

PUBLIC WORKS DEPARTMENT

CHAD TOWNSEND, DIRECTOR

ctownsend@daltonga.gov

535 N. Elm Street
P.O. Box 1205
Dalton, GA 30722-1205
Office: (706) 278-7077
FAX: (706) 278-1847



DAVID PENNINGTON, MAYOR

CITY COUNCIL MEMBERS:

DENNIS MOCK
TYREE GOODLETT
STEVE FARROW

M E M O R A N D U M

TO: Mayor and City Councilmembers

FROM: Chad Townsend, Public Works Director

RE: Corrective Action Plan & Permanent Easement – E.
Lakeshore Drive Permanent Drainage Easement

DATE: May 22nd, 2023

An area of concern regarding right-of-way flooding is located at a culvert on E. Lakeshore Drive. A catch basin on the East side of the road receives stormwater runoff from the street and surrounding properties, and a 12-inch reinforced concrete culvert conveys the runoff across the road to a junction box on the West side of the road. A 24-inch corrugated metal pipe then conveys the runoff Southwest for approximately 217 feet across a property off right-of-way at 1000 E. Lakeshore Dr.

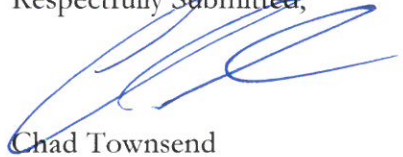
The Public Works Department has received requests to alleviate the flooding that occurs on the road during large rain events. Therefore, the Department has developed the following Corrective Action Plan to address the flooding issue. The 24-inch pipe conveying stormwater through the private property is made of corrugated metal and has reached the end of its useful life, resulting in the formation of sinkholes and allowing sediment to enter the pipe, forming blockages. The pipes in the conveyance system will be replaced to mitigate flooding of the road. Therefore, a temporary construction easement, and permanent drainage easement will be required for 1000 E. Lakeshore Dr. to allow the Department access off right-of-way to upgrade the conveyance network.

Sec. 96-1 of City Code provides for the acceptance of temporary or permanent easements for public dedication of certain drainage systems including those connected directly to the City's existing system and conveying runoff from City right of way. The Public Works Department has developed the enclosed Corrective Action Plan drawings for the subject location and is recommending that City Council adopt this plan to allow city intervention. This plan would provide a long-term solution for a key drainage network within the Tar Creek drainage basin. The Corrective Action Plan requires a temporary construction and permanent drainage easement be provided by the property owner and accepted by the City Council. The property owner must provide written commitment to provide the easement areas described. The Corrective Action Plan

is subject to minor revisions related to the exact alignment of the pipe to accommodate unforeseen field conditions.

Should you have any questions or need additional information regarding this matter, please do not hesitate to contact me.

Respectfully Submitted,



Chad Townsend
Public Works Director

Cc: City Administrator, Andrew Parker, P.E.
City Attorney, Terry Miller

Enclosures:

Corrective Action Plan – E. Lakeshore Drive Permanent Drainage Easement
Storm Drainage Easement Agreement

[Space above this line for recording data.]

Please Record and Return To:

Terry L. Miller
Mitchell & Mitchell, P.C.
108 S. Thornton Ave.
P.O. Box 668
Dalton, GA 30722-668

STORM DRAINAGE EASEMENT AGREEMENT

Georgia, Whitfield County

This Storm Drainage Easement Agreement (this "Agreement") is made this ____ day of _____, 2023 (the "Effective Date"), by and between **Jerry L. Hennon** and **Elizabeth A. Hennon**, 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 "Hennon Property"); and

WHEREAS, Grantee is the owner of certain real property adjacent to the Hennon Property and more particularly described as E. Lakeshore Drive (the "City Property"); and

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

WHEREAS, Grantor acknowledges that the work to be performed in this Agreement will not alleviate all issues relating to the flooding of the Hennon Property and that there may be damages that will occur in the future to the Hennon Property; and

WHEREAS, Grantee desires non-exclusive access to and use of a portion of the Hennon Property to discharge storm water originating from the City Property into the Hennon 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 Hennon Property to construct and/or maintain the Hennon 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 Hennon Municipal Storm Sewer, Grantee intends to be responsible for all costs associated with the use, maintenance, repair, replacement, inspection, and reconstruction of the Hennon Municipal Storm Sewer, as it relates to maintaining reasonable drainage flow from the right of way to the discharge point; and

WHEREAS, in order to evidence the understanding between Grantor and Grantee with respect to the Hennon 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, utilization, maintenance, repair and re-construction of the installations 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 Hennon 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 Hennon Municipal Storm Sewer. Notwithstanding the foregoing, Grantor hereby agrees to accept such storm water discharge through the Hennon Municipal Storm Sewer in its current intensity, rate, volume and location.

2. **Temporary Construction 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 temporary, non-exclusive easement in, on, over, under, across and through the Hennon Property described by the legal description attached hereto as Exhibit "A" and incorporated herein by this reference (the "Construction Easement"). The rights, benefits, privileges, and easement granted herein is for the purpose of the non-exclusive construction and/or maintenance of the Hennon Municipal Storm Sewer. Said Construction Easement is temporary and shall expire upon completion of the Hennon Municipal Storm Sewer.

3. **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 Hennon 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.

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 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.

5. **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 Hennon Property to the greatest extent practicable.

(b) Grantee shall operate, repair, replace and maintain continuously the Hennon Municipal Storm Sewer on or within the Storm Drainage Easement.

(c) Grantee shall be solely responsible to maintain reasonable drainage flow from the right of way to the discharge point, which shall be at Grantee's absolute discretion. The Hennon

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

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

(g) Grantee shall require that any contractor it engages to perform construction of the Hennon Municipal Storm Sewer, and any subcontractors thereof, waive any tort claims that they may accrue against Grantor during the course of their work on said construction except for those claims which arise from gross negligence or intentional torts.

6. **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 Hennon 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.

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. **Successors and Assigns.** The Storm Drainage Easement shall run with title to and burden the Hennon 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.

9. **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.

10. **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.

11. **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.

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

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

[SIGNATURES ON FOLLOWING 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:

Thomas Carby
Unofficial Witness
Jake J. Poff
Notary Public

Grantor:

By: Jerry L. Hennon (Seal)
Jerry L. Hennon
By: Elizabeth A. Hennon (Seal)
Elizabeth A. Hennon

My commission expires:

[Notarial Seal]



Grantee:

City of Dalton

By: _____

Its: _____

Attest: _____

City Clerk

Unofficial Witness

Notary Public
My Commission Expires:

EXHIBIT "A"

DEED PREPARATION ONLY-NO TITLE EXAM PERFORMED

Deed

Doc: WD

Recorded 05/31/2019 04:50PM

Georgia Transfer Tax Paid : \$0.00

MELICA KENDRICK

Clerk Superior Court, WHITFIELD County, Ga.

Bk 06710 Pg 0538-0540

Pre 100/436

RETURN TO:

L. STEPHEN KELEHEAR
LITTLE, BATES & KELEHEAR, P.C.
101 E CRAWFORD STREET
THE LANDMARK BUILDING-FIFTH FLOOR
PO BOX 488
DALTON, GA 30722-0488

STATE OF GEORGIA
COUNTY OF WHITFIELD

WARRANTY DEED WITH RIGHT OF SURVIVORSHIP

THIS INDENTURE, made this 23rd day of May, 2019, between **Elizabeth Hennon**, of the State of Georgia and County of Whitfield of the first part, and **Jerry L. Hennon and Elizabeth A. Hennon**, of the State of Georgia and County of Whitfield of the second part.

WITNESSETH:

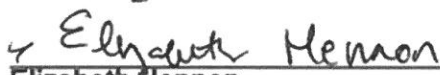
That the said parties of the first part, for and in consideration of the sum of One Dollar (\$1.00), and other good and valuable considerations, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said parties of the second part as tenants in common, for and during their joint natural lives, and, upon the death of either of them, then the survivor of them, in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor, the following described property:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise pertaining, to the only proper use, benefit, and behoof of the said parties of the second part, as tenants in common, for and during their joint lives and upon the death of either of them, then to the survivor of them in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor.

And the said parties of the first part, for their heirs, executors and administrators, will warrant and forever defend the right and title to the above described property, unto the said parties of the second part, as hereinabove provided, against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and affixed their seals, the day and year first above written.

 (SEAL)
Elizabeth Hennon

Sworn to and subscribed before me

this 23rd day of May, 2019.


WITNESS

NOTARY PUBLIC

Judy L Yarbrough
Notary Public, Whitfield County, Georgia
My Comm. Expires 04/07/2021

EXHIBIT "A"**LEGAL DESCRIPTION**

All that tract or parcel of land situated, lying and being Land Lot 58 of the 12th District and 3rd Section of Whitfield County, Georgia, as shown by a plat of survey prepared by N. S. DeLoach, Surveyor, dated October 3, 1984, and more particularly described as follows:

BEGINNING at the intersection of the south right of way of Lakemont Drive with the west right of way of East Lakeshore Drive and running thence in a southeasterly direction along the west right of way of East Lakeshore Drive a distance of 152.24 feet to an iron pin and the **TRUE POINT OF BEGINNING**; thence along and with the westerly right of way of East Lakeshore Drive the following courses and distances, south 47 degrees 35 minutes 50 seconds east a distance of 113.48 feet; thence south 48 degrees 57 minutes 10 seconds east a distance of 91.06 feet; thence south 29 degrees 48 minutes 10 seconds east a distance of 87.77 feet; thence south 22 degrees 17 minutes 00 seconds east a distance of 30.62 feet to an iron pin; thence south 07 degrees 41 minutes 50 seconds east a distance of 67.74 feet; thence south 01 degree 17 minutes 10 seconds west a distance of 400.00 feet to an iron pin located at the northeast corner of Lot 88 of Lakeshore Development; thence north 88 degrees 17 minutes 00 seconds west a distance of 366.13 feet to an iron pin; thence north 88 degrees 17 minutes 00 seconds west a distance of 33.00 feet, more or less, to the east shore line of the lake; thence in a northerly direction along and with the meandering of said lake the following courses and distances: north 63 degrees 38 minutes 30 seconds east a distance of 104.80 feet; thence north 11 degrees 40 minutes 10 seconds east a distance of 44.42 feet; thence north 19 degrees 38 minutes 30 seconds west a distance of 43.69 feet; thence north 77 degrees 12 minutes 00 seconds west a distance of 40.80 feet; thence north 09 degrees 43 minutes 40 seconds west a distance of 43.10 feet; thence north 03 degrees 39 minutes 50 seconds east a distance of 71.69 feet; thence north 41 degrees 40 minutes 30 seconds east a distance of 84.11 feet; thence north 28 degrees 21 minutes 50 seconds east a distance of 40.88 feet; thence north 19 degrees 32 minutes 50 seconds east a distance of 32.47 feet; thence north 34 degrees 29 minutes 25 seconds west a distance of 53.71 feet to an iron pin located at the southwest corner of Lot 147 of Brookwood Subdivision; thence north 15 degrees 37 minutes 30 seconds west a distance of 127.37 feet to an iron pin; thence north 46 degrees 32 minutes 50 seconds east a distance of 169.88 feet to an iron pin and the **TRUE POINT OF BEGINNING**.

Grantors hereby convey any and all interest they may have in the certain corporation known as Lakeshore, Inc., as a result of their ownership of property located in Lakeshore Development.

The above described property is a part of Lot 146 all of Lots 147 and 148 of Brookwood Subdivision and two unnumbered lots in Lakeshore Development the northern most of which is adjacent to the south side of Lot 147 and 148 of Brookwood Subdivision.

This conveyance is made subject to all zoning ordinances, easements, restrictions of record, insofar as the same may affect the above described property.

LESS AND EXCEPT all that tract or parcel of land conveyed by Sheila K. McNeese a/k/a Sheila K. McNeese to Kenneth A. King and Elizabeth M. King by deed dated September 26, 2011, recorded in Deed Book 5645, Page 188, Whitfield County Deed Records.

EXHIBIT "B"

1000 E Lakeshore Dr Permanent Drainage Easement

