

TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (sometimes the "Agreement") is made this ____ day of _____, _____ (the "Effective Date"), by and between **HR Advocate, LLC**, 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 **Crawford Street** (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:
HR Advocate, LLC

Unofficial Witness


Blake Adcock, Member

Notary Public
My Commission Expires:

Acceptance of Grantee:

CITY OF DALTON

Authorized Officer

EXHIBIT "A"

RETURN TO:

L. STEPHEN KELSEHEAR
LAW OFFICE OF L. STEPHEN KELSEHEAR, LLC
P. O. BOX 488
DALTON, GEORGIA 30722-488

STATE OF GEORGIA
COUNTY OF WHITFIELD

LIMITED WARRANTY DEED

THIS INDENTURE, made the 3rd day of May, 2023, between Fatokie, LLC c/o Edward Mowles (hereinafter "Grantor"), of the County of Whitfield and State of Georgia, and HR Advocate, LLC (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:

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

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.



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

AND THE SAID GRANTOR, will warrant and forever defend the right and title to the above described property

unto the said Grantee, and his successors and assigns, against the lawful claims of all persons claiming or to claim the same or any part thereof, by, through or under Grantor.

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.

Fatokia, LLC

BY  (SEAL)
Edward M. Mowles, Member/Manager

Signed, sealed and delivered
this 3rd day of May, 2023.

In the presence of:

WITNESS


NOTARY PUBLIC



EXHIBIT "A"

Tract 1:

All that tract or parcel of land lying and being in the City of Dalton, Georgia, and being Lots 11 and 13 on Crawford Street, Dalton, Georgia fronting 44 feet on the north side of Crawford Street and running an equal width 100 feet.

Tract 2:

All that tract or parcel of land lying and being in The City of Dalton, Whitfield County, Georgia, and being a portion of Lot 15 on Crawford Street, as shown on the map or plat of the City of Dalton, said lot fronting 22 feet, more or less on Crawford Street and running back an equal and like width 100 feet, more or less to an alley and being bounded as follows: on the south by Crawford Street; on the east by property now or formerly owned by Gail Realty Corp; on the north by an alley; and on the west by property now or formerly owned by Maebelle B. Whitener.

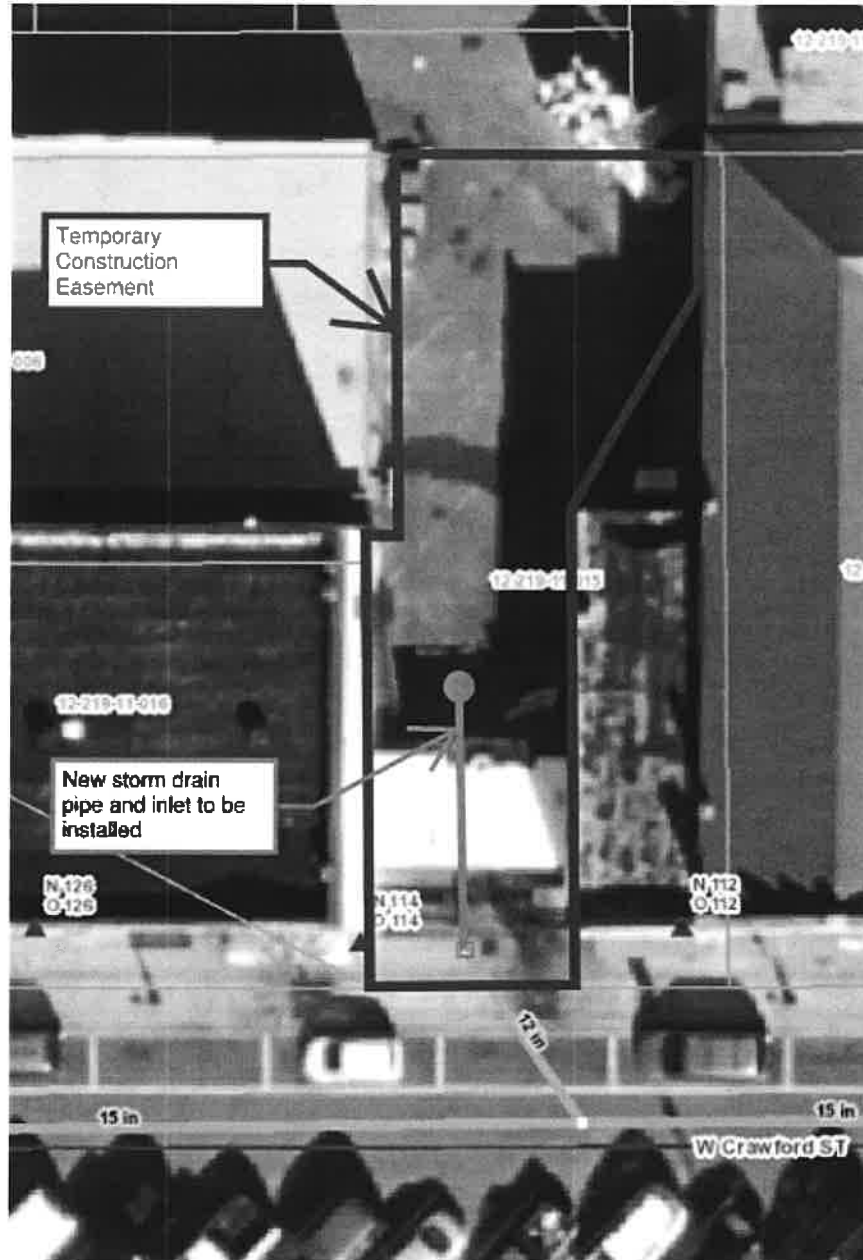
Tract 3:

A certain tract or parcel of land lying an being in Land Lot 219, 12th District, 3d Section of Whitfield County, Georgia, being City Lot 17 on the north side of Crawford Street as shown on the Sapp Map of the City of Dalton, said lot fronting 22 feet on the north side of said Crawford Street and running back north therefrom, and equal and uniform width 85 feet.



EXHIBIT "B"

112 W Crawford St - Temporary Construction Easement



[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 **HR Advocate, LLC**, 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 "HR Advocate Property"); and

WHEREAS, Grantee is the owner of certain real property adjacent to the HR Advocate Property and more particularly described as Crawford Street (the "City Property"); and

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

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

WHEREAS, Grantee desires non-exclusive access to and use of a portion of the HR Advocate Property to collect storm water originating from the City Property into the HR Advocate 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 HR Advocate Property to construct and/or maintain the HR Advocate 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 HR Advocate 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 HR Advocate 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 HR Advocate Municipal Storm Sewer; and

WHEREAS, in order to evidence the understanding between Grantor and Grantee with respect to the HR Advocate 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 HR Advocate 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 HR Advocate Municipal Storm Sewer. Notwithstanding the foregoing, Grantor hereby agrees to accept such storm water discharge through the HR Advocate 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 HR Advocate 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 HR Advocate Property to the greatest extent practicable.

(b) Grantee shall only install the HR Advocate 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 HR Advocate 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 HR Advocate 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 HR Advocate 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 HR Advocate Municipal Storm Sewer, the area within the Storm Drainage Easement or the HR Advocate 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 HR Advocate 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 HR Advocate 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:
HR Advocate, LLC

Unofficial Witness

By: B. Blake Adcock (Seal)
Blake Adcock, Member

Notary Public

My commission expires:

[Notarial Seal]

Grantee:

City of Dalton

By: _____

Its: _____

Attest: _____
City Clerk

Unofficial Witness

Notary Public
My Commission Expires:

EXHIBIT "A"

RETURN TO:

L. STEPHEN KELEHEAR
LAW OFFICE OF L. STEPHEN KELEHEAR, LLC
P. O. BOX 488
DALTON, GEORGIA 30722-488

STATE OF GEORGIA
COUNTY OF WHITFIELD

LIMITED WARRANTY DEED

THIS INDENTURE, made the 3rd day of May, 2023, between Fatokie, LLC c/o Edward Mowles (hereinafter "Grantor"), of the County of Whitfield and State of Georgia, and HR Advocate, LLC (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:

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

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.

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

AND THE SAID GRANTOR, will warrant and forever defend the right and title to the above described property

unto the said Grantee, and his successors and assigns, against the lawful claims of all persons claiming or to claim the same or any part thereof, by, through or under Grantor.

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.

Fatokia, LLC

BY Edward M. Mowles (SEAL)
Edward M. Mowles, Member/Manager

Signed, sealed and delivered
this 3rd day of May, 2023.

In the presence of:

WITNESS

NOTARY PUBLIC



EXHIBIT "A"

Tract 1:

All that tract or parcel of land lying and being in the City of Dalton, Georgia, and being Lots 11 and 13 on Crawford Street, Dalton, Georgia fronting 44 feet on the north side of Crawford Street and running an equal width 100 feet.

Tract 2:

All that tract or parcel of land lying and being in The City of Dalton, Whitfield County, Georgia, and being a portion of Lot 15 on Crawford Street, as shown on the map or plat of the City of Dalton, said lot fronting 22 feet, more or less on Crawford Street and running back an equal and like width 100 feet, more or less to an alley and being bounded as follows: on the south by Crawford Street; on the east by property now or formerly owned by Gail Realty Corp; on the north by an alley; and on the west by property now or formerly owned by Maebelle B. Whitener.

Tract 3:

A certain tract or parcel of land lying an being in Land Lot 219, 12th District, 3d Section of Whitfield County, Georgia, being City Lot 17 on the north side of Crawford Street as shown on the Sapp Map of the City of Dalton, said lot fronting 22 feet on the north side of said Crawford Street and running back north therefrom, and equal and uniform width 85 feet.

A handwritten signature in black ink, appearing to be a stylized 'J' or 'L' followed by a horizontal line.

EXHIBIT "B"

112 W Crawford Street - Permanent Drainage Easement

