

**STATE OF GEORGIA
COUNTY OF HALL**

PERFORMANCE/MAINTENANCE AGREEMENT

THIS AGREEMENT (the “Agreement”) made and entered into this _____ day of August, 2022, between Riverbrook Investment, LLC (hereinafter referred to as “Owner”) and the Hall County Board of Commissioners (hereinafter referred to as “Hall County”) (hereinafter collectively referred to as the “Parties”).

WHEREAS, Owner is the owner of the Subdivision known as Somerset at Riverbrook, which subdivision is shown on a land disturbance plan prepared by PEC+; and

WHEREAS, Somerset at Riverbrook is accessed by two private easements known as “Wahoo Falls Trace” and “Somerset Way” (the “Private Streets”); and

WHEREAS, Hall County regulations require that subdivisions be accessed by public roads; and

WHEREAS, in order to induce Hall County to approve a land disturbance plan permit, Owner has agreed to post a \$500,000 Performance/Maintenance Bond and to enter into this Agreement whereby Owner agrees to maintain the Private Streets; and

WHEREAS, Owner agrees to maintain the Private Streets for a period of five years after they are completed; and

WHEREAS, Owner has agreed to be responsible for one-third of the actual cost of maintaining the Private Streets during the term of this Agreement;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Private Streets (Wahoo Falls Trace and Somerset Way) as shown on the Master Site Plan prepared by PEC+ and last revised on July 19, 2022, shall be completed on or before July 1, 2023.

2. Owner will procure a Performance/Maintenance Bond for the entirety of the Private Streets as shown on the Master Site Plan prepared by PEC+ and last revised on July 19, 2022, in the amount of \$500,000.00 in favor of Hall County, said Performance/Maintenance Bond being in operation and effect for a period of five years from November 1, 2022, the anticipated date of completion of the Private Streets. The Performance/Maintenance Bond will be issued by a surety with at least an A rating, and the surety must have an office located within the State of Georgia.

3. In addition to procuring the Performance/Maintenance Bond described in Paragraph 2 of this Agreement, Owner agrees to maintain the Private Streets free from any and all deficiencies, defects, or damages as follows:

a. Continually maintain the roadways to ensure a safe and efficient thoroughfare, free from any and all deficiencies, defects, or damages, beyond normal wear and tear, to the asphalt, base, curb and gutters, stormwater pipes, culverts, guardrails, pavement markings, or traffic signage regardless of cause and as determined solely by the Hall County Engineer.

b. Pavement deficiencies, defects, or damages include, but are not limited to the following:

- Rutting – surface depressions that run parallel to traffic and typically are located in the wheel path
- Various types of cracking (fatigue cracking, block cracking, alligator cracking, reflection cracking) other than normal asphalt shrinkage and normal wear and tear
- Washboards – series of ruts in the road running transverse to the road
- Potholes – bowl shaped holes with a minimum 3” width and a minimum 1” depth
- Washout – any removal of pavement, base, and subgrade where road is effectively impassable

- Defacement – graffiti, inappropriate markings, etc.
- Insufficient slopes to provide proper positive drainage to storm inlets
- c. Stormwater pipe/culvert deficiencies, defects, or damages include, but are not

limited to the following:

- Cracked/broken catch basin top slabs
- Missing/stolen catch basin ring/cover lids
- Joint failure and/or cracking of stormwater structure
- Joint failure at pipe and stormwater structure
- Any pipe joint failure
- Any obstructions at structure inlet, structure throat, or inside storm pipe that substantially interferes with stormwater flow
- Any debris/material in storm system that substantially interferes with stormwater flow
- Egging or distortion of the proper circular pipe shape anywhere along the pipe
- Any corrosion and/or “rusting out” of storm pipes/culverts that result in voids and/or seepage of water.
- Excessive abrasion wear in storm pipe flow line
- Headwall shifting and/or settling

- d. Concrete and curb and gutter deficiencies, defects, or damages other than natural

cosmetic cracks include, but are not limited to the following:

- Various types of cracking (transverse cracks, longitudinal cracks, “D” cracks, map cracking)
- Joint deterioration/Spalling

- Scaling – deterioration of the upper concrete surface typically ½” deep
 - Faulting – changing in elevation across a join or crack
 - Settlement – sections with tilted or uneven level due to settling
 - Corner breaks – a corner portion of the gutter that breaks/separates along cracks that intersect the adjacent transverse and longitudinal joints at approx. 45-degree angle
 - “Bird bathing” or surface water ponding along curb or gutter line that prevents proper drainage to storm inlets
- e. Driveway shoulder deficiencies, defects, or damages include, but are not limited to

the following:

- Excessive shoulder erosion and roadbed erosion (rills)
- Improper vegetation mowing/maintenance
- Fixed objects improvements within the clear zone
- Any guardrail that does not meet the details shown on the approved land disturbance plans for the private streets with regard to installation or disposition

f. Pavement marking and signage deficiencies, defects, or damages include, but are not limited to the following:

- Any deviation from the approved land disturbance plan for the private streets with regard to sign location/orientation
- Any deviation from the approved land disturbance plan for private streets with regard to striping and pavement markings and with regard to location/layout/spacing etc.

- Improper/inadequate reflectivity for pavement marking and signage per the approved land disturbance plan for the private streets
- Any missing/stolen/damaged street signs

4. Owner hereby agrees to maintain and repair the entire length of the Private Streets free of deficiencies, defects, or damages including, but not limited to, those listed in the previous paragraph for the period from the date of execution of this Agreement through and including October 31, 2027. During the term of this Agreement, Owner shall maintain the Private Streets in good operating condition so as to ensure the provision of safe access by those served by such streets as well as emergency vehicles.

5. In the event that Hall County determines, in the reasonable discretion of the Hall County Engineer, that the Private Streets are in need of repair, Hall County shall provide written notice to Owner of the need for such repair and the estimated cost of such repair. If the estimated cost of such repair is less than \$50,000.00, Owner shall make such repair within 60 days of the date that Hall County provides such written notice to Owner. If the estimated cost of such repair is \$50,000.00 or more, Owner shall make such repair within 90 days of the date that Hall County provides such written notice to Owner. The Parties agree that emergency repairs will be made on an expedited basis as the circumstances require. If, after written notice the Owner fails or refuses to make such repairs within the time set forth in this Agreement, Owner hereby agrees that Hall County may enter onto the Private Streets and make the repairs. Upon doing so, Hall County shall send written notice to the Owner of the cost to make the repairs, and Owner shall pay Hall County one-third of the actual cost incurred in making such repairs within 60 days of Hall County's written notice of said cost to repair. Any appeal of the decision of the Hall County Engineer regarding repairs to the Private Streets shall be made in accordance with the Official Code of Hall County.

In no event, however, shall a pending appeal of the decision of the Hall County Engineer prevent Hall County from calling the Performance/Maintenance Bond described in Paragraph 2.

6. Owner has entered into a separate agreement with Fuqua Development and Riverbrook Village Development Partners regarding responsibility for maintenance of the Private Streets. Hall County acknowledges that Owner is only responsible for one-third of the cost of maintenance of the Private Streets pursuant to the separate agreement. The provisions of the separate agreement shall not relieve Owner from its responsibility for one-third of any and all costs of repair of the Private Streets pursuant to this Agreement.

7. Under no circumstance shall Hall County be responsible for any repair of the Private Streets during the term of this Agreement or after the term of this Agreement. Owner acknowledges that Hall County has not accepted the Private Streets into its County Road System, and these streets are private streets that have not been built to Hall County Road standards. If Hall County makes repairs as contemplated in this Agreement, Hall County shall not be deemed to have accepted the Private Streets into the County Road System or to have undertaken maintenance of such Private Streets.

8. Owner further agrees that all roads within the Riverbrook Subdivision will be constructed to certain Hall County Road Standards as set forth on the approved land disturbance plan for Somerset at Riverbrook.

9. In the event that Hall County provides written notice of a breach of this Agreement, Hall County shall be entitled to enforce this Agreement using any and all remedies provided by law or equity, including specific performance and injunctive relief.

10. This Agreement shall not be modified, or assigned, except an assignment to an entity created by McKinley Homes, without the written consent of all Parties to this Agreement.

11. Should any provision of this Agreement be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall not be affected, and each term and condition shall be valid and enforceable to the extent permitted by law.

12. This Agreement shall be binding upon the Parties hereto and their successors and assigns.

13. Owner agrees to indemnify, hold harmless, and defend Hall County, its elected officials, officers, agents, and employees from any and all claims and causes of action arising from this Agreement or related to the improvements set forth in this Agreement, except that in the event defective work done by or on behalf of Hall County causes injury, damage, or results in a claim, Owner's indemnification obligation shall be inapplicable.

14. This Agreement expires on October 31, 2027. When the indicated expiration date falls on a Saturday, Sunday, or a legal holiday, the expiration date shall be extended to the next succeeding business day.

15. Jurisdiction for any civil litigation necessary for collection of claims hereunder shall be in the Superior Court of Hall County, Georgia.

IN WITNESS WHEREOF, each of the Parties hereto have caused this instrument to be executed by their respective and proper officers and the seal of each of the Parties hereby affixed, the day and year above written.

(Signatures on the following page.)

RIVERBROOK INVESTMENT, LLC

HALL COUNTY, GEORGIA

By:

By: _____

Richard Higgins, Chairman

Its:

ATTEST:

Jennifer Rivera, County Clerk (SEAL)