



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 08/19/2024

**Agenda Item:** 707 Valley Drive, 705 Valley Drive, 704 South Thornton Avenue Temporary Construction Easements

**Department:** Public Works

**Requested By:** Chad Townsend

**Reviewed/Approved by City Attorney?** Yes

**Cost:** N/A

**Funding Source if Not in Budget** -----

**Please Provide A Summary of Your Request, Including Background Information to Explain the Request:**

This request is to authorize the temporary construction easements to complete the scope of work within properties residing along the Valley Drive Channel Stabilization Project area. Properties within the agenda request include 707 & 705 Valley Drive, and 704 South Thornton Avenue.

The completion time for each property varies based upon the scope of improvements being performed at each respective location.

See attached easements for additional information.

## TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (sometimes the “Agreement”) is made this 5 day of August, 2024 (the “Effective Date”), by and between C. Bruce Jennings and Gaile R. Jennings, (hereinafter “Grantor”), and the City of Dalton, Georgia, a municipal corporation of the State of Georgia, party of the second part (hereinafter “Grantee”), their respective heirs, administrators, successors and assigns:

**WHEREAS**, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in Exhibit “A” attached hereto and incorporated herein by reference (the “Property”); and

**WHEREAS**, Grantee is a municipal corporation owning or controlling certain real property near to or adjacent to the Property being used as a city street or right-of-way and more particularly described as part of the Ridge Street Stormwater Drainage Area per engineering study of Grantee (the “City Project”); and

**WHEREAS**, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use and subject to the terms hereof; and

**WHEREAS**, upon completion of the construction identified therein said construction easement shall cease; and

**NOW, THEREFORE**, in consideration of the sum of Ten and No/100 Dollars (\$10.00) from each to the other in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Temporary Construction Easement.** Grantor, for herself/himself and on behalf of her/his heirs, legal representations, and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across, and through that Property shown on Exhibit “A” (the “Construction Easement”). The rights, benefits, privileges, and easement granted herein are for the purpose of that construction identified in Exhibit B and as provided in Section 3 herein below (the “Construction Project”). Said Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Temporary Construction Easement.** The parties contemplate that the construction project can be completed by February 1<sup>st</sup>, 2025 or earlier. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement shall be for a period of the date of execution through February 1<sup>st</sup>, 2025. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related events as soon as reasonably

possible. The parties shall reasonably cooperate to complete the Construction Project in a timely manner.

3. **Construction and Additional Rights.** The Temporary Construction Easement granted herein shall include:

- (a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;
- (b) the right to remove trees as necessary to perform scope of work;
- (c) the right to construct a new stormwater conveyance system spanning parallel of the northern property line, and connecting to the stream bank restoration spanning parallel along the easterly property line.
- (d) the right to perform a stream bank restoration on the stream located at the Eastern portion of the parcel.
- (e) the right to remove and dispose of existing shed located on the northeastern corner of the property.
- (f) the right to remove and dispose of any landscape debris residing within the limits of the Temporary Construction Easement unless specified otherwise within the 'Conditions and Obligations of Construction Easement Use'.

4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.

5. **Conditions and Obligations of Construction Easement Use.**

- (a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Property. Any such use of this Temporary Construction Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.
- (b) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be done in a good workmanlike manner and the Property shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable.

- (c) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be performed in a manner to mitigate any potential impacts towards root systems of trees that are to remain on the property.
- (d) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be performed in a manner that minimizes disturbance and demolition of landscape vegetation within the working area specified within this Temporary Construction Easement.
- (e) Grantee shall remove all debris that resides within the
- (f) Grantee shall construct a temporary fence as needed on the easement area for the purpose of containing Grantor's dog away from the construction area. Grantee shall remove said fence, and restore in-kind Grantor's permanent fencing where disturbed prior to the end of the term set forth in Paragraph 2.
- (g) Grantee shall, prior to the end of the term set forth in Paragraph 2, remove the shed from the property indicated on Exhibit "B".

6 **Covenants of Grantor.**

- (a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted to the Grantee herein and further acknowledges that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Construction Easement.
- (b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easement, rights and privileges granted herein.

7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication to the general public or for any general public use.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against whom enforcement of such amendment, waiver or discharge is sought.

9. **Severability.** The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of

the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, upon execution by the Grantor and Grantee.

11. **Time of Essence.** Time is of the essence with respect to this Agreement.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signatures on next page]

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered in the presence of:

T. Gankam Sheppard  
Unofficial Witness

Grantor:

C. Bruce Jennings  
C. Bruce Jennings

Gaile R. Jennings  
Gaile R. Jennings

Tosha Haynes  
Notary Public

My Commission Expires: 04-03-2026

Acceptance of Grantee:

CITY OF DALTON

\_\_\_\_\_  
Authorized Officer

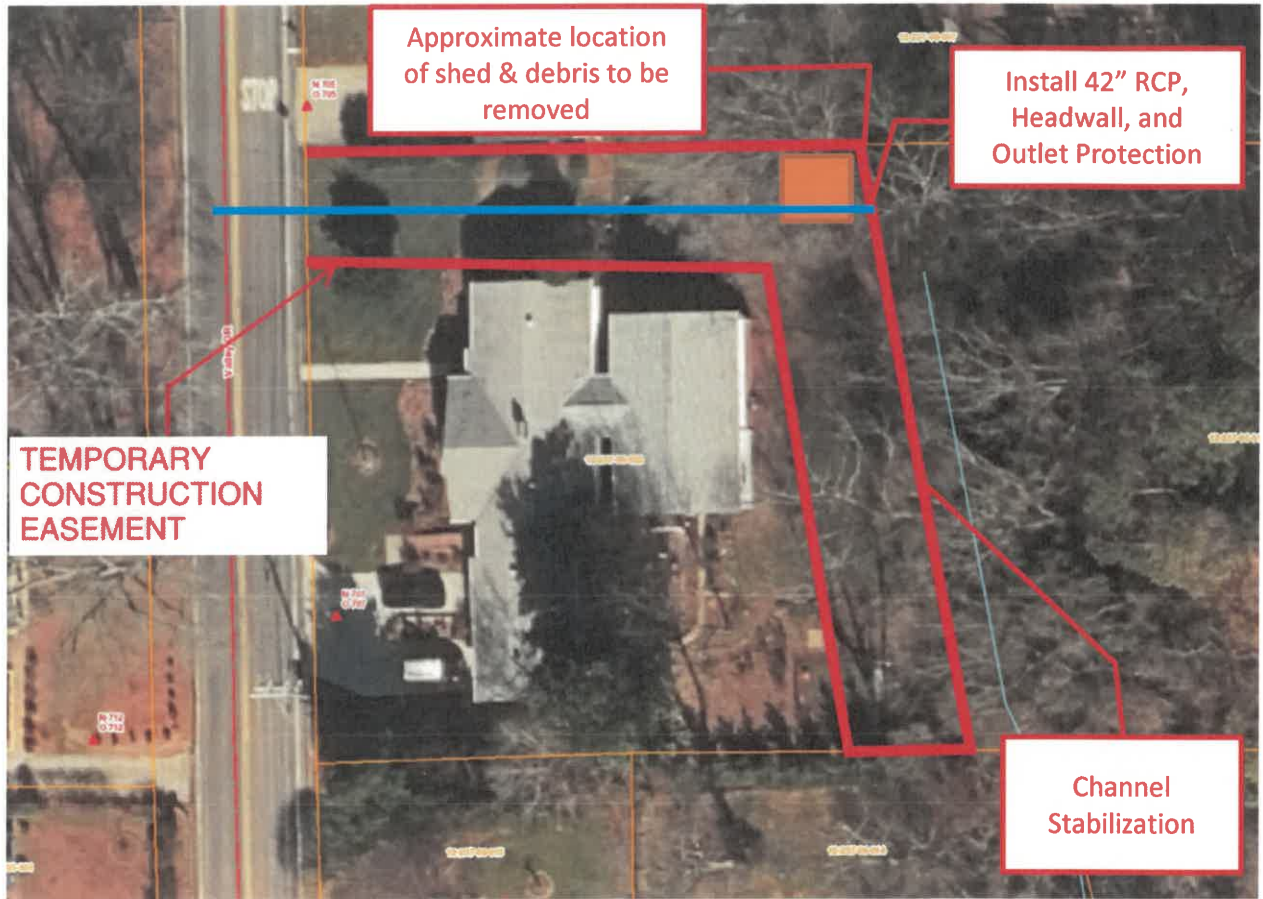


## EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 237 of the 12th District and 3rd Section of Whitfield County, Georgia, as per a plat prepared by Norman B. DeLoach, Georgia Registered Land Surveyor No. 1347, dated June 26, 1998, and being more particularly described as follows:

BEGINNING at a point on the east right-of-way of Valley Drive (50' r/w), which point is located 144.07 feet north along the east right-of-way of Valley Drive from its intersection with the north right-of-way of Walnut Avenue; thence north 01 degrees 22 minutes 22 seconds west 156.59 feet to a point; thence north 89 degrees 13 minutes 46 second east 135.17 feet to a point; thence along the west bank of a ditch the following courses and distances: south 09 degrees 46 minutes 41 seconds east 62.04 feet; south 11 degrees 22 minutes 53 seconds east 99.17 feet to a point; thence north 90 degrees 00 minutes west 161.52 feet to the POINT OF BEGINNING.

**EXHIBIT "B"**





## TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (sometimes the "Agreement") is made this 1 day of August, 20 24 (the "Effective Date"), by and between AKC Rentals, LLC, (hereinafter "Grantor"), and the City of Dalton, Georgia, a municipal corporation of the State of Georgia, party of the second part (hereinafter "Grantee"), their respective heirs, administrators, successors and assigns:

**WHEREAS**, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

**WHEREAS**, Grantee is a municipal corporation owning or controlling certain real property adjacent to the Property being used as a city street or right-of-way and more particularly described as **Thornton Avenue** (the "City Property"); and

**WHEREAS**, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use and subject to the terms hereof; and

**WHEREAS**, upon completion of the construction identified therein said construction easement shall cease; and

**NOW, THEREFORE**, in consideration of the sum of Ten and No/100 Dollars (\$10.00) from each to the other in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Temporary Construction Easement.** Grantor, for herself/himself and on behalf of her/his heirs, legal representations, and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across, and through that Property shown on Exhibit "A" (the "Construction Easement"). The rights, benefits, privileges, and easement granted herein are for the purpose of that construction identified in Exhibit B and as provided in Section 3 herein below (the "Construction Project"). Said Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Temporary Construction Easement.** The parties contemplate that the construction project can be completed by the end of fiscal year 20~~23~~<sup>24</sup> or earlier. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement shall be for a period of the date of execution through December 31<sup>st</sup>, 20~~23~~<sup>24</sup>. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related delays as soon

24 J.S.

24 J.S.

as reasonably possible. The parties shall reasonably cooperate to complete the project in a timely manner.

3. **Construction and Additional Rights.** The Temporary Construction Easement granted herein shall include:
  - (a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;
  - (b) the right to perform necessary work in order to prepare for installation of an in-situ pipe lining on an existing storm drain pipe;
  - (c) the right to install an in-situ pipe lining on the existing storm drain pipe located at 705 Valley Dr.;
  - (d) the right to remove trees as necessary to perform scope of work;
  - (e) the right to perform a stream bank restoration on the stream located at the Western portion of the parcel.
  
4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.
  
5. **Conditions and Obligations of Construction Easement Use.**
  - (a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Property. Any such use of this Temporary Construction Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.
  - (b) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be done in a good workmanlike manner and the Property shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable.
  
6. **Covenants of Grantor.**
  - (a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted to the Grantee herein and further acknowledges that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the

negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Construction Easement.

(b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easement, rights and privileges granted herein.

7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication to the general public or for any general public use.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against whom enforcement of such amendment, waiver or discharge is sought.

9. **Severability.** The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, upon execution by the Grantor and Grantee.

11. **Time of Essence.** Time is of the essence with respect to this Agreement.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signatures on next page]

**IN WITNESS WHEREOF**, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered  
in the presence of:

Grantor:  
AKC HOLDINGS, LLLP

T. Gibson Shepherd  
Unofficial Witness

Art Kinard  
managing partner

Tosha Haynes  
Notary Public

My Commission Expires: 04-03-2026

Acceptance of Grantee:

CITY OF DALTON



\_\_\_\_\_  
Authorized Officer

## EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 237 of the 12<sup>th</sup> District and 3<sup>rd</sup> Section of Whitfield County, Georgia, and beginning at a point on the east right of way of Valley Drive, which point is located 168.5 feet north of the intersection of the north curb of Walnut Avenue and the east curb of Valley Drive (formerly known as Jones Street); thence running north along the east right of way of Valley Drive a distance of 156.5 feet, more or less, to the property line of J. Pleas Smith, Jr.; thence running east along the south line of the property of J. Pleas Smith, Jr., a distance of 300.0 feet, more or less; thence south a distance of 164.5 feet, more or less, along the west line of the property now or formerly owned by Mrs. Fannie B. McCarty and the property of Mrs. Kate Spann Wink to the property of J. P. Herndon; thence west along the north line of the property J. P. Herndon and others, a distance of 300.0 feet, more or less, to the point of beginning.

LESS AND EXCEPT that portion conveyed to G. Bruce Jennings and Gaile R. Jennings in that certain Warranty Deed from Robert W. Kinard to G. Bruce Jennings and Gaile R. Jennings dated August 28, 1998, recorded in Deed Book 3023 Page 336, Whitfield County, Georgia Land Records.

**EXHIBIT "B"**



## TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (sometimes the "Agreement") is made this 1 day of August, 2024 (the "Effective Date"), by and between **Kindard Development, Inc.**, (hereinafter "Grantor"), and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, party of the second part (hereinafter "Grantee"), their respective heirs, administrators, successors and assigns:

**WHEREAS**, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Property"); and

**WHEREAS**, Grantee is a municipal corporation owning or controlling certain real property adjacent to the Property being used as a city street or right-of-way and more particularly described as **Thornton Avenue** (the "City Property"); and

**WHEREAS**, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use and subject to the terms hereof; and

**WHEREAS**, upon completion of the construction identified therein said construction easement shall cease; and

**NOW, THEREFORE**, in consideration of the sum of Ten and No/100 Dollars (\$10.00) from each to the other in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Temporary Construction Easement.** Grantor, for herself/himself and on behalf of her/his heirs, legal representations, and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across, and through that Property shown on Exhibit "A" (the "Construction Easement"). The rights, benefits, privileges, and easement granted herein are for the purpose of that construction identified in Exhibit B and as provided in Section 3 herein below (the "Construction Project"). Said Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Temporary Construction Easement.** The parties contemplate that the construction project can be completed by the end of fiscal year ~~2023~~ or earlier. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement shall be for a period of the date of execution through December 31<sup>st</sup>, ~~2023~~. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related delays as soon

as reasonably possible. The parties shall reasonably cooperate to complete the project in a timely manner.

3. **Construction and Additional Rights.** The Temporary Construction Easement granted herein shall include:

- (a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;
- (b) the right to perform necessary work in order to prepare for installation of an in-situ pipe lining on an existing storm drain pipe located off property;
- (c) the right to remove trees as necessary to perform scope of work;
- (d) the right to perform a stream bank restoration on the stream located at the Western portion of the parcel.

4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.

5. **Conditions and Obligations of Construction Easement Use.**

- (a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Property. Any such use of this Temporary Construction Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.
- (b) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be done in a good workmanlike manner and the Property shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable.

6 **Covenants of Grantor.**

- (a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted to the Grantee herein and further acknowledges that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Construction Easement.



(b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easement, rights and privileges granted herein.

7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication to the general public or for any general public use.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against whom enforcement of such amendment, waiver or discharge is sought.

9. **Severability.** The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, upon execution by the Grantor and Grantee.

11. **Time of Essence.** Time is of the essence with respect to this Agreement.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signatures on next page]

**IN WITNESS WHEREOF**, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered  
in the presence of:

Grantor:  
KINDARD DEVELOPMENT, INC.

J. Gibson Shepard

Unofficial Witness

Duff Kinard

Tosha Haynes

Notary Public

My Commission Expires: 04-03-2026

Acceptance of Grantee:

CITY OF DALTON



\_\_\_\_\_  
Authorized Officer

## EXHIBIT "A"

### Whitfield County Tax Parcel Information

#### Owner and Parcel Information

Parcel Number 12-237-06-013  
 Realkey 21704  
 Property Record Card [Click Here](#)  
 Property Record Card [Click Here](#)  
 GIS Map [Map](#)  
 Owner Name KINARD DEVELOPMENT INC  
 Owner Address 704 S THORNTON AVE  
 Owner Address 2  
 Owner Address 3  
 Owner City DALTON  
 Owner State GA  
 Owner Zip 30720  
 Latitude  
 Longitude

#### Parcel Address

Parcel House Number 0  
 Parcel Street Extension  
 Parcel Street Direction  
 Parcel Street Name WALNUT  
 Parcel Street Units  
 Parcel Street Type AVE

#### Current Fair Market Value Information

Previous 48300  
 Current 48300  
 Land 48300  
 Residential Improvement  
 Commercial Improvement  
 Accessory Improvement  
 Conservation Use Value

#### Property Information

Class Commercial  
 Strata Lot  
 Tax District City of Dalton  
 Neighborhood  
 Legal Description TRACTS 3 & 4 (C-326)  
 Total Acres 0.54  
 Zoning See GIS Map  
 GMD/Map Number  
 Subdivision  
 Subdivision Phase  
 Subdivision Section 0000  
 Subdivision Block  
 Subdivision Lot  
 Comments:

#### Historical Fair Market Value Information

2019 48300  
 2018 48300  
 2017 48300

#### Exemption Information

Homestead 50  
 Preferential Year  
 Conservation Use Year  
 Historical Year  
 Historical Val 0  
 EZ year  
 EZ Val 0

#### Appeals Information

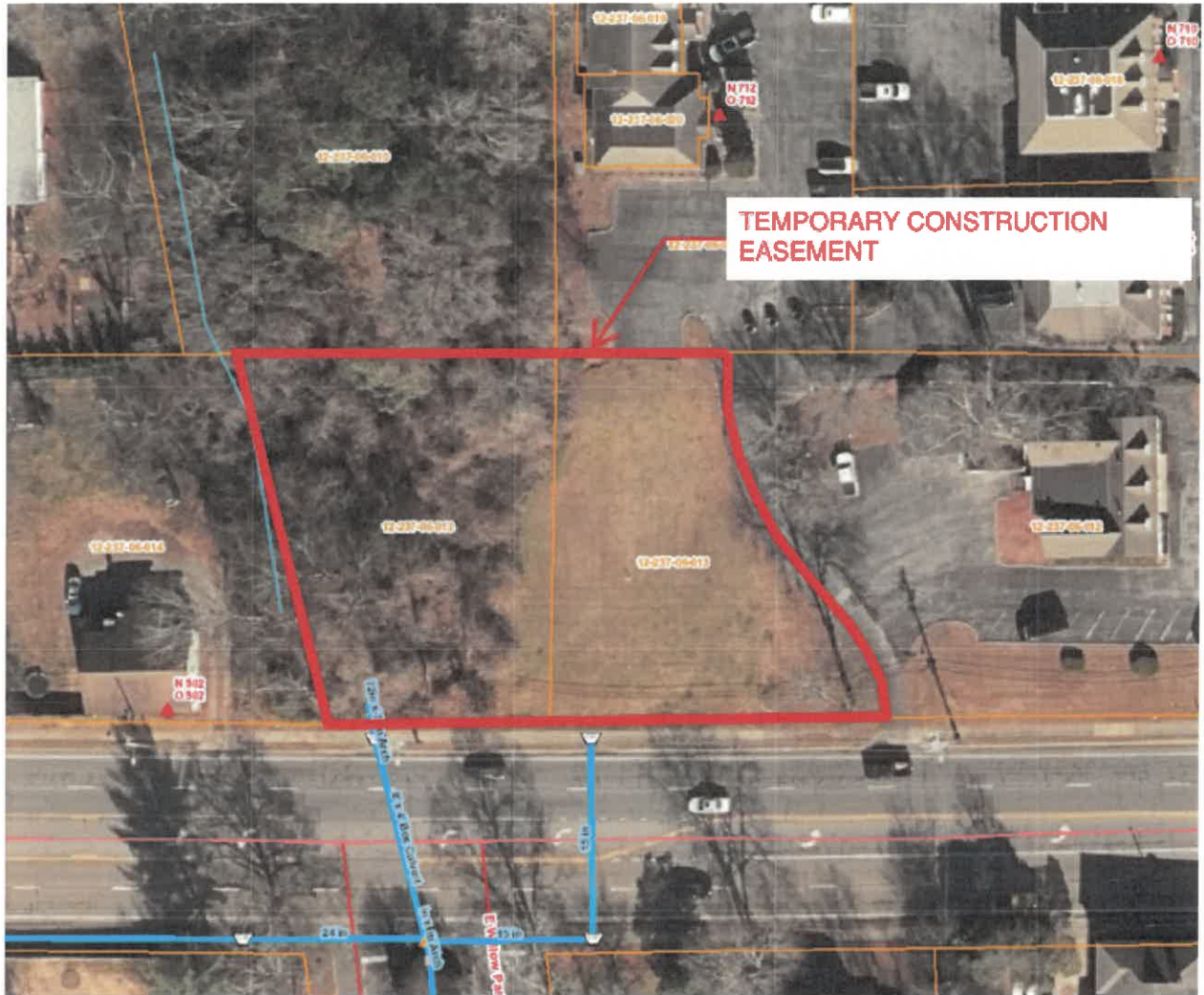
Appeal Year 2011  
 Appeal Status Resolved

### GIS Quickmap



For the current GIS map of this parcel, click on the Quickmap to launch the interactive map viewer

# EXHIBIT "B"



[Space above this line for recording data.]

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Please Record and Return To:

Jonathan Bledsoe  
The Minor Firm  
P.O. Box 2586  
Dalton, GA 30722-2586

## TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (this "Agreement") made this 14 day of August, 2024, between **Jack Joseph Hitchens and Courtney King Hitchens**, Grantor, and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, Grantee.

### W I T N E S S E T H:

**WHEREAS**, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as being more particularly described in Exhibit "A," attached hereto and made a part hereof by reference (the "Servient Property"); and

**WHEREAS**, Grantee is the owner of certain real property adjacent to the Servient Property and being more particularly described that certain public roadway known as **Valley Drive** (the "City Property"); and

**WHEREAS**, Grantee has constructed, or will construct, a storm sewer pipe and/or storm water structures located on the Servient Property (collectively the "Municipal Storm Sewer") and being located on that certain portion of the Servient Property more particularly described as the "Construction Easement" on the depiction attached hereto as Exhibit "B," attached hereto and made a part hereof by reference (the "Storm Drainage Easement"); and

**WHEREAS**, Grantee desires non-exclusive temporary access and use of a portion of the Servient Property for a period set forth herein to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use and subject to the terms hereof; and

**WHEREAS**, upon completion of the construction identified therein said construction easement

shall cease;

**NOW THEREFORE**, for and in consideration of the sum of Ten Dollars and other good and valuable considerations, in hand paid at and before the sealing and delivering of these presents, the receipt of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. *Recitals.* The parties hereto acknowledge that the above recitals to this Agreement are true and correct, and agree that the same are incorporated by reference into the body of this Agreement.
2. *Temporary Construction Easement.* Grantor, for and on behalf of his heirs, administrators, executors, legal representatives, and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across, and through that Property shown on Exhibit "A" (the "Temporary Construction Easement"). The rights, benefits, privileges, and easement granted herein are for the purpose of the construction of the Municipal Storm Sewer (the "Construction Project"). Said Easement is temporary and shall begin upon execution of this Agreement and expire upon the earlier of twelve (12) months from the date of this Agreement or completion of the Construction Project ("Term").
3. *Extension of Term of Construction Easement.* The parties contemplate that the Construction Project can be completed during the Term. However, the parties acknowledge that the time for completion may be delayed due to weather or other conditions. Grantee shall have the right upon written notice to Grantor to extend the Temporary Construction Easement up to one additional Term in the event of delays in the Construction Project. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather or other delays as soon as reasonably possible. The parties shall reasonably cooperate to complete the project in a timely manner.
4. *Rights to Maintain.* Grantee shall have all rights, benefits, privileges, and easements necessary or convenient for the full enjoyment and use of the Temporary Construction Easement for the purposes described herein, including the right of entry into and upon the Servient Property for the purpose of access and ingress to and egress from the Storm Drainage Easement in order to effect the rights, privileges and easements set forth herein. Grantee shall have the right to cut away and keep clear, remove and dispose of all trees, undergrowth or other obstructions now or as may exist on the Temporary Construction Easement or Storm Drainage Easement, which removal is necessary for Grantee's use and enjoyment of easements, rights and privileges granted herein, and Grantee shall also have the right to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Temporary Construction Easement or Storm Drainage Easement. However, nothing in this Agreement shall obligate Grantee to take any such action, and Grantor hereby releases, indemnifies, and holds harmless Grantee from any and all claims which in any way pertain to construction or maintenance of the Municipal Storm Sewer, Temporary Construction Easement, or Storm Drainage Easement.
5. *Covenants of Grantor.* Grantor waives all right to any further compensation for the use and enjoyment of the rights and privileges granted herein. Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Servient Property, that it has a good and lawful right to convey said easement, rights and privileges granted herein. Grantor irrevocably binds itself to refrain from making any claim or demand, or to commence, cause, or permit to be prosecuted any action in law or equity against Grantee, or any other person, firm or entity claiming by or through Grantee on account of any damage that may occur or resulting from the installation or the operation of the Temporary Construction Easement.
6. *Running with the Land.* It is intended that each of the Easements, covenants, conditions, rights, and obligations set forth herein shall run with the land and create equitable servitudes in favor of the City Property benefited thereby, shall bind every person having any fee, leasehold, or other interest therein and

shall inure to the benefit of the respective Parties and their successors, assigns, heirs, and personal representatives.

7. *Jurisdiction and Venue* The laws of the State of Georgia shall govern the interpretation, validity, performance, and enforcement of this Agreement. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County, Georgia, and the parties hereby waive any and all objections or defenses to said jurisdiction and venue.

8. *Severability*. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

9. *Time of Essence*. Except as otherwise specifically provided herein, time is of the essence of this Agreement.


10. *Entire Agreement*. This Agreement and any permanent Storm Drainage Easement executed in connection herewith contain the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby. In the event of any conflict between this Agreement and the permanent Storm Drainage Easement, the terms of the permanent Storm Drainage Easement shall control.


11. *Successors and Assigns*. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

12. *Counterparts*. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

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

Signed, sealed and delivered  
In the presence of:

  
Unofficial Witness

  
Notary Public  
My commission expires: 04-03-2026



**GRANTOR:**

 (Seal)  
Jack Joseph Hitchens

 (Seal)  
Courtney King Hitchens

**RECEIPT ACKNOWLEDGED BY:**

Signed, sealed and delivered  
In the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My commission expires:  
[Notarial Seal]

**GRANTEE:**

**City of Dalton, Georgia**

By \_\_\_\_\_  
Title:



## **EXHIBIT "A"**

A certain tract or parcel of land lying and being in The City of Dalton, 12th District and 3rd Section of Whitfield County, Georgia, fronting 100 feet, more or less, on the east side of the right-of-way of Valley Drive and being the west part of what was formerly known as the J. J. Duane Homeplace and being that identical property heretofore conveyed to J. Pleas Smith, Jr. by the Executors of Pearl Duane Smith, by deed dated July 8, 1948, as recorded in Deed Book 53, page 138 of the Deed Records of Whitfield County, Georgia, (LESS AND EXCEPT that property subsequently conveyed by J. Pleas Smith, Jr. to J. Pleas Smith, Sr., dated July 8, 1948 as recorded in Deed Book 53, pages 95-96 of the Deed Records of Whitfield County, Georgia,) PLUS that property conveyed by Warranty Deed of Exie Jane C. Smith to J. Pleas Smith, Jr. on January 12, 1968, as recorded in Deed Book 224, page 61 of the Deed Records of Whitfield County, Georgia, reference to which is herein made to all of the aforesaid Deeds with the property herein conveyed, being more particularly described as follows, to-wit:

BEGINNING at a point on the east side of the right-of-way of Valley Drive located 600 feet south of the right-of-way of the west side of Thornton Avenue and being the northwest corner of the property of Conner and further identified as the southwest corner of that property heretofore deeded to J. Pleas Smith, Jr. by the aforesaid deed referred to above, dated July 8, 1948, as recorded in Deed Book 53, page 138 of the Deed Records of Whitfield County, Georgia; thence running north along the east side of the right-of-way of Valley Drive, 100 feet, more or less, to the northwest corner of that property referred to in Deed Book 53, page 138; thence running east 250 feet; thence running south 100 feet, more or less; thence running west 250 feet to the point of beginning plus a part of City Lot No. 10 (which said lot is also designated as 706 South Thornton Avenue) and being 53 feet, more or less, off of the west end of that portion of the property heretofore referred to above in Deed Book 53, pages 95-96 and being more particularly described as beginning at the northeast corner of the J. Pleas Smith, Jr. Homeplace described above; thence running east along the north line of said Lot, 53 feet, more or less, to an iron stake which is 3 feet east of where a wire dog fence is now or previously located; thence south parallel to said wire dog fence to an iron stake on the south line of said lot; thence west along the south line of said lot to the east line of the J. Pleas Smith, Jr. Homeplace as aforesaid; thence north along the east line of said Homeplace lot to the point of beginning with said additional property herein described as being that property described in Deed Book 224, page 61 of the Deed Records of Whitfield County, Georgia, reference to which is herein made.

# EXHIBIT "B"

