amendment, all parties certify as follows:

A. This Amendment supersedes any and all previous agreements regarding the Property, and neither party has asserted any claims, counterclaims, rights of offset against the other, and that no circumstances exist which would justify cancellation or termination of the Amendment.

B. In consideration of the mutual promises contained herein and other good and valuable consideration, Developer, on behalf of itself and its affiliates, divisions, parents, subsidiaries, predecessors, successors, assigns, agents, employees, officers, directors, shareholders, representatives and insurers, whether named herein or not, do hereby irrevocably and unconditionally release, remise, acquit and discharge the Town, including its elected officials, employees, former employees, representatives, attorneys, contractors and insurers, whether named herein or not, from any and all claims, demands, actions or causes of action, or suits of law or in equity for damages, declaratory relief, injunctive relief, or any other form of monetary or non-monetary relief, based upon legal or equitable theory of recovery, known or unknown, past, present, or future, suspected to exist or not suspected to exist, anticipated or not anticipated, which have arisen prior to the effective date of this Amendment and which are in any manner related to the subject matter of this Amendment.

C. In consideration of the mutual promises contained herein, and other good and valuable consideration, the Town, including its elected officials, employees, former employees, representatives, attorneys, contractors and insurers, whether named herein or not, except for past sums owed by Developer for fees, charges or reimbursements due pursuant to the Town's development fee schedule, for property taxes of general application, and/or due pursuant to applicable Sections of this Amendment, does hereby irrevocably and unconditionally release, remise, acquit and discharge Developer, its affiliates, divisions, parents, subsidiaries, predecessors, successors, assigns, agents, employees, former employees, officers, directors, shareholders, representatives, attorneys, contractors and insurers, whether named herein or not, from any and all claims, demands, actions or causes of action, or suits of law or in equity for damages, declaratory relief, injunctive relief, or any other form of monetary or non-monetary relief, based upon any legal or equitable theory of recovery, known or unknown, past, present, or future, suspected to exist or not suspected to exist, anticipated or not anticipate, which have arisen prior to the effective date of this Amendment and which are in any manner related to the subject matter of this Amendment.

SECTION 22. Except as where in conflict with the terms of this Amendment, the terms of the October 25, 2018 Agreement, as amended by the First Amendment, dated September 15, 2021, shall and do hereby remain in full force and effect.

IN WITNESS WHEREOF, Town and Developer have caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

DR HORTON- TERRAMOR LLC.

By:________________________________

Name:______________________________

Title:_______________________________

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: _____________________, as _______________ of DR Horton – Terrmaor LLC.

Date: ____________________, 20_____

____
[Notary’s signature as name appears on seal]

____
[Notary’s printed name]

My commission expires: ________________

[Affix Official Seal in space above]

ATTEST: TOWN OF KNIGHTDALE

By:_________________________________ By:_________________________________

__________________, Town Clerk

NORTH CAROLINA
WAKE COUNTY

I certify that _________________, Town Clerk of the Town of Knightdale, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed _______________________ sign the foregoing document, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Date: ____________________, 20_____

____
[Notary's signature as name appears on seal]

____
[Notary's printed name]

My commission expires: ________________

[Affix Official Seal in space above]

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

____
Town Finance Officer Date

LIST OF EXHIBITS

Exhibit A Phase 4 Property Description

Exhibit B Phase 4 Master Subdivision Plan/Planned Unit Development

Exhibit C Phase 4 Phasing Schedule

Exhibit D Phase 4 Single Family Dwelling Construction Standards

Exhibit E Phase 4 Non- Residential Village Square Standards

Exhibit F Phase 4 Property Enhancements for Bonus Points

Exhibit G Old Knight Road Roundabout Improvements

EXHIBIT A

Description of Phase 4 Property

All that certain parcel of land situated in the Township of St. Matthews, County of Wake, State of North Carolina, being more particularly bounded and described as follows:

BEGINNING at an iron stake, Joe Horton's corner, thence South 86 degrees 12 minutes East 1,356 feet to an iron stake; thence North 4 degrees 48 minutes East 1,780 feet by an oak tree in line to the center of the road; thence with said road South 34 degrees West 540 feet, South 54 degrees West 485 feet, North 86 degrees 12 minutes West 740 feet to an iron stake; thence South 3 degrees 48 minutes West 1,003 feet to the POINT OF BEGINNING.

Containing 36.3 acres of land according to survey and plat made by W.P. Massey, surveyor, June 4th, 1938, and being the second tract conveyed to C.N. Robertson by J.H. Hester and wife Mattie M. Hester in deed dated November 2, 1938 and recorded in the Wake County Registry.

Subject to all covenants and agreements of record.

Deed Reference: Deed Book 8389, Page 1242

EXHIBIT B

Phase 4 Property Master Subdivision Plan

OLD KNIGHT ROAD - 60' PUBLIC R/W
NCSR # 2232

HORTON ROAD PUBLIC 60' R/W
(N.C.S.R. 2124)

HORTON MILL DR

SITE DATA

BUILDING SETBACKS

STREET TABLE

FOR REVIEW ONLY-
NOT FOR CONSTRUCTION
PLAN IS SUBJECT TO REVISIONS DURING
THE PRELIMINARY APPROVAL PROCESS

LEGEND

GRAPHIC SCALE

THIS DRAWING IS THE PROPERTY OF:
The Spaulding Group, PA

ALLEY SECTION

LOCAL RESIDENTIAL STREET SECTION
W/PARALLEL PARKING ONE SIDE

LOCAL RESIDENTIAL STREET SECTION
W/PARALLEL PARKING

LOCAL RESIDENTIAL STREET SECTION

URBAN AVENUE SECTION
OLD KNIGHT ROAD WIDENING

HAYWOOD GLEN SUBDIVISION-PHASE 4
TOWN OF KNIGHTDALE, WAKE COUNTY, NORTH CAROLINA
PLANNED UNIT DEVELOPMENT MASTERPLAN
OVERALL SITE PLAN

DRAWING SHEET C-1.0

PROJECT NUMBER 981-20

THE SPAULDING GROUP, PA

<u>EXHIBIT C</u>

Phase 4 Property Phasing Schedule

Developer shall record all of the lots approved for the Phase 4 Property in two phases within five (5) years of the effective date of this Amendment.

EXHIBIT D

Single-Family Dwelling Construction Standards

1. Single-family 2 story homes built on lots at least 60-feet wide will have a minimum heated area of 2,000 square feet.
2. Single-family 1 or 1.5 story homes built on lots at least 60-feet wide will have a minimum heated area of 1,600 square feet.
3. Single-family homes built on lots less than 60-feet wide will have a minimum heated area of 1,600 square feet.
4. Ninety percent (90%) of the single-family homes built on lots at least 60-feet wide will have a minimum house width of 40-feet. Ten percent (10%) of the single-family homes built on lots at least 60-feet wide will have a minimum house width of 35 feet.
5. The foundations for all single-family detached homes shall be raised to a minimum height of 14" above finished yard grade in the front and shall contain a minimum of 2 stair risers up to the front porch/stoop. The foundation height on both sides and the rear shall be raised to a minimum average height of 12" above average finished yard grade. The foundations shall be wrapped in either brick or stone on all sides.
6. All single-family homes will have a combination of two or more of the following materials on the front façade (not counting foundation): stone, brick, lap siding, fiber cement siding, shakes or board and batten unless the home is only stone or brick. When two materials are used, the materials shall be different but complementary colors. Vinyl may be used only for soffets, fascia and corner boards.
7. All single-family homes will have a front porch with a minimum depth of five feet. Front porch posts will be at least 6" x 6".
8. Main roof pitches (excluding porches) fronting the street for 2-story homes will be at least 8:12.
9. Main roof pitches (excluding porches) fronting the street for 1-story and 1.5-story homes will be at least 6:12 unless an alternate is approved by staff.
10. Garages will not protrude more than 6 feet from the front porch or stoop, and all garage doors shall contain window inserts.
11. For every 30 feet (or fraction) of continuous side elevation (calculated on a per floor basis), there shall be one window or door added to the side elevations. Any siding break on the side of the home such as a fireplace, side porch, wall offsets could be used as an alternate to windows.
12. There shall be a minimum 12" overhang on every gable end for every single-family home.

EXHIBIT E

Non- Residential Village Square Standards

1. The proposed use standards will restrict certain uses otherwise permitted in the RMX zoning district. This will encourage more neighborhood oriented and small businesses to better serve residents. The following principal uses shall be the only allowable uses on the 1.5-acre non-residential parcel at the comer of Old Knight Road and Horton Road, and shall be permitted by-right:
    a. Personal Services
    b. Professional Services
    c. Neighborhood Retail/Restaurant-2,000 sf or less
    d. Child/ Adult Day Care Center (6 or more people)
    e. Medical Services
    f. Studio - Art, dance, martial arts, music

    All residential uses are expressly prohibited. Additionally, "Smoke Shops" or any retail outlet that sells cigarettes, cigars, or other tobacco products; "Vape Shops" or any retail outlet selling electronic cigarette products, any retail outlet that mixes or sells liquids for electronic cigarettes; "Hemp" or "CBD" shops or any retail outlet that sells hemp or hemp-related products is expressly prohibited.
2. Potable water, sanitary sewer, and storm drainage will be stubbed to the RMX parcel prior to first phase plat recordation.
3. Street improvements, including curb, gutter, and sidewalks shall be made to the Old Knight Road and Horton Road frontages prior to first phase plat recordation.
4. The Phase 4 (overall) stormwater infrastructure will be oversized to accommodate future commercial development of the RMX parcel.
5. The RMX parcel shall never be owned by the Haywood Glen Homeowners Association.
6. The RMX parcel will be maintained by the developer in a manner consistent with the Haywood Glen Homeowners Association properties.
7. The developer will provide an infrastructure incentive package that is equal to the current market value of 52 standard asphalt parking spaces.
8. A 10-foot Type A landscape buffer yard will be provided between the RMX and GR3 zoning districts, rather than the UDO required 20 foot Type B buffer. A stained split rail fence, consistent in design and color with previous phases of Haywood Glen will be installed along adjoining residential lot lines. The buffer and fence will be installed prior to first phase plat recordation.
9. In accordance with the Master Plan, two ADA compliant sidewalks will be provided through the RMX parcel, connecting Jasmine View Way to both Old Knight Road and

Horton Road prior to first phase plat recordation. At time of commercial development, the sidewalk locations may be modified but not removed. A pet waste station, trash receptacle, and decorative column, consistent in style and color to previous phases of Haywood Glen, will be installed along each sidewalk connection. The column location will be at the NCDOT right-of-way entry point of each sidewalk/path.

10. The developer shall work with the Town of Knightdale and transit partners to explore the feasibility of adding a transit stop along the development's frontage, and will commit to making improvements as deemed appropriate.

EXHIBIT F

Phase 4 Property Project Enhancements for Bonus Point Compliance

Project Enhancement	**Points**
Base Points – Major Subdivision	15
PH 1 & 2 Resort Style Pool	2
PH 1 & 2 Deck/Patio Greater than 3,000 SF	3
PH 1 & 2 Water Apparatus	2
PH 1 & 2 Clubhouse with Bathhouse Only	3
Architectural	15
IPEMA Certified Playground Equipment	4
On-Street Parking	4
Enhanced Roadside Landscape	2
Total:	**50 Points**

** References to Phase 1 & 2 means that the Phase 4 Property will have access to those enhancements that are provided as part of Phase 1 & 2.

EXHIBIT F

Old Knight Road Roundabout Improvements

TIMMONS GROUP
NORTH CAROLINA LICENSE NO. C-1652

YOUR VISION ACHIEVED THROUGH OURS.

HAYWOOD GLEN PHASE 3
OLD KNIGHT ROAD, WAKE COUNTY, NORTH CAROLINA
ROAD IMPROVEMENTS (2 OF 2)

PRELIMINARY DO NOT USE FOR CONSTRUCTION