

## **DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS **DECLARATION OF COVENANTS AND RESTRICTIONS**, made declared and published this \_\_\_\_ day of October, 2007 by DQ WILBANKS, LLC, (hereinafter referred to as "Declarant");

### **WITNESSETH, that:**

**WHEREAS**, Declarant is the owner of certain real property located in Habersham County, Georgia, as more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference (the said real estate and all improvements constructed thereon being hereinafter referred to as the "Property"); and

**WHEREAS**, Declarant has subdivided the Property into four (4) tracts as hereinafter described, (hereinafter referred to as the "Development"); and

**WHEREAS**, Declarant desires to subject the Property to the covenants and restrictions herein;

**NOW, THEREFORE, DECLARANTS HEREBY DECLARE** that the Property is and shall be owned, held, transferred, aliened, sold, conveyed, leases, rented, mortgaged, occupied, used, and otherwise disposed of subject to the covenants, restrictions, conditions, easements, charges, and liens as hereinafter set forth.

1. **Run With the Land.** This Declaration and all of the provisions hereof are and shall be covenants running with the title to the Property and shall burden and bind the Property and each individual Lot thereof for the duration hereof. To that end, this Declaration shall be deemed incorporated in all deeds and conveyances hereinafter made by Declarants and/or any Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in a Lot shall take a hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a

security interest with respect to, any Lot, such Person shall be deemed to have assented to this Declaration and all of the terms and provisions hereof.

2. **Duration.** The provisions of this Declaration shall run with and bind title to the Property, and all portions thereof, shall be binding upon and inure to the benefit of Declarants, the Association, and all Owners and Mortgagees, and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect until the twentieth (20<sup>th</sup>) anniversary of the effective date of this Declaration whereupon this Declaration shall be automatically renewed unless a majority of the Owners of Lots in the Property shall declare in writing, recorded on the public deed records of Habersham County, Georgia that this Declaration shall not be so renewed. Notwithstanding the foregoing, the easements granted herein are and shall be perpetual.
3. **Designation of Lots.** Declarant has subdivided the Property into Lots numbered 1 through 4, inclusive as shown on the Plat attached hereto as Exhibit "A."
  - 3.1. Declarant (with respect to Lot (3) of the subdivision only) shall have the right and power to subdivide into additional Lots. To accomplish any subdivision of Lot 3, Declarant shall file of public record a Plat thereof, which Plat shall expressly refer to any other Plat previously filed of public record which is superseded in whole or in part by the new Plat.
  - 3.2. Lots 1 and 2 may not be further subdivided.
  - 3.3. Lot 4 may be combined with Lot 3 or any portion of Lot 3 by the Declarant.
4. **Access Road.** Declarant agrees to construct at Declarant's sole cost, and access road connecting the Lots to U.S. Highway 23 and Wilbanks Road. This access road shall include a deceleration lane and entry from U.S. Highway 23. The access road shall be used by all Owners, and their invitees for access for ingress and egress.
5. **Owner's Responsibilities.** All maintenance and repair of all Improvements located on a Lot shall be the responsibility of the Owner of such Lot. Each Owner shall keep its Improvements in good working order and repair, including, but not limited to, painting and repairing Improvements, all in a manner consistent with first-class property management. Each Owner shall be responsible for all maintenance of that portion of the access road located on the Owner's Lot. The access roadway shall at all times be maintained in good condition, free from any pot holes or other conditions that may adversely affect the use of the road. Additionally, each Owner shall be responsible for all utilities located on their Lot, including any lighting associated with the access road.
6. **Permitted Uses.** Each Lot shall be used only for the purposes and uses hereinafter provided. No Owner shall, without the approval or consent of the Association, apply

for or consent to (i) any change or amendment in the zoning classification applicable to a Lot or (ii) any special use permit for a Lot.

7. **Basic Use Restrictions.** No Lot, other than Lot 1, shall be used in whole or in part for the operation or maintenance of a gasoline filling station and no Lot, other than Lot 2, shall be used in whole or in part for the operation or maintenance of a fast food restaurant. Any convenience store or gasoline filling station located on Lot 1 must be a nationally branded gasoline and store.
8. **Construction.** All buildings shall be constructed of brick, stone or stucco on at least three sides. Vinyl or other materials are limited to use as trim materials.
9. **Signs.** Declarant hereby reserves the right to install monument type signs at the entrances of the access road as a common sign. The common signs shall be for directional and informational purposes for customers accessing Tracts 1, 2, 3 & 4 on the attached Exhibit "A". The common signs shall contain a place for placement of the name or logo of the occupant of each Lot and shall be constructed in such a manner as not to interfere or obscure any existing advertising sign for the occupants of the Lots. No advertising sign placed by the occupant or Owner of any Lot shall obscure the view of the common signs. The cost of the erection and maintenance, including the costs of all permitting and utilities shall be borne equally by the Owners of each Lot who desire to place that name or logo upon the common sign.
10. **Amendment.** Amendments to this Declaration, may be made by the Declarant in writing at any time so long as the Declarant owns at least one Lot. No such Amendment shall an unreasonable burden upon any Lot. Any such amendment of this Declaration shall become effective when recorded in the real property records of the Office of the Clerk of the Superior Court of Habersham County, Georgia, or at such later date as may be specified in the amendment itself.

**Effective Date.** The effective date of this Declaration shall be the date of its filing for record in the real property records of the Office of the Clerk of the Superior Court of Habersham County, Georgia.

**IN WITNESS WHEREOF**, the undersigned Declarants have executed this Declaration under seal, the day and year first aforesaid.

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2007  
in the presence of:

**DECLARANT:**

**DQ WILBANKS, LLC**

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

By:\_\_\_\_\_

---

Notary Public  
My Commission Expires:

W100528

STATE OF GEORGIA  
COUNTY OF HABERSHAM

## **RECIPROCAL EASEMENT AGREEMENT**

This Reciprocal Easement Agreement dated this \_\_\_\_ day of \_\_\_\_\_, 2007 is between DQ Wilbanks, LLC, (“Grantor”) and Shiriah Shetty and Srikanth Rukkaynagrai, (“Grantees”).

Whereas, Grantee is the purchaser of a tract of land described as Tract 1 containing 1.498 acres and more particularly described as Exhibit “A”;

Whereas, Grantor is the owner of a tract of land described as Tract 2, containing 0.936 acres and more particularly described as Exhibit “B”; and

Whereas, the parties hereto wish to create reciprocal easements over and across their property properties.

Now, therefore for and in consideration of the mutual policies and covenants contained herein and other goods and valuable consideration and receipt and sufficiency which is hereby acknowledged the parties hereto agree as follows:

1.

Easement for Parking and Ingress and Egress. Grantor grants to Grantees for the use and benefit of Grantee and Grantee’s tenants a perpetual, nonexclusive easement for vehicular parking and vehicular and pedestrian ingress and egress appurtenant to Tract 1 over, upon and across the parking areas, and spaces, driveways, access ways, sidewalks, and walkways, exits, entries, and other common areas to constructed on Tract 2. Grantor reserves and Grantees grant to Grantor a perpetual non-exclusive easement for vehicular parking and vehicular and pedestrian ingress and

egress appurtenant to Tract 2 for the use and benefit of Grantor and Grantor's tenants, successors and assigns for the purpose of automobile and pedestrian ingress and egress and automobile parking over and upon the parking areas, access ways, entrances and exits as such area from time to time to be developed, altered and modified on Tract 1.

2.

Maintenance. Grantor and Grantees covenant and agree to maintain in good condition in repair or cause to be maintained and kept in repair, the parking, driveways and other common areas situated on their respective easement areas. The obligation of Grantor and Grantees to maintain, repair and keep in repair the parking, driveways and other common areas shall without limiting the generality thereof include the following:

(a) Maintaining the surfaces at such grades and levels that they may be used and enjoyed as uniform and homogenous common areas and maintaining the surfaces in a level smooth and evenly covered condition with a type of surfacing material originally installed or similar quality use and durability and be removing papers, debris, snow, ice, filth; and

(b) Thoroughly sweeping the area to the extent reasonably necessary to keep the areas in a neat, clean, and orderly condition; and

(c) Placing, keeping and repair and replacing any necessary appropriate direction signals, striping, markers and lines and operating, keeping and replacing when necessary artificial lighting facilities, as shall be reasonably required; and

(d) Maintaining any perimeter walls in good condition and state of repair; and

(e) Maintaining all landscaped areas. Making such replacements of scrubs and other landscaping as is necessary and keeping these areas at all times adequately weeded, fertilized and watered.

3.

Barriers. Grantor shall not detract from the parking and access rights of Grantees or prevent, hinder or interfere in anyway with the free flow and passage of vehicular traffic and pedestrian traffic and parking over, to, from and between Tract 1 and 2 within the easement areas. Grantees shall not detract from the parking and access rights of Grantor or prevent, hinder or interfere in annoy with the free flow and passage of vehicular and pedestrian traffic and parking over, to, from, and between Tract 1 and 2 within the easement areas.

4.

Parking Ratio and Changes to Common Areas. Each party agrees that the parking spaces, access drives and other common areas located within the easement area shall not be changed or modified without the other parties' consent.

5.

Compliance with the Laws and Regulations. Grantor and Grantees covenant and agree with respect to their own property to comply with all laws, rules, regulations and requirements of all public authorities and to indemnify, defend and hold each other harmless against all claims, demands, loss, damages, liabilities and expenses in all suits, actions and judgments, including but not limiting to costs and attorney's fees arising out of or in any way related to Grantor or Grantees failure to maintain the respective properties in a safe condition. Grantor and Grantee shall give prompt and

timely notice of any claim made or suit or action commenced against the other party which in any way would result in an indemnification under this Agreement.

6.

Maintenance and Expenses. Grantor and Grantees further covenant and agree to pay the expense of maintaining and repairing a parking ingress, egress and other common areas situated on their respective tracts including the payment of all real estate taxes and assessments subject only to the right to defer payment in a manner provided by law and or in connection with bona fide contest of such taxes or assessments so long as the rights of the party shall be jeopardized by the deferring of payment.

7.

Default. If there is any failure by either party to perform, fulfill or observe any agreement contained within this Agreement to be performed, fulfilled or observed by it continuing for thirty (30) days on situations involving potential danger to health or safety of persons in, on or about substantial deterioration of Tract 1 or Tract 2 or any portion or any part thereof in each case after written notice the other party may at its election cure such failure or breach on behalf of the defaulting party. Any amount the party sole electing shall expend for such purchase or which shall otherwise be due by either party to the other, shall be paid to the party to whom due on demand, without contest, upon delivery of its invoice together with interest at the lower of the rate of 10% per annum or the maximum rate permissible from time to time under applicable law from the date of the expenditure or the date which it shall have become due to the date of payment in full. The revisions of this paragraph shall be in all respect subject and subordinate to the lien of any mortgages, deeds, or trusts of any kind arriving in lien or deed to secure

debt at any time or from any time on the land of the defaulting party and the rights of holder and holders of any mortgage or deed to secure debt.

8.

Covenants Running With the Land. The rights contained within this Agreement shall run with the land and inure to and be for the benefit of the Grantor and Grantee their successors and assigns, tenants, subtenants, licenses, concessionaires, mortgagees in possessions, customers and business invitees of such persons.

9.

Covenants of Title and Quit Enjoyment. Grantor warrants that he has good and indefeasible title to Tract 2. Grantor warrants that he will defend title to the easements on premises owned by Grantor and will indemnify Grantees against any damage and expense which Grantees may suffer by reason of any lien, encumbrance, restriction, or defect in the title of description of the easement premises. Grantees warrant that they have good and indefeasible title to Tract 1 and Grantees warrant and will defend the title to the easement premises owned by Grantees and indemnify Grantor against any damage and expense which Grantor may suffer by reason of any lien, encumbrance, restriction, or defect in the title of description of the easement premises.

10.

Termination of Liability. Whenever a transferred ownership of either parcel takes place the transferor will not be liable for breach of this Agreement occurring after a transfer.

Construction. The rule of strict construction does not apply to this Agreement.

This Agreement shall be given a reasonable construction so that the attention of the parties to convey commercially usable right of enjoyment to Grantor and Grantees as carried out.

IN WITNESS WHEREOF, the parties have hereunto caused this instrument to be duly executed under seal as of the date first above written.

Signed, sealed and delivered  
this \_\_\_ day of \_\_\_\_\_, 2007.

DQ Wilbanks, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_(SEAL)

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

By: \_\_\_\_\_(SEAL)

Signed, sealed and delivered  
This \_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Witness

\_\_\_\_\_(SEAL)  
Shiriah Shetty

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

Signed, sealed and delivered  
This \_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Witness

\_\_\_\_\_(SEAL)  
Srikanth Rukkaynagrai

\_\_\_\_\_  
Notary Public  
TWR/taa/6715/11772/W100441

Return recorded document to:  
Robert A. Weber, Jr.  
P.O. Box 74  
Gainesville, Georgia 30503

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**RECIPROCAL EASEMENTS AND DETENTION POND AGREEMENT**

**THIS RECIPROCAL EASEMENTS AND DETENTION POND AGREEMENT**, made as of this 16<sup>th</sup> day of February, 2012, by **DQ Wilbanks, LLC**, a Georgia limited liability company (hereinafter referred to as "DQW"), its successors, successors-in-title and assigns.

**WITNESSETH:**

**WHEREAS**, DQW is the owner of fee simple title to that certain tract or parcel of real property located at Land Lot 165 of the 10<sup>th</sup> District, Habersham County, Georgia, which tract or parcel is more particularly described as Tract 2 on Exhibit "A" attached hereto and by this reference made a part hereof (said tract is hereinafter referred to as "Tract 2");

**WHEREAS**, DQW is the owner of fee simple title to that certain tract or parcel of land located adjacent to Tract 2, which tract or parcel is more particularly described as Tract 3 on Exhibit "A" attached hereto and by this reference made a part hereof (said tracts are hereinafter sometimes referred to (i) individually as "Tract 2" or "Tract 3" or (ii) collectively as the "Tracts");

**WHEREAS**, this Agreement is essential for the purpose of creating certain easements for the benefit of the Tracts and imposing certain use restrictions and obligations upon the Tracts, all as more particularly set forth herein;

**NOW THEREFORE**, for and in consideration of the mutual benefits to be realized by such use and the covenants set forth herein, the parties do hereby declare and agree that the Tracts shall be held, owned and used in accordance with the following rights, covenants and easements:

1. **SURFACE WATER DRAINAGE AND GRADING EASEMENTS**. The owners of each of the Tracts shall be entitled to cut, fill or slope their respective Tract and any adjoining driveway or common area as is reasonably required for the development and maintenance of such Tract, and easements to permit such work are hereby granted, declared and established by the owners of the Tracts for the benefit of each Tract; provided, however, that (i) no owner of a Tract shall materially alter the pattern or volume of drainage onto another Tract without first obtaining the prior written consent of the owner of any affected Tract, and (ii) all such work shall be performed in a good and workmanlike manner and so as to minimize any disruption to the driver and parking areas and business being conducted on the adversely affected Tract.

2      **DETENTION POND EASEMENTS; MAINTENANCE.**

(a)      DQW does hereby grant and establish for the benefit of each Tract the non-exclusive, perpetual easement, right and privilege: (i) to flow, concentrate and discharge storm and surface water onto, over, under and across and into the Detention Pond depicted on that survey attached hereto as Exhibit "B" and incorporated by reference herein (the "Survey"); (ii) to go on and across the Tracts for the construction, installation, and maintenance of pipes, catch basins, flumes and other site facilities to facilitate the discharge of surface and storm water towards the Detention Pond and to thereafter enter the properties to maintain such facilities.

(b)      DQW does hereby establish for the benefit of Tract 2 the non-exclusive, perpetual easement, right and privilege: (i) to flow, concentrate and discharge storm and surface water onto, over, under and across and into Tract 3 ; (ii) to utilize the Detention Pond for purpose of retaining the storm and surface water flowing from Tract 2 over, through and across Tract 3; (iii) to go on and across Tract 3 to install pipes, catch basins, flumes and other site facilities to facilitate the discharge of surface and storm water across Tract 3 and to thereafter enter Tract 3 to maintain such facilities; and (iv) to go on and across Tract 3 to maintain such Detention Pond.

(c)      The owners of Tract 2 and Tract 3 shall bear that respective portion of the cost of maintenance of the Detention Pond determined by calculating the ratio which the area of each Tract bears to the total area of both Tracts.

3.      **DEVELOPMENT AND USE RESTRICTIONS AND OBLIGATIONS** In connection with the establishment of the reciprocal easements contained herein, and in order to insure the effectiveness of such easements for their respective purposes, and for other purposes, DQW, as owner of the Tracts, agrees, establishes, and covenants as follows;

(a)      **Barriers.** No owner of any Tract shall, at any time prior to the termination of the easements herein granted, erect or construct, or cause to be erected or constructed, any fence, wall, curb or other barrier between the Tracts, except that the owner of a Tract may construct curbs which do not unduly restrict pedestrian or vehicular traffic between the Tracts or interfere with or restrict the full and complete use and enjoyment by any party of the easements granted hereunder.

(b)      **Common Area Maintenance.** The parking areas, entrance ways, signs, sidewalks, driveways, service drives, curbs, lighting, sewer and storm water detention facilities located on each Tract shall be maintained in good order and repair by the owner of such Tract at all times during the term of this Agreement, after the construction of such facilities has been completed, which maintenance shall include striping and snow, ice and trash removal, maintenance of "in", "out" and other parking and traffic control signs and maintenance of landscaping. The owner of each Tract shall keep the parking areas located thereon lighted, as necessary, during the hours of business maintained by any tenant or business enterprise located on such Tract

(c)      **Taxes.** The owner of each Tract agrees to pay or cause to be paid, prior to delinquency, directly to appropriate taxing authorities all real property taxes and assessments which are levied against each Tract and improvements located thereon.

4.      **INDEMNIFICATION.** The owner of each Tract shall and does hereby indemnify and save the other parties harmless from and any and all liability, damage, expense, causes of action, suits, claims or judgments arising from the personal injury, death or property damage (collectively, the "Claims") and occurring on or from its own Tract; provided, however, that an owner will not be indemnified and held harmless in the event that such owner's act or negligence caused the Claims.

5. INSURANCE

(a) The owner of each Tract shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury and death or property damage occurring upon, in or about its property, such insurance to afford protection to the limit of not less than \$1,000,000.00 for injury or death of a single person, and to the limit of not less than \$1,000,000.00 for any one occurrence, and to the limit of not less than \$1,000,000.00 for property damage. The owner of each Tract shall provide the other parties with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the Tract covered by this Agreement. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the other party.

(b) At all times during the term of this Agreement, the owner of each Tract shall keep improvements on its property insured against loss or damage by fire or other perils and events as may be insured against under the form of All-Risk Coverage in effect from time to time in the State of Georgia, with such insurance to be for the full replacement value of the insured improvements

(c) Policies of insurance provided for in this Paragraph shall name the owner of each Tract as the insured as their respective interests may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

(d) The owner of each Tract, for itself and its property insurer, hereby releases the owner of each of the other Tracts, and such owners' tenants, employees and agents from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any tenant, agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated under this Agreement to carry, or, if the releasing party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing party were carrying that insurance.

6. REMEDIES

(a) If any owner of a Tract shall, during the term of this Agreement, default in the full and punctual performance of any obligation of this Agreement to be performed by such owner, and if such default shall continue for thirty days (or such lesser time as shall be set forth expressly elsewhere in this Agreement or as may be reasonable in the case of emergency) after receipt of written notice from the non-defaulting owner, then, in addition to all other remedies which the non-defaulting owner may have at law or equity or under this Agreement, the owner of such Tract may, but shall not be obligated to, perform such obligation on behalf of the defaulting owner. If the defaulting owner shall not pay to the non-defaulting owner all of the costs incurred by such owner to perform such obligation within fifteen days of receipt of a statement therefor, the non-defaulting owner shall have a lien on the Tract owned by the defaulting owner in the amount of the statement, which amount shall bear interest at the rate of eighteen percent (18%) per year, or the highest rate permitted by law, whichever is lower, until paid. If a default, other than the payment of money, cannot be cured within the period required herein, then such default shall be deemed to be cured if the defaulting owner shall commence curing the default within such period and shall continue thereafter with all due diligence and does so cure the default within a reasonable time.

(b) In the event of a breach or attempted or threatened breach of any obligation of this Agreement by the owner of a Tract, in addition to any other remedy the non-defaulting owner may have at law or equity or under this Agreement, the non-defaulting owner shall be entitled forthwith to full and adequate relief by injunction and all such other available legal and equitable remedies from the consequences of such breach. All costs and expenses of any such suit or proceeding, including, but not limited to, reasonable attorneys' fees

actually incurred, court costs and the reasonable costs of investigation, shall be assessed against the defaulting owner and shall constitute a lien against the Tract owned by the defaulting owner

(c) No delay or omission by an owner in the exercise of any right accruing upon any default of an owner of a Tract under this Agreement shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by an owner of a breach or a default of any of the terms and conditions of this Agreement by the owner of a Tract shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but each shall be cumulative with all other remedies provided in this Agreement and at law or in equity.

7. **DURATION OF AGREEMENT.** The easements, covenants and restrictions established herein shall be perpetual in duration.

8. **EFFECT OF AGREEMENT.** The covenants, easements and restrictions provided for herein shall be effective upon the date hereof and shall run with the land and constitute a use for reciprocal benefits to and burdens upon the Tracts. The covenants, easements and restrictions provided for herein shall inure to the benefit of and be binding upon each of the Tracts and the owners thereof and their respective successors, successors-in-title, assigns and tenants, and the customers, employees and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership or possession of the Tracts, or either of them, or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Each of the rights created hereunder shall be specifically enforceable in a court of equity as an action for damages would not be an adequate remedy for a breach of this Agreement.

9. **NO DEDICATION.** This Agreement is not intended to, and shall not be construed to dedicate the said easement areas to the general public. Without limiting the generality of the foregoing and subject to the limitations contained in Paragraph hereof, the owners from time to time of the Tracts shall have the right to expand, alter, modify, or demolish all or any part of the buildings now or hereafter constructed on said Tracts, or develop said Tracts in any manner they see fit.

10. **CERTIFICATES.** Upon the written request of the owner of any of the Tracts, the then owner or ground lessee of any Tract or any portion thereof, shall execute and deliver, within ten (10) days after receipt of such request, a certificate certifying that there are no known defaults on the part of any party to this Agreement or, if there are such defaults, specifying the particulars of such defaults and the action required to remedy them, and certifying that there are no setoffs or defenses to the enforcement of the terms of this Agreement or, if there are, specifying the particulars of such setoffs or defenses.

11. **EMINENT DOMAIN.**

(a) **Owner's Right to Award.** Nothing herein shall be construed to give the owner of any Tract any interest in any award or payment made to another owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Tract or giving the public or any government any rights in said Tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of a Tract, the award attributable to the land and improvements taken shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other Tract.

(b) **Collateral Claims.** The owners of the Tracts may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner, which collateral claims would include without limitation losses resulting from use of easements.

(c) **Tenant's Claim.** Nothing in this Section 13 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

12. MISCELLANEOUS.

(a) Force Majeure In the event the owner of any of the Tracts shall be delayed or hindered in or prevented from the performance of any act required to be performed by such owner by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of any other owner of the Tracts, adverse weather conditions preventing the performance of work as certified to by an architect, war or any other reason beyond such owner's reasonable control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay, provided that such owner has taken steps that are reasonable under the circumstances to mitigate the effects of such force majeure and further provided that such owner shall notify the other owners of such delay, hindrance or prevention within fifteen (15) days after the commencement thereof and within fifteen (15) days after the expiration thereof. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such owner.

(b) Invalidity. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) Termination of Liability. In the event that the owner of any of the Tracts shall convey, transfer, assign or otherwise dispose of all of its interest in a tract, said owner shall thereupon be released and discharged from any and all obligations and liabilities with respect to its tract for the breach of any covenant arising from and after the date of the closing of such conveyance and such liabilities and obligations shall thereafter be binding upon the successor-in-title to such tract; provided however, the prior owner shall remain liable for the breach of any covenant or agreement which arose prior to the date of the closing of such conveyance

(d) Attorney's Fees. In the event any legal action is commenced to enforce the terms of this Agreement, the prevailing party in such action shall, in addition to the relief granted, be entitled to the payment of reasonable attorneys' fees actually incurred by the prevailing party in connection therewith and the court having jurisdiction in such action is hereby authorized and directed to award such attorneys' fees to the prevailing party.

(e) Exhibits Exhibits "A" and "B" attached hereto are by this reference incorporated herein and made a part hereof.

(f) Applicable Law. The terms of this Agreement shall be governed by the laws of the State of Georgia

(g) Terminology. All personal pronouns used in this Agreement, whether used in the feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice-versa. Title of paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

(h) Headings. The Section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement and shall not be considered in any construction or interpretation of this Agreement or any part thereof.

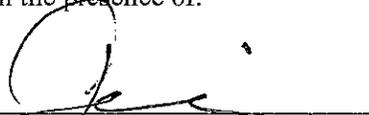
(i) Notices. Any notice or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given if it is (i) delivered by hand, (ii) mailed by registered or certified mail, return receipt requested, postage prepaid or (iii) sent via Federal Express (or any other overnight air courier) to the respective owners of the Tracts at either the address assigned to such Tract or to such other address as the respective owners of the Tracts may from time to time designate. The time for performance after any notice or demand is given hereunder shall commence on the date of receipt

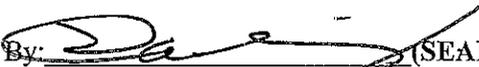
of such notice. If more than one addressee is designated for any owner, any notice, or demand shall be effective, if received by either addressee

**IN WITNESS WHEREOF**, the undersigned have signed and sealed this Agreement as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**DQ Wilbanks, LLC,**  
a Georgia limited liability company

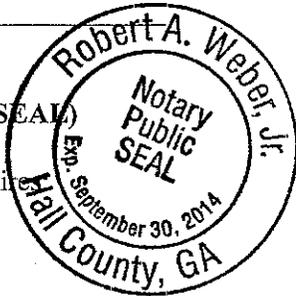
  
\_\_\_\_\_  
Witness

By:  (SEAL)  
Donald A. Grimsley, Jr., Manager

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

(NOTARY SEAL)

My Commission Expires



**EXHIBIT "A"**  
**(Description of Property)**

**Tract 2 ("Dairy Queen Parcel"):**

All that tract or parcel of land, together with all improvements thereon and appurtenances thereto, lying and being in Land Lot 165, 10<sup>th</sup> Land District, Habersham County, City of Baldwin, Georgia, containing 0.936 acre, more or less, and being more particularly described as Tract 2 on that survey for DQ Wilbanks, LLC; Branch Banking and Trust Company; Georgia Mountains Regional Economic Development Corp.; U.S. Small Business Administration; and Stewart Title Guaranty Co., dated February 28, 2007, last revised March 25, 2007, prepared by Trident Surveying, LLC, John S. Lingle, RLS No. 2920, Job No. 07100, recorded in Plat Book 60, page 112, Habersham County Records, which Survey is incorporated by reference herein for a more full and accurate description of said property.

Subject to covenants, conditions, restrictions, and easements of record.

**Tract 3 ("Vacant Parcel"):**

All those tracts or parcels of land, together with all improvements thereon and appurtenances thereto, lying and being in Land Lot 165, 10<sup>th</sup> Land District, Habersham County, City of Baldwin, Georgia, containing 4.803 acres, more or less, and 0.144 acre, more or less, and being more particularly described, respectively, as Tract 3 and "Unopened Right of Way Area" on that survey for DQ Wilbanks, LLC; Branch Banking and Trust Company; Georgia Mountains Regional Economic Development Corp.; U.S. Small Business Administration; and Stewart Title Guaranty Co., dated February 28, 2007, last revised March 25, 2007, prepared by Trident Surveying, LLC, John S. Lingle, RLS No. 2920, Job No. 07100, recorded in Plat Book 60, page 112, Habersham County Records, which Survey is incorporated by reference herein for a more full and accurate description of said property.

Subject to covenants, conditions, restrictions, and easements of record.

# Exhibit "B"

**SCHULUR ROAD**  
 AKA ED SCHULUR ROAD  
 (80' R/W - ASPHALT)  
 80' AS PER DEED DATED 1-2-87  
 PROVIDED BY FABERSHAW CO. ROAD DEPT

N/F  
 BALDWIN OIL, CO., INC  
 DB 825, PG 197  
 PB 60, PG 112

0.936 ACRES

N/F  
 DQ WILBANKS, LLC  
 DB 799, PG 171-177  
 PB 60, PG 112

