

**SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION
AGREEMENT
(Ayrshire)**

THIS SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT (“**Agreement**”) is made by and among **CITY OF GREEN COVE SPRINGS**, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 321 Walnut Street, Green Cove Springs, Florida 32043 (the “**City**”); **CLAY COUNTY DISTRICT SCHOOLS**, a body corporate and political subdivision of the State of Florida, whose address is 900 Walnut Street, Green Cove Springs, Florida 32043 (hereinafter referred to as “**School District**”); and **D.R. HORTON, INC. – JACKSONVILLE**, a Delaware corporation, whose address is 4220 Race Track Road, St. Johns, Florida 32259 (hereinafter referred to as the “**Developer**”).

RECITALS:

WHEREAS, Developer is the contract purchaser of that certain tract of land being approximately 561 acres located in the City of Green Cove Springs, being a portion of Clay County Parcel Identification No. 38-06-26-016515-000-00 as more particularly described on **Exhibit “A”** attached hereto incorporated herein by this reference (the “**Property**”). The location of the Property described in **Exhibit “A”** is illustrated with a map appearing in **Exhibit “B”**; and further described in the School Concurrency Reservation Certificate application entitled Ayrshire/Gustafson’s Dairy; and

WHEREAS, the Applicant has submitted an application for a development proposal seeking approval to develop a maximum of 2,100 residential dwelling units on the Property, hereinafter referred to as the “**Development Proposal**”; and

WHEREAS, the City and the School District have adopted and implemented a public school concurrency management system to assure the future availability of public school facilities to serve new development consistent with level of service standards (“**Level of Service**” and “**Level of Service Standards**”) consistent with the terms of the current Interlocal Agreement for Coordinated Planning, Public Educational Facility Siting and Review and School Concurrency in Clay County between the School District, the Clay County Board of County Commissioners and the local governments, including the City (the “**Interlocal Agreement**”), and the public school facilities and capital improvement elements of the respective comprehensive plans (individually, “**Element**”; plural, “**Elements**”); and

WHEREAS, at the time of this Agreement, adequate elementary and high school capacity is available to accommodate the elementary and high school students the Development Proposal is anticipated to generate by the Development Proposal; and

WHEREAS, at the adopted Level of Service standards, (i) adequate school capacity is not available for seventy-one (71) junior high students generated by the Development Proposal at the Level of Service Standard within the school concurrency services area or areas (“**Concurrency Service Area**”; “**Concurrency Service Areas**”) in which the Development

Proposal is located, to accommodate the anticipated number of public school students that the Development Proposal will generate; (ii) the needed junior high school capacity for the applicable Concurrency Service Area or Concurrency Service Areas within which the Development Proposal is located is also not available in any contiguous Concurrency Service Areas; and (iii) available junior high school capacity will not be in place or under actual construction within three (3) years after the approval of the Development Proposal; and

WHEREAS, authorizing these new residential dwelling units without the mitigation provided for in this Agreement would result in a failure of the Level of Service Standard for public school facilities in one or more applicable Concurrency Service Areas, or will exacerbate existing deficiencies in Level of Service; and

WHEREAS, the Parties agree that public school concurrency shall be satisfied by the Applicant's execution of this legally binding Agreement to provide mitigation proportionate to the demand for public school facilities to be created by these new residential dwelling units ("**Proportionate Share Mitigation**"); and

WHEREAS, the Parties further agree that the appropriate Proportionate Share Mitigation option necessary to satisfy public school concurrency is payment of Proportionate Share Mitigation in the amount of **\$1,967,552.00 for the Development Proposal, or \$936.93 per dwelling unit**, as more specifically depicted or described herein; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions upon which the Developer shall pay funds as Proportionate Share Mitigation for the Property impacts on K-12 educational facilities under control of the School District.

NOW, THEREFORE, in consideration of the foregoing described Proportionate Share Mitigation, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are hereby incorporated into this Agreement by this reference as if fully set forth herein.

2. **PARTIES.** The City, the School District and the Developer shall be collectively referred to as the "**Parties.**"

3. **LEGALLY BINDING COMMITMENT.** The Parties agree that this Agreement constitutes a legally binding commitment by the Developer to provide Proportionate Share Mitigation for the new residential dwelling units sought to be approved by City in the Development Proposal for the Property.

4. **PROPORTIONATE SHARE MITIGATION.** The Parties agree that the payment of Proportionate Share Mitigation in the total amount of \$1,967,552.00 for the Development Proposal, or \$936.93 per dwelling unit, is an appropriate Proportionate Share Mitigation option necessary to maintain the Level of Service Standard for school capacity in the affected Concurrency Service Area or Concurrency Service Areas. Upon

the final execution of this Agreement, the School District shall issue a revised School Concurrency Determination showing adequate mitigation. The duration and effect of this School Concurrency Determination shall be in accordance with the Interlocal Agreement and the Public School Facilities Element. However, in no event shall this School Concurrency Determination, or any capacity reservation based on this Determination, continue to be effective if the Developer fails to perform its obligations under this Agreement. Conversely, once the Developer has completely performed its obligations under this Agreement, the Developer shall be entitled to rely on the School Concurrency Determination and capacity reservation to the extent of the capacity provided by the Proportionate Share Mitigation and once the Developer has completely performed its obligations under this Agreement, such right of reliance shall survive the expiration of this Agreement.

5. **TIMING**. The Parties agree that the Proportionate Share Mitigation shall occur at the time of, and be a condition for the issue by City of, final plat approval for each lot within the Property. For example, if a plat contains 100 lots, the Developer shall pay \$93,693.00 (100 lots times \$936.93 per lot) in Proportionate Share Mitigation prior to the City's approval of such plat. Each payment shall be made directly to the School District.

6. **IMPACT FEE CREDIT**. As consideration for the Developer's Proportionate Share Mitigation specified herein, the Parties agree that the City shall provide a credit of \$1,967,552.00 for the Development Proposal, or \$936.93 per dwelling unit, toward any school impact fee or exaction imposed by ordinance of the City or Clay County for the same need. Should the school impact fee or exaction be greater than the above-described credit, the Developer shall pay the difference at the time school impact fees are due. The Developer shall provide a school impact fee voucher substantially in the form of "**Exhibit C**" to the City and/or County, at the time of impact fee payment. Should the school impact fee or exaction be less, the Developer shall not be entitled to the use of any excess credits. Should school impact fees be pre-paid in order to extend the Final Certificate of Concurrency, any remaining balance due on the Proportionate Share Mitigation shall be paid at the time of final subdivision approval. Provided, however nothing in this Agreement shall be deemed to require the City to continue to levy or collect School Impact Fees, or, if levied, to levy them for any certain amount.

7. **SCHOOL CAPACITY IMPROVEMENT**. The School District agrees to apply the Proportionate Share Mitigation contributed by the Developer toward a school capacity improvement which will be added to the planned capital improvements in the Five Year District Facilities Work Plan at the time of its next annual update, and which satisfies the demands created by the Development Proposal in accordance with this Agreement.

8. **NO GUARANTEE OF LAND USE/ZONING**. Nothing in this Agreement shall require the City to approve any Land Use Amendment or Rezoning application associated with the Property.

9. **EFFECTIVE DATE**. This Agreement shall become effective on the date it is recorded in the Public Records of Clay County, Florida (the "**Effective Date**"). If this Agreement is not executed by the Developer and delivered to the City within thirty (30) days after the latter of City or School District approval of this Agreement, this Agreement shall become void.

10. **TERM.** This Agreement shall expire upon the Parties' completion of their performance of all obligations herein.

11. **STATUTORY COMPLIANCE.** The Parties agree that this Agreement satisfies the requirements for a binding Proportionate Share Mitigation Agreement in Section 163.3180(6)(h), Florida Statutes.

12. **NOTICES.** Whenever any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. Until otherwise designated by amendment to this Agreement, the Parties designate the following as the respective places for giving notice:

TO THE CITY:

City Manager
City of Green Cove Springs
321 Walnut Street
Green Cove Springs, Florida 32043

WITH COPIES TO:

Jim Arnold, Attorney
City of Green Cove Springs
321 Walnut Street
Green Cove Springs, Florida 32043
cityattorney@greencovesprings.com

FOR SCHOOL DISTRICT:

James Fossa
Coordinator of Planning and
Intergovernmental Affairs
Clay County District Schools
900 Walnut Street
Green Cove Springs, Florida 32043

FOR DEVELOPER:

D.R. Horton, Inc. – Jacksonville
Attn: John R. Gislason
4220 Race Track Road
St. Johns, Florida 32259

WITH COPIES TO:

Ellen Avery-Smith, Esq.
Rogers Towers, P.A.
100 Whetstone Place, Suite 200
St. Augustine, Florida 32086

13. **RELEASE.** Upon the performance of all obligations of all Parties hereto, the School District shall release the Developer from this Agreement, and the Developer shall release the School District and the City from any and all future claims, costs or liabilities arising out of

the provision of Proportionate Share Mitigation in accordance with this Agreement. These releases shall be recorded at the Developer's expense in the Official Records of Clay County, Florida, evidencing such performance.

14. **DEFAULT.** If any party to this Agreement materially defaults under the terms hereof, then the City shall give the defaulting party thirty (30) days' notice and a right to cure such breach. Should the Developer of the property described herein fail to timely cure a default in meeting their obligations set forth herein, its Concurrency certificate, issued based upon payment and/or performance hereunder, shall be voided and that Developer and the property described herein shall lose their right to concurrency under this Agreement and their right to School Impact Fee credits under this Agreement. Further, in the case of such default, any development upon that property dependent upon such certificate will be stopped, until and unless the agreement is reinstated or the default is cured or capacity becomes available and is granted through an appropriate application. Should City or School District fail to timely cure a default in meeting their obligations set forth herein, Developer may seek any and all remedies available to it in law or equity.

15. **VENUE; CHOICE OF LAW.** Any controversies or legal issues arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be submitted to the jurisdiction of the Circuit Court of Clay County, Florida, the venue situs, and shall be governed by the laws of the State of Florida.

16. **CAPTIONS and PARAGRAPH HEADINGS.** Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.

17. **NO WAIVER.** No waiver of any provision of this Agreement shall be effective unless it is in writing, and signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates, and shall not be deemed to be a continuing or future waiver.

18. **EXHIBITS.** All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference.

19. **FURTHER ASSURANCES.** The Parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.

20. **AMENDMENTS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective, unless contained in a written document prepared with the same or similar formality as this Agreement and executed by all the Parties to this Agreement.

21. **ASSIGNMENT.** This Agreement runs with the land. The Developer may assign its rights, obligations and responsibilities under this Agreement to a third-party purchaser of all or any part of fee simple title to the Property. Any such assignment shall be in writing and shall require the prior acknowledgement of all of the Parties. At the election of the School District,

such acknowledgement may be conditioned upon the written agreement of the assignee to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Proportionate Share Mitigation under this Agreement. The assignor under such assignment shall furnish the Parties with a copy of the written assignment within ten (10) days of the date of execution of same.

22. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is made for the sole benefit and protection of the parties, their successors and assigns, and no other persons shall have any right of action hereunder.

23. **COUNTERPARTS.** This Agreement may be executed in three (3) counterparts, each of which may be deemed to be an original.

24. **RECORDING OF THIS AGREEMENT.** The Developer shall record this Agreement, at its expense, within fourteen (14) days after full execution, in the Clay County Public Records. Time is of the essence in the recording, and failure to timely record shall render this Agreement void.

25. **MERGER CLAUSE.** This Agreement sets forth the entire agreement among the Parties, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.

26. **SEVERABILITY.** If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of this Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates above each signature:

CITY of GREEN COVE SPRINGS, through its CITY COMMISSION, signing by and through its City Manager, authorized to execute same by Commission action on this _____ day of _____, 2021.

The SCHOOL DISTRICT OF CLAY COUNTY, signing by and through its Chair, authorized to execute same by District action on this _____ day of _____, 2021.

The DEVELOPER signing by _____ its _____ duly authorized to execute same, on this _____ day of _____, 2021.

CITY

Passed and Duly Adopted by the City Commission of the City of Green Cove Springs, Florida this ____ day of _____, 2021.

Attest:

CITY OF GREEN COVE SPRINGS,
FLORIDA, a municipal corporation

Print Name: _____

By: _____
Steve Kennedy, City Manager

Print Name: _____

Approved as to form, legal sufficiency and execution:

By: _____
L.J. Arnold, III, City Attorney

SCHOOL DISTRICT

Signed, witnessed, executed and acknowledged on this ____ day of _____, 2021.

WITNESSES

**THE SCHOOL BOARD OF CLAY COUNTY,
FLORIDA**

Print Name: _____

By: _____, Chair

Print Name: _____

(Please Print)

ATTEST:

By: _____, Superintendent of Schools

(Please Print)

DEVELOPER

Signed, witnessed, executed and acknowledged on this ___ day of _____, 2021.

WITNESSES

DEVELOPER

D.R. HORTON INC. -JACKSONVILLE, a
Delaware corporation

Print Name: _____

By: _____

Print Name: _____

Its: _____

Date: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization on this day ___ of _____, 2021, by _____, as _____ of D.R. Horton, Inc. - Jacksonville., a Delaware corporation, on behalf of the corporation, who is (check one) personally known to me or has produced a valid driver's license as identification.

Notary Public

Name: _____

Commission Expires: _____

Exhibit "A"

Property

A portion of Section 38 of the George I.F. Clarke Grant, Township 6 South, Range 26 East, Clay County, Florida, being a portion of those lands described and recorded in Official Records Book 1545, page 513 of the Public Records of said county and being more particularly described as follows:

For a Point of Reference, commence at the intersection of the Easterly right of way line of County Road 15A, (South Oakridge Avenue), a 100 foot right of way as presently established with the Southerly right of way line of Green Cove Avenue, a variable width right of way as presently established; thence Southerly along said Easterly right of way line and along the arc of a curve concave Westerly having a radius of 1959.86 feet, through a central angle of $14^{\circ}47'09''$, an arc length of 505.76 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South $05^{\circ}15'37''$ East, 504.36 feet; thence South $02^{\circ}07'57''$ West, continuing along last said Easterly right of way line, 1331.79 feet to the Southwest corner of those lands described and recorded in Official Records Book 3863, page 203 of said Public Records and the Point of Beginning.

From said Point of Beginning, thence Easterly and Northeasterly along the Southerly and Southeasterly boundary of last said lands, the following 12 courses: Course 1, thence South $88^{\circ}31'42''$ East, departing last said Easterly right of way line, 282.59 feet; Course 2, thence North $21^{\circ}17'17''$ East, 161.55 feet; Course 3, thence South $68^{\circ}42'43''$ East, 287.10 feet; Course 4, thence South $58^{\circ}52'43''$ East, 32.90 feet; Course 5, thence South $37^{\circ}48'54''$ East, 22.40 feet; Course 6, thence North $70^{\circ}53'31''$ East, 15.20 feet; Course 7, thence North $34^{\circ}14'49''$ East, 52.23 feet; Course 8, thence South $88^{\circ}17'22''$ East, 94.17 feet; Course 9, thence North $31^{\circ}43'31''$ East, 427.82 feet; Course 10, thence North $73^{\circ}46'32''$ West, 158.11 feet; Course 11, thence North $13^{\circ}06'51''$ East, 477.10 feet; Course 12, thence North $10^{\circ}55'57''$ East, 142.00 feet to a point lying on the Southwesterly line of those lands described and recorded as Parcel "A" in Official Records Book 3316, page 1098 of said Public Records; thence South $77^{\circ}06'26''$ East, along last said line, 2932.48 feet to the Northwest corner of those lands described and recorded in Official Records Book 3855, page 1391 of said Public Records; thence Southerly along the westerly line thereof, the following 3 courses: Course 1, thence South $21^{\circ}54'49''$ East, 3242.16 feet; Course 2, thence South $68^{\circ}05'09''$ West, 1307.43 feet; Course 3, thence South $21^{\circ}54'51''$ East, 1003.87 feet to a point lying on the Northerly line of an Access and Maintenance Easement as described and recorded in Official Records Book 3855, page 1394 of said Public Records; thence Westerly along said Northerly line, the following 26 courses: Course 1, thence South $37^{\circ}01'31''$ West, 149.07 feet to the point of curvature of a curve concave Northwesterly having a radius of 955.00 feet; Course 2, thence Southwesterly along the arc of said curve, through a central angle of $16^{\circ}37'06''$, an arc length of 276.99 feet to a point on said curve, said arc being subtended by a chord bearing and distance of South $45^{\circ}20'05''$ West, 276.02 feet; Course 3, thence South $67^{\circ}24'13''$ West, along a non-tangent line, 105.10 feet; Course 4, thence South $53^{\circ}45'05''$ West, 12.16 feet; Course 5, thence South $13^{\circ}14'26''$ West, 24.72 feet; Course 6, thence South $63^{\circ}07'28''$ West, 859.11 feet; Course 7, thence North $26^{\circ}52'32''$ West, 5.00 feet; Course 8, thence South $63^{\circ}07'28''$ West, 382.73 feet; Course 9, thence North $26^{\circ}52'32''$ West,

31.65 feet; Course 10, thence South $63^{\circ}07'28''$ West, 74.60 feet; Course 11, thence South $26^{\circ}52'32''$ East, 36.65 feet; Course 12, thence South $63^{\circ}07'28''$ West, 102.14 feet to the point of curvature of a curve concave Northerly having a radius of 955.00 feet; Course 13, thence Westerly along the arc of said curve, through a central angle of $22^{\circ}47'15''$, an arc length of 379.82 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South $74^{\circ}31'05''$ West, 377.32 feet; Course 14, thence South $85^{\circ}54'43''$ West, 731.91 feet; Course 15, thence North $04^{\circ}05'17''$ West, 5.00 feet to a point on a non-tangent curve concave Northerly having a radius of 250.00 feet; Course 16, thence Westerly along the arc of said curve, through a central angle of $05^{\circ}44'03''$, an arc length of 25.02 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South $88^{\circ}46'45''$ West, 25.01 feet; Course 17, thence North $88^{\circ}21'14''$ West, 61.78 feet; Course 18, thence North $19^{\circ}49'14''$ West, 8.30 feet; Course 19, thence North $55^{\circ}44'57''$ West, 30.16 feet; Course 20, thence South $67^{\circ}18'10''$ West, 29.23 feet; Course 21, thence South $07^{\circ}09'24''$ West, 17.00 feet; Course 22, thence North $88^{\circ}21'14''$ West, 362.37 feet; Course 23, thence South $01^{\circ}38'46''$ West, 5.00 feet; Course 24 thence North $88^{\circ}21'14''$ West, 800.00 feet; Course 25, thence North $01^{\circ}38'46''$ East, 10.00 feet; Course 26, thence North $88^{\circ}21'14''$ West, 355.52 feet to a point lying on the aforementioned Easterly right of way line of County Road 15A; thence North $02^{\circ}07'57''$ East, along last said Easterly right of way line, 5150.65 feet to the Point of Beginning.

Containing 560.52 acres, more or less.

Exhibit "B"

Property Location

Exhibit "C"

Voucher # _____

Impact Fee Voucher

Ayrshire

- 1. Name and address of Developer/Grantor: _____
- 27. Name and address of Grantee: _____
- 28. Legal description of subject property: See attached Exhibit "A"
- 29. Subdivision or Master Development Plan name: Ayrshire PUD

The undersigned Developer/Grantor confirms that it has received from _____ on _____, 202__ funds sufficient for the following impact fees required under the applicable School Impact Fee Ordinance, as amended, as indicated below. Developer/Grantor gives notice to the City of Green Cove Springs and/or Clay County, Florida that the following sums should be deducted from the applicable Impact Fee Credit account of the Developer/Grantor.

_____ Schools

In the amount of \$ _____

By: _____

Print: _____

Its: _____