

**CASH DEPOSIT  
PERFORMANCE AGREEMENT**

**For** Fairhaven at Preston / Villages at Preston **Subdivision**

**Final Plat #** 23-PDR-FR0015

**THIS AGREEMENT**, entered into this 5 day of February, 2024, between SDH Atlanta LLC (hereinafter called the "Subdivider"), with its principal place of business at 110 Village Trail Ste 215 Woodstock GA 30188 and the City of Powder Springs, Georgia, a Georgia municipal corporation, (hereinafter called "City"),

**WITNESSETH:**

**WHEREAS**, the Unified Development Code Section 15-61 – 15-65, requires the deposit of a security for the performance of construction in an amount not less than \$230,089.31; and

**WHEREAS**, the Subdivider has received approval of the construction plans in accordance with the plans and specifications on file with the City for the improvements within Fairhaven at Preston / Villages at Preston Subdivision; and

**WHEREAS**, the Subdivider certifies that any and all persons, firms, or corporations providing labor and/or materials required for construction of said improvements will be paid in full; and

**WHEREAS**, the parties have agreed that the City of Powder Springs is acceptable to all parties to hold the funds to secure Subdivider's performance hereunder;

**NOW, THEREFORE**, in consideration of the foregoing premises, it is hereby agreed:

1. The Subdivider has provided to the City of Powder Springs the sum of \$230,089.31 ("Deposit"), to guarantee that the improvements will be constructed as required by the Unified Development Code and other codes of the City, and the City will not release any of the funds so held in escrow except in accordance with the terms hereof.
2. The City agrees to disburse funds to the full amount of the Deposit only when:
  - (a) the construction has progressed satisfactorily to the state of development for which payment is made and upon receipt of the City of a certificate to that effect signed by the Subdivider for the Subdivision and upon proof satisfactory to the City that all bills therefore have been paid to date, including but not limited to bills for surveying, engineering, land clearing, construction of improvements, and materials which are included in the plan of development.

- (b) upon determination that any portion or all of the said improvements have not been constructed by the Subdivider in accordance with the Unified Development Code. The City is authorized, but not obligated, to take over and perform any such uncompleted construction, and to use the funds acquired from the Deposit.
  - (c) To any person or corporation upon direction from the City, through the City of Powder Springs Community Development Department, that such funds be paid for any labor and/or materials used in constructing the improvements. The City will direct such payments if it determines that claims for labor and/or materials are just and unpaid. The Subdivider hereby consents to any such payments and authorizes and ratifies any such action on the part of the City and agrees to protect and save harmless the City from any claims of any persons or corporations whatsoever on account of any improvements which have not been completed or paid for.
3. A further condition of this Agreement is that the improvements to be made for Fairhaven at Preston / Villages at Preston Subdivision shall be completed within 24 months from the date of acceptance of this Agreement by the City and all costs incurred in connection therewith shall be paid in full and in accordance therewith and with the documents and specifications referred to therein or attached thereto, then upon acceptance of the improvements by the City for Subdivider's maintenance this Agreement shall be null and void; otherwise, it shall remain in full force and effect. If the improvements are not completed within the specified 24 month period, the City is hereby authorized to complete the improvements as specified in Item 2(b) above, using the funds guaranteed under this Agreement.

4. If the funds are inadequate to pay for any costs covered by this Agreement, the Subdivider shall pay any and all costs beyond coverage.
5. Should any provision governing the subject Escrow Deposit conflict with the terms of this Agreement, the terms of this Agreement shall control.

**WITNESS** the hands and official seals of the parties hereto on the day and year first above written.

**CITY OF POWDER SPRINGS, GEORGIA**

**By:** \_\_\_\_\_

**SUBDIVIDER:** SDH Atlanta LLC

**By:** 

**Title:** President

**(Corporate Seal)**

**Approved as to form:**

**By:** \_\_\_\_\_  
**City Attorney**

2060219\_1.docx