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Cross Reference:

Deed Book 5079, Page 327,
Whitfield County, Georgia Land
Records

AGREEMENT PERMITTING ENCROACHMENTS

THIS AGREEMENT made this 18 day of November , 2019, by and between the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, Covenantor, and **Naik Properties LLC**, a Georgia limited liability company, Covenantee,

W I T N E S S E T H:

WHEREAS, the Covenantee is the owner in fee of that certain lot of land described in Exhibit “A” attached hereto (the “Property”) and

WHEREAS, said Covenantor is the owner in fee of that certain tract or parcel of land lying immediately west of the Property; and

WHEREAS, there is now erected upon the Property certain improvements identified as concrete parking spaces located on the west side of the Property (the “First Encroachment”) and being identified on that certain plat of survey prepared for Dwarkesh Group, LLC by Billy L. Floyd, Georgia Registered Land Surveyor No. 3078, and attached hereto as Exhibit “A” (the “Survey”); and

WHEREAS, there is now erected upon the Property additional improvements identified as concrete parking spaces located near the center of the Property at the northerly end of the parking lot located on the Property as shown on the Survey (the “Second Encroachment”); and

WHEREAS, the First Encroachment encroaches on a portion of Covenantor’s above described property, as shown on the Survey;

WHEREAS, the Second Encroachment encroaches into certain power line easements owned by Covenantee (the “Power Line Easements”);

NOW, IN CONSIDERATION and in consideration of the above-recited premises, the mutual covenants and agreements hereinafter set forth, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. Covenantor hereby covenants and agrees to and with said Covenantee that so long as the aforesaid First Encroachment shall remain, Covenantee shall have, and there is hereby granted and secured to Covenantee, the right to have the First Encroachment now erected as aforesaid, overlap and extend beyond the line of the land of Covenantee and encroach and rest upon the land of Covenantor, to the same extent and in the same manner as said improvements now overlap and encroach on said land of Covenantor.

2. Covenantor hereby covenants and agrees to and with said Covenantee that so long as the aforesaid Second Encroachment shall remain, Covenantee shall have, and there is hereby granted and secured to Covenantee, the right to have the Second Encroachment now erected as aforesaid, overlap and extend into the Power Line Easements owned by Covenantor, to the same extent and in the same manner as said improvements now overlap and encroach on said land of Covenantor; subject to the following conditions:

- a. Covenantee agrees to use said area within the Power Line Easement in such a manner as will not interfere with the Covenantor's activities and facilities as now, or hereafter, exist thereon the facilities of Covenantor.
- b. Covenantee agrees the use of said area within the Power Line Easement herein provided shall in no way affect the validity of the Covenantor's easements and shall in no way modify or restrict the use or rights of the Covenantor, its successors or assigns, in and to the area to be used.
- c. Covenantee acknowledges the Covenantor's right and title to said easements and the priority of the Covenantor's right to use and hereby agrees not to resist or assail said priority.
- d. The use of said area within said rights-of-way by the Covenantee shall be at the sole risk and expense of the Covenantee, and the Covenantor is specifically relieved of any responsibility for damage to the facilities and property of Covenantee resulting or occurring from the use of said rights-of-way by the Covenantor, unless said damage is caused by Covenantor's sole negligence or willful misconduct.
- e. Should the Covenantor determine at a future date and in its sole discretion that the area described herein is needed by the Covenantor in the operation of its activities, upon 90 days written notice from the Covenantor, shall immediately terminate use of such area, remove all improvements from said area at Covenantee's sole expense, and to return possession of said area in its original condition to Covenantor.
- f. Covenantee hereby agrees and covenants not to use and will prohibit agents, employees and contractors of Covenantee from using any tools, equipment or machinery within ten (10) feet of the Covenantor's overhead conductors.

- g. Covenantee agrees to comply with Official Code of Georgia Section 46-3-30 et. seq., (HIGH-VOLTAGE SAFETY ACT), and any and all Rules and Regulations of the State of Georgia promulgated in connection therewith, all as now enacted or hereinafter amended; and further agrees to notify any contractor(s) that may be employed by the Covenantee to perform any of the work referred to in this Agreement of the existence of said code sections and regulations by requiring said work to be performed in compliance with said code sections and regulations by including same as a requirement in its request for bids and including said requirement in any contract let as a result of said bid. Covenantee further agrees and covenants to warn all persons whom the Covenantee knows or should reasonably anticipate for any reason may resort to the vicinity of such conductors of the fact that such conductors are (a) electrical conductors, (b) energized, (c) uninsulated and (d) dangerous.
- h. Notwithstanding anything to the contrary contained herein, the Covenantee agrees to reimburse the Covenantor for all cost and expense for any damage to the Covenantor's facilities resulting from the use by the Covenantee of said area within said right(s)-of-way. Also, the Covenantee agrees that if in the reasonable opinion of the Covenantor, it becomes necessary, as a result of the exercise of the permission herein granted, to relocate, rearrange, change or raise any of the Covenantor's facilities, to promptly reimburse the Covenantor for all cost and expense involved in such relocation, rearrangement or raising of said facilities.
- i. Covenantee agrees to notify or have its contractor(s) notify Georgia Covenantor's Transmission Maintenance Center, Rome, Georgia, phone (706) 236-1430, and Dalton Utilities (706) 281 -1003, at least two (2) days prior to actual construction on the Covenantor's right(s)-of-way.
- j. Covenantee shall and does hereby agree to indemnify and save harmless and defend the Covenantor from the payment of any sum or sums of money to any persons whomsoever (including third persons, subcontractors, of the Covenantee, and agents and employees of them) on account of claims or suits growing out of injuries to persons (including death) or damage to property (including property of the Covenantor) in any way attributable to or arising out of the use of the above described lands, by the Covenantee as herein provided, including (but without limiting the generality of the foregoing) all liens, garnishments, attachments, claims, suits, judgments, costs, attorney's fees, cost of investigation and of defense, and excepting only those situations where the personal injury and property damage claimed have been caused by reason of the sole negligence on the part of the Covenantor, its agents or employees.

[SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, this Agreement has been duly executed and sealed by Covenantor the day and year first above written.

Signed, sealed and delivered
In the presence of:

The City of Dalton

Unofficial Witness

By: _____
Mayor

Notary Public

Attest: _____
Clerk

My commission expires:

[Notarial Seal]

[Seal]

Signed, sealed and delivered
In the presence of:

Naik Properties LLC

Unofficial Witness

By: _____
Pramod Naik
Title: Sole Member

Notary Public

My commission expires:

[Notarial Seal]

[Corporate Seal]

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot No. 240 in the 12th District and 3rd Section of Whitfield County, Georgia and being more particularly described according to a plat of survey prepared for Charles Fortner by N.B. DeLoach, Georgia Registered Land Surveyor No. 1347, dated November 1, 1991, revised March 11, 1992, and being more particularly described according to said survey as follows:

BEGINNING at a point located in the north right-of-way line of Walnut Avenue, said point being located in an easterly direction, as measured along said right-of-way line a distance of 404.86 feet from the point of intersection of said right-of-way line and the east right-of-way line of Fielding St.; thence running north 00 degrees 16 minutes 00 seconds east a distance of 14.74 feet to an iron pin located in the original north right-of-way line of Key Street as described in that certain Quit Claim Deed recorded in Deed Book 903 Page 116, Whitfield County, Georgia Land Records; thence running north 00 degrees 16 minutes 00 seconds east a distance of 258 feet to an iron pin; thence running north 11 degrees 33 minutes 39 seconds west a distance of 185.60 feet to an iron pin; thence running south 88 degrees 00 minutes 28 seconds east a distance of 98.11 feet to an iron pin, said iron pin being located south 04 degrees 54 minutes 08 seconds east a distance of 14.9 feet from a point located in the centerline of Richards Street, (now abandoned) which latter point is located 468.6 feet south and 406 west from the intersection of the centerline of unopened Tenth Avenue with the south line of the right-of-way of May Street; thence running south 04 degrees 54 minutes 08 seconds east a distance of 442 feet to an iron pin located in the original north right-of-way line of Key Street as described in that certain Quit Claim Deed recorded in Deed Book 903 Page 116 Whitfield County, Georgia Land Records; thence running south 04 degrees 54 minutes 08 seconds east a distance of 11.39 feet to a point; thence running north 89 degrees 40 minutes 30 seconds west, along the north right-of-way line of Walnut Avenue, a distance of 100.87 feet to a point, which is the POINT OF BEGINNING.

EXHIBIT “B”

{Survey}