

# TEMPORARY CONSTRUCTION EASEMENT/AGREEMENT

Georgia, Whitfield County

This **Temporary Construction Easement Agreement** (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between **Barbara Barnwell** (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 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 the owner of certain real property adjacent to the Property being a city street and right-of-way and more particularly described as **Shugart Road** (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 on 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) 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, and for and on behalf of its successors and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across and through that certain portion of the Property shown on the **Location Map for Temporary Construction Easement with B. Barnwell** (designated by hash marks) attached hereto as **Exhibit “B”** and incorporated herein by reference (the “Construction Easement”). The rights, benefits, privileges, and easement granted herein is for the purpose of the non-exclusive construction identified therein. Said Construction Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Easement.** The parties contemplate that the construction project can be completed in ninety (90) days or less and will be completed prior to May 30, 2021. 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 ninety (90) days beginning January 1, 2021. 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 reasonable cooperate to complete the project in a timely manner.

3. **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 cut away, remove and dispose of all trees, undergrowth or other obstructions which exist on the Easement, which removal is necessary for Grantee's construction identified herein;

(c) the right to install stone rip rap, fabric or other materials for stormwater and erosion control within the easement area;

(d) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Property.

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 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 Easement. Any such use of the 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 on the Easement by Grantee shall be done in a good workmanlike manner and the Easement 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 herein and further acknowledge 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 Constructive 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 easements, rights and privileges granted herein.

7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift of 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 which 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, and 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.

**[Signature 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:**

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

**Barbara Barnwell**

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_(Seal)

My commission expires:

[Notarial Seal]

## **EXHIBIT “A”**

### **Legal Description**

A certain tract or parcel of land lying and being in Land Lot 159 of the 12<sup>th</sup> District and 3<sup>rd</sup> Section of Whitfield County, Georgia and being Tracts No. 96, 97, 98, and 99 of Willowdale Subdivision according to a plat of said subdivision by R. E. Smith, Registered Land Surveyor, dated September, 1936, of record in Plat Book 1, page 107 in the Office of the Clerk of the Superior Court of Whitfield County, Georgia, reference to said plat being herein made for a more full and complete description of said tracts.

**EXHIBIT “B”**

**Location Map for Temporary Construction Easement with B. Barnwell**