

STATE OF ALABAMA)
)
COUNTY OF BALDWIN)

ROAD CONSTRUCTION AND REPAVING AGREEMENT

THIS ROAD CONSTRUCTION AND REPAVING AGREEMENT ("Agreement") is entered into between the BALDWIN COUNTY COMMISSION (the "County"), MULLINS, LLC, an Alabama limited liability company ("Mullins"), and BRELAND HOMES COASTAL, LLC, a Delaware limited liability company ("Breland") (Mullins and Breland are referred to together herein as the "Developer"):

WHEREAS, the County is the duly formed governing body in and for Baldwin County, Alabama;

WHEREAS, Shambo Road is a County maintained road located within Baldwin County, Alabama, and more particularly shown on Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, Developer is the developer of and owner of remaining lots in Churchill Subdivision, a subdivision located in the municipal limits of the City of Spanish Fort in Baldwin County, Alabama, which is adjacent to Shambo Road;

WHEREAS, prior to entering into this Agreement, the Developer constructed a roadway connecting Churchill Subdivision to Shambo Road, a County maintained road, without obtaining permission or approval from the County (the "Connecting Roadway");

WHEREAS, the Developer desires to obtain approval for the Connecting Roadway from the County;

WHEREAS, the County is willing to grant said approval in exchange for payment by the Developer of the costs of materials required for the County to repave that portion of Shambo Road maintained by the County; and

WHEREAS, it is in the public interest for the County and the Developer to cooperate toward the proposed road improvements.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the County and the Developer do hereby agree as follows:

1. **Payment by Developer for Materials to Repave Shambo Road:**

A. In consideration of the approval set forth in Paragraph 2 below, the Developer agrees to promptly pay to the County all costs and expenses required for the County to repave Shambo Road from the Connecting Roadway to Highway 31 as reflected on Exhibit "A" attached hereto.

B. The parties acknowledge that the current estimated costs of materials for said repaving is \$24,117.90 and the Developer agrees to pay said amount in full.

C. The Developer agrees to pay all such costs and expenses to the County within ten (10) days of receipt of the County's request for payment.

D. All work and labor for said repaving shall be supplied by the County.

2. **Approval by County of Connecting Roadway:** Upon completion of the repaving of Shambo Road, and provided that the Developer has paid the County for the costs of materials required for the same as identified in Paragraph 1 above, the County agrees to grant approval of the Connecting Roadway previously constructed by Developer. Developer acknowledges and agrees that the Connecting Roadway may not be used until said repaving is completed and the County has received payment from the Developer for the costs of material associated with said repaving.

3. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties (the "Effective Date").

4. **Public Property:** Developer acknowledges and consents that Shambo Road, including the Connecting Roadway, is public in nature and that the usage hereunder is permissive. Developer shall not obstruct or otherwise interrupt any rights of the general public to Shambo Road or the Connecting Roadway. Developer makes no claim of private ownership or other possessory interest in Shambo Road or the Connecting Roadway, and any rights of the Developer to Shambo Road, including the Connecting Roadway, will be limited to the same extent as that of the general public. Any work performed by Developer, or any improvements made as a result of the Developer's construction of the Connecting Roadway or any work on Shambo Road whatsoever, is considered to be a benefit to the general public, and the Developer makes no claim that such work or improvements are privately owned and waives all right to claims that such work or improvements are private in nature.

5. **No Alteration:** Except as expressly permitted by this Agreement, Developer shall not make nor permit any uses, alterations or additions to Shambo Road or the Connecting Roadway without the County's prior written consent.

6. **Damage to Property:** Developer agrees to pay for any damage which may arise to buildings, fences, machinery, or other property of the County or any third party on or near Shambo Road resulting from Developer's operations or presence on such property. Developer shall reimburse any and all costs related to any and all corrections, changes or improvements deemed to be necessary by the County as a result of the Developer's construction of the Connecting Roadway.

7. **Termination and Notice:** Notwithstanding the foregoing, the County may terminate this Agreement, with or without cause, upon written notice to the Developer. The said termination notice shall be deemed effective, and the Agreement deemed terminated, seven (7) days after the date such notice is mailed by certified mail to the Developer. In the event of termination for breach by the Developer, the Developer shall be responsible for all costs incurred by the County, for work specified herein, including any contractual obligations incurred by County in reliance upon this Agreement through the date of receipt of the requisite termination notice. All notices provided for herein shall be sent as follows:

To Developer:

Mullins, LLC on behalf of Breland Homes Coastal, LLC
c/o Micah Jones
41 N. Jefferson St, Ste. 106
Pensacola, FL 32507

To County:

Baldwin County Commission
c/o Joey Nunnally
312 Courthouse Square, Suite 12
Bay Minette, AL 36507

8. **Indemnity and Disclaimer of Warranties:** Developer, for itself and its employees, agents, representatives, successors and assigns, waives and releases the County from any claims for injury to persons or damage to any real or personal property by reason of the condition of the designs, improvements, work, property, product, and services of the County or otherwise. From the Effective Date of this Agreement, the Developer shall defend, indemnify, and hold the County, including its Commissioners, officers, directors, employees, representatives and agents, harmless from and against all demands, actions, and claims of any description whatsoever for property damage, personal injury (including death), actions in trespass, and all other claimed loss, injury or damage, including, but not limited to, attorneys' fees and costs, arising out of relating to or resulting from any and all acts or omissions of the Developer, its officers, directors, employees, agents or contractors related to the Developer's construction of the Connecting Roadway or any of the Developer's obligations under this Agreement.

All representations, assurances, payment obligations and indemnity obligations contained within this Agreement shall survive and exist beyond the date of termination or expiration of this Agreement.

Nothing contained herein shall be construed to limit or modify the laws of the State of Alabama as the same may apply to the County regarding any immunity, absolute or qualified, or limitations of liability to which the County is otherwise entitled by law.

9. **Miscellaneous:**

A. **Regulation of Rights-of-Way:** Nothing contained in this Agreement or otherwise shall limit the authority of the County to control, manage, supervise, regulate, repair, maintain or improve the public rights-of-way or improvements constructed pursuant to this Agreement in accordance with state law, and the County shall have the right to alter, change, modify, improve or remove any and all improvements constructed within their rights-of-way, in their discretion, in accordance with applicable state law.

B. **Entire Agreement:** This Agreement represents the entire and integrated agreement between the County and the Developer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.

C. **Both Parties Contributed Equally to the Agreement:** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the County and the Developer have contributed substantially and materially to the preparation of this Agreement.

D. **Failure to Strictly Enforce Performance:** The failure of either party to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute a default or be construed as a waiver or relinquishment of the right of a party to thereafter enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

E. **No Assignment:** Neither this Agreement nor any interest herein shall be assigned, transferred or otherwise encumbered without a prior written agreement providing for such assignment, transfer, or other encumbrance, signed by the parties.

F. **Choice of Law; Venue:** The parties acknowledge and agree that this Agreement shall in all respects be governed by the law of the State of Alabama, including without limitation all issues relating to capacity, formation, interpretation, and available remedies, without regard to Alabama conflict of law principles. Proper venue for any action arising hereunder shall lie in Baldwin County.

G. Counterparts: This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

H. Severability: Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution below, which shall be the Effective Date of the Agreement.

COUNTY:

BALDWIN COUNTY COMMISSION

By: _____
CHARLES F. GRUBER
Its: Chairman

ATTEST:

WAYNE DYESS
County Administrator

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that CHARLES F. GRUBER, as Chairman of the Baldwin County Commission, and WAYNE DYESS, as County Administrator of the Baldwin County Commission, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

Given under my hand and official seal this the ____ day of _____, 2019.

Notary Public
My Commission Expires: _____

DEVELOPER:

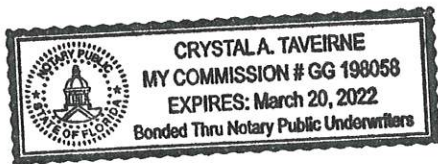
MULLINS, LLC

By: [Signature]
Its: Engineering Manager

STATE OF Florida)
~~ALABAMA~~)
COUNTY OF Escambia)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Michael Jones, as Engineering Manager of MULLINS, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said Mullins, LLC.

Given under my hand and official seal this the 2nd day of August, 2019.



[Signature]
Notary Public
My Commission Expires: March 20, 2022

DEVELOPER (cont'd):

BRELAND HOMES COASTAL, LLC

By: [Signature]
Its: MANAGER

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that LOUIS W. BRELAND, as MANAGER of BRELAND HOMES COASTAL, LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said Breland Homes Coastal, LLC.

Given under my hand and official seal this the 29 day of July, 2019.



Patricia Acker
Notary Public
My Commission Expires: 4/10/22

EXHIBIT "A"

