

TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (sometimes the “Agreement”) is made this ___ day of _____, _____ (the “Effective Date”), by and between **Jimmy Wilbanks and Jane G. Wilbanks**, party of the first part (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 **Rocky Face Circle** (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 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 “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 in fourteen (14) days or less once on site. 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 fourteen (14) days beginning on the date of commencement. 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 install a storm drain pipe to convey runoff from city owned property, necessary for stormwater and erosion control within the easement area;
- (c) 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 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 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.

- (c) Grantor acknowledges Grantee shall not be liable for any structure that Grantor may build on or above the storm drain pipe installed by Grantee. Grantor assumes full liability for any structure that Grantor may erect within the bounds of the easement and waive any claims, for bodily injury, for property damage to Grantor or to any third person.
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.

[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


Jimmy Wilbanks

Notary Public
My Commission Expires:


Jane G. Wilbanks

Acceptance of Grantee:

CITY OF DALTON

Authorized Officer

EXHIBIT "A"

Book 2711 Page 105

8:30 1A24A
Cohutta Banking Co.
P.O. BOX 10
Chatsworth GA. 30055

STATE OF GEORGIA,
COUNTY OF WHITFIELD.

WARRANTY DEED

THIS INDENTURE, made the 1st day of April, 1996, between L. GLENN RIBANKS (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 12th 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 west 189.7 feet to an iron pin; thence north 89 degrees 0 minutes east 319.2 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 4-4-96
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 **FEES SIMPLE** (except as may be limited herein).

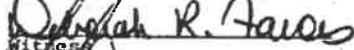
AND THE SAID GRANTOR, and the heirs, legal representatives, successors and assigns of the Grantor will **WARRANT** and **DEFEND** all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said Grantee, and to the heirs, legal representatives, successors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

Witness

Notary Public

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

(NOTARIAL SEAL)

FILED & RECORDED 8:30
TIME: 4-3-76
DATE: 2711
DEED BOOK: 105-106
PAGE:
BETTY NELSON, C.S.C.
WHYFIELD COUNTY, GA

EXHIBIT "B"

2251 Rocky Face Circle Temporary Construction Easement

