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Please Record and Return To:

Jonathan Bledsoe
The Minor Firm
745 College Drive, Suite B
Dalton, GA 30720

STORM DRAINAGE EASEMENT AGREEMENT

Georgia, Whitfield County

This Storm Drainage Easement Agreement (this "Agreement") is made this ____ day of _____, 2024 (the "Effective Date"), by and between **Jimmy Wilbanks and Jane G. Wilbanks**, of the first part (hereinafter called "Grantor"), and the City of Dalton, Georgia, a municipal corporation of the State of Georgia, party of the second part (hereinafter called "Grantee"), their respective heirs, administrators, successors and assigns:

WITNESSETH:

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 "Wilbanks Property"); and

WHEREAS, Grantee is the owner of certain real property adjacent to the Wilbanks Property and more particularly described as **Rocky Face Circle** (the "City Property"); and

WHEREAS, Grantee has constructed, or will construct, a storm sewer pipe and storm water structures on the Wilbanks Property (collectively the "Wilbanks Municipal Storm Sewer"); and

WHEREAS, Grantor acknowledges that the work to be performed in this Agreement may not fully mitigate all flooding of the Wilbanks Property; and

WHEREAS, Grantee desires non-exclusive access to and use of a portion of the Wilbanks Property to collect storm water originating from the City Property into the Wilbanks Municipal

Storm Sewer; and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Wilbanks Property to construct and/or maintain the Wilbanks Municipal Storm Sewer and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, upon completion of the installation and construction of the Wilbanks Municipal Storm Sewer, Grantee shall be not responsible for any and all costs associated with the use, maintenance, repair, replacement, inspection, and reconstruction of the Wilbanks Municipal Storm Sewer, as relates to maintaining reasonable drainage flow from the right of way to the discharge point, if Grantor erects a structure above Wilbanks Municipal Storm Sewer; and

WHEREAS, in order to evidence the understanding between Grantor and Grantee with respect to the Wilbanks Municipal Storm Sewer, Grantor intends to declare, establish, create, grant, and/or convey certain easement rights to Grantee for and with respect to the installation and utilization of the Storm Drainage Easement (as defined herein below), all as more particularly set forth herein.

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. **Storm Drainage Easement.** Grantor, and for and on behalf of his heirs, administrators, successors and assigns, and for and on behalf of anyone claiming by, through or under Grantor, does hereby grant, bargain, sell and convey unto Grantee and its successors and assigns, a perpetual, non-exclusive easement in, on, over, under, across and through that certain portion of the Wilbanks Property shown as the "Perm. Drainage Esmt" on the aerial drawing attached hereto as Exhibit "B" and incorporated herein by this reference (also the "Storm Drainage Easement"). The rights, benefits, privileges, and easement granted herein is for the purpose of the non-exclusive use and enjoyment of the Storm Drainage Easement flowing to channel, distribute or transport storm water originating from or onto and across the City's Property through the Wilbanks Municipal Storm Sewer. Notwithstanding the foregoing, Grantor hereby agrees to accept such storm water discharge through the Wilbanks Municipal Storm Sewer in its current intensity, rate, volume and location.

2. **Additional Rights.** The Storm Drainage Easement granted herein shall include:

(a) all rights, benefits, privileges, and easements necessary or convenient for the full enjoyment and use of the Storm Drainage Easement for the purposes described herein;

(b) the right of entry into and upon the Wilbanks 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;

(c) 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 Storm Drainage Easement, which removal is necessary for Grantee's use and enjoyment of easements, rights and privileges granted herein; and

(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 Storm Drainage Easement.

3. **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 Storm Drainage Easement appurtenant to his fee simple estate and for any and all purposes not inconsistent with Grantee's easement as expressly permitted herein.

4. **Conditions and Obligations of Easement Use.**

(a) The use of the Storm Drainage Easement by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Storm Drainage Easement. Any such use of the Storm Drainage 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 Wilbanks Property to the greatest extent practicable.

(b) Grantee shall only install the Wilbanks Municipal Storm Sewer on or within the Storm Drainage Easement.

(c) Grantor shall be solely responsible to maintain reasonable drainage flow from the right of way to the intake point. The Wilbanks Municipal Storm Sewer and Storm Drainage Easement shall remain free and clear of all liens and other encumbrances arising out of the exercise by the Grantee of its rights hereunder.

(d) Any construction, maintenance, repair or other work or activities performed on the Wilbanks Municipal Storm Sewer or within the Storm Drainage Easement by Grantee shall be done in a good, workmanlike manner and the Storm Drainage Easement shall be left in a clean and good condition, with all debris removed therefrom and with trenches and cuts properly filled so that all grades, paved areas, and permitted landscaped and grassed areas and other permitted improvements which may have been disturbed by such work are restored to their former condition as nearly as practicable; provided that if the affected area within the Storm Drainage Easement is natural and has not been improved, such areas shall be smoothed to commercial lawn grade and seeded with grass following such activity.

(e) Except in the event of an emergency, Grantor shall use commercially reasonable efforts to provide Grantee with at least ten (10) days prior written notice of any construction, maintenance, repair or other work or activities to be performed on or above the Wilbanks Municipal Storm Sewer or within the Storm Drainage Easement by Grantor.

(f) In the event that the Grantor, its employees, agents, or assigns, shall damage the Wilbanks Municipal Storm Sewer, the area within the Storm Drainage Easement or the Wilbanks Property, then, at its sole cost and expense and within thirty (30) days after receipt of written notice from Grantee that Grantor has caused such damage, Grantor shall repair, or cause such damage to be repaired, in a good, clean, and workmanlike manner, and to its former condition as nearly as practicable.

5. **Covenants of Grantor.**

(a) Grantor waives all right to any further compensation for the use and enjoyment of the rights and privileges granted herein.

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

(c) 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 Storm Drainage Easement.

6. **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.

7. **Successors and Assigns.** The Storm Drainage Easement shall run with title to and burden the Wilbanks Property and shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and assigns of Grantor and Grantee. All obligations of Grantor and Grantee hereunder shall be binding upon their respective heirs, administrators, successors-in-title and assigns.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties 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, this Agreement shall be promptly recorded in the Deed Records of Whitfield County, Georgia.

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:

Unofficial Witness

By:  (Seal)
Jimmy Wilbanks

Notary Public

By:  (Seal)
Jane G. Wilbanks

My commission expires:

[Notarial Seal]

Grantee:

City of Dalton

By: _____

Its: _____

Attest: _____
City Clerk

Unofficial Witness

Notary Public

My Commission Expires:

EXHIBIT "A"

Book 2711 Page 105

8:30 1A249
Columbia Banking Co.
P.O. BOX 10
Chatsworth GA 30045

STATE OF GEORGIA,
COUNTY OF WHITFIELD.

WARRANTY DEED

THIS INDENTURE, made the 1st day of April, 1996, between L. GLENN EUBANKS (hereinafter "Grantor"), of the County of Whitfield and State of Georgia, and JIMMY WILBANKS and JANE G. WILBANKS (hereinafter "Grantee"), of the County of Whitfield and State of Georgia.

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency whereof being hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does hereby grant, bargain, sell, alien, convey and confirm unto the said Grantee the following described property, to-wit:

All that tract or parcel of land lying and being in Land Lot No. 185 in the 13th District and 3rd Section of Whitfield County, Georgia, and being Lot No. 26 of Rocky Face Estates Subdivision, as shown by plat of record in Plat Book 8, page 14 (Plat Cabinet A, Slide 245), in the Office of the Clerk of the Superior Court of Whitfield County, Georgia, and being that identical tract as shown on plat of survey prepared by Marcus E. Cook, Registered Land Surveyor No. 1935, dated September 6, 1985, and revised September 11, 1985, and described as follows: BEGINNING at a point on the northwesterly side of the right-of-way of Tibbs Road at the northeasterly end of the curvature formed by the rounding of the intersection of the northerly side of Rocky Face Circle with the northwesterly side of the right-of-way of said Tibbs Road; thence southwesterly and westerly following the curvature formed by the rounding of said intersection 50 feet, more or less, to a point on the northerly side of the right-of-way of Rocky Face Circle, which said point marks the southwesterly terminus of the curvature formed by the rounding of said intersection; thence westerly, following the curvature of the northerly side of Rocky Face Circle 128.45 feet to an iron pin; thence north 1 degree 0 minutes east 189.7 feet to an iron pin; thence north 89 degrees 0 minutes east 339.2 feet to an iron pin on the westerly side of the right-of-way of Tibbs Road; thence southwesterly along the curvature of the northwesterly side of Tibbs Road 104.3 feet; thence continuing along the westerly side of Tibbs Road, south 19 degrees 40 minutes west 109 feet to a right-of-way marker; thence continuing along the right-of-way of said Tibbs Road south 50 degrees 30 minutes east 25 feet; thence continuing along said right-of-way, south 19 degrees 40 minutes west 34.5 feet to the point of beginning.

TOGETHER WITH all and singular the hereinabove described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all estate, right, title, interest and rights of possession, claim and demand whatsoever, as well in law as in equity, of the said Grantor, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging.

Whitfield County, Georgia
Real Estate Transfer Tax
Paid \$ 123.00
Date 4-5-96
Betty Nelson
Clerk of Superior Court

TO HAVE AND TO HOLD, all and singular the above described premises, unto the said Grantee, and to the heirs, legal representatives, successors and assigns of the said Grantee forever, in **FREE SIMPLE** (except as may be limited herein).

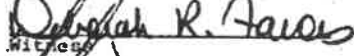
AND THE SAID GRANTOR, and the heirs, legal representatives, successors and assigns of the Grantor will **WARRANT** and **DEFEND** all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said Grantee, and to the heirs, legal representatives, successors and assigns of the Grantee, against all acts and deeds of the said Grantor, and all and every person or persons whomsoever lawfully claiming or to claim the same.

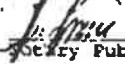
THIS CONVEYANCE IS MADE SUBJECT TO all easements, conditions and restrictive covenants of record insofar as the same may lawfully affect the above-described property.

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Deed on the day and year first above written.


L. GLENN EUBANKS (L.S.)

Signed, sealed and delivered in the presence of:


Deborah R. Faus

Witness

Notary Public

My Commission Expires:
Notary Public, Murray County, Georgia
My Commission Expires Sept. 1, 1988

(NOTARIAL SEAL)

FILED & RECORDED 8130
TIME: _____
DATE: 4-3-96
DEED BOOK: 2711
PAGE: 105-106
BETTY NELSON, C.S.C.
WHITFIELD COUNTY, GA

EXHIBIT "B"

2251 Rocky Face Circle Permanent Drainage Easement

