

E



Doc ID: 010422070011 Type: GLR
Filed: 04/01/2008 at 02:41:52 PM
Fee Amt: \$30.00 Page 1 of 11
Forsyth County, GA
Douglas Sorrells Clerk Superior Ct
BK **5085** PG **67-77**

STATE OF GEORGIA
COUNTY OF FORSYTH

PREPARED BY AND RETURN TO:
David J. Lambrecht, Esq.
Ret David J. Lambrecht, P.C.
Two Midtown Plaza, Suite 1150
1349 West Peachtree Street NW
Atlanta, Georgia 30309

SANITARY SEWER EASEMENT AGREEMENT

THIS SANITARY SEWER EASEMENT AGREEMENT (the "Agreement") is made and entered into as of the 22 day of February, 2008, by and between **VICKERY LAND CO., LLC**, a Georgia limited liability company (hereinafter referred to as "Vickery Land") and **VICKERY VILLAGE, LLC** (hereinafter referred to as "Vickery Village") (Vickery Land and Vickery Village are hereinafter together referred to as "Grantor"), and **POLO FIELDS II, LLC**, a Georgia limited liability company (hereinafter referred to as "Grantee").

RECITALS

A. Vickery Land is the fee-simple owner of certain tract or parcel of land (the "Grantor Property") which is located on the northwesterly side of State Route 371 (a/k/a Post Road) ("Post Road") and is more particularly described on **Exhibit "A"** attached hereto and by this reference made a part hereof, and Vickery Village is the holder of an interest in the Grantor Property.

B. Grantee is the fee-simple owner of a certain tract or parcel of land (the "Grantee Property") which is located on the southeasterly side of Post Road across Post Road from the Grantor Property, and is more particularly described on **Exhibit "B"** attached hereto and by this reference made a part hereof.

C. In connection with the development of the Grantee Property, Grantee has requested that Grantor grant and convey to Grantee an easement across a portion of the Grantor Property for the purpose of construction and installation of a sanitary sewer line in order to tap into and connect with an existing sanitary sewer line located within the Grantor Property, and to extend it to the right-of-way of Post Road where it will be extended by boring under Post Road to provide sanitary sewer service to the Grantee Property, and Grantor has agreed to do so.

5

D. The parties hereto desire to enter into this Agreement for the purpose of evidencing such agreement and the grant of such easement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid by the parties hereto each to the other and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby covenant and agree as follows:

APPURT

1. **Grant of Sanitary Sewer Easement.** Grantor hereby grants and conveys to Grantee a permanent non-exclusive easement (the "Sanitary Sewer Easement") for the purposes of repairing, maintaining, altering, replacing and operating a sanitary sewer line and related facilities (the "Sewer Line") in, upon, under and across that portion of the Grantor Property which is twenty feet (20') in width, running in a southeasterly direction from an existing manhole and sanitary sewer line to the northwesterly right-of-way line of Post Road, all as more particularly described and shown on **Exhibit "C"** attached hereto and by this reference made a part hereof ("Sewer Easement Area") and tapping into the public sanitary sewer line (the "Public Line") located within the Grantor Property at said manhole and discharging through the Sewer Line effluent from improvements constructed and to be constructed upon the Grantee Property into the public sanitary sewer system.

2. **Construction of Sewer Line.** Grantee shall be responsible for the construction of said Sewer Line in substantial accordance with the plans and specifications therefor which have been or shall be approved by the applicable governmental authority and which satisfy all applicable governmental rules and regulations. Said construction shall be at Grantee's sole cost and expense. Prior to commencement of construction, Grantee shall deliver a copy of said plans and specifications (including profiles) to Grantor, and Grantor shall have ten (10) days after receipt of said plans and specifications to review same to confirm that the design of the Sewer Line does not conflict with Grantor's future work within the vicinity of the Sanitary Sewer Easement. If Grantor does not give Grantee notice of objection to said plans and specifications within said 10-day day period, said plans and specifications shall be deemed to be approved by Grantor.

3. **Grant of Temporary Construction Easement.** In order to permit the construction and installation of the Sewer Line, Grantor hereby grants to Grantee, a temporary construction easement over, through, and across that portion of the Grantor Property which includes the Sewer Easement Area and an additional twenty foot (20') wide strip of land located on each side of and abutting the perimeter of the Sewer Easement Area for the purpose of constructing the Sewer Line within the Grantor Property. Said construction easement shall expire twelve (12) months from the date of this Agreement or upon completion of construction of the Sewer Line within the Grantor Property, whichever first occurs, at which time the aforesaid temporary easement for the construction of the said Sewer Line shall automatically cease and terminate without the necessity of executing any documentation whatsoever, leaving in effect the permanent non-exclusive easement herein granted upon portions of the Grantor Property. Further, Grantor hereby grants to Grantee a temporary right of access across portions of the Grantor Property adjacent to the Sewer Easement Area as may be reasonably required or necessary in connection with the construction of the Sewer Line, and any such access by Grantee, its agents, contractors or employees across any portion of the Grantor Property needed in connection with the construction of the Sewer Line and related facilities shall be at locations reasonably acceptable to Grantor.

4. **Restoration of Disturbed Area.** Upon completion of such installation and construction of that portion of the Sewer Line located within the Grantor Property, such area within the Grantor Property disturbed or damaged as a result of any activities by or on behalf of the Grantee shall be expeditiously restored by Grantee at its sole cost and expense to the condition in which it existed prior to such disturbance or work performed.

5. **Completion of Sewer Line.** Grantee shall complete the construction and installation of the Sewer Line and cause it to be connected to the Public Line and operational within twelve (12) months from and after the date hereof, subject to matters of force majeure.

6. **Reservations by Grantor.** Notwithstanding the foregoing, Grantor reserves the following rights and interests:

A. Grantor reserves the right during the construction of the Sewer Line and in the future to tap into and to utilize the Sewer Line for sanitary sewer service in connection with the construction of improvements upon and within the Grantor Property; provided, however that all costs and expenses in connection therewith shall be the sole obligation and responsibility of Grantor, such construction work and tap in by Grantor shall not result in any disruption of sanitary sewer service to the Grantee Property or any reduction in capacity available to the Grantee Property, such construction work and tap in by Grantor shall be pursuant to and in accordance with all applicable governmental rules and requirements, and Grantor shall indemnify and hold Grantee and its agents, employees, agents and contractors harmless from and against any and all loss, cost damage and expense suffered or incurred by any of them as a result of Grantor's tapping into and utilizing the Sewer Line for improvements constructed upon and within the Grantor Property.

B. Grantor reserves the future right to relocate the Sewer Line if necessary and required to accommodate future construction by Grantor upon and within the Grantor Property; provided, however that all costs and expenses in connection with such relocation of the Sewer Line shall be the sole obligation and responsibility of Grantor, such construction work by Grantor shall not result in any disruption of sanitary sewer service to the Grantee Property or any reduction in capacity available to the Grantee Property, such construction work by Grantor shall be pursuant to and in accordance with all applicable governmental rules and requirements, and Grantor shall indemnify and hold Grantee and its agents, employees, agents and contractors harmless from and against any and all loss, cost damage and expense suffered or incurred by any of them as a result of Grantor's relocation of the Sewer Line to accommodate improvements constructed upon and within the Grantor Property.

7. **Dedication of Sewer Line within Sewer Easement Area.** Grantor and Grantee for themselves and their respective successors-in-title to the Grantor Property and the Grantee Property contemplate that the Sewer Line to be located in the Sewer Easement Area shall be dedicated to Forsyth County, Georgia and upon acceptance thereof by Forsyth County, the Sanitary Sewer Easement contained in Section 1 of this Agreement shall automatically terminate and be of no further force or effect. Grantor and Grantee for themselves and their respective successors-in-title to the Grantor Property and the Grantee Property agree to execute such reasonable documents in recordable form as may be necessary or appropriate to effect such

dedication, but it is hereby acknowledged that Grantor and Grantee's consent to such dedication is hereby given, and no further authorization or consent is necessary.

8. **Lien-Free Work; Indemnification.** Grantee shall perform all such work and construction upon the Grantor Property in a lien-free manner with as little disruption and inconvenience to Grantor as is consistent with reasonable progress. Grantee shall not permit any liens to stand against the Grantor Property for any work done or materials furnished in connection with any such work. Grantor shall not incur any costs related to the installation of the Sewer Line. Grantee hereby indemnifies Grantor and agrees to hold Grantor harmless from and against all losses, costs, damages, claims and expenses (including, without limitation, materialmen's or mechanics' liens) arising or resulting from construction, installation, operation and use of the Sewer Line by Grantee upon the Grantor Property, (including, without limitation, court costs and reasonably attorneys' fees) and suffered or incurred by Grantor as a result thereof, excepting, however, such claims or demands as may result from any injury or damage caused by the negligent acts or omissions of any of Grantor. In addition, Grantee shall obtain or cause to be obtained, and shall maintain or cause to be maintained during the period of construction of the Sewer Line, a policy of liability insurance providing coverage in an amount equal to \$2,000,000 for all work performed by or on behalf of Grantee in connection with the construction and installation of the Sewer Line; and prior to the commencement of such work, Grantee shall deliver to Grantor a copy of its insurance certificate that shall name Grantor as an additional insured.

9. **Limitation of Agreement to Purposes Expressed.** Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Grantor Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

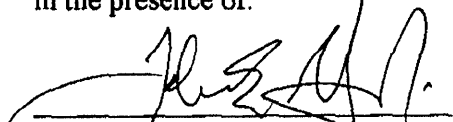
10. **Running of Benefit and Burden.** The easements, rights and obligations herein granted and conveyed shall run with and burden the Grantor Property and the Grantee Property and shall be binding upon Grantor and Grantee, as the case may be, and their respective successors and assigns, and shall run with and benefit the Grantor Property and the Grantee Property and inure to the benefit of Grantor and Grantee, as the case may be, and their respective successors and assigns.

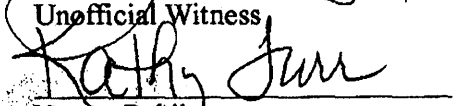
[EXECUTIONS BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be duly executed under seal as of the day and year first above-written.

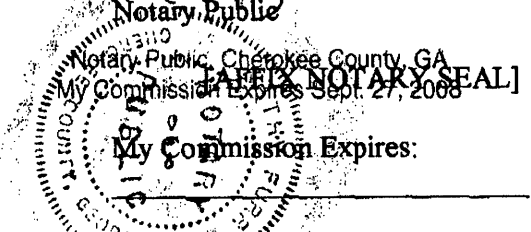
"GRANTOR"

Signed, sealed and delivered
in the presence of:

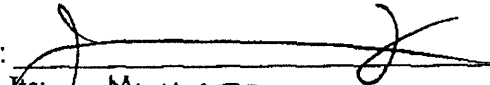


Unofficial Witness


Notary Public

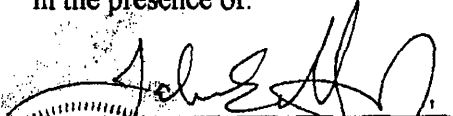



VICKERY LAND CO., LLC,
a Georgia limited liability company

By: 

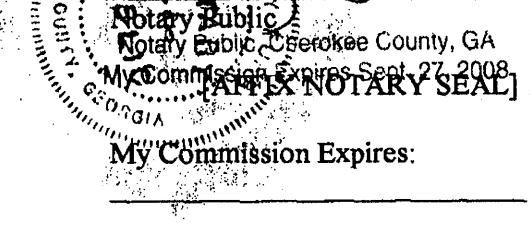
Its: MANAGER

Signed, sealed and delivered
in the presence of:

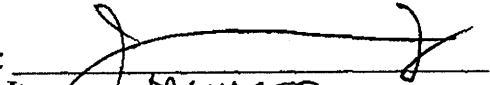


Unofficial Witness


Notary Public




VICKERY VILLAGE, LLC,
a Georgia limited liability company

By: 

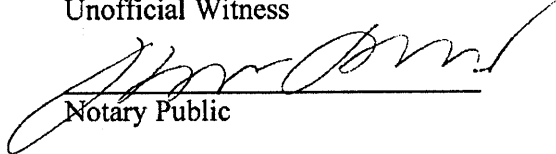
Its: MANAGER

[EXECUTIONS CONTINUED ON NEXT PAGE]

Signed, sealed and delivered
in the presence of:



Unofficial Witness



Notary Public

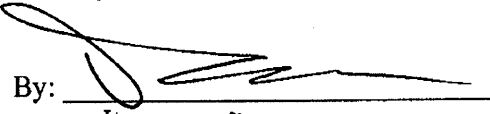
[AFFIX NOTARY SEAL]

My Commission Expires _____



"GRANTEE"

POLO FIELDS II, LLC,
a Georgia limited liability company

By: 

Its: MANAGER

EXHIBIT A

GRANTOR PROPERTY

All that tract or parcel of land lying and being in Land Lot 243, 2nd District, 1st Section, Forsyth County, Georgia, lying northwest of the existing right-of-way of Post Road, a/k/a S.R. 371.

LESS AND EXCEPT that portion of sis property conveyed to Donald E. Stone and Marilyn H. Stone by Warranty Deed recorded in Deed Book 111, Page 425, Forsyth County Georgia records; and also LESS AND EXCEPT that portion of said property conveyed to Forsyth County, Georgia by Right of Way Deed recorded in Deed Book 1731, Page 110, Forsyth County, Georgia records.

EXHIBIT "B"

LEGAL DESCRIPTION OF PROPERTY

Original Tract 1 = 12.97 Acres
(Includes Outparcel #1, Post Road R/W Dedication Area, and Majors Road R/W Dedication Area.)

A parcel of land lying and being a part of Land Lot 243, of the 2nd District, 1st Section, of Forsyth County, Georgia, said tract of land being more particularly described as follows:

BEGINNING at an iron pin set at the Southerly mitered intersection of the Southwesterly right-of-way line Majors Road (60' R/W) and State Route #371 (a.k.a. Post Road 80' R/W);

THENCE North 77 degrees 01 minutes 36 seconds East for a distance of 36.60 feet to a right-of-way monument found;

THENCE proceed along the southwesterly right-of-way line of Majors Road South 58 degrees 32 minutes 47 seconds East for a distance of 65.10 feet to a right-of-way monument found;

THENCE South 63 degrees 05 minutes 33 seconds East for a distance of 124.86 feet to a right-of-way monument found;

THENCE South 58 degrees 30 minutes 38 seconds East for a distance of 182.23 feet to a right-of-way monument found;

THENCE along a curve to the right having a radius of 411.81 feet and an arc length of 104.08 feet, being subtended by a chord of South 51 degrees 54 minutes 21 seconds East for a distance of 103.80 feet to a right-of-way monument found;

THENCE North 47 degrees 13 minutes 34 seconds East for a distance of 18.07 feet to an iron pin set; THENCE South 42 degrees 49 minutes 07 seconds East for a distance of 196.36 feet to a point;

THENCE South 45 degrees 11 minutes 18 seconds East for a distance of 106.20 feet to an iron pin set;

THENCE South 46 degrees 28 minutes 45 seconds West for a distance of 205.96 feet to an ½" rebar found disturbed;

THENCE South 60 degrees 54 minutes 11 seconds West for a distance of 935.07 feet to ½" rebar found;

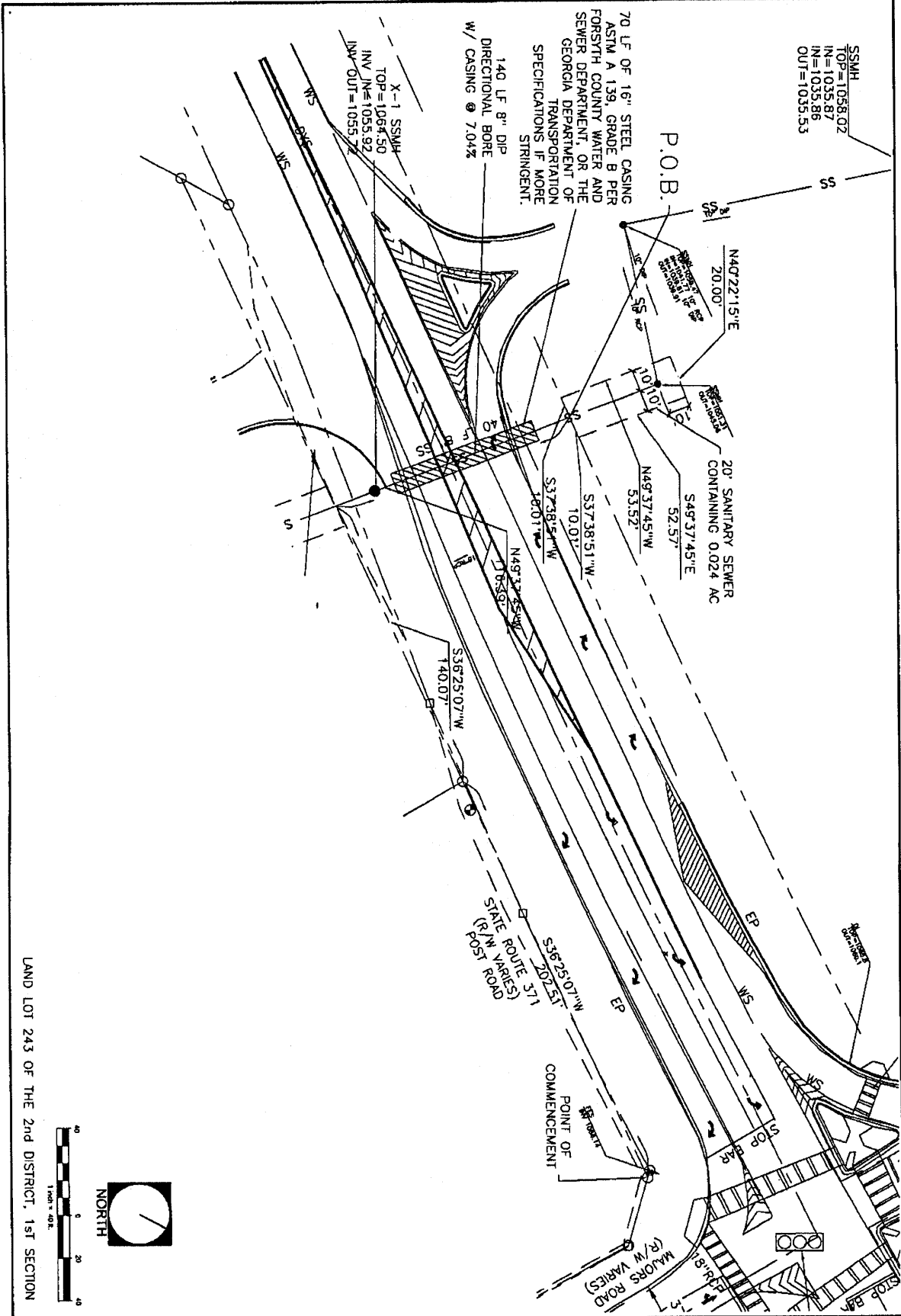
THENCE North 00 degrees 27 minutes 48 seconds East for a distance of 660.04 feet to an ½" rebar found lying on the southeasterly right-of-way line of State Route #371;

THENCE proceed along said southeasterly right-of-way line the following courses and distances: North 36 degrees 38 minutes 42 seconds East for a distance of 68.03 feet to a right-of-way monument found; North 40 degrees 35 minutes 39 seconds East for a distance of 180.33 feet to a right-of-way monument; North 37 degrees 18 minutes 39 seconds East for a distance of 106.35 feet to a right-of-way monument found; along a curve to the left having a radius of 1959.86 feet and an arc length of 133.07 feet, being subtended by a chord of North 35 degrees 21 minutes 00 seconds East for a distance of 133.04 feet to a point, said point being the TRUE POINT OF BEGINNING.

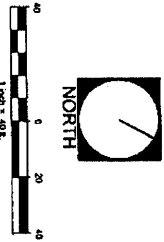
Said property contains 12.97 Acres more or less.

The above described property is shown on a Boundary Survey of Bridle Crossing Site for Polo Fields II, LLC and M. J. Lant Development, by LandAir Surveying Company, dated October 15, 2007, last revised October 22, 2007.

EXHIBIT "C"



LAND LOT 243 OF THE 2nd DISTRICT, 1st SECTION



<p>COLUMBIA ENGINEERING 2763 MEADOW CHURCH ROAD SUITE 100 DULUTH, GEORGIA 30097 (770) 926-0357</p>	<p>LAND PLANNERS CIVIL ENGINEERS</p>	<p>CLIENT: NORO MANAGEMENT, INC.</p>	<p>SHEET NO.</p>
	<p>JOB NO.: 3130.00</p>	<p>PROJECT NAME: BRIDLE STATION</p>	<p>EX-1</p>
	<p>DATE: 04/18/07</p>	<p>LOCATION: FORSYTH COUNTY, GEORGIA</p> <p>SHEET TITLE: SANITARY SEWER CROSSING</p>	

EXHIBIT "C"

LEGAL DESCRIPTION
SEWER EASEMENT

All that certain tract or parcel of land lying in and being a part of Land Lot 243, of the 2nd District, 1st Section, of Forsyth County, Georgia, and being more particularly described as follows.

To find the TRUE POINT OF BEGINNING Commence at the point formed by the intersection of the westerly mitered right-of-way line of Majors Road (right-of-way varies) as dedicated, with the southerly right-of-way line of State Route 371 aka Post Road (right-of-way varies) as dedicated. Running thence along the said southerly right-of-way line of State Route 371 South 36 degrees 25 minutes 07 seconds West for a distance of 342.58 feet to a point; Thence leaving the said southerly right-of-way line of State Route 371 running North 49 degrees 37 minutes 45 seconds West for distance of 116.39 feet to a point on the northerly right-of-way line of State Route 371 at the TRUE POINT OR PLACE OF BEGINNING.

Running thence along the said northerly right-of-way line of State Route 371 South 37 degrees 38 minutes 51 seconds West for a distance of 10.01 feet to a point;
Thence leaving said right of way running North 49 degrees 37 minutes 45 seconds West for a distance of 53.52 feet to a point;
Thence North 40 degrees 22 minutes 15 seconds East for a distance of 20.00 feet to a point;
Thence South 49 degrees 37 minutes 45 East for a distance of 52.57 to a point on the said northerly right-of-way line of State Route 371;
Thence along the said right of way South 37 degrees 38 minutes 51 seconds West for a distance of 10.01 feet to the true point of beginning;

Said easement containing 0.024 acres

SUBORDINATION AGREEMENT

The undersigned, being the owner and holder of that certain Deed to Secure Debt, Assignment of Rents, Security Agreement and Financing Statements, dated June 17, 2002, and recorded in Deed Book 2341, Page 542, Forsyth County, Georgia Records (Said Deed to Secure Debt, as subsequently modified and supplemented is herein called the "Security Deed"), which Security Deed encumbers all or portions of the Grantor Property, hereby subordinates all of its rights, titles and interests in and to the Grantor Property arising by virtue of the Security Deed to all of the terms and conditions of this Agreement, such that the Security Deed shall be subject and subordinate to this Agreement, but not to any other documents or instruments which have been recorded subsequent to the recording of the Security Deed, except to the extent that the undersigned has subordinated thereto by express Subordination Agreement executed by the undersigned and recorded in the Public Records of Forsyth County, Georgia.

IN WITNESS WHEREOF, the undersigned has executed this Agreement under seal as of the 15TH day of FEBRUARY, 2008.

Signed, sealed and delivered
in the presence of:

Grant B. M. Imphon
Unofficial Witness
Donna A. Deprinzio
Notary Public

WACHOVIA BANK, N.A.

By: [Signature]
Its: VICE PRESIDENT

(CORPORATE SEAL)



[AFFIX NOTARY SEAL]

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Donna A. Deprinzio, Notary Public
City of Philadelphia, Philadelphia County
My commission expires May 22, 2011