

Draft agreement

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

PRIVATE ROADMAINTENANCE AGREEMENT

THIS PRIVATE ROAD MAINTENANCE AGREEMENT (hereinafter “Agreement”), made this ____ day of March, 2025, by and between the undersigned, as set forth on the attached signature pages, (hereinafter individually “Owner” or collectively the “Owners”):

RECITALS

WHEREAS The Owners each own a parcel of real property along a section of ____ (each a “Parcel” or collectively the “Parcels”) in Wake County, NC; and

WHEREAS a portion of _____ (the “Private Road”) is a private road and is not maintained by Town of Rolesville or the North Carolina Department of Transportation; and

WHEREAS The Owners desire to use the Private Road for access and to provide for the proper maintenance of the Private Road and the sharing of costs associated with the maintenance of the Private Road.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners hereby agree as follows:

1. **Private Road.** The Private Road shall be subject to a non-exclusive, perpetual access easement for ingress and egress in favor of the Owners and their occupants, tenants, contractors, guests, and invitees, as well as their successors and assigns, including the right to use, maintain, repair and replace all of the roadway improvements over and across the Private Road for the purpose of providing vehicular and pedestrian access to and from the Parcels. The location of the Private Road may be modified only by the written joint agreement of all Owners.

Any improvements within the Private Road shall be constructed and maintained at a uniform grade, and no barriers, fences or other obstructions shall be erected on any Owners' Parcel so as to interfere with the free flow of pedestrian and vehicular traffic within the Private Road. In addition, any Owner may block traffic for the time reasonably required for the purpose of repairing or replacing the paved or improved area within the Private Road or making repairs to their individual residences; provided, however, that such repairs shall be performed in a good and workmanlike manner as quickly as practical, and in a manner that minimizes interference with the use and enjoyment of all Owners' Parcels. Such action shall be taken only after three (3) business days' prior written notice to all other Owners.

2. **Private Road Maintenance.** The Owner of each Parcel, and their successors and assigns, shall be equally responsible for maintaining, at its expense, the Private Road, subject to its right to receive reimbursement from the other Parcel Owners for certain expenses, as provided herein. The maintenance obligation with respect to the Private Road shall include, but is not limited to, the following: (a) maintaining the roadway improvements on the Private Road in a good state of repair, including maintaining all pavement in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or an equal substitute; (b) removing all papers, ice and snow, mud and sand, debris, filth and refuse, and thoroughly sweeping the roadway improvements to the extent necessary to keep the Private Road in a clean and orderly condition; (c) installing, keeping in repair and replacing as necessary all the traffic control signs, pavement markings and lines; and (d) keeping the roadway improvements suitably illuminated, including the payment of electrical costs and the replacement and repair of lamps and lighting fixtures.

With respect to the roadway improvements within the Private Road, whenever a party shall perform any construction, maintenance, repairs or replacements required or permitted hereunder, such work shall be done expeditiously and in a good and workmanlike manner and in accordance with all applicable laws, codes, rules, statutes and regulations of governmental authorities having jurisdiction thereof. Any work done to such improvements shall be carried out in such manner so as to cause the least amount of disruption to the use and enjoyment of the Parcels as is reasonably practicable.

The obligations set forth within this agreement shall automatically terminate at such time as the Private Road is accepted as a public road and either the City of Durham, the North Carolina Department of Transportation or other similar municipal, county or state entity accepts maintenance and upkeep obligations for the Private Road.

3. **Sharing of Maintenance Costs.** Each Parcel Owner shall pay the other Parcel Owners its proportionate share of the documented costs incurred to maintain and repair the roadway improvements located within the Private Road on the Property based on an equal pro-rata cost.

If an Owner (a "Defaulting Owner") fails to pay its pro rata share of the cost of maintaining and repairing the roadway improvements within the Private Road on the Property within thirty (30) days after written demand by the Owner (a "Non-Defaulting Owner") responsible for maintenance thereof that includes (i) an affidavit from the contractor conducting such work waiving all liens for work performed to date and certifying there are no unpaid subcontractors or materialmen related to the completion of such work and (ii) an invoice detailing the costs incurred in connection with such work, the Non-Defaulting Owner shall be

entitled to (a) the amount of such invoice, plus interest at the then Prime Rate plus two (2) percent and (b) reasonable attorney's fees, court costs and other disbursements incurred by the Defaulting Owner in collecting such amount. For purposes of this Paragraph 8(d) and Paragraph 9(b) below, the term "Prime Rate" means a per annum interest rate equal to the "Prime Rate" as published each day by *The Wall Street Journal* in its "Money Rates" section, and if more than one such rate is published, then the highest such rate. Failure to pay such proportionate share within thirty (30) days of the date of billing shall also constitute a failure to pay for labor and materials as is contemplated in NC Gen. Statute Section 44(1)-8 et seq. and Non-Defaulting or its assigns, shall be entitled to proceed against the Defaulting Owner to perfect a lien against the Parcel as is provided in NC Gen. Statute Section 44(A)-12 et seq.

Notwithstanding any provision in this Agreement to the contrary, each Owner shall be solely responsible, at its expense, for any maintenance or repairs to the roadway improvements primarily necessitated by the negligence or wrongful intentional acts of such Parcel Owner, its tenants or respective agents, contractors, employees or invitees, and each other Owner shall have the self-help rights specified herein if any Owner fails to make the repairs required of it under this sentence.

4. **Remedies for Breach.** The terms and conditions of this Agreement shall be enforceable by any Owner, by actions for specific performance or injunction, or for the enforcement of any liens provided for in this Agreement, in addition to any other remedies available at law. Additionally, each Owner shall have the right to assign its rights to enforce covenants, terms and conditions herein contained to a tenant in good standing of its entire Parcel, provided such assignee complies with all of the covenants, terms and conditions set forth herein as if it was an original party hereto. No breach of the provisions of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but the foregoing limitations shall not affect any other rights or remedies which such Owner may have under this Agreement for such breach.

5. **Notice.** All written notices to be provided under this Agreement shall be delivered not less than three (3) business days in advance from any action which requires notice, unless stated otherwise in this Agreement. For purposes of this Agreement, notices, demands, consents, reports or other communications required or permitted hereunder shall be in writing and, unless actual delivery or receipt is required pursuant to any provision hereof, shall be effective at the earliest of (a) its actual delivery, (b) the first business day following its deposit with an overnight courier, charges prepaid, or (c) the third business day following its deposit in the United States certified or registered mail, return receipt requested, postage prepaid, in any case addressed to the parties at the addresses of the businesses located on the Parcels, or at such other address as they shall each specify in a notice addressed and sent as herein set forth.

6. **Waivers.** No delay or omission by any Owner in exercising any right or power accruing upon any default, non-compliance or failure of performance of any of the provisions of this Agreement by any other Owner shall be construed to be a waiver thereof. A waiver by any Owner of any obligation of any other Owner shall not be construed to be a waiver of any subsequent breach of such obligation, or a waiver of any breach of any other terms, covenants or conditions of this Agreement.

7. **Attorneys' Fees.** If any action, suit, arbitration or other proceeding is instituted to remedy, prevent or obtain relief from any default in the performance by any Owner of its obligations under this Agreement, the prevailing party shall be reimbursed by the other party for all of its costs and expenses, including without limitation reasonable attorneys' fees, incurred in each such action, suit, arbitration or other proceeding. As used in this Agreement, the term "reasonable attorneys' fees" shall be deemed to mean the actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fee charged by such attorneys, as opposed to any statutory presumption that may then be in effect in the State of North Carolina.

8. **Private Agreement.** This Agreement shall not be construed to grant any rights to the public in general.

9. **No Partnership.** The provisions of this Agreement are not intended to create, and shall not be interpreted to create, a joint venture, a partnership or any similar relationship between the Owners.

10. **Amendment.** This agreement may not be amended except in writing, signed by all Owners, or their successors or assigns as may appear of record and is effective upon proper recordation of the amendment.

11. **Governing Law.** This Agreement has been entered into under, and shall be construed in accordance with, the laws of the State of North Carolina.

(Signature Pages to Follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNERS

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the State of North Carolina and County of _____, certify that _____ personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal, this _____ day of March 2025.

Notary Signature

Print Name: _____

My Commission expires: _____

(SEAL)

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the State of North Carolina and County of _____, certify that _____ personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal, this _____ day of October 2019.

Notary Signature
Print Name: _____

My Commission expires: _____

(SEAL)

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the State of North Carolina and County of _____, certify that _____ personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal, this _____ day of October 2019.

Notary Signature
Print Name: _____

My Commission expires: _____

(SEAL)