

**DAWSON COUNTY BOARD OF COMMISSIONERS**  
**VOTING SESSION AGENDA – THURSDAY, MAY 16, 2024**  
**DAWSON COUNTY GOVERNMENT CENTER ASSEMBLY ROOM**  
**25 JUSTICE WAY, DAWSONVILLE, GEORGIA 30534**  
**TO IMMEDIATELY FOLLOW THE 4:00 PM WORK SESSION**

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**A. ROLL CALL**

**B. OPENING PRESENTATION**

1. National Public Works Week Proclamation

**C. INVOCATION AND PLEDGE OF ALLEGIANCE**

**D. ANNOUNCEMENTS**

**E. APPROVAL OF MINUTES**

1. Minutes of the Work Session held on May 2, 2024
2. Minutes of the Voting Session held on May 2, 2024

**F. APPROVAL OF AGENDA**

**G. PUBLIC COMMENT**

**H. ALCOHOL LICENSE**

1. New Alcohol License (*Retail Consumption on Premises of Beer, Wine and Distilled Spirits*) – Awesomeville LLC dba Mellow Mushroom, 229 Blue Ridge Parkway, Dawsonville, GA 30534

**I. ZONING**

1. ZA 24-01 – Jim King on behalf of Dawson Forest Owner LLC requests to amend the site plan and zoning stipulations for the Dawson Crossroads Development TMP 114-031.

**J. CONSENT AGENDA**

1. Request to Accept 2024 Emergency Management Performance Grant
2. Family Connection's Request to Accept Increase of Georgia Department of Human Services Grant
3. Family Connection's Request to Accept United Way for Dawson County Grant Funds
4. Legacy Link FY 2024 Addendum No. 1 Contract for Nutrition Program Services
5. Request to Approve a Proposed 2024 Local Maintenance and Improvement Grant Local Road Assistance Administration Funds Application
6. A Resolution of Support Concerning the Dawson Forest Wildlife Management Area Land Currently Owned by the City of Atlanta

**K. NEW BUSINESS**

1. Consideration of an Intergovernmental Agreement Between Dawson County and the City of Dawsonville Concerning Burt Creek Road Improvement
2. Consideration of a Resolution to Amend Transfer Station Fee Schedule to Accept Television and Computer Monitor Recycling

- [3.](#) Consideration of Request to Initiate Professional Engineering Services for Lumpkin Campground Road Intersection Improvements and Allocate Funds from Impact Fees
- [4.](#) Consideration to Move Forward to a Public Hearing for a Proposed Amendment of Chapter 105 - Buildings and Building Regulations
- [5.](#) Consideration of Professional Exemption and Budget Request for the Design of the Styles Park Trails

**L. PUBLIC COMMENT**

**M. ADJOURNMENT**

*\*An Executive Session may follow the Voting Session meeting.*

*Those with disabilities who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting, should contact the ADA Coordinator at 706-344-3666, extension 44514. The county will make reasonable accommodations for those persons.*



**DAWSON COUNTY  
BOARD OF COMMISSIONERS**

**NATIONAL PUBLIC WORKS WEEK  
PROCLAMATION**

May 19–25, 2024

‘Advancing Quality of Life for All’

WHEREAS, public works professionals focus on infrastructure, facilities and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life and well-being of the people of Dawson County; and

WHEREAS, these infrastructure, facilities and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers, administrators, equipment operators and attendants who are responsible for rebuilding, improving and protecting our communities’ transportation, waste services, storm system, and other structures and facilities essential for our citizens; and

WHEREAS, it is in the public interest for the citizens, civic leaders and children in Dawson County to gain knowledge of and maintain an ongoing interest and understanding of the importance of public works and public works programs in this community; and

WHEREAS, the year 2024 marks the 64<sup>th</sup> annual National Public Works Week sponsored by the American Public Works Association / Canadian Public Works Association;

NOW, THEREFORE, the Dawson County Board of Commissioners does hereby designate the week of May 19–25, 2024, as National Public Works Week. The board urges all citizens to join with representatives of the American Public Works Association and government agencies in activities, events and ceremonies designed to pay tribute to our public works professionals, engineers, managers and employees, and to recognize the substantial contributions they make to protecting our health and safety and advancing quality of life for all.

On this 16th day of May, 2024.

Attest:

\_\_\_\_\_  
Billy Thurmond, Chairman

\_\_\_\_\_  
Kristen Cloud, County Clerk

**DAWSON COUNTY BOARD OF COMMISSIONERS  
WORK SESSION MINUTES – THURSDAY, MAY 2, 2024  
DAWSON COUNTY GOVERNMENT CENTER ASSEMBLY ROOM  
25 JUSTICE WAY, DAWSONVILLE, GEORGIA 30534  
4:00 PM**

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*Those present were Chairman Billy Thurmond; Commissioner Seth Stowers, District 1; Commissioner Chris Gaines, District 2; Commissioner Alexa Bruce, District 3 (via teleconference); Commissioner Emory Dooley, District 4; County Manager Joey Leverette; County Attorney Angela Davis; County Clerk Kristen Cloud; and interested citizens of Dawson County.*

**NEW BUSINESS**

1. Presentation of Request to Accept 2024 Emergency Management Performance Grant- Emergency Services Division Chief of Training and Operations Johnny Irvin  
***This item, presented by Emergency Services Director Troy Leist, will be placed on the May 16, 2024, Voting Session Agenda.***
2. Presentation of Family Connection's Request to Accept Increase of Georgia Department of Human Services Grant- Family Connection Coordinator Rebecca Bliss  
***This item will be placed on the May 16, 2024, Voting Session Agenda.***
3. Presentation of Family Connection's Request to Accept United Way for Dawson County Grant Funds- Family Connection Coordinator Rebecca Bliss  
***This item will be placed on the May 16, 2024, Voting Session Agenda.***
4. Presentation of Legacy Link FY 2024 Addendum No. 1 Contract for Nutrition Program Services- Senior Services Director Dawn Johnson  
***This item will be placed on the May 16, 2024, Voting Session Agenda.***
5. Presentation of an Intergovernmental Agreement Between Dawson County and the City of Dawsonville Concerning Burt Creek Road Improvement- Public Works Director Robert Drewry  
***This item will be placed on the May 16, 2024, Voting Session Agenda.***
6. Presentation of Request to Approve a Proposed 2024 Local Maintenance and Improvement Grant Local Road Assistance Administration Funds Application- Public Works Director Robert Drewry  
***This item will be placed on the May 16, 2024, Voting Session Agenda.***
7. Presentation of a Resolution to Amend Transfer Station Fee Schedule to Accept Television and Computer Monitor Recycling- Public Works Director Robert Drewry  
***This item, presented by Keep Dawson County Beautiful Interim Executive Director Robbie Irvin, will be placed on the May 16, 2024, Voting Session Agenda.***

8. Presentation of Request to Initiate Professional Engineering Services for Lumpkin Campground Road Intersection Improvements and Allocate Funds from Impact Fees- Public Works Director Robert Drewry  
*This item will be placed on the May 16, 2024, Voting Session Agenda.*
9. Presentation of Proposed Amendment of Chapter 105 - Buildings and Building Regulations- Planning & Development Director Sharon Farrell  
*This item will be placed on the May 16, 2024, Voting Session Agenda.*
10. Presentation of Professional Exemption and Budget Request for the Design of the Styles Park Trails- County Manager Joey Leverette / Purchasing Manager Melissa Hawk  
*This item will be placed on the May 16, 2024, Voting Session Agenda.*
11. Presentation of a Resolution of Support Concerning the Dawson Forest Wildlife Management Area Land Currently Owned by the City of Atlanta- County Attorney  
*This item will be placed on the May 16, 2024, Voting Session Agenda.*
12. Presentation of a Jarrard & Davis Waiver of Conflict Concerning Cherokee County and a Proposed Minor Subdivision that Includes Land in Both Dawson and Cherokee Counties- County Attorney  
*This item will be added to the May 2, 2024, Voting Session Agenda.*
13. County Manager Report  
*This item was for information only.*
14. County Attorney Report  
*County Attorney Davis had no information to report and requested an Executive Session.*

APPROVE:

ATTEST:

\_\_\_\_\_  
Billy Thurmond, Chairman

\_\_\_\_\_  
Kristen Cloud, County Clerk

**DAWSON COUNTY BOARD OF COMMISSIONERS  
VOTING SESSION MINUTES – THURSDAY, MAY 2, 2024  
DAWSON COUNTY GOVERNMENT CENTER ASSEMBLY ROOM  
25 JUSTICE WAY, DAWSONVILLE, GEORGIA 30534  
IMMEDIATELY FOLLOWING THE 4:00 PM WORK SESSION**

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**ROLL CALL:** Those present were Chairman Billy Thurmond; Commissioner Seth Stowers, District 1; Commissioner Chris Gaines, District 2; Commissioner Alexa Bruce, District 3 (via teleconference); Commissioner Emory Dooley, District 4; County Manager Joey Leverette; County Attorney Angela Davis; County Clerk Kristen Cloud; and interested citizens of Dawson County.

**OPENING PRESENTATION:**

*National Day of Prayer Proclamation*

Chairman Thurmond read aloud a National Day of Prayer Proclamation.

Motion passed 4-0 to approve a National Day of Prayer Proclamation. Dooley/Gaines

**INVOCATION AND PLEDGE OF ALLEGIANCE:** Chairman Thurmond

**ANNOUNCEMENTS:**

None

**APPROVAL OF MINUTES:**

Motion passed 4-0 to approve the Minutes of the Work Session held on April 18, 2024. Gaines/Stowers

Motion passed 4-0 to approve the Minutes of the Voting Session held on April 18, 2024. Stowers/Gaines

**APPROVAL OF AGENDA:**

Motion passed 4-0 to approve the agenda with the following change:

- Addition of No. 5 under New Business:
  - Jarrard & Davis Waiver of Conflict Concerning Cherokee County and a Proposed Minor Subdivision that Includes Land in Both Dawson and Cherokee Counties

Stowers/Gaines

**PUBLIC COMMENT:**

None

**NEW BUSINESS:**

Consideration of Tax Software Upgrade Needs and Funding Needs Related to Proposed Homestead Exemption Changes and Possible Future Special Ad Valorem Tax Districts to Fund Capital (Roadway) Improvement Projects

Motion passed 4-0 to approve Tax Software Upgrade Needs and Funding Needs Related to Proposed Homestead Exemption Changes and Possible Future Special Ad Valorem Tax Districts to Fund Capital (Roadway) Improvement Projects; \$30,352 will come from General Fund's fund balance. Gaines/Dooley

Consideration of Board Authorization to Enter into Agreement for the Mutual Exchange of Real Property and to Acquire Driveway Easements and Temporary Construction Easements from Bethel Baptist Church of Dawson County Inc., Tax Parcel No: 080-022 (Project Parcels 1, 2 and 3) for Dawson County P.I. # 0120048- Right of Way of Proposed State Route 136 at Shoal Creek Road

Motion passed 4-0 to approve Entering into an Agreement for the Mutual Exchange of Real Property and to Acquire Driveway Easements and Temporary Construction Easements in the Amount of \$1,500 from Bethel Baptist Church of Dawson County Inc., Tax Parcel No: 080-022 (Project Parcels 1, 2 and 3) for Dawson County P.I. # 0120048- Right of Way of Proposed State Route 136 at Shoal Creek Road; \$1,500 will come from Special Purpose Local Option Sales Tax VI funds. Dooley/Stowers

Consideration of Request for Fuel Center Updates

Motion passed 4-0 to approve a Request for Fuel Center Updates - to allow MECO of Atlanta Inc. to perform the updates in the amount of \$75,786, which will come from General Fund's fund balance, and to waive the requirement to bid the project. Stowers/Bruce

Consideration of Agreement Between Dawson County and Georgia Mountains Regional Commission for Services Associated with the Preparation and Submittal of a Community Development Block Grant for a Health Department

Motion passed 4-0 to approve an Agreement Between Dawson County and Georgia Mountains Regional Commission for Services Associated with the Preparation and Submittal of a Community Development Block Grant for a Health Department; \$1,000 will come from Special Purpose Local Option Sales Tax VII funds. Dooley/Stowers

Consideration of a Jarrard & Davis Waiver of Conflict Concerning Cherokee County and a Proposed Minor Subdivision that Includes Land in Both Dawson and Cherokee Counties

Motion passed 4-0 to approve a Jarrard & Davis Waiver of Conflict Concerning Cherokee County and a Proposed Minor Subdivision that Includes Land in Both Dawson and Cherokee Counties. Dooley/Gaines

**PUBLIC COMMENT:**

None

**ADJOURNMENT:**

**EXECUTIVE SESSION:**

Motion passed 4-0 to enter into Executive Session to discuss litigation. Stowers/Gaines

Motion passed 3-0 to come out of Executive Session. Dooley/Gaines

APPROVE:

ATTEST:

\_\_\_\_\_  
Billy Thurmond, Chairman

\_\_\_\_\_  
Kristen Cloud, County Clerk

DRAFT



# DAWSON COUNTY PLANNING AND DEVELOPMENT

## ALCOHOL LICENSING

Location & Mailing Address:

25 JUSTICE WAY, SUITE 2322  
DAWSONVILLE, GA 30534

Phone: 706/344-3500 x 42335

### APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

This application must be signed by the applicant and notarized. Every question must be fully answered with the answer typewritten or printed. If the space provided is not sufficient, answer on a separate sheet and indicate in the space provided that a separate sheet is attached. When completed, the application must be dated, signed, and verified under oath by the applicant and submitted to Planning and Development, together with the license fee(s) and the administrative/investigative fee (separate checks). All fees are payable to Dawson County in certified funds (bank check, certified check, or money order). **The applicant must be not less than 21 years of age.**

NOTICE: Any false answer to any question could result in the denial of a license, or in the event a license is issued, in the revocation or suspension of the license. **\*\*\*KEEP A COPY OF ALL FORMS SUBMITTED\*\*\***

#### FOR OFFICIAL USE ONLY:

Name of Business: \_\_\_\_\_

Date Received: \_\_\_\_\_

License Fee Enclosed: \$ \_\_\_\_\_

Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

State License Number: \_\_\_\_\_

Local License Number: \_\_\_\_\_

Administrative/Investigative Fee Enclosed : \$ \_\_\_\_\_ Advertising Fee Enclosed: \$ \_\_\_\_\_

1. TYPE OF LICENSE: (check one):  NEW  AMENDMENT (TRANSFER)
2. ADMINISTRATIVE AND INVESTIGATIVE FEE:  \$250.00 (Consumption on Premises)  
ADMINISTRATIVE AND INVESTIGATIVE FEE:  \$250.00 (Retail Package)  
ADMINISTRATIVE AND INVESTIGATIVE FEE:  \$250.00 (Transfer of License)  
*Note: Administrative/Investigative fees may be higher depending on the number of persons for which we conduct a federal and state background check.*  
ADVERTISING FEE:  \$ 40.00 (Distilled Spirits)  
(Consumption on Premises & Retail Package)

3. TYPE OF BUSINESS:
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Bona Fide Eating Establishment  | <input type="checkbox"/> Indoor Commercial Recreation Facility            |
| <input type="checkbox"/> Super Market                               | <input type="checkbox"/> Hotel/Motel                                      |
| <input type="checkbox"/> Convenience Store                          | <input type="checkbox"/> Caterer (must have alcohol by the drink license) |
| <input type="checkbox"/> Package Liquor Store (see Item 14, Page 5) | <input type="checkbox"/> Other  |
- Explain: \_\_\_\_\_

Will live entertainment be offered? No If Yes, Explain: \_\_\_\_\_

## APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

4. **TYPE OF LICENSE AND FEES:**                      **PAYMENT BY CERTIFIED FUNDS ONLY!!**  
(Check all that apply)                                      Note: If license is issued after July 1st, fees are one half.

**RETAIL PACKAGE:**            *(Total: Beer - Wine - Distilled Spirits = \$5,800)*  
*(Total: Beer - Wine = \$1,300)*

Beer \$650                                       Wine \$650                                       Distilled Spirits \$4,500

**GROCERY & CONVENIENCE STORES: ATTACH COPY OF DEPT. OF AGRICULTURE FOOD ESTABLISHMENT LICENSE.**

**RETAIL CONSUMPTION ON PREMISES:**                      *(Total: Beer - Wine - Distilled Spirits = \$4,800)*  
*(Total: Beer - Wine = \$1,500)*

Distilled Spirits            \$3,300                                       Add'l Fixed Bars # \_\_\_\_\_ \$ 500 (each bar)  
 Beer                                      \$ 750                                       Movable Bars # \_\_\_\_\_ \$ 250 (each bar)  
 Wine                                      \$ 750

**PRIVATE CLUB:**                                      **Note: Must obtain a retail consumption on the premises license.**

Beer \$750                                       Wine \$750                                       Distilled Spirits \$3,300

**HOTEL IN-ROOM SERVICE:**                      **Note: Must obtain a retail consumption on the premises license before Hotel In-Service License is issued.**

Beer \$750                                       Wine \$750                                       Hotel In-Service \$250

**SPECIAL EVENT ALCOHOL PERMIT:**                      **Note: Must complete additional Special Event Alcohol Permit Form # 2-B.**

\$25 Per Day

5. **BUSINESS**

(a) Business Name: Awesomeville Pie LLC d/b/a Mellow Mushroom

(b) Location:                      229                      Blue Ridge Parkway  
   Street Number                      Street Name

Dawsonville                                      GA                      30534                      404-734-7838  
City     State                      Zip Code                      Phone Number

(c) Mailing Address: PO Box 191306  
**For Renewals:**                      Street Number                      Street Name

Atlanta                                      GA                      31119                      404-734-7838  
City     State                      Zip Code                      Phone Number

## APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

**6. OWNER:**  
 (a) Full Name: Scott Lamar Mathis \_\_\_\_\_ Social Security # \_\_\_\_\_

(b) Corporation or LLC Name (if applicable): Awesomeville Pie LLC d/b/a Mellow Mushroom \_\_\_\_\_

(c) Location: \_\_\_\_\_  
   229                            Blue Ridge Parkway  
   Street Number                            Street Name

Dawsonville  GA                            30534  404-734-7838  
 City  State                            Zip Code  Phone Number

(d) Mailing Address: \_\_\_\_\_  
   Street Number                            Street Name

\_\_\_\_\_  
 City  State                            Zip Code  Phone Number

**7. REGISTERED AGENT: (Applicant may name a registered agent - attach Registered Agent Consent Form #2-A.)**

(a) Full Name: Stacy Lorraine Harris \_\_\_\_\_ Social Security # \_\_\_\_\_

(b) Address: \_\_\_\_\_  
   Street Number                            Street Name

\_\_\_\_\_  
 City  State                            Zip Code  Phone Number

**8. TYPE OF OWNERSHIP:**

- |  |   |
|--|---|
| <input type="checkbox"/> Sole Proprietorship                                   | <input type="checkbox"/> Legally Registered Partnership       |
| <input type="checkbox"/> Private Held Corporation                              | <input type="checkbox"/> Public Held Corporation              |
| <input type="checkbox"/> Public Held Corporation Subject to S.E.C. Regulations | <input checked="" type="checkbox"/> Limited Liability Company |
| <input type="checkbox"/> Other; explain _____                                  |   |

**9. FOR PARTNERSHIP ONLY:**

(a) Date the Partnership was formed: \_\_\_\_\_

(b) Attach Partnership Agreement

(c) List Partners:

Name & Resident Address (Attach separate sheet if necessary)	Social Security Number	G - General L - Limited S - Silent	Interest	
			Investment \$	Participation %

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

## APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

**10. FOR CORPORATION or LLC ONLY: (Attach Articles & Certificate of Incorporation/ Organization)**

- (a) Date of Incorporation/Organization: 3/15/2022
- (b) Place of Incorporation/Organization: Georgia
- (c) State Parent Corporation, if applicable: NA
- (d) Number of Shares of Capital Stock Authorized, if applicable: NA
- (e) Number of Shares of Outstanding Stock, if applicable: NA
- (f) For Corporations or LLC's, list officers, directors, members, and/or principal shareholders with 20% or more of the stock:

Name	Social Security #	Position	Interest %
James Livingston	[REDACTED]	Member	41%
Linda Livingston	[REDACTED]	Member	40%
Scott Mathis	[REDACTED]	Member	19%

- (g) Is the corporation owned by a parent corporation or held by a holding company? No  
If yes, explain: \_\_\_\_\_

**11. FOR PRIVATE CLUBS ONLY:**

- (a) Date of organization under the laws of the State of Georgia: \_\_\_\_\_
- (b) State the total number of regular dues paying members: \_\_\_\_\_
- (c) Is any member, officer, agent, or employee compensated directly or indirectly from the profits of the sale of distilled spirits beyond a fixed salary as established by its members at any annual meeting or by its governing board out of the general revenue of the club?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (d) **Attach minutes of the annual meeting setting salaries.** For private club, list officers, directors and/or principal shareholders with 20% or more of the stock.

Name	Social Security #	Position

**12. FINANCING:**

- (a) Bank to be used by business, include branch: \_\_\_\_\_
- (b) State total amount of capital that is or will be invested in the business by any party or parties: \$2,000,000.00
- (c) State total amount of funds invested by the owner: \_\_\_\_\_
- (d) State total amount of funds invested by parties other than the owner: \_\_\_\_\_
- (e) If any capital is borrowed:

Name of Lender	Date	Amount	Interest Rate

## APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

**13. GENERAL INFORMATION:**

(a) Has owner and/or individual partner, shareholder, director, officer or member any interest in any manufacturer or wholesaler of alcoholic beverage? No

(b) Has owner and/or individual partner, shareholder, director, officer or member received any financial aid or assistance from any manufacturer or wholesaler of alcoholic beverages? No

(c) If answer is "Yes" to either of immediate foregoing, explain: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(d) Show hereunder any and all persons, corporations, partnerships, limited liability companies or associations (other than persons stated herein as owner(s), directors, officers or members) who have received or will receive, as a result of your operation under the requested license, any financial gain or payment derived from any interest or income from the operation. Financial gain or payment shall include payment or gain from any interest in the land, fixtures, building, stock, and any other asset of the proposed operation under the license. In the event any corporation or limited liability company is listed as receiving an interest or income from this operation, show the names of the officers, directors or members of said corporation together with the names of the principal stockholders.

Home-Grown Industries of Georgia, Inc. - See attached Franchise Agreement

(e) List all other businesses engaged in the sale of alcohol beverages that you the owner, or any individual, partner, shareholder, officer, director or member has interest in, is employed by or is associated with in any way whatsoever, or has had interest in, has been employed by, or has been associated with in the past.

Name	Name or Business	Interest %
Scott Mathis	Mellow Mushroom Lakeland	20%
James Livingston	Mellow Mushroom Brookhaven	51%
James Livingston	Mellow Mushroom Buckhead	51%
James Livingston	Mellow Mushroom Dunwoody	51%
Linda Livingston	Mellow Mushroom Brookhaven	49%
Linda Livingston	Mellow Mushroom Buckhead	49%
Linda Livingston	Mellow Mushroom Dunwoody	49%

**14. FOR PACKAGE LIQUOR STORE APPLICANTS: \*\*\*State of Georgia Regulations\*\*\***

The State of Georgia will **not** issue a State Alcohol License to any person who has more than two (2) retail package liquor licenses. See official language below. Do **not** apply for a Dawson County License if you already have (or have interest in) two (2) package liquor store licenses in the State of Georgia.

**O.C.G.A. 3-4-21 and Regulation 560-2-2-40.**

*No person shall be issued more than two retail package liquor licenses, nor shall any person be permitted to have a beneficial interest in more than two retail package liquor licenses issued by the Department regardless of the degree of such interest.*

*For the purposes of explanation and applicability of the Code:*

*"Beneficial interest" as used here means: when a person holds the retail package liquor license in his own name, or when he has a legal, equitable or other ownership interest in, or has any legally enforceable interest or financial interest in, or derives any economic benefit from, or has control over a retail package liquor business.*

*The term "person" shall include all members of a retail package liquor dealer licensee's family; and the term "family" shall include any person related to the holder of the license within the first degree of consanguinity and affinity as computed according to the canon law which includes the following: spouse, parents, step-parents, parents-in-law, brothers and sisters, step-brothers and step-sisters, brothers-in-law and sisters-in-law, children, step-children and children-in-law.*

Do you currently hold any package liquor licenses in your own name or have a beneficial interest in any package liquor licenses as described above? \_\_\_\_\_ Yes  No If yes, attach a separate sheet listing names, addresses, and license numbers.

**APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE**

**NOTE:** Before signing this statement, check all answers and explanations to see that you have answered all questions fully and correctly. This statement is to be executed under oath and subject to the penalties of false swearing, and it includes all attached sheets submitted herewith.

STATE OF GEORGIA, DAWSON COUNTY

I, Scott Mathis, DO SOLEMNLY SWEAR, SUBJECT TO THE PENALTIES OF FALSE SWEARING, THAT THE STATEMENTS AND ANSWERS MADE BY ME AS THE APPLICANT IN THE FOREGOING APPLICATION ARE TRUE AND CORRECT.

\_\_\_\_\_  
APPLICANT'S SIGNATURE

I HEREBY CERTIFY THAT Scott Mathis SIGNED HIS NAME TO THE FOREGOING APPLICATION STATING TO ME THAT HE KNEW AND UNDERSTOOD ALL STATEMENTS AND ANSWERS MADE THEREIN, AND, UNDER OATH ACTUALLY ADMINISTERED BY ME, HAS SWORN THAT SAID STATEMENTS AND ANSWERS ARE TRUE AND CORRECT.

THIS 19th DAY OF March, 2024.



\_\_\_\_\_  
NOTARY PUBLIC

FOR OFFICIAL USE ONLY:

**PLANNING AND DEVELOPMENT REVIEW:**

APPLICANT HAS OBTAINED ALL NECESSARY PERMITS AND LICENSES. (Building Permit / Business License)

Date: \_\_\_\_\_

\_\_\_\_\_  
Planning and Development Director

APPLICANT HAS COMPLETED ALL NECESSARY INSPECTIONS. (Fire Dept. / Health Dept. / Dept. of Agriculture-Retail Package only)

\_\_\_\_\_  
Planning and Development Director

APPLICANT HAS COMPLETED PREMISE & STRUCTURE FORM # 3 AND ATTACHED ALL REQUIRED INFORMATION IN ITEMS 10 through 15.

\_\_\_\_\_  
Planning and Development Director

FOR OFFICIAL USE ONLY:

**SHERIFF DEPARTMENT REVIEW:**

APPLICANT HAS COMPLETED ALL REQUIREMENTS FOR FEDERAL AND STATE BACKGROUND CHECK AND IS APPROVED FOR THIS APPLICATION PROCESS.

Date: \_\_\_\_\_

\_\_\_\_\_  
Sheriff

**DAWSON COUNTY PLANNING AND DEVELOPMENT**

Alcohol Licensing  
25 Justice Way, Suite 2322  
Dawsonville, GA 30534  
(706) 344-3500 x 42335

**\* REGISTERED AGENT CONSENT FORM**

Awesomeville Pie LLC d/b/a Mellow Mushroom  
Business Name

229 Blue Ridge Parkway, Dawsonville, GA 30534  
Business Address

I, Stacy Lorraine Harris, do hereby consent to serve as the Registered Agent for the licensee, owners, officers, and/or directors and to perform all obligations of such agency under the Alcoholic Beverage Ordinance of Dawson County. I understand the basic purpose is to have and continuously maintain a Registered Agent upon which any process, notice, or demand required or permitted by law or under said Ordinance to be served upon the licensee or owner may be served.

This 15 day of March, 2024.

Stacy Lorraine Harris  
Signature of Agent

Stacy Lorraine Harris  
Print Name of Agent

\_\_\_\_\_  
Print Agent's Street Address

\_\_\_\_\_  
Print Agent's City - County - State - Zip Code

\_\_\_\_\_  
Agent's Phone Number

APPROVED:

[Signature]

\_\_\_\_\_  
Sole Owner / Partner

Scott Mathis  
Officer or Director

Member  
Title

\*Note: Naming a Registered Agent is optional under the Consolidated Alcohol Ordinance of Dawson County.

# DAWSON COUNTY PLANNING AND DEVELOPMENT

## ALCOHOL LICENSING

Locating & Mailing Address:

25 JUSTICE WAY, SUITE 2322  
Dawsonville, GA 30534

Phone: 706.344.3500 x 42335

### PREMISE AND STRUCTURE FORM

**INSTRUCTION:** THIS STATEMENT MUST BE TYPEWRITTEN OR PRINTED AND EXECUTED UNDER OATH. EACH QUESTION MUST BE FULLY ANSWERED. IF SPACE PROVIDED IS NOT SUFFICIENT, ANSWER ON A SEPARATE SHEET AND INDICATE IN THE SPACE PROVIDED THAT A SEPARATE SHEET IS ATTACHED.

1. **TYPE OF BUSINESS:**

EATING ESTABLISHMENT

INDOOR COMMERCIAL RECREATION ESTABLISHMENT

CONVENIENCE STORE

SUPER MARKET

PACKAGE LIQUOR STORE

HOTEL OR MOTEL

OTHER (DESCRIBE) \_\_\_\_\_

2. **TRADE NAME OF BUSINESS:** Mellow Mushroom

LOCATION: 229 Blue Ridge Parkway  
Street Number Street Name

Dawsonville GA 30534 404-734-7838  
City State Zip Code Phone Number

107 319

Land Lot

Map & Parcel Number

3. **IS THIS LOCATION WITHIN A COMMERCIAL ZONING DISTRICT?** yes no  
**PROOF OF ZONING IS REQUIRED FROM PLANNING AND DEVELOPMENT**

For package liquor stores, is this zoned Commercial Highway Business (C-HB) or Commercial Planned Comprehensive Development (CPCD) as required by the ordinance?

\_\_\_\_\_yes \_\_\_\_\_no.

**PROOF OF C-HB or CPCD ZONING IS REQUIRED FROM PLANNING AND DEVELOPMENT.**

4. **DOES THE COMPLETED BUILDING OR THE PROPOSED BUILDING COMPLY WITH ORDINANCES OF DAWSON COUNTY, REGULATIONS OF THE STATE REVENUE COMMISSIONER, AND THE LAWS OF THE STATE OF GEORGIA?** Yes IF NO, EXPLAIN NON-COMPLIANCE AND PROPOSED METHODS

TO RECTIFY SAME: \_\_\_\_\_



**PREMISE AND STRUCTURE FORM**

5. (a) DOES THE BUILDING IN WHICH THE BUSINESS IS TO BE LOCATED CONTAIN SUFFICIENT LIGHTING SO THAT THE BUILDING ITSELF AND THE PREMISES ON ALL SIDES OF THE BUILDING ARE READILY VISIBLE AT ALL TIMES FROM THE FRONT OF THE STREET ON WHICH THE BUILDING IS LOCATED AS TO REVEAL ALL OF THE OUTSIDE PREMISES OF SUCH BUILDING? Yes
- (b) IS THE BUILDING SO ILLUMINATED SO THAT ALL HALLWAYS, PASSAGE WAYS, AND OPEN AREAS MAY BE CLEARLY SEEN BY THE CUSTOMER THEREIN? Yes

IF THE ANSWER IS NO TO EITHER OR BOTH (a) OR (b) ABOVE, PLEASE EXPLAIN PROPOSED METHODS TO RECTIFY THE INSUFFICIENT LIGHTING. \_\_\_\_\_

\_\_\_\_\_

6. **FOR CONSUMPTION ON PREMISES AND RETAIL PACKAGE APPLICATIONS:**

*(Answer "N/A" for items that are not applicable to your business)*

- (a) NUMBER OF SQUARE FEET OF TOTAL FLOOR AREA: 5,280
- (b) NUMBER OF SQUARE FEET DEVOTED TO DINING AREA: 1,500
- (c) SEATING CAPACITY EXCLUDING BAR AREA: 120
- (d) DO YOU HAVE A FULL SERVICE KITCHEN? Yes

DOES THE FULL SERVICE KITCHEN CONTAIN A THREE (3) COMPARTMENT SINK? Yes

IS THE STOVE AND/OR GRILL PERMANENTLY INSTALLED AND APPROVED BY THE HEALTH AND FIRE DEPARTMENTS? Yes

IF THE ANSWER TO ANY OF THE IMMEDIATE FOREGOING IS NO, PLEASE EXPLAIN: \_\_\_\_\_

\_\_\_\_\_

(e) HOURS PREPARED MEALS OR FOODS ARE SERVED: Sun-Thurs: 11 a.m. - 10 p.m.  
Fri-Sat: 11 a.m. - midnight

(f) HOURS THAT ALCOHOLIC BEVERAGES ARE SERVED or SOLD: \_\_\_\_\_  
Sun-Thurs: 11 a.m. - 10 p.m., Fri-Sat: 11 a.m. - midnight

(g) HOURS OF OPERATION: Sun-Thurs: 11 a.m. - 10 p.m., Fri-Sat: 11 a.m. - midnight

(h) MAXIMUM NUMBER OF EMPLOYEES ON HIGHEST SHIFT: 35

(i) NUMBER OF PARKING SPACES: 62

(j) NUMBER OF PARKING SPACES DEVOTED TO HANDICAPPED PERSONS: 4

(k) **PACKAGE LIQUOR STORES:**

DO YOU COMPLY WITH ORDINANCE ARTICLE 5 SECTION 503 - POSTING OF LICENSE NUMBER?  
*Every licensee shall have posted on the front of the licensed premises the name of the licensee together with the following inscription, "County Retail Package Sales of Distilled Spirits License No. \_\_\_\_\_"*

DO YOU COMPLY WITH ORDINANCE ARTICLE 5 SECTION 505 A) (2) - TYPES OF OUTLETS WHERE PACKAGE SALES ARE PERMITTED? \_\_\_\_\_

*Outlets that are devoted exclusively to the retail sale of distilled spirits, malt beverages and/or wine by the package with ingress and egress provided directly to and only to the exterior of the building and not to any other enclosed part of the building or adjoining building.*

## PREMISE AND STRUCTURE

7. **FOR HOTEL/MOTEL ONLY:**

(a) NUMBER OF ROOMS AVAILABLE FOR HIRE TO GENERAL PUBLIC: \_\_\_\_\_

(b) NUMBER OF SQUARE FEET OF FLOOR SPACE DEVOTED TO RESTAURANT: \_\_\_\_\_

(c) NUMBER OF SQUARE FEET OF FLOOR SPACE DEVOTED TO DINING AREA: \_\_\_\_\_

(d) SEATING CAPACITY EXCLUDING BAR AREA: \_\_\_\_\_

EXPLAIN IF MORE THAN ONE DINING AREA: \_\_\_\_\_

\_\_\_\_\_

(e) DO YOU HAVE A FULL SERVICE KITCHEN? \_\_\_\_\_

DOES THE FULL SERVICE KITCHEN CONTAIN A THREE (3) COMPARTMENT SINK? \_\_\_\_\_

IS THE STOVE AND/OR GRILL PERMANENTLY INSTALLED AND APPROVED BY THE HEALTH AND FIRE DEPARTMENTS? \_\_\_\_\_

IF THE ANSWER TO ANY OF THE IMMEDIATE FOREGOING IS NO, PLEASE EXPLAIN: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(f) HOURS PREPARED MEALS OR FOODS ARE SERVED: \_\_\_\_\_

(g) HOURS THAT ALCOHOLIC BEVERAGES ARE SERVED: \_\_\_\_\_

(h) MAXIMUM NUMBER OF EMPLOYEES ON THE HIGHEST SHIFT DEVOTED TO THE OPERATION OTHER THAN THE RESTAURANT: \_\_\_\_\_

(i) MAXIMUM NUMBER OF EMPLOYEES ON HIGHEST SHIFT DEVOTED TO THE RESTAURANT OPERATION: \_\_\_\_\_

(j) NUMBER OF PARKING SPACES: \_\_\_\_\_

(k) NUMBER OF PARKING SPACES DEVOTED TO HANDICAPPED PERSONS: \_\_\_\_\_

**FOR ALL APPLICATIONS:**

8. **ATTACH A CERTIFIED SCALE DRAWING OF THE PROPOSED PREMISES BY A REGISTERED LAND SURVEYOR OR PROFESSIONAL ENGINEER, SHOWING THE DISTANCE REQUIREMENT FROM CHURCH, SCHOOL, DAYCARE FACILITY, OR ALCOHOL TREATMENT CENTER.**  
***(See Survey Form # 3-A)***

9. **ATTACH APPLICANT'S CERTIFICATION THAT THE LOCATION COMPLIES WITH THE DISTANCE REQUIREMENT FROM CHURCH, SCHOOL, DAYCARE FACILITY OR ALCOHOL TREATMENT CENTER.**  
***(See Survey Form 3-A)***

10. **ATTACH EVIDENCE OF OWNERSHIP (DEED, LEASE, SALES AGREEMENT, LETTER OF INTENT).**

**PREMISE AND STRUCTURE FORM**

- 11. IF THE APPLICANT IS A FRANCHISE, ATTACH A COPY OF THE FRANCHISE AGREEMENT OR CONTRACT.
  
- 12. IF THE APPLICANT IS AN EATING ESTABLISHMENT, ATTACH A COPY OF THE MENU(S).
  
- 13. (a) IF THE BUILDING IS COMPLETE, ATTACH COPIES OF DETAILED SITE PLANS OF SAID BUILDING INCLUDING OUTSIDE PREMISES AND FLOOR PLAN.  
  
(b) IF THE BUILDING IS PROPOSED, ATTACH COPIES OF PROPOSED SITE PLAN AND SPECIFICATIONS AND BUILDING PERMIT OF THE PROPOSED BUILDING.

---

**NOTE:** Before signing this statement, check all answers and explanations to see that you have answered all questions fully and correctly. This statement is to be executed under oath and subject to the penalties of false swearing, and it includes all attached sheets submitted herewith

STATE OF GEORGIA, DAWSON COUNTY

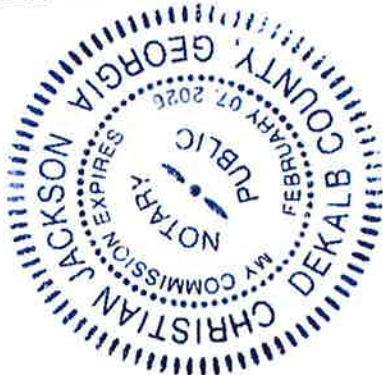
I, Scott Mathis, DO SOLEMNLY SWEAR, SUBJECT TO THE PENALTIES OF FALSE SWEARING, THAT THE STATEMENTS AND ANSWERS MADE BY ME AS THE APPLICANT IN THE FOREGOING PREMISE AND STRUCTURE STATEMENT ARE TRUE AND CORRECT.



\_\_\_\_\_  
APPLICANT'S SIGNATURE

I HEREBY CERTIFY THAT Scott Mathis SIGNED HIS/HER NAME TO THE FOREGOING APPLICATION STATING TO ME THAT HE/SHE KNEW AND UNDERSTOOD ALL STATEMENTS AND ANSWERS MADE THEREIN, AND, UNDER OATH ACTUALLY ADMINISTERED BY ME, HAS SWORN THAT SAID STATEMENTS AND ANSWERS ARE TRUE AND CORRECT.

THIS, THE 15th DAY OF March, 2024.



\_\_\_\_\_  
NOTARY PUBLIC

# DAWSON COUNTY PLANNING AND DEVELOPMENT

## ALCOHOL LICENSING

LOCATION & MAILING ADDRESS:

25 JUSTICE WAY, SUITE 2322  
DAWSONVILLE, GA 30534

PHONE: 706.344.3500 x 42335

### CERTIFIED REPORT OF SURVEY

### FOR ALL CONSUMPTION ON PREMISES AND RETAIL PACKAGE ESTABLISHMENTS

APPLICANT: Scott Mathis

BUSINESS NAME: Awesomeville Pie LLC d/b/a Mellow Mushroom

ADDRESS OF PREMISES  
TO BE LICENSED: 229 Blue Ridge Parkway, Dawsonville, GA 30534

The premises to be licensed must comply with the following minimum distance requirements to comply with the Official Code of Georgia §§ 3-3-2; 3-3-21; Reg. 560-2-2-.32; and the **Dawson County Consolidated Alcohol Ordinance**.

#### 1. **CHURCH BUILDING:**

"Church building" means the main structure used by any religious organization for purposes of worship.

The premises to be licensed must be a minimum of **600 feet (200 yards)** from the nearest church building, **measured in a straight line from the front door of the licensed facility to the front door of the church building.**

*County Ordinance References: Article 5 Section 501(A), Article 6 Section 600(B), Article 7 Section 700 (B)*

Name and Address  
of Nearest Church Local Church Dawson

31 Successful Way, Dawsonville, GA 30534

Distance Measured 3,050'

#### 2. **SCHOOL BUILDING OR SCHOOL GROUNDS:**

"School building or school grounds" shall apply only to state, county, city, or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state and which are public schools or private schools.

The premises to be licensed must be a minimum of **600 feet (200 yards)** from any school, educational building or college, **measured in a straight line from the front door of the licensed facility to the front door of the school, educational building or college.** *County Ordinance References: Article 5 Section 501(A), Article 6 Section 600(B), Article 7 Section 700 (B)*

Name and Address  
of Nearest School Promise Preparatory Academy

214 Northside Dawson St., Dawsonville, GA 30534

Distance Measured 1.67 miles

3. **DAYCARE:**

"Daycare" means any place operated by a person, society, agency, corporation, institution, or group wherein are received for pay for group care for less than 24 hours per day, without transfer of legal custody, children under 18 years of age, and is not accredited as a public or private school (except that centers offering state funded pre-K programs are still considered daycares).

The premises to be licensed must be a minimum of **600 feet (200 yards)** from the nearest daycare, **measured in a straight line from the front door of the licensed facility to the front door of the daycare.**

*County Ordinance References: Article 5 Section 501(A), Article 6 Section 600(B), Article 7 Section 700 (B)*

Name and Address of Nearest Daycare	The Infant Tree Christian Preschool
	5225 Ridge Farms Drive, Dawsonville, GA 30041
Distance Measured	1.5 miles

4. **ALCOHOL TREATMENT FACILITY:**

"Alcohol treatment facility" means any alcohol treatment center owned and operated by the State or the County government.

The premises to be licensed must be a minimum of **600 feet (200 yards)** from the nearest alcohol treatment facility, **measured in a straight line from the front door of the licensed facility to the front door of the alcohol treatment facility.** *County Ordinance References: Article 5 Section 501(A), Article 6 Section 600(B), Article 7 Section 700 (B)*

**Note: The only State or County operated alcohol treatment facility is Dawson County Treatment Court, 189 Highway 53 West, Suite 106, Dawsonville, GA 30534.**

Name and Address of Nearest Alcohol Treatment Facility	Avita Community Partners
	671 South Lumpkin Campground Rd., Suite 100, Dawsonville, GA 30534
Distance Measured	1.71 miles

5. **ANOTHER PACKAGE STORE:**

**\*\*\*Applies to Package Liquor Stores Only\*\*\***

No license shall be issued under this ordinance for use at a location which is within **one (1) mile** (1,760 yards) of any other business licensed to sell packaged liquor (distilled spirits) at retail. This distance shall be **measured in a straight line from the front door of the licensed facility to the front door of the other package store.** This restriction shall not apply to any location for which a new license is applied if the retail package sale of distilled spirits was lawful at such location during the 12 months immediately preceding such application. *County Ordinance Reference Article 5 Section 501(B)*

Name and Address of Nearest Package Liquor Store	Dawson Fine Wine and Spirits
	46 Blue Ridge Parkway, Dawsonville, GA 30534
Distance Measured	1,238'

5. **HOUSING AUTHORITY PROPERTY:**

**\*\*\*Applies to Alcohol by the Drink Establishments\*\*\***

**There is NO housing authority property in Dawson County.**

"Housing authority property" means any property containing 300 housing units or fewer owned or operated by a housing authority created under the State Housing Authorities Law.

The premises to be licensed must be a minimum of **600 feet (200 yards)** from the nearest housing authority property, **measured in a straight line from the front door of the licensed facility to the front door of the housing authority property.** *County Ordinance Reference Article 7 Section 700(B)*

Name and Address of Nearest Housing Authority Property	<b>NONE IN DAWSON COUNTY</b>
Distance Measured	21

**Note:**

A scale drawing (by a Georgia Registered Land Surveyor/Engineer) of the location of the premises to be licensed, showing the closest prohibited structures and identifying the minimum distance, must be attached hereto.

**THE LICENSE APPLICANT COMPLETES THE FOLLOWING CERTIFICATION:**

The undersigned certifies that subject location is in compliance or non-compliance with the distance requirements set forth above. I have found: (check one)

The above listed structures are inside the minimum distance restrictions stated above

**OR**

The premises to be licensed meets the minimum distance requirements for licensing stated above.

Scott Mathis  
Applicant's Printed Name

  
Applicant's Signature

3.15.2024  
Date of Signature

  
Notary Signature

03/15/2024  
Date of Signature



# DAWSON COUNTY PLANNING AND DEVELOPMENT

## ALCOHOL LICENSING

Location & Mailing Address:

25 JUSTICE WAY, SUITE 2322  
DAWSONVILLE, GA 30534

Phone: 706/344-3500 x 42335

### STATEMENT OF PERSONAL HISTORY

Instruction: This statement must be typed or neatly printed and executed under oath. Each question must be fully answered. If space provided is not sufficient, answer on a separate sheet and indicate in the space if a separate sheet is attached.

1. **NAME:** Mathis Scott Lamar  
Last First Middle

**RESIDENCE:** \_\_\_\_\_  
Street Number Street Name  
\_\_\_\_\_  
City State Zip Code Telephone Number

2. **CHECK:** (all that apply)

- Sole Owner/Proprietor     Partner:     General     Limited     Silent  
 Director     Principal Stockholder (20% or more)  
 Registered Agent     Officer: Member  
 Manager     Employee: \_\_\_\_\_

3. **TRADE NAME OF BUSINESS FOR WHICH THIS STATEMENT IS MADE:**

NAME OF BUSINESS: Mellow Mushroom

LOCATION: 229 Blue Ridge Parkway  
Street Number Street Name P. O. Box  
Dawsonville GA 30534 404-734-7838  
City State Zip Code Telephone Number

4. **STATE THE PERCENTAGE OF OWNERSHIP OR INTEREST, IF ANY, IN THIS BUSINESS:** 19%

5. **STATE METHOD AND AMOUNT OF COMPENSATION, IF ANY, DIRECTLY OR INDIRECTLY:** NA

6. **DATE OF BIRTH:** \_\_\_\_\_ **PLACE OF BIRTH:** \_\_\_\_\_  
**SSN:** \_\_\_\_\_ **SEX:**  MALE     FEMALE    **RACE:** White  
**COLOR OF HAIR:** Brown    **COLOR OF EYES:** Blue

7.  U.S. CITIZEN     LEGAL PERMANENT RESIDENT     QUALIFIED ALIEN OR NON-IMMIGRANT

**Requirements:**

Affidavit for Issuance of a Public Benefit and a Secure & Verifiable Document  
E-Verify Private Employer Affidavit of Compliance or E-Verify Private Employer Exemption Affidavit

**STATEMENT OF PERSONAL HISTORY**

8.  SINGLE  MARRIED  WIDOWED  DIVORCED  SEPARATED

IF MARRIED OR SEPARATED, COMPLETE INFORMATION LISTED BELOW:

FULL NAME OF SPOUSE: Debra Mathis SSN# [REDACTED]

MAIDEN NAME: Jackson PLACE OF BIRTH: [REDACTED]

DATE OF BIRTH: [REDACTED] NAME AND ADDRESS OF SPOUSE'S EMPLOYER:  
Self-Employed

9. STATE ANY OTHER NAMES THAT YOU HAVE USED: MAIDEN NAME, NAMES BY FORMER MARRIAGES, FORMER NAMES, CHANGED LEGALLY OR OTHERWISE, ALIASES, NICKNAMES, ETC. SPECIFY WHICH, SHOW DATES, ETC.: NA

10. EMPLOYMENT RECORD FOR THE PAST TEN (10) YEARS. (LIST THE MOST RECENT EXPERIENCE FIRST).

<i>From Mo/Yr</i>	<i>To Mo/Yr</i>	<i>Occupation &amp; Duties Performed</i>	<i>Salary Received</i>	<i>Employer (Business Name)</i>	<i>Reason for Leaving</i>
12/95	Present	Partner	NA	Mellow Mushroom	NA

11. LIST IN REVERSE CHRONOLOGICAL ORDER ALL OF YOUR RESIDENCES FOR THE PAST TEN (10) YEARS:

<i>From</i>	<i>To</i>	<i>Street</i>	<i>City</i>	<i>State</i>
5/07	Present	[REDACTED]	[REDACTED]	[REDACTED]



**STATEMENT OF PERSONAL HISTORY**

12. DO YOU HAVE ANY FINANCIAL INTEREST, OR ARE YOU EMPLOYED IN ANY OTHER WHOLESALE OR RETAIL BUSINESS ENGAGED IN DISTILLING, BOTTLING, RECTIFYING, OR SELLING ALCOHOLIC BEVERAGES? Yes

IF YOUR ANSWER IS "YES" TO NUMBER 14, GIVE NAMES, LOCATIONS, AND AMOUNT OF INTEREST IN EACH: \_\_\_\_\_

Mellow Mushroom Lakeland (20%)

13. HAVE YOU EVER HAD ANY FINANCIAL INTEREST IN AN ALCOHOLIC BEVERAGE BUSINESS THAT WAS DENIED A LICENSE? No

IF SO, GIVE DETAILS: \_\_\_\_\_

14. HAS ANY ALCOHOLIC BEVERAGE LICENSE IN WHICH YOU HOLD, OR HAVE HELD, ANY FINANCIAL INTEREST OF, OR EMPLOYED, OR HAVE BEEN EMPLOYED, EVER BEEN CITED FOR ANY VIOLATIONS OF THE RULES AND REGULATIONS OF THE STATE REVENUE COMMISSIONER RELATING TO THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES? No

IF SO, GIVE DETAILS: \_\_\_\_\_

15. IF DURING THE PAST TEN YEARS YOU HAVE BOUGHT OR SOLD ANY BUSINESS ASSOCIATED WITH ALCOHOL, GIVE DETAILS. (DATE, LICENSE NUMBER, PERSONS, AND CONSIDERATIONS INVOLVED):

NA

16. HAVE YOU EVER BEEN DENIED BOND BY A COMMERCIAL SECURITY COMPANY? No

IF SO, GIVE DETAILS: \_\_\_\_\_

17. ARE YOU A REGISTERED VOTER? Yes IN WHAT STATE? Georgia

18. HAVE YOU EVER BEEN ARRESTED, OR HELD BY FEDERAL, STATE OR OTHER LAW ENFORCEMENT AUTHORITIES, FOR ANY VIOLATION OF ANY FEDERAL LAW, STATE LAW, COUNTY OR MUNICIPAL LAW, REGULATION OR ORDINANCES? (Do not include traffic violations. All other charges must be included even if they were dismissed. Give reason charged or held, date, place where charged and disposition. If no arrest, write no arrest. After last arrest is listed, please write no other arrest):

1. NA

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

**STATEMENT OF PERSONAL HISTORY**

19. LIST BELOW FOUR REFERENCES (PERSONAL AND BUSINESS). GIVE COMPLETE ADDRESS AND PHONE NUMBER INCLUDING AREA CODE. IF GIVING A BUSINESS REFERENCE, NAME A PERSON AT THE LOCATION TO BE CONTACTED. DO NOT INCLUDE RELATIVES OR EMPLOYERS OR FELLOW EMPLOYEES OF PARTICULAR BUSINESS.

- 1. Malvern Hill; \_\_\_\_\_  
\_\_\_\_\_
- 2. Jeremy Tudor; \_\_\_\_\_  
\_\_\_\_\_
- 3. Kevin McArthur; \_\_\_\_\_  
\_\_\_\_\_
- 4. James Carlisle; \_\_\_\_\_  
\_\_\_\_\_

20. HAVE YOU HAD ANY LICENSE UNDER THE REGULATORY POWERS OF DAWSON COUNTY DENIED, SUSPENDED, OR REVOKED WITHIN TWO (2) YEARS PRIOR TO THE FILING OF THIS APPLICATION?

No

IF SO, GIVE DETAILS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. ATTACH PHOTOGRAPH (Front View) TAKEN WITHIN THE PAST YEAR:



**NOTE: ATTACH A COPY OF YOUR DRIVER'S LICENSE TO THIS FORM.**

**STATEMENT OF PERSONAL HISTORY**

Before signing this statement, check all answers and explanations to see that you have answered all questions fully and correctly. This statement is to be executed under oath and subject to the penalties of false swearing, and it includes all attachments submitted herewith.

STATE OF GEORGIA, DAWSON COUNTY.

I, Scott Mathis, DO SOLEMNLY SWEAR, SUBJECT TO THE PENALTIES OF FALSE SWEARING, THAT THE STATEMENT AND ANSWERS MADE BY ME AS THE APPLICANT IN THE FOREGOING PERSONAL STATEMENT ARE TRUE AND CORRECT. FURTHER, AS PART OF THE PROCESS RESULTING FROM MY APPLICATION FOR BACKGROUND INVESTIGATION, FOR AN ALCOHOLIC BEVERAGE LICENSE. I HEREBY AUTHORIZE PERSONNEL OF THE DAWSON COUNTY SHERIFF'S DEPARTMENT OR DAWSON COUNTY MARSHAL'S OFFICE TO RECEIVE, VERIFY AND DISSEMINATE ANY CRIMINAL HISTORY INFORMATION WHICH MAY BE IN THE FILES OF ANY LOCAL, STATE, OR FEDERAL CRIMINAL JUSTICE AGENCY FOR INVESTIGATIVE PURPOSES, DENIAL, OR APPEALS.

\_\_\_\_\_  
APPLICANT'S SIGNATURE

I HEREBY CERTIFY THAT Scott Mathis SIGNED HIS/HER NAME TO THE FOREGOING APPLICATION STATING TO ME THAT HE/SHE KNEW AND UNDERSTOOD ALL STATEMENTS AND ANSWERS MADE THEREIN, AND UNDER OATH ACTUALLY ADMINISTERED BY ME, HAS SWORN THAT SAID STATEMENTS AND ANSWERS ARE TRUE AND CORRECT.

THIS, THE 15<sup>th</sup> DAY OF March, 2024



\_\_\_\_\_  
NOTARY PUBLIC

# DAWSON COUNTY PLANNING AND DEVELOPMENT

## ALCOHOL LICENSING

Location & Mailing Address:

25 JUSTICE WAY, SUITE 2322  
DAWSONVILLE, GA 30534

Phone: 706/344-3500 x 42335

### STATEMENT OF PERSONAL HISTORY

Instruction: This statement must be typed or neatly printed and executed under oath. Each question must be fully answered. If space provided is not sufficient, answer on a separate sheet and indicate in the space if a separate sheet is attached.

1. **NAME:** Livingston James C.  
Last First Middle

**RESIDENCE:** \_\_\_\_\_  
Street Number Street Name  
\_\_\_\_\_  
City State Zip Code Telephone Number

2. **CHECK:** (all that apply)

Sole Owner/Proprietor  Partner:  General  Limited  Silent  
 Director  Principal Stockholder (20% or more)  
 Registered Agent  Officer: President  
 Manager  Employee: \_\_\_\_\_

3. **TRADE NAME OF BUSINESS FOR WHICH THIS STATEMENT IS MADE:**

NAME OF BUSINESS: Mellow Mushroom

LOCATION: 229 Blue Ridge Parkway  
Street Number Street Name P. O. Box  
Dawsonville GA 30534 404-734-7838  
City State Zip Code Telephone Number

4. **STATE THE PERCENTAGE OF OWNERSHIP OR INTEREST, IF ANY, IN THIS BUSINESS:** 41%

5. **STATE METHOD AND AMOUNT OF COMPENSATION, IF ANY, DIRECTLY OR INDIRECTLY:** NA

6. **DATE OF BIRTH:** \_\_\_\_\_ **PLACE OF BIRTH:** \_\_\_\_\_  
**SSN:** \_\_\_\_\_ **SEX:**  MALE  FEMALE **RACE:** White  
**COLOR OF HAIR:** Gray **COLOR OF EYES:** Blue-Gray

7.  **U.S. CITIZEN**  **LEGAL PERMANENT RESIDENT**  **QUALIFIED ALIEN OR NON-IMMIGRANT**

**Requirements:**

Affidavit for Issuance of a Public Benefit and a Secure & Verifiable Document

E-Verify Private Employer Affidavit of Compliance or E-Verify Private Employer Exemption Affidavit

**STATEMENT OF PERSONAL HISTORY**

8.  SINGLE  MARRIED  WIDOWED  DIVORCED  SEPARATED

IF MARRIED OR SEPARATED, COMPLETE INFORMATION LISTED BELOW:

FULL NAME OF SPOUSE: Linda Ann Livingston SSN# [REDACTED]

MAIDEN NAME: Strickland PLACE OF BIRTH: [REDACTED]

DATE OF BIRTH: [REDACTED] NAME AND ADDRESS OF SPOUSE'S EMPLOYER:  
Mellow Mushroom

9. STATE ANY OTHER NAMES THAT YOU HAVE USED: MAIDEN NAME, NAMES BY FORMER MARRIAGES, FORMER NAMES CHANGED LEGALLY OR OTHERWISE, ALIASES, NICKNAMES, ETC. SPECIFY WHICH, SHOW DATES, ETC.: NA

10. EMPLOYMENT RECORD FOR THE PAST TEN (10) YEARS. (LIST THE MOST RECENT EXPERIENCE FIRST).

<i>From Mo/Yr</i>	<i>To Mo/Yr</i>	<i>Occupation &amp; Duties Performed</i>	<i>Salary Received</i>	<i>Employer (Business Name)</i>	<i>Reason for Leaving</i>
1/1993	Present	President	NA	Mellow Mushroom	NA

11. LIST IN REVERSE CHRONOLOGICAL ORDER ALL OF YOUR RESIDENCES FOR THE PAST TEN (10) YEARS:

<i>From</i>	<i>To</i>	<i>Street</i>	<i>City</i>	<i>State</i>
1/2009	Present	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>

**STATEMENT OF PERSONAL HISTORY**

12. DO YOU HAVE ANY FINANCIAL INTEREST, OR ARE YOU EMPLOYED IN ANY OTHER WHOLESALE OR RETAIL BUSINESS ENGAGED IN DISTILLING, BOTTLING, RECTIFYING, OR SELLING ALCOHOLIC BEVERAGES? Yes

IF YOUR ANSWER IS "YES" TO NUMBER 14, GIVE NAMES, LOCATIONS, AND AMOUNT OF INTEREST IN EACH: \_\_\_\_\_

Mellow Mushroom Brookhaven (51%), Mellow Mushroom Buckhead (51%)

Mellow Mushroom Dunwoody (51%)

13. HAVE YOU EVER HAD ANY FINANCIAL INTEREST IN AN ALCOHOLIC BEVERAGE BUSINESS THAT WAS DENIED A LICENSE? No

IF SO, GIVE DETAILS: \_\_\_\_\_

14. HAS ANY ALCOHOLIC BEVERAGE LICENSE IN WHICH YOU HOLD, OR HAVE HELD, ANY FINANCIAL INTEREST OF, OR EMPLOYED, OR HAVE BEEN EMPLOYED, EVER BEEN CITED FOR ANY VIOLATIONS OF THE RULES AND REGULATIONS OF THE STATE REVENUE COMMISSIONER RELATING TO THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES? No

IF SO, GIVE DETAILS: \_\_\_\_\_

15. IF DURING THE PAST TEN YEARS YOU HAVE BOUGHT OR SOLD ANY BUSINESS ASSOCIATED WITH ALCOHOL, GIVE DETAILS. (DATE, LICENSE NUMBER, PERSONS, AND CONSIDERATIONS INVOLVED):

No

16. HAVE YOU EVER BEEN DENIED BOND BY A COMMERCIAL SECURITY COMPANY? No

IF SO, GIVE DETAILS: \_\_\_\_\_

17. ARE YOU A REGISTERED VOTER? Yes IN WHAT STATE? Florida

18. HAVE YOU EVER BEEN ARRESTED, OR HELD BY FEDERAL, STATE OR OTHER LAW ENFORCEMENT AUTHORITIES, FOR ANY VIOLATION OF ANY FEDERAL LAW, STATE LAW, COUNTY OR MUNICIPAL LAW, REGULATION OR ORDINANCES? (Do not include traffic violations. All other charges must be included even if they were dismissed. Give reason charged or held, date, place where charged and disposition. If no arrest, write no arrest. After last arrest is listed, please write no other arrest):

1. NA

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

**STATEMENT OF PERSONAL HISTORY**

19. LIST BELOW FOUR REFERENCES (PERSONAL AND BUSINESS). GIVE COMPLETE ADDRESS AND PHONE NUMBER INCLUDING AREA CODE. IF GIVING A BUSINESS REFERENCE, NAME A PERSON AT THE LOCATION TO BE CONTACTED. DO NOT INCLUDE RELATIVES OR EMPLOYERS OR FELLOW EMPLOYEES OF PARTICULAR BUSINESS.

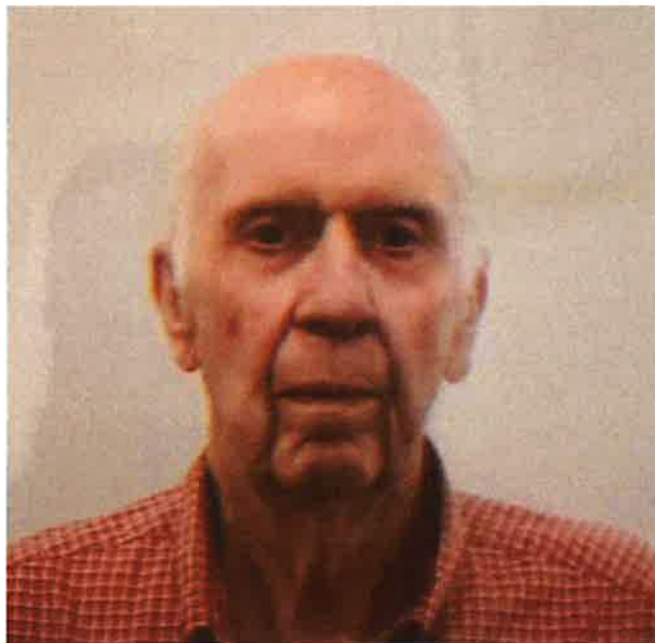
- 1. Ellie Hogan; \_\_\_\_\_  
\_\_\_\_\_
- 2. Tim Duff; \_\_\_\_\_  
\_\_\_\_\_
- 3. Doug Falkinburg; \_\_\_\_\_  
\_\_\_\_\_
- 4. Steve Shell \_\_\_\_\_  
\_\_\_\_\_

20. HAVE YOU HAD ANY LICENSE UNDER THE REGULATORY POWERS OF DAWSON COUNTY DENIED, SUSPENDED, OR REVOKED WITHIN TWO (2) YEARS PRIOR TO THE FILING OF THIS APPLICATION?

No

IF SO, GIVE DETAILS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. ATTACH PHOTOGRAPH (Front View) TAKEN WITHIN THE PAST YEAR:



**NOTE: ATTACH A COPY OF YOUR DRIVER'S LICENSE TO THIS FORM.**

**STATEMENT OF PERSONAL HISTORY**

Before signing this statement, check all answers and explanations to see that you have answered all questions fully and correctly. This statement is to be executed under oath and subject to the penalties of false swearing, and it includes all attachments submitted herewith.

STATE OF GEORGIA, DAWSON COUNTY.

I, James Livingston, DO SOLEMNLY SWEAR, SUBJECT TO THE PENALTIES OF FALSE SWEARING, THAT THE STATEMENT AND ANSWERS MADE BY ME AS THE APPLICANT IN THE FOREGOING PERSONAL STATEMENT ARE TRUE AND CORRECT. FURTHER, AS PART OF THE PROCESS RESULTING FROM MY APPLICATION FOR BACKGROUND INVESTIGATION, FOR AN ALCOHOLIC BEVERAGE LICENSE. I HEREBY AUTHORIZE PERSONNEL OF THE DAWSON COUNTY SHERIFF'S DEPARTMENT OR DAWSON COUNTY MARSHAL'S OFFICE TO RECEIVE, VERIFY, AND DISSEMINATE ANY CRIMINAL HISTORY INFORMATION WHICH MAY BE IN THE FILES OF ANY LOCAL, STATE, OR FEDERAL CRIMINAL JUSTICE AGENCY FOR INVESTIGATIVE PURPOSES, DENIAL, OR APPEALS.

James Livingston  
APPLICANT'S SIGNATURE

I HEREBY CERTIFY THAT James Livingston SIGNED HIS/HER NAME TO THE FOREGOING APPLICATION STATING TO ME THAT HE/SHE KNEW AND UNDERSTOOD ALL STATEMENTS AND ANSWERS MADE THEREIN, AND UNDER OATH ACTUALLY ADMINISTERED BY ME, HAS SWORN THAT SAID STATEMENTS AND ANSWERS ARE TRUE AND CORRECT.

THIS, THE 18 DAY OF March, 2024

Sheila K. Hammond  
NOTARY PUBLIC





# DAWSON COUNTY PLANNING AND DEVELOPMENT

## ALCOHOL LICENSING

Location & Mailing Address:

25 JUSTICE WAY, SUITE 2322  
DAWSONVILLE, GA 30534

Phone: 706/344-3500 x 42335

### STATEMENT OF PERSONAL HISTORY

Instruction: This statement must be typed or neatly printed and executed under oath. Each question must be fully answered. If space provided is not sufficient, answer on a separate sheet and indicate in the space if a separate sheet is attached.

1. NAME: Livingston Linda Ann  
Last First Middle

RESIDENCE: [Redacted] [Redacted]  
Street Number Street Name

[Redacted] [Redacted] [Redacted] [Redacted]  
City State Zip Code Telephone Number

2. CHECK: (all that apply)

- Sole Owner/Proprietor  Partner:  General  Limited  Silent  
 Director  Principal Stockholder (20% or more)  
 Registered Agent  Officer: Vice President  
 Manager  Employee: \_\_\_\_\_

3. TRADE NAME OF BUSINESS FOR WHICH THIS STATEMENT IS MADE:

NAME OF BUSINESS: Mellow Mushroom

LOCATION: 229 Blue Ridge Parkway  
Street Number Street Name P. O. Box

Dawsonville GA 30534 404-734-7838  
City State Zip Code Telephone Number

4. STATE THE PERCENTAGE OF OWNERSHIP OR INTEREST, IF ANY, IN THIS BUSINESS: 40%

5. STATE METHOD AND AMOUNT OF COMPENSATION, IF ANY, DIRECTLY OR INDIRECTLY: NA

6. DATE OF BIRTH: [Redacted] PLACE OF BIRTH: [Redacted]

SSN: [Redacted] SEX:  MALE  FEMALE RACE: White

COLOR OF HAIR: Brown COLOR OF EYES: Hazel

7.  U.S. CITIZEN  LEGAL PERMANENT RESIDENT  QUALIFIED ALIEN OR NON-IMMIGRANT

#### Requirements:

Affidavit for Issuance of a Public Benefit and a Secure & Verifiable Document  
E-Verify Private Employer Affidavit of Compliance or E-Verify Private Employer Exemption Affidavit

**STATEMENT OF PERSONAL HISTORY**

8.  SINGLE     MARRIED     WIDOWED     DIVORCED     SEPARATED

IF MARRIED OR SEPARATED, COMPLETE INFORMATION LISTED BELOW:

FULL NAME OF SPOUSE: James C. Livingston    SSN# [REDACTED]  
MAIDEN NAME: NA    PLACE OF BIRTH: [REDACTED]  
DATE OF BIRTH: [REDACTED]    NAME AND ADDRESS OF SPOUSE'S EMPLOYER:  
Mellow Mushroom

9. STATE ANY OTHER NAMES THAT YOU HAVE USED: MAIDEN NAME, NAMES BY FORMER MARRIAGES, FORMER NAMES CHANGED LEGALLY OR OTHERWISE, ALIASES, NICKNAMES, ETC. SPECIFY WHICH, SHOW DATES, ETC.: NA

10. EMPLOYMENT RECORD FOR THE PAST TEN (10) YEARS. (LIST THE MOST RECENT EXPERIENCE FIRST).

<i>From Mo/Yr</i>	<i>To Mo/Yr</i>	<i>Occupation &amp; Duties Performed</i>	<i>Salary Received</i>	<i>Employer (Business Name)</i>	<i>Reason for Leaving</i>
1/1993	Present	Vice-President	NA	Mellow Mushroom	NA

11. LIST IN REVERSE CHRONOLOGICAL ORDER ALL OF YOUR RESIDENCES FOR THE PAST TEN (10) YEARS:

<i>From</i>	<i>To</i>	<i>Street</i>	<i>City</i>	<i>State</i>
1/2009	Present	<u>[REDACTED]</u>	<u>[REDACTED]</u>	<u>[REDACTED]</u>

**STATEMENT OF PERSONAL HISTORY**

12. DO YOU HAVE ANY FINANCIAL INTEREST, OR ARE YOU EMPLOYED IN ANY OTHER WHOLESALE OR RETAIL BUSINESS ENGAGED IN DISTILLING, BOTTLING, RECTIFYING, OR SELLING ALCOHOLIC BEVERAGES? Yes

IF YOUR ANSWER IS "YES" TO NUMBER 14, GIVE NAMES, LOCATIONS, AND AMOUNT OF INTEREST IN EACH: \_\_\_\_\_

Mellow Mushroom Brookhaven (49%), Mellow Mushroom Buckhead (49%)

Mellow Mushroom Dunwoody (49%)

13. HAVE YOU EVER HAD ANY FINANCIAL INTEREST IN AN ALCOHOLIC BEVERAGE BUSINESS THAT WAS DENIED A LICENSE? No

IF SO, GIVE DETAILS: \_\_\_\_\_

14. HAS ANY ALCOHOLIC BEVERAGE LICENSE IN WHICH YOU HOLD, OR HAVE HELD, ANY FINANCIAL INTEREST OF, OR EMPLOYED, OR HAVE BEEN EMPLOYED, EVER BEEN CITED FOR ANY VIOLATIONS OF THE RULES AND REGULATIONS OF THE STATE REVENUE COMMISSIONER RELATING TO THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES? No

IF SO, GIVE DETAILS: \_\_\_\_\_

15. IF DURING THE PAST TEN YEARS YOU HAVE BOUGHT OR SOLD ANY BUSINESS ASSOCIATED WITH ALCOHOL, GIVE DETAILS. (DATE, LICENSE NUMBER, PERSONS, AND CONSIDERATIONS INVOLVED):

No

16. HAVE YOU EVER BEEN DENIED BOND BY A COMMERCIAL SECURITY COMPANY? No

IF SO, GIVE DETAILS: \_\_\_\_\_

17. ARE YOU A REGISTERED VOTER? Yes IN WHAT STATE? Florida

18. HAVE YOU EVER BEEN ARRESTED, OR HELD BY FEDERAL, STATE OR OTHER LAW ENFORCEMENT AUTHORITIES, FOR ANY VIOLATION OF ANY FEDERAL LAW, STATE LAW, COUNTY OR MUNICIPAL LAW, REGULATION OR ORDINANCES? (Do not include traffic violations. All other charges must be included even if they were dismissed. Give reason charged or held, date, place where charged and disposition. If no arrest, write no arrest. After last arrest is listed, please write no other arrest):

1. NA

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

**STATEMENT OF PERSONAL HISTORY**

19. LIST BELOW FOUR REFERENCES (PERSONAL AND BUSINESS). GIVE COMPLETE ADDRESS AND PHONE NUMBER INCLUDING AREA CODE. IF GIVING A BUSINESS REFERENCE, NAME A PERSON AT THE LOCATION TO BE CONTACTED. DO NOT INCLUDE RELATIVES OR EMPLOYERS OR FELLOW EMPLOYEES OF PARTICULAR BUSINESS.

- 1. Charlene Fugate, \_\_\_\_\_  
\_\_\_\_\_
- 2. Sally Boklage; \_\_\_\_\_  
\_\_\_\_\_
- 3. Nancy Brown; \_\_\_\_\_  
\_\_\_\_\_
- 4. Steve Shell; \_\_\_\_\_  
\_\_\_\_\_

20. HAVE YOU HAD ANY LICENSE UNDER THE REGULATORY POWERS OF DAWSON COUNTY DENIED, SUSPENDED, OR REVOKED WITHIN TWO (2) YEARS PRIOR TO THE FILING OF THIS APPLICATION?

No

IF SO, GIVE DETAILS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. ATTACH PHOTOGRAPH (Front View) TAKEN WITHIN THE PAST YEAR:



**NOTE: ATTACH A COPY OF YOUR DRIVER'S LICENSE TO THIS FORM.**

**STATEMENT OF PERSONAL HISTORY**

Before signing this statement, check all answers and explanations to see that you have answered all questions fully and correctly. This statement is to be executed under oath and subject to the penalties of false swearing, and it includes all attachments submitted herewith.

STATE OF GEORGIA, DAWSON COUNTY.

I, Linda Livingston, DO SOLEMNLY SWEAR, SUBJECT TO THE PENALTIES OF FALSE SWEARING, THAT THE STATEMENT AND ANSWERS MADE BY ME AS THE APPLICANT IN THE FOREGOING PERSONAL STATEMENT ARE TRUE AND CORRECT. FURTHER, AS PART OF THE PROCESS RESULTING FROM MY APPLICATION FOR BACKGROUND INVESTIGATION, FOR AN ALCOHOLIC BEVERAGE LICENSE. I HEREBY AUTHORIZE PERSONNEL OF THE DAWSON COUNTY SHERIFF'S DEPARTMENT OR DAWSON COUNTY MARSHAL'S OFFICE TO RECEIVE, VERIFY, AND DISSEMINATE ANY CRIMINAL HISTORY INFORMATION WHICH MAY BE IN THE FILES OF ANY LOCAL, STATE, OR FEDERAL CRIMINAL JUSTICE AGENCY FOR INVESTIGATIVE PURPOSES, DENIAL, OR APPEALS.

*Linda Livingston*  
APPLICANT'S SIGNATURE

I HEREBY CERTIFY THAT Linda Livingston SIGNED HIS/HER NAME TO THE FOREGOING APPLICATION STATING TO ME THAT HE/SHE KNEW AND UNDERSTOOD ALL STATEMENTS AND ANSWERS MADE THEREIN, AND UNDER OATH ACTUALLY ADMINISTERED BY ME, HAS SWORN THAT SAID STATEMENTS AND ANSWERS ARE TRUE AND CORRECT.

THIS, THE 18 DAY OF March, 2024

*Sheila K. Hammond*

NOTARY PUBLIC





**Dawson County, Georgia Board of Commissioners**  
**Affidavit for Issuance of a Public Benefit**  
**As Required by the Georgia Illegal Immigration Reform and Enforcement Act of 2011**

By executing this affidavit under oath, as an applicant for a Dawson County Business License, Out of County Business Registration, Alcohol License, or other public benefit as referenced in the Georgia Illegal Immigration Reform and Enforcement Act of 2011 [O.C.G.A. § 50-36-1(e)(2)], I am stating the following with respect to my application for such Dawson County public benefit.

- X   I am a United States citizen.
- I am a legal permanent resident of the United States. *(FOR NON-CITIZENS)*
- I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency. *(FOR NON-CITIZENS)*

My alien number issued by the Department of Homeland Security or other federal immigration agency is:

\_\_\_\_\_


The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one **secure and verifiable document**, as required by O.C.G.A. § 50-36-1(e)(1), with this affidavit. *(See reverse side of this affidavit for a list of secure and verifiable documents.)*

The secure and verifiable document provided with this affidavit can best be classified as:

Driver's License

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20 and face criminal penalties as allowed by such criminal statute.

Executed in Brockton (city), GA (state)

 3.15.2024


Signature of Applicant Date

Scott Mathis Awesomeville Pie LLC

Printed Name Name of Business



SUBSCRIBED AND SWORN BEFORE ME ON  
THIS 15th DAY OF March, 2024

 Notary Public

My Commission Expires: 02/07/2024

*This affidavit is a State of Georgia requirement that must be completed for **initial** applications and **renewal** applications for public benefits as referenced in O.C.G.A § 50-36-1(a)(3). The person who has made application for access to public benefits on behalf of an individual, business, corporation, partnership or other private entity must complete and sign the affidavit and provide a secure and verifiable document.*

**Dawson County, Georgia Board of Commissioners**  
**Affidavit for Issuance of a Public Benefit**  
**As Required by the Georgia Illegal Immigration Reform and Enforcement Act of 2011**

By executing this affidavit under oath, as an applicant for a Dawson County Business License, Out of County Business Registration, Alcohol License, or other public benefit as referenced in the Georgia Illegal Immigration Reform and Enforcement Act of 2011 [O.C.G.A. § 50-36-1(e)(2)], I am stating the following with respect to my application for such Dawson County public benefit.

- X   I am a United States citizen.
- I am a legal permanent resident of the United States. *(FOR NON-CITIZENS)*
- I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency. *(FOR NON-CITIZENS)*

**My alien number issued by the Department of Homeland Security or other federal immigration agency is:**

\_\_\_\_\_

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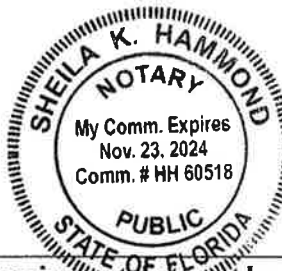
Executed in Gulf Breeze (city), Florida (state)

*Linda Livingston*  
**Signature of Applicant**

3-18-2024  
**Date**

Linda Livingston  
**Printed Name**

Awesomeville Pie LLC  
**Name of Business**



SUBSCRIBED AND SWORN BEFORE ME ON  
THIS 18 DAY OF March, 2024  
*Sheila K. Hammond* Notary Public  
My Commission Expires: 11-23-2024

*This affidavit is a State of Georgia requirement that must be completed for **initial applications and renewal applications** for public benefits as referenced in O.C.G.A § 50-36-1(a)(3). The person who has made application for access to public benefits on behalf of an individual, business, corporation, partnership or other private entity must complete and sign the affidavit and provide a secure and verifiable document.*



**Dawson County, Georgia Board of Commissioners**  
**Affidavit for Issuance of a Public Benefit**  
**As Required by the Georgia Illegal Immigration Reform and Enforcement Act of 2011**

By executing this affidavit under oath, as an applicant for a Dawson County Business License, Out of County Business Registration, Alcohol License, or other public benefit as referenced in the Georgia Illegal Immigration Reform and Enforcement Act of 2011 [O.C.G.A. § 50-36-1(e)(2)], I am stating the following with respect to my application for such Dawson County public benefit.

- X   I am a United States citizen.
- I am a legal permanent resident of the United States. *(FOR NON-CITIZENS)*
- I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency. *(FOR NON-CITIZENS)*

My alien number issued by the Department of Homeland Security or other federal immigration agency is:

\_\_\_\_\_

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one **secure and verifiable document**, as required by O.C.G.A. § 50-36-1(e)(1), with this affidavit. *(See reverse side of this affidavit for a list of secure and verifiable documents.)*

The secure and verifiable document provided with this affidavit can best be classified as:

Driver's License

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20 and face criminal penalties as allowed by such criminal statute.

Executed in Gulf Breeze (city), Florida (state)

*James Livingston*  
Signature of Applicant

3/18/24  
Date

James Livingston  
Printed Name

Awesomeville Pie LLC d/b/a Mellow Mushroom  
Name of Business



SUBSCRIBED AND SWORN BEFORE ME ON  
THIS 18 DAY OF March, 2024

*[Signature]* Notary Public

My Commission Expires: 5/17/27

*This affidavit is a State of Georgia requirement that must be completed for initial applications and renewal applications for public benefits as referenced in O.C.G.A § 50-36-1(a)(3). The person who has made application for access to public benefits on behalf of an individual, business, corporation, partnership or other private entity must complete and sign the affidavit and provide a secure and verifiable document.*

## Dawson County Marshal's Office Alcohol Log Sheet

	Application Date	Applicant's Name <small>(first, middle initial, last)</small>	DOB	Business Name
1	3/14/2024	Scott Lamar Mathis	<del>                    </del>	Awesomeville, LLC, dba Mellow Mushroom
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				



**DAWSON COUNTY SHERIFF'S OFFICE**  
**SHERIFF JEFF JOHNSON**  
 19 Tucker Avenue  
 Dawsonville, Georgia 30534  
 Office (706) 344-3535 ~ Fax (706) 344-3537



**CRIMINAL HISTORY REQUEST**

I hereby request for the Dawson County Sheriff's Office to retrieve any criminal history record information, which may pertain to myself (or the person named below), that may be found in any state or local criminal justice agency in Georgia. Records obtained from the Dawson County Sheriff's Office shall only be used by the requesting agency or individual solely for the purposes requested. If any information is used to deny employment or license, it shall not reflect on the liability of this office, but on the agency or entity who makes that decision and to allow the person/applicant a chance to dispute any information which may be in error. Any dissemination of the information provided must be with permission of the person/applicant. Dawson County shall not be held responsible for information obtained by another agency, state or federal, which provides such information and whose files reflect records which may contain errors or omissions.

TO ENSURE ACCURACY, PLEASE PRINT AND PROVIDE COMPLETE INFORMATION.

Date of request: 3/14/24 Authorization good for:  7  30  60  90  180 days

Agency requesting criminal history (name and phone #): Dawson County Planning & Development

Full name: Scott Lamar Mathis Phone #: [REDACTED]

Address: [REDACTED]

SSN: [REDACTED] Providing your SSN is voluntary. SSN helps confirm your identity and history.

DOB: [REDACTED] Sex: Male Race: W State of birth: Florida

Height: 5'10" Weight: 175 Hair: Brown Eyes: Blue

Individual(s) authorized to receive criminal history: Dawson County Planning & Development

Any authorized individual(s) must present a valid identification upon receipt of this criminal history. If a valid identification cannot be presented, the criminal history will not be released.

*Angela Byers or Kathryn Massey*

Special employment provisions (check if applicable):

- Employment with mentally disabled (Purpose code "M")
- Employment with elder care (Purpose code "N")
- Employment with children (Purpose code "W")

To be completed by Dawson County Sheriff's Office personnel:

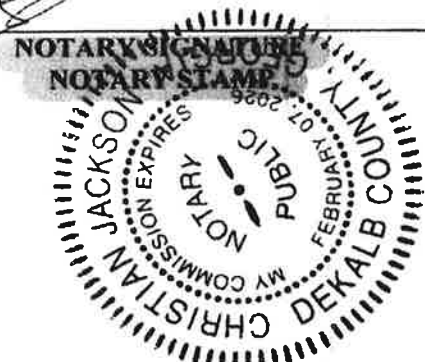
Select purpose code used:  C  E  F  J  M  N  P  U  W  Z

Case number or criminal history number used: 24 04 0045 E

Date of inquiry: [Signature] Time of inquiry: \_\_\_\_\_ Operator's initials: \_\_\_\_\_

SIGNATURE OF APPLICANT

SIGNATURE OF RECEIVING PERSON



DAS4-00058908 GA-CCH 20240412 12:29:55 20240412 12:29:55 091F004923  
IR.GASIR0000.GA0420005.

GEORGIA CRIMINAL HISTORY NAME AND IDENTIFIER SEARCH

REQUESTED BY:

DATE: 20240412 PUR: E ATTN: ABYERS/ALCOHOLIC/AMARTIN

ARN: 24-04-0045E

RESPONSE DATE: 20240412

QUERY REQUESTED ON:

NAM/MATHIS, SCOTT LAMAR

DOB [REDACTED]

SEX/M [REDACTED]

RAC/W [REDACTED]

SOC [REDACTED]

**NO RECORD IN GEORGIA**  
**DAWSON COUNTY SHERIFF'S OFFICE**  
**JEFF JOHNSON SHERIFF**

*Amanda Martin*

**DAWSON COUNTY PLANNING AND DEVELOPMENT**

**ALCOHOL LICENSING  
25 JUSTICE WAY, SUITE 2322  
Dawsonville, GA 30534**

**(706) 344-3500 x 42335**

**DISTILLED SPIRITS**

**PROJECTED PURCHASES**

**PROJECTED GROSS SALES**

**APPLICANT:** Scott Mathis

**BUSINESS NAME:** Awesomeville Pie LLC

**ADDRESS:** 229 Blue Ridge Parkway, Dawsonville, GA 30534

Please provide the following projections for your establishment:

	<u>Projected Purchases of Distilled Spirits (in liters)</u>	<u>Projected Gross Sales of Mixed Drinks</u>
Balance of Calendar Year 20 <u>24</u>	<u>630 (90 per month)</u>	<u>\$98,000 (\$14k per month)</u>
Calendar Year 20 <u>25</u>	<u>1,080 (90 per month)</u>	<u>\$168,000 (\$14k per month)</u>

**HOME-GROWN INDUSTRIES OF GEORGIA, INC.**  
**PRELIMINARY AGREEMENT**

**THIS PRELIMINARY AGREEMENT** (the "Agreement") is made and entered into by and between **HOME-GROWN INDUSTRIES OF GEORGIA, INC.**, a Georgia corporation ("we," "us" or "our"), and Scott Mathis ("you," "your" or "Applicant") as of the date signed by us and set forth opposite our signature on this Agreement.

**RECITALS**

A. We have spent considerable time and effort developing and operating a restaurant system featuring pizza and other food products. These restaurants operate under the "Mellow Mushroom" name ("Mellow Mushroom Restaurants") and have distinctive business formats, methods, procedures, designs, layouts, standards, and specifications, all of which we may periodically improve, further develop, or otherwise modify.

B. We use, promote, and license certain trademarks, service marks, and other commercial symbols in operating Mellow Mushroom Restaurants, which have gained and continue to gain public acceptance and goodwill, and may create, use, and license additional trademarks, service marks, and commercial symbols in operating Mellow Mushroom Restaurants (collectively, the "Marks").

C. We grant to persons meeting our qualifications and willing to undertake the investment and effort a franchise to own and operate a Mellow Mushroom Restaurant offering the products and services we authorize and approve while utilizing our business formats, methods, procedures, signs, designs, layouts, equipment, standards, specifications, and Marks (the "System").

D. You want to be considered, and to begin looking for a site, for a franchise to operate a Mellow Mushroom Restaurant ("Franchise"). You obtain no franchise rights unless and until we and you sign our Franchise Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth in this Agreement, we and you agree as follows:

**Recitals.** The Recitals are incorporated into and made a part of this Agreement by this reference.

**Deposit.** Concurrently with signing this Agreement, you must pay us a Ten-Thousand Dollar (\$10,000) deposit (the "Deposit"). We will apply the Deposit toward the initial franchise fee you must pay us under our Franchise Agreement ("Franchise Agreement") if we grant you a franchise or, if applicable, the development fee you must pay us under our Development Rights Rider ("DRR") if we grant you development rights. If we do not grant you a Franchise or development rights, we will refund or retain the Deposit as provided in this Agreement. The Deposit will not bear interest, and we need not establish a separate bank account for the Deposit.

**Site Selection.** Within ninety (90) days after this Agreement's effective date, you must find and be prepared to secure a suitable site for a Mellow Mushroom Restaurant (the "Restaurant") within the following geographic area (the "Area"): Dawsonville, GA

. You will have the non-exclusive right during this Agreement's term to look for, review, and assess potential sites for the Restaurant within the Area. We have the right during this Agreement's term to sign Preliminary Agreements with other franchise applicants granting them the same right to look for, review, and assess potential sites for a Mellow Mushroom Restaurant within the Area.

We must accept the Restaurant's proposed site (the "Site") in writing before you may sign any purchase agreement, lease, sublease, financing, or other occupancy document for the Site. We will not unreasonably withhold our acceptance of a Site meeting our standard site-selection criteria. We will spend the time and effort, and incur the expense, reasonably required to consider Sites you propose, although we may condition all site evaluations and visits on your first sending us complete market studies, site reports, and other materials we request. We will accept or reject your proposed Site within thirty (30) days after we receive the complete studies, reports, and other materials and have completed physical inspection of the Site.

Our acceptance of, and any information we communicate to you regarding, the Site do not constitute our representation or warranty, express or implied, that the Site is suitable for a Mellow Mushroom Restaurant or for any other purpose. Our acceptance of the Site indicates only that we believe the Site meets or has the potential to meet, or we have waived, our then-current criteria for site acceptability. Criteria appearing effective for other sites might not accurately reflect the potential for all sites, and, after our Site acceptance, demographic and/or other factors included in or excluded from our site criteria could change, altering the Site's potential. The uncertainty and instability of these criteria are beyond our control; we are not responsible if the Site fails to meet your revenue or other expectations or business needs. If we grant you a Franchise, the Exclusive Territory under the Franchise Agreement will differ from the Area defined above. The Area is simply where you must focus your efforts to find the Site. It confers no rights on you.

If you cannot find or are not prepared to secure the Site within ninety (90) days after this Agreement's effective date or during any extended period to which you and we have agreed, or, if applicable, you choose not to sign a DRR within ninety (90) days after this Agreement's effective date, we may terminate this Agreement any time afterward.

**Lease or Purchase of Site.** We have the right to accept or refuse to accept the terms (including, but not limited to, purchase price or lease payments) of any purchase agreement, lease, or other occupancy agreement proposed for the Site (the "Real Estate Agreement") before you sign it and commit to move forward. You must give us for review and comment a copy of the proposed final form of Real Estate Agreement before you sign it. You may not sign the Real Estate Agreement until we review and accept its final form and expressly authorize you to sign it. If you sign the Real Estate Agreement before our authorization, we may terminate this Agreement.

Our review and acceptance of the Real Estate Agreement is not our guarantee or warranty, express or implied, that the Restaurant operated at the Site will be successful or profitable. Our

review and acceptance indicate only that we believe the Real Estate Agreement's terms meet, or we have waived, our then-current criteria for proposed Mellow Mushroom Restaurant sites.

The Real Estate Agreement must contain the terms and provisions we reasonably require. If you (or an affiliate) lease rather than purchase the Site's real estate, we may require (i) the lease to be collaterally assigned to us (with the lessor's prior written consent) by a lease rider and/or collateral assignment agreement acceptable to us to secure your performance of your obligations to us under the Franchise Agreement, and (ii) the lease to contain the provisions we specify for site leases for Mellow Mushroom Restaurants. Attached to this Agreement are copies of our current lease rider, which sets forth these required lease provisions, and collateral assignment of lease. If we cure your default under the lease, you must immediately reimburse all of our costs.

**Architectural and Engineering Plans and Fees.** We will manage overall implementation of the Restaurant's build-out project with respect to communications, schedule, general budget parameters, and overall design execution. We will provide requirements or guidance for the Restaurant's overall design direction along with an approved Selection Guide or other materials for, among other things, furniture, finishes, bar layout, and retail options. We reserve the right to require that the design include an area to display and sell Mellow Mushroom merchandise.

We will arrange for you to hire directly one or more third parties (such as architects and/or engineers) to prepare interior/exterior site and architectural plans for the Restaurant. You must use the architect(s) and/or engineer(s) we designate. You must pay all architectural and engineering fees associated with the project (identified in the services contract) directly to the architect and engineer. The fees depend on the project's scope and nature. You may not hire an architect or engineer we have not designated. The civil engineer may be an employee of the architectural firm or a civil-engineering firm the architect hires. If you lease the Site, you must obtain the lessor's written approval of the plans. You also must obtain any required construction permits.

You may not begin constructing the Restaurant until (a) you sign a Franchise Agreement and (b) we accept the Restaurant's complete, final set of plans and specifications (including for exterior signage), as approved, if applicable, by your landlord. We will promptly review the final plans and specifications (including for exterior signage) presented to us and accept or provide comments on them. Unless we expressly disapprove the final plans and specifications within twenty (20) business days after we receive them, they are deemed to be accepted.

**Permits.** You must obtain all permits, licenses, and other government approvals necessary to construct and operate the Restaurant (as depicted in your plans and specifications).

**Confidential Information.** We possess (and will continue to develop and acquire) certain confidential information relating to the development and operation of Mellow Mushroom Restaurants, which includes (without limitation) site-selection criteria; methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in developing and operating Mellow Mushroom Restaurants; marketing and advertising programs for Mellow Mushroom Restaurants; knowledge of specifications for and suppliers of certain fixtures, furnishings, equipment, products, materials, and supplies; and knowledge of the operating results and financial performance of Mellow Mushroom Restaurants



other than your Restaurant (the "Confidential Information"). You will not acquire any interest in Confidential Information, other than the right to use it while operating the Restaurant. Confidential Information is proprietary, includes our trade secrets, and will be disclosed to you only on the condition that you agree, and you hereby do agree: (1) not to use Confidential Information in any other business or capacity; (2) to keep confidential each item deemed to be part of Confidential Information, both during and after the Franchise Agreement's term; (3) not to make unauthorized copies of Confidential Information disclosed in electronic, written, or other tangible form; and (4) to adopt and implement reasonable procedures to prevent unauthorized use or disclosure of Confidential Information.

**Termination.** You may withdraw your application for the Restaurant's franchise and/or for development rights, and terminate this Agreement, by written notice delivered to us at any time before we and you sign the Franchise Agreement and/or (if applicable) the DRR. However, unless you previously terminated this Agreement, you agree after our Site acceptance to sign a Franchise Agreement in the form delivered to you.

We may terminate this Agreement at our option, effective immediately upon delivery of notice to you:

for any or no reason within fifteen (15) days after we sign this Agreement;

after that fifteen (15)-day period if another franchise applicant submits and we accept a site for a Mellow Mushroom Restaurant within the Area or we decide to grant development rights to another franchise applicant for Mellow Mushroom Restaurants to be developed in or near the Area;

(i) if you do not sign a Franchise Agreement when we require after we accept the Site or (ii) after ninety (90) days following this Agreement's effective date if you have not found or are not prepared to secure, or we have not accepted, the Site;

after ninety (90) days following this Agreement's effective date if you are an existing franchisee who expressed an interest in acquiring development rights but have not signed our DRR;

if you sign the Real Estate Agreement before we authorize you to do so;

if you or an owner (if you are an entity) made any material misrepresentation or omission in the franchise application;

if you or an owner (if you are an entity) is convicted of or pleads guilty or no contest to a felony or other crime or offense;

if you or an owner (if you are an entity) engages in conduct we believe may materially and adversely affect the reputation of a Mellow Mushroom Restaurant or the goodwill associated with the Marks; or

if you or an owner (if you are an entity) makes any unauthorized use or disclosure of Confidential Information.

**Refund of Deposit.** If we or you terminate this Agreement under Section 8(a), or if we terminate this Agreement under Section 8(b), we will refund (without interest) all of the Deposit within ten (10) days after you sign and send us a general release. If you terminate this Agreement after fifteen (15) days following its effective date, regardless of the reason, or if we terminate this Agreement under Sections 8(c)(ii) or 8(d), we will refund (without interest) one-half (1/2) of the Deposit, minus any expenses we have incurred, within ten (10) days after you sign and send us a general release. The portion of the Deposit we retain compensates us for our time spent and the costs and expenses we incurred in connection with the Restaurant's development, including, without limitation, those related to Site inspection and evaluation, reviewing the Real Estate Agreement for proposed Sites, giving you information concerning the operation of a Mellow Mushroom Restaurant, travel and living expenses, compensation of our employees and agents, legal fees, and related expenses. If we terminate this Agreement under Section 8(c)(i) or any of Sections 8(e) through 8(i), we will not refund any portion of the Deposit.

If you are a new prospective franchisee, or an existing franchisee, and express an interest in acquiring development rights for multiple Mellow Mushroom Restaurants, we then prepare (with your knowledge) a DRR reflecting the substance of our business discussions with you and governing your proposed development of the Mellow Mushroom Restaurants, but you then fail for whatever reason to execute the DRR or a new Franchise Agreement before we terminate this Agreement (unless we terminate this Agreement under Section 8(b)), we may keep \$2,500 of the Deposit to compensate our costs of preparing the DRR and negotiating potential development rights with you. This \$2,500 is in addition to the portion of the Deposit we may retain, as described in the preceding paragraph, if you terminate this Agreement after the fifteen (15) day period following its effective date or if we terminate this Agreement under Sections 8(c)(ii) or 8(d).

**Assignment.** Your rights under this Agreement are personal in nature and not transferable by assignment, will, operation of law, or otherwise.

**Costs and Attorneys' Fees.** If we incur costs and expenses to enforce our rights or your obligations under this Agreement, you must reimburse those costs and expenses, including, without limitation, reasonable accounting, attorneys', and related fees. You must reimburse us whether or not we begin a formal legal proceeding against you to enforce this Agreement. If we do begin a formal legal proceeding, the reimbursement obligation applies to all costs and expenses we incur preparing for, commencing, and prosecuting the legal proceeding and until the proceeding comes to a complete end (including appeals and settlements).

**Governing Law.** EXCEPT TO THE EXTENT GOVERNED BY THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) OR OTHER FEDERAL LAW, THIS AGREEMENT AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU UNDER THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF GEORGIA, WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES, EXCEPT THAT ANY GEORGIA LAW REGULATING FRANCHISE OFFERS AND SALES OR GOVERNING

THE FRANCHISOR-FRANCHISEE RELATIONSHIP WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS SECTION.


**Consent to Jurisdiction.** ALL ACTIONS ARISING UNDER THIS AGREEMENT OR AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US UNDER THIS AGREEMENT MUST BE COMMENCED IN THE STATE OR FEDERAL COURT OF GENERAL JURISDICTION LOCATED CLOSEST TO WHERE WE HAVE OUR PRINCIPAL BUSINESS ADDRESS AT THE TIME THE ACTION IS COMMENCED. YOU AND YOUR OWNERS IRREVOCABLY SUBMIT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION YOU AND YOUR OWNERS MIGHT HAVE TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS.

**Waiver of Multiple Damages and Jury Trial.** EXCEPT FOR CLAIMS WE BRING AGAINST YOU FOR UNAUTHORIZED USE OF THE MARKS OR UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, WE AND YOU AND OUR AND YOUR RESPECTIVE OWNERS WAIVE TO THE FULLEST EXTENT THE LAW PERMITS ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, OR TREBLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU RELATED TO THIS AGREEMENT'S SUBJECT MATTER, THE PARTY MAKING A CLAIM IS LIMITED TO EQUITABLE RELIEF AND RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.

WE AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER US OR YOU WITH RESPECT TO THIS AGREEMENT'S SUBJECT MATTER. WE AND YOU ACKNOWLEDGE THAT WE AND YOU MAKE THIS WAIVER KNOWINGLY, VOLUNTARILY, WITHOUT DURESS, AND ONLY AFTER CONSIDERATION OF THIS WAIVER'S RAMIFICATIONS.

You have read this Agreement and our Franchise Disclosure Document, understand and accept this Agreement's terms, conditions, covenants, and obligations as being reasonably necessary to maintain our high standards, and agree to be bound hereby.

HOME-GROWN INDUSTRIES OF  
GEORGIA, INC., a Georgia corporation

By:   
Name: Richard A. Brasch  
Its: President & Chief Executive Officer  
Date: \_\_\_\_\_

 1/24/22  
APPLICANT / DATE

SECURITY FEATURES INCLUDE TRUE WATERMARK PAPER, HEAT SENSITIVE ICON AND FOIL HOLOGRAM



835 N. CAMPBELL STATION RD.  
PARRAGUT, TN 37934  
865-777-8788  
www.mellowmushroom.net

2.20.22

PAY TO THE  
ORDER OF

Home Grown Industries

\$ 10,000.00

Ten thousand & 00/100

DOLLARS

VALID VALID  
VALID VALID  
VALID VALID

MEMO: Duesonville replacement

AUTHORIZED SIGNATURE

Details on Back  
Security Features Indicated



## RECEIPT

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Home-Grown Industries of Georgia, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

[Michigan requires that Home-Grown Industries of Georgia, Inc. give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.]

If Home-Grown Industries of Georgia, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C., 20580 and the appropriate state agency identified in Exhibit E.

The Franchisor is Home-Grown Industries of Georgia, Inc. located at 150 Great Southwest Parkway, Atlanta, Georgia 30336. Its telephone number is (404) 505-2806.

The franchise sellers for this offering are Richard Brasch, Sandy Howard, Michael Foster, Tonya Woods, Loyd Aric Wynkoop, and Bill Bimmerman, all of whom can be reached at 150 Great Southwest Parkway, Atlanta, Georgia 30336, (404) 505-2806, and \_\_\_\_\_  
(Complete if applicable).

Issuance Date: January 27, 2022

Home-Grown Industries of Georgia, Inc. authorizes the respective state agents identified on Exhibit E to receive service of process for us in the particular states. I received a disclosure document from Home-Grown Industries of Georgia, Inc. dated as of January 27, 2022, that included the following Exhibits:

- A. Financial Statements
- B. Franchise Agreement
- C. Preliminary Agreement (including Rider and Special Stipulations)
- D. Operations Manual Table of Contents
- E. List of State Agencies/Agents for Service of Process
- F. Principal's Agreement
- G. List of Franchisees and Franchisees Who Left the System
- H. Franchisee Representations
- I. Successor Franchise Rider to Franchise Agreement
- J. State Addenda and Agreement Riders
- K. Development Rights Rider to Franchise Agreement

February 9, 2022  
Date

James C. Livingston  
Prospective Franchisee [Print Name]

(Date, Sign, and Keep for Your Own  
Records)

James C. Livingston  
Prospective Franchisee [Signature]

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February 9, 2022  
Date

Linda A. Livingston  
Prospective Franchisee [Print Name]

*(Date, Sign, and Return to Us)*

Linda A. Livingston  
Prospective Franchisee [Signature]

You may return the signed Receipt by signing, dating, and mailing it to us at our address above, by faxing a copy of the signed and dated Receipt to us at (404) 924-2261, or by emailing a scanned copy of the signed and dated Receipt to [sandy@mellowmushroom.com](mailto:sandy@mellowmushroom.com).

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2/9/2022  
Date

Scott Mathis  
Prospective Franchisee [Print Name]

*(Date, Sign, and Keep for Your Own Records)*

  
Prospective Franchisee [Signature]



# STATE OF GEORGIA

**Secretary of State**  
**Corporations Division**  
**313 West Tower**  
**2 Martin Luther King, Jr. Dr.**  
**Atlanta, Georgia 30334-1530**

## CERTIFICATE OF ORGANIZATION

I, **Brad Raffensperger**, the Secretary of State and the Corporation Commissioner of the State of Georgia, hereby certify under the seal of my office that

**Awesomeville Pie LLC**  
**a Domestic Limited Liability Company**

has been duly organized under the laws of the State of Georgia on **03/15/2022** by the filing of articles of organization in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated.

WITNESS my hand and official seal in the City of Atlanta  
and the State of Georgia on **03/17/2022**.



*Brad Raffensperger*

**Brad Raffensperger**  
**Secretary of State**

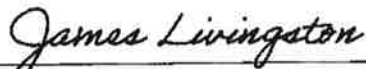
MEMBER RESOLUTION  
OF  
AWESOMEVILLE PIE LLC

We, the undersigned Member(s) of Awesomeville Pie LLC, a limited liability company duly organized and existing under the laws of Georgia (hereinafter the "Company"), with authority granted in the Operating Agreement to make binding resolutions on behalf of the Company, hereby resolve:


It is resolved that Awesomeville Pie LLC enter into a Franchise Agreement with Home Grown Industries of Georgia. All as more fully set forth in the Franchise Disclosure Document that have been presented to and reviewed by this Board.

By affirmative votes noted as signatures below, a majority vote of the Members of Awesomeville Pie LLC with authority to bind the Company approves the form and content of this resolution, to be effective immediately.


MEMBERS

  
\_\_\_\_\_  
James Livingston  
Member

June 23, 2022  
Date

  
\_\_\_\_\_  
Linda Livingston  
Member

June 23, 2022  
Date

  
\_\_\_\_\_  
Scott Mathis  
Member

June 22, 2022  
Date

**Limited Liability Company Agreement of  
Awesomeville Pie LLC,  
a Limited Liability Company**

**I. Formation.**

A. State of Formation. This is a Limited Liability Company Operating Agreement (the "Agreement") for Awesomeville Pie LLC, a Member-managed Georgia limited liability company (the "Company") formed under and pursuant to Georgia law.

B. Operating Agreement Controls. To the extent that the rights or obligations of the Members or the Company under provisions of this Operating Agreement differ from what they would be under Georgia law absent such a provision, this Agreement, to the extent permitted under Georgia law, shall control.

C. Primary Business Address. The location of the primary place of business of the Company is:

Address to be determined. Site 2 of Pointe Grande, Dawsonville, Georgia 30534, or such other location as shall be selected from time to time by the Members.

The Company's mailing address is:

POB 191306, Atlanta, Georgia 31119

D. Registered Agent and Office. The Company's initial agent (the "Agent") for service of process is Bob J Goldberg. The Agent's registered office is 1600 Parkwood Circle Suite 400, Atlanta, Georgia 30339. The Company may change its registered office, its registered agent, or both, upon filing a statement with the Georgia Secretary of State.

E. No State Law Partnership. No provisions of this Agreement shall be deemed or construed to constitute a partnership (including, without limitation, a limited partnership) or joint venture, or any Member a partner or joint venturer of or with any other Member, for any purposes other than federal and state tax purposes.

**II. Purposes and Powers.**

A. Purpose. The Company is created for the following business purpose: Awesomeville Pie LLC will own and operate the Mellow Mushroom Restaurant in Pointe Grand development, Dawsonville.

B. Powers. The Company shall have all of the powers of a limited liability company set forth under Georgia law.

C. Duration. The Company's term shall commence upon the filing of Articles of Organization and all other such necessary materials with the state of Georgia. The Company will operate until terminated as outlined in this Agreement unless:

1. A majority of the Members vote to dissolve the Company;
2. No Member of the Company exists, unless the business of the Company is continued in a manner permitted by Georgia law;
3. It becomes unlawful for either the Members or the Company to continue in business;
4. A judicial decree is entered that dissolves the Company; or
5. Any other event results in the dissolution of the Company under federal or Georgia law.

### **III. Members.**

A. Members. The Members of the Company (jointly the "Members") and their Membership Interest in the same at the time of adoption of this Agreement are as follows:

James Livingston, 41%

Linda Livingston, 40%

Scott Mathis, 19%

B. Initial Contribution. Each Member shall make an Initial Contribution to the Company. The Initial Contributions of each shall be as described in Attachment A, Initial Contributions of the Members.

No Member shall be entitled to interest on their Initial Contribution. Except as expressly provided by this Agreement, or as required by law, no Member shall have any right to demand or receive the return of their Initial Contribution.

C. Limited Liability of the Members. Except as otherwise provided for in this Agreement or otherwise required by Georgia law, no Member shall be personally liable for any acts, debts, liabilities or obligations of the Company beyond their respective Initial Contribution. The Members shall look solely to the Company property for the return of their Initial Contribution, or value thereof, and if the Company property remaining after payment or discharge of the debts, liabilities or obligations of the Company is insufficient to return such Initial Contributions, or value thereof, no Member shall have any recourse against any other Member except as is expressly provided for by this Agreement.

D. Withdrawal or Death of a Member. Should a Member die or withdraw from the Company by choice, the remaining Members will have the option to buy out that Member's Membership Interest in the Company. Should the Members agree to buy out the Membership Interest of the withdrawing Member, that Interest shall be paid for proportionately by the remaining Members, according to their existing Membership Interest and distributed proportionately among the remaining Members. The Members agree to hire an outside firm to assess the value of the Membership Interest.

The Members will have 60 days to decide if they want to buy the Membership Interest together and disperse it proportionately. If all Members do not agree to buy the Membership Interest, individual Members will then have the right to buy the Membership Interest individually. If more than one Member requests to buy the remaining Membership Interest, the Membership Interest will be paid for and split proportionately among those Members wishing to purchase the Membership Interest. If all Members agree by unanimous vote, the Company may choose to allow a non-Member to buy the Membership Interest thereby replacing the previous Member.

If no individual Member(s) finalize a purchase agreement by 60 days, the withdrawing Member, or their estate, may dispose of their Membership Interest however they see fit, subject to the limitations in Section III(E) below. If a Member is a corporation, trust, partnership, limited liability company or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

The name of the Company may be amended upon the written and unanimous vote of all Members if a Member withdraws, dies, is dissolved or terminated.

E. Creation or Substitution of New Members. Any Member may assign in whole or in part its Membership Interest only after granting their fellow Members the right of first refusal, as established in Section III(D) above.

1. *Entire transfer.* If a Member transfers all of its Membership Interest, the transferee shall be admitted to the Company as a substitute Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement. Such admission shall be deemed effective immediately upon the transfer, and, simultaneously, the transferor Member shall cease to be a Member of the Company and shall have no further rights or obligations under this Agreement.

2. *Partial transfer.* If a Member transfers only a portion of its Membership Interest, the transferee shall be admitted to the Company as an additional Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement.

3. Whether a substitute Member or an additional Member, absent the written consent of all existing Members of the Company, the transferee shall be a limited Member and possess only the percentage of the monetary rights of the transferor Member that was transferred without any voting power as a Member in the Company.

F. Member Voting.

1. *Voting power.* The Company's Members shall each have voting power equal to their share of Membership Interest in the Company.

2. *Proxies.* At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be

delivered to the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

G. Duties of the Members. The Members shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. The Members also shall cause the Company to:

1. Maintain its own books, records, accounts, financial statements, stationery, invoices, checks and other limited liability company documents and bank accounts separate from any other person;
2. At all times hold itself out as being a legal entity separate from the Members and any other person and conduct its business in its own name;
3. File its own tax returns, if any, as may be required under applicable law, and pay any taxes required to be paid under applicable law;
4. Not commingle its assets with assets of the Members or any other person, and separately identify, maintain and segregate all Company assets;
5. Pay its own liabilities only out of its own funds, except with respect to organizational expenses;
6. Maintain an arm's length relationship with the Members, and, with respect to all business transactions entered into by the Company with the Members, require that the terms and conditions of such transactions (including the terms relating to the amounts paid thereunder) are the same as would be generally available in comparable business transactions if such transactions were with a person that was not a Member;
7. Pay the salaries of its own employees, if any, out of its own funds and maintain a sufficient number of employees in light of its contemplated business operations;
8. Not guarantee or become obligated for the debts of any other person or hold out its credit as being available to satisfy the obligations of others;
9. Allocate fairly and reasonably any overhead for shared office space;
10. Not pledge its assets for the benefit of any other person or make any loans or advances to any person;
11. Correct any known misunderstanding regarding its separate identity;
12. Maintain adequate capital in light of its contemplated business purposes;
13. Cause its Members to meet or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Georgia limited liability company formalities;

14. Make any permitted investments directly or through brokers engaged and paid by the Company or its agents;

15. Not require any obligations or securities of the Members; and

16. Observe all other limited liability formalities.

Failure of the Members to comply with any of the foregoing covenants shall not affect the status of the Company as a separate legal entity or the limited liability of the Members.

H. Fiduciary Duties of the Members.

1. *Loyalty and Care.* The Members shall have only the fiduciary duties of loyalty and care required under Georgia Revised Limited Liability Company Act.

i. *Loyalty.* The duty of loyalty shall be limited to:

a. Not usurping or otherwise appropriating an opportunity of the Company without disclosure to and authorization from the other Members;

b. Refraining from competing against the company in the conduct of the Company's activities without disclosure to and authorization from the other Members;

c. Accounting to the other Members any property, profit or benefit derived by the Member in the conduct or winding up of the Company's affairs, or by the use of the Company's property.

ii. *Care.* The duty of care shall be limited to refraining from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of law.

2. *Competition with the Company.* The Members shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority, by individual vote, of the Members excluding the interested Member, consents thereto. The Members shall refrain from competing with the Company in the conduct of the Company's business unless a majority, by individual vote, of the Members excluding the interested Member, consents thereto. In the event that a Member is the sole Member of the Company, no vote shall be required.

3. *Duties Only to the Company.* The Member's fiduciary duties of loyalty and care are to the Company and not to the other Members. The Members shall owe fiduciary duties of disclosure, good faith and fair dealing to the Company and to the other Members. A Member who so performs their duties shall not have any liability by reason of being or having been a Member.

4. *Reliance on Reports.* In discharging the Member's duties, a Member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

C. **Distributions.** Distributions shall be issued, as directed by the Company's Treasurer or Assistant Treasurer, on a quarterly basis, based upon the Company's fiscal year. The distribution shall not exceed the remaining net cash of the Company after making appropriate provisions for the Company's ongoing and anticipatable liabilities and expenses. Each Member shall receive a percentage of the overall distribution that matches that Member's percentage of Membership Interest in the Company.

V. **Tax Treatment Election.**

The Company has not filed with the Internal Revenue Service for treatment as a corporation. Instead, the Company will be taxed as a pass-through organization. The Members may elect for the Company to be treated as a C-Corporation at any time.

VI. **Officers.**

A. **Appointment and Titles of Officers.** The initial Officers shall be appointed by the Members and shall consist of at least a Chairman, a Secretary and a Treasurer. Any additional or substitute Officers shall be chosen by the Members. The Members may also choose one or more President, Vice-President, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, as permitted by Georgia law. The Members may appoint such other Officers and agents as they shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Members. The Officers and agents of the Company shall hold office until their successors are chosen and qualified. Any Officer elected or appointed by the Members may be removed at any time, with or without cause, by the affirmative vote of a majority of the Members. Any vacancy occurring in any office of the Company shall be filled by the Members. Unless the Members decide otherwise, if the title of an Officer is one commonly used for officers of a limited liability company formed under Georgia law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office.

1. **Chairman.** The Chairman shall be the chief executive officer of the Company, shall preside at all meetings of the Members, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Members are carried into effect. The Chairman shall execute all contracts on behalf of the Company, except:

- i. where required or permitted by law or this Agreement to be otherwise signed and executed;
- ii. where signing and execution thereof shall be expressly delegated by the Members to some other Officer or agent of the Company.

2. **President.** In the absence of the Chairman or in the event of the Chairman's inability to act, the President shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. The President shall perform such other duties and have such other powers as the Members may from time to time prescribe.



3. *Vice-Presidents.* In the absence of the Chairman and President or in the event of their inability to act, any Vice-Presidents in the order designated by the Members (or, in the absence of any designation, in the order of their election) shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. Vice-Presidents, if any, shall perform such other duties and have such other powers as the Members may from time to time prescribe.

4. *Secretary and Assistant Secretary.* The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Members and record all the proceedings of the meetings of the Company and of the Members in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the Members, as required in this Agreement or by Georgia law, and shall perform such other duties as may be prescribed by the Members or the Chairman, under whose supervision the Secretary shall serve. The Secretary shall cause to be prepared such reports and/or information as the Company is required to prepare by applicable law, other than financial reports. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Members (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Members may from time to time prescribe.

5. *Treasurer and Assistant Treasurer.* The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company according to generally accepted accounting practices, using a fiscal year ending on the last day of the month of December. The Treasurer shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Members. The Treasurer shall distribute the Company's profits to the Members. The Treasurer shall disburse the funds of the Company as may be ordered by the Members and shall render to the Chairman and to the Members, at their regular meetings or when the Members so require, an account of all of the Treasurer's transactions and of the financial condition of the Company. As soon as practicable after the end of each fiscal year of the Company, the Treasurer shall prepare a statement of financial condition as of the last day of the Company's fiscal year, and a statement of income and expenses for the fiscal year then ended, together with supporting schedules. Each of said annual statements shall be prepared on an income tax basis and delivered to the Members forthwith upon its preparation. In addition, the Treasurer shall keep all financial records required to be kept pursuant to Georgia law. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Members (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Members may from time to time prescribe.

B. Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Members not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

C. Fiduciary Duties of the Officers.

1. *Loyalty and Care.* The Officers shall have only the fiduciary duties of loyalty and care required under Georgia Revised Limited Liability Company Act.

i. *Loyalty.* The duty of loyalty shall be limited to:

a. Not usurping or otherwise appropriating an opportunity of the Company without disclosure to and authorization from the Members;

b. Refraining from competing against the company in the conduct of the Company's activities without disclosure to and authorization from the Members;

c. Accounting to Members any property, profit or benefit derived by the Officer in the conduct or winding up of the Company's affairs, or by the use of the Company's property.

ii. *Care.* The duty of care shall be limited to refraining from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of law.

2. *Competition with the Company.* The Officers shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority, by individual vote, of the Members, excluding the interested Officer if that Officer is a Member, consents thereto. The Officers shall refrain from competing with the Company in the conduct of the Company's business unless a majority, by individual vote, of the Members, excluding the interested Officer if that Officer is a Member, consents thereto. In the event that the interested Officer is the sole Member, no vote shall be required.

3. *Duties Only to the Company.* The Officers' fiduciary duties of loyalty and care are to the Company and not to the Members or other Officers. The Officers shall owe fiduciary duties of disclosure, good faith and fair dealing to the Company and to the Members, but shall owe no such duties to Officers unless the Officer is a Member. An Officer who so performs their duties shall not have any liability by reason of being or having been an Officer.

4. *Reliance on Reports.* In discharging the Officer's duties, an Officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

i. One or more Members, Officers, or employees of the Company whom the Officer reasonably believes to be reliable and competent in the matters presented.

ii. Legal counsel, public accountants, or other persons as to matters the Officer reasonably believes are within the persons' professional or expert competence.

iii. A committee of Members of which the affected Officer is not a participant, if the Officer reasonably believes the committee merits confidence.

E. Other Considerations. In discharging the Officer's duties, the Officer may consider factors that the Officer deems relevant, including the long-term prospects and interests of the Company and its Members, and the social, economic, legal, or other effects of any action on the employees, suppliers, and customers of the Company, the communities and society in which the Company operates, and the economy of Georgia and the nation.

**VII. Dissolution.**

A. Limits on Dissolution. The Company shall have a perpetual existence, and shall be dissolved, and its affairs shall be wound up only upon the provisions established in Section II(C) above.

Notwithstanding any other provision of this Agreement, the Bankruptcy of any Member shall not cause such Member to cease to be a Member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

Each Member waives any right that it may have to agree in writing to dissolve the Company upon the Bankruptcy of any Member or the occurrence of any event that causes any Member to cease to be a Member of the Company.

B. Winding Up. Upon the occurrence of any event specified in Section II(C), the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. One or more Members, selected by the remaining Members, shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the liabilities of the Company and its assets, shall either cause its assets to be distributed as provided under this Agreement or sold, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided under this Agreement.

C. Distributions in Kind. Any non-cash asset distributed to one or more Members in liquidation of the Company shall first be valued at its fair market value (net of any liability secured by such asset that such Member assumes or takes subject to) to determine the profits or losses that would have resulted if such asset were sold for such value, such profit or loss shall then be allocated as provided under this Agreement. The fair market value of such asset shall be determined by the Members or, if any Member objects, by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) approved by the Members.

D. Termination. The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for under this Agreement and (ii) the Company's registration with the state of Georgia shall have been canceled in the manner required by Georgia law.

E. Accounting. Within a reasonable time after complete liquidation, the Company Treasurer shall furnish the Members with a statement which shall set forth the assets and liabilities of the Company as at the date of dissolution and the proceeds and expenses of the disposition thereof.

F. Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely to the assets of the Company for the return of its Initial Contribution and shall have no recourse for its Initial Contribution and/or share of profits (upon dissolution or otherwise) against any other Member.

G. Notice to Georgia Authorities. Upon the winding up of the Company, the Member with the highest percentage of Membership Interest in the Company shall be responsible for the filing of all appropriate notices of dissolution with Georgia and any other appropriate state or federal authorities or agencies as may be required by law. In the event that two or more Members have equally high percentages of Membership Interest in the Company, the Member with the longest continuous tenure as a Member of the Company shall be responsible for the filing of such notices.

#### **VIII. Exculpation and Indemnification.**

A. No Member, Officer, employee or agent of the Company and no employee, agent or affiliate of a Member (collectively, the "Covered Persons") shall be liable to the Company or any other person who has an interest in or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

B. To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. Expenses, including legal fees, incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall be paid by the Company. The Covered Person shall be liable to repay such amount if it is determined that the Covered Person is not entitled to be indemnified as authorized in this Agreement. No Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions. Any indemnity under this Agreement shall be provided out of and to the extent of Company assets only.

C. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any person as to matters the Covered Person reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value

and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

D. To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement. The provisions of the Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

E. The foregoing provisions of this Article VIII shall survive any termination of this Agreement.

**IX. Insurance.**

The Company shall have the power to purchase and maintain insurance, including insurance on behalf of any Covered Person against any liability asserted against such person and incurred by such Covered Person in any such capacity, or arising out of such Covered Person's status as an agent of the Company, whether or not the Company would have the power to indemnify such person against such liability under the provisions of Article VIII or under applicable law.

**X. Settling Disputes.**

All Members agree to enter into mediation before filing suit against any other Member or the Company for any dispute arising from this Agreement or Company. Members agree to attend one session of mediation before filing suit. If any Member does not attend mediation, or the dispute is not settled after one session of mediation, the Members are free to file suit. Any law suits will be under the jurisdiction of the state of Georgia.

**XI. General Provisions.**

A. Notices. All notices, offers or other communications required or permitted to be given pursuant to this Agreement shall be in writing and may be personally served or sent by United States mail and shall be deemed to have been given when delivered in person or three (3) business days after deposit in United States mail, registered or certified, postage prepaid, and properly addressed, by or to the appropriate party.

B. Number of Days. In computing the number of days (other than business days) for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which national banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.

C. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall together constitute one and the same instrument.

D. Severability. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

E. Headings. The Article and Section headings in this Agreement are for convenience and they form no part of this Agreement and shall not affect its interpretation.

F. Controlling Law. This Agreement shall be governed by and construed in all respects in accordance with the laws of the state of Georgia (without regard to conflicts of law principles thereof).

G. Application of Georgia Law. Any matter not specifically covered by a provision of this Agreement shall be governed by the applicable provisions of Georgia law.

H. Amendment. This Agreement may be amended only by written consent of all the Members. Upon obtaining the approval of any such amendment, supplement or restatement as to the Certificate, the Company shall cause a Certificate of Amendment or Amended and Restated Certificate to be prepared, executed and filed in accordance with Georgia law.

I. Entire Agreement. This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

IN WITNESS WHEREOF, the Members have executed and agreed to this Limited Liability Company Operating Agreement, which shall be effective as of June 15, 2022.

Signature: James Livingston  
James Livingston

Signature: [Handwritten Signature]  
Linda Livingston

Signature: [Handwritten Signature]  
Scott Mathis

**ATTACHMENT A**  
**Initial Contributions of the Members**

The Initial Contributions of the Members of Awesomeville Pie LLC are as follows:

**James Livingston**  
Contribution:  
Cash: \$20.00

**Linda Livingston**  
Contribution:  
Cash: \$20.00

**Scott Mathis**  
Contribution:  
Cash: \$10.00





## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into as of the date the last party executed this Agreement ("Effective Date"), by and between **Pointe Grand Dawsonville, LLC**, a Georgia limited liability company (hereinafter referred to as "Seller") and **Awesomeville LLC**, a Georgia limited liability company (hereinafter referred to as "Purchaser").

### WITNESSETH:

1. Agreement to Buy and Sell. Seller hereby agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following described property: ALL that certain parcel or tract of land, lying and being situated in the County of Dawson, State of Georgia, currently a part of PIN No. 107 319, and being approximately 1.241 acres and identified as Lot 2 on that certain Exemption Plat of Pointe Grand Dawsonville, LLC, which plat is recorded in Book 00087, page 132-133, Clerk of the Superior Court, Dawson County, Georgia, and attached hereto as Exhibit "A" and by this reference made a part hereof (the "Plat"), and including, but not limited to, any right, title and interest of Seller in and to adjacent streets, roads, alleys, easements, all surface and mineral rights and rights-of-way, together with any improvements and fixtures located thereon if any, and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining to any of the foregoing (the "Land"). In addition, Seller will transfer and assign to Purchaser all tangible and intangible personal property owned by Seller and pertaining to the ownership, use, operation, maintenance or management of the Land, including, but not limited to, all books, records, ledgers, licenses, permits, certifications, authorizations, approvals, utility service rights, guaranties, warranties, entitlements and other development rights, and all intellectual and other intangible rights pertaining to the Land (collectively with the Land, the "Property") by executing the Bill of Sale and General Assignment, in the form provided for on Exhibit "B", attached hereto and by this reference made a part hereof (the "Bill of Sale").

2. Earnest Money. Within three (3) business days of the Effective Date of this Agreement, Purchaser shall deposit with Weiner, Shearouse, Weitz, Greenberg & Shaw, LLP, hereinafter known as "Escrow Agent", the sum of **Fifteen Thousand and No/100 Dollars (\$15,000.00)** as earnest money (the "Earnest Money"). The Earnest Money shall be held in escrow by Escrow Agent in an interest bearing account and credited against the Purchase Price (as hereinafter defined) due Seller pursuant to Paragraph 3 hereof at the consummation of the sale by Seller and the purchase by Purchaser of the Property in accordance herewith (herein referred to as the "Closing") or paid as otherwise provided herein.

3. Purchase Price. The purchase price to be paid by Purchaser to Seller for the Property (hereinafter referred to as the "Purchase Price") shall be **Seven Hundred Ninety Four Thousand Two Hundred Forty and 00/100 Dollars (\$794,240.00)**. The Purchase Price, subject to adjustments and prorations as provided herein, shall be paid by immediately available funds at Closing. The Purchase Price shall also be adjusted to subtract the area encumbered by the Sign Easement (defined below) such that the final calculation of the Purchase Price is equal to **Six Hundred Forty Thousand And 00/100 Dollars (\$640,000.00) per acre**. For example purposes only, if the final deeded acreage amount less the encumbered area amount is 1.20 acres, then the purchase price shall equal Seven Hundred Sixty Eight Thousand and 00/100 Dollars (\$768,000.00).

4. Examination of Title. Within thirty (30) days after the Effective Date, Seller shall obtain and deliver to Purchaser a title commitment for an owner's title insurance policy (standard 2006 ALTA form) issued by First American Title Insurance Company or another title insurance company licensed to issue title insurance in the State of Florida acceptable to Buyer (the "Title Company"), in the amount of the Purchase Price covering title to the Property on or after the date hereof, showing title in the Seller. Purchaser shall have until thirty (30)

days prior to the expiration of the Due Diligence Period to examine Seller's title to the Property and to furnish Seller with a written statement of Purchaser's objections to such title. Seller shall have ten (10) business days following receipt by Seller of such written statement of defects in which to notify Purchaser in writing whether and to what extent Seller will cure Purchaser's objections, if at all. Failure to respond by Seller shall be deemed a response on the tenth (10<sup>th</sup>) day that Seller shall not cure Purchaser's objections. Purchaser shall have ten (10) business days following receipt by Purchaser of Seller's response (or deemed response if Seller fails to respond) in which to notify Purchaser in writing whether, at Purchaser's sole election and in Purchaser's sole discretion, to (a) waive all of the title objections that Seller declined to cure, whereupon Purchaser would proceed to close the transaction in accordance with this Agreement, or (b) terminate this Agreement, in which case all Earnest Money and any other monies held in escrow by Escrow Agent, shall be refunded to Purchaser, and Purchaser shall have no further liability under this Agreement, except for those terms that expressly survive the termination of this Agreement. In the event that Purchaser fails to respond timely, Purchaser shall be deemed to have selected option (a) above. Notwithstanding anything to the contrary contained herein, for purposes of this Agreement, Seller agrees and is required to take such actions as necessary to satisfy all the B-1 requirements in the title commitment within its control and to satisfy, pay or bond-off at Closing from the sales proceeds or otherwise, including (a) amounts secured by any mortgage lien or security interest encumbering the Property; (b) all real estate taxes and assessments which are due and payable on or prior to the Closing (subject to pro-ration adjustments as provided herein); and (c) any liquidated final non-appealable liens or judgments affecting all or any portion of the Property (collectively, the "Mandatory Removal Liens"). If any new matters appear on any updates to the title commitment or survey prior to Closing ("Intervening Matters" or individually, an "Intervening Matter") then all of the provisions of Section 4 shall apply thereto except: (a) the time for Purchaser to object to any such Intervening Matters shall be five (5) days after it receives said update; (b) the time for Seller to respond shall be five (5) days after it receives Purchaser's notice of any such objection; and (c) the time for Purchaser to exercise its remedies shall be five (5) days after receiving Seller's written response to such objection. Seller must cure any later objection to an Intervening Matter that is a Mandatory Removal Lien and may do so from the closing proceeds. In addition, if any of the time periods provided for in this Section 4 for Intervening Matters extend beyond the Closing Date, then the Closing Date will be extended until a date which is five (5) days after the last applicable date. The term "Permitted Exceptions" shall mean and refer to all matters of record with respect to the Property and all matters that appear on Purchaser's survey of the Property, but less and except such matters as Seller is required or agrees in writing to cure.

5. Inspection and Review. Purchaser, its agents and representatives, at Purchaser's expense and at all times on or before the expiration of NINETY (90) DAYS from the Effective Date ("Due Diligence Period"), shall have the right to enter upon the Property for the purpose of inspecting, examining, boring, testing, and surveying the Property, including but not limited to, at Purchaser's discretion, a Level One (i.e. Phase I) Environmental Study (or such more invasive testing if recommended by the Level One Environmental Study and approved in writing by Seller, such approval not to be unreasonably withheld, conditioned or delayed). Provided however, notwithstanding the aforementioned, Purchaser shall provide Seller reasonable notice before entering on the Property and shall notify Seller if it plans to do any invasive testing on the Property. Purchaser assumes all responsibility for the acts of Purchaser, its agents, and representatives in exercise of the rights granted by this paragraph. Purchaser agrees to indemnify and hold Seller harmless from any and all claims, demands, damages, costs and expenses that may be incurred by Seller arising out of or resulting from the inspections performed by or on behalf of Purchaser under this Section. Notwithstanding the foregoing, Purchaser's indemnity shall not cover any loss, claim or damage to the Property or to any person directly related (i) to any conditions or environmental issues that existed prior to Purchaser's inspection or to the existence of any hazardous materials or substances that is discovered during Purchaser's inspection or (ii) resulting from Seller's acts, failure to act or negligence. Such indemnity shall survive the termination of this Agreement. In addition, Purchaser agrees to and shall promptly repair and restore any and all damage caused to the Property arising out of or related to the exercise of the rights granted to Purchaser by this Section unless Purchaser closes. Purchaser shall have

until the expiration of the Due Diligence Period to decide in its sole and absolute discretion whether the Property is satisfactory for Purchaser's acquisition. If Purchaser determines that the Property, for any reason, INCLUDING WITHOUT LIMITATION, ECONOMIC VIABILITY OF BUYER'S INTENDED USE OF THE PROPERTY, is not satisfactory, then Purchaser may terminate this Agreement by written notice to Seller on or before the expiration of the Due Diligence Period, upon such occurrence neither Purchaser nor Seller shall have any further obligations hereunder, except for those obligations that expressly survive the termination of this Agreement, and all Earnest Money shall be returned to Purchaser. If Purchaser elects not to terminate this Agreement during the Due Diligence Period, then within three (3) days of the expiration after the Due Diligence Period, an additional deposit of Five Thousand and No/100 Dollars (\$5,000.00) shall be deposited with Escrow Agent as Earnest Money, thereby making the total Earnest Money equal to Twenty Thousand and No/100 Dollars (\$20,000.00) and whereupon, all references to Earnest Money in this Agreement shall include the full Twenty Thousand and No/100 Dollars (\$20,000.00). The Earnest Money shall be held in escrow by Escrow Agent in an interest bearing account and credited against the Purchase Price at the Closing. The Earnest Money shall be nonrefundable after the expiration of the Due Diligence Period except as otherwise expressly provided for in this Agreement.

Within ten (10) days of execution of this Agreement (or prior to execution hereof), Seller shall provide one copy of each of the materials listed on Exhibit "C" ("Due Diligence Materials") to Purchaser with respect to the Property to the extent same are in Seller's possession or control and not previously provided to Purchaser.

6. Seller Representations: In order to induce Purchaser to enter into this Agreement and to purchase the Property, in addition to warranties, representations, covenants, and undertakings contained elsewhere in this Agreement, Seller hereby makes the following representations, warranties and covenants, each of which is material and is relied upon by Purchaser, and each of which shall be true and complete as of the date of execution of this Agreement and as of the Closing Date:

- a. Authority of Seller. Seller has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by Seller, will be a valid and binding obligation of Seller in accordance with its terms.
- b. No Bankruptcy. Seller is not a party to any voluntary or involuntary proceedings under any applicable laws relating to the insolvency, bankruptcy, moratorium or other laws affecting creditors' rights to the extent that such laws may be applicable to Seller.
- c. Litigation. There are no actions, suits, or proceedings pending or, to Seller's actual knowledge, threatened in writing against Seller with respect to the Property or otherwise affecting any portion of the Property, at law or in equity, or before or by any federal, state, municipal, or other governmental court, department, commission, board, bureau, agency, or instrumentality, domestic or foreign.
- d. Condemnation. Seller has not received written notice of any pending or, to Seller's actual knowledge, threatened condemnation or eminent domain proceedings which would affect the Property or any part thereof.
- e. Foreign Person. Seller is not a "foreign person" as defined by the Internal Revenue Code, Section 1445.
- f. Title; No Options. Seller holds fee simple title to the Property. Seller's interest in the Property is not subject to any outstanding agreement of sale, purchase option, or right of first refusal.
- g. Mechanic's Liens. To Seller's actual knowledge, no work has been performed or is in progress at, and no materials have been furnished to, the Property, which, though not presently the subject of, are unpaid and might give rise to construction, mechanic's, materialman's, municipal or other liens against the Property or any portion thereof, except

that for which full and complete releases have been obtained. Seller shall sign a customary Seller's title affidavit as may be required for the Title Company to issue its Title Policy without exception for liens and if any lien is filed after Closing, arising from work at the Property performed prior to Closing, then Seller shall promptly discharge same.

- h. Leases. Seller is in complete and exclusive possession of the Land. There are no leases or other tenancy agreements affecting the Land.
- i. Environmental. To the best of Seller's knowledge without the obligation of investigation:
  - i. the Land has been operated in material compliance with all applicable Federal, State and local laws and regulations ("Environmental Laws") governing Hazardous Materials;
  - ii. Seller has not received any written notice or citation for noncompliance with respect to any Environmental Laws relating to the Land;
  - iii. no Hazardous Material has been or is currently being generated, stored, transported, utilized, disposed of, managed, treated, released or located on or from the Land (whether or not in reportable quantities); and
  - iv. there are no underground storage tanks under the Land. "Hazardous Material" means any hazardous or toxic waste, substance or material, pollutant or contaminant, or words of similar import, as the same may be defined from time to time in the Comprehensive Environmental Response-Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et. seq.), as amended, or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et. seq.), as amended, or any other applicable Federal, State or local law ordinance, rule or regulation relating to the environment, pollutants, contamination or similar matters ("Environmental Laws").
- j. Assessments. Seller has received no written notice of, and has no actual knowledge of, any special assessments for public improvements against the Land, whether pending or threatened, including, without limitation, those for construction of sewer and water lines or mains, street lights, streets, sidewalks and curbs. If Seller receives written notice of any such assessment during the term of this Agreement, Seller will promptly notify Purchaser of same.
- k. Violations. Seller has not received any notices from any governmental authority of zoning code violations or other violations in respect to the Property.
- l. Prohibited Persons. To Seller's actual knowledge, Seller is not (i) identified on any governmental list, or otherwise qualifies as a prohibited person or (ii) in violation of any applicable law, rule or regulation relating to anti-money laundering or anti-terrorism, including, without limitation, any applicable law, rule or regulation related to transaction business with prohibited persons or the requirements of any Anti-Terrorism Law.

Where used in this Agreement, the terms "actual knowledge" or "to the best of Seller's knowledge" shall refer to the knowledge of Steven Campisi, the manager of Hillpointe Fund III GP, LLC, the general partner of Seller, being the representative of Seller who is most knowledgeable about the Property, without the duty or obligation of investigation or inquiry.

7. Added Restrictions. Seller currently owns property in Dawsonville, GA identified as of the date of this Agreement by the following PIN Numbers: 107 319; 107 319 002; 107 319 004 and 107 319 005 (such land and the building and other improvements thereto from time to time, "Seller's Remaining Property") and more particularly described and/or depicted on Exhibit "D" attached hereto and by this reference made a part hereof. Seller agrees to record prior to or concurrently with the deed contemplated by Section 11(a)(i) below, the following restrictive covenant ("Restrictive Covenant") to Seller's Remaining Property on or before Closing: No portion of the Seller's Remaining Property may be used or occupied for a pizza restaurant, so long as Purchaser or its successors and assigns is operating as a Mellow Mushroom pizza concept on the subject Property, excluding temporary disruptions due to repairs, maintenance, renovations, casualty, condemnation, closures required by governmental authority, or other force majeure event. A "pizza restaurant", for purposes of the Restrictive Covenant, shall be defined as a restaurant that generates

25% or more of its gross sales from pizza. In the event that Purchaser or its successors and assigns stop operating as a Mellow Mushroom pizza concept for a period of six (6) months consecutively, excluding temporary disruptions due to repairs, maintenance, renovations, casualty, condemnation, closures required by governmental authority, or other force majeure event, then the restriction shall automatically terminate. In such case, Seller and its successors and assigns may unilaterally file a termination of such restriction, which may be relied upon by lenders, title insurance companies, purchasers, closing attorneys and title examiners.

Purchaser acknowledges and agrees that Seller currently does not own PIN Numbers: 107 319 007 and 107 319 006, and that pursuant to Georgia law, Purchaser has no power or authority to create a use or development restriction on such property.

8. Closing and Closing Date. The Closing date ("Closing Date") shall be on or before forty-five (45) day after the expiration of the Due Diligence Period.

9. Closing Prorations/Taxes. At the Closing, all real property ad valorem taxes and assessments applicable to the Property shall be prorated as of the Closing Date between Seller and Purchaser, said proration to be based upon the most-recently available tax rate and valuation with respect to the Property; provided, however, that upon the issuance of the actual tax bills for such taxes for the year of the Closing, Purchaser and Seller shall promptly make such adjustments as may be necessary to ensure that the actual amount of such taxes for the year of Closing shall be prorated between Purchaser and Seller as of the Closing Date. The provisions set forth in this section 9 shall survive Closing.

10. Closing Costs. Seller shall pay for the deed stamps, transfer fee and any other tax or fee due and required to be paid in connection with the delivery and recording of the Limited Warranty Deed from Seller to Purchaser, and all costs of releasing all existing loans and/or monetary liens affecting the Property and any portion thereof and recording the releases therefor. Seller shall also pay brokerage commissions to Seller's Broker pursuant to Section 15 of this Agreement. Purchaser shall pay costs of recording the deed, the premium cost-of owner's title insurance policy to be issued in favor of Purchaser at the Closing if Purchaser elects to get title insurance, all Escrow Agent fees, intangible tax, title examination costs, surveyor's fees, appraisal fees, environmental assessment fees, engineering fees, closing disbursement fees, lender fees, and loan costs. Notwithstanding anything to the contrary herein, each of the parties shall pay attorney's fees to their respective counsel for services performed on each party's behalf.

11. Closing Documents.

(a) At the Closing, Seller shall deliver the following items to Purchaser (through the Title Company, as closing agent):

(i) A Limited Warranty Deed conveying the Property to Purchaser, subject only to taxes for the current year and the Permitted Exceptions and otherwise in form reasonably acceptable to Purchaser;

(ii) A certificate as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued pursuant thereto, certifying the non foreign status of Seller;

(iii) A standard Owner's Affidavit in the form required by the Title Company to insure title, satisfy all requirements and remove all standard exceptions (such affidavit may be qualified to Seller's current actual knowledge if and to the extent that such qualification does not result in a diminution in coverage offered by the Title Company);

- (iv) A settlement statement;
- (v) The information required for Internal Revenue Service Form 1099;
- (vi) Bill of Sale, in the form provided for on Exhibit "B", attached hereto and by this reference made a part hereof; and
- (vii) Evidence of the existence and good standing of Seller (and any party acting on its behalf) and the authority of Seller (and any party executing documents on its behalf) to consummate the transaction contemplated hereby, without the joinder or consent of any other person or party;
- (v) The Restrictive Covenant;
- (vi) The Easement Agreements (as hereinafter defined); and
- (vii) Such other documents reasonably requested to consummate the transaction.

(b) At the Closing, Purchaser shall deliver to Seller (through the Title Company, as closing agent) the following items:

- (i) The Purchase Price, payable in good funds by wire transfer, subject, however, to all adjustments, credits and prorations;
- (ii) Evidence of the existence of Purchaser (and any party acting on its behalf) and the authority of Purchaser (and any party executing documents on its behalf) to consummate the transaction contemplated hereby, without the joinder or consent of any other person or party; and
- (iii) Such other documents reasonably requested to consummate the transaction.

12. Defaults. In the event of a Purchaser's default under this Agreement, Seller agrees to provide Purchaser with written notice of such default by specifying the nature of such default. Purchaser shall have a ten (10) day period after the date of receipt of said notice to cure said default. If Purchaser does not cure said default within ten (10) days and the transaction contemplated hereby is not closed by reason of Purchaser's default (and Seller has performed all of its obligations hereunder required up to the point of Purchaser's default), then the Earnest Money shall be paid to Seller as full liquidated damages, this Agreement shall be null and void, and none of the parties hereto shall have any further rights or obligations except for those obligations that expressly survive the termination of this Agreement. Purchaser and Seller acknowledge that it would be difficult to ascertain precisely the actual damages suffered by Seller as a result of any default by Purchaser and agree that such liquidated damages are a reasonable estimate thereof and shall be the sole remedy of Seller.

In the event of a Seller's default under this Agreement, Purchaser agrees to provide Seller with written notice of such default by specifying the nature of such default. Seller shall have a ten (10) day period after the date of receipt of said notice to cure said default. If Seller does not cure said default within ten (10) days and the transaction contemplated hereby is not closed by reason of Seller's default (and Purchaser has performed all of its obligations hereunder required up to the point of Seller's default), then Purchaser shall be entitled to only the following remedies: (i) Purchaser may terminate this Agreement, in which case none of the parties hereto shall have any further rights or obligations except for Surviving Obligations, and Purchaser shall receive an immediate refund of all Earnest Money paid hereunder by Purchaser, or (ii) Purchaser may seek specific performance of this Agreement; provided that such action for specific performance must be filed within three (3) months of such termination or this remedy for specific

performance shall be unavailable to Purchaser and waived. Notwithstanding the foregoing, if specific performance of Seller's obligation to convey the Property is not available to Purchaser due to an intentional act of Seller (e.g., Seller has conveyed the Property to another party), then in addition to terminating this Agreement (whereupon the Earnest Money shall be promptly returned to Purchaser by Escrow Agent), Purchaser may seek damages against Seller, and after Purchaser has received all such amounts, neither party shall have any further liability or obligation to the other, except for the provisions of this Agreement which are expressly stated to survive the termination of this Agreement.

13. Possession of Property. Seller shall deliver to Purchaser full and exclusive possession of the Property on the Closing Date.

14. Real Estate Commission. Seller agrees that a commission shall be paid to Ackerman & Co, LLC (the "Seller's Broker"), as set forth in a separate agreement, at Closing as consideration for the services of the Broker in connection with this transaction and the parties agree that the Seller's Broker shall be the responsibility of Seller to pay. Buyer and Seller each represents to each other that it has had no Agreement with any other real estate agencies, brokers, salesmen, or agents regarding the Property. Seller and Buyer represent that no commission or fee will be due from Seller or Buyer on account of the sale of the Property, except as above noted. Each party agrees to indemnify, defend and hold the other harmless from and against any costs (including, but not limited to court costs and attorney fees), expenses, or liability for commissions or other compensation claimed by any broker or agent other than those listed above with respect to this Agreement.

15. Escrow Agent. Escrow Agent shall not be entitled to any fees or compensation for its services as escrow agent hereunder. Escrow Agent shall be liable only to hold the Earnest Money and to deliver same to the parties named herein in accordance with the provisions of this Agreement. Escrow Agent, as escrow agent, is acting in the capacity of a depository only, and shall not be liable or responsible to anyone for any damages, losses or expenses unless same shall be caused by the negligence or willful malfeasance of Escrow Agent. In the event of any disagreement among any of the parties to this Agreement or among them or any of them and any other person, resulting in adverse claims and demands being made in connection with or for any property involved herein or affected hereby, Escrow Agent shall be entitled to refuse to comply with any such claims or demands as long as such disagreements may continue, and in so refusing, shall make no delivery or other disposition of any property then held by it under this Agreement, and in so doing Escrow Agent shall not become liable in any way for such refusal, and Escrow Agent shall be entitled to continue to refrain from acting until (a) the rights of adverse claimants shall have been finally settled by binding arbitration or finally adjudicated in a court assuming and having jurisdiction of the Property involved herein or affected hereby, or (b) all differences shall have been adjusted by agreement and Escrow Agent shall have been notified in writing of such agreement signed by the parties hereto. Further, Escrow Agent shall have the right at any time after a dispute between Seller and Purchaser has arisen, to pay any deposits held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon Escrow Agent's obligations hereunder shall terminate.

16. Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, delivered by nationally recognized overnight delivery service or delivered by the United States Postal Service, postage prepaid, to be mailed by registered or certified United States Mail, return receipt requested, and addressed as follows:

To Purchaser As Follows:

Awesomeville LLC  
Attn: Scott Mathis  
1158 Brookhaven Green NE

Atlanta, GA 30319

As to Purchaser, with a copy to:

Taylor English Duma, LLP  
Attn: Lauren Langham  
3948 Third Street South, Suite 1  
Jacksonville Beach, FL 32250  
llangham@taylorenghish.com

To Seller As Follows:

Pointe Grand Dawsonville, LLC  
Attn: Steven Campisi, Managing Partner  
1031 W. Morse Blvd, Suite 240  
Winter Park, FL 32789

As to Seller, with a copy to:

Weiner, Shearouse, Weitz, Greenberg & Shaw, LLP  
Attn: Stuart R. Halpern, Esq.  
14 East State Street  
Savannah, GA 31401  
Tel: (912) 233-2251  
[shalpern@wswgs.com](mailto:shalpern@wswgs.com)

To Escrow Agent:

Weiner, Shearouse, Weitz, Greenberg & Shaw, LLP  
Attn: Stuart R. Halpern, Esq.  
14 East State Street  
Savannah, GA 31401  
Tel: (912) 233-2251  
[shalpern@wswgs.com](mailto:shalpern@wswgs.com)

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

17. General Provisions. No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by all parties hereto. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning



of the contents of each paragraph. This Agreement shall be interpreted under the laws of the State of Georgia.

18. Time of Essence; Computation of Time. Time is of the essence in this Agreement. In computing any period of time prescribed or allowed by this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday under the laws of the United States or the State, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday, and the computation of any designated period of time that is calculated from the expiration of a previous period that ended on the next day which is neither a Saturday, Sunday nor a legal holiday shall commence on said next day. For purposes of this Agreement, the term "business day" shall mean any day which is not a Saturday, Sunday or legal holiday.

19. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

20. Assignment. Purchaser shall not assign this Agreement other than to an entity controlled by, controlling or under common control with Purchaser, without the consent from Seller.

21. Casualty; Condemnation. Until Closing, all risk of loss of, or damage to, or destruction of, the Property (whether by fire, flood, tornado, or other casualty, or by the exercise of the power of eminent domain, or otherwise) shall belong to and be borne by Seller. If, prior to Closing, the Property or any portion thereof shall be condemned or any proceeding for the condemnation of the Property or any part thereof is filed, Purchaser may at its option elect to terminate any obligation to Seller under this Agreement. If Purchaser elects to terminate, the entire Earnest Money shall be repaid promptly to Purchaser. If Purchaser does not terminate this Agreement, any award, damages or other considerations for condemnation of any portion of the Property subject to this Agreement, shall be paid to Purchaser at Closing, or if paid to Seller, credited against the Purchase Price at Closing, with any excess paid to Purchaser.

22. Survival. All representations, warranties and agreements of the Seller set forth in this Agreement shall survive Closing for a period of twelve (12) months thereafter.

23. Easement Agreements. On or before the date that is thirty (30) days after the Effective Date, (i) the parties shall negotiate and agree upon easement agreements to be executed and delivered at Closing, meeting the requirements of this Section 23 (the "Easement Agreements"); (ii) Seller shall provide and the parties shall agree upon the Sign Specifications (defined in subsection 23.b. below) and (iii) this Agreement will be amended by the parties to identify the agreed-upon Sign Specifications, and the agreed-upon Easement Agreements as the Easement Agreements to be executed and delivered at Closing.

a. Seller will grant for the benefit of Lot 2 of the Property perpetual easements for utilities, drainage, and access, consistent with the rights of way shown on the Plat (the "Access Easement(s)" and the agreement(s) evidencing the Access Easement(s), the "Access Easement Agreement(s)"). The Access Easement Agreement(s) will address construction and maintenance obligations and expenses and address such other matters pertaining to such easements as the parties determine are appropriate. The Access Easement(s) will be described, plotted and identified on Purchaser's survey, and will be part of the Property and insured by the title company at Closing; and

b. Seller will reserve a perpetual easement for monument signage, including access and utilities thereto, at the north corner of Lot 2 (the "Sign Easement" and the agreement evidencing the Sign Easement, the "Sign Easement Agreement"). The signage and signage structures and improvements will be in substantially in accordance with specifications complying with the provisions of this subsection 23.b. and acceptable to both parties, including without limitation size, height and dimensions (the "Sign Specifications"). The Sign Easement shall be sized, configured and located as to minimize the impact on and interference with access to, construction on and use of the remainder of Lot 2 for Purchaser's intended purpose. In no event shall the Sign Easement, signage or signage structures or improvements, result in a reduction of signage that otherwise would be available to Lot 2. The Sign Easement Agreement will address construction and maintenance obligations and expenses and address such other matters pertaining to such easements as the parties determine are appropriate. The Sign Easement will be described, plotted and identified on Purchaser's survey.

24. 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "Exchange") pursuant to § 1031 of the Code, provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement, (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary, (c) neither party shall be required to take an assignment of the purchase agreement for the relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange and indemnify the other party from and against all losses or damages sustained as a result of the Exchange. Neither party shall by this Agreement or acquiescence to an Exchange desired by the other party have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with § 1031 of the Code.

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# STATE OF GEORGIA

Secretary of State

Corporations Division

313 West Tower

2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

## CERTIFICATE OF ORGANIZATION

I, **Brad Raffensperger**, the Secretary of State and the Corporation Commissioner of the State of Georgia, hereby certify under the seal of my office that

**Awesomeville Pie LLC**  
a Domestic Limited Liability Company

has been duly organized under the laws of the State of Georgia on **03/15/2022** by the filing of articles of organization in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated.

WITNESS my hand and official seal in the City of Atlanta  
and the State of Georgia on **03/17/2022**.



*Brad Raffensperger*

Brad Raffensperger  
Secretary of State

**ARTICLES OF ORGANIZATION**

\*Electronically Filed\*  
Secretary of State  
Filing Date: 3/15/2022 1:39:17 PM

**BUSINESS INFORMATION**

**CONTROL NUMBER** [REDACTED]  
**BUSINESS NAME** Awesomeville Pie LLC  
**BUSINESS TYPE** Domestic Limited Liability Company  
**EFFECTIVE DATE** 03/15/2022

**PRINCIPAL OFFICE ADDRESS**

**ADDRESS** [REDACTED]

**REGISTERED AGENT**

<b>NAME</b>	<b>ADDRESS</b>	<b>COUNTY</b>
Bob J Goldberg	[REDACTED]	Cobb

**ORGANIZER(S)**

<b>NAME</b>	<b>TITLE</b>	<b>ADDRESS</b>
Bob J Goldberg	ORGANIZER	[REDACTED]

**OPTIONAL PROVISIONS**

Management of the Company shall be vested in one or more managers pursuant to the Company's Operating Agreement.

**AUTHORIZER INFORMATION**

**AUTHORIZER SIGNATURE** Bob Goldberg  
**AUTHORIZER TITLE** Attorney In Fact

**Limited Liability Company Agreement of  
Awesomeville Pie LLC,  
a Limited Liability Company**

**I. Formation.**

A. State of Formation. This is a Limited Liability Company Operating Agreement (the "Agreement") for Awesomeville Pie LLC, a Member-managed Georgia limited liability company (the "Company") formed under and pursuant to Georgia law.

B. Operating Agreement Controls. To the extent that the rights or obligations of the Members or the Company under provisions of this Operating Agreement differ from what they would be under Georgia law absent such a provision, this Agreement, to the extent permitted under Georgia law, shall control.

C. Primary Business Address. The location of the primary place of business of the Company is:

Address to be determined. Site 2 of Pointe Grande, Dawsonville, Georgia 30534, or such other location as shall be selected from time to time by the Members.

The Company's mailing address is:

POB 191306, Atlanta, Georgia 31119

D. Registered Agent and Office. The Company's initial agent (the "Agent") for service of process is Bob J Goldberg. The Agent's registered office is 1600 Parkwood Circle Suite 400, Atlanta, Georgia 30339. The Company may change its registered office, its registered agent, or both, upon filing a statement with the Georgia Secretary of State.

E. No State Law Partnership. No provisions of this Agreement shall be deemed or construed to constitute a partnership (including, without limitation, a limited partnership) or joint venture, or any Member a partner or joint venturer of or with any other Member, for any purposes other than federal and state tax purposes.

**II. Purposes and Powers.**

A. Purpose. The Company is created for the following business purpose: Awesomeville Pie LLC will own and operate the Mellow Mushroom Restaurant in Pointe Grand development, Dawsonville.

B. Powers. The Company shall have all of the powers of a limited liability company set forth under Georgia law.

C. Duration. The Company's term shall commence upon the filing of Articles of Organization and all other such necessary materials with the state of Georgia. The Company will operate until terminated as outlined in this Agreement unless:

1. A majority of the Members vote to dissolve the Company;
2. No Member of the Company exists, unless the business of the Company is continued in a manner permitted by Georgia law;
3. It becomes unlawful for either the Members or the Company to continue in business;
4. A judicial decree is entered that dissolves the Company; or
5. Any other event results in the dissolution of the Company under federal or Georgia law.

**III. Members.**

A. Members. The Members of the Company (jointly the "Members") and their Membership Interest in the same at the time of adoption of this Agreement are as follows:

James Livingston, 41%

Linda Livingston, 40%

Scott Mathis, 19%

B. Initial Contribution. Each Member shall make an Initial Contribution to the Company. The Initial Contributions of each shall be as described in Attachment A, Initial Contributions of the Members.

No Member shall be entitled to interest on their Initial Contribution. Except as expressly provided by this Agreement, or as required by law, no Member shall have any right to demand or receive the return of their Initial Contribution.

C. Limited Liability of the Members. Except as otherwise provided for in this Agreement or otherwise required by Georgia law, no Member shall be personally liable for any acts, debts, liabilities or obligations of the Company beyond their respective Initial Contribution. The Members shall look solely to the Company property for the return of their Initial Contribution, or value thereof, and if the Company property remaining after payment or discharge of the debts, liabilities or obligations of the Company is insufficient to return such Initial Contributions, or value thereof, no Member shall have any recourse against any other Member except as is expressly provided for by this Agreement.

D. Withdrawal or Death of a Member. Should a Member die or withdraw from the Company by choice, the remaining Members will have the option to buy out that Member's Membership Interest in the Company. Should the Members agree to buy out the Membership Interest of the withdrawing Member, that Interest shall be paid for proportionately by the remaining Members, according to their existing Membership Interest and distributed proportionately among the remaining Members. The Members agree to hire an outside firm to assess the value of the Membership Interest.

The Members will have 60 days to decide if they want to buy the Membership Interest together and disperse it proportionately. If all Members do not agree to buy the Membership Interest, individual Members will then have the right to buy the Membership Interest individually. If more than one Member requests to buy the remaining Membership Interest, the Membership Interest will be paid for and split proportionately among those Members wishing to purchase the Membership Interest. If all Members agree by unanimous vote, the Company may choose to allow a non-Member to buy the Membership Interest thereby replacing the previous Member.

If no individual Member(s) finalize a purchase agreement by 60 days, the withdrawing Member, or their estate, may dispose of their Membership Interest however they see fit, subject to the limitations in Section III(E) below. If a Member is a corporation, trust, partnership, limited liability company or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

The name of the Company may be amended upon the written and unanimous vote of all Members if a Member withdraws, dies, is dissolved or terminated.

E. Creation or Substitution of New Members. Any Member may assign in whole or in part its Membership Interest only after granting their fellow Members the right of first refusal, as established in Section III(D) above.

1. *Entire transfer.* If a Member transfers all of its Membership Interest, the transferee shall be admitted to the Company as a substitute Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement. Such admission shall be deemed effective immediately upon the transfer, and, simultaneously, the transferor Member shall cease to be a Member of the Company and shall have no further rights or obligations under this Agreement.

2. *Partial transfer.* If a Member transfers only a portion of its Membership Interest, the transferee shall be admitted to the Company as an additional Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement.

3. Whether a substitute Member or an additional Member, absent the written consent of all existing Members of the Company, the transferee shall be a limited Member and possess only the percentage of the monetary rights of the transferor Member that was transferred without any voting power as a Member in the Company.

F. Member Voting.

1. *Voting power.* The Company's Members shall each have voting power equal to their share of Membership Interest in the Company.

2. *Proxies.* At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be

delivered to the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

G. Duties of the Members. The Members shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. The Members also shall cause the Company to:

1. Maintain its own books, records, accounts, financial statements, stationery, invoices, checks and other limited liability company documents and bank accounts separate from any other person;
2. At all times hold itself out as being a legal entity separate from the Members and any other person and conduct its business in its own name;
3. File its own tax returns, if any, as may be required under applicable law, and pay any taxes required to be paid under applicable law;
4. Not commingle its assets with assets of the Members or any other person, and separately identify, maintain and segregate all Company assets;
5. Pay its own liabilities only out of its own funds, except with respect to organizational expenses;
6. Maintain an arm's length relationship with the Members, and, with respect to all business transactions entered into by the Company with the Members, require that the terms and conditions of such transactions (including the terms relating to the amounts paid thereunder) are the same as would be generally available in comparable business transactions if such transactions were with a person that was not a Member;
7. Pay the salaries of its own employees, if any, out of its own funds and maintain a sufficient number of employees in light of its contemplated business operations;
8. Not guarantee or become obligated for the debts of any other person or hold out its credit as being available to satisfy the obligations of others;
9. Allocate fairly and reasonably any overhead for shared office space;
10. Not pledge its assets for the benefit of any other person or make any loans or advances to any person;
11. Correct any known misunderstanding regarding its separate identity;
12. Maintain adequate capital in light of its contemplated business purposes;
13. Cause its Members to meet or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Georgia limited liability company formalities;



14. Make any permitted investments directly or through brokers engaged and paid by the Company or its agents;

15. Not require any obligations or securities of the Members; and

16. Observe all other limited liability formalities.

Failure of the Members to comply with any of the foregoing covenants shall not affect the status of the Company as a separate legal entity or the limited liability of the Members.

H. Fiduciary Duties of the Members.

1. *Loyalty and Care.* The Members shall have only the fiduciary duties of loyalty and care required under Georgia Revised Limited Liability Company Act.

i. *Loyalty.* The duty of loyalty shall be limited to:

a. Not usurping or otherwise appropriating an opportunity of the Company without disclosure to and authorization from the other Members;

b. Refraining from competing against the company in the conduct of the Company's activities without disclosure to and authorization from the other Members;

c. Accounting to the other Members any property, profit or benefit derived by the Member in the conduct or winding up of the Company's affairs, or by the use of the Company's property.

ii. *Care.* The duty of care shall be limited to refraining from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of law.

2. *Competition with the Company.* The Members shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority, by individual vote, of the Members excluding the interested Member, consents thereto. The Members shall refrain from competing with the Company in the conduct of the Company's business unless a majority, by individual vote, of the Members excluding the interested Member, consents thereto. In the event that a Member is the sole Member of the Company, no vote shall be required.

3. *Duties Only to the Company.* The Member's fiduciary duties of loyalty and care are to the Company and not to the other Members. The Members shall owe fiduciary duties of disclosure, good faith and fair dealing to the Company and to the other Members. A Member who so performs their duties shall not have any liability by reason of being or having been a Member.

4. *Reliance on Reports.* In discharging the Member's duties, a Member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

- i. One or more Members, Officers, or employees of the Company whom the Member reasonably believes to be reliable and competent in the matters presented.
- ii. Legal counsel, public accountants, or other persons as to matters the Member reasonably believes are within the persons' professional or expert competence.
- iii. A committee of Members of which the affected Member is not a participant, if the Member reasonably believes the committee merits confidence.

5. *Other Considerations.* In discharging the Member's duties, the Member may consider factors that the Member deems relevant, including the long-term prospects and interests of the Company and its Members, and the social, economic, legal, or other effects of any action on the employees, suppliers, and customers of the Company, the communities and society in which the Company operates, and the economy of Georgia and the nation.

I. Waiver of Partition: Nature of Interest. Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each Member hereby irrevocably waives any right or power that such Member might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. No Member shall have any interest in any specific assets of the Company.

J. Compensation of Members. The Members shall have the authority to fix the compensation of individual Members. All Members may be paid their expenses, if any, of attendance at meetings of the Members, which may be a fixed sum for attendance at each meeting of the Members or a stated salary as a Member. No such payment shall preclude any Member from serving the Company in any other capacity and receiving compensation therefor.

K. Members as Agents. All Members are agents of the Company for the purpose of its business. An act of any Member, including the signing of an instrument in the Company's name, binds the Company where the Member executed the act for apparently carrying on the Company's business or business of the kind carried on by the Company in the ordinary course, unless the Member had no authority to act for the Company in the particular matter and the person with whom the Member was dealing knew or had notice that the Member lacked authority. An act of a Member binds the Company, however, even where the Member executed the act not apparently for carrying on the Company's business or business of the kind carried on by the Company in the ordinary course only if the act was authorized by the other Members.

#### IV. Accounting and Distributions.

- A. Fiscal Year. The Company's fiscal year shall end on the last day of December.
- B. Records. All financial records including tax returns and financial statements will be held at the Company's primary business address and will be accessible to all Members.

C. Distributions. Distributions shall be issued, as directed by the Company's Treasurer or Assistant Treasurer, on a quarterly basis, based upon the Company's fiscal year. The distribution shall not exceed the remaining net cash of the Company after making appropriate provisions for the Company's ongoing and anticipatable liabilities and expenses. Each Member shall receive a percentage of the overall distribution that matches that Member's percentage of Membership Interest in the Company.

V. **Tax Treatment Election.**

The Company has not filed with the Internal Revenue Service for treatment as a corporation. Instead, the Company will be taxed as a pass-through organization. The Members may elect for the Company to be treated as a C-Corporation at any time.

VI. **Officers.**

A. Appointment and Titles of Officers. The initial Officers shall be appointed by the Members and shall consist of at least a Chairman, a Secretary and a Treasurer. Any additional or substitute Officers shall be chosen by the Members. The Members may also choose one or more President, Vice-President, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, as permitted by Georgia law. The Members may appoint such other Officers and agents as they shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Members. The Officers and agents of the Company shall hold office until their successors are chosen and qualified. Any Officer elected or appointed by the Members may be removed at any time, with or without cause, by the affirmative vote of a majority of the Members. Any vacancy occurring in any office of the Company shall be filled by the Members. Unless the Members decide otherwise, if the title of an Officer is one commonly used for officers of a limited liability company formed under Georgia law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office.

1. *Chairman.* The Chairman shall be the chief executive officer of the Company, shall preside at all meetings of the Members, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Members are carried into effect. The Chairman shall execute all contracts on behalf of the Company, except:

- i. where required or permitted by law or this Agreement to be otherwise signed and executed;
- ii. where signing and execution thereof shall be expressly delegated by the Members to some other Officer or agent of the Company.

2. *President.* In the absence of the Chairman or in the event of the Chairman's inability to act, the President shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. The President shall perform such other duties and have such other powers as the Members may from time to time prescribe.

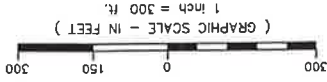
DAWSON COUNTY  
STATE OF GEORGIA  
JOB NO. 2024-3414  
SCALE: AS NOTED  
DWN. BY: ELA  
FIELD WORK: 03-11-2024  
DATE DRAFTED: 03-12-2024  
REVISION: 03-18-2024



OWNER: SCOTT MATHIS  
229 BLUE RIDGE PARKWAY  
DAWSONVILLE, GA 30535  
Business name: MELLOW MUSHROOM  
229 BLUE RIDGE PARKWAY  
DAWSONVILLE, GA 30635  
Site Address:

ALCOHOLIC LICENSE SURVEY FOR:

GENERAL NOTES:  
1. THIS MAP IS A SPECIAL PURPOSE MAP INTENDED FOR SOLE USE OF THE OWNER.  
2. ALL MATTERS OF TITLE ARE EXCEPTED.  
3. THIS PLAT IS NOT FOR RECORDING.  
4. EQUIPMENT USED FOR MEASUREMENTS: SURVEY MEASURING WHEEL AND GOOGLE EARTH.  
5. MEASUREMENTS MADE IN A STRAIGHT LINE  
NO RESPONSIBILITY OR LIABILITY IS ASSUMED BY ATLANTA ENGINEERING SERVICES, INC. OR USE OF SURVEY FOR ANY OTHER PURPOSE INCLUDING, BUT NOT LIMITED TO INC OR USE OF SURVEY AFFIDAVIT, RESALE OF PROPERTY, OR TO ANY OTHER PERSON NOT LISTED IN CERTIFICATION, EITHER DIRECTLY OR INDIRECTLY.



DISTANCE MEASUREMENTS:  
SCHOOL / SCHOOL GROUND:  
214 NORTH SIDE DAWSON ST, DAWSONVILLE, GA 30534  
1.87 MILES MEASURED IN A STRAIGHT LINE  
CHURCH: LOCAL CHURCH DAWSON  
31 SUCESSFUL WAY, DAWSONVILLE, GA 30534  
0.507 MILES MEASURED IN A STRAIGHT LINE  
TREATMENT CENTER: AVITA COMMUNITY PARTNERS  
671 SOUTH LUMPKIN CAMPGROUND RD, SUITE 100  
DAWSONVILLE, GA 30534  
1.71 MILES MEASURED IN A STRAIGHT LINE

DAY CARE: THE INFANT TREE CHRISTIAN PRESCHOOL  
5225 RIDGE FARMS DRIVE, DAWSONVILLE, GA 30041  
1.5 MILES MEASURED IN A STRAIGHT LINE  
COLLEGE: LANIER TECHNICAL COLLEGE  
516 ALLEN STREET  
DAWSONVILLE, GA 30534  
6.5 MILES MEASURED IN A STRAIGHT LINE  
PACKAGE STORE: DAWSON FINE WINE AND SPIRITS  
46 BLUE RIDGE PARKWAY  
DAWSONVILLE, GA 30534  
12.98 MILES MEASURED IN A STRAIGHT LINE



ATLANTA ENGINEERING SERVICES, INC. HAS NOT PERFORMED A BOUNDARY LINE SURVEY AS PER THE GEORGIA PLAT ACT O.C.G.A. 15-8-87.

ATLANTA ENGINEERING SERVICES  
918 HOLCOMB BRIDGE ROAD, SUITE 201  
ROSWELL, GEORGIA 30076  
PHONE: 770-316-1720



3. *Vice-Presidents.* In the absence of the Chairman and President or in the event of their inability to act, any Vice-Presidents in the order designated by the Members (or, in the absence of any designation, in the order of their election) shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. Vice-Presidents, if any, shall perform such other duties and have such other powers as the Members may from time to time prescribe.

4. *Secretary and Assistant Secretary.* The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Members and record all the proceedings of the meetings of the Company and of the Members in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the Members, as required in this Agreement or by Georgia law, and shall perform such other duties as may be prescribed by the Members or the Chairman, under whose supervision the Secretary shall serve. The Secretary shall cause to be prepared such reports and/or information as the Company is required to prepare by applicable law, other than financial reports. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Members (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Members may from time to time prescribe.

5. *Treasurer and Assistant Treasurer.* The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company according to generally accepted accounting practices, using a fiscal year ending on the last day of the month of December. The Treasurer shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Members. The Treasurer shall distribute the Company's profits to the Members. The Treasurer shall disburse the funds of the Company as may be ordered by the Members and shall render to the Chairman and to the Members, at their regular meetings or when the Members so require, an account of all of the Treasurer's transactions and of the financial condition of the Company. As soon as practicable after the end of each fiscal year of the Company, the Treasurer shall prepare a statement of financial condition as of the last day of the Company's fiscal year, and a statement of income and expenses for the fiscal year then ended, together with supporting schedules. Each of said annual statements shall be prepared on an income tax basis and delivered to the Members forthwith upon its preparation. In addition, the Treasurer shall keep all financial records required to be kept pursuant to Georgia law. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Members (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Members may from time to time prescribe.

B. Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Members not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

C. Fiduciary Duties of the Officers.

1. *Loyalty and Care.* The Officers shall have only the fiduciary duties of loyalty and care required under Georgia Revised Limited Liability Company Act.

i. *Loyalty.* The duty of loyalty shall be limited to:

a. Not usurping or otherwise appropriating an opportunity of the Company without disclosure to and authorization from the Members;

b. Refraining from competing against the company in the conduct of the Company's activities without disclosure to and authorization from the Members;

c. Accounting to Members any property, profit or benefit derived by the Officer in the conduct or winding up of the Company's affairs, or by the use of the Company's property.

ii. *Care.* The duty of care shall be limited to refraining from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of law.

2. *Competition with the Company.* The Officers shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority, by individual vote, of the Members, excluding the interested Officer if that Officer is a Member, consents thereto. The Officers shall refrain from competing with the Company in the conduct of the Company's business unless a majority, by individual vote, of the Members, excluding the interested Officer if that Officer is a Member, consents thereto. In the event that the interested Officer is the sole Member, no vote shall be required.

3. *Duties Only to the Company.* The Officers' fiduciary duties of loyalty and care are to the Company and not to the Members or other Officers. The Officers shall owe fiduciary duties of disclosure, good faith and fair dealing to the Company and to the Members, but shall owe no such duties to Officers unless the Officer is a Member. An Officer who so performs their duties shall not have any liability by reason of being or having been an Officer.

4. *Reliance on Reports.* In discharging the Officer's duties, an Officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

i. One or more Members, Officers, or employees of the Company whom the Officer reasonably believes to be reliable and competent in the matters presented.

ii. Legal counsel, public accountants, or other persons as to matters the Officer reasonably believes are within the persons' professional or expert competence.

iii. A committee of Members of which the affected Officer is not a participant, if the Officer reasonably believes the committee merits confidence.

E. Other Considerations. In discharging the Officer's duties, the Officer may consider factors that the Officer deems relevant, including the long-term prospects and interests of the Company and its Members, and the social, economic, legal, or other effects of any action on the employees, suppliers, and customers of the Company, the communities and society in which the Company operates, and the economy of Georgia and the nation.

**VII. Dissolution.**

A. Limits on Dissolution. The Company shall have a perpetual existence, and shall be dissolved, and its affairs shall be wound up only upon the provisions established in Section II(C) above.

Notwithstanding any other provision of this Agreement, the Bankruptcy of any Member shall not cause such Member to cease to be a Member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

Each Member waives any right that it may have to agree in writing to dissolve the Company upon the Bankruptcy of any Member or the occurrence of any event that causes any Member to cease to be a Member of the Company.

B. Winding Up. Upon the occurrence of any event specified in Section II(C), the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. One or more Members, selected by the remaining Members, shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the liabilities of the Company and its assets, shall either cause its assets to be distributed as provided under this Agreement or sold, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided under this Agreement.

C. Distributions in Kind. Any non-cash asset distributed to one or more Members in liquidation of the Company shall first be valued at its fair market value (net of any liability secured by such asset that such Member assumes or takes subject to) to determine the profits or losses that would have resulted if such asset were sold for such value, such profit or loss shall then be allocated as provided under this Agreement. The fair market value of such asset shall be determined by the Members or, if any Member objects, by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) approved by the Members.

D. Termination. The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for under this Agreement and (ii) the Company's registration with the state of Georgia shall have been canceled in the manner required by Georgia law.

E. Accounting. Within a reasonable time after complete liquidation, the Company Treasurer shall furnish the Members with a statement which shall set forth the assets and liabilities of the Company as at the date of dissolution and the proceeds and expenses of the disposition thereof.

F. Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely to the assets of the Company for the return of its Initial Contribution and shall have no recourse for its Initial Contribution and/or share of profits (upon dissolution or otherwise) against any other Member.

G. Notice to Georgia Authorities. Upon the winding up of the Company, the Member with the highest percentage of Membership Interest in the Company shall be responsible for the filing of all appropriate notices of dissolution with Georgia and any other appropriate state or federal authorities or agencies as may be required by law. In the event that two or more Members have equally high percentages of Membership Interest in the Company, the Member with the longest continuous tenure as a Member of the Company shall be responsible for the filing of such notices.

#### **VIII. Exculpation and Indemnification.**

A. No Member, Officer, employee or agent of the Company and no employee, agent or affiliate of a Member (collectively, the "Covered Persons") shall be liable to the Company or any other person who has an interest in or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

B. To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. Expenses, including legal fees, incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall be paid by the Company. The Covered Person shall be liable to repay such amount if it is determined that the Covered Person is not entitled to be indemnified as authorized in this Agreement. No Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions. Any indemnity under this Agreement shall be provided out of and to the extent of Company assets only.

C. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any person as to matters the Covered Person reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value



and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

D. To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement. The provisions of the Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

E. The foregoing provisions of this Article VIII shall survive any termination of this Agreement.

**IX. Insurance.**

The Company shall have the power to purchase and maintain insurance, including insurance on behalf of any Covered Person against any liability asserted against such person and incurred by such Covered Person in any such capacity, or arising out of such Covered Person's status as an agent of the Company, whether or not the Company would have the power to indemnify such person against such liability under the provisions of Article VIII or under applicable law.

**X. Settling Disputes.**

All Members agree to enter into mediation before filing suit against any other Member or the Company for any dispute arising from this Agreement or Company. Members agree to attend one session of mediation before filing suit. If any Member does not attend mediation, or the dispute is not settled after one session of mediation, the Members are free to file suit. Any law suits will be under the jurisdiction of the state of Georgia.

**XI. General Provisions.**

A. Notices. All notices, offers or other communications required or permitted to be given pursuant to this Agreement shall be in writing and may be personally served or sent by United States mail and shall be deemed to have been given when delivered in person or three (3) business days after deposit in United States mail, registered or certified, postage prepaid, and properly addressed, by or to the appropriate party.

B. Number of Days. In computing the number of days (other than business days) for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which national banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.

C. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall together constitute one and the same instrument.

D. Severability. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

E. Headings. The Article and Section headings in this Agreement are for convenience and they form no part of this Agreement and shall not affect its interpretation.

F. Controlling Law. This Agreement shall be governed by and construed in all respects in accordance with the laws of the state of Georgia (without regard to conflicts of law principles thereof).

G. Application of Georgia Law. Any matter not specifically covered by a provision of this Agreement shall be governed by the applicable provisions of Georgia law.

H. Amendment. This Agreement may be amended only by written consent of all the Members. Upon obtaining the approval of any such amendment, supplement or restatement as to the Certificate, the Company shall cause a Certificate of Amendment or Amended and Restated Certificate to be prepared, executed and filed in accordance with Georgia law.

I. Entire Agreement. This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

IN WITNESS WHEREOF, the Members have executed and agreed to this Limited Liability Company Operating Agreement, which shall be effective as of June 15, 2022.

Signature: James Livingston  
James Livingston

Signature: [Handwritten Signature]  
Linda Livingston

Signature: [Handwritten Signature]  
Scott Mathis

**ATTACHMENT A**  
**Initial Contributions of the Members**

The Initial Contributions of the Members of Awesomeville Pie LLC are as follows:

**James Livingston**

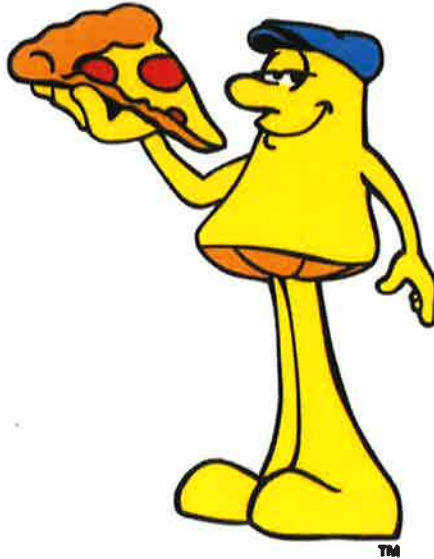
**Contribution:**  
**Cash: \$20.00**

**Linda Livingston**

**Contribution:**  
**Cash: \$20.00**

**Scott Mathis**

**Contribution:**  
**Cash: \$10.00**



**HOME-GROWN INDUSTRIES OF GEORGIA, INC.**  
**FRANCHISE AGREEMENT**

**AWESOMEVILLE PIE LLC**  
**FRANCHISEE**

July 14, 2022  
**DATE OF AGREEMENT**

**229 BLUE RIDGE PARKWAY**  
**DAWSONVILLE, GEORGIA 30534**  
**RESTAURANT ADDRESS**

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Guaranty and Assumption of Obligations



**HOME-GROWN INDUSTRIES OF GEORGIA, INC.**  
**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** (the “Agreement”) is made and entered into by and between **HOME-GROWN INDUSTRIES OF GEORGIA, INC.**, a Georgia corporation d/b/a **MELLOW MUSHROOM** (the “Franchisor”), and **AWESOMEVILLE PIE LLC** (the “Franchisee”) as of the date signed by Franchisor and set forth opposite Franchisor’s signature on this Agreement.

**RECITALS**

**WHEREAS**, Franchisor has developed a system (the “Mellow Mushroom System”) for establishing and operating retail stores selling pizza and related food products, clothing, souvenirs, and novelty items to the general public (“Mellow Mushroom Restaurants”);

**WHEREAS**, the Mellow Mushroom System consists of a general restaurant layout and design, equipment, interior and exterior decoration, signage specifications, menus of standard appearance and design, recipes, formulas, specially-designed paper goods and other items used in dispensing food products, clothing, souvenirs and novelty items, advertising, trade practices, operating methods, various business forms, training materials, manuals, sales techniques, and bookkeeping and accounting systems;

**WHEREAS**, Franchisor has acquired and owns the trade name, service mark, and trademark “Mellow Mushroom” and certain designs, phrases, logos, and other trademarks (the “Marks”) for use in operating a Mellow Mushroom Restaurant under the Mellow Mushroom System according to this Agreement’s terms; and

**WHEREAS**, Franchisee desires to acquire a franchise to operate a Mellow Mushroom Restaurant, and Franchisor desires to grant Franchisee a franchise, on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the above facts and the terms and conditions set forth in this Agreement, the parties agree as follows:

**1. INCORPORATION OF RECITALS AND ACKNOWLEDGMENTS.**

The recitals set forth above are true and correct and incorporated by reference into the body of this Agreement. Franchisee acknowledges that it has read this Agreement and Franchisor’s Franchise Disclosure Document and understands and accepts that the terms, conditions, and covenants contained in this Agreement are reasonably necessary for Franchisor to maintain its high standards of quality and service (and the uniformity of those standards at each Mellow Mushroom Restaurant) and to protect and preserve the goodwill of the Marks. Franchisee acknowledges it has independently investigated the business venture this Agreement contemplates and recognizes that, like any other business, the nature of a Mellow Mushroom Restaurant’s business may evolve and change over time, an investment in a Mellow Mushroom Restaurant involves business risks, and Franchisee’s business abilities and efforts are vital to the venture’s success. Information relating to the sales, profits, or cash flows of Mellow Mushroom

Restaurants that Franchisor or its franchisees operate that is contained in Franchisor's Franchise Disclosure Document and other materials, if any, is only to indicate historical and/or potential future financial performance of Mellow Mushroom Restaurants. Franchisor expressly disclaims the making of, and Franchisee acknowledges it has not received or relied upon, any guaranty or representation, express or implied, of the revenue, profits, or success of the business venture this Agreement contemplates or the extent to which Franchisor will continue to develop and expand the network of Mellow Mushroom Restaurants. Franchisee acknowledges it has not received or relied on any representations about the franchise, Franchisor, or its franchising program contradicting the statements made in Franchisor's Franchise Disclosure Document or this Agreement's terms. Any information Franchisee acquires from other Mellow Mushroom Restaurant franchisees of their sales, profits, or cash flows is not information obtained from Franchisor, and Franchisor makes no representation about that information's accuracy. Franchisee acknowledges that, in all of their dealings with Franchisee, Franchisor's officers, directors, employees, and agents act only in a representative, and not in an individual, capacity. All business dealings between Franchisee and these persons as a result of this Agreement are only between Franchisor and Franchisee.

Franchisee represents to Franchisor, to induce Franchisor's entry into this Agreement, that all statements Franchisee made and all materials it submitted to Franchisor in acquiring the franchise are accurate and complete, and Franchisee made no misrepresentations or material omissions in obtaining the franchise. Franchisor has agreed to grant Franchisee a franchise based on tangible and intangible qualities that Franchisee and its owners have led Franchisor to believe they have. Who Franchisee and its owners are is important and, together with all of Franchisee's representations, influenced Franchisor's decision to grant this franchise.

## **2. GRANT OF FRANCHISE.**

Subject to this Agreement's terms, Franchisor grants to Franchisee during this Agreement's term the right and license (the "Franchise") to use the Mellow Mushroom System and Marks in operating a Mellow Mushroom Restaurant (the "Restaurant") at the address set forth in Exhibit "B" (the "Restaurant Site") and within an exclusive territory equal to a radius of one (1) mile from the Restaurant Site's front entrance (the "Exclusive Territory"). Franchisee may use the Mellow Mushroom System and Marks solely in connection with operating the Restaurant according to this Agreement's terms and all instructions, rules, and procedures Franchisor prescribes from time to time. The Marks may be used solely in connection with the products and services Franchisor designates. Nothing contained in this Agreement authorizes Franchisee's use of the Mellow Mushroom System and/or Marks at any other location or for any other purpose.

## **3. TERM OF FRANCHISE.**

### **A. Initial Term.**

The initial term of this Agreement will be fifteen (15) years, commencing on the date Franchisor executes this Agreement (the "Term"). Franchisee agrees to operate the Restaurant in compliance with this Agreement for the entire Term unless this Agreement is properly terminated under Section 20.A.

**B. Right to Acquire A Successor Franchise.**

(1) When this Agreement expires, if Franchisee (and each of its owners) has substantially complied with this Agreement during the Term, and provided that:

(a) Franchisee maintains possession of and agrees (regardless of cost) to remodel and/or expand the Restaurant, add or replace improvements and operating assets, and otherwise modify the Restaurant as Franchisor requires to comply with specifications and standards then applicable for Mellow Mushroom Restaurants, or

(b) if Franchisee cannot maintain possession of the Restaurant Site, or if in Franchisor's sole judgment the Restaurant should be relocated, Franchisee secures a substitute site within a time period acceptable to Franchisor, develops this site according to specifications and standards then applicable for Mellow Mushroom Restaurants, and continues to operate the Restaurant at the Restaurant Site until transferring operations to the substitute site,

then, subject to the terms and conditions set forth in this Subsection 3.B., Franchisee may acquire one (1) successor franchise to operate the Restaurant as a Mellow Mushroom Restaurant on the terms and conditions of the franchise agreement Franchisor then uses to grant franchises for Mellow Mushroom Restaurants (modified as necessary to reflect that it is for a successor franchise and Franchisee will have no further successor-franchise rights), which may contain provisions materially different from any and all of those contained in this Agreement (including no Exclusive Territory or a modified Exclusive Territory), provided, however, the successor-franchise term will be five (5) years and Franchisee will be obligated to pay a successor-franchise fee of Ten Thousand Dollars (\$10,000) rather than the then-current initial franchise fee Franchisor charges.

(2) Franchisee agrees to give Franchisor written notice of its election to acquire a successor franchise during the fourteenth (14th) year of the Term. After receiving such notice, Franchisor agrees to give Franchisee written notice ("Franchisor's Notice") at least one hundred eighty (180) days before the end of the Term of Franchisor's decision under subparagraph (1) above:

(a) to grant Franchisee a successor franchise;

(b) to grant Franchisee a successor franchise on the condition that Franchisee corrects deficiencies of the Restaurant or in Franchisee's operation of the Restaurant; or

(c) not to grant Franchisee a successor franchise based on Franchisor's determination that Franchisee and its owners have not substantially complied with this Agreement during the Term or located an acceptable substitute site for the Restaurant.

If applicable, Franchisor's Notice will:

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(i) describe the remodeling and/or expansion and other improvements or modifications required to bring the Restaurant into compliance with then-applicable specifications and standards for Mellow Mushroom Restaurants; and

(ii) state the actions Franchisee must take to correct operating deficiencies and the time period in which it must correct these deficiencies.

If Franchisor elects not to grant a successor franchise, Franchisor's Notice will describe the reasons for its decision. Franchisee's right to acquire a successor franchise is subject to its continued compliance with all of the terms and conditions of this Agreement through its expiration date, in addition to its compliance with the obligations described in Franchisor's Notice.

If Franchisor's Notice states that Franchisee must cure certain deficiencies of the Restaurant or its operation as a condition to the grant of a successor franchise, Franchisor will give Franchisee written notice of its decision not to grant a successor franchise, based upon Franchisee's failure to cure those deficiencies, not less than ninety (90) days before this Agreement expires, provided, however, Franchisor need not give Franchisee this ninety (90) days' notice if it decides not to grant Franchisee a successor franchise due to Franchisee's breach of this Agreement during the ninety (90)-day period before it expires. If Franchisor fails to give Franchisee:

(x) notice of deficiencies in the Restaurant, or in Franchisee's operation of the Restaurant, at least one hundred eighty (180) days before this Agreement expires (if Franchisor elects to grant Franchisee a successor franchise under subparagraphs (b) and (ii) above); or

(y) notice of Franchisor's decision not to grant a successor franchise at least ninety (90) days before this Agreement expires, if this notice is required,

Franchisor may unilaterally extend the Term for the time necessary to give Franchisee either reasonable time to correct deficiencies or the ninety (90) days' notice of Franchisor's refusal to grant a successor franchise. If Franchisee fails to notify Franchisor of its election to acquire a successor franchise within the prescribed time period, Franchisor may refuse to grant Franchisee a successor franchise.

(3) If Franchisee satisfies all other conditions for the grant of a successor franchise, Franchisee and its owners agree to execute the form of franchise agreement and any ancillary agreements (including, but not limited to, a Guaranty and Assumption of Obligations) Franchisor then customarily uses in granting franchises for Mellow Mushroom Restaurants (modified as necessary to reflect that it is for a successor franchise and Franchisee will have no further successor-franchise rights), which may contain provisions materially different from any and all of those contained in this Agreement, including no Exclusive Territory or a modified Exclusive Territory. Franchisee and its owners further agree to execute general releases, in a form satisfactory

to Franchisor, of any and all claims against Franchisor and its shareholders, officers, directors, employees, agents, successors, and assigns. Franchisee's or its owners' failure to sign those agreements and releases and return them to Franchisor, with the successor-franchise fee, for acceptance and execution within thirty (30) days after their delivery to Franchisee will be deemed Franchisee's election not to acquire a successor franchise.

#### **4. INITIAL FEES.**

##### **A. Initial Franchise Fee.**

Franchisee agrees to pay Franchisor a nonrecurring and nonrefundable initial franchise fee of Fifty Thousand Dollars (\$50,000) (the "Franchise Fee"), payable concurrently with, and fully earned upon, the execution of this Agreement.

##### **B. Artwork Package Contract and Fee.**

Franchisee agrees to commission and pay for an artwork package designed and created by Franchisor exclusively for the Restaurant, which work will be completed pursuant to a separate agreement between Franchisee and an artist or artists chosen by Franchisor for Franchisee (the "Art Package"). All aspects of the Art Package's form and content that Franchisee commissions are subject to Franchisor's approval before Franchisee may commission and install the Art Package. Franchisee agrees to pay Franchisor as custodian, concurrently with the execution of this Agreement, the sum of Thirty-Five Thousand and NO/Dollars (\$35,000) (the "Art Package Fee"), which is based on the Restaurant's current estimated square footage. Franchisor will disburse the Art Package Fee to the artist or artists with whom Franchisee contracts to design and create the Art Package according to invoices for the work submitted to Franchisee (with copies to Franchisor). If the Art Package's cost is expected to exceed the Art Package Fee due to changes in the Restaurant's square footage or the scope or nature of the Art Package, Franchisee agrees to pay Franchisor as custodian, within five (5) days after Franchisor's demand, the full amount of that expected incremental cost. If the Art Package's actual, final cost is less than the Art Package Fee or the sum of the Art Package Fee plus the incremental costs previously paid by Franchisee, Franchisor agrees promptly to refund to Franchisee the amount it previously paid that exceeds the Art Package's actual, final cost.

#### **5. EXCLUSIVE TERRITORY.**

##### **A. Boundaries.**

Franchisee is granted the right to operate its Restaurant within the Exclusive Territory. Franchisee specifically acknowledges that Franchisor does not guarantee the success or profitability of Franchisee's Restaurant.

##### **B. Protection of Franchisor.**

During the Term, and except as otherwise provided in this Agreement, Franchisor may not own, operate, or issue a franchise for any other Mellow Mushroom Restaurant that has its physical location within the Exclusive Territory, provided, however, Franchisor:

(1) may establish, and allow other franchisees to establish, Mellow Mushroom Restaurants at any locations outside the Exclusive Territory (including at the boundary of the Exclusive Territory) and on any terms and conditions Franchisor deems appropriate;

(2) may allow Mellow Mushroom Restaurants located outside the Exclusive Territory to deliver products to customers located within the Exclusive Territory;

(3) may sell products and services identical, similar, or dissimilar to the products and services Franchisee's Restaurant sells, whether identified by the Marks or other trademarks or service marks, through retail stores (other than Mellow Mushroom Restaurants) located within the Exclusive Territory and through any other distribution channels located and/or operating within the Exclusive Territory; and

(4) may engage in all other business activities not expressly prohibited by this Agreement.

**C. Restrictions on Franchisee.**

The Franchise is granted only for the operation of the Restaurant at the Restaurant Site, and Franchisee may not relocate its Restaurant, whether within or outside the Exclusive Territory, without Franchisor's prior written consent. Franchisee may deliver the Restaurant's products outside its Exclusive Territory as long as it follows Franchisor's standards and specifications. However, Franchisee may not, without Franchisor's prior written consent and without following Franchisor's required standards, specifications, and operating procedures, engage in any promotional activities or sell any food or other products, whether directly or indirectly, through or on the Internet, the World Wide Web, or any similar proprietary or common carrier electronic delivery system (collectively, the "Electronic Media").

**6. SELECTION AND LEASE OF RESTAURANT SITE.**

**A. Site Selection.**

Franchisee acknowledges that, before signing this Agreement, Franchisee (with or without Franchisor's assistance) located and Franchisor accepted the Restaurant Site. Franchisor's recommendation or acceptance of, and any information Franchisor communicated to Franchisee regarding, the Restaurant Site are not Franchisor's representation or warranty, express or implied, that the Restaurant Site is suitable for a Mellow Mushroom Restaurant or any other purpose. Franchisor's recommendation or acceptance of the Restaurant Site indicates only that it believes the Restaurant Site meets or has the potential to meet, or that Franchisor has waived, its then-current criteria for sites. Criteria appearing effective for other sites might not accurately reflect the potential for all sites, and, after Franchisor's site acceptance, demographic and/or other factors included in or excluded from its criteria could change, altering the Restaurant Site's potential. The uncertainty and instability of these criteria are beyond Franchisor's control; Franchisor is not responsible if the Restaurant Site fails to meet Franchisee's revenue or other expectations or business needs. Franchisee acknowledges that its

acceptance of the Franchise is based on its own independent investigation of the Restaurant Site's suitability.

**B. Lease or Purchase of Site.**

Franchisee acknowledges that, before signing this Agreement and the lease (the "Lease") or purchase agreement (the "Purchase Agreement") for the Restaurant Site (the "Lease" and "Purchase Agreement" are collectively referred to as the "Real Estate Agreement"), Franchisee gave Franchisor for review and comment a copy of the final form of the Real Estate Agreement. Franchisee represents that, in the case of the Lease, the Lease contains (either within its text or via a separate Lease Rider signed concurrently with the Lease) the provisions Franchisor required. Franchisee represents that a copy of the signed Real Estate Agreement will be delivered to Franchisor within fifteen (15) days after it is signed. Franchisee acknowledges that Franchisor's review and acceptance of the Real Estate Agreement are not a guarantee or warranty, express or implied, that the Mellow Mushroom Restaurant operated at the Restaurant Site will be successful or profitable. Franchisor's review and acceptance indicate only that Franchisor believes the Restaurant Site and, in the case of the Lease, the Lease's terms meet, or that Franchisor has waived, its then-current criteria for Mellow Mushroom Restaurant sites.

**7. LEASEHOLD IMPROVEMENTS, FIXTURES, AND EQUIPMENT.**

**A. Obligations of Franchisee.**

Within three-hundred-sixty-five (365) days after the date Franchisor executes this Agreement, or such other period upon which Franchisor and Franchisee may agree, Franchisee must (1) at its sole expense, construct, remodel, furnish, and equip its Restaurant in accordance with Franchisor's current requirements and specifications as provided below in this Section 7 and as Franchisor specifies in writing from time to time, and (2) commence operating the Restaurant.

**B. Architectural and Site Plans and Specifications.**

(1) Franchisor will oversee overall implementation of the Restaurant's build-out project with respect to communications, schedule, general budget parameters, and overall design execution. It will provide requirements or guidance for the Restaurant's overall design direction along with a Franchisor-approved Selection Guide or other materials for, among other things, furniture, finishes, bar layout, kitchen layout, and retail options. Franchisor reserves the right to require that the design include an area to display and sell Mellow Mushroom merchandise.

Franchisee is responsible for all costs of designing the Restaurant in accordance with Franchisor's requirements. Franchisor has recommended or will approve, on Franchisee's behalf and for Franchisee to hire, one or more third parties (such as architects and/or engineers) to prepare interior/exterior site and construction documents for the Restaurant. Franchisee must use the architect(s) and/or engineer(s) Franchisor approves and require all such service providers to give Franchisee and Franchisor, upon completing the project, all close-out manuals or other documentation confirming adherence to all project specifications. Franchisee must pay all architectural fees (including any site or civil engineering required for site preparation) associated

with the project (identified in the services contract Franchisee must sign) directly to the architect and engineer. The amount of such fees depends on the project's scope and nature. Franchisee may not hire an architect or engineer Franchisor has not approved. The civil engineer may be an employee of the architectural firm or a civil-engineering firm hired by the architect or franchisee.

(2) Upon receiving the plans for the Restaurant Site and Restaurant, Franchisee must obtain its landlord's written approval of the plans and any required construction permits. Franchisee may not begin constructing the Restaurant until Franchisor accepts in writing the complete, final set of plans and specifications (including for exterior signage) for the Restaurant, as approved by the landlord. If the landlord refuses to approve the Restaurant's proposed plans or any modifications of those plans approved by Franchisor after receiving the landlord's input, as a result of which Franchisee cannot develop the Restaurant in accordance with Franchisor's standards and specifications for the Mellow Mushroom Restaurant proposed to be developed at the Restaurant Site, Franchisor may terminate this Agreement.

(3) Franchisor may specify how and through which format Franchisee and its architect(s), engineer(s), and related service providers must present plans, specifications, and designs to Franchisor, including in a formal presentation to Franchisor. Franchisor will promptly review the final plans and specifications (including for exterior signage) presented to it and accept or provide comments on them. Unless Franchisor expressly rejects such plans and specifications within twenty (20) business days after it receives them, they are deemed to be accepted. Franchisee must obtain Franchisor's written acceptance of any and all changes in the Restaurant's plans before implementing the changes, whether before or during the Restaurant's construction, which acceptance will not be unreasonably withheld. If such changes are not expressly rejected by Franchisor within twenty (20) business days, they are deemed to be accepted. However, if Franchisor rejects any changes to what it had considered to be the final plans and specifications, Franchisee is solely responsible for all costs associated with changing back to the original design.

(4) If at any time Franchisor determines in its sole judgment that the approved or designated architect and/or engineer is not performing its services according to this Agreement's requirements, then Franchisor may require Franchisee immediately to terminate its relationship with the architect and/or engineer and replace him or her with a different architect and/or engineer approved by Franchisor.

### **C. Construction and Inspection.**

(1) Franchisee must, at its own cost, employ a general contractor and others necessary to construct the Restaurant in accordance with the construction documents accepted by Franchisor and any other Franchisor requirements. Franchisee must hire the general contractor Franchisor approves to perform the required construction work at the Restaurant. If Franchisor does not recommend a general contractor, Franchisee must engage a third-party contractor; it may not act as its own contractor. Before Franchisee hires the general contractor, Franchisee must submit to Franchisor for its written acceptance the name of the proposed general contractor, the proposed contractor agreement, and such other information regarding the general contractor as Franchisor reasonably requires. Franchisee may not engage a general contractor whom, or sign a contractor agreement that, Franchisor has not accepted. If at any time Franchisor



determines in its sole judgment that the general contractor is not performing its services according to this Agreement's requirements, then Franchisor may require Franchisee immediately to terminate its relationship with the general contractor and replace him or her with a different contractor accepted by Franchisor. Franchisor will not, by virtue of its acceptance or recommendation of the general contractor or otherwise, be responsible for delays in constructing, equipping, or decorating the Restaurant or any loss or damage to Franchisee or any third party resulting from the Restaurant's design or construction.

(2) Franchisor may access the Restaurant Site while work is in progress and require reasonable alterations to the Restaurant it deems necessary. Franchisor will consult with Franchisee, to the extent Franchisor deems necessary, on constructing and equipping the Restaurant, but it will be Franchisee's sole responsibility diligently to construct, equip, and open the Restaurant.

(3) Franchisor will make a final inspection of the completed Restaurant and may require corrections and modifications it deems necessary to bring the Restaurant into compliance with accepted plans and specifications. The Restaurant may not open if it does not conform to those plans and specifications. Failure to correct promptly any unauthorized variance from the accepted plans and specifications will result in termination of this Agreement.

(4) In addition, if Franchisee's Restaurant is at any time to be altered or remodeled, if artwork is to be modified or added, if additional decorations, fixtures, furniture, or equipment are to be installed or substituted, or if signs are to be erected or altered, Franchisor must approve all such work before it begins. If Franchisee begins such work without Franchisor's pre-approval, Franchisee is solely responsible for all costs associated with returning the Restaurant to its original state if Franchisor does not approve the work that was done. Any such remodeling will be subject to the provisions in Subsection 7.B. above and this Subsection 7.C. Although not obligated to do so, Franchisor may inspect such work at any time to determine whether the work is being done according to the plans and specifications it previously accepted.

#### **D. Additional Layout Plans.**

Subject to Franchisor's prior written approval, if Franchisee changes the Restaurant's location at any time during the Term, Franchisee must conform such Restaurant Site to the then-current layout and specifications for Mellow Mushroom Restaurants and is solely responsible for all related costs and expenses. Should Franchisee require additional layout plans for constructing its relocated Restaurant, subject to other provisions of this Agreement, Franchisee must pay Franchisor for the costs and expenses Franchisor incurs in providing such suggested layout plans for the new Restaurant Site.

#### **E. Fixtures, Furniture, and Equipment.**

Franchisee agrees to use in developing and operating its Restaurant those types of fixtures, furniture, and equipment Franchisor requires. The specifications Franchisor provides for typical fixtures, furniture, and equipment do not limit Franchisee's obligation to provide all required fixtures, furniture, and equipment for the Restaurant at its sole expense. Franchisor may provide specifications for required items, which include, without limitation, a computer system

(including wireless access point), a telephone and telephone-answering system, retail merchandise display, a stereo/audio/video system, and a point-of-sale-information system.

If Franchisor suggests certain suppliers, it does so only as an accommodation to Franchisee. Except as provided in Subsection 8.A. below, Franchisee has the right to substitute suppliers and to purchase or lease the required fixtures, furniture, and equipment from any source, provided the items to be purchased are in strict accordance with Franchisor's specifications. Used fixtures, furniture, or equipment are not normally permitted in the Restaurant. Franchisee must receive Franchisor's prior written approval to install any used fixtures, furniture, or equipment in its Restaurant.

**F. Signs.**

Franchisee must install and display, at its sole expense, all signs to be used in the Restaurant, both exterior and interior, which must conform to the criteria set forth in the Lease and prescribed by Franchisor as to type, color, size, design, and location, as provided in the Mellow Mushroom Confidential Operations Manual (the "Manual") or as Franchisor otherwise specifies. All signs must be approved in writing by Franchisor prior to installation or display, and be installed in accordance with Franchisor's approval, before Franchisee commences operation of the Restaurant.

**G. Maintenance and Repair.**

Maintenance and repair of the Restaurant are Franchisee's sole responsibility. Franchisee must maintain its equipment, decor, furnishings, fixtures, and all other tangible property in the Restaurant in a clean, attractive condition and good repair, regardless of their source, and replace any items which become obsolete or mechanically impaired to the extent they no longer adequately perform the functions for which they were originally intended. Replacement equipment and fixtures must be of the same type and quality as those being used in new Mellow Mushroom Restaurants being developed at the time. All replacement equipment and fixtures must comply with Franchisor's requirements and specifications.

**H. Computer System.**

(1) Franchisee agrees to use in operating the Restaurant the computer equipment, technology products, and technology systems ("Computer System") Franchisor specifies or approves, which includes the point-of-sale system described in Section 8.J. below and any and all equipment components and software necessary for Franchisee to accept and process online orders and Franchisor's gift and loyalty cards and participate in Franchisor's gift card, customer loyalty, affinity, and similar programs. Franchisee must ensure that the Computer System and networks are adequately maintained and protected from unauthorized access. Franchisee must subscribe to a service Franchisor specifies to install an appropriate firewall. Franchisee must ensure that all operating-systems software is regularly maintained and updated in accordance with the manufacturers' specifications and in compliance with Payment Card Industry (PCI) Compliance Standards.

(2) Franchisor may at any time during the Term require Franchisee to obtain specified computer hardware and/or software and modify specifications for and components of the Computer System. Modification of specifications for the Computer System and/or other technological developments or events might require Franchisee to purchase, lease, and/or license new or modified Computer Systems and to obtain service and support for the Computer System. Although Franchisor cannot estimate the Computer System's future costs, and although these costs might not be fully amortizable over the remaining portion of the Term, Franchisee agrees to pay the costs of obtaining the Computer System (or additions and modifications) and required service or support. Within sixty (60) days after Franchisee receives notice from Franchisor, Franchisee agrees to obtain the Computer System components that Franchisor designates.

(3) Franchisor may charge Franchisee a reasonable fee for modifying and enhancing proprietary software that Franchisor licenses to Franchisee and for other Computer System maintenance and support programs and services Franchisor or its affiliates provide. If Franchisor or its affiliates license proprietary software to Franchisee, Franchisee agrees to sign any Software License Agreement or similar document Franchisor or its affiliates prescribe to regulate Franchisee's use of, and the parties' respective rights and responsibilities with respect to, the software.

## **8. METHODS AND STANDARDS OF OPERATIONS.**

In order to maintain uniform standards of operation for all Mellow Mushroom Restaurants and to protect the goodwill of Franchisor, the Mellow Mushroom System, and the Marks, Franchisee agrees to follow the methods and standards of operation Franchisor establishes.

### **A. Standards Established by Franchisor.**

(1) Franchisor retains the right to prescribe in the Manual the standards of quality, service, production, merchandising, construction, design direction, furnishings, finishes, and advertising for the Restaurant at all times during the Term. Franchisee agrees to comply strictly with all mandatory specifications, standards, and operating procedures comprising the Mellow Mushroom System, as set forth in the Manual and as Franchisor otherwise communicates from time to time, and not to deviate from them without Franchisor's prior written consent. Franchisor has developed and may further develop standards and specifications for products, services (including gift, loyalty, and affinity card products and services), equipment (including signage and retail displays), ingredients, supplies, materials, and merchandise (including clothing, souvenirs, and novelty items).

(2) Franchisor reserves the right from time to time to approve distributors or suppliers (collectively "suppliers") of any or all of these items and services so as to instill quality, consistency, and control throughout the Mellow Mushroom System. Further, Franchisor may designate a single supplier or distributor for any item or service. The designated supplier or distributor may be Franchisor or an affiliate of Franchisor. Unless Franchisor directs Franchisee otherwise, Franchisee may purchase these items and services, except the Proprietary Products (as defined in Subsection 8.B.), from any source if the distributor or supplier and the items and services to be purchased strictly comply with Franchisor's standards and specifications. If

Franchisor approves suppliers or designates a distributor or supplier for an item or service, Franchisee must purchase that item or service only from an approved supplier or the designated distributor or supplier, as applicable.

(3) Included among the mandatory specifications, standards, and operating procedures with which Franchisee must comply are those relating to issuing and honoring/redeeming gift certificates, coupons, and gift, loyalty, and affinity cards and administering gift-card and other customer loyalty, affinity, and similar programs. Franchisee must participate in, and comply with the requirements of, Franchisor's gift card and other customer loyalty, affinity, and similar programs (including Franchisor's issuing and honoring/redemption procedures and giving Franchisor all customer-specific information Franchisee receives or generates from operating the Restaurant, which customer-specific information Franchisor will be deemed to own). Franchisor may keep any prepaid amounts not used by customers to the extent allowed by applicable law.

(4) Franchisee also must comply, to the extent allowed by applicable law, with Franchisor's mandatory specifications, standards, and operating procedures relating to using social media, and mobile or digital ordering and Mellow Mushroom System applications and other digital channels ("Apps"), in connection with its operation of the Restaurant, including prohibitions (but only if they do not violate applicable law) on Franchisee's and the Restaurant's employees' posting or blogging comments about the Restaurant or the Mellow Mushroom system ("social media" includes personal blogs, common social networks like Facebook, professional networks like LinkedIn, live-blogging tools like Twitter, virtual worlds, file, audio, and video-sharing sites like Instagram, and other similar social-networking or media sites or tools).

(5) Franchisee may sell no product, service, or other item at the Restaurant unless approved by Franchisor. Franchisee may not, without Franchisor's prior written consent, sell, dispense, give away, or otherwise provide Franchisor's products, or any products bearing the Marks, except through retail sales in the Restaurant or approved delivery services. Franchisee must deliver products to customers, engage with third-party-food-ordering and delivery systems, and ring up and account for delivery and catering charges not included in the price of products only in the manner Franchisor permits. In addition, all menu items must be made in strict compliance with Franchisor's specifications, recipes, and requirements. Franchisee must submit in writing to Franchisor for approval all contemplated menu changes and may not make such changes without Franchisor's prior written consent. In addition, Franchisee must at all times maintain a supply of such food products sufficient to meet public demand.

#### **B. Purchase of Proprietary Products.**

The pizza dough and tomato sauce/spice mix and certain other products (including those which might be developed from time to time) (collectively, the "Proprietary Products") used in preparing Mellow Mushroom Restaurant food products are unique, and their formula and manufacturing process constitute trade secrets essential to the success of the Mellow Mushroom System. The Proprietary Products must be used as Franchisor prescribes. Franchisee must purchase the pizza dough and tomato sauce/spice mix and other Proprietary Products exclusively from Franchisor or its designee and no other source at such prices and under such terms as

Franchisor or its designee establishes from time to time. The right to purchase and use the Proprietary Products is only co-extensive with the Term. Purchases of Proprietary Products other than from Franchisor or its designee, or use or sale of any similar products not supplied by Franchisor or its designee, will result in termination of this Agreement.

**C. Manual.**

Franchisor will give Franchisee access to the Manual before the Restaurant opens. The Manual will govern the Restaurant's operation. Changes may be made by Franchisor from time to time. Franchisee must treat the Manual as confidential and use all reasonable efforts to keep its information secret and confidential. Franchisee may not at any time without Franchisor's prior written consent (except as expressly permitted in the Manual) copy, duplicate, record, or otherwise reproduce these materials in whole or in part or make them available to any unauthorized person. Franchisee agrees that it will operate the Restaurant strictly according to the standards, specifications, and procedures set forth in the Manual and strictly comply with and accept as reasonable any modifications, revisions, and additions to the Manual which Franchisor in good faith believes to be necessary or desirable.

Franchisor currently posts the Manual on a Website, extranet, or intranet. Franchisee agrees to monitor and access the Website, extranet, or intranet as Franchisor specifies for any updates to the Manual or Franchisor's standards, specifications, and procedures. Any passwords or other digital identifications necessary to access the Manual on the Website, extranet, or intranet will be deemed to be part of Confidential Information (defined in Section 17.B. below).

**D. Interior and Exterior Upkeep.**

Franchisee must at all times maintain the appearance and condition of the Restaurant's interior and exterior and the surrounding area and comply with the Manual regarding upkeep of Mellow Mushroom Restaurants. Franchisee must repair, refinish, or paint the Restaurant's exterior and interior at its own expense at such times Franchisor reasonably directs. Franchisor periodically may modify its standards, specifications, and operating procedures for Mellow Mushroom Restaurants, which may accommodate regional or local variations, and these modifications may obligate Franchisee to invest additional capital in the Restaurant and/or incur higher operating costs. Franchisee agrees to implement any changes in standards, specifications, and operating procedures within the time period Franchisor requests, whether they involve refurbishing or remodeling the Restaurant, buying new Restaurant operating assets, adding new products or services, or otherwise modifying the nature of the Restaurant's operations, as if they were part of this Agreement as of its effective date, even if the additional capital investment in the Restaurant at that time (in compliance with Franchisor's requirements) cannot be amortized over the remaining portion of the Term.

**E. Hours of Operation.**

Except as otherwise provided in the Manual or agreed to by Franchisor, the Restaurant must be open to the public from 11:00 a.m. until 10:00 p.m. Sunday through Thursday and from 11:00 a.m. to 12:00 midnight Friday and Saturday. The Restaurant must be closed on Christmas Day. Prior to Franchisor's execution of this Agreement, Franchisee must send Franchisor

adequate proof, as determined by Franchisor, that the Restaurant is not prohibited by any governmental authority under applicable state or local regulations from operating as provided in this subsection.

**F. Advertising Approval.**

Unless provided by Franchisor, all local advertising, promotions, or other forms of publicity to be used by Franchisee, which may include, without limitation, newspaper, radio, and digital advertisements, signs, billboards, appearances by public figures, flyers, coupons, and promotional merchandise in the form of watches, T-shirts, caps, buttons, and similar items, must be submitted to Franchisor for review at least fifteen (15) days prior to use. No advertising, promotion, or publicity may be used without Franchisor's prior approval, which Franchisor may withhold as it deems appropriate. If Franchisor has not expressly rejected any item within these fifteen (15) days, they are accepted. Franchisor reserves the right to request that Franchisee resubmit any previously-accepted advertising or promotional material, at which time Franchisor may reinspect such material and consent to its continued use or withhold consent. As provided in Section 17.B.(6), all programs and advertising created by Franchisee or its advertising agencies will be deemed to be works made-for-hire for Franchisor and Franchisor's sole and exclusive property, which Franchisor may use and allow other franchisees to use however it deems best. Franchisee will take all action (and/or will cause its advertising agency to take all action) necessary to confirm Franchisor's ownership of all copyrights in the programs and advertising without any required payment by Franchisor. For example, Franchisee agrees to ensure that its contracts with advertising and other agencies state that Franchisor will, without any separate payment required, own all materials related to the Mellow Mushroom system prepared by such agencies and that such materials will be deemed to be works made-for-hire for Franchisor. Franchisee also is not entitled to any compensation from Franchisor for such materials.

**G. Time and Attention.**

(1) Throughout the Term, one of Franchisee's owners must be designated Franchisee's "Managing Owner," responsible personally for devoting his or her full time and best efforts to the Restaurant's construction, development, and operation and to whom Franchisor may give direction, and from whom Franchisor may receive feedback, on matters other than those relating to labor relations and employment practices. Franchisee's Managing Owner as of this Agreement's effective date is identified in Exhibit A. If Franchisee's Managing Owner transfers his or her ownership interest in Franchisee (with Franchisor's approval) during the Term, Franchisee must designate a new Managing Owner (whom Franchisor must approve), and have that new Managing Owner attend and satisfactorily complete Franchisor's full training program, within the timeframe Franchisor specifies. Franchisee's Restaurant must at all times be under the direct supervision of the Managing Owner or an approved, trained, and qualified General Manager ("Qualified GM") who has successfully completed the training provided in Subsection 9.A. The Managing Owner and/or the Restaurant's Qualified GM must devote sufficient time and attention to perform their duties under this Agreement. Restaurant employees are under Franchisee's control in implementing and maintaining Mellow Mushroom System standards at the Restaurant.

(2) If the Restaurant is the third (3rd) Mellow Mushroom Restaurant owned by Franchisee and/or its affiliates, Franchisee must hire or appoint (i) a full-time Area Manager to oversee all of Franchisee's and its affiliates' Mellow Mushroom Restaurant operations and (ii) a dedicated marketing resource to manage the marketing activities and materials of Franchisee's and its affiliates' Mellow Mushroom Restaurants. Franchisee must identify the proposed Area Manager candidate for Franchisor in advance. The Area Manager may not also be a Restaurant-level manager performing the duties typical of a single Restaurant manager. The Area Manager must attend and successfully complete Franchisor's required training program within sixty (60) days after his or her hire date. Franchisee must pay Franchisor's then-current training charge and all related travel and living expenses for Area Manager training.

Franchisee may not open the Restaurant for business (if it is the third (3rd) Mellow Mushroom Restaurant owned by Franchisee and/or its affiliates) unless Franchisee's Area Manager is in position and has successfully completed all required training. Franchisee and its affiliates must have a full-time Area Manager for every three (3) to six (6) Mellow Mushroom Restaurants they own. In other words, Franchisee and its affiliates must have one (1) Area Manager for no less than every three (3) Mellow Mushroom Restaurants they own, and the Area Manager may not oversee more than six (6) Mellow Mushroom Restaurants. Once Franchisee and its affiliates own seven (7) Mellow Mushroom Restaurants, they must hire or appoint a second (2nd) Area Manager, and so on.

#### **H. Management of Restaurant.**

The Managing Owner or Qualified GM must assume responsibility for the day-to-day management and operation of the Restaurant, oversight of the preparation of food products, and supervision of personnel. Franchisee may designate any number of Qualified GMs and assistant managers. Qualified GMs and assistant managers, together with the Managing Owner, must spend the time necessary to oversee and actively supervise the Restaurant's operation during operating hours. Franchisee may replace any Qualified GM or assistant manager at any time provided Franchisee notifies Franchisor of any such changes in management personnel by the day following the date on which any new manager is hired. Franchisor may, at its option, require any new manager to complete Franchisor's training program at Franchisee's expense in order to become a Qualified GM.

#### **I. Personnel.**

(1) Franchisee agrees to hire, train, and supervise all Restaurant employees. All personnel must maintain such standards of sanitation, cleanliness, and demeanor Franchisor specifies in the Manual or otherwise in writing. All persons having access to any confidential information, knowledge, or know-how concerning the Mellow Mushroom System must execute a nondisclosure agreement under which such persons agree not to disclose any of the Trade Secrets and Confidential Information (as described in Section 17), knowledge, or know-how concerning the Mellow Mushroom System disclosed to them. Such nondisclosure agreement must name Franchisor as a third-party beneficiary and be approved in advance by Franchisor. Franchisor's approval is solely to ensure that Franchisee adequately protects the Trade Secrets, Confidential Information, knowledge, and know-how. Under no circumstances will Franchisor control the forms or terms of employment agreements Franchisee uses with Restaurant

employees or otherwise be responsible for Franchisee's labor relations or employment practices. Franchisee is liable to Franchisor for any unauthorized disclosure by any of Franchisee's directors, officers, employees, or agents.

(2) Franchisee has sole responsibility and authority for its labor relations and employment practices, including, among other things, employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. Restaurant employees are under Franchisee's control at the Restaurant. Franchisee must communicate clearly with Restaurant employees in employment agreements, human resources manuals, written and electronic correspondence, paychecks, and other materials that Franchisee (and only Franchisee) is their employer and that Franchisor is not their employer or joint employer and does not engage in any employer-type activities for which only franchisees such as Franchisee are responsible. Franchisee also must obtain an acknowledgment (in the form Franchisor specifies or approves) from all Restaurant employees that Franchisee (and not Franchisor) is their employer.

#### **J. Guest Checks and Point of Sale Systems.**

(1) Franchisee must record all sales and receipts of revenue in the manner Franchisor specifies. Franchisee must utilize a point-of-sale system which must be capable of categorizing all sales by product type, have non-resettable devices where all sales are registered, consecutively validate all guest checks, and generate a consecutively-numbered receipt which will be presented at the time of sale to each customer. The point-of-sale system and/or related equipment components and software must enable Franchisee to accept and process online orders and Franchisor's gift and loyalty cards and participate in Franchisor's gift-card, customer-loyalty, affinity, and similar programs. At its sole expense, Franchisee may only use point-of-sale system components of a type and configuration Franchisor specifies from time to time in the Manual or otherwise, which may include contactless payment solutions.

(2) Franchisee must comply with the accounting, recordkeeping, and reporting requirements set forth in the Manual or otherwise. Franchisee must at all times maintain such records specified in the Manual or otherwise, including, but not limited to, sales, inventory, and expense information, on a timely basis. Franchisee also must provide Franchisor or its representatives, agents, or employees with the means to access the Computer System to retrieve information relating to the Restaurant's operation (other than Franchisee's employee records, as Franchisee controls exclusively its labor relations and employment practices). Franchisor must at all times have independent access to the information stored on Franchisee's Computer System (other than Franchisee's employee records, as Franchisee controls exclusively its labor relations and employment practices). As noted in Subsection 14.B.(2), Franchisee must retain a daily sales reporting form and accompanying computer files used in preparing hourly and item sales as Franchisor requires. Such daily sales reporting forms must be submitted to Franchisor on a weekly basis attached to the Weekly Royalty Fee.

(3) If for any reason the Restaurant's point-of-sale system must be repaired, a replacement system must be used in the interim which records sales according to Franchisor's specifications. During any repair period or other down-time of the point-of-sale system, all business records (other than Franchisee's employee records, as Franchisee controls exclusively



its labor relations and employment practices) must be kept on forms and in accordance with procedures Franchisor prescribes from time to time. Franchisee must notify Franchisor of any such repair or other down-time not more than twenty-four (24) hours from the time the system is determined to be inoperative.

**K. Opening.**

Franchisee may not open the Restaurant to the public until Franchisor acknowledges in writing that the Restaurant, Franchisee, the Qualified GM, and other managers are prepared for the opening.

**L. Use of Marks by Third Party.**

Franchisee may not permit any third-party supplier to imprint the Marks on any products, materials, documents, or supplies utilized by Franchisee in operating its Restaurant without first obtaining Franchisor's prior written consent.

**M. Incentive and Sponsorship Programs for Restaurant Employees.**

Franchisee acknowledges that Franchisor may, consistent with applicable law, establish various incentive and sponsorship programs through which existing employees of Mellow Mushroom Restaurants, including Franchisee's Restaurant, might be identified as prospective Mellow Mushroom Restaurant franchisees. Franchisee agrees to support these programs, which are intended to strengthen the Mellow Mushroom System and to create opportunities for employees at Mellow Mushroom Restaurants, and not to challenge or bring an action against Franchisor if one or more of Franchisee's employees leave the Restaurant as a result of one of Franchisor's franchise-incentive or sponsorship programs.

**N. Cooperation.**

Franchisee must cooperate with Franchisor in taking any action, or refraining from taking any action, which in Franchisor's judgment is necessary or desirable to protect the Mellow Mushroom System or the Marks or to promote and enhance service provided by the Restaurant or the Restaurant's image in the community.

**O. Standard Menu Format.**

Franchisee must use a standard menu format Franchisor will supply. Franchisor may change the standard menu format at any time and from time to time. Any changes by Franchisee in the menu format must be accepted in writing by Franchisor prior to use. Franchisor may withhold its acceptance. Franchisee agrees to reimburse Franchisor and its shareholders, directors, officers, employees, and agents for any and all loss, damage, cost, or expense, including reasonable attorneys' fees, they incur resulting from any change Franchisee makes in the standard menu. Franchisor may require that the standard menu format contain advertising references to other Mellow Mushroom Restaurants. Franchisor has the right, to the fullest extent allowed by applicable law, to establish maximum, minimum, or other pricing requirements with respect to the prices charged by Franchisee for its products and services.

**P. Trade Accounts.**

Franchisee agrees to maintain its trade accounts in a current status and to seek to resolve any disputes with trade suppliers promptly. Should Franchisee not maintain its trade accounts, Franchisor may, but is not required to, pay any and all such accounts on Franchisee's behalf, in which event Franchisee agrees immediately to repay Franchisor. Franchisor has the right at any time to communicate directly with Franchisee's trade suppliers and to obtain from them any sales and purchasing information relating to their dealings with Franchisee.

**Q. Compliance with Laws.**

Franchisee must operate the Restaurant in strict compliance with all applicable laws, rules, and regulations. Franchisee is solely responsible for obtaining and maintaining all necessary permits and licenses required for operating the Restaurant.

**R. Payment of Taxes.**

Franchisee is responsible for all taxes related to its Restaurant. All such taxes must be paid directly to the taxing authorities prior to the delinquent date. If the taxes become delinquent, Franchisor may pay the same, together with penalties and interest, if any, on Franchisee's behalf (other than employment-related taxes), in which case Franchisee agrees to repay Franchisor immediately. Franchisor will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property, or other taxes, whether levied upon Franchisee or the Restaurant, due to the business Franchisee conducts (except for Franchisor's own income taxes). Franchisee must pay these taxes and reimburse Franchisor for any taxes Franchisor must pay to any state taxing authority on account of either Franchisee's operation or payments Franchisee makes to Franchisor (except for Franchisor's own income taxes).

**S. Uniforms.**

Franchisor prescribes standard uniforms and attire for all Restaurant personnel in order to enhance Franchisor's product and format. Franchisee is required to purchase a sufficient quantity of uniforms from Franchisor or an approved supplier on such standard terms and prices as may be in effect at the time.

**T. Vending Machines.**

No vending machines, pool tables, amusement devices, video machines, or other devices of any nature may be installed or used at the Restaurant without Franchisor's prior written consent.

**U. Clothing, Souvenirs and Novelty Items.**

Franchisor may specify certain articles of clothing, souvenirs, and other novelty items identified with the Marks or otherwise related to the Mellow Mushroom System which

Franchisee must offer for sale at the Restaurant. Franchisee must maintain a sufficient representative inventory of each item to ensure they are available on a regular basis.

**V. Barter or Countertrade.**

Franchisee may not enter into any barter or countertrade sales transactions with respect to the Restaurant without Franchisor's prior written consent. If Franchisor gives such written consent, Franchisee must record all barter or countertrade sales, include them in Weekly Gross Sales (as defined in Section 14), and report them to Franchisor in accordance with Section 14 of this Agreement.

**W. Access to Premises.**

Franchisee agrees to make available to Franchisor the means for entering the Restaurant Site at any time of the day or night (such means consisting of a key and the necessary code to deactivate any applicable alarm system). Such access is necessary for the efficient and timely delivery of Proprietary Products and to allow Franchisor to conduct inspections. Franchisor agrees that any information or key used for access will be given only to reliable and trustworthy members of Franchisor's staff.

**X. The Exercise of Franchisor's Judgment.**

Franchisor has the right to develop and change the Mellow Mushroom System in any manner that is not specifically prohibited by this Agreement. Whenever Franchisor has reserved in this Agreement a right to take or to withhold an action, or to grant or decline to grant Franchisee a right to take or omit an action, Franchisor may, except as otherwise specifically provided in this Agreement, make its decision or exercise its rights based on information readily available and its judgment of what is in its and/or the Mellow Mushroom System's best interests at the time its decision is made, without regard to whether Franchisor could have made other reasonable or even arguably preferable alternative decisions or whether Franchisor's decision promotes its financial or other individual interest.

**Y. Modification of the Mellow Mushroom System.**

Because complete and detailed uniformity under many varying conditions might not be possible or practical, Franchisee acknowledges that Franchisor specifically reserves the right and privilege, as Franchisor considers to be best, to vary the methods and standards for any franchisee based upon the peculiarities of any condition Franchisor considers important to that franchisee's successful operation. Franchisee has no right to require Franchisor to grant Franchisee a similar variation or accommodation.

**9. SERVICES OF FRANCHISOR.**

In addition to the services set forth elsewhere in this Agreement, and provided Franchisee is not then in default under and has complied with the terms and conditions of this Agreement and any other agreements between Franchisee and Franchisor or any affiliate, Franchisor will perform the following:

**A. Training and Assistance.**

(1) Before the Restaurant opens, Franchisor will train the Managing Owner and up to two (2) additional persons Franchisee designates, including the potential Qualified GM and the Restaurant's other managers and/or assistant managers, in operating a Mellow Mushroom Restaurant. The Managing Owner, the potential Qualified GM, and any additional managers or assistant managers will be trained by Franchisor simultaneously. Franchisor is under no obligation to provide separate training sessions. Such training will be conducted at both a training facility and an operating Mellow Mushroom Restaurant that Franchisor designates and will last for approximately six (6) weeks or for such longer or shorter time Franchisor otherwise deems appropriate. (For example, Franchisor may extend training beyond six (6) weeks depending on the skills, experience, and needs of those attending training.) Franchisor may conduct some portions of training on-line or virtually. In addition, if necessary in Franchisor's opinion, Franchisor will train one additional managerial-level employee during the first thirty (30) days after the Restaurant opens. Franchisor will bear the cost of such training, except for any costs and expenses attributable to transportation, room and board, wages, and other personal expenses.

The Managing Owner and each of Franchisee's management personnel who participate in Franchisor's initial training program must pursue training diligently. Successful completion of the initial training program by the Managing Owner and up to two (2) managers and/or assistant managers, including the potential Qualified GM, is a condition to opening. The Managing Owner's failure to complete training satisfactorily will allow Franchisor to terminate this Agreement. If any manager or assistant manager fails to complete Franchisor's training program satisfactorily, Franchisee may send a replacement to Franchisor's training program. Training of the replacement manager or assistant manager is additional training for which Franchisee is required to reimburse Franchisor.

(2) If, after the Restaurant opens, Franchisor determines that the Managing Owner or Franchisee's managers or assistant managers, including the Qualified GM, require additional training in any area of operations, or Franchisee hires an additional or replacement manager or assistant manager and Franchisor determines that Franchisee is unable to train such manager or assistant manager adequately, Franchisor may require that the Managing Owner, manager, or assistant manager satisfactorily complete the training Franchisor designates. Training of any additional or replacement manager or assistant manager will be for at least three (3) weeks. Should Franchisee at any time desire that Franchisor train additional management personnel, including any replacement manager or assistant manager, or should Franchisor require that a manager or assistant manager complete Franchisor's training program, Franchisee must pay all salary, travel, and lodging for such person during training and reimburse Franchisor for its costs of training, up to a maximum of One Thousand Dollars (\$1,000) for each individual providing training, plus reasonable expenses (including travel, lodging, meals, and other out-of-pocket expenses).

(3) Franchisor will provide, at its own expense, personnel for up to three (3) weeks, or as Franchisor otherwise deems necessary, to assist at Franchisee's Restaurant in all phases of the opening and provide such other assistance to Franchisee as Franchisor deems necessary in order to assist Franchisee in opening its Restaurant.

**B. Inspections.**

(1) Franchisor may inspect the Restaurant from time to time to enhance uniformity and quality control. Franchisor's personnel or designated agents or representatives may enter the Restaurant at any reasonable time and from time to time for conferences with Franchisee or its managers, inspection of the operation (including photographing the Restaurant and videoing (with full audio) its operation for consecutive or intermittent periods), testing products sold in the Restaurant, and all other purposes to determine that the Restaurant is being operated according to this Agreement, the Manual, and other applicable rules. Franchisee specifically authorizes Franchisor or its designated agents or representatives in the Restaurant to monitor the operation of cash registers or point-of-sale systems for such periods of time Franchisor determines to be necessary. Franchisor will notify Franchisee in writing of any defects, deficiencies, or unsatisfactory conditions discovered at the Restaurant, and Franchisee agrees immediately to begin correcting or repairing these conditions.

(2) If Franchisor (or its agents or representatives) inspects the Restaurant and determines it is not operating in compliance with this Agreement and all of Franchisor's required standards, specifications, and operating procedures, and Franchisor then must re-inspect the Restaurant to determine whether Franchisee has corrected the operating deficiencies, Franchisor may require Franchisee to pay it Two-Thousand-Five-Hundred Dollars (\$2,500) for each follow-up inspection of the Restaurant. Franchisor also has the right to require Franchisee immediately to suspend the Restaurant's operation temporarily if continued operation would create a public health or safety risk. That suspension will continue until, in Franchisor's opinion, the cause of the event has been determined and corrected.

(3) If Franchisee fails to comply with the obligation to correct or repair, Franchisor, in addition to all other available rights and remedies, may make or cause to be made the corrections or repairs, and the expenses of doing so, including meals, lodging, wages, and transportation for Franchisor's personnel, must be promptly reimbursed by Franchisee upon Franchisor's request.

**C. Products, Supplies and Materials.**

(1) Following execution of this Agreement, Franchisor will make available for purchase from Franchisor or its designated suppliers all printed paper, paper products, plastic goods and containers (the "Paper Products"), clothing, souvenirs, and novelty items bearing the Marks. Franchisee must purchase these items from the designated supplier (if only one is designated) or an approved supplier that has complied with Franchisor's supplier-acceptance guidelines. Since many of the Paper Products and clothing, souvenirs, and novelty items will bear the Marks, each supplier also will be required to execute Franchisor's Supplier License Agreement, setting forth the manner in which the Marks are to be imprinted, the required text on these materials, and necessary specifications and standards for preparing these materials.

(2) To protect and maintain the reputation and goodwill of Franchisor's Mellow Mushroom System and the Marks, all supplies (including gift and loyalty cards and related services), equipment, furnishings, fixtures, and services must conform to specifications and quality standards Franchisor establishes from time to time and be purchased from suppliers Franchisor accepts in writing. If Franchisee proposes to use any product, supply, material, equipment, furnishing, or service not previously accepted by Franchisor as conforming to its specifications and quality standards and/or from a supplier not previously approved, Franchisee must first notify Franchisor. Franchisee must submit to Franchisor, upon request, sufficient specifications, photographs, and/or other information or samples for examination and/or testing so that Franchisor may determine whether such product, supply, material, or service and/or such supplier meets Franchisor's specifications and standards as set forth in the Manual or otherwise, which determination will be made and communicated to Franchisee within a reasonable time period. Franchisor also has the right to inspect such supplier's facilities. Franchisor reserves the right, at its option, to reinspect the facilities and products of any accepted supplier and to revoke its acceptance upon the supplier's failure to continue meeting Franchisor's criteria and specifications. Franchisee must reimburse Franchisor for all excessive or unusual costs and expenses Franchisor incurs in any examination, testing, or inspection, including, but not limited to, travel and lodging expenses incurred where Franchisor deems it necessary to visit a supplier's facilities.

(3) Franchisor is not obligated to accept an inordinate number of suppliers for a given item or service if this would result in higher costs generally to franchisees or prevent the effective and economical supervision of approved suppliers. Nor is Franchisor obligated to accept any supplier of a proposed item or service if Franchisor already has designated or approved a single supplier or a limited number of suppliers for each item or service, even if Franchisor or an affiliate is the designated or approved supplier. Franchisor and its affiliates have the right to receive payments from suppliers on account of their actual or prospective dealings with Franchisee and other franchisees and to use all amounts received without restriction (unless instructed otherwise by the supplier) for any purposes they deem appropriate.

## 10. INSURANCE.

### A. Liability, Fire, Business Interruption, and Workers' Compensation Insurance.

Franchisee must secure and maintain insurance coverage, including general-liability, products-liability, and employment-practices-liability insurance, with insurance carriers acceptable to Franchisor and according to Franchisor's current insurance requirements set forth from time to time in the Manual. Franchisee agrees that it will at all times maintain general-liability insurance of at least One-Million Dollars (\$1,000,000) per occurrence, Two-Million Dollars (\$2,000,000) in the aggregate. Insurance coverage must commence when Franchisee first takes possession of the Restaurant Site, comply with the Lease's requirements, and include coverage for such risks, in such amounts, and subject to such policy limits and deductible amounts Franchisor determines from time to time. Franchisee also must carry such workers'-compensation insurance required by applicable law. In addition, Franchisor may require as a condition of any supplier approval that such supplier include Franchisor and Franchisee as additional named insureds under such supplier's product liability insurance.

**B. Conditions of Coverage.**

Franchisor must be named as an additional insured on all policies (except for employment-practices-liability insurance, unless Franchisor requires otherwise) for claims arising from the Restaurant's operation and must receive certificates of insurance evidencing coverage. All policies must provide Franchisor with at least ten (10) days' prior written notice of cancellation or termination of coverage. Franchisor reserves the right to specify reasonable changes in the types and amounts of required insurance coverage. Should Franchisee fail or refuse to procure and maintain the required insurance coverage from an insurance carrier acceptable to Franchisor, Franchisor may procure such coverage for Franchisee, in which event Franchisee agrees to pay the required premiums and/or to reimburse Franchisor.

**11. BRAND DEVELOPMENT AND ENHANCEMENT.**

**A. Brand Development Fund.**

(1) Recognizing the value of advertising, marketing, and other brand-enhancement activities to the goodwill and public image of Mellow Mushroom Restaurants, Franchisor has established a Brand Development Fund (the "Brand Fund") for the advertising, marketing, public relations, and other brand-development and enhancement programs and materials it deems appropriate. Franchisee agrees to contribute to the Brand Fund the minimum amounts Franchisor periodically prescribes, not to exceed three percent (3%) of the Restaurant's Weekly Gross Sales, payable at the same time and in the same manner as the Weekly Royalty Fees. Mellow Mushroom Restaurants that Franchisor or its affiliates own will contribute to the Brand Fund on the same basis as franchisees. Franchisor also may collect for deposit into the Brand Fund any advertising, marketing, or similar allowances paid by suppliers who deal with Mellow Mushroom Restaurants.

(2) Franchisor will direct and determine all programs the Brand Fund finances. The Brand Fund may pay for preparing and producing video, audio, and written materials and Electronic Media; developing, implementing, operating, and maintaining the Franchise System Website, an intranet or extranet, and/or related strategies; administering national, regional, and multi-regional marketing, advertising, and other brand-development and enhancement programs, including outfitting Restaurants with additional signage or artwork and other brand-building; purchasing direct mail and other media advertising; doing on-line Internet advertising, marketing, and other brand-building; using advertising, promotion, and marketing agencies to provide assistance; administering, staffing, and supporting all public-relations programs and store-quality and operational-enhancement programs; on-site training of store personnel; and supporting market research and other advertising, promotion, marketing, and other brand-development and enhancement activities, including conducting franchise conferences and research and development of new menu items and products. Franchisor may advertise in printed materials, on public signage, on radio or television, or in other media (including Electronic Media), depending on what it thinks is best. Franchisor's staff and/or outside advertising agencies will produce materials and programs. The Brand Fund periodically will give Franchisee samples of public relations, marketing, and promotional formats and materials at no cost.

Multiple copies of these materials are available for purchase from Franchisor's designated vendor at its then-current prices, plus any related shipping and handling charges.

(3) Franchisor will account for the Brand Fund separately from its other funds and not use the Brand Fund for any of its general operating expenses, except for the reasonable salaries, administrative costs, travel expenses, and overhead it incurs in administering and implementing the Brand Fund and its programs, including, without limitation, conducting market research; preparing advertising, promotion, marketing, and other brand-development and enhancement materials; arranging for public signage; conducting public relations and store-quality and operational-enhancement programs; on-site training of store personnel; and collecting and accounting for Brand Fund contributions, including, without limitation, paying taxes on Brand Fund contributions Franchisor receives. Although the Brand Fund is not a trust, Franchisor will hold all Brand Fund contributions for the contributors' benefit and use contributions only for their intended purposes (as defined above). The Brand Fund may spend in any fiscal year more or less than all Brand Fund contributions in that year, borrow from Franchisor or others (paying reasonable interest) to cover deficits, invest any surplus for future use, and roll over unspent monies to the following year. Franchisor may use new Brand Fund contributions to pay Brand Fund deficits incurred during previous years. Franchisor will use all interest earned on Brand Fund contributions to pay costs before using the Brand Fund's other assets. Franchisor will prepare an annual, unaudited statement of Brand Fund collections and expenses and give Franchisee the statement upon written request. Franchisor may have the Brand Fund audited annually, at the Brand Fund's expense, by an independent certified public accountant Franchisor selects. Franchisor may have the Brand Fund incorporated or operated through a separate entity anytime it deems appropriate. The successor entity will have all of the rights and duties specified in this Subsection.

(4) The Brand Fund is to maximize recognition of the Marks, increase patronage of Mellow Mushroom Restaurants, and enhance the in-store and on-line experience of a Mellow Mushroom customer. Although Franchisor will try to utilize the Brand Fund to benefit all Mellow Mushroom Restaurants, Franchisor undertakes no obligation to ensure that Brand Fund expenditures in or affecting any geographic area are proportionate or equivalent to the Brand Fund contributions by Mellow Mushroom Restaurants operating in that geographic area or that any Mellow Mushroom Restaurant will benefit directly or in proportion to its Brand Fund contribution. While the Brand Fund will not be used to develop materials and programs intended principally for the solicitation of franchises, materials and programs created with and paid for by Brand Fund contributions may reference the availability of franchises and related information. Except as expressly provided in this Subsection, Franchisor assumes no direct or indirect liability or obligation to Franchisee for collecting amounts due to, maintaining, directing, or administering the Brand Fund.

(5) Franchisor may defer or reduce contributions of a Mellow Mushroom Restaurant franchisee and, upon thirty (30) days' prior written notice to Franchisee, reduce or suspend Brand Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Brand Fund. If Franchisor terminates the Brand Fund, it will distribute all unspent monies on the date of termination to franchisees and to Franchisor and its



affiliates in proportion to their respective Brand Fund contributions during the preceding twelve (12)-month period.

**B. By Franchisee.**

In addition to its Brand Fund contributions under Subsection 11.A. above, Franchisee agrees to spend the minimum amounts Franchisor periodically prescribes, not to exceed two percent (2%) of the Restaurant's Weekly Gross Sales, to advertise and promote the Restaurant locally. Franchisee agrees to send Franchisor the periodic reports it requests concerning Franchisee's advertising, marketing, and promotional activities and expenditures. Franchisee agrees that its advertising, promotion, and marketing will be completely clear, factual, and not misleading and conform to the highest standards of ethical advertising and marketing and the advertising and marketing policies Franchisor prescribes from time to time. As noted in Subsection 8.F., Franchisee must send Franchisor for approval samples of all advertising, promotional, and marketing materials which Franchisor has not prepared or previously approved within the past twelve (12) months before Franchisee uses them. If Franchisee does not receive written disapproval within fifteen (15) days after Franchisor receives the materials, they are deemed to be approved. Franchisee may not use any advertising, promotional, or marketing materials Franchisor has not approved or has disapproved. As used in this Subsection, advertising, promotional, and marketing materials include any information relating to Franchisor, Franchisee, or the Restaurant that Franchisee plans to include on a Website (if Franchisor allows Franchisee to establish a Website).

**C. Advertising Cooperatives.**

Franchisee agrees that Franchisor may designate any geographic area in which two (2) or more Mellow Mushroom Restaurants are located as a region in order to establish an advertising cooperative ("Cooperative"). The Cooperative's members in any area will include all Mellow Mushroom Restaurants operating in that area. Each Cooperative will be organized and governed in a form and manner, and begin operating on a date, Franchisor determines in advance. Each Cooperative's purpose is, with Franchisor's approval, to administer advertising programs and develop promotional materials for the area the Cooperative covers. If, when Franchisee signs this Agreement, Franchisor has established a Cooperative for the geographic area in which the Restaurant is located, or if Franchisor establishes a Cooperative in the area covering the Restaurant during this Agreement's term, Franchisee agrees to participate in the Cooperative as its governing documents require.

In addition to its Brand Fund contributions in Subsection 11.A. above, Franchisee agrees to contribute to the Cooperative the amounts determined by a two-thirds (2/3) vote of all Mellow Mushroom Restaurant franchisees that are members of that Cooperative. Each franchisee will have one vote, regardless of the number of Mellow Mushroom Restaurants that franchisee (or its affiliates) operates within the Cooperative's area.

Franchisee agrees to submit to Franchisor and the Cooperative any reports Franchisor requires. The Cooperative will operate solely to collect and spend Cooperative contributions for the purposes described above. The Cooperative and its members may not use any advertising or promotional plans or materials without Franchisor's prior written consent.

#### **D. Franchise System Website**

(1) Franchisor and its affiliates may establish one or more Websites (a) to advertise, market, and promote Mellow Mushroom Restaurants, their products and services, the brand, and/or the Mellow Mushroom Restaurant franchise opportunity, (b) through which to operate on-line product ordering and other fulfillment systems, and (c) for any other purposes Franchisor considers appropriate or necessary for the Mellow Mushroom franchise System or other business activities in which Franchisor engages (**each a “Franchise System Website”**). If Franchisor establishes a Franchise System Website, it may provide Franchisee with a separate interior webpage (accessible only through the Franchise System Website) referencing Franchisee’s Restaurant and/or otherwise allow Franchisee to participate in the Franchise System Website. At Franchisor’s request, Franchisee must develop its webpage at its own expense using a template Franchisor provides. Franchisor must pre-approve Franchisee’s webpage before it is posted by Franchisor’s webmaster on the Franchise System Website and has the continuing right to monitor and pre-approve the webpage’s form, content, and quality during the Term. Franchisor may reject Franchisee’s webpage if it is in a form or contains content Franchisor finds unacceptable. Franchisee’s webpage always must comply with Franchisor’s standards and specifications. Franchisee may modify its webpage only through and with the pre-approval of Franchisor’s webmaster. Franchisee must give Franchisor the information and materials Franchisor requests for Franchisee to participate in the Franchise System Website. By giving Franchisor the information and materials, Franchisee represents they are accurate and not misleading and do not infringe another party’s rights. Franchisor will own all intellectual property and other rights in the Franchise System Website, Franchisee’s webpage, and all information they contain (including, without limitation, the log of “hits” by visitors and any personal or business data that visitors supply).

(2) Franchisor will control, and may use Brand Fund contributions to develop, maintain, operate, update, and market, the Franchise System Website, including Franchisee’s webpage (if any). Franchisor will update the information on Franchisee’s webpage, if any, or add information Franchisor approves as frequently as it deems appropriate. Franchisee must notify Franchisor whenever any information on its webpage changes or is not accurate. Franchisee must pay Franchisor’s then-current fee to participate in the various aspects of the Franchise System Website or as Franchisor otherwise requires to maintain and operate the Franchise System Website’s various features and functions (if, or to the extent, the Brand Fund does not pay for these costs). Franchisor has final approval rights over all information on the Franchise System Website, including Franchisee’s webpage, if any. Franchisor may implement and periodically modify standards and specifications for the Franchise System Website.

(3) Franchisor will maintain Franchisee’s webpage, if any, and otherwise allow Franchisee to participate in the Franchise System Website only while Franchisee is in substantial compliance with this Agreement and all system standards and specifications (including those for the Franchise System Website). If Franchisee is in material default of any obligation under this Agreement or Franchisor’s standards and specifications, Franchisor may, in addition to its other remedies, temporarily suspend Franchisee’s participation in the Franchise System Website until Franchisee fully cures the default. Franchisor will permanently terminate Franchisee’s access to and participation in the Franchise System Website upon this Agreement’s expiration or termination.

(4) All marketing and other materials Franchisee develops for the Restaurant must contain notices of the Franchise System Website's domain name(s) in the manner Franchisor designates. Franchisee may not develop, maintain, link to, or authorize any other Website mentioning or describing Franchisee or the Restaurant or displaying any of the Marks.

## 12. INDEMNIFICATION.

(1) Franchisee agrees to indemnify and hold harmless Franchisor, its affiliates, and their respective owners, directors, officers, employees, agents, successors, and assignees (the "Indemnified Parties") against, and to reimburse any one or more of the Indemnified Parties for, all Losses (defined below) incurred as a result of a claim asserted or threatened or an inquiry made formally or informally, or a legal action, investigation, or other proceeding threatened or brought, by a third party and directly or indirectly arising out of the Restaurant's operation; the business Franchisee conducts under this Agreement; Franchisee's noncompliance or alleged noncompliance with any law, ordinance, rule, or regulation, including any allegation that Franchisor or another Indemnified Party is an employer or joint employer or otherwise responsible for Franchisee's acts or omissions relating to Franchisee's employees; or Franchisee's breach of this Agreement. Franchisee also agrees to defend the Indemnified Parties (unless an Indemnified Party chooses to defend at Franchisee's expense as provided in the following paragraph) against any and all such claims, inquiries, actions, investigations, and proceedings, including those alleging the Indemnified Party's negligence, gross negligence, willful misconduct, and willful wrongful omissions. However, Franchisee has no obligation to indemnify or hold harmless an Indemnified Party for any Losses to the extent they are determined in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction to have been caused solely and directly by the Indemnified Party's gross negligence (as distinguished from just negligence), willful misconduct, or willful wrongful omissions, so long as the claim to which those Losses relate is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or joint employment) or Franchisor's failure to compel Franchisee to comply with this Agreement.

(2) For purposes of this indemnification and hold harmless obligation, "Losses" includes all obligations, liabilities, damages (actual, consequential, or otherwise), and reasonable defense costs any Indemnified Party incurs. Defense costs include, without limitation, accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration, or alternative dispute resolution, regardless of whether litigation, arbitration, or alternative dispute resolution is commenced. Each Indemnified Party may, with its own counsel and at Franchisee's expense, defend and otherwise respond to and address any claim asserted or threatened or inquiry made, or action, investigation, or proceeding threatened or brought (instead of having Franchisee defend it with Franchisee's counsel, as provided in the preceding paragraph), and, in cooperation with Franchisee, agree to settlements or take any other remedial, corrective, or other actions, for all of which defense and response costs and other Losses Franchisee is solely responsible.

(3) Franchisee's obligations in this Section will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its

Losses, in order to maintain and recover fully a claim against Franchisee under this Section. Franchisee agrees that a failure to pursue a recovery or mitigate a Loss will not reduce or alter the amounts an Indemnified Party may recover from Franchisee under this Section.

### **13. PAYMENTS TO FRANCHISOR.**

In addition to all other payments provided in this Agreement, Franchisee must pay to Franchisor promptly when due, or in the case of Subsections 13.D. and 13.E. below upon Franchisor's demand, the following:

#### **A. Weekly Royalty Fee.**

A weekly royalty fee for use of the Mellow Mushroom System and Marks (the "Weekly Royalty Fee") in an amount equal to five percent (5%) of Franchisee's "Weekly Gross Sales," as defined in Subsection 14.A. The Weekly Royalty Fee is not in exchange for any particular products, services, or assistance but instead is solely in consideration of Franchisor's granting the Franchise to Franchisee.

#### **B. Weekly Brand Fund Fee.**

A weekly Brand Fund fee, as more fully described in Subsection 11.A.

#### **C. Sales and Use Taxes.**

The amount of all sales, use, and similar taxes imposed upon or required to be collected or paid on account of goods or services furnished to Franchisee by Franchisor.

#### **D. Advances.**

All amounts, if any, advanced by Franchisor on Franchisee's behalf. Franchisor is not under any obligation to make any advances.

#### **E. Late Fee and Interest.**

Franchisee agrees to pay Franchisor a One-Hundred Dollar (\$100) late fee for each required payment not made on or before its original due date and for each payment not honored by Franchisee's financial institution. (Franchisee also must reimburse Franchisor's bank charges for Franchisee's dishonored payments.) This late fee is not interest or a penalty but compensates Franchisor for increased administrative and management costs due to Franchisee's late payment. In addition, all amounts Franchisee owes Franchisor that are more than seven (7) days late will bear interest, accruing as of their original due date, at one and one-half percent (1.5%) per month or the highest commercial contract interest rate the law allows, whichever is less. Franchisor may debit Franchisee's account automatically for late fees and interest. This Subsection is not Franchisor's agreement to accept any late payments or its commitment to extend credit to, or otherwise finance Franchisee's operation of, the Restaurant.

**14. PAYMENT OF ROYALTIES AND FEES; REPORTING REQUIREMENTS.**

**A. Weekly Gross Sales.**

The term "Weekly Gross Sales" means the total revenue Franchisee derives from its Restaurant during each one-week period from all sales of food, goods, wares, merchandise, and services, whether for cash, check, credit, or otherwise, including any sales in connection with barter or countertrade, if any, without reserve or deduction for inability or failure to collect payment, and including sales and services where the orders originate at and are accepted by Franchisee in the Restaurant though delivery or performance is made from or at any other place or received or billed at or from the Restaurant. Weekly Gross Sales will not be reduced by the amount paid to, collected by, or shared with third-party food-ordering and delivery systems with which Franchisor allows the Restaurant to do business. For purposes of calculating Weekly Gross Sales, all such transactions will be valued at the full retail price charged by the Restaurant. Weekly Gross Sales will not include rebates or refunds to customers (if the original payment was included in Weekly Gross Sales) or the amount of any sales or other taxes Franchisee collects from customers to be paid to any federal, state, or local taxing authority.

**B. Payment of Royalties and Fees.**

(1) Franchisee agrees to pay Franchisor on or before the close of business on Friday of each week, calculated upon the Weekly Gross Sales of Franchisee's Restaurant during the preceding calendar week ending at close of business on Sunday, the Weekly Royalty Fee and Weekly Brand Fund Fee accompanied by weekly statements in the form Franchisor specifies. (Franchisor may change the day on which the calendar week is deemed to close and/or the date of the week on which payment is due.)

(2) Franchisee must deliver to Franchisor any sales data Franchisor reasonably requests in the form, manner, and frequency requested. Such data must include: (a) daily sales and related information, which must be submitted concurrently with the Weekly Royalty Fee and Weekly Brand Fund Fee; and (b) a copy of monthly state sales-tax returns to be delivered to Franchisor concurrently with the monthly profit-and-loss statement described in Subsection 14.C.

(3) Franchisee must pay Franchisor the Weekly Royalty Fee, Weekly Brand Fund Fee, and other amounts due under this Agreement by automatic debit, and Franchisee agrees to comply with such payment instructions. At Franchisor's request, Franchisee must sign and deliver to Franchisor the documents (or take any other action) Franchisor requires to debit Franchisee's business checking account automatically for the Weekly Royalty Fee, Weekly Brand Fund Fee, and other amounts due under this Agreement. On or before the day Franchisor specifies, Franchisee must report to Franchisor by telephone or electronic means or in written form, as Franchisor directs, the Restaurant's true and correct Weekly Gross Sales. Franchisor will debit Franchisee's account for the Weekly Royalty Fee and Weekly Brand Fund Fee on a date it specifies when it sets up the automatic debit program (although it may change that date). Franchisee agrees to make the funds available for withdrawal by electronic transfer before each due date.

If Franchisee fails to report the Restaurant's Weekly Gross Sales, Franchisor may debit Franchisee's account for one-hundred-twenty percent (120%) of the last Weekly Royalty Fee and Weekly Brand Fund Fee it debited. If the Weekly Royalty Fee and Weekly Brand Fund Fee that Franchisor debits from Franchisee's account are less than the Weekly Royalty Fee and Weekly Brand Fund Fee that Franchisee actually owes Franchisor (once Franchisor has determined the Restaurant's true and correct Weekly Gross Sales), Franchisor will debit Franchisee's account for the balance of the Weekly Royalty Fee and Weekly Brand Fund Fee due on the day Franchisor specifies. If the Weekly Royalty Fee and Weekly Brand Fund Fee that Franchisor debits from Franchisee's account are greater than the Weekly Royalty Fee and Weekly Brand Fund Fee that Franchisee actually owes Franchisor, Franchisor will credit the excess against the amount Franchisor otherwise would debit from Franchisee's account during the following week.

**C. Financial Statements.**

No later than ten (10) days following the end of each calendar month, Franchisee must provide Franchisor with "compilation report" financial statements, including a profit-and-loss statement and a balance sheet reflecting the Restaurant's financial condition as of the last day of the preceding calendar month, in the form Franchisor specifies in the Manual. The Managing Owner or Qualified GM is personally required to certify the completeness and accuracy of the accounting records, submit the financial statements, and submit operating reports and sales figures with all royalty payments and Brand Fund fees as provided elsewhere in this Agreement. Franchisee also must deliver to Franchisor, within thirty (30) days after the end of each semi-annual-calendar period or, in the case of a corporation, limited liability company, or partnership, within thirty (30) days after the end of each semi-annual-fiscal period, "review report" financial statements, including a balance sheet, a profit-and-loss statement, and a statement of changes in financial position for each such semi-annual period prepared by Franchisee's certified public accountant. Additionally, Franchisee must submit to Franchisor, on a quarterly basis, an electronic copy of Franchisee's accounting-software data. The records and information described in this subsection will not include any records or information relating to Restaurant employees, as Franchisee controls exclusively its labor relations and employment practices.

**D. Corporation, Limited Liability Company, or Partnership.**

If Franchisee is at any time a corporation, limited liability company, or partnership, it agrees and represents that:

(1) Franchisee will have the authority to execute, deliver, and perform its obligations under this Agreement, having obtained all required board-of-directors or other consents, and is duly organized or formed and validly exists in good standing under the laws of the state of its incorporation or formation;

(2) Franchisee's organizational documents, operating agreement, or partnership agreement will recite that the issuance and transfer of any ownership interests are restricted by this Agreement's terms, and all certificates and other documents representing ownership interests in Franchisee will bear a legend (the wording of which Franchisor may prescribe) referring to this Agreement's restrictions;

(3) Exhibit A to this Agreement will completely and accurately describe all of Franchisee's owners and their interests in Franchisee;

(4) Each of Franchisee's owners at any time during the Term, including after an approved transfer, will execute an agreement in the form Franchisor prescribes undertaking to be bound jointly and severally by all provisions of this Agreement and any ancillary agreements between Franchisor and Franchisee. Franchisee and its owners agree to execute and deliver to Franchisor any revised Exhibits A that are necessary to reflect any changes in the information Exhibit A now contains and to furnish any other information about its organization or formation that Franchisor requests; and

(5) The Restaurant or other Mellow Mushroom Restaurants will be the only business Franchisee operates.

## **15. RECORDKEEPING AND ACCOUNTING.**

### **A. Use of Uniform System of Accounting.**

Franchisor's uniform system of accounting and recordkeeping, including its standardized forms, are incorporated in the Manual, which Franchisee must use on a continuing basis and in the manner Franchisor prescribes to maintain the books and records of the Restaurant and Franchisee's business. This uniform system may be amended or supplemented by Franchisor from time to time and includes, without limitation, forms for reporting Weekly Gross Sales, the Weekly Royalty Fee, and the Weekly Brand Fund Fee. Franchisor may require Franchisee to use a Computer System to maintain certain sales data and other information. Franchisor may, as often as it deems appropriate, access the Computer System and retrieve all information relating to the Restaurant's operation (other than Restaurant employee records, as Franchisee controls exclusively its labor relations and employment practices).

### **B. Records and Audits.**

Franchisee must maintain and preserve accurate books, records, tax returns, and related materials for the Restaurant for at least five (5) years after their preparation. Franchisee must make these books, records (other than Restaurant employee records, as Franchisee controls exclusively its labor relations and employment practices), tax returns, and supporting materials available for Franchisor's inspection, examination, or audit at all reasonable times and at such locations Franchisor designates from time to time. Such examination or audit will be at Franchisor's expense unless the total Weekly Gross Sales submitted by Franchisee for the period being inspected is understated by two percent (2%) or more, in which case Franchisee is responsible for all costs and expenses of the audit. Franchisee must immediately pay Franchisor on demand any deficiency in royalty or Brand Fund fee payments disclosed on examination together with: (1) interest, as specified earlier in this Agreement; and (2) a service charge of ten percent (10%) of the amount of understated fees. If Franchisee fails to make such payment to Franchisor within five (5) days after it receives Franchisor's demand, interest also will accrue on the ten percent (10%) service charge described at (2) above.

**C. Tax Returns.**

Franchisee must submit to Franchisor copies of Franchisee's annual federal, state, and city income and sales-tax returns within ten (10) days after filing, to the extent these returns relate to the Restaurant.

**16. TRANSFERABILITY OF INTEREST.**

**A. By Franchisor.**

Franchisee acknowledges that Franchisor maintains a staff to manage and operate the Mellow Mushroom System, and staff members can change as employees come and go. Franchisee represents that it has not entered into this Agreement in reliance on any shareholder, director, officer, or employee remaining with Franchisor in that capacity. Franchisor may change its ownership or form and/or assign this Agreement and any other agreement without restriction. After Franchisor's assignment of this Agreement to a third party who expressly assumes the obligations under this Agreement, Franchisor no longer will have any performance or other obligations under this Agreement. That assignment will constitute a release and novation with respect to this Agreement, and the new owner-assignee will be liable to Franchisee as if it had been an original party to this Agreement. Specifically and without limiting the foregoing, Franchisee agrees that Franchisor may sell its assets (including this Agreement), the Marks, or the franchise system to a third party; offer its ownership interests privately or publicly; merge, acquire other business entities, or be acquired by another business entity; and/or undertake a refinancing, recapitalization, leveraged-buyout, or other economic or financial restructuring.

**B. By Franchisee.**

Franchisee understands and acknowledges that the rights and duties this Agreement creates are personal to Franchisee (or, if Franchisee is a corporation, limited liability company, or partnership, to its owners) and Franchisor has granted the Franchise to Franchisee in reliance upon its perceptions of Franchisee's (or its owners') individual or collective character, skill, aptitude, attitude, business ability, and financial capacity. Accordingly, neither this Agreement (or any interest in this Agreement), the Restaurant or substantially all of its assets, any ownership or other interest in Franchisee or the Restaurant, nor any controlling ownership interest in any of Franchisee's owners (if such owners are legal entities) may be transferred without Franchisor's prior written approval. Any transfer without this prior written approval is a breach of this Agreement and has no effect, meaning Franchisee (and its owners) will continue to be obligated to Franchisor for all its obligations under this Agreement. A transfer of the Restaurant's ownership, possession, or control, or substantially all of its assets, may be made only with the concurrent transfer (to the same proposed transferee) of the franchise rights (with the transferee assuming this Agreement or signing Franchisor's then-current form of franchise agreement and related documents, as Franchisor may require). Franchisee must notify Franchisor promptly if at any time it enters into substantive discussions regarding a potential transfer or retains the services of a broker or other agent to (i) assist in identifying potential buyers for Franchisee or the Restaurant or (ii) otherwise to facilitate a transfer. The term "transfer" includes Franchisee's (or its owners') voluntary, involuntary, direct, or indirect assignment, sale, gift, or other disposition of any interest in:



- (1) this Agreement;
- (2) Franchisee;
- (3) the Restaurant or its assets; or
- (4) Franchisee's owners (if such owners are legal entities).

An assignment, sale, gift, or other disposition includes the following events:

(i) transfer of ownership of capital stock, a partnership interest, or another form of ownership interest;

(ii) merger or consolidation or issuance of additional securities or interests representing an ownership interest;

(iii) any sale of an ownership interest or any security convertible to an ownership interest;

(iv) transfer of an interest in Franchisee, this Agreement, the Restaurant or its assets, or Franchisee's owners in a divorce, insolvency, or corporate, limited-liability-entity, or partnership-dissolution proceeding or otherwise by operation of law;

(v) transfer of an interest in Franchisee, this Agreement, the Restaurant or its assets, or an owner of Franchisee, in the event of death, by will, declaration of or transfer in trust, or under the laws of intestate succession; or

(vi) (a) the grant of a mortgage, charge, pledge, collateral assignment, lien or security, or other interest in this Agreement, the Restaurant, any of its operating assets, or an ownership interest in Franchisee (or in an entity with an ownership interest in Franchisee), excluding only a security interest (including a purchase-money security interest) in the Restaurant's real estate, fixtures, furnishings, equipment, and vehicles granted to a lender that finances Franchisee's acquisition, development and/or operation of the Restaurant; (b) foreclosure upon or attachment or seizure of the Restaurant, any of its operating assets, or any interest in Franchisee (or an entity with an ownership interest in Franchisee); or (c) Franchisee's transfer, surrender, or loss of the Restaurant's possession, control, or management.

### **C. Conditions for Approval of Transfer.**

If Franchisee (and its owners) is fully complying with this Agreement, then, subject to the other provisions of this Section 16:

(1) A non-controlling ownership interest in Franchisee or its owners (determined as of the date on which the proposed transfer will occur) may be transferred if the proposed

transferee and its direct and indirect owners (if the transferee is an entity) are of good character and otherwise meet Franchisor's then-applicable standards for non-controlling owners of Mellow Mushroom Restaurant franchisees (including no ownership interest in or performance of services for a competitive business). Franchisee, the transferring owner(s), and the proposed transferee and its direct and indirect owners must sign the documents Franchisor specifies to effect the transfer (including new forms of Guaranty and Assumption of Obligations), and Franchisee must pay Franchisor Two-Thousand Dollars (\$2,000). The term "controlling ownership interest" is defined in Section 23.M.

(2) If the proposed transfer is of the franchise rights granted by this Agreement or a controlling ownership interest in Franchisee or in an entity owning a controlling ownership interest in Franchisee, or is one of a series of transfers (regardless of the time period over which these transfers take place) which in the aggregate transfer the franchise rights granted by this Agreement or a controlling ownership interest in Franchisee or in an entity owning a controlling ownership interest in Franchisee, Franchisor will not unreasonably withhold its approval if all of the following conditions are met:

(a) on both the date Franchisee sends Franchisor the transfer request and the transfer's proposed effective date: (i) the transferee has the necessary business experience, aptitude, and financial resources to operate the Restaurant; (ii) the transferee otherwise is qualified under Franchisor's then-existing standards for the approval of new franchisees or of existing franchisees interested in acquiring additional franchises (including being in substantial operational compliance, at the time of the application, under other franchise agreements for Mellow Mushroom Restaurants to which the transferee or any of its affiliates then is a party with Franchisor); and (iii) the transferee and its owners are not restricted by another agreement (whether or not with Franchisor) from purchasing the Restaurant or the ownership interest in Franchisee or the entity that owns a controlling ownership interest in Franchisee;

(b) (i) on both the date Franchisee sends Franchisor the transfer request and the transfer's proposed effective date, Franchisee has paid all Weekly Royalty Fees, Weekly Brand Fund Fees, and other amounts owed to Franchisor or third-party creditors and submitted all required reports and statements, and (ii) Franchisee has not violated any provision of this Agreement, the Lease, or another agreement with Franchisor during either the ninety (90)-day period before Franchisee requested Franchisor's consent to the transfer or during the period between the date Franchisee sends Franchisor the transfer request and the transfer's proposed effective date;

(c) on both the date Franchisee sends Franchisor the transfer request and the transfer's proposed effective date, the transferee and its owners and affiliates do not operate or have an ownership interest in a competitive business, as defined in Subsection 18.A.;

(d) Franchisee is allowed to transfer the Lease or sublease the Restaurant Site to the transferee;

(e) Franchisee or the transferee pays Franchisor, at the time Franchisee requests approval of the transfer, a transfer fee equal to Ten-Thousand Dollars (\$10,000), only Five-Thousand Dollars (\$5,000) of which will be refunded if the transfer does not occur;

(f) before the transfer's proposed effective date, Franchisee (and its transferring owners) have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its shareholders, officers, directors, employees, and agents;

(g) Franchisor has determined that the purchase price and payment terms will not adversely affect the transferee's operation of the Restaurant. Franchisor reserves the right to hire an independent third party to appraise the Restaurant's fair market value and suggest an appropriate sales price before Franchisor grants or denies its consent to the proposed transfer. Franchisee must pay all costs associated with such appraisal. The appraisal price will be considered advisory only and will not bind Franchisor. Franchisor retains the sole right to determine the reasonableness of the sales price and whether the proposed sales price and payment terms will adversely affect the transferee's operation of the Restaurant;

(h) if Franchisee or its owners finance any part of the sales price of the transferred interest, (i) Franchisee and/or its owners agree before the transfer's proposed effective date that the transferee's obligations under any promissory notes, agreements, or security interests that Franchisee or its owners have reserved in the Restaurant are subordinate to the transferee's obligation to pay Weekly Royalty Fees, Weekly Brand Fund Fees, and other amounts due to Franchisor and otherwise to comply with this Agreement, and (ii) Franchisee and its owners must obtain Franchisor's pre-approval and satisfy any conditions Franchisor then reasonably imposes in order to take back the Restaurant upon the transferee's default under any seller-financing documents (Franchisee and its owners do not under any circumstances have the automatic right to take back the Restaurant upon the transferee's default);

(i) before the transfer's proposed effective date, Franchisee and its transferring owners (and their spouses and children) agree that, for two (2) years beginning on the transfer's effective date, they will not engage in any activity proscribed in Subsection 18.B.;

(j) before the transfer's proposed effective date, Franchisee and its transferring owners agree that, after the transfer's effective date, they will not directly or indirectly at any time or in any manner (except in other Mellow Mushroom Restaurants they own and operate) identify themselves in any business as a current or former Mellow Mushroom Restaurant or as one of Franchisor's franchisees, use any Mark, any colorable imitation of a Mark, or other indicia of a Mellow Mushroom Restaurant in any manner or for any purpose, or utilize for any purpose any trade name, trade or service mark, or other commercial symbol that suggests or indicates a connection or association with Franchisor;

(k) before the transfer's proposed effective date, (i) Franchisee has corrected existing Restaurant deficiencies of which Franchisor has notified Franchisee on a punch-list or in other communications, and/or (ii) the transferee agrees (if the transfer is of this Agreement) to upgrade, remodel, and refurbish the Restaurant according to Franchisor's then-current requirements and specifications for Mellow Mushroom Restaurants within the time period Franchisor specifies following the transfer's effective date (Franchisor will advise the transferee, before the transfer's effective date, of the specific actions it must take and the time period within which it must do so); and

(l) before the transfer's proposed effective date, the transferee (if the transfer is of the franchise rights granted by this Agreement) or Franchisee (if the transfer is of a controlling ownership interest in Franchisee or in an entity owning a controlling ownership interest in Franchisee), must, if Franchisor so requires, sign Franchisor's then-current forms of franchise agreement and related documents ("related documents" include the Guaranty and Assumption of Obligations), any and all provisions of which may differ materially from any and all of those contained in this Agreement, provided, however, (i) the duration of the new franchise agreement signed will equal this Agreement's unexpired Term, (ii) the Weekly Royalty Fee and Weekly Brand Fund Fee percentages charged to the transferee under the new franchise agreement will be the same percentages specified in this Agreement, and (iii) the size of the Exclusive Territory, as defined in this Agreement, will remain the same under the new franchise agreement.

Franchisee acknowledges that Franchisor has legitimate reasons to evaluate the qualifications of potential transferees and to analyze and critique the terms of their purchase contracts with Franchisee, and Franchisor's contact with potential transferees to protect its business interests will not constitute improper or unlawful conduct. Franchisee expressly authorizes Franchisor to investigate any potential transferee's qualifications, to analyze and critique the proposed purchase terms, to communicate candidly and truthfully with the transferee regarding the nature of Franchisee's operation of the Restaurant, and to withhold its consent, as long as its decision is not unreasonable, even if the conditions in clauses 2(a) through 2(l) above are satisfied. Franchisee waives any claim that Franchisor's decision to withhold approval of a proposed transfer in order to protect its business interests—if that decision was reasonable despite satisfaction of the conditions in clauses 2(a) through 2(l) above—constitutes a breach of contract or tortious interference with contractual or business relationships. Franchisor has the sole right to determine whether the transfer conditions above have been satisfied. Franchisor may review all information regarding the Restaurant that Franchisee gives the proposed transferee, correct any information Franchisor believes is inaccurate, and give the transferee copies of any reports Franchisee has given Franchisor or Franchisor has made regarding the Restaurant.

Notwithstanding anything to the contrary in this Section 16 or elsewhere in this Agreement, Franchisor need not consider a proposed transfer of a controlling or non-controlling ownership interest in Franchisee, or a proposed transfer of the franchise rights granted by this Agreement, until Franchisee (or an owner) and the proposed transferee first send Franchisor a copy of a bona fide offer to purchase or otherwise acquire the particular interest from Franchisee (or the owner). For an offer to be considered "bona fide," it must include a copy of all proposed agreements between Franchisee (or its owner) and the proposed transferee related to the sale, assignment, or transfer.

**D. Transfer to A Wholly-Owned Corporation or Limited Liability Company.**

Despite Subsection 16.C. above, if Franchisee is fully complying with this Agreement, Franchisee may transfer this Agreement to a corporation or limited liability company which conducts no business other than the Restaurant and, if applicable, other Mellow Mushroom Restaurants, in which Franchisee maintains management control, and of which Franchisee owns and controls one hundred percent (100%) of the equity and voting power of all issued and outstanding capital stock or other ownership interests, and further provided that all of the Restaurant's assets are owned, and the Restaurant's entire business is conducted, by that single corporation or limited liability company. The corporation or limited liability company must expressly assume all of Franchisee's obligations under this Agreement. Transfers of ownership interests in the corporation or limited liability company are subject to the provisions of Subsection 16.C. above. Franchisee agrees to remain personally liable under this Agreement as if the transfer to that corporation or limited liability company did not occur. Such transfer must be approved by Franchisor, and Franchisee must pay all legal fees and expenses Franchisor incurs to prepare and execute any revised franchise documentation.

**E. Franchisee's Death or Disability.**

(1) Transfer Upon Death or Disability. Upon the Managing Owner's death or disability, the Managing Owner's executor, administrator, conservator, guardian, or other personal representative must transfer the Managing Owner's interest in Franchisee to a third party. The disposition of that interest in Franchisee (including, without limitation, transfer by bequest or inheritance) must be completed within a reasonable time, not to exceed nine (9) months from the date of death or disability, and will be subject to all terms and conditions applicable to transfers contained in this Section. A failure to transfer the ownership interest in Franchisee within this time period is a breach of this Agreement. The term "disability" means a mental or physical disability, impairment, or condition that is reasonably expected to prevent or actually does prevent the Managing Owner from managing and operating the Restaurant.

(2) Operation Upon Death or Disability. If, upon the Managing Owner's death or disability, a Qualified GM is not managing the Restaurant, the Managing Owner's executor, administrator, conservator, guardian, or other personal representative must within a reasonable time, not to exceed fifteen (15) days from the date of death or disability, appoint a manager to operate the Restaurant. The manager must complete training at Franchisee's expense within the timeframe Franchisor specifies in order to become a Qualified GM.

If, in Franchisor's judgment, the Restaurant is not being managed properly any time after the Managing Owner's death or disability, Franchisor may, but need not, assume the Restaurant's management (or appoint a third party to assume its management). If Franchisor assumes the Restaurant's management (or appoints a third party to do so), the manager will not exercise direct or indirect control over the working conditions of the Restaurant's employees, except to the extent such indirect control is

related to Franchisor's legitimate interest in protecting the quality of the products, services, and Mellow Mushroom brand. All funds from the Restaurant's operation while it is under Franchisor's (or the third party's) management will be kept in a separate account, and all expenses will be charged to this account. Franchisor may charge Franchisee (in addition to the Weekly Royalty Fee, Weekly Brand Fund Fee, and other amounts due under this Agreement) Four-Hundred Dollars (\$400) per person per day, plus Franchisor's (or the third party's) direct out-of-pocket costs and expenses, if Franchisor (or a third party) assumes the Restaurant's management under this subparagraph. Franchisor (or a third party) has a duty to utilize only reasonable efforts and, provided it is not grossly negligent and does not commit an act of willful misconduct, will not be liable to Franchisee or its owners for any debts, losses, lost or reduced profits, or obligations the Restaurant incurs, or to any of Franchisee's creditors for any products, other assets, or services the Restaurant purchases, while Franchisor (or a third party) manages it.

**F. Effect of Consent To Transfer.**

Franchisor's consent to a transfer of this Agreement and the Restaurant or any interest in Franchisee or its owners is not a representation of the fairness of the terms of any contract between Franchisee and the transferee, a guarantee of the Restaurant's or transferee's prospects of success, or a waiver of any claims Franchisor has against Franchisee (or its owners) or of Franchisor's right to demand the transferee's exact compliance with this Agreement's terms or conditions.

**G. Franchisor's Right of First Refusal.**

If Franchisee, any of its owners, or the owner of a controlling ownership interest in an entity with an ownership interest in Franchisee at any time determines to sell, assign, or transfer for consideration the franchise rights granted by this Agreement and the Restaurant, an ownership interest in Franchisee, or a controlling ownership interest in the entity with an ownership interest in Franchisee in a transaction that otherwise would be allowed under Sections 16.B. and C above, Franchisee (or its owner) agrees to obtain a bona fide, executed written offer (which, as noted in Subsection 16.C. above, must include a copy of all proposed agreements related to the sale or transfer) and earnest money deposit (for five percent (5%) or more of the offering price) from a responsible and fully-disclosed offeror (including lists of the record and beneficial owners of any corporate or limited-liability-company offeror and all general and limited partners of any partnership-offeror and, in the case of a publicly-held corporation or limited partnership, copies of the most current annual and quarterly reports and Form 10K) and immediately send Franchisor a true and complete copy of the offer, which includes details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a dollar amount. The offer must apply only to an interest in Franchisee (or in the entity with an ownership interest in Franchisee) or in the franchise rights granted by this Agreement and the Restaurant and may not include an offer to purchase any of Franchisee's (or its owners') other property or rights. However, if the offeror proposes to buy any other property or rights from Franchisee (or its owners) under a separate, contemporaneous offer, Franchisee must disclose that separate, contemporaneous offer to Franchisor, and the purchase price and

terms offered to Franchisee (or its owners) for the interest in Franchisee (or in the entity with an ownership interest in Franchisee) or in the franchise rights granted by this Agreement and the Restaurant must reflect the bona fide price offered for it or them and not reflect any value for any other property or rights.

The right-of-first-refusal process will not be triggered by a proposed transfer that would not be allowed under Subsections B and C above and therefore may not proceed. Franchisor may require Franchisee (or its owners) to send Franchisor copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction. Franchisor has the unrestricted right to assign this right of first refusal to a third party, who then will have the rights described in this Subsection.

Franchisor may, by written notice delivered to Franchisee or its selling owner(s) within thirty (30) days after Franchisor receives both an exact copy of the offer and all other information it requests, elect to purchase the interest for the price and on the terms and conditions contained in the offer, provided that:

- (1) Franchisor may substitute cash for any form of payment proposed in the offer;
- (2) Franchisor's credit will be deemed equal to the credit of any proposed purchaser;
- (3) Franchisor will have not less than sixty (60) days after giving notice of its election to purchase to prepare for closing;
- (4) Franchisor must receive, and Franchisee and its owners agree to make, all customary representations and warranties given by the seller of the assets of a business or the capital stock of or other forms of ownership interest in a legal entity, as applicable, including, without limitation, representations and warranties as to:
  - (a) ownership and condition of and title to stock or other forms of ownership interest and/or assets;
  - (b) liens and encumbrances relating to the stock or other forms of ownership interest and/or assets;
  - (c) validity of contracts;
  - (d) the liabilities, contingent or otherwise, of the entity whose ownership interests are being purchased;
  - (e) Franchisee's and its owners' authorization to sell, as applicable, any ownership interests or assets without violating any law, contract, or requirement of notice or consent; and

(f) indemnities for all actions, events, and conditions that existed or occurred in connection with the Restaurant before the closing of Franchisor's purchase; and

(5) if the price offered for the interest proposed to be transferred includes any portion of the transfer fee referenced in Section 16.C.(2)(e) above, Franchisor or its designee may reduce the purchase price it must pay (if it exercises the right of first refusal) by the amount of that transfer fee.

Once Franchisee or its selling owner(s) submits the offer and related information to Franchisor triggering the start of the thirty (30)-day decision period referenced above, the offer is irrevocable during that thirty (30)-day period. This means Franchisor has the full thirty (30) days to decide whether to exercise the right of first refusal and may choose to do so even if Franchisee or its selling owner(s) changes its, his, or her mind during that period and prefers after all not to sell the particular interest that is the subject of the offer. Franchisee and its selling owner(s) may not withdraw or revoke the offer for any reason during the thirty (30)-day period, and Franchisor (or its designee) may exercise the right to purchase the particular interest in accordance with this Subsection's terms.

If Franchisor exercises its right of first refusal, Franchisee and its selling owner(s) agree that, for two (2) years beginning on the closing date, they will be bound by the noncompetition covenant contained in Subsection 18.B. below, although this noncompetition covenant does not apply to other Mellow Mushroom Restaurants that Franchisee or its owners operate under a franchise agreement with Franchisor. Franchisee and its selling owner(s) further agree to abide during this same time period by the restrictions in Subsection 16.C.(2)(i) of this Agreement.

If Franchisor does not exercise its right of first refusal, Franchisee or its owners may complete the sale to the purchaser on the original offer's exact terms, but only if Franchisor otherwise approves the transfer in accordance with, and Franchisee (and its owners) and the transferee comply with the conditions in, Subsections B and C above. This means that, even if Franchisor does not exercise its right of first refusal (whether or not it is properly triggered as provided above), if the proposed transfer otherwise would not be allowed under Subsections B and C above, Franchisee (or its owners) may not move forward with the transfer at all.

If Franchisee does not complete the sale to the purchaser within sixty (60) days after Franchisor receives the offer (assuming Franchisor does not exercise the right of first refusal), or if there is a material change in the sale terms (which Franchisee agrees promptly to communicate to Franchisor), Franchisor will have an additional right of first refusal during the thirty (30) days following either expiration of the sixty (60)-day period or notice to Franchisor of the material change(s) in the sale terms, either on the terms originally offered or the modified terms, at Franchisor's option.



**17. PROTECTION OF TRADEMARKS AND RELATED PROPRIETARY RIGHTS.**

**A. Rights to the Mellow Mushroom System and the Marks.**

Franchisee's right to use the Marks is limited to operation of Franchisee's Restaurant. Franchisee acknowledges Franchisor's ownership of the Marks and the schemes, standards, specifications, operating procedures, and other concepts embodied in the Mellow Mushroom System. Franchisee will acquire no right, title, or interest in these items, and any and all goodwill associated with the Mellow Mushroom System and the Marks inures exclusively to Franchisor's benefit. When this Agreement expires or is terminated, no monetary amount will be attributable to any goodwill associated with Franchisee's use of the Mellow Mushroom System or the Marks.

**B. Trade Secrets and Confidential Information.**

Franchisee acknowledges that, during the Term, Franchisor will disclose in confidence to Franchisee, either orally or in writing, certain Trade Secrets and other Confidential Information.

(1) "Trade Secrets" means the Proprietary Products and any know-how, design, process, procedure, or improvement with respect to the operations of Franchisor or Mellow Mushroom Restaurants that are known only to Franchisor and its employees.

(2) "Confidential Information" means any data or information, other than Trade Secrets, that is competitively sensitive and not disclosed to the public by Franchisor or not generally known by the public, including, without limitation, the confidential contents of the Manual.

(3) Excluded from the term "Confidential Information" is information which Franchisee knows or knew, as evidenced by written records, before Franchisor disclosed it to Franchisee, so long as Franchisee properly obtained this information outside the scope of this Agreement. Excluded from the terms "Trade Secrets" and "Confidential Information" is information which (a) is disclosed to Franchisee in good faith by a third party who has the right to make such a disclosure and is not violating any obligation to Franchisor with respect to such information; (b) is or becomes known or available to the public through no fault of Franchisee and without breach of this Agreement; or (c) is furnished to a third party by Franchisor without a similar restriction on the third-party's rights.

(4) All Trade Secrets and Confidential Information are and remain Franchisor's property. Any reproductions, notes, summaries, or similar documents relating to the Trade Secrets and Confidential Information, and any files, memoranda, reports, price lists, customer lists, and other documents relating to the Mellow Mushroom System, will become and remain Franchisor's property immediately upon their creation. When this Agreement expires or is terminated, or upon Franchisor's prior demand, Franchisee must immediately return all of these materials together with all copies.

(5) Franchisee agrees that it will not during or after the Term use or permit the duplication or disclosure to any person of any Trade Secrets or Confidential Information

(other than an employee, agent, or representative of Franchisee who must have such information to perform Franchisee's obligations under this Agreement), unless Franchisor authorizes such use, duplication, or disclosure in writing.

(6) All ideas, concepts, techniques, and materials relating to a Mellow Mushroom Restaurant, whether or not protectable intellectual property and whether created by or for Franchisee or its owners or employees, must be promptly disclosed to Franchisor and will be deemed to be Franchisor's sole and exclusive property, part of the Franchise System, and works made-for-hire for Franchisor. To the extent any item does not qualify as a "work made-for-hire" for Franchisor, by this paragraph Franchisee assigns ownership of and all related rights to that item to Franchisor and agrees to take whatever action (including signing assignment or other documents) Franchisor requests to evidence Franchisor's ownership or to help Franchisor obtain intellectual property rights in the item.

### **C. Limitations on Franchisee's Use of Marks.**

Franchisee agrees to use the Marks as the Restaurant's sole identification, except that Franchisee agrees to identify itself as the Restaurant's independent owner in the manner Franchisor prescribes. Except to the extent Franchisor authorizes Franchisee to do so, Franchisee may not use any Mark (1) as part of any corporate or legal business name, (2) with any prefix, suffix, or other modifying words, terms, designs, or symbols (other than logos Franchisor has licensed to Franchisee), (3) in selling any unauthorized services or products, (4) as part of any domain name, electronic address, or search engine Franchisee maintains on any Electronic Media, or otherwise in connection with a Website, or (5) in any other manner Franchisor has not expressly authorized in writing. (A "Website" is defined as an interactive electronic document contained in a network of computers linked by communications software, including the Internet and World Wide Web Home Pages.) At Franchisor's request, Franchisee agrees to participate, in the manner Franchisor specifies, in any Website Franchisor has established for the Mellow Mushroom System.

Franchisee may not use any Mark in advertising the transfer, sale, or other disposition of the Restaurant or an ownership interest in Franchisee without Franchisor's prior written consent, which Franchisor will not unreasonably withhold. Franchisee agrees to display the Marks prominently in the manner Franchisor prescribes at the Restaurant and on forms, advertising and marketing materials, supplies, and other materials Franchisor designates. Franchisee agrees to give the notices of trade and service-mark registrations Franchisor specifies and to obtain any fictitious or assumed-name registrations required under applicable law. To the extent Franchisee uses any Mark in employment-related materials, Franchisee must include a clear disclaimer that Franchisee (and only Franchisee) is the employer of employees at the Restaurant and that Franchisor, as the franchisor of Mellow Mushroom Restaurants, and its affiliate are not their employer or joint employer and do not engage in any employer-type activities for which only franchisees are responsible, such as employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. Franchisee also must obtain an acknowledgment (in the form Franchisor specifies or approves) from all Restaurant employees that Franchisee (and not Franchisor or its affiliates) is their employer.

**D. Notification of Infringements and Claims.**

Franchisee agrees to notify Franchisor immediately of any apparent infringement or challenge to Franchisee's use of any Mark, or of any person's claim of any rights in any Mark, and not to communicate with any person other than Franchisor and its attorneys, and Franchisee's attorneys, regarding any infringement, challenge, or claim. Franchisor may take the action it deems appropriate (including no action) and control exclusively any litigation, U.S. Patent and Trademark Office proceeding, or other administrative proceeding arising out of any infringement, challenge, or claim or otherwise relating to any Mark. Franchisee agrees to sign any documents and do the things that, in the opinion of Franchisor's attorneys, are necessary or advisable to protect and maintain Franchisor's interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain Franchisor's interests in the Marks.

**E. Discontinuance of Use of Marks.**

If it becomes advisable to Franchisor at any time for Franchisor and/or Franchisee to modify or discontinue using any Mark and/or use one or more additional or substitute trade or service marks, Franchisee agrees to comply with Franchisor's directions within a reasonable time after receiving notice. Franchisor need not reimburse Franchisee for its direct expenses of changing the Restaurant's signs, for any loss of revenue attributable to any modified or discontinued Mark, or for its expenses of promoting a modified or substitute trademark or service mark.

**F. Indemnification for Use of Marks.**

Franchisor agrees to reimburse Franchisee for all damages it sustains and reasonable expenses it incurs in responding to any claim or proceeding disputing Franchisee's authorized use of any Mark under this Agreement if Franchisee has timely notified Franchisor of the claim or proceeding and otherwise complied with this Agreement. Franchisor may, at its own option, defend and control the defense of any proceeding arising out of Franchisee's use of any Mark under this Agreement.

**18. NONCOMPETITION.**

**A. During Term of Agreement.**

Franchisee acknowledges and agrees that Franchisor could not protect Trade Secrets and Confidential Information against unauthorized use or disclosure or encourage a free exchange of ideas and information among Mellow Mushroom Restaurants if franchised owners of Mellow Mushroom Restaurants could hold interests in or perform services for a competitive business (defined below). Franchisee also acknowledges that Franchisor has granted the Franchise to Franchisee in consideration of and reliance upon Franchisee's agreement to deal exclusively with Franchisor. Franchisee therefore agrees that, during the Term, neither Franchisee nor any of its owners (nor any of their spouses or children) may:

- (1) have any direct or indirect interest as a disclosed or beneficial owner in a competitive business, wherever located or operating;
- (2) perform services as a director, officer, manager, employee, consultant, representative, or agent for a competitive business, wherever located or operating; or
- (3) divert or attempt to divert any actual or potential business or customer of the Restaurant to another business.

The term "competitive business" means any restaurant or food service business that features pizza as a primary or significant menu item or an entity granting franchises or licenses to others to operate that type of business (other than a Mellow Mushroom Restaurant operated under a franchise agreement with Franchisor). "Primary" or "significant" means either that (i) the business derives ten percent (10%) or more of its revenue from selling pizza or (ii) ten percent (10%) or more of the business' menu consists of pizza.

All of Franchisee's personnel performing managerial or supervisory functions or receiving special training and instruction must, to the extent permitted by applicable law, sign reasonable noncompetition covenants appropriate for their positions to protect Trade Secrets and Confidential Information and the competitiveness of Mellow Mushroom Restaurants. However, under no circumstances will Franchisor control the forms of employment agreements Franchisee uses with its employees or otherwise be responsible for Franchisee's labor relations or employment practices.

**B. After Term of Agreement.**

Upon

- (1) Franchisor's termination of this Agreement according to its terms and conditions,
- (2) Franchisee's termination of this Agreement without cause, or
- (3) expiration of this Agreement,

Franchisee and its owners agree that, for two (2) years beginning on the effective date of termination or expiration or, in the case of any particular person restricted by this Subsection, beginning on the date on which that restricted person begins to comply with this Subsection, whichever is later, neither Franchisee nor any of its owners will have any direct or indirect interest (e.g., through a spouse or child) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative, or agent in any competitive business (defined above) operating at the Restaurant Site or within ten (10) miles of the Restaurant Site.

If any person restricted by this Subsection refuses voluntarily to comply with these obligations, the two (2)-year period for that person will begin with the entry of a court order enforcing this provision. The two (2)-year period for a restricted person will be tolled, if applicable, for the period during which the restricted person breaches this Subsection and will

resume when that person resumes compliance. Franchisee and its owners expressly acknowledge they possess skills and abilities of a general nature and have other opportunities for exploiting these skills. Consequently, enforcing the covenants made in this Subsection will not deprive them of their personal goodwill or ability to earn a living.

## **19. RELATIONSHIP OF THE PARTIES.**

(1) Franchisee and Franchisor understand and agree that this Agreement does not create a fiduciary relationship between them. Franchisee and Franchisor are and will be independent contractors and are entering this Agreement with that intent and expectation. Neither Franchisor nor Franchisee intends that anything in this Agreement, or any aspect of their relationship, will make either of them a general or special agent, joint venturer, partner, or employee of the other for any purpose. Nor is Franchisor or its affiliates the employer or joint employer of the Restaurant's employees. Franchisee agrees to identify itself conspicuously in all dealings with customers, suppliers, public officials, Restaurant personnel, and others as the Restaurant's independent owner, operator, and manager under a franchise Franchisor has granted and to place notices of independent ownership on the forms, business cards, stationery, advertising and marketing, and other materials Franchisor periodically requires.

(2) Franchisor and its affiliates will not exercise direct or indirect control over the working conditions of Restaurant personnel, except to the extent such indirect control is related to Franchisor's legitimate interest in protecting the quality of the products, services, or Mellow Mushroom brand. Franchisor and its affiliates do not share or codetermine the terms and conditions of employment of Restaurant employees or affect matters relating to the employment relationship between Franchisee and Restaurant employees, such as employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. To that end, Franchisee agrees to identify itself conspicuously in all dealings with Restaurant personnel as the employer of such personnel and that Franchisor, as the franchisor of Mellow Mushroom Restaurants, and its affiliates are not their employer or joint employer and do not engage in any employer-type activities for which only franchisees are responsible, such as employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. Franchisee also must obtain an acknowledgment (in the form Franchisor specifies or approves) from all Restaurant employees that Franchisee (and not Franchisor or its affiliates) is their employer.

## **20. DEFAULT.**

### **A. Termination.**

(1) By Franchisee. If Franchisee and its owners are fully complying with this Agreement and Franchisor substantially fails to comply with this Agreement and does not correct the failure within sixty (60) days after Franchisee delivers written notice of the substantial failure to Franchisor or, if Franchisor cannot correct the failure within sixty (60) days, provide Franchisee within sixty (60) days after its notice reasonable evidence of Franchisor's effort to correct the failure within a reasonable time, Franchisee may terminate this Agreement effective thirty (30) days after delivery to Franchisor of written

notice of termination. Franchisee's termination of this Agreement for any other reason or without notice will be deemed a termination without cause and a breach of this Agreement.

(2) By Franchisor. Franchisor may terminate this Agreement, effective upon delivery of written notice of termination to Franchisee, if:

(a) Franchisee (or any of its owners) made any material misrepresentation or omission in acquiring the Franchise or makes any material misrepresentation or omission in operating the Restaurant;

(b) The landlord of the Restaurant Site refuses to approve the Restaurant's proposed plans or any modifications of those plans approved by Franchisor after receiving the landlord's input, as a result of which Franchisee cannot develop the Restaurant in accordance with Franchisor's standards and specifications for the Mellow Mushroom Restaurant proposed to be developed at the Restaurant Site;

(c) Franchisee fails to begin operating the Restaurant within three-hundred-sixty-five (365) days after this Agreement's effective date;

(d) The Managing Owner fails to complete initial training to Franchisor's satisfaction;

(e) Franchisee (i) abandons the Restaurant, meaning Franchisee has deserted, walked away from, or closed the Restaurant under circumstances leading Franchisor to conclude that Franchisee has no intent to resume the Restaurant's operation, regardless of the number of days that have passed since the apparent abandonment, or (ii) fails actively and continuously to operate the Restaurant (a failure to operate the Restaurant for three (3) or more consecutive days will be deemed a default under this clause (ii), except where closure is due to fire, riot, flood, acts of terrorism, or natural disaster and Franchisee notifies Franchisor within three (3) days after the particular occurrence to obtain Franchisor's written approval to remain closed for an agreed-upon amount of time as is necessary under the circumstances before Franchisee must re-open);

(f) Franchisee surrenders or transfers control of the Restaurant's operation without Franchisor's prior written consent;

(g) Franchisee (or any of its owners) is or has been convicted by a trial court of, or pleads or has pleaded guilty or no contest to, a felony;

(h) Franchisee interferes with Franchisor's right to inspect the Restaurant;

(i) Franchisee purchases or uses products which are similar to Proprietary Products but are not approved Proprietary Products;

(j) Franchisee (or any of its owners) engages in any dishonest, immoral, or unethical conduct which might adversely affect the reputation of the Restaurant or the goodwill associated with the Marks;

(k) Franchisee, any of its owners, or the owner of a controlling ownership interest in an entity with an ownership interest in Franchisee makes an unauthorized assignment of the franchise rights granted by this Agreement, the Restaurant, an ownership interest in Franchisee, or a controlling ownership interest in an entity with an ownership interest in Franchisee;

(l) Franchisee (or any of its owners or affiliates) (i) fails to comply with any provision of another franchise agreement with Franchisor and to cure such default (if such default is curable) as required in that franchise agreement, or (ii) commits an incurable default under another franchise agreement with Franchisor that would allow Franchisor to terminate that agreement;

(m) in the event of the Managing Owner's death or disability, the Managing Owner's interest in Franchisee is not assigned as required;

(n) Franchisee loses the right to possess the Restaurant Site;

(o) Franchisee (or any of its owners) makes any unauthorized use or disclosure of any Trade Secrets or Confidential Information or uses, duplicates, or discloses any portion of the Manual in violation of this Agreement;

(p) Franchisee violates any health, safety, or sanitation law, ordinance, or regulation and does not begin to cure the violation immediately, and correct the violation within the time mandated by law, after oral or written notice is delivered to it;

(q) Franchisee fails to pay any amounts due to Franchisor or any suppliers and does not correct the failure within seven (7) days after delivery of written notice of the failure to Franchisee;

(r) Franchisee fails to pay when due any federal or state income, service, sales, or other taxes due on the Restaurant's operations, unless Franchisee is in good faith contesting its liability for these taxes;

(s) Franchisee understates the Restaurant's Weekly Gross Sales three (3) times during the Term;

(t) Franchisee's (or any of its owners') assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities, or Franchisee (or any of its owners) otherwise violates any such law, ordinance, or regulation;

(u) Franchisee (or any of its owners) fails to comply with any other provision of this Agreement or any standard, specification, or operating procedure

and does not correct the failure within fifteen (15) days after Franchisor delivers to Franchisee written notice of the failure;

(v) Franchisee (or any of its owners) fails on three (3) or more separate occasions within any period of twelve (12) consecutive months to do any one or more or combination of the following: (i) submit when due reports or other data, information, or supporting records; (ii) pay when due any amounts due to Franchisor; or (iii) otherwise comply with this Agreement, whether or not it corrects any of the failures set forth in subparagraphs (i) through (iii) after Franchisor delivers written notice to Franchisee (Franchisor may terminate immediately upon the occurrence of the third default); or

(w) Franchisee makes an assignment for the benefit of creditors or admits in writing its insolvency or inability to pay its debts generally as they become due; Franchisee consents to the appointment of a receiver, trustee, or liquidator of all or the substantial part of its property; the Restaurant is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant, or levy is vacated within fifteen (15) days; or any order appointing a receiver, trustee, or liquidator of Franchisee or the Restaurant is not vacated within fifteen (15) days following the entry of the order.

(3) Assumption of Management. Franchisor has the right (but not the obligation), under the circumstances described below, to enter the Restaurant and assume its management (or to appoint a third party to assume its management). If Franchisor (or a third party) assumes the Restaurant's management, the manager will not exercise direct or indirect control over the working conditions of the Restaurant's employees, except to the extent such indirect control is related to Franchisor's legitimate interest in protecting the quality of the products, services, and Mellow Mushroom brand. If Franchisor (or a third party) assumes the Restaurant's management under clauses (1) or (2) below, Franchisee agrees to pay Franchisor (in addition to the Weekly Royalty Fee, Weekly Brand Fund Fee, and other amounts due under this Agreement) Four-Hundred Dollars (\$400) per person per day, plus Franchisor's (or the third party's) direct out-of-pocket costs and expenses, for up to ninety (90) days after Franchisor assumes management.

If Franchisor (or a third party) assumes the Restaurant's management, Franchisee acknowledges that Franchisor (or the third party) will have a duty to utilize only reasonable efforts and, provided Franchisor is not grossly negligent and does not commit an act of willful misconduct, Franchisor will not be liable to Franchisee or its owners for any debts, losses, lost or reduced profits, or obligations the Restaurant incurs, or to any of Franchisee's creditors for any supplies, products, or other assets or services the Restaurant purchases, while Franchisor (or the third party) manages it. If Franchisor (or a third party) assumes the Restaurant's management under clauses (1) or (3) below, Franchisor (or the third party) may retain all, and need not pay Franchisee or otherwise account to Franchisee for any, Weekly Gross Sales generated while Franchisor (or the third party) manages the Restaurant.



Franchisor (or a third party) may assume the Restaurant's management under the following circumstances: (1) if Franchisee abandons or fails actively to operate the Restaurant; (2) if Franchisee fails to comply with any provision of this Agreement, including any standard, specification, or operating procedure, and does not cure the failure within the time period Franchisor specifies in its notice to Franchisee, but only for as long as it takes Franchisor, using reasonable commercial efforts, to correct the failure Franchisee failed to cure; or (3) if this Agreement expires or is terminated and Franchisor is deciding whether to exercise its option to purchase the Restaurant under Subsection 20.D. below. If Franchisor exercises its rights under clauses (1) or (2) above, that will not affect its right to terminate this Agreement under Subsection 20.A.(2) above. In the event of an assumption under clause (2) above, Franchisor will periodically evaluate whether or not the Managing Owner or an alternative approved manager is capable of resuming the Restaurant's operation and will periodically discuss the Restaurant's status with Franchisee.

**B. Obligations Upon Termination or Expiration.**

When this Agreement expires or is terminated, Franchisee must:

(1) Immediately and permanently cease to operate the Restaurant and not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor;

(2) Immediately and permanently cease to use, by advertising or in another manner, the Marks or any equipment, materials, Trade Secrets, Confidential Information, forms, and confidential methods, procedures, and techniques associated with the Mellow Mushroom System;

(3) Immediately make such modifications or alterations to the Restaurant Site (including, without limitation, changing all telephone numbers in Franchisee's name and other communications-equipment listings) that Franchisor deems necessary to prevent the operation of any business at the Restaurant Site which might be deemed substantially similar to that of Franchisor or any other franchisee, provided, however, Franchisor may waive this provision if Franchisor exercises its option under the Collateral Assignment of Lease or otherwise takes over the Restaurant Site. If Franchisee fails or refuses to comply with this subparagraph's requirements, Franchisor may enter upon the Franchisee's business premises, without being guilty of trespass or any other tort, to make the changes required at Franchisee's expense;

(4) Turn over to Franchisor any and all copies of the Manual, the Trade Secrets and Confidential Information, and any other materials relating to operating the Restaurant, including (at Franchisor's request) materials or items reflecting or embodying characters associated with the Mellow Mushroom System (such as "Mel Mushroom" or "The Dude"), all of which are Franchisor's sole property;

(5) Immediately assign to Franchisor, or forward to numbers Franchisor specifies, all telephone and other numbers in Franchisee's name that Franchisee used in

operating the Restaurant, and assign to Franchisor (or its designee) or cancel any electronic address, domain name, search engine, or Website associating Franchisee with Franchisor, the Restaurant, or the Marks (if Franchisor has allowed Franchisee to establish one), for all of which purposes Franchisee hereby irrevocably appoints Franchisor as Franchisee's attorney-in-fact to do any act on Franchisee's behalf to effect any such assignment, which power of attorney may be relied upon by any third parties; and

(6) Abide by all noncompetition provisions described in Subsection 18.B.

**C. Monetary Obligations.**

Franchisee agrees to pay Franchisor within fifteen (15) days after this Agreement expires or is terminated, or on any later date the amounts due to Franchisor are determined, the Weekly Royalty Fees, Weekly Brand Fund Fees, amounts owed for purchases from Franchisor, interest, and all other amounts owed to Franchisor which then are unpaid. If Franchisor terminates this Agreement on any ground specified under Section 20.A.(2), or if Franchisee terminates this Agreement without cause, before the Term's scheduled expiration date, Franchisee also will be liable to Franchisor for all of its damages caused by Franchisee's breach of contract, including Franchisor's lost future royalties and lost future Brand Fund contributions.

**D. Franchisor's Right to Purchase Restaurant and/or Lease Restaurant Site.**

(1) Exercise of Option. Upon

(a) Franchisor's termination of this Agreement according to its terms and conditions,

(b) Franchisee's termination of this Agreement without cause, or

(c) expiration of this Agreement (if Franchisor offers, but Franchisee elects not to acquire, a successor franchise, or if Franchisor does not offer Franchisee a successor franchise due to its failure to satisfy the conditions for a successor franchise set forth in Subsection 3.B.),

Franchisor may, by giving Franchisee written notice within thirty (30) days after the date of termination or expiration, (i) purchase the Restaurant's operating assets and supplies and the fee simple interest in the Restaurant Site (if Franchisee or one of its affiliates owns the Restaurant Site) and/or, if Franchisee (or one of its affiliates) does not own the Restaurant Site or Franchisor chooses not to purchase Franchisee's (or its affiliate's) fee simple interest in the Restaurant Site, (ii) exercise the rights under subparagraph (2) below. Franchisor has the unrestricted right to assign this option to purchase. Franchisor is entitled to all customary warranties and representations in its asset purchase, including, without limitation, representations and warranties as to ownership and condition of and title to assets; liens and encumbrances on assets; validity of contracts and agreements; liabilities affecting the assets, contingent or otherwise; and indemnities for all actions,

events, and conditions that existed or occurred in connection with the Restaurant before the closing of Franchisor's purchase.

(2) **Rights to Restaurant Site.** If Franchisee leases the Restaurant Site from an unaffiliated lessor, or if Franchisor chooses not to purchase Franchisee's (or its affiliate's) fee simple interest in the Restaurant Site, Franchisee agrees (as applicable) at Franchisor's election:

(a) to assign its leasehold interest in the Restaurant Site to Franchisor;

(b) to enter into a sublease for the remainder of the Lease term on the same terms (including renewal options) as the Lease; or

(c) to lease the Restaurant Site to Franchisor for an initial ten (10)-year term, with two five (5)-year renewal terms (at Franchisor's option), on commercially-reasonable terms.

(3) **Purchase Price.** The purchase price for the Restaurant's operating assets and supplies and, if applicable, the fee simple interest in the Restaurant Site will be their fair market value, provided these items will not include any value for:

(a) the Franchise or any rights granted by this Agreement;

(b) the Marks;

(c) participation in the network of Mellow Mushroom Restaurants; or

(d) goodwill attributable to Franchisor's Marks, brand image, and other intellectual property.

Franchisor may exclude from the assets purchased any operating assets and supplies that are not reasonably necessary (in function or quality) to the Restaurant's operation or that Franchisor has not approved as meeting standards for Mellow Mushroom Restaurants, and the purchase price will reflect these exclusions.

If Franchisor and Franchisee cannot agree on fair market value, fair market value will be determined by three (3) independent appraisers, each of whom will conduct a separate appraisal and, in doing so, be bound by the criteria specified in this subparagraph (3). Franchisor will appoint one appraiser, Franchisee will appoint one appraiser, and the two party-appointed appraisers will appoint the third appraiser. Franchisor and Franchisee agree to select their respective appraisers within fifteen (15) days after Franchisor notifies Franchisee it wishes to exercise its option to purchase, and the two appraisers so chosen are obligated to appoint the third appraiser within fifteen (15) days after the last of the two party-appointed appraisers was appointed. Franchisor and Franchisee will bear the cost of their own appraisers and share equally the fees and expenses of the third appraiser chosen by the two party-appointed appraisers. The appraisers are obligated to complete their appraisals within thirty (30) days after the third appraiser's appointment. The purchase price will be the average of the three appraisals.

(4) Closing. Franchisor (or its assignee) will pay the purchase price at the closing, which will take place not later than sixty (60) days after the purchase price is determined, although Franchisor (or its assignee) may decide after the purchase price is determined not to purchase the Restaurant's assets. Franchisor may set off against the purchase price, and reduce the purchase price by, any and all amounts Franchisee or its owners owe Franchisor. At the closing, Franchisee agrees to deliver instruments transferring to Franchisor:

- (a) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to Franchisor), with all sales and other transfer taxes paid by Franchisee;
- (b) all Restaurant licenses and permits which may be assigned or transferred; and
- (c) the fee simple or leasehold interest in the Restaurant Site and improvements.

If Franchisee cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, Franchisor and Franchisee will close the sale through an escrow. Franchisee and its owners further agree to execute general releases, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its shareholders, officers, directors, employees, agents, successors, and assigns.

## **21. ENFORCEMENT.**

In addition to any other remedies to which Franchisor is entitled at law or in equity, Franchisor is entitled, without bond, to the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement relating to (a) Franchisee's use of the Marks; (b) Franchisee's preparation and distribution of products at its Restaurant; (c) the construction and equipping of the Restaurant; (d) Franchisee's obligations upon termination or expiration of this Agreement; (e) an assignment or transfer of the Franchise, any ownership interest in Franchisee or its owners, or the Lease for the Restaurant Site; (f) violations of any applicable law, ordinance, or regulation; and (g) Franchisee's non-competition and confidentiality covenants.

## **22. NOTICES.**

All acceptances, approvals, requests, notices, and reports required or permitted under this Agreement will not be effective unless in writing and delivered to the party entitled to receive the notice in accordance with this Section 22. All such acceptances, approvals, requests, notices, and reports will be deemed delivered at the time delivered by hand; or one (1) business day after deposit with a nationally-recognized commercial-courier service for next-business-day delivery; or three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return-Receipt Requested, postage-prepaid; and must be addressed to the party to be notified at its most current principal business address of which the notifying party has been

notified. Payments and certain information and reports Franchisee must send Franchisor under this Agreement will be deemed delivered on any of the applicable dates described above or, if earlier, when Franchisor actually receives them electronically (all payments, information, and reports must be received on or before their due dates in the form and manner specified in this Agreement). As of this Agreement's effective date, notices should be addressed to the following addresses unless and until a different address has been designated by written notice to the other party:

Franchisor: Home-Grown Industries of Georgia, Inc.  
150 Great Southwest Parkway  
Atlanta, Georgia 30336  
Attn: Richard A. Brasch

Franchisee: at the Restaurant Site except as otherwise provided in Paragraph (E) of Exhibit A.

If Franchisee's Restaurant has not yet been constructed or has not yet opened for business, or if Franchisee at any time during the Term loses possession of or otherwise cannot be reached at the Restaurant Site, Franchisee's address for notice purposes will be the residential or office address (as applicable) of Franchisee's owner specified in Exhibit A.

## **23. MISCELLANEOUS.**

### **A. Further Acts.**

The parties agree to execute such other documents and perform such further acts as may be necessary or desirable to carry out the purposes of this Agreement.

### **B. Heirs and Successors.**

This Agreement will be binding upon and inure to the benefit of the parties and their permitted heirs, successors, and assigns.

### **C. Entire Agreement.**

This Agreement represents the entire understanding between the parties and supersedes all other negotiations, agreements, representations, and covenants, oral or written, other than any other agreement executed by Franchisor or its affiliates and Franchisee contemporaneously with this Agreement's execution. Subject to Franchisor's right to modify the Manual, this Agreement may not be modified except by a written instrument signed by the party to be charged and referring specifically to the portion of this Agreement to be modified. The parties intend this Agreement to be the entire integration of all their agreements of any nature but in no way affects Franchisee's obligations to comply with Franchisor's specifications as determined from time to time. No other agreements, representations, promises, commitments, or the like of any nature exist between the parties. However, nothing in this Agreement or any related agreement disclaims or requires Franchisee to waive its reliance on Franchisor's representations in its most

recent Franchise Disclosure Document (including exhibits) delivered to Franchisee or its representative.

**D. Severability and Substitution of Valid Provisions.**

(1) Except as expressly provided to the contrary in this Agreement, each section, paragraph, term, and provision of this Agreement is considered severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency, or tribunal with competent jurisdiction in a proceeding to which Franchisor is a party, that ruling will not impair the operation of, or have any other effect upon, any other portions of this Agreement, which will continue to have full force and effect and bind the parties, although any portion held to be invalid will be deemed not to be a part of this Agreement from the date the time for appeal expires, if Franchisee is a party, otherwise upon Franchisee's receipt from Franchisor of a notice of non-enforcement.

(2) If any covenant restricting competitive activity is deemed unenforceable due to its scope in terms of area, business activity prohibited, and/or length of time, but would be enforceable if modified, Franchisee and Franchisor agree the covenant will be reformed to the extent necessary to be reasonable and enforceable, and then enforced to the fullest extent permissible, under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity.

(3) If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of this Agreement's termination or of Franchisor's refusal to enter into a successor-franchise agreement, or some other action this Agreement does not require, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any standard, specification, or operating procedure is invalid or unenforceable, the prior notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and Franchisor may modify the invalid or unenforceable provision or standard, specification, or operating procedure to the extent required to be valid and enforceable. Franchisee agrees to be bound by any promise or covenant imposing the maximum duty the law permits, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement, or any standard, specification, or operating procedure, any portion or portions which a court or arbitrator may hold to be unenforceable in a final decision to which Franchisor is a party, or that results from reducing the scope of any promise or covenant to the extent required to comply with a court order or arbitration award. These modifications to this Agreement will be effective only in that jurisdiction, unless Franchisor elects to give them greater applicability, and enforced as originally made and entered into in all other jurisdictions.

**E. Waiver of Obligations.**

Franchisor and Franchisee may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice to the other or any other effective date stated in the waiver notice. Any waiver Franchisor grants will be without prejudice to any other rights it has, will be subject to its

continuing review, and may be revoked at any time and for any reason, effective upon delivery to Franchisee of ten (10) days' prior written notice.

Franchisor and Franchisee will not be deemed to have waived or impaired any right, power, or option this Agreement reserves (including, without limitation, Franchisor's right to demand exact compliance with every term, condition, and covenant or to declare any breach to be a default and to terminate this Agreement before its term expires) by virtue of any custom or practice at variance with this Agreement's terms; Franchisor's or Franchisee's failure, refusal, or neglect to exercise any right under this Agreement or to insist upon the other's exact compliance with their obligations under this Agreement, including, without limitation, Franchisor's waiver, forbearance, delay, failure, or omission to exercise any right, power, or option, whether of the same, similar, or different nature, with other Mellow Mushroom Restaurants; the existence of other franchise agreements for Mellow Mushroom Restaurants which contain provisions different from those this Agreement contains; or Franchisor's acceptance of any payments due from Franchisee after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to Franchisor will be a waiver, compromise, settlement, or accord and satisfaction. Franchisor may remove or obliterate any legend or endorsement, which then will have no effect.

Neither Franchisor nor Franchisee will be liable for loss or damage or deemed to be in breach of this Agreement if, for reasons that are not due to its own fault and are beyond its control, its failure to perform its obligations results from:

- (1) transportation shortages, inadequate supplies of equipment, products, supplies, or materials, or voluntarily foregoing the right to acquire or use any of these to accommodate or comply with the orders, requests, regulations, recommendations, or instructions of any federal, state, or municipal government or any of its departments or agencies;
- (2) acts of God;
- (3) fires, floods, tornadoes, hurricanes, and other natural disasters;
- (4) strikes, embargoes, war, or riot; or
- (5) any other similar event or cause.

Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except these causes will not excuse payments of amounts owed at the time of the occurrence or payment of Weekly Royalty Fees and Weekly Brand Fund Fees due on any Weekly Gross Sales afterwards.

#### **F. Costs and Attorneys' Fees.**

If Franchisor incurs expenses (both internal and external) to enforce its rights or Franchisee's obligations under this Agreement because Franchisee has failed to pay when due amounts owed to Franchisor, to submit when due any reports, information, or supporting records,

or otherwise to comply with this Agreement, Franchisee agrees to reimburse Franchisor for any of the costs and expenses (both internal and external) it incurs, including, without limitation, reasonable accounting, attorneys', arbitrators', and related fees. Franchisee's obligation to reimburse Franchisor arises whether or not Franchisor begins a formal legal proceeding against Franchisee to enforce this Agreement. If Franchisor does begin a formal legal proceeding against Franchisee to enforce this Agreement, the reimbursement obligation applies to all costs and expenses Franchisor incurs preparing for, commencing, and prosecuting the legal proceeding and until the proceeding has come to a complete end (including appeals and settlements).

**G. Franchisee May Not Withhold Payments Due to Franchisor.**

Franchisee agrees not to withhold payment of any amounts owed to Franchisor on the grounds of Franchisor's alleged nonperformance of any of its obligations under this Agreement. Franchisee specifically waives any right it has at law or in equity to offset any monies Franchisee owes Franchisor or its affiliates or to fail or refuse to perform any of its obligations under this Agreement.

**H. Rights of Parties Are Cumulative.**

Franchisor's and Franchisee's rights under this Agreement are cumulative, and either party's exercise or enforcement of any right or remedy under this Agreement will not preclude its exercise or enforcement of any other right or remedy under this Agreement which it is entitled by law to enforce.

**I. GOVERNING LAW.**

**EXCEPT TO THE EXTENT GOVERNED BY THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) OR OTHER FEDERAL LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN FRANCHISOR AND FRANCHISEE WILL BE GOVERNED BY THE LAWS OF THE STATE OF GEORGIA, WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES, EXCEPT THAT (1) ANY GEORGIA LAW REGULATING FRANCHISE OFFERS OR SALES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS PARAGRAPH, AND (2) THE ENFORCEABILITY OF THOSE PROVISIONS IN THIS AGREEMENT WHICH RELATE TO RESTRICTIONS ON FRANCHISEE'S (AND ITS OWNERS') COMPETITIVE ACTIVITIES WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH THE RESTAURANT IS LOCATED.**

**J. CONSENT TO JURISDICTION.**

**FRANCHISEE AND ITS OWNERS AGREE THAT ALL ACTIONS ARISING UNDER THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN FRANCHISOR AND FRANCHISEE MUST BE COMMENCED IN A STATE OR FEDERAL COURT OF GENERAL JURISDICTION**



**LOCATED CLOSEST TO WHERE FRANCHISOR HAS ITS PRINCIPAL BUSINESS ADDRESS WHEN THE ACTION IS COMMENCED. FRANCHISEE AND ITS OWNERS IRREVOCABLY SUBMIT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION THEY MAY HAVE TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS. NONETHELESS, FRANCHISEE AND ITS OWNERS AGREE THAT FRANCHISOR MAY ENFORCE THIS AGREEMENT IN THE COURTS OF THE STATE IN WHICH THE RESTAURANT IS LOCATED.**

**K. WAIVER OF MULTIPLE DAMAGES, JURY TRIAL, AND CLASS ACTIONS.**

**EXCEPT FOR FRANCHISEE'S OBLIGATION TO INDEMNIFY FRANCHISOR UNDER SECTION 12 AND EXCEPT FOR CLAIMS FRANCHISOR BRINGS AGAINST FRANCHISEE FOR ITS UNAUTHORIZED USE OF THE MARKS OR UNAUTHORIZED USE OR DISCLOSURE OF ANY TRADE SECRETS OR CONFIDENTIAL INFORMATION, FRANCHISOR AND FRANCHISEE AND THEIR RESPECTIVE OWNERS WAIVE TO THE FULLEST EXTENT THE LAW PERMITS ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, TREBLE, OR OTHER FORMS OF MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN THEM, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.**

**FRANCHISOR AND FRANCHISEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM. EACH ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, WITHOUT DURESS, AND ONLY AFTER CONSIDERATION OF THIS WAIVER'S RAMIFICATIONS.**

**FRANCHISEE WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO BRING, OR BE A CLASS MEMBER IN, ANY CLASS ACTION SUITS OR TO PARTICIPATE IN ANY LEGAL ACTIONS BROUGHT EITHER ON A CONSOLIDATED BASIS WITH OTHER FRANCHISEES OR ON A REPRESENTATIVE BASIS BY A FRANCHISEE ASSOCIATION.**

**L. Limitations of Claims.**

Except for Franchisee's indemnification obligations under Section 12 and except for claims arising from Franchisee's non-payment or underpayment of amounts it owes Franchisor under this Agreement or otherwise, any and all claims arising out of or relating to this Agreement or the parties' relationship will be barred unless a legal proceeding (in the required or permitted forum) is commenced within two (2) years from the date on which the violation, act, or conduct giving rise to the claim occurs, regardless of when the party asserting the claim knew or should have known of the facts giving rise to the claim.

**M. Construction.**

(1) Except where this Agreement expressly obligates Franchisor reasonably to approve or not unreasonably to withhold its approval of any Franchisee action or request, Franchisor has the absolute right to refuse any request Franchisee makes or to withhold its approval of any of Franchisee's proposed, initiated, or completed actions requiring Franchisor's approval. Any policies Franchisor adopts and implements from time to time to guide its decision-making are subject to change, are not a part of this Agreement, and are not binding on Franchisor.

(2) The headings of the sections and paragraphs are for convenience only and do not define, limit, or construe the contents of the sections or paragraphs.

(3) References in this Agreement to "Franchisor," with respect to all of its rights and all of Franchisee's obligations to Franchisor under this Agreement, include any of Franchisor's affiliates with whom Franchisee deals. The term "affiliate" means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling another. "Control" means the power to direct or cause the direction of management and policies.

(4) If two or more persons are at any time the Franchisee under this Agreement, whether as partners or joint venturers, their obligations and liabilities to Franchisor will be joint and several. References to "owner" mean any person holding a direct or indirect, legal or beneficial ownership interest or voting rights in Franchisee (or a transferee of the rights granted by this Agreement and the Restaurant or an interest in Franchisee), including, without limitation, any person who has a direct or indirect interest in Franchisee (or a transferee), the rights granted by this Agreement, the Franchise, or the Restaurant and any person who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights, or assets.

(5) References to a "controlling interest" or "controlling ownership interest" in Franchisee mean the percent of Franchisee's voting shares or other voting rights resulting from dividing one hundred percent (100%) of the ownership interests by the number of Franchisee's owners. In the case of a proposed transfer of an ownership interest in Franchisee, determination of whether a "controlling interest" or "controlling ownership interest" is involved must be made as of both immediately before and immediately after the proposed transfer to see if a "controlling interest" or "controlling ownership interest" will be transferred (because of the number of owners before the proposed transfer) or will be deemed to have been transferred (because of the number of owners after the proposed transfer). "Person" means any natural person, corporation, limited liability company or partnership, general or limited partnership, unincorporated association, cooperative, or other legal or functional entity.

(6) The term "Restaurant" includes all assets of the Mellow Mushroom Restaurant Franchisee operates under this Agreement, including its revenue and income and the Real Estate Agreement.

(7) This Agreement will become valid and enforceable only upon its full execution by Franchisor and Franchisee, although Franchisor and Franchisee need not be signatories to the

same original, facsimile, or electronically-transmitted counterpart of this Agreement. A faxed copy of an originally-signed signature page, a scanned copy of an originally-signed signature page that is sent as a .pdf by email, or a signature page bearing an electronically/digitally captured signature and transmitted electronically will be deemed an original.

(8) Franchisee acknowledges and agrees that exchanging information with Franchisor by e-mail is efficient and desirable for day-to-day communications, and Franchisor and Franchisee may utilize e-mail for such communications. Franchisee authorizes the transmission of e-mail by Franchisor and its employees, vendors, and affiliates ("Official Senders") to Franchisee during the Term. Franchisee further agrees that: (a) Official Senders are authorized to send e-mails to those of Franchisee's employees whom Franchisee occasionally authorizes for the purpose of communicating with Franchisor; (b) Franchisee will cause its officers, directors, and employees to give their consent to Official Senders' transmission of e-mails to them; (c) Franchisee will require such persons not to opt out or otherwise ask to no longer receive e-mails from Official Senders while such person works for or is affiliated with Franchisee; and (d) Franchisee will not opt out or otherwise ask to no longer receive e-mails from Official Senders during the Term.

#### **24. COMPLIANCE WITH ANTI-TERRORISM LAWS.**

Franchisee and its owners agree to comply, and to assist Franchisor to the fullest extent possible in its efforts to comply, with Anti-Terrorism Laws (defined below). In connection with that compliance, Franchisee and its owners certify, represent, and warrant that none of their property or interests is subject to being blocked under, and Franchisee and its owners otherwise are not in violation of, any Anti-Terrorism Law. "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States and all other present and future federal, state, and local laws, ordinances, regulations, policies, lists, and other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of Anti-Terrorism Laws by Franchisee and its owners, or any blocking of Franchisee's and its owners' assets under Anti-Terrorism Laws, will constitute good cause for immediate termination of this Agreement, as provided in Subsection 20.A(2)(t) above.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date stated on the first page.

**HOME-GROWN INDUSTRIES OF GEORGIA, INC.**, a Georgia corporation

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

Print Name: Richard A. Brasch  
Title: President and Chief Executive Officer  
Date: July 27, 2022\*\*

\*\*Effective Date

**FRANCHISEE:**

**AWESOMEVILLE PIE LLC**, a Georgia limited liability company

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

Print Name: James Livingston  
Title: Member  
Date: 7-27, 2022

**EXHIBIT A**

**TO THE FRANCHISE AGREEMENT  
BETWEEN HOME-GROWN INDUSTRIES OF GEORGIA, INC.  
AND AWESOMEVILLE PIE LLC  
DATED July 14, 2022**

**Effective Date: This Exhibit A is current and complete  
as of July 14, 2022**

**Franchisee and Its Owners**

**Form of Ownership  
(Check One)**

Individual(s)

Legal Entity (check one):

Partnership

Corporation

Limited Liability Company

If a legal entity, attach a copy of the certificate of formation or articles of partnership and provide the following information:

(A) the name, address, and percentage of ownership of each owner, member, or partner and indicate whether each such person will be active in the business:

James Livingston  
Member-41%

~~Not Active~~

Linda Livingston  
Member-40%

~~Not Active~~

Scott Mathis  
Member-19%

~~Active~~

(B) the date and state in which the legal entity was formed: March 15, 2022, in Georgia.

(C) if a corporation, the name and address of each officer and director: See (A) above

(D) the name of, and all contact information for, the Managing Owner as of the Effective Date: Scott Mathis, Managing Member, 1158 Brookhaven Green NE, Atlanta, Georgia 30319. Franchisee may not change the Managing Owner without Franchisor's prior written approval.

(E) If Franchisee's Restaurant has not yet been constructed or has not yet opened for business, or if Franchisee at any time during the Term loses possession of or otherwise cannot be reached at the Restaurant Site, Franchisee's address for notice purposes will be the following residential or office address (as applicable) of the following owner of Franchisee: Scott Mathis, Managing Member, 1158 Brookhaven Green NE, Atlanta, Georgia 30319.

(F) Provide the address where Franchisee's financial records and partnership, corporate, or company records, as applicable, are maintained (Restaurant Site will be deemed to be the address unless otherwise stated below): Scott Mathis, Managing Member, 1158 Brookhaven Green NE, Atlanta, Georgia 30319.

Franchisee acknowledges that this Statement of Ownership applies to the Restaurant authorized under the Franchise Agreement. Any and all changes to the above information must be reported to (and in some cases first approved by) Franchisor in writing.

**HOME-GROWN INDUSTRIES OF  
GEORGIA, INC.**, a Georgia corporation

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

Print Name: Richard A. Brasch  
Title: President and Chief Executive Officer  
Date: July 27, 2022

**FRANCHISEE:**

**AWESOMEVILLE PIE LLC**, a Georgia  
limited liability company

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

Print Name: James Livingston  
Title: Member  
Date: 7-22, 2022

A-2

**EXHIBIT B**

**RESTAURANT SITE**

The Restaurant Site for Franchisee's Mellow Mushroom Restaurant is 229 Blue Ridge Parkway, Dawsonville, Georgia 30534.

**HOME-GROWN INDUSTRIES OF  
GEORGIA, INC.** a Georgia corporation

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

Print Name: Richard A. Brasch  
Title: President and Chief Executive Officer  
Date: July 27, 2022

**FRANCHISEE:**

**AWESOMEVILLE PIE LLC**, a Georgia  
limited liability company

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

Print Name: James Livingston  
Title: Member  
Date: 7-22, 2022

B-1

## GUARANTY AND ASSUMPTION OF OBLIGATIONS

July 14, 2022, by James Livingston, Linda Livingston, and Scott Mathis.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement (the "Agreement") on this date by HOME-GROWN INDUSTRIES OF GEORGIA, INC. ("us," "we," or "our"), each of the undersigned personally and unconditionally (a) guarantees to us and our successors and assigns, for the term of the Agreement (including extensions) and afterward as provided in the Agreement, that AWESOMEVILLE PIE LLC ("Franchisee") will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement (including any amendments or modifications of the Agreement) and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (including any amendments or modifications of the Agreement), including (i) monetary obligations, (ii) obligations to take or refrain from taking specific actions and to engage or refrain from engaging in specific activities, including the non-competition, confidentiality, and transfer requirements, and (iii) the enforcement and other provisions in Sections 21, 22, 23 and 24 of the Agreement.

Each of the undersigned consents and agrees that: (1) his or its direct and immediate liability under this Guaranty will be joint and several, both with Franchisee and among other guarantors; (2) he or it will render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) this liability will not be contingent or conditioned upon our pursuit of any remedies against Franchisee or any other person; (4) this liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which we may from time to time grant to Franchisee or another person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims (including the release of other guarantors), none of which will in any way modify or amend this Guaranty, which will continue and be irrevocable during the term of the Agreement (including extensions) and afterward for so long as any performance is or might be owed under the Agreement by Franchisee or its owners, and for so long as we have any cause of action against Franchisee or its owners; and (5) this Guaranty will continue in full force and effect for (and as to) any extension or modification of the Agreement and despite the transfer of any interest in the Agreement or Franchisee, and each of the undersigned waives notice of any and all renewals, extensions, modifications, amendments, or transfers.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchisee arising as a result of the undersigned's execution of and performance under this Guaranty; and (ii) acceptance and notice of acceptance by us of his or its undertakings under this Guaranty, notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices to which he or it may be entitled.

If we enforce this Guaranty in a judicial proceeding and prevail in that proceeding, we are entitled to reimbursement from each of the undersigned of our costs and expenses, including, but



not limited to, reasonable accountants', attorneys', attorneys' assistants', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether incurred before, in preparation for, or in contemplation of the filing of any such proceeding. If we must engage legal counsel in connection with the undersigned's failure to comply with this Guaranty, the undersigned must reimburse us for any of the above-listed costs and expenses we incur, even if we do not commence a legal proceeding.

IN WITNESS WHEREOF, each of the undersigned has affixed his or its signature on the same day and year as the Agreement was executed.

**GUARANTORS:**

**PERCENTAGE OF OWNERSHIP IN FRANCHISEE**

(1) James Livingston

 7.21.22 41%  
[Signature of James Livingston / Date]

(2) Linda Livingston

 7/21/22 40%  
[Signature of Linda Livingston / Date]

(3) Scott Mathis

 July 14, 2022 19%  
[Signature of Scott Mathis / Date]



**HOME-GROWN INDUSTRIES OF GEORGIA, INC.**  
**FRANCHISEE REPRESENTATIONS**

**Important Instructions:** Home-Grown Industries of Georgia, Inc. (“we,” “us,” or “our”) and you are preparing to sign a Franchise Agreement for the construction, development, and operation of a Mellow Mushroom Restaurant. This document’s purpose is to determine whether any statements or promises were made to you that we have not authorized, that do not appear in or are inconsistent with our franchise documents, and/or that might be untrue, inaccurate, or misleading. We also want to be sure that you understand certain terms of the agreements that you will sign and their ramifications. Please review each of the following statements carefully and do not sign this document if it contains anything you think might be untrue. If you sign this document, you are confirming that what it says is true. In addition, if you sign it, we will act in reliance on the truth of what it says.

**Initial the spaces after the statements to confirm your understanding and the accuracy of the statements.**

Name of Franchisee: Awesomeville Pie LLC (the “Franchisee”)

Mellow Mushroom Pizza Restaurant: 229 Blue Ridge Parkway, Dawsonville, Georgia 30534 (the “Restaurant”)

Each of the undersigned represents that all of the following statements are true:

1. Each of the undersigned has independently investigated us; our affiliates; the Mellow Mushroom System (as that term is used in our Franchise Agreement); the risks, burdens, and nature of the business that Franchisee will conduct under the Franchise Agreement; the Restaurant; the Restaurant’s location; and the Restaurant’s market area.

\*Insert initials into the following blank to confirm this statement: SW ll *[Signature]*

2. Each of the undersigned understands that the business Franchisee will conduct under the Franchise Agreement involves risk, and any success or failure will be substantially influenced by Franchisee’s abilities and efforts, the viability of the Restaurant’s location, competition from other businesses, interest rates, inflation, labor and supply costs, lease terms, and other economic and business factors.

\*Insert initials into the following blank to confirm this statement: SW ll *[Signature]*

3. Each of the undersigned understands that we previously might have signed, and in the future we may sign, franchise agreements with provisions different from the provisions of the Restaurant’s Franchise Agreement.

\*Insert initials into the following blank to confirm this statement: SW ll *[Signature]*

7.3 We have specifically instructed our affiliates, and our and their respective officers, directors, employees, and agents, that except as provided in Item 19 of our FDD, they are not permitted to make any representation, warranty, promise, guaranty, prediction, projection, or other statement or give other information as to income, sales volume, or profitability, either generally or with respect to any particular Mellow Mushroom Pizza Restaurant.

\*Insert initials into the following blank to confirm this statement:

SW *ll Jee*

7.4 If any unauthorized representation, warranty, promise, guaranty, prediction, projection, or other statement or information is made or given, the undersigned should not (and will not) rely on it.

\*Insert initials into the following blank to confirm this statement:

SW *ll Jee*

8. Before signing the Franchise Agreement or any related documents, the undersigned Franchisee has had ample opportunity: (a) to discuss the particular agreement, any related document, and the business Franchisee will conduct with its, his, or her own attorneys, accountants, and real estate and other advisors; (b) to contact our existing franchisees; and (c) to investigate all statements and information made or given by us or our affiliates, or our or their respective officers, directors, employees, and agents, relating to the Mellow Mushroom System, the Restaurant, and any other subject.

\*Insert initials into the following blank to confirm this statement:

SW *ll Jee*

9. Each of the undersigned understands that the Franchise Agreement licenses certain rights for one, and only one, Restaurant, located only at the location now specified in the Franchise Agreement, and that, except as may be provided in the Franchise Agreement or Development Rights Rider, no "exclusive," "expansion," "protected," "non-encroachable," or other territorial rights, rights of first refusal, or rights of any other kind are granted or have been promised concerning the shopping center or other structure in which the Restaurant is located, the contiguous or any other market area of the Restaurant, or any other existing or potential Mellow Mushroom Pizza Restaurant or geographic territory.

\*Insert initials into the following blank to confirm this statement:

SW *ll Jee*

10. Each of the undersigned understands that the Franchise Agreement (including any riders and exhibits) constitutes the entire agreement between the parties and supersedes all prior and contemporaneous oral or written agreements, statements, representations (except for those in the FDD), or understandings of us, the undersigned, and Franchisee.

\*Insert initials into the following blank to confirm this statement:

SW *ll Jee*

17. Each of the undersigned understands that site selection is a difficult and risky proposition. We and our affiliates have not given (and will not give) any representation, warranty, promise, guaranty, prediction, projection, or other statement or information relied upon (or to be relied upon) by the undersigned or Franchisee regarding a location's prospects for success, nearby tenants, or other attributes, even if we reviewed the lease or purchase contract. Franchisee will have any lease or purchase contract reviewed by its, his, or her own attorney and other advisors.

\*Insert initials into the following blank to confirm this statement: SW *ll Joe*

18. Each of the undersigned understands that the estimated initial investment ranges disclosed in Item 7 of our FDD are for Mellow Mushroom Restaurants of a certain size, at certain types of locations, and having certain characteristics we consider to be fairly standard for Mellow Mushroom Restaurants. Franchisee's actual investment to develop its Mellow Mushroom Restaurant could be incrementally or materially higher than the estimated initial investment ranges disclosed in Item 7 if Franchisee chooses to develop a larger Restaurant or a Restaurant that otherwise is atypical when compared with standard Mellow Mushroom Restaurants.

\*Insert initials into the following blank to confirm this statement: SW *ll Joe*

19. The covenants and restrictions concerning competition contained in the Franchise Agreement are fair and reasonable and will not impose an undue hardship on the undersigned or Franchisee. Each of them has other considerable skills, abilities, opportunities, and experience in other matters and of a general nature enabling each of them to derive income that is satisfactory to them from other endeavors.

\*Insert initials into the following blank to confirm this statement: SW *ll Joe*

20. There is no fiduciary or confidential relationship between us and the undersigned or between us and Franchisee. Each of the undersigned expects us to deal, and will act as if we are dealing, with it, him, or her at arm's length and in our own best interests.

\*Insert initials into the following blank to confirm this statement: SW *ll Joe*

21. We have advised the undersigned and Franchisee to consult with their own advisors on the legal, financial, and other aspects of the Franchise Agreement, this document, the Restaurant, any lease, sublease, or purchase contract for the premises, and the business contemplated. Each of the undersigned has either consulted with such advisors or deliberately declined to do so.

\*Insert initials into the following blank to confirm this statement: SW *ll Joe*

The undersigned and Franchisee further covenant that neither they nor any of their employees, agents, or representatives, nor any other person or entity associated with them, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

\*Insert initials into the following blank to confirm this statement: SL JLL SM

**FRANCHISEE:**

**AWESOMEVILLE PIE LLC**

By: James C Livingston  
Signature

Print Name: James Livingston  
Title: Member  
Date: 7-22, 2022

**Owners/executives of the Franchisee legal entity must sign below individually**

James Livingston  
(Signature)

James Livingston  
(Name Printed)

7-22-22  
(Date)

Linda Livingston  
(Signature)

Linda Livingston  
(Name Printed)

7/22/22  
(Date)

Scott Mathis  
(Signature)

Scott Mathis  
(Name Printed)

July 14, 2022  
(Date)



s

**Minutes of Written Action in Lieu of a Meeting of the Members of Awesomeville Pie LLC upon the Consent of Members**

**CONSENT RESOLUTION  
AWESOMEVILLE PIE LLC**

The undersigned, constituting all the members of Awesomeville Pie LLC, a Georgia limited liability company (the "Company"), hereby consent to and approve the adoption of the following resolutions without the requirement of a meeting on July 14, 2022, all requirements of notice being hereby waived:

**RESOLVED**, that the Company (1) sign a new Franchise Agreement with Home-Grown Industries of Georgia, Inc. ("Home-Grown") for the right to operate a Mellow Mushroom® pizza restaurant franchise (the "Restaurant") for an initial franchise term of 15 years in consideration for the Company's payment to Home-Grown of an initial franchise fee of \$50,000, ongoing payments to Home-Grown of other fees and charges, and commitment to perform other contractual obligations, all as set forth in the Franchise Agreement, (2) sign such other agreements and documents required by Home-Grown for the Restaurant franchise, (3) in connection with signing the Franchise Agreement and such other agreements and documents, obtain the right to occupy real estate located at 229 Blue Ridge Parkway, Dawsonville, Georgia 30534 at which to operate the Restaurant (clauses (1), (2), and (3), collectively, the "Transaction"), and (4) take such other action as the members authorized below who execute documents in connection with such Transaction deem in the Company's best interests; and

**RESOLVED FURTHER**, that each member of the Company, acting alone, is hereby authorized and empowered to negotiate and execute, in that member's sole discretion, any documents for and on behalf of the Company that may be necessary or desirable in connection with the franchise acquisition and Transaction described above, including, but not limited to, a Franchise Agreement, collateral assignment of lease, affidavits, and any other documents or agreements relating to or deemed necessary or desirable to consummate the Transaction; and


**RESOLVED FURTHER**, that (1) only one signature of the above-authorized members of the Company will be required on such documents executed in connection with the Transaction, (2) the one signature, without any second signature or attestation and without the affixation of the Company's seal, will bind the Company, and (3) Home-Grown may rely on the one signature as authorization for the Company to proceed with the Transaction; and

**RESOLVED FURTHER**, any Company actions and any documents signed on the Company's behalf with respect to the Transaction are hereby ratified as the Company's act and deed.



IN WITNESS WHEREOF, this Consent has been duly executed by the undersigned.

(1) Member: James Livingston

  
[Signature of James Livingston]

Date: 7.22, 2022

(2) Member: Linda Livingston

  
[Signature of Linda Livingston]

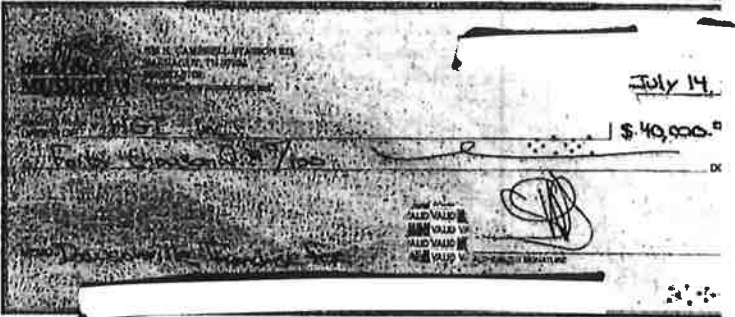
Date: July 21, 2022

(3) Member: Scott Mathis

  
[Signature of Scott Mathis]

Date: July 14, 2022





THE U.S. CURRENCY NOTE  
SERIAL NUMBER  
DATE


July 14, 2011

\$ 35,000.00

THIRTY FIVE THOUSAND & 00/100

DOLLAR

ONE VALID TO  
TWO VALID TO  
THREE VALID TO  
FOUR VALID TO





**ARTICLES OF ORGANIZATION**

**\*Electronically Filed\***  
**Secretary of State**  
**Filing Date: 3/15/2022 1:39:17 PM**

**BUSINESS INFORMATION**

**CONTROL NUMBER** [REDACTED]  
**BUSINESS NAME** Awesomeville Pie LLC  
**BUSINESS TYPE** Domestic Limited Liability Company  
**EFFECTIVE DATE** 03/15/2022

**PRINCIPAL OFFICE ADDRESS**

**ADDRESS** [REDACTED]

**REGISTERED AGENT**

<b>NAME</b>	<b>ADDRESS</b>	<b>COUNTY</b>
Bob J Goldberg	[REDACTED]	[REDACTED]

**ORGANIZER(S)**

<b>NAME</b>	<b>TITLE</b>	<b>ADDRESS</b>
Bob J Goldberg	ORGANIZER	[REDACTED]

**OPTIONAL PROVISIONS**

Management of the Company shall be vested in one or more managers pursuant to the Company's Operating Agreement.

**AUTHORIZER INFORMATION**

**AUTHORIZER SIGNATURE** Bob Goldberg  
**AUTHORIZER TITLE** Attorney In Fact

USA  
**Georgia**  
New! Real ID

**DRIVER'S LICENSE**

DOB  
 Eye

DL #  
 CLASS  
 SCOTT LAMAR  
 MATHIS

SEX  
 M  
 HGT  
 WGT  
 EYES  
 HAIR

RESTRICTIONS  
 NONE

EXPIRES  
 01/05/2017

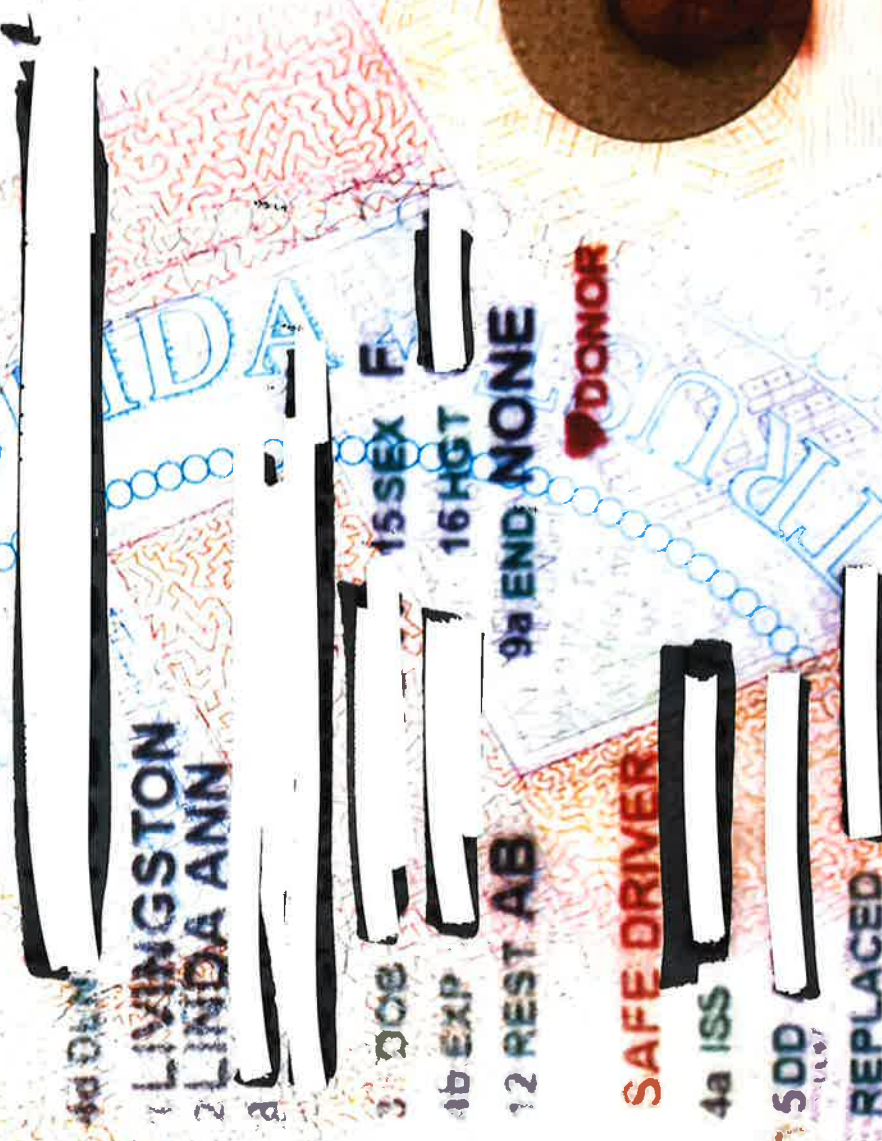
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# Florida

## DRIVER LICENSE

USA



14 DWN

1 LIVINGSTON  
2 LINDA ANN

3 DOB [REDACTED]

15 SEX F

4b EXP [REDACTED]

16 HGT [REDACTED]

12 REST AB

9a END NONE

SAFE DRIVER

DONOR

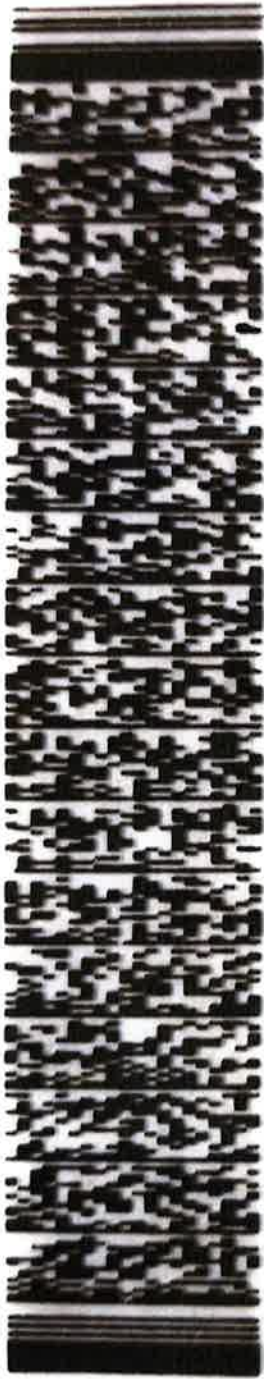
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REPLACED



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19155



The State  
of Florida  
retains all  
property  
rights herein.

112747

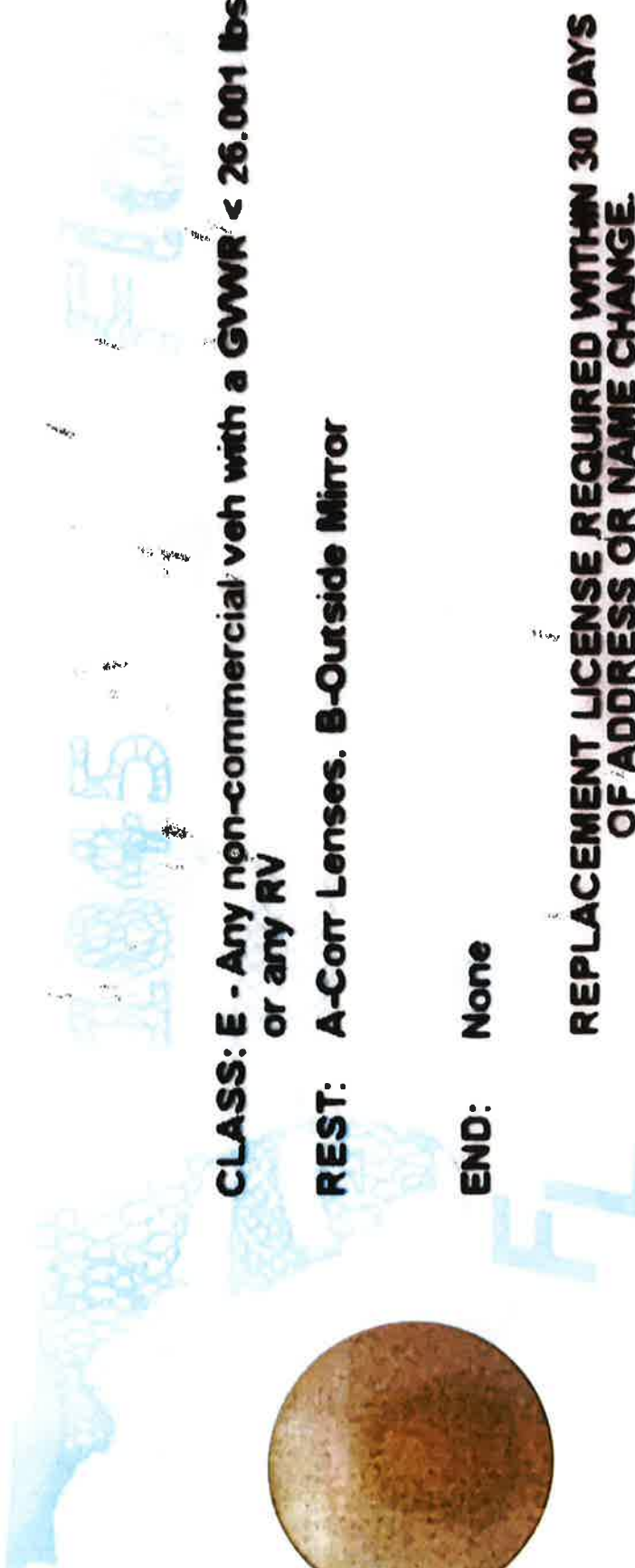
Rev.  
05/01/2019

**CLASS: E - Any non-commercial veh with a GVWR < 26,001 lbs.  
or any RV**

**REST: A-Corr Lenses. B-Outside Mirror**

**END: None**

**REPLACEMENT LICENSE REQUIRED WITHIN 30 DAYS  
OF ADDRESS OR NAME CHANGE.**



# Florida

## DRIVER LICENSE

USA



CLASS E

4d DEN [redacted]

1 LIVINGSTON  
2 JAMES C

8 [redacted]

3 DOB [redacted]

15 SEX M

4b EXP [redacted]

16 HGT [redacted]

12 REST A

9b END NONE

DONOR

SAFE DRIVER

4a ISS [redacted]

5DD [redacted]

REPLACED

Operation of a motor vehicle constitutes consent to any sobriety test required by law.



*James C. Livingston*

The State  
of Florida  
retains all  
property  
rights herein.

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Rev.  
05/01/2019



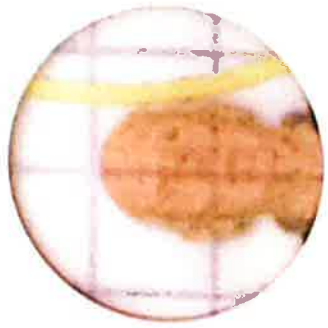
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**CLASS: E - Any non-commercial veh with a GVWR < 26,001 lbs.  
or any RV**

**REST: A-Cont Lenses**

**END: None**



**REPLACEMENT LICENSE REQUIRED WITHIN 30 DAYS  
OF ADDRESS OR NAME CHANGE**

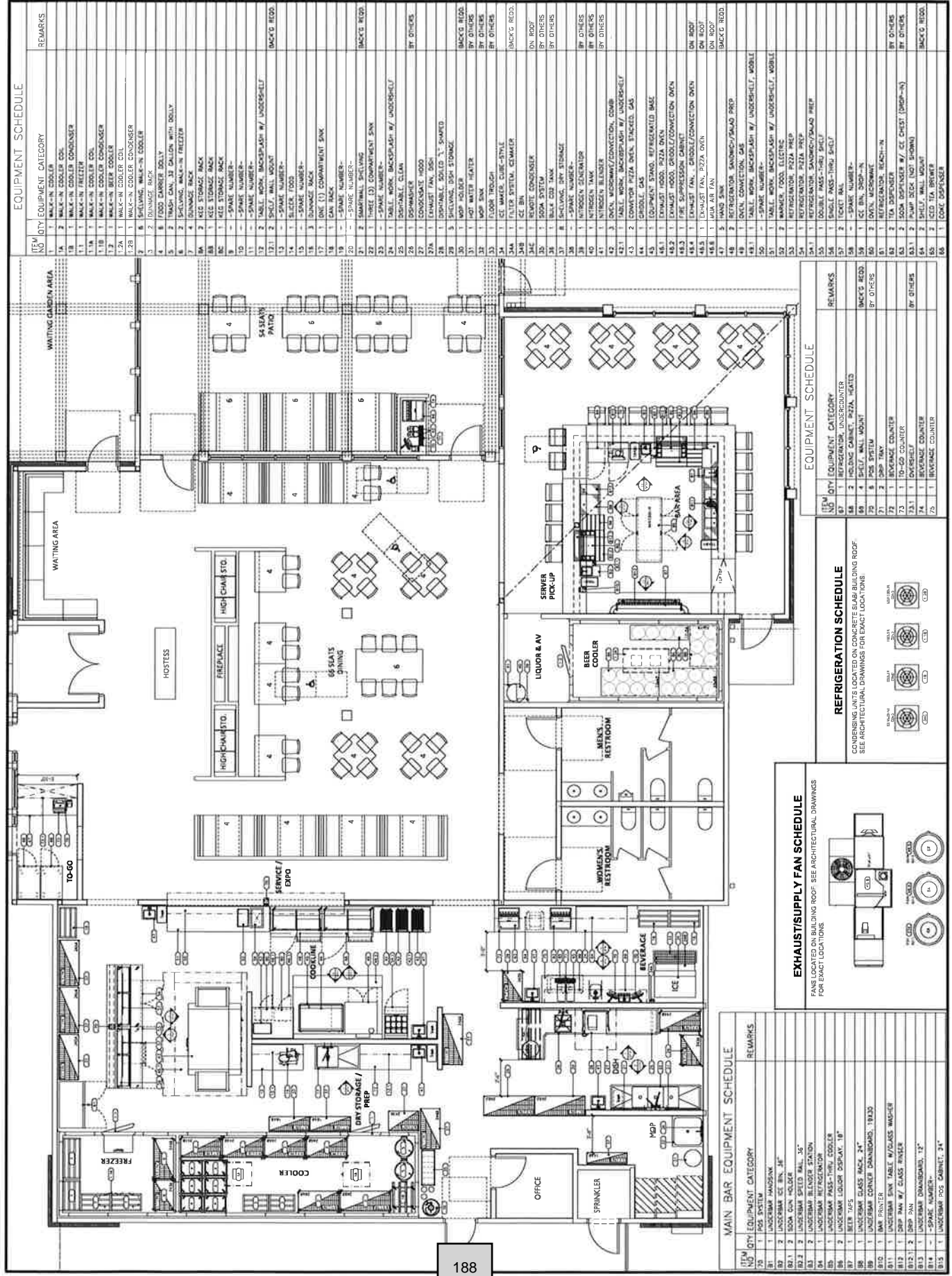
The document contains confidential information and the accuracy of the information is dependent on the accuracy of the information provided to the architect by the client. The architect's review is limited to the information provided to the architect by the client.

Owner: All Contractors to meet conditions in the field before starting work. The architect is not responsible for any errors or omissions in the field.

DATE	NO.	DESCRIPTION

**MELLOW MUSHROOM -**  
 DAWSONVILLE, GA  
 CONSTRUCTION DOCUMENT

PROJECT NUMBER	23 10403
DATE	07/17/2023
SCALE	1/4" = 1'-0"
BY	BDM/IMG
DATE	VF
PROJECT TITLE	FOODSERVICE EQUIPMENT PLAN
PROJECT NUMBER	23 10403
DATE	07/17/2023
SCALE	1/4" = 1'-0"
BY	BDM/IMG
DATE	VF
PROJECT TITLE	FOODSERVICE EQUIPMENT PLAN
PROJECT NUMBER	23 10403
DATE	07/17/2023
SCALE	1/4" = 1'-0"
BY	BDM/IMG
DATE	VF
PROJECT TITLE	FOODSERVICE EQUIPMENT PLAN



**EQUIPMENT SCHEDULE**

ITEM NO.	QTY	EQUIPMENT CATEGORY	REMARKS
1A	1	WALK-IN COOLER	
1B	1	WALK-IN COOLER/CHILLER	
1C	1	WALK-IN COOLER	
1D	1	WALK-IN COOLER/CHILLER	
1E	1	WALK-IN COOLER	
1F	1	WALK-IN COOLER	
1G	1	WALK-IN COOLER	
1H	1	WALK-IN COOLER	
1I	1	WALK-IN COOLER	
1J	1	WALK-IN COOLER	
1K	1	WALK-IN COOLER	
1L	1	WALK-IN COOLER	
1M	1	WALK-IN COOLER	
1N	1	WALK-IN COOLER	
1O	1	WALK-IN COOLER	
1P	1	WALK-IN COOLER	
1Q	1	WALK-IN COOLER	
1R	1	WALK-IN COOLER	
1S	1	WALK-IN COOLER	
1T	1	WALK-IN COOLER	
1U	1	WALK-IN COOLER	
1V	1	WALK-IN COOLER	
1W	1	WALK-IN COOLER	
1X	1	WALK-IN COOLER	
1Y	1	WALK-IN COOLER	
1Z	1	WALK-IN COOLER	
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94	2	WALK-IN COOLER	
95	2	WALK-IN COOLER	
96	2	WALK-IN COOLER	
97	2	WALK-IN COOLER	
98	2	WALK-IN COOLER	
99	2	WALK-IN COOLER	
100	2	WALK-IN COOLER	

**REFRIGERATION SCHEDULE**

ITEM NO.	QTY	EQUIPMENT CATEGORY	REMARKS
87	1	REFRIGERATOR	
88	1	REFRIGERATOR	
89	1	REFRIGERATOR	
90	1	REFRIGERATOR	
91	1	REFRIGERATOR	
92	1	REFRIGERATOR	
93	1	REFRIGERATOR	
94	1	REFRIGERATOR	
95	1	REFRIGERATOR	
96	1	REFRIGERATOR	
97	1	REFRIGERATOR	
98	1	REFRIGERATOR	
99	1	REFRIGERATOR	
100	1	REFRIGERATOR	

**EXHAUST/SUPPLY FAN SCHEDULE**

ITEM NO.	QTY	EQUIPMENT CATEGORY	REMARKS
70	1	POS SYSTEM	
71	1	POS SYSTEM	
72	1	POS SYSTEM	
73	1	POS SYSTEM	
74	1	POS SYSTEM	
75	1	POS SYSTEM	
76	1	POS SYSTEM	
77	1	POS SYSTEM	
78	1	POS SYSTEM	
79	1	POS SYSTEM	
80	1	POS SYSTEM	
81	1	POS SYSTEM	
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94	1	POS SYSTEM	
95	1	POS SYSTEM	
96	1	POS SYSTEM	
97	1	POS SYSTEM	
98	1	POS SYSTEM	
99	1	POS SYSTEM	
100	1	POS SYSTEM	

**MAIN BAR EQUIPMENT SCHEDULE**

ITEM NO.	QTY	EQUIPMENT CATEGORY	REMARKS
81	1	UNDERBAR W/UNDERBAR	
82	1	UNDERBAR W/UNDERBAR	
83	1	UNDERBAR W/UNDERBAR	
84	1	UNDERBAR W/UNDERBAR	
85	1	UNDERBAR W/UNDERBAR	
86	1	UNDERBAR W/UNDERBAR	
87	1	UNDERBAR W/UNDERBAR	
88	1	UNDERBAR W/UNDERBAR	
89	1	UNDERBAR W/UNDERBAR	
90	1	UNDERBAR W/UNDERBAR	
91	1	UNDERBAR W/UNDERBAR	
92	1	UNDERBAR W/UNDERBAR	
93	1	UNDERBAR W/UNDERBAR	
94	1	UNDERBAR W/UNDERBAR	
95	1	UNDERBAR W/UNDERBAR	
96	1	UNDERBAR W/UNDERBAR	
97	1	UNDERBAR W/UNDERBAR	
98	1	UNDERBAR W/UNDERBAR	
99	1	UNDERBAR W/UNDERBAR	
100	1	UNDERBAR W/UNDERBAR	

**MAIN BAR EQUIPMENT SCHEDULE**

ITEM NO.	QTY	EQUIPMENT CATEGORY	REMARKS
81	1	UNDERBAR W/UNDERBAR	
82	1	UNDERBAR W/UNDERBAR	
83	1	UNDERBAR W/UNDERBAR	
84	1	UNDERBAR W/UNDERBAR	
85	1	UNDERBAR W/UNDERBAR	
86	1	UNDERBAR W/UNDERBAR	
87	1	UNDERBAR W/UNDERBAR	
88	1	UNDERBAR W/UNDERBAR	
89	1	UNDERBAR W/UNDERBAR	
90	1	UNDERBAR W/UNDERBAR	
91	1	UNDERBAR W/UNDERBAR	
92	1	UNDERBAR W/UNDERBAR	
93	1	UNDERBAR W/UNDERBAR	
94	1	UNDERBAR W/UNDERBAR	
95	1	UNDERBAR W/UNDERBAR	
96	1	UNDERBAR W/UNDERBAR	
97	1	UNDERBAR W/UNDERBAR	
98	1	UNDERBAR W/UNDERBAR	
99	1	UNDERBAR W/UNDERBAR	
100	1	UNDERBAR W/UNDERBAR	

# TERRATORY

Development Consultants  
 1st Office Box 132  
 1000 Peachtree Street, NE  
 Atlanta, GA 30309  
 Phone: (404) 524-4008  
 Email: terratorty.com

OWNER/DEVELOPER  
 Scott Mathis  
 Awesomerville Pte, LLC  
 PO Box 191306  
 Atlanta, GA 31119  
 Phone: 404-734-7638  
 scott@melowmushroom.net

PROJECT  
 SCOTT MATHIS  
 P: (404) 734-7638  
 Email: scott@melowmushroom.net

MELLOW  
 MUSHROOM  
 POINTE GRAND  
 DAWSONVILLE  
 OUT PARCEL NO.2  
 Land Lot 489  
 13th District, 1st Section  
 Dawson County, Georgia

SHEET TITLE:

## SITE / UTILITY PLAN

DRAWING DATE: MAY 24, 2023

DRAWING SCALES:  
 HORIZONTAL SCALE: 1"=20'  
 VERTICAL SCALE: N/A

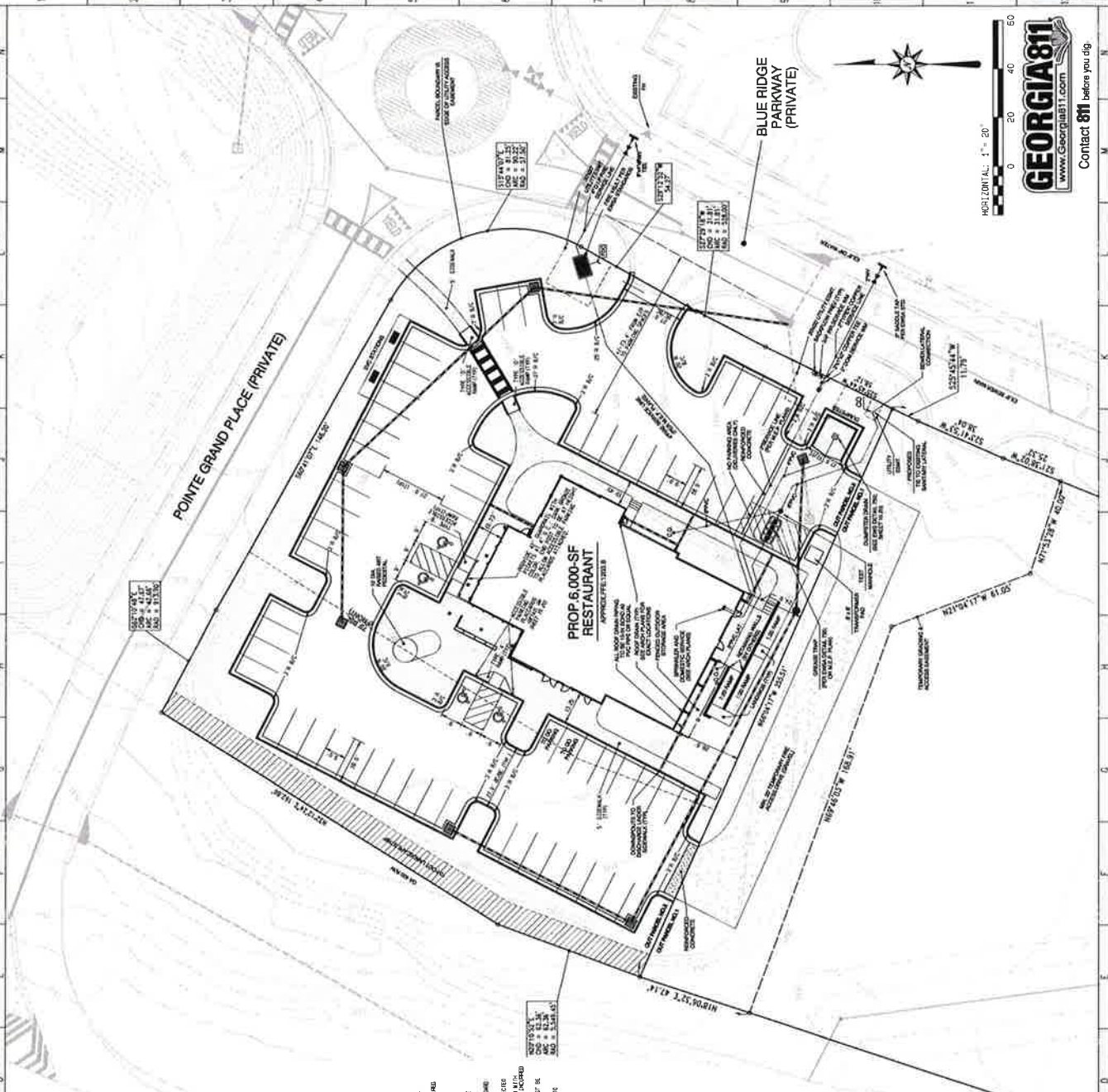


### SHEET REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITTING	5/24/23
2	ISSUED FOR PERMITTING	5/24/23
3	ISSUED FOR PERMITTING	5/24/23
4	ISSUED FOR PERMITTING	5/24/23
5	ISSUED FOR PERMITTING	5/24/23
6	ISSUED FOR PERMITTING	5/24/23

APPROVED  
 By Jeff Bailey at 12:57 pm, Sep 14, 2023

SHEET 4.00



**SITE NOTES:**

- ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON THE CURRENT WATER & SEWER UTILITY MAPS AND RECORD DRAWINGS. THE LOCATION, DEPTH, AND SIZE OF ALL UTILITIES SHALL BE VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION.
- ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE UNLESS OTHERWISE NOTED.
- ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM OF 18" OF GRANULAR FILL.
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**GENERAL NOTES FOR WATER MAIN AND SANITARY SEWER MAIN CONSTRUCTION**

- ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE UNLESS OTHERWISE NOTED.
- ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM OF 18" OF GRANULAR FILL.
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**UTILITY NOTES:**

- ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE UNLESS OTHERWISE NOTED.
- ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM OF 18" OF GRANULAR FILL.
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- ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM OF 18" OF GRANULAR FILL.

**OWNERS DEDICATION CERTIFICATE**  
 ETOWAH WATER AND SEWER AUTHORITY  
 DAWSON COUNTY, GEORGIA

WE, THE BOARD OF COMMISSIONERS OF THE ETOWAH WATER AND SEWER AUTHORITY, DO HEREBY DEDICATE TO THE PUBLIC THE WATER MAIN AND SANITARY SEWER MAINS SHOWN ON THIS PLAN AND RECORD DRAWINGS FOR THE MELLOW MUSHROOM PROJECT, OUT PARCEL NO. 2, LAND LOT 489, 13TH DISTRICT, 1ST SECTION, DAWSON COUNTY, GEORGIA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF OFFICE AT DAWSONVILLE, GEORGIA, THIS 8th DAY OF SEPTEMBER, 2023.

R. Juddon, PE, R.L.A. 8.28.23 DATE

**WHEEL STOPS NEEDED:**  
 ALL PARKING SPACES CLOSEST TO BUILDING, INCLUDING ACCESSIBLE SPACES SHALL RECEIVE WHEEL STOPS INSURE COMPLIANCE WITH PRODUCT MANUFACTURERS SPECIFICATIONS.

# SALAD

## CREEK SALAD v

Romaine and iceberg lettuce, shredded carrots, red cabbage, onions, cucumbers, green peppers, mushrooms, feta cheese, kalamata olives, roma tomatoes, pepperoncini and banana peppers.

\$5.49 lil' \$8.99 regular

## HOUSE SALAD v

Spring mix and romaine with roma tomatoes, cucumbers, black olives and onions topped with shaved parmesan. We suggest balsamic vinaigrette with this salad.

\$3.99 lil' \$5.99 regular

## CAESAR SALAD

Romaine lettuce tossed with Caesar dressing and topped with shaved parmesan and house-made croutons.

\$5.49 lil' \$8.99 regular  
(Add all-natural chicken or applewood smoked bacon for an additional charge.)

## CHEF SALAD

Romaine and iceberg lettuce, shredded carrots, red cabbage, onions, cucumbers, green peppers, mushrooms, black olives, roma tomatoes, mozzarella, provolone and ham.

\$5.49 lil' \$8.99 regular

## ENLIGHTENED SPINACH SALAD v

Fresh spinach topped with dried cherries, apples, house-made candied pecans and feta cheese.

\$6.49 lil' \$11.49 regular  
(Add all-natural chicken or applewood smoked bacon for an additional charge.)

## ALL-NATURAL SALAD DRESSINGS:

Signature Esperanza  
Herb vinaigrette  
Caesar  
Chunky bleu cheese  
Balsamic vinaigrette  
Ranch

# BUILD IT!

Your choice of base plus three ingredients \$7.99. Base choices are lettuce blend (romaine and iceberg lettuce, shredded carrots and red cabbage), romaine, spinach or spring mix. Customize to your taste with additional cheeses and fresh ingredients below for \$1.29 each.

## INGREDIENTS

Anchovies  
Artichoke hearts  
\*Avocado  
Bacon  
Banana peppers  
Basil  
Black olives  
\*Candied pecans  
Caramelized onions  
\*Chicken, all-natural grilled  
Cucumbers  
Diced apples  
\*Dried cherries  
Garlic  
Green olives  
Green peppers  
Ham  
Jalapeños

Mushrooms  
Onions  
Pepperoncini  
Pepperoni  
Pineapple  
Portobello mushrooms  
Roasted mushroom trio  
Roasted red peppers  
Roma tomatoes  
Salami  
Spinach  
\*Steak, grilled, shaved all-natural ribeye  
Sun-dried roasted tomatoes  
Tempeh  
Tofu

## CHEESES

\*Bleu cheese  
Cheddar  
Feta cheese  
\*MontAmore®  
\*Mozzarella - fresh  
Mozzarella - shredded  
Parmesan - shaved  
Provolone  
Ricotta - seasoned  
\*Vegan cheese

Our tofu, tempeh, and all-natural chicken and steak can be prepared in your choice of four sauces: BBQ, buffalo, herb vinaigrette, jerk, pesto or teriyaki.

# BOAGIES & even burgers

All hoagies are served on a French roll or multigrain roll. All hoagies are served with a choice of kettle chips - malt vinegar & sea salt, jalapeno cheddar, sea salt or BBQ

## STEAK & CHEESE HOACIE

Grilled, shaved all-natural ribeye steak, onions, mushrooms, green peppers, provolone, mayo, lettuce and roma tomatoes.

\$7.79 half \$10.79 whole

## MEATBALL HOACIE

Seasoned meatballs in a Mellow red sauce topped with melted mozzarella.

\$7.79 half \$10.79 whole

## ITALIAN BOACIE

Ham, pepperoni, salami, fresh mozzarella, caramelized onions, basil, spring mix, mayo, roma tomatoes and herb vinaigrette.

\$7.79 half \$10.79 whole

## AVOCADO HOACIE v

Seasoned avocado, onions, provolone, mayo, lettuce and roma tomatoes.

\$7.79 half \$10.79 whole

## MUSHROOM CLUB BOACIE

Ham, applewood smoked bacon, provolone or swiss, caramelized onions, grilled mushrooms, mayo, lettuce and roma tomatoes.

\$7.79 half \$10.79 whole

\*ALL BURGERS MAY BE COOKED TO ORDER. UNLESS OTHERWISE REQUESTED, HAMBURGERS ARE COOKED TO AN INTERNAL TEMPERATURE OF 155°. CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOODBORNE ILLNESS.

## CHICKEN & CHEESE HOACIE

All-natural grilled teriyaki chicken provolone, onions, mushrooms, green peppers, mayo, lettuce and roma tomatoes.

\$7.79 half \$10.79 whole

## TEMPER OR TOFU HOACIE

Your choice of teriyaki tempeh or tofu with provolone, onions, mushrooms, green peppers, mayo, lettuce and roma tomatoes.

\$7.49 half \$10.49 whole

## BURGERS\*

8 oz. of 100% choice, all-natural black angus beef, USDA-certified from family-owned and operated Harris Ranch. Served on a grilled brioche bun with a side of roasted potatoes.

## RITZ BURGER\*

Finished with swiss, caramelized onion garlic aioli, romaine lettuce, sliced tomato and pickle chips.

\$9.99

## BYOB\* - BUILD YOUR OWN BURGER JUST THE WAY YOU LIKE IT

All BYOB burgers are dressed with lettuce, tomato, pickle and onions. Add two additional ingredients of your choice from the following list: applewood smoked bacon, roasted mushroom trio, caramelized onions, jalapeños, avocado, cheddar, swiss or bleu cheese crumbles.

\$10.99

# MUNCHIES

## PRETZEL BITES v

Signature Mellow dough, cut into bite-sized pieces, finished with garlic butter and parmesan. Served with a side of our Pabst Blue Ribbon™ beer cheese dip, it's the perfect shareable munchie.

\$7.49

## PRETZELS v

Signature Mellow dough twisted into pretzels: Choice of garlic butter and parmesan with a side of Mellow red sauce or garlic butter and kosher salt with a side of mustard.

\$4.99 half \$7.99 whole  
(Add Pabst Blue Ribbon™ beer cheese for \$2.29)

## BRUSCHETTA v

Diced tomatoes, basil and seasonings tossed in balsamic vinegar and olive oil. Topped with feta cheese and fresh basil, served on garlic toast points, and drizzled with a balsamic glaze.

\$6.79

## MEATBALL TRIO

Three meatballs grilled with fresh mozzarella on a bed of Mellow red sauce with shaved parmesan and basil, sprinkled with breadcrumbs.

\$7.99

## GARLIC CHEESE BREAD

French bread topped with melted mozzarella, then baked. Served with a side of Mellow red sauce.

\$4.49

(Add fresh tomatoes for an additional \$0.89)

Pepperoni garlic cheese bread

\$5.29

Pesto garlic cheese bread

\$4.99

## HUMMUS v

Creamy hummus served with your choice of toasted pita wedges or carrots and celery. Garnished with paprika, basil and olive oil.

\$6.79

## SPINACH ARTICHOKE DIP v

Fresh sautéed spinach blended with artichokes, mozzarella and parmesan in a creamy sauce topped with shaved parmesan and baked. Served with garlic toast points.

\$7.79

## OVEN ROASTED WINGS

Crisp double-baked wings. Choose from hot, mild, BBQ, jerk, sweet Thai chili or naked. Served with celery, carrots and your choice of ranch or bleu cheese dressing.

\$6.49 half (5) \$10.49 whole (10)

## MAGIC MUSHROOM SOUP v

A rich, creamy soup flavored with Burgundy wine and herbs. Topped with Italian MontAmoré®, grilled shiitake, button and portobello mushrooms, and fresh chives.

\$4.99 Bowl

# BUILD IT! PIZZA

Customize to your taste with any of the fresh ingredients listed. Base sauce choices include olive oil & garlic, pesto GF and Mellow red sauce GF.

## SMALL 10" MEDIUM 14" LARGE 16"

	SMALL 10"	MEDIUM 14"	LARGE 16"
1 INGREDIENT	\$9.58	\$14.58	\$18.28
2 INGREDIENTS	\$10.87	\$16.87	\$21.27
3 INGREDIENTS	\$12.16	\$19.16	\$24.26
ADD'L INGREDIENTS	\$1.29	\$2.29	\$2.99

## CHEESES

\*Bleu cheese  
Cheddar  
Feta cheese GF  
\*MontAmoré®  
Mozzarella - extra GF

\*Mozzarella - fresh  
Parmesan - shaved  
Provolone  
Ricotta - seasoned  
\*Vegan cheese GF

## INGREDIENTS

Anchovies  
Artichoke hearts  
\*Avocado  
Bacon GF  
Banana peppers  
Basil  
Black olives GF  
Caramelized onions  
\*Chicken, all-natural grilled  
Garlic  
Green olives  
Green peppers GF  
Ground beef GF  
Ham GF  
Jalapeños  
Kalamata olives  
Meatballs  
Mushrooms GF  
Onions GF  
Pepperoncini GF  
Pepperoni GF

Pesto swirl GF  
Pineapple  
Portobello mushrooms  
Roasted mushroom trio  
Roasted red peppers  
Roma tomatoes GF  
Salami  
Sausage GF  
Spinach GF  
\*Steak, grilled, shaved all-natural ribeye  
Sun-dried roasted tomatoes GF  
Tempeh  
Tofu

Our tofu, tempeh, and all-natural chicken and steak can be prepared in your choice of our sauces: BBQ, buffalo, herb vinaigrette, jerk, pesto or teriyaki.

\* These items are so good they count as two ingredients.

## CHEESE PIZZA \* v

Mellow red sauce and mozzarella on Mellow's crust, buttered and sprinkled with parmesan.

\$8.29 S \$12.29 M \$15.29 L

# - PIZZA BAKERS

Classic" CRUST OR MELLOW "THIN" CRUST

## SPECIALTY PIES

All pizzas are served as large - 8 slices, medium - 6 slices, small - 4 slices.

### GREAT WHITE v

Olive oil and garlic base with sun-dried roasted tomatoes, provolone, feta cheese, seasoned ricotta, fresh basil, mozzarella, roma tomatoes and onions.

\$13.99 S      \$20.49 M      \$25.29 L

### HOUSE SPECIAL\*

Mellow red sauce with mozzarella, pepperoni, sausage, ground beef, ham, applewood smoked bacon, mushrooms, black olives, roma tomatoes, green peppers and onions. Topped with extra mozzarella.

\$13.99 S      \$20.49 M      \$25.29 L

### KOSMIC KARMA\* v

Mellow red sauce with feta cheese, mozzarella, spinach, sun-dried roasted tomatoes and roma tomatoes. Finished with a pesto swirl.

\$13.99 S      \$20.49 M      \$25.29 L

### MIGHTY MEATY\*

Mellow red sauce with mozzarella, pepperoni, sausage, ground beef, ham and applewood smoked bacon.

\$13.99 S      \$20.49 M      \$25.29 L

### VEG OUT\* v

Mellow red sauce with mozzarella, spinach, green peppers, mushrooms, onions, black olives and tomatoes.

\$13.99 S      \$20.49 M      \$25.29 L

### PACIFIC RIM

Mellow red sauce with mozzarella, ham, bacon, caramelized onions, pineapple and jalapeños.

\$13.99 S      \$20.49 M      \$25.29 L

### FUNKY Q. CHICKEN

BBQ chicken, mozzarella, cheddar, caramelized onions and applewood smoked bacon. Finished with a BBQ sauce swirl.

\$13.99 S      \$20.49 M      \$25.29 L

### GLUTEN-FREE?

Any pie can be made on a gluten-free crust; however, only those pies and ingredients with the GF designation are made with our allergy-safe procedures. Additional gluten-free items may vary by location; ask your server for details. All gluten-free pizzas are served on our 10" signature gluten-free crust. Gluten-free pizzas and ingredients are priced as a small pie.



### BUFFALO CHICKEN

Mozzarella, all-natural buffalo chicken, caramelized onions and applewood smoked bacon with a swirl of buffalo sauce. Finished with a swirl of your choice of bleu cheese or ranch dressing.

\$13.99 S      \$20.49 M      \$25.29 L

### HOLY SHIITAKE PIE v

Olive oil and garlic base with shiitake, button and portobello mushrooms, caramelized onions, mozzarella, and MontAmoré®. Finished with a garlic aioli swirl and a spritz of black truffle oil. Garnished with fresh chives and shaved parmesan.

\$13.99 S      \$20.49 M      \$25.29 L

## CALZONES

All calzones are made with fresh Mellow dough and served with a side of Mellow red sauce. Ingredients for a calzone are priced at small pie prices.

### CHEESE CALZONE v

Stuffed with mozzarella, provolone and seasoned ricotta, then basted with garlic butter and sprinkled with parmesan.

\$8.99

### VEGGIE CALZONE v

Spinach, mushrooms, roma tomatoes, seasoned ricotta, mozzarella and provolone

\$10.99

### THE SAUSAGEFEST

Meatball, sausage, salami, mozzarella, provolone and seasoned ricotta.

\$12.49

### STEAK & CHEESE OR CHICKEN & CHEESE

Grilled, shaved all-natural ribeye steak or grilled all-natural chicken with mushrooms, onions, green peppers, seasoned ricotta, mozzarella and provolone.

\$12.49





**ASK ABOUT OUR LUNCH SPECIALS AND  
OUR LOCALS ONLY MENU ITEMS**

# SWEETS

**GIANT GOURMET COOKIE**

Our massive house-baked gourmet cookies. Three decadent choices: triple chocolate chunk, oatmeal raisin and peanut butter made with REESE'S® Peanut Butter Cups®.

\$3.00

**MARY JANE'S TRIPLE  
CHOCOLATE BROWNIE**

No plain Jane brownie here. This one's a buttery chocolate, chewy brownie generously studded with HERSHEY'S® KISSES milk chocolate, bittersweet and semi-sweet chocolate chunks.

\$3.00

# THIRSTY?

- Coca Cola
- Coke Zero
- Diet Coke
- Sprite
- Barq's
- Cherry Coke
- Ginger Ale
- Minute Maid Lemonade
- Pibb Xtra
- POWERade Mtn Blast

\$2.39

Red Bull® - Regular  
and Sugarfree  
\$2.99

Lipton® Iced Tea  
\$2.39

*mellow*  
**MUSHROOM**  
PIZZA BAKERS

— **TOGO** —

*Dawsonville, GA  
229 Blue Ridge  
Parkway  
Dawsonville, GA  
30534*

**PHONE: (706) 600-7777**

—  
—  
**W**— [Twitter.com/MellowMushroom](https://twitter.com/MellowMushroom)

**Li** [Facebook.com/MellowMushroom](https://facebook.com/MellowMushroom)

**IN THE MOOD FOR MORE MELLOW?  
TEXT MELLOW\$ TO 47377**

**to receive text messages with offers and updates.**

Consent is not a condition of purchase. Automated, recurring messages will be sent to the mobile phone number provided. Message frequency will vary. Message and data rates may apply. Text HELP for info or STOP to cancel.

**ORDER ONLINE [MELLOWMUSHROOM.COM/ORDER](http://MELLOWMUSHROOM.COM/ORDER)**

*"participating locations only"*

Dawson County  
Rezoning Application  
(AMENDMENT TO LAND USE MAP)

**APPLICANT INFORMATION (or Authorized Representative)**

If applicant is other than owner, the Property Owner Authorization form must be completed.

Printed Name: Jim King

Address: 131 Prominence Court, Suite 230 Dawsonville GA 30534

Phone (Listed only please) ' \_\_\_\_\_

Email (Business/Personal): \_\_\_\_\_

Status:  Owner  Authorized Agent  Lessee  Option to purchase

I have  / have not  participated in a Pre-application meeting with Planning Staff.

If not, I agree  /disagree  to schedule a meeting the week following the submittal deadline.

Meeting Date: 12/14/2023 Applicant Signature: 

**REQUESTED ACTION & DETAILS OF PROPOSED USE**

Rezoning to: Chg of Cond-CPGD  Special Use Permit for: \_\_\_\_\_  
SITE PLAN AMENDMENT

Proposed Use:

Existing Utilities:  Water  Sewer  Gas  Electric

Proposed Utilities:  Water  Sewer  Gas  Electric

**RESIDENTIAL**

No. of Lots: 42 Minimum Lot Size: 1,200 (acres) No. of Units: 42

Minimum Heated Floor Area: \_\_\_\_\_ sq. ft. Density/Acre: \_\_\_\_\_

Type:  Apartments  Condominiums  Townhomes  Single-family  Other

Type of Amenity: \_\_\_\_\_ Amount of Open Space: \_\_\_\_\_

**COMMERCIAL & RESTRICTED INDUSTRIAL:**

Building area: \_\_\_\_\_ No. of Parking Spaces: \_\_\_\_\_

# Property Owner/ Property Information

Name: Dawson Forest Owner, LLC

Street Address of Property being rezoned: 4130 Dawson Forest

Rezoning from: C-PCD to: C-PCD Total acreage being rezoned: 8.07

Directions to Property (if no address):

PROPERTY IS BETWEEN PUBLIX AND THE CROSSROADS APARTMENTS AT THE CORNER OF GA 400 AND DAWSON FOREST RD.

Subdivision Name (if applicable): \_\_\_\_\_ Lot(s) #: \_\_\_\_\_

Current Use of Property: undeveloped

**Does this proposal reach DRI thresholds?** No If yes, the application will require submittal of a transportation study. DRIs require an in depth review by County agencies, and regional impact review by the Georgia Mountains Regional Planning staff. This adds several weeks to processing; additionally, the applicant is responsible for the expense of third party review of the required technical studies associated with the project.

**Please refer to Dawson County's Georgia 400 Corridor Guidelines and Maps to answer the following:**

Does the property lie within the Georgia 400 Corridor? yes (yes/no)

### SURROUNDING PROPERTY ZONING CLASSIFICATION:

North C-PCD South C-PCD East C-PCD West C-PCD

Future Land Use Map Designation: COMMERCIAL/HIGHWAY BUSINESS

Access to the development will be provided from:

Road Name: THE PUBLIX SHOPPING CENTER Type of Surface: ASPHALT

2008



LETTER OF INTENT

Applicant Dawson Forest Owner, LLC

Subject Property Approximately 8.07 acres at 4130 Dawson Forest Road

Current Zoning: C-PCD – ZA 14-08.

Proposed Zoning: C-PCD – ZA 14-08. Amend Site plan and connection point

Proposed Use: Development Townhomes and connection access

Application: 1) Amend zoning condition to update site plan to allow townhomes in place of apartments on phase II of development

ROW Access: 2) Current zoning through World Wide Drive. Request to amend

PROPOSED USE

The applicant proposes to amend zoning conditions established with ZA 14-08. Applicant would request two changes from its existing zoning:

1. Existing Zoning permits 84 multifamily apartments to be built as an additional phase of the existing apartments. Applicant proposes changing the use of that area (Phase II of the Apartment site) to allow the development of Townhomes rather than multifamily apartments.  
and.
2. The original zoning contemplated vehicular access to the Phase II apartment parcel coming from World Wide Drive. Presently, World Wide Drive terminates into a gated parking lot and has an existing detention pond built between the end of the paved road and our property line. Applicant proposes vehicular access to the Phase II apartment parcel across the stream on an existing land bridge that would be improved to connect the shopping center driveway to the new townhome access point. (see plan)





# DAWSON COUNTY BOARD OF COMMISSIONERS

## APPROVAL FORM

Mike Berg  
Chairman

Gary Pichon  
Commissioner  
District One

James Swafford  
Commissioner  
District Two

Jimmy Hamby  
Commissioner  
District Three

Julie Hughes Nix  
Commissioner  
District Four

Cindy Campbell  
County Manager

Danielle Yarbrough  
County Clerk

### PUBLIC HEARING OF LAND USE CHANGE REQUEST MEETING HELD NOVEMBER 20, 2014

We, the Dawson County Board of Commissioners, do hereby **APPROVE** the following Land Use Change Request:

<b>REQUEST:</b>	<b>ZA 14-08</b>
Applicant's Name:	Dawson Forest Developer, LLC
Applicant's Address:	5269 Buford Hwy NE, Doraville, GA 30340
Location:	Dawson Forest Road
TMP:	114-031
Purpose:	Rezone from C-HB to C-PCD
Property Usage:	Commercial and Residential uses

The approval is based upon the following stipulations that the request will:

1. The commercial component of the development shall be completed prior to or in conjunction with the first phase of the multi-family residential development.
2. Prior to the completion of Phase Three (3) of the multi-family development, the developer shall connect an access road to World Wide Drive along the southern boundary line to allow an access exit to Carlisle Road.
3. Apartment buildings shall be fully sprinkled.
4. No adult businesses will be permitted to occupy the property.

The request will not:

- A. Affect the property values of surrounding property.
- B. Affect the health, safety or general welfare of the public.
- C. Impose special hardships on the surrounding property owners.

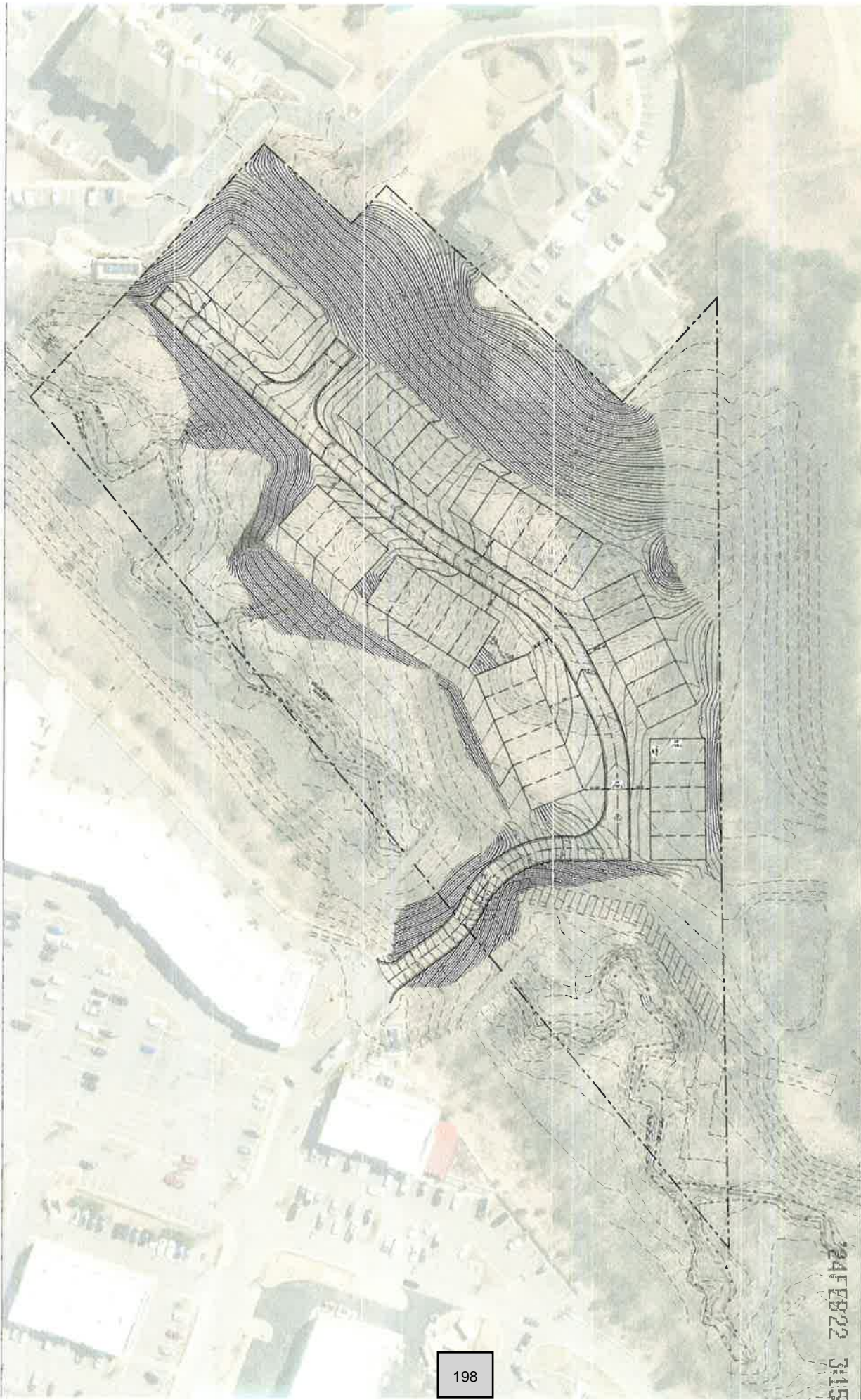
The subject property is suited for the proposed land use.

  
 \_\_\_\_\_  
 Mike Berg, Chairman

11/20/14  
 Date

cc: Joey Homans, County Attorney  
 Rachel Burton, Zoning Administrator  
 Sallie Ledbetter, Tax Assessor's Office

2014  
NOV  
20



24 FEB 22 3:15 PM

4130 DAWSON FOREST ROAD - DAWSONVILLE, GA  
CONCEPT 2







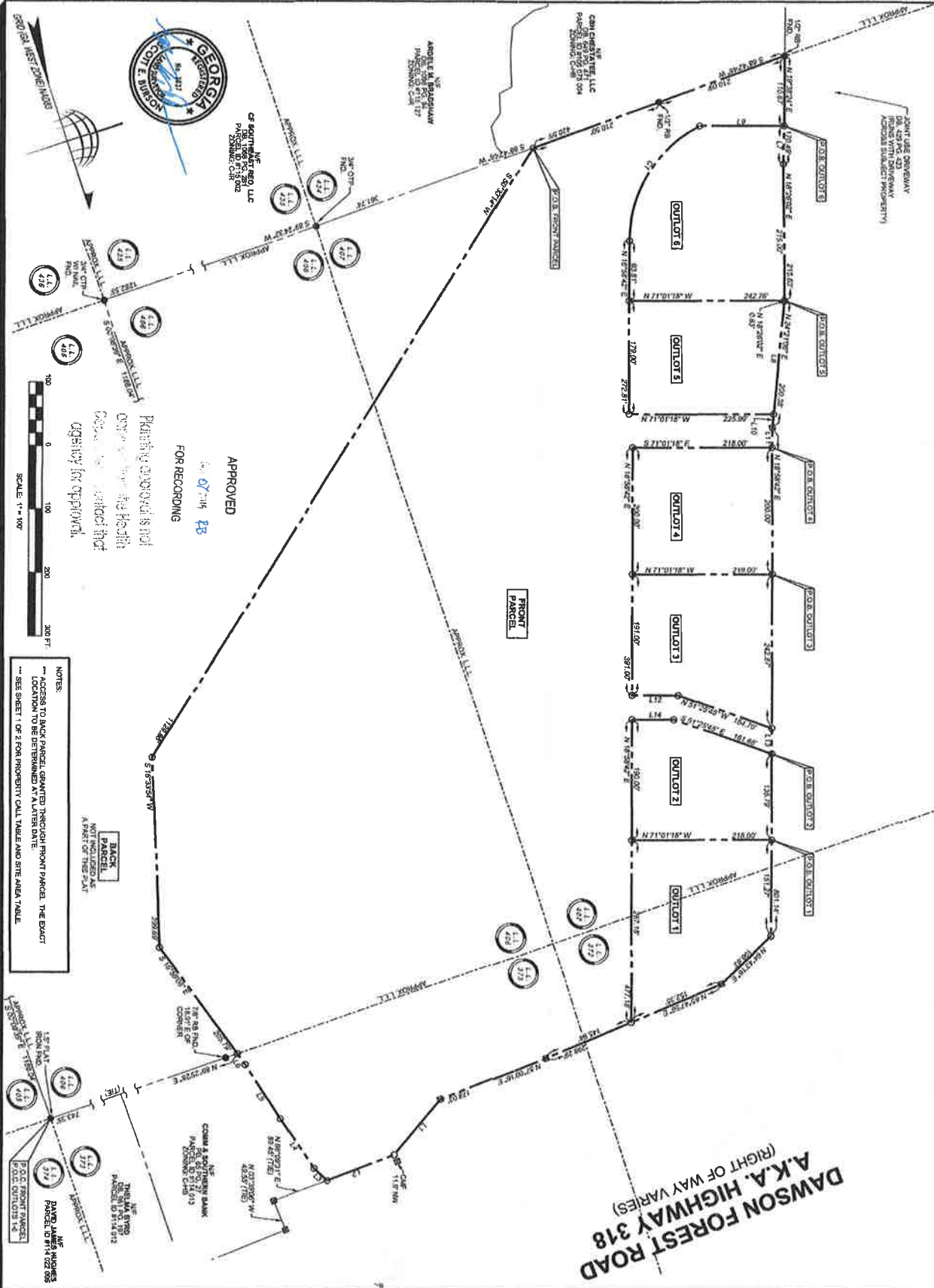
# GEORGIA HIGHWAY 400 A.K.A. U.S. HIGHWAY 19 (RIGHT OF WAY VARIES)

SCALE: 1" = 100'

446  
447  
448

THE ORIGINAL OF THIS DOCUMENT  
SCOTT E. BIRDSON, C.S. 13007  
THIS REPRODUCTION IS  
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# DAWSON FOREST ROAD (RIGHT OF WAY VARIES)



**MINOR PLAT FOR**  
**HALPERN ENTERPRISES, INC.**  
**(DAWSON CROSSROADS)**  
 LOCATED IN LAND LOTS 372, 373, 406 & 407,  
 SOUTH HALF 13 DISTRICT, 1ST SECTION  
 DAWSON COUNTY, GEORGIA

Station	From	To	By	Date
1	0+00	0+10	DW	08/11/2015
2	0+10	0+20	DW	08/11/2015
3	0+20	0+30	DW	08/11/2015
4	0+30	0+40	DW	08/11/2015
5	0+40	0+50	DW	08/11/2015
6	0+50	0+60	DW	08/11/2015
7	0+60	0+70	DW	08/11/2015
8	0+70	0+80	DW	08/11/2015
9	0+80	0+90	DW	08/11/2015
10	0+90	1+00	DW	08/11/2015

**TerraMark**  
 Professional Land Surveying C. O. A. 150000810

TerraMark Land Surveying, Inc.  
 1500 Dale Ferry Road  
 Marietta, Georgia 30066  
 Phone No. (770) 421-1927  
 Fax No. (770) 421-6552  
 www.TerraMark.com

## **CONSTRUCTION & DEVELOPMENT SCHEDULE**

Entitlement Process:	February 2024 - July 2024
Engineering Design:	August 2024 – October 2024
Land Development:	November 2024 – June 2025
Home Construction:	June 2025 – June 2026



# LAND USE AMENDMENT STAFF REPORT

## PLANNING & DEVELOPMENT

**ZA Number:** **24-01**  
**Public Meetings:** Planning Commission April 16, 2024  
 Board of Commission Hearing May 16, 2024  
**Project Name:** Dawson Crossings  
**Owner:** Matthew Oppenheimer / Dawson Forest Owner, LLC  
**Applicant:** Jim King

**Requested Action:** Amend the C-PCD master plan, approved in 2014, to construct 42 townhomes instead of 84 apartments in this phase and delete the stipulation that the development connect via World Wide Drive, allowing access to Carlisle Road.

**Planning Commission Recommendation:**

**Property Size:** 8.07 acres  
**Location:** 4130 Dawson Forest Road (*Behind the Dawson Crossroad Retail Center*)  
**Commission District:** 4  
**Parcel I.D. Number:** 114-031  
**Zoning District:** C-PCD (ZA14-08)  
**Road Classification:** Internal roads are private, and Worldwide Drive is private.  
**Proposed Zoning District:** n/a Amendment to ZA14-08 stipulations and Master Plan.  
**Character Area:** Suburban Residential  
**Dawson Trail Segment:** n/a  
**Environmental Constraint:** Thompson Creek

Location	Character Area	Zoning	Existing Use	Status
114 031	Suburban Residential	CPCD	vacant	natural
North	GA400 Mixed Uses	CPCD	Shopping Center	Developed Retail
South	Suburban Residential	Industrial	Vacant/Industrial	Industrial Park
East	Suburban Residential	CPCD	Apartment Complex	Multi-family
West	GA400 Mixed Use	CPCD	Shopping Center	Developed retail

## -Analysis-

The applicant proposes constructing single-family attached units instead of the original proposal for apartments with access through an established retail center instead of Worldwide Drive as stipulated in 2014. This last phase of the mixed-use 56-acre development is on a parcel with extreme topography. The conceptual plan indicates there will be eight groups of townhomes, with one building containing four units, four buildings containing five units each, and three buildings containing six units each (42 total units).

A creek (state waters) transects the property from south to north. The creek acts as a natural buffer and the break line for the multifamily and commercial retail properties. Under the current code, unbuildable land, such as State Water Buffers (streams and lakes), is not calculated as part of the net density. The number of dwellings per net acre is based on the total developable area of the parcel, including vacated rights-of-way and excluding separate or non-contiguous lands, constrained lands, common open space, and rights-of-way or easements.

### Land Use Code Dimensional Requirements of Townhouses:

- a. Each townhouse shall be located on its lot of record, which shall be a minimum of 2,400 square feet in size.
- b. The minimum lot width for a townhouse shall be 24 feet.
- c. Frontage. The minimum frontage of the site for a townhouse development project on a public street shall be at least 100 feet.
- d. Setbacks for principal and accessory structures.
  1. All units shall be a minimum of 22 feet from the front property line.
  2. Driveway length. All units shall have a driveway that is a minimum of 24 feet from the face of the unit to the back of the curb or sidewalk, whichever is more restrictive.
  3. Between buildings, there shall be no less than a 20-foot separation.
  4. A minimum 50-foot exterior setback from any adjoining parcel boundary is required.
  5. The rear setbacks for lots not located on the exterior property boundary of the plat shall be a minimum of 20 feet except where a rear entry garage, carport, or other parking area accessible from an alley is provided. The setback shall be 20 feet measured from the alley curb or property line, whichever is greater.

## **Sec. 121-313. Guidelines are to be considered when Granting an Amendment.**

Whenever consideration is being given to an amendment to the Land Use Code, the planning commission shall make its recommendations, and the board of commissioners shall make its decision based on the following criteria:

- (1) **The existing uses and classification of nearby property.**
- (2) **The extent to which the particular land use classification diminishes property values;**
- (3) **The extent to which the destruction of property values of the applicant promotes the health, safety, morals, or general welfare of the public;**
- (4) **The relative gain to the public, as compared to the hardship imposed upon the individual property owner;**
- (5) **The suitability of the subject property for the proposed land use classification;**
- (6) **The length of time the property has been vacant under the present classification, considered in the context of land development in the area in the vicinity of the property; and**
- (7) **Whether the requested zoning would result in a use that could create an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;**

### Public Works Department

This development must make every effort to avoid additional impacts to Thompson Creek. It should also be noted that since the first approval for phases 1 and 2 of *The Crossings* development, the stream buffer for this tributary has been increased from 25 feet to 50 feet. The applicant may not have taken into account this additional stream buffer requirement. Applicants should be made aware of this as soon as practical.

The preferred access location is to adhere to the original Land Use Approval in 2014 stipulation #2: "The developer shall connect an access road to World Wide Drive." However, if there is access through commercial development, please stipulate the following:

- Eliminate vehicle conflict points with commercial development as follows:
- a) Dumpster use and dumpster service backing into an access road conflict with delivery and tractor-trailers servicing the rear of the commercial development
  - b) Future residents cannot access rear delivery of commercial development
  - c) Backing vehicles that are using the rear of the restaurant's service door
  - d) Pedestrian accessibility
  - e) Deeded perpetual access easement across the commercial development

### Etowah Water and Sewer Authority

8" water line; water pressure to be determined - the extension necessary to serve projects or upgrades that are possible for fire protection to be funded by the developer.

Sewer at property line - extensions and upgrades necessary to serve the project to be funded by the developer.

### Emergency Services

The initial approval for this project was conditioned upon the Crossings providing a second access to the property before beginning additional residential construction beyond the originally approved 216

units. This second access was to connect Carlisle Road (via World Wide Dr) to the Crossings development and provide an acceptable means for emergency vehicle access. The proposed relocation of this second entrance to being through the parking lot of a well established and heavily traveled shopping center would present multiple design and acceptance challenges. A second entrance will be required, and all of the requirements of the 2018 International Fire Code, Sect's 503, 507, Appendix D, and GA 120-3-3-.04 will apply to the design and maintenance of a fire apparatus access road and fire protection water supply. Fire apparatus access roads require approval by the fire department showing compliance with the above referenced GA prescriptive codes, and as such, I would not endorse modifying the proposed condition changes without first being provided documentation that shows how those requirements will be satisfied. Additionally for consideration, the construction of 42 townhomes would also necessitate compliance with all County requirements for a new "major subdivision."

- (8) Whether the proposal conforms with the policy and intent of the future land use plan; and**
- (9) The specific, unusual, or unique facts of each case that give rise to special hardships incurred by the applicant and/or surrounding property owners.**

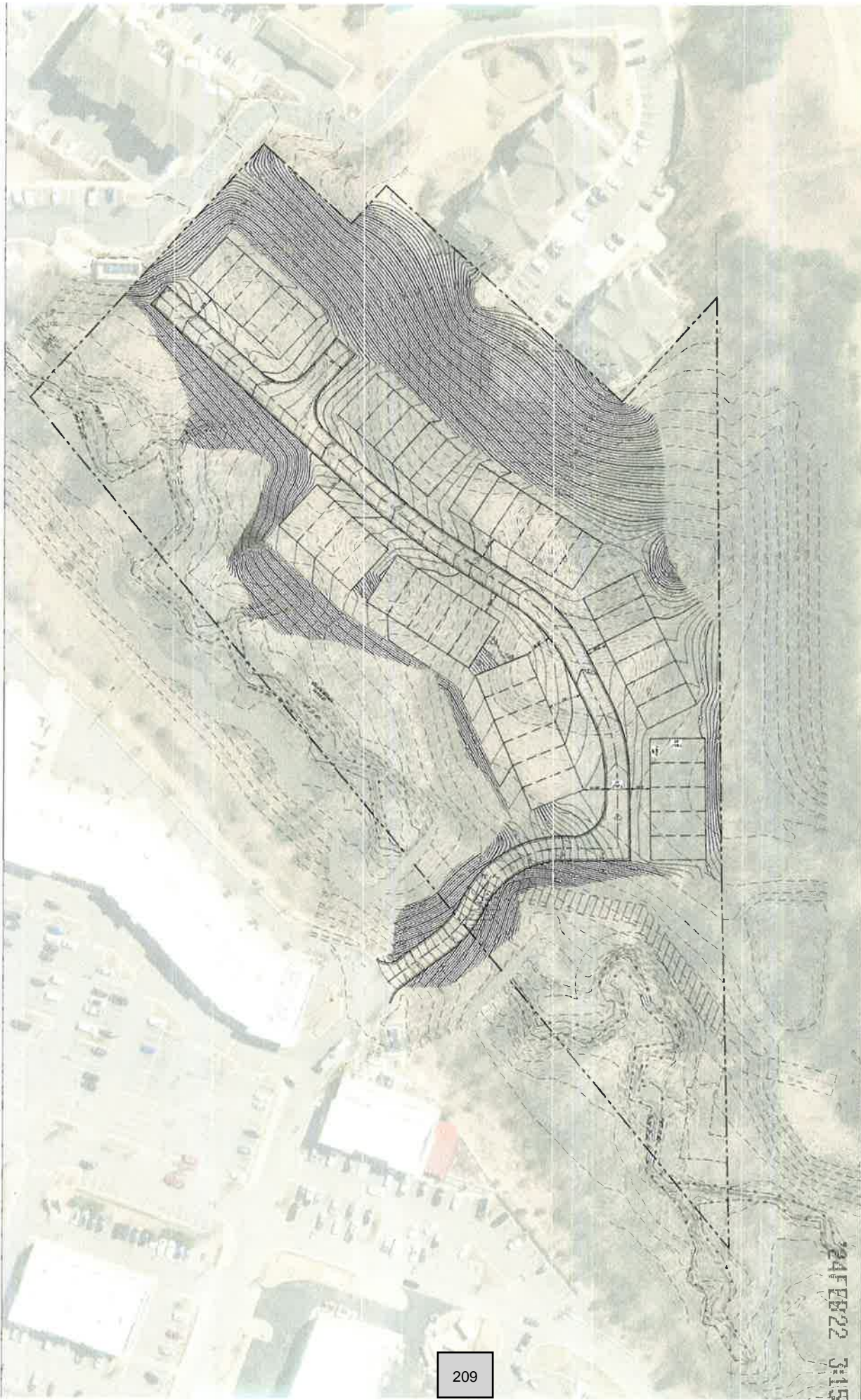
PHOTOS OF SITE



Staff recommends that the following items be added as conditions of approval.

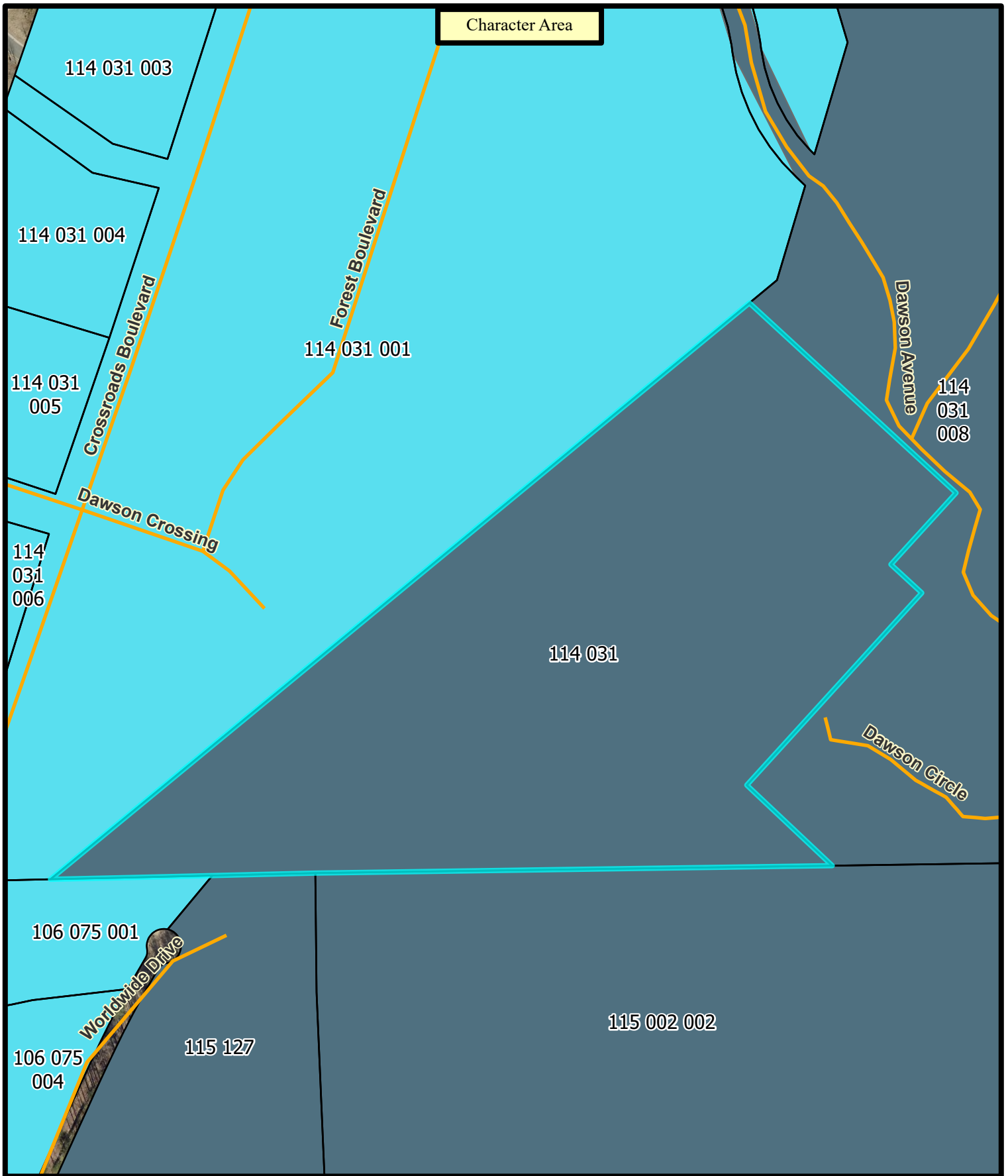
1. Each townhouse shall be located on its lot, which is a minimum of 2,400 square feet in size.
2. Dumpster use and dumpster service backing into an access road is prohibited
3. Residents cannot access the rear delivery of commercial development or
4. Backing vehicles that are using the rear of the restaurant's service door
5. Pedestrian accessibility must be provided from the project to the commercial site.
6. Deeded perpetual access easement across the commercial development





4130 DAWSON FOREST ROAD - DAWSONVILLE, GA  
CONCEPT 2

24 FEB 22 3:15 PM



Character Area

114 031 003

114 031 004

114 031 005

114 031 006

Crossroads Boulevard

Forest Boulevard

114 031 001

Dawson Crossing

Dawson Avenue

114 031 008

114 031

Dawson Circle

106 075 001

Worldwide Drive

106 075 004

115 127

115 002 002



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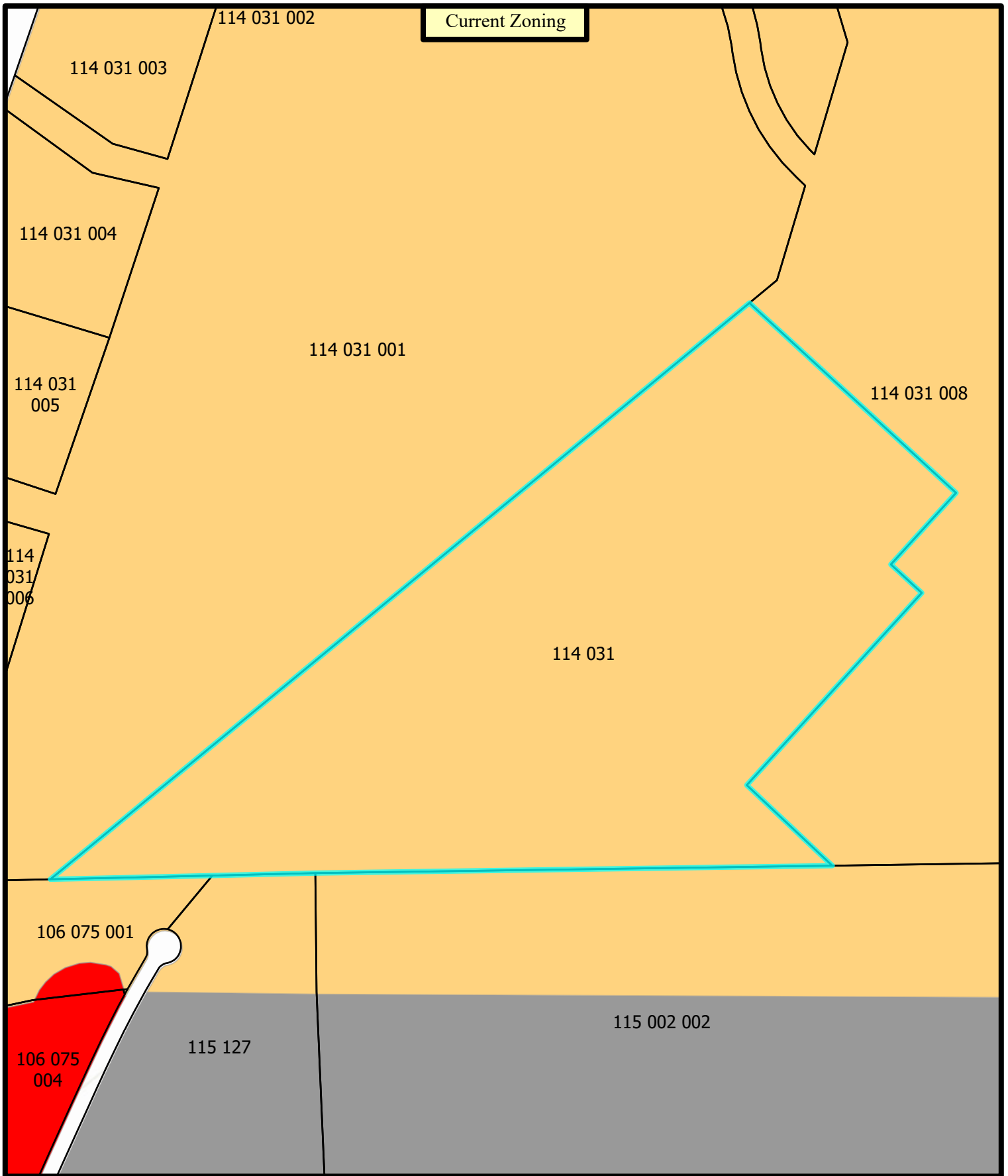


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Dawson County  
Planning and Development

210

Parcel #: 114-031  
Current Zoning: C-PCD  
Application #: ZA 24-01  
Character Area: Suburban  
Residential



Current Zoning



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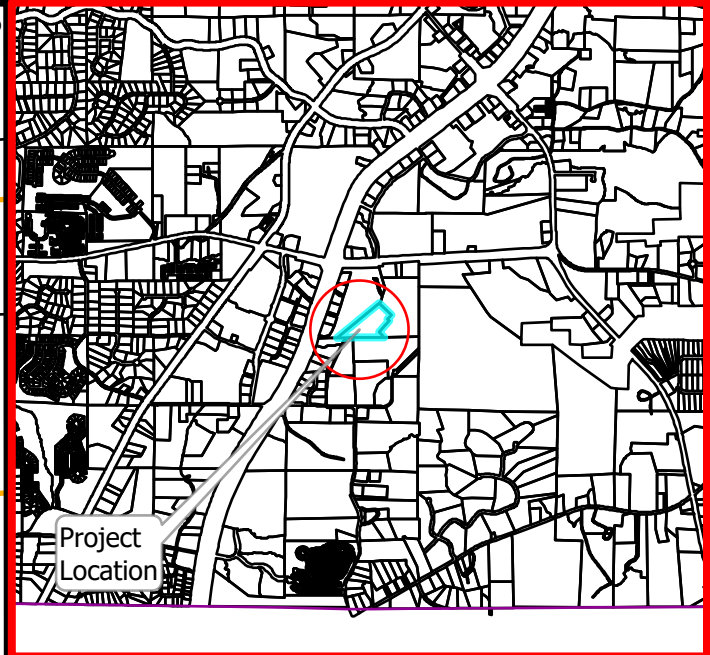
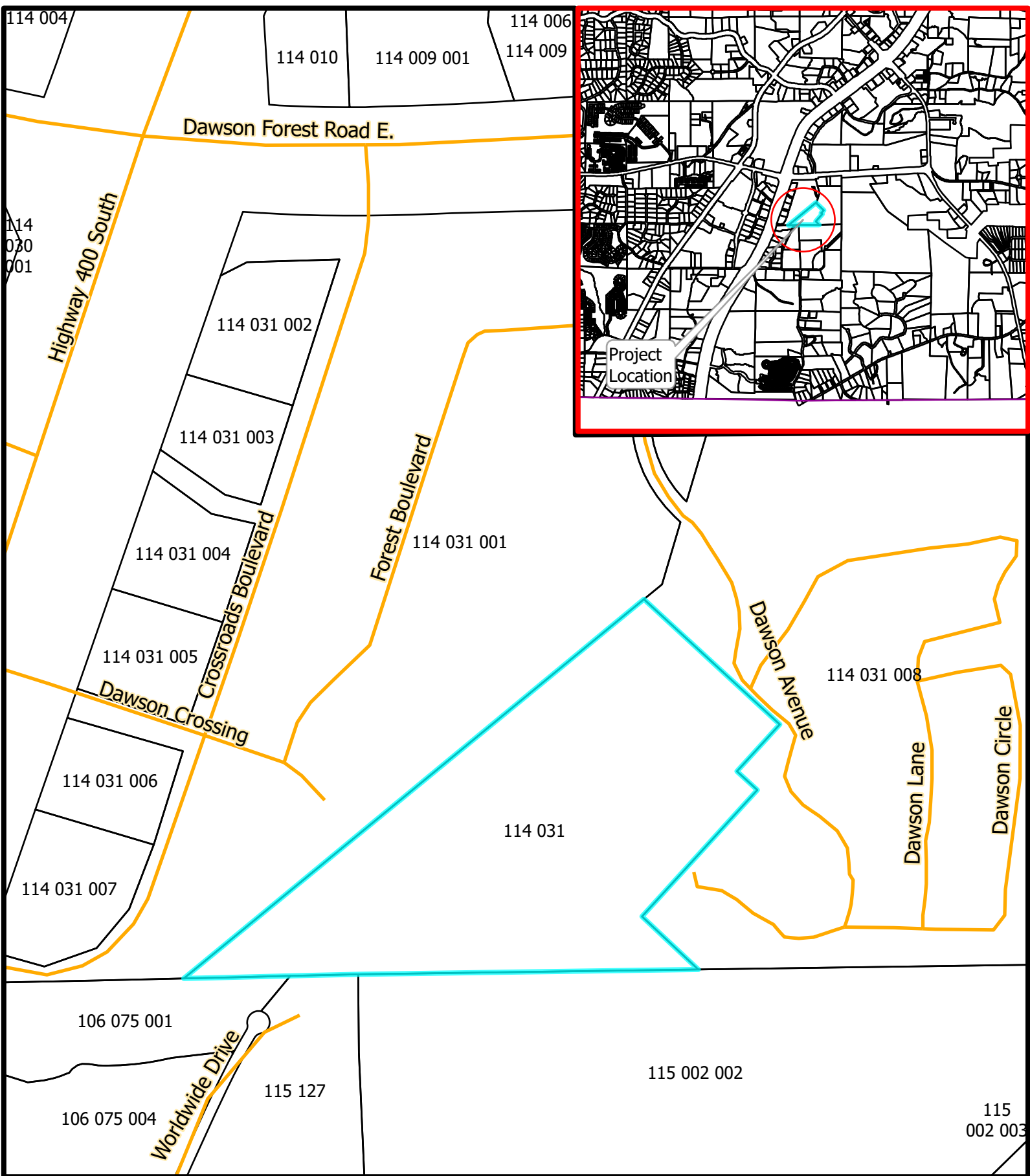
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Dawson County  
Planning and Development

211

Staff Report

Parcel #: 114-031  
Current Zoning: C-PCD  
#:ZA 24-01  
Character Area: Suburban  
Residential



Project Location

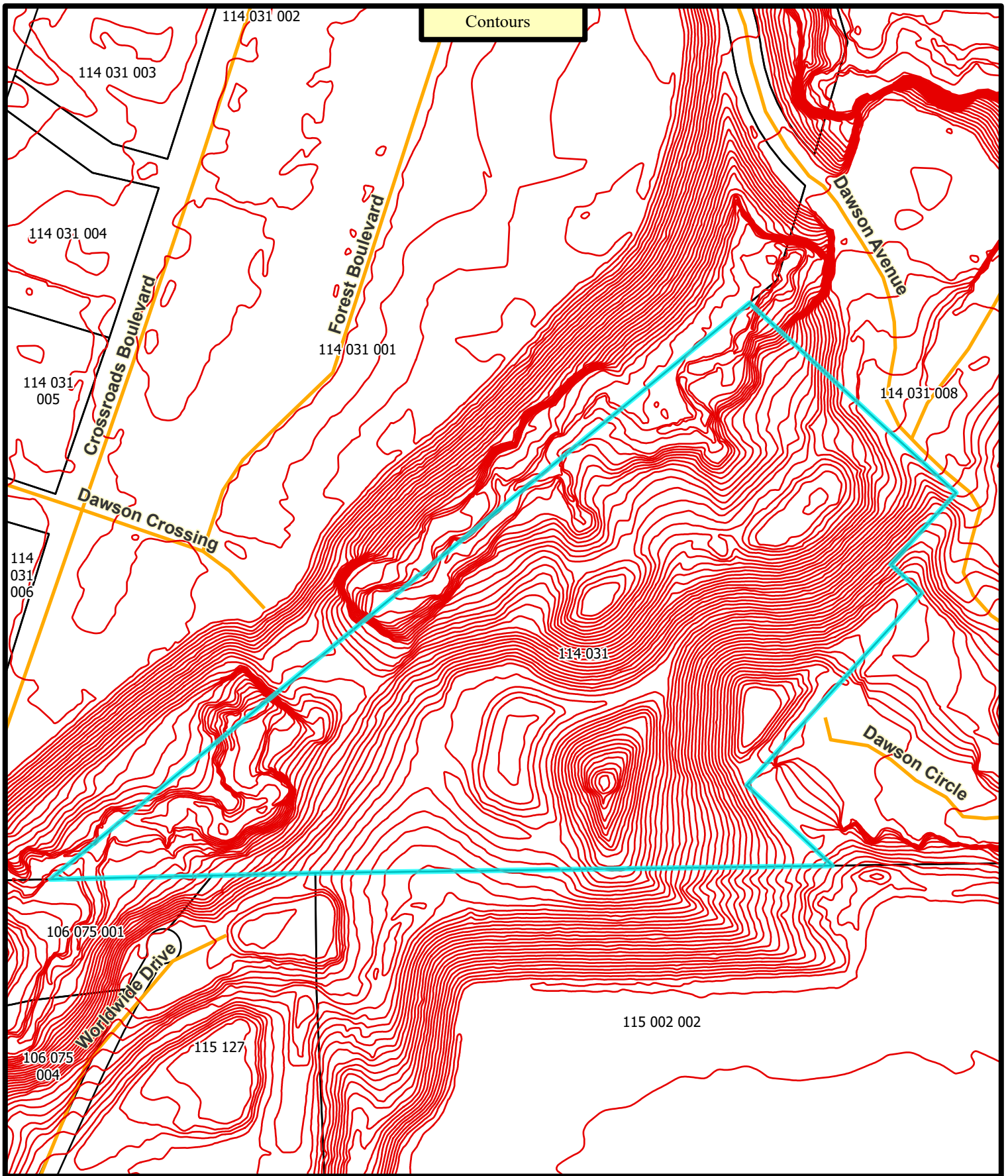


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Dawson County  
Planning and Development  
Staff Report: Exhibit  
212

Parcel #: 114-031  
Current Zoning: C-PCD  
Application #: ZA 24-01  
Character Area: Suburban Residential



Contours



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Scale: 1:2,242

Dawson County

Planning and Development

213

Staff Report

Parcel #: 114-031  
Current Zoning: C-PCD  
FLU: CHB  
Application #: ZA 24-01  
Character Area: Suburban  
Residential

Stipulations:

1. Dumpster use and dumpster service backing into an access road conflict with delivery and tractor-trailers servicing the rear of the commercial development
2. Future residents cannot access rear delivery of commercial development
3. Backing vehicles that are using the rear of the restaurant's service door
4. Pedestrian accessibility
5. Deeded perpetual access easement across the commercial development
6. The development shall be accessed through Dawson Avenue.

The Dawson County Planning Commission meeting was called to order at 6:00 p.m. by Chairman Jason Hamby.

Neil Hornsey gave the invocation. The Pledge of Allegiance was led by Chairman Hamby.

Members present: Jason Hamby, District 1 Chairman; John Maloney, District 2; Shelton Townley, District 3 and Neil Hornsey, District 4. Staff present: Harmony Gee and Sharon Farrell.

Chairman Hamby requested a motion to approve the minutes from the February 20, 2024 minutes as prepared. Motion passed by a vote of 4-0 Maloney/Hornsey

Chairman Hamby asked for a motion to approve the agenda as presented by staff. Motion passed by a vote of 4-0. H o r n s e y / T o w n l e y

Chairman Hamby announced the requirement that a *statement of disclosure of campaign contributions* of \$250 or more must be completed by anyone who wishes to speak in favor or opposition to any application.

**New Business:**

VR 24-04 Donald Rogers is requesting to vary from the Dawson County Land Use Resolution Article III Section 121-67 setback reduction TMP L21 100 031 (Crestline Drive)

Chairman Hamby asked if there was anyone to speak on behalf of the application. Donald Rogers of Gainesville, Georgia spoke to their application. He stated the topography of the lot was challenging and cannot accommodate a previously approved administrative variance house plan.

Chairman Hamby asked if there was anyone to speak in favor of the application. There were none.

Chairman Hamby asked if there was anyone to speak in opposition of the application. There were none.

Chairman Hamby closed the Board for discussion.

Chairman Hamby asked for a motion.

Motion to approve the variance was passed 3-0 Maloney/Hornsey 1 abstention Hamby

ZA 24-01 Jim King obo Dawson Forest Owner, LLC is requesting to amend the site plan and zoning stipulations for the Dawson Crossroads Development TMP 114-031.

Chairman Hamby asked if there was anyone to speak on behalf of the application. Jim King of Dawsonville, GA, spoke on behalf of the application. He stated that his client is seeking to amend a previously approved master plan and zoning approval stipulation from 2014. He stated that his client wished to construct 42 townhomes instead of the apartments that were approved on the master plan and remove the stipulation requiring a second entrance/exit that connects to World Wide Drive. Steve West of Alpharetta, GA also spoke to the application as a representative of Halpern Development. He stated that the apartments were sold after the first phase of construction and that the current owner does not wish to construct apartments.

Chairman Hamby asked if there was anyone to speak in favor of the application. There were none.

Chairman Hamby asked if there was anyone to speak in opposition of the application. There were none

Chairman Hamby then closed the Board for discussion.

DAWSON COUNTY PLANNING COMMISSION  
MEETING HELD APRIL 16, 2024  
DAWSON COUNTY GOVERNMENT CENTER

Chairman Hamby asked for a motion.

Motion to recommend approval of the request with the following stipulations was approved 3-0.  
Maloney/Townley 1 abstention Hamby.

Stipulations:

1. Dumpster use and dumpster service backing into an access road conflict with delivery and tractor-trailers servicing the rear of the commercial development
2. Future residents cannot access rear delivery of commercial development
3. Backing vehicles that are using the rear of the restaurant's service door
4. Pedestrian accessibility
5. Deeded perpetual access easement across the commercial development
6. The development shall be accessed through Dawson Avenue.

**Updates by Planning and Development:**

Planning and Development Director Sharon Farrell stated that the department processed 106 single family residential permits in the month of March and that the department continues to stay busy.

There being no further business to discuss, the meeting was adjourned at 6:22 p.m.

\_\_\_\_\_  
Jason Hamby, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attest: Harmony Gee

\_\_\_\_\_  
Date





# DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Emergency Services

Work Session: May 2, 2024

Prepared By: Troy Leist, Chief

Voting Session: May 16, 2024

Presenter: Johnny Irvin, Division Chief

Public Hearing: Yes \_\_\_\_\_ No

Agenda Item Title: Seeking Approval to Accept the EMPG Grant

**Background Information:**

For many years, Dawson County has been awarded the (EMPG) Emergency Management Performance Grant through GEMA. This year's grant will help pay for two live, remote weather cameras/weather stations. These weather stations will be located at Crystal Falls golf course and Chestatee golf course. They will give us real-time weather and a live video feed of the area.

**Current Information:**

We are seeking approval to accept this year's EMPG grant. This grant is a 50/50 match grant with \$7,784 coming from the grant and \$7,784 coming from the county for a total of \$15,568.

Budget Information: Applicable: \_\_\_\_\_ Not Applicable: \_\_\_\_\_ Budgeted: Yes  No \_\_\_\_\_

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining

Recommendation/Motion: \_\_\_\_\_

Department Head Authorization: TL

Date: April 11, 2024

Finance Dept. Authorization: Vickie Neikirk

Date: 4/22/24

County Manager Authorization: J. Leverette

Date: 4/23/24

County Attorney Authorization: \_\_\_\_\_

Date: \_\_\_\_\_

**Comments/Attachments:**

# GEORGIA EMERGENCY MANAGEMENT AND HOMELAND SECURITY AGENCY

**BRIAN P. KEMP**  
GOVERNOR



**JAMES C. STALLINGS**  
DIRECTOR

March 28, 2024

Dear County EMA Directors,

Georgia Emergency Management and Homeland Security Agency (GEMA/HS) has received increased funding in the State of Georgia's Amended Fiscal Year 2024 budget, for the purpose of restoring full previous payment amounts to the Emergency Management Agencies (EMA) across the State. This will include full funding for the FY 2023 EMPG pass through funds to each EMA. It will also include a separate opportunity to receive funding to make up for the ten percent reduction, announced in my former letter dated February 1, 2023.

In the next few weeks, you will receive information from our Preparedness Grants and Programs division with the details of the administrative process required. There will be a requirement to process these two payments separately due to the federal administrative requirements associated with them.

I want to thank Governor Kemp, the Governor's Office of Planning and Budget, and both the House and Senate Appropriations Committees in close coordination with our Agency to provide this increased funding.

Last Friday, March 22, 2024, Congress passed the funding legislation for FEMA and the U.S. Department of Homeland Security for Federal Fiscal Year 2024. The national level EMPG was funded 9% below the 2023 level. We do not know the exact funding amount we will receive at GEMA/HS based on that change. It is expected to have some level of impact on the funds we have available for the FY 2024 budget.

Thanks to all of you for your continued work on behalf of your organizations and the citizens of Georgia that you represent. We look forward to continuing to utilize these funds for both planning and preparation to ensure we are ready, together, to face the next challenges that come our way.

Sincerely,

A handwritten signature in black ink, appearing to read "James C. Stallings".

James C. Stallings

/al



## DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: Family Connection

Work Session: May 2, 2024

Prepared By: Rebecca Bliss

Voting Session: May 16, 2024

Presenter: Rebecca Bliss

Public Hearing: Yes  No

Agenda Item Title: Presentation of request for BOC to accept increase of Georgia Division of Human Services (DHS) grant for in the amount of \$3,750.00.

**Background Information:**

Dawson County Family Connection’s (DCFC) mission is to provide leadership through collaboration with all segments of the community for the well-being of families and children. (Established 1999)

**Current Information:**

On Thursday, March 21, the Dawson County BOC accepted funds designated for DCFC from DHS in the amount \$52,500. On Thursday, March 28, the Georgia General Assembly adjourned having voted in its final version of the FY25 budget, which reflects a \$3,750 increase in funding for each Family Connection Collaborative. (New FY25 contract total, \$56,250.)

**Budget Information:**

Applicable:  Not Applicable:

Budgeted: Yes  No

Fund	Department	Account #	Budget	Balance	Requested	Remaining

\*If this is a personnel-related request, has it been reviewed by Human Resources?

\*If this item is being requested to move to the same day’s voting session for BOC consideration, provide *detailed justification* for the request:

Recommendation/Motion: To accept additional FY25 funds awarded in the amount of \$3,750.00 from DHS to DCFC.

Department Head Authorization: Rebecca Bliss

Date: 04/22/2024

Finance Department Authorization: Vickie Neikirk

Date: 4/22/24

County Manager Authorization: J. Leverette

Date: 4/23/24

Comments/Attachments: Notice of increase from Georgia Family Connection Regional Manager Toni Brown.

**From:** Toni Brown  
**To:** [Don Barber \(pastor.rabunapinesbyterian@gmail.com\)](mailto:Don.Barber@pastor.rabunapinesbyterian@gmail.com); [jacquedevieux@dji.state.ga.us](mailto:jacquedevieux@dji.state.ga.us); [Jeff Morgan; Mandy Power](mailto:Jeff.Morgan@mandypower.com); [Phillippa Lewis Moss; Milford Regent](mailto:Phillippa.Lewis.Moss@milfordregent.com); [Richard Sutherland - Hart County](mailto:Richard.Sutherland@hartcounty.gov); [Shelby Ward; Shelby Ward@northgatech.edu](mailto:Shelby.Ward@northgatech.edu); [Stacey Morgan; Stacie Johnson](mailto:Stacey.Morgan@staciejohnson.com); [Stephen Bartlett@myfec.org](mailto:stephen.bartlett@myfec.org)  
**Cc:** [rosiemccormick@cumquoc.org](mailto:rosiemccormick@cumquoc.org); [Virginia Dick; amibby@towncountyschools.org](mailto:Virginia.Dick@amibby@towncountyschools.org); [brionette.barker@lumpkinschools.com](mailto:brionette.barker@lumpkinschools.com); [bankscountyfc@gmail.com](mailto:bankscountyfc@gmail.com); [d.barrett@habershamschools.com](mailto:d.barrett@habershamschools.com); [kjones@ucschools.org](mailto:kjones@ucschools.org); [Noel Pauley; hcfcdirector@gmail.com](mailto:Noel.Pauley@hcfcdirector@gmail.com); [rabuncountyfamilyconnection@gmail.com](mailto:rabuncountyfamilyconnection@gmail.com); [Nanette Baughman \(nanette.baughman@white.k12.ga.us\)](mailto:Nanette.Baughman@nanette.baughman@white.k12.ga.us); [Rebecca Bliss; sarah@forythconnection.org](mailto:Rebecca.Bliss@forythconnection.org); [Susan Harris@franklin.k12.ga.us](mailto:susan.harris@franklin.k12.ga.us); [Toni Brown](mailto:Toni.Brown@gaafcp.org)  
**Subject:** GOOD NEWS - FY25 Budget increase of \$3,750 for each county  
**Date:** Tuesday, April 2, 2024 12:10:26 PM

**Caution:** This is an external email. Please take care when clicking links or opening attachments. When in doubt, contact your IT Department.

Family Connection Board Chair,

GREAT NEWS! The Georgia General Assembly adjourned on Thursday, March 28, ending the 2024 legislative session. It is with gratitude to our legislators who partner with us that I share with you that their final version of the FY25 budget reflects a **\$3,750 increase** for each Georgia Family Connection Collaborative over your FY24 allocation. What this means for our statewide network is that all FY25 county contracts will be increased to **\$56,250**.

I hope you as board chair have been talking with the board about how to allocate the increase for FY25. My recommendation is to add it to the coordinator salary package or contractors' package, but it is truly a board decision. Let me know how I can help you as you move forward.

I'll be in touch with coordinator soon about how to make those budget revisions for FY25. Thank you for your patience as we navigate this process.

**Toni Brown**  
Regional Manager, Georgia Family Connection Partnership  
706-491-4295 | [www.gaafcp.org](http://www.gaafcp.org) | [toni@gaafcp.org](mailto:toni@gaafcp.org)



## DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: Family Connection

Work Session: May 2, 2024

Prepared By: Rebecca Bliss

Voting Session: May 16, 2024

Presenter: Rebecca Bliss

Public Hearing: Yes  No

Agenda Item Title: Presentation of request for BOC to accept United Way for Dawson County grant funds in the amount of \$5,500

**Background Information:**

Dawson County Family Connection's (DCFC) mission is to provide leadership through collaboration with all segments of the community for the well-being of families and children. (Established 1999)

**Current Information :**

DCFC is being awarded \$5,500 in grant funds\* by United Way for Dawson County. DCFC agrees to provide Trust Based Relational Intervention (TBRI) Training as well as provide a Poverty Simulation event to the Dawson County community. \*No match required

**Budget Information:**

Applicable:  Not Applicable:

Budgeted: Yes  No

Fund	Department	Account #	Budget	Balance	Requested	Remaining

\*If this is a personnel-related request, has it been reviewed by Human Resources?  \*If this item is being requested to move to the same day's voting session for BOC consideration, provide *detailed justification* for the request:

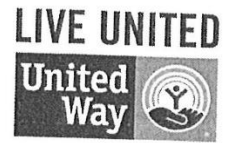
Recommendation/Motion: To accept funds awarded in the amount of \$5,500.00 from United Way for Dawson County for DCFC as designated above.

Department Head Authorization: Rebecca Bliss  
 Finance Department Authorization: Vickie Neikirk  
 County Manager Authorization: J. Leverette

Date: 04/22/2024  
 Date: 4/22/24  
 Date: 4/23/24

Comments/Attachments: 2024 United Way for Dawson County Letter of Award to DCFC

United Way for Dawson County  
PO Box 1350  
Cumming, GA 30028  
tel 770.781.4110  
fax 770.781.4558  
www.UnitedWayForsyth.com/DawsonCounty



April 12, 2024

Rebecca Bliss  
Dawson County Family Connection  
PO Box 872  
Dawsonville, GA 30534

Dear Rebecca:

Thank you for your submission of the 2024 Agency Application and budget presentation to the Allocations Committee. After thoughtful consideration of your request and review of your application, programs and finances, United Way for Dawson County has awarded Dawson County Family Connection funds to be used for the following areas/programs: \$5,000 to be used for Trust Based Relational Intervention (TBRI) training for 50 participants and \$500 to be applied to the cost of providing a Poverty Simulation to the community, for a total of \$5,500, for the year 2024. Payments of \$1,375 will be distributed on a quarterly basis beginning in April.

**Note: Funding is contingent upon the reasonable success of campaign pledges as well as the collection on pledges from United Way for Dawson County's annual fundraising campaign.**

Your allocation is comprised of funds designated by contributors to Dawson County Family Connection in the amount of \$349.70; the remaining \$5,150.30 will be allocated from the general campaign fund. Enclosed you will find a printout of the names and addresses of individuals who designated their donation to your agency for use in sending out thank you notes.

Upon acceptance of this funding, please be reminded of the terms of our Statement of Agreement. If you have any questions regarding your allocation, please do not hesitate to call our office at 770-781-4110.

We look forward to working with you this year as we strive to enhance the quality of life for all residents of Dawson County and thank you for the services you provide in our community.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ruth Goode".

Ruth Goode  
Executive Director

**Mission Statement:** To improve lives in our community by mobilizing the caring power and spirit of our citizens.



# DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: Senior Services

Work Session: May 2, 2024

Prepared By: Dawson Johnson

Voting Session: May 16, 2024

Presenter: Dawn Johnson

Public Hearing: Yes \_\_\_\_\_ No X

Agenda Item Title: Presentation of FY24 Legacy Link Contract Addendum #1

### Background Information:

Legacy Link will add addendums each year to our yearly contract for services depending on what is available from federal and state sources on our grant.

### Current Information:

This is the first addendum from Legacy Link for FY24. This is for a rollover of ARPA funding from the FY23 contract. Additional funding of support services material aid (supplies for clients) of \$22,169. This funding has been spent and is continuing to be spent on supplies for seniors at home, memory care, and health and wellness.

### Budget Information:

Applicable: X Not Applicable: \_\_\_\_\_

Budgeted: Yes X No \_\_\_\_\_

Fund	Department	Account #	Budget	Balance	Requested	Remaining
5510						

\*If this is a personnel-related request, has it been reviewed by Human Resources? N/A

\*If this item is being requested to move to the same day's voting session for BOC consideration, provide *detailed justification* for the request:

Recommendation/Motion: Motion to approve Legacy Link Addendum #1 for FY24.

Department Head Authorization: Dawn Johnson

Date: 4/23/2024

Finance Department Authorization: Vickie Neikirk

Date: 4/24/24

County Manager Authorization: \_\_\_\_\_

Date: \_\_\_\_\_

Comments/Attachments: \_\_\_\_\_



April 4, 2024

Mr. Billy Thurmond, Chairman  
Dawson County Board of Commissioners  
25 Justice Way Suite 2313  
Dawsonville, GA 30534

Dear Mr. Thurmond:

Enclosed are two (2) original copies of the FY-2024 Addendum #1 Contract between The Legacy Link, Inc. and the Dawson County Commission for Nutrition Program Services. This Addendum is for the contract period of July 1, 2023 - June 30, 2024.

After the Addendums have been reviewed and approved, **please sign and notarize both copies and return both copies** to The Legacy Link, Inc.. Ms. Melissa Armstrong, Chief Executive Officer/AAA Director of The Legacy Link, Inc. will also sign them. A fully executed copy will then be returned to your office.

Please let me know if you have any questions about the enclosed. My phone number is (678) 677-8511 or e-mail at [tnghuyen@legacylink.org](mailto:tnghuyen@legacylink.org)

Sincerely,

Tony Nguyen  
Finance Manager

Enclosure



**ADDENDUM NO. 1  
TO  
AGREEMENT**

BETWEEN THE LEGACY LINK, INC., AND Dawson COUNTY COMMISSION  
FOR THE PROVISION OF Nutrition program and entered into on the first  
day of July, 2023.

Said agreement is amended to read as follows.

**W I T N E S S E T H:**

WHEREAS, the Legacy has entered into an Agreement with the Department of Human Services of the State of Georgia for the purpose of carrying out a component of the Legacy Link, Inc., Area Agency on Aging Plan; and

WHEREAS, this component of said Area Plan on Aging is the provision of Material Aid-Individual services to the elderly;

WHEREAS, the Legacy and the Contractor desire to enter into an Agreement to provide Wellness services in Dawson County;

**2. Description of Services.**

(b) Operation of the nutrition site includes serving one meal a day, five days a week (250 days per year) as specified in the Grant Application incorporated herein, for a total of 9,234 units of congregate nutrition services to 82 elderly persons, 32,100 units of home-delivered nutrition services to 131 elderly persons,

(e) Provide Wellness services for elderly persons in Dawson County as described in the Legacy Link, Inc., Area Agency Plan for the period July 1, 2023 to June 30, 2024. Services must be performed as provided in Section "D" of Title III of the Older Americans Act of 1965 as amended. A total of 310 units of Lifestyle Management services to 1050 persons; a total of 36 units of Nutrition Education services to 350 persons; a total of 350 units of Physical Activity services to 2,650 persons; a total of 18 units of Program Awareness/Prevention services to 90 persons in Dawson County.

(f) Provide 22,169 units of support services material aide individual services to 180 elderly persons and 3,121 units of caregiver

services material aide individual services to 5 persons.

5. Compensation.

(b) The total compensation paid by the Legacy to the Contractor for nutrition site operation pursuant to this Agreement shall not exceed Sixty-Three Thousand Eight Hundred One Dollars (\$63,801.00). The Legacy agrees to provide federal and state funds for congregate meals in the amount of Twenty-Eight Thousand One Hundred Seventy-One Dollars (\$28,171.00) and federal and state funds for home-delivered meals in the amount of Thirty Five Thousand Six Hundred Thirty Dollars (\$35,630.00).

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(c) The total compensation paid by the Legacy to the Contractor for Alzheimer Respite services pursuant to this agreement shall not exceed Twenty Thousand Two Hundred Seventy-Six Dollars (\$20,276.00).

(d) The total compensation paid by the Legacy to the Contractor for Transportation services pursuant to this agreement shall not exceed Twelve Thousand Nine Hundred Twenty-Eight Dollars (\$12,928.00).

(e) The total compensation paid by the Legacy to the Contractor for Wellness services pursuant to this agreement shall not exceed Nine Thousand Three Hundred Forty-Three Dollars (\$9,343.00).

(f) The Legacy agrees to provide federal funds for material aid individual support services in the amount of Twenty Thousand Eight Hundred Thirty-Eight Dollars (\$20,838.00).

6. Non-Federal Funds.

(a) As a condition of this Agreement, the Contractor agrees to insure non-federal funds in the amount of Four Thousand Eight Hundred Sixteen Dollars (\$4,816.00) will be available for nutrition site operations, and Two Thousand Eighty Six Dollars (\$2,086.00) for respite services, and One Thousand Three Hundred Thirty Dollars (\$1,330.00) for material aid support and Five Hundred Ninety Six Dollars (\$596.00) for wellness services and One Thousand Five Hundred and Twenty Eight Dollars (\$1,528.00) for transportation services.

(b) The Contractor further agrees to insure local cash based on actual cost per meal and available federal and state funds for 9,234

congregate and 32,100 home-delivered meals.

The minimum cash requirement for the term of the Agreement being Twenty Three Thousand Three Hundred Seventy Four Dollars (\$23,374.00) for congregate meals and One Hundred Five Thousand Three Hundred Fifteen Dollars (\$105,315.00) for home-delivered meals.

The Contractor shall provide the necessary non-match local resources required for the provision of the services listed in Paragraph two (2) of this contract, this amount being Five Hundred Eight Thousand Seven Hundred Five Dollars (\$508,705.00).

All other terms and conditions of this agreement remain unchanged.

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

THE LEGACY LINK, INC.

By: \_\_\_\_\_  
Chief Executive Officer/AAA Director

Subscribed and sworn to  
in our presence:

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

CONTRACTOR:  
DAWSON COUNTY COMMISSION

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

Subscribed and sworn to  
in our presence:

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



# DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: **Public Works**

Work Session: May 2, 2024

Prepared By: **Robert W. Drewry**

Voting Session: May 16, 2024

Presenter: **Robert W. Drewry**

Public Hearing: Yes  No

Agenda Item Title: Request Board approval of proposed 2024 LMIG LRA grant application and request for GDOT funding.

### Background Information:

Annually, Dawson County submits to the GDOT a request for funding from the LMIG (Local Maintenance Improvement Grant). Funding allocation has already been approved by the GDOT for 2024, however, additional funds were approved in the state legislature in Local Road Assistance Administration (LRA) Funds for 2024 with no match required by the local government. This funding provides much needed assistance to Dawson County in the maintenance and improvement of county roads.

### Current Information :

Staff has already solicited bids for a full depth reclamation on Burt Creek Road from the city limits to the County line. One bid was received for \$1,135,718.13. Contract award is pending. The annual LMIG allocation is based on a formula using centerline miles and population. According to the GDOT website, Dawson County is eligible for \$595,405.18. Since no match is required by the state, staff is requesting the full amount based on the formula to be applied to the Burt Creek Road project. Applications are due no later than June 15, 2024.

### Budget Information:

Applicable:  Not Applicable:

Budgeted: Yes  No

Fund	Department	Account #	Budget	Balance	Requested	Remaining
n/a						

\*If this is a personnel-related request, has it been reviewed by Human Resources?

\*If this item is being requested to move to the same day's voting session for BOC consideration, provide *detailed justification* for the request:

Recommendation/Motion: Board approval of proposed 2024 LMIG LRA grant application and request for GDOT funding.

Department Head Authorization: RWD

Date: April 19, 2024

Finance Department Authorization: Vickie Neikirk  
County Manager Authorization: J. Leverette

Date: 4/22/24  
Date: 4/23/24

Comments/Attachments: \_\_\_\_\_

**GEORGIA DEPARTMENT OF TRANSPORTATION LOCAL  
MAINTENANCE & IMPROVEMENT GRANT (LMIG)  
APPLICATION FOR FISCAL YEAR 20 24  
TYPE OR PRINT LEGIBLY. ALL SECTIONS MUST BE COMPLETED.**

**LOCAL GOVERNMENT INFORMATION**

Date of Application: April 15, 2024

Name of local government: Dawson County, GA

Address: 60 Transportation Lane Dawsonville GA 30534

Contact Person and Title: Tessa Webb, Administrative Assistant

Contact Person's Phone Number: 706-265-2774

Contact Person's Fax Number: n/a

Contact Person's Email: twebb@dawsoncountyga.gov

Is the Priority List attached? Yes

**LOCAL GOVERNMENT AFFIDAVIT AND CERTIFICATION**

I, Robert Drewry (Name), the Director of Public Works (Title), on behalf of Dawson County (Local Government), who being duly sworn do swear that the information given herein is true to the best of his/her knowledge and belief. Local Government swears and certifies that it has read and understands the LMIG General Guidelines and Rules and that it has complied with and will comply with the same.

Local government further swears and certifies that it has read and understands the regulations for the Georgia Planning Act of 1989 (O.C.G.A. § 45-12-200, et seq.), Service Delivery Strategy Act (O.C.G.A. § 36-70-20, et seq.), and the Local Government Budgets and Audits Act (O.C.G.A. 36-81-7 et seq.) and will comply in full with said provisions. Local government further swears and certifies that the roads or sections of roads described and shown on the local government's Project List are dedicated public roads and are part of the Public Road System in said county/city. Local government further swears and certifies that it complied with federal and/or state environmental protection laws and at the completion of the project(s), it met the match requirements as stated in the Transportation Investment ACT (TIA).

Further, the local government shall be responsible for any claim, damage, loss or expense that is attributable to negligent acts, errors, or omissions related to the designs, drawings, specifications, work and other services furnished by or on behalf of the local government pursuant to this Application ("Loss"). To the extent provided by law, the local government further agrees to hold harmless and indemnify the DEPARTMENT and the State of Georgia from all suits or claims that may arise from said Loss.

**GEORGIA DEPARTMENT OF TRANSPORTATION LOCAL  
MAINTENANCE & IMPROVEMENT GRANT (LMIG)  
APPLICATION FOR FISCAL YEAR 24**

**LOCAL GOVERNMENT AFFIDAVIT AND CERTIFICATION**

If the local government fails to comply with these General Guidelines and Rules, or fails to comply with its Application and Certification, or fails to cooperate with the auditor(s) or fails to maintain and retain sufficient records, the DEPARTMENT may, at its discretion, prohibit the local government from participating in the LMIG program in the future and may pursue any available legal remedy to obtain reimbursement of the LMIG funds. Furthermore, if in the estimation of the DEPARTMENT, a roadway or bridge shows evidence of failure(s) due to poor workmanship, the use of substandard materials, or the failure to follow the required design and construction guidelines as set forth herein, the Department may pursue any available legal remedy to obtain reimbursement of the allocated LMIG funds or prohibit local government from participating in the LMIG program until such time as corrections are made to address the deficiencies or reimbursement is made. All projects identified on the Project list shall be constructed in accordance with the Department's Standard Specifications of Transportation Systems (Current Edition), Supplemental Specifications (Current Edition), and Special Provisions.

Local Government:

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print)  
Mayor / Commission Chairperson

\_\_\_\_\_ (Date)

LOCAL GOVERNMENT SEAL:

\_\_\_\_\_  
E-Verify Number

Sworn to and subscribed before me,

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

In the presence of:

NOTARY PUBLIC

\_\_\_\_\_  
My Commission Expires:

NOTARY SEAL:

**FOR GDOT USE ONLY**

The local government's Application is hereby granted and the amount allocated to the local government is \_\_\_\_\_. Such allocation must be spent on any or all of those projects listed in the Project List.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
GDOT Office of Local Grants



## GDOT LMIG APPLICATION CHECKLIST

1. Local Government **must include a cover letter** with their LMIG Application. The cover letter shall include the following:
  - a. Overview of type of project(s) being requested
  - b. Status of previous LMIG funding
  - c. Signature of Mayor or County Commission Chairperson
2. The LMIG Application Form shall include the following:
  - a. Signature of Mayor or County Commission Chairperson
  - b. County/City Seal
  - c. Notary signature and seal
3. Project List including a brief description of work to be done at each location.



# DAWSON COUNTY Public Works

April 15, 2024

Subject: 2024 LMIG LRA  
Application and Project List

Engineering

Project Management

Roads/Bridges

Stormwater Management

Waste Services

Dear Mr. Jeremy Durrance:

It is my pleasure to submit to you the following list of projects eligible for LMIG LRA funding for 2024. The FY2024 amount allocated to Dawson County is \$595,405.18. The total budgeted for the 2024 LMIG LRA (projects) are \$1,135,718.13. All previous LMIG projects (2023 and prior) have been completed and payment has been received.

The project cost estimates DO NOT include the utilization of Dawson County labor and equipment. Please find the enclosed LMIG Project list. If there are any questions, please do not hesitate to contact me. We are current with previous LMIG funding.

The following table outlines our 2024 project list:

Line Item	Description	Estimated Quantity	Unit	Unit Cost	Total Estimated Cost
<b>TASK 1:</b>	<b>FDR – Burt Creek Road- Approx. 8,765 feet</b>				
1.1	Traffic Control, Shoulders, Striping, Signage and Mobilization	1	Lump sum	\$302,688.38	\$302,688.38
1.2	10" Cement Reclaimed Base (Includes temp raised lane markers) 20 foot wide	19,900	SY	\$5.07	\$100,893.00
1.3	Portland Cement – 55 lb/SY	535	TN	\$286.93	\$153,507.55
1.4	B-MOD Asphalt Binder 2" Depth, 20' wide	2,220	TN	\$153.11	\$339,904.20
1.5	9.5 mm 135 lbs/SY TP 1/H Mix SP Asphalt Topping 20' wide	1,500	TN	\$159.15	\$238,725.00
<b>Subtotal</b>					<b>\$1,135,718.13</b>

Sincerely,

Robert Drewry, Director  
Dawson County Public Works

**A RESOLUTION BY THE BOARD OF COMMISSIONERS  
OF DAWSON COUNTY, GEORGIA, EXPRESSING SUPPORT OF THE  
PERPETUAL CONSERVATION AND PRESERVATION OF THE  
DAWSON FOREST WILDLIFE MANAGEMENT AREA AS A  
STATE PARK AND/OR RECREATION AREA**

**WHEREAS**, the Georgia Department of Natural Resources (“DNR”), Wildlife Resources Division, manages the Dawson Forest Wildlife Management Area (“WMA”) in Dawson County, Georgia, which is comprised of approximately 25,500 acres of land offered for hunting deer, bear, turkey, small game, dove and waterfowl; and

**WHEREAS**, a copy of DNR’s map of the WMA is attached hereto marked “Exhibit A”; and

**WHEREAS**, there are five sections of the WMA, including Wildcat Creek, Goethe, Burnt Mountain, Amicalola, and City of Atlanta; and

**WHEREAS**, the DNR Wildlife Resources Division owns over 15,000 acres of the WMA and the City of Atlanta, Georgia, owns the remaining 10,000-plus acres (the “Atlanta Property”); and

**WHEREAS**, the Atlanta Property is depicted as the lower portion of the WMA on the map attached at Exhibit A and is more particularly depicted on the Dawson County Tax Assessor Map (re. Parcel No. 087 003), a copy of which is attached hereto marked “Exhibit B”; and

**WHEREAS**, the City of Atlanta acquired the Atlanta Property in the early 1970s anticipating a potential second airport location which never came to fruition and the property fell into disrepair; and

**WHEREAS**, around 1975, the City of Atlanta entered into an agreement with the Georgia Forestry Commission to manage the site and not long after that the Dawson Forest Wildlife Management Area was created; and

**WHEREAS**, through the 1960s and up to 1971, prior to the City of Atlanta’s acquisition of the Atlanta Property, it was owned by the Federal Government and operated by Lockheed Corporation as the Georgia Nuclear Aircraft Laboratory (“GNAL”) where the area was used to test the development of nuclear-powered aircraft and later used for open air testing to determine the effects of radiation on various items; and

**WHEREAS**, the DNR has conducted quarterly or semi-annual direct (external) gamma radiation measurements in publicly accessible locations at the WMA since approximately 1979; and

**WHEREAS**, today, due to the DNR’s prolonged conservation efforts as a part of its management of the Atlanta Property, it is a thriving forest with abundant wildlife which is enjoyed by the public as a part of the greater WMA; and

**WHEREAS**, pursuant to the Official Code of Georgia Annotated (“O.C.G.A.”) § 12-3-30(2), the term “park” or “recreational area” is defined as “any land which, by reason of natural features or scenic beauty, with or without historical, archeological, or scientific buildings or other objects thereon, possesses distinctive, innate or potential physical, intellectual, creative, social, or other recreational or educational value or interest”; and

**WHEREAS**, pursuant to O.C.G.A. § 12-3-32(a), the DNR is empowered and directed to, among other things, “(5) To cooperate with other state agencies, with counties, municipalities, and other political subdivisions of the state, with other states, and with the United States government in matters relating to the acquiring, planning, establishing, developing, improving, or maintaining of any park, parkway, or recreational area”; and

**WHEREAS**, to promote the continued management and perpetual conservation and preservation of the Atlanta Property, the entire property should be formally transferred over to the DNR for permanent incorporation into the WMA and for the entire WMA to be further developed by the DNR into a state park and/or recreational area.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners, and it is hereby resolved by the authority of the same, as follows:

1. The above recitals are hereby incorporated as if fully stated herein.
2. The Dawson County Board of Commissioners (“BOC”) hereby expresses its support for the perpetual conservation and preservation of the WMA, including the Atlanta Property, as wildlife preservation and public recreational area.
3. The BOC hereby proposes that the Atlanta Property should be transferred to the DNR for permanent incorporation into the WMA and for the entire WMA to be further developed by the DNR into a state park and/or recreation area, to include recognition of the historical significance of the area.
4. The County Administration is hereby directed to provide a copy of this resolution to the DNR and to the City of Atlanta to notify such parties of the recommendations of the BOC as provided herein.

(signature page follows)

**THIS RESOLUTION** is hereby adopted this \_\_\_\_ day of \_\_\_\_\_ 2024, the public health, safety, and general welfare demanding it.

**DAWSON COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Billy Thurmond, Chairman

\_\_\_\_\_  
Seth Stowers, District 1 Commissioner

\_\_\_\_\_  
Chris Gaines, District 2 Commissioner

\_\_\_\_\_  
Alexa Bruce, District 3 Commissioner

\_\_\_\_\_  
Emory Dooley, District 4 Commissioner

Attest:

[COUNTY SEAL]

\_\_\_\_\_  
Kristen Cloud, County Clerk

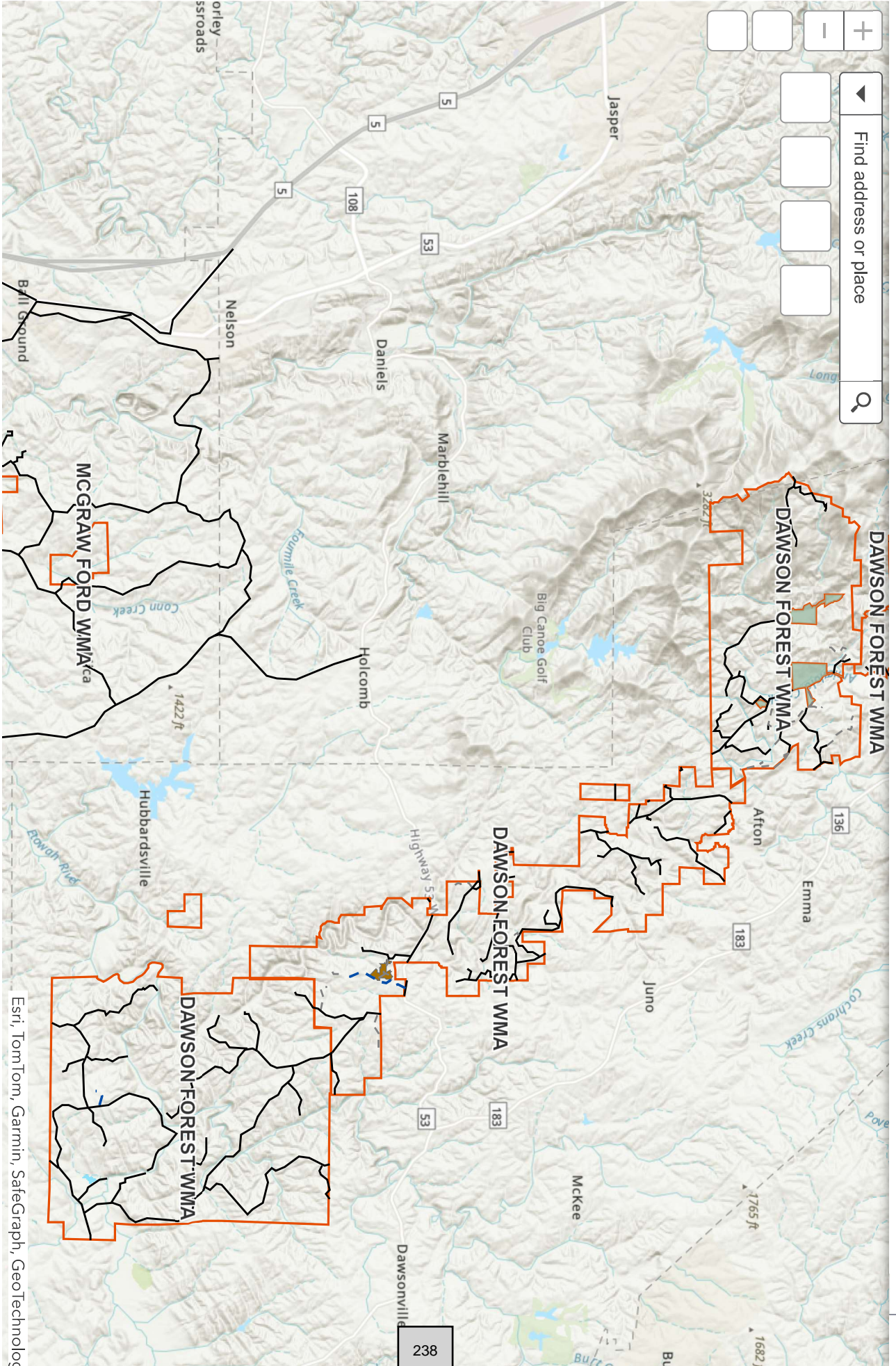
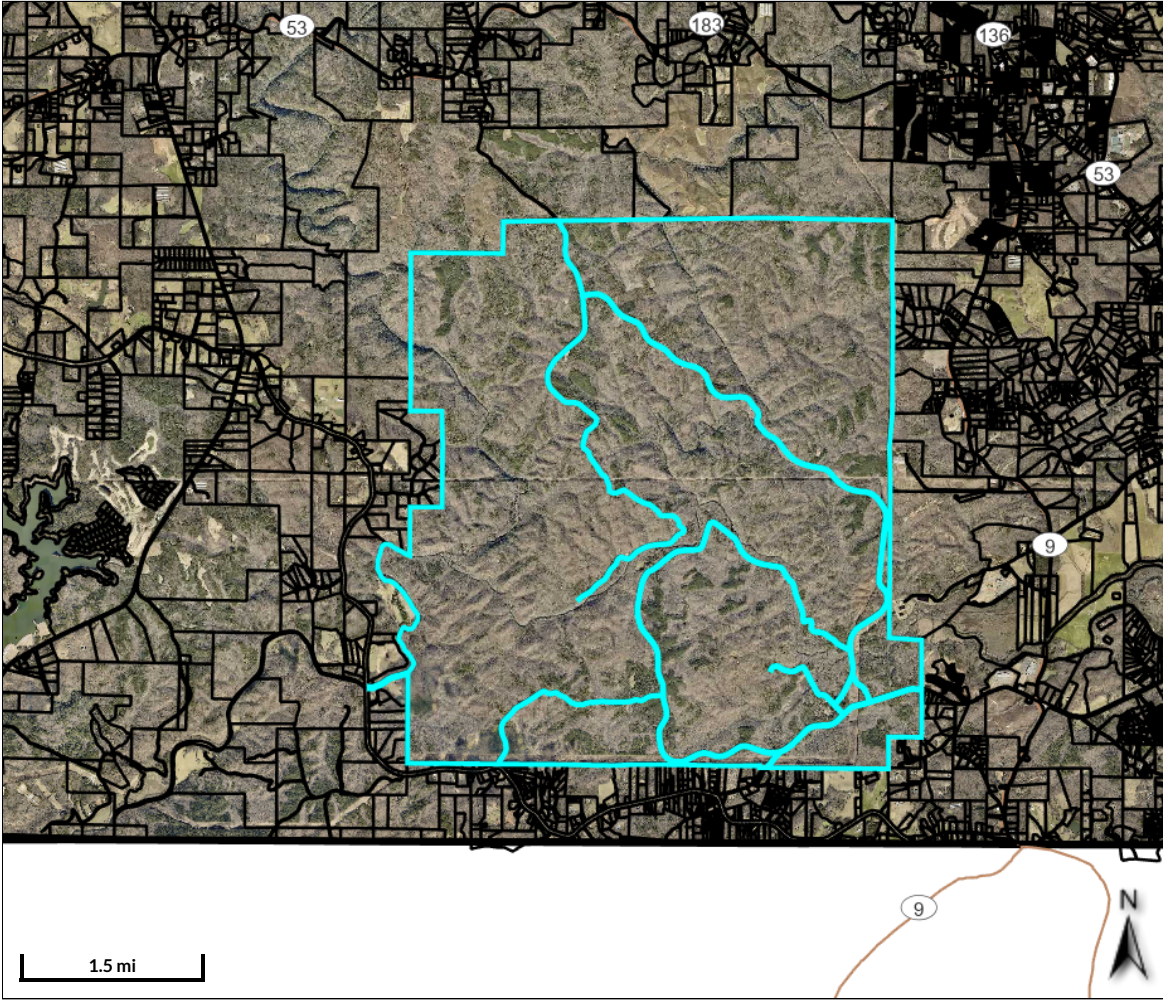


EXHIBIT A

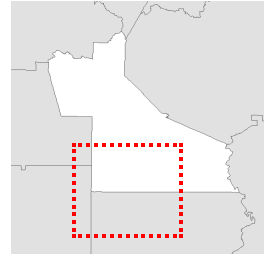
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









# EXHIBIT B



## Overview



## Legend

-  Parcels
- USA Major Highways**
-  Limited Access
-  Highway
-  Major Road
-  Local Road
-  Minor Road
-  Other Road
-  Ramp
-  Ferry
-  Pedestrian Way

Parcel ID:087 003  
Alt ID: 5976  
Owner: CITY OF ATLANTA  
Assessed Value: \$17269000

Date created: 4/9/2024  
Last Data Uploaded: 4/8/2024 5:49:15 PM

Developed by 



## DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: **Public Works**

Work Session: May 2, 2024

Prepared By: **Robert W. Drewry**

Voting Session: May 16, 2024

Presenter: **Robert W. Drewry**

Public Hearing: Yes  No

Agenda Item Title: Presentation of Intergovernmental Agreement between Dawson County and the City of Dawsonville regarding Burt Creek Road improvement.

**Background Information:**

Dawson County and the City of Dawsonville entered into a Settlement and Release Agreement on May 20, 2021. The agreement obligated Dawson County to repave Burt Creek Road. However, both the City and the County agree that Burt Creek Road has deteriorated to the condition that a repaving will not be sustainable and that significant improvements must be made.

The County bid the repaving of Burt Creek Road as the base bid but included two alternate bids. The alternate bids are for a full depth reclamation and to deep patch and resurface.

**Current Information :**

The County agrees to fund the base bid of \$112,733.12. The City supports alternate bid #2 to deep patch and resurface in the amount of \$157,116.35 and agrees to pay the additional cost for the upgrade of Burt Creek Road in the net amount of \$44,383.23 to the County.

Therefore, an Intergovernmental Agreement was drafted that stipulates this arrangement pending Board approval and award of the contract to improve Burt Creek Road. The County Attorney has approved the agreement.

**Budget Information:**

Applicable:  Not Applicable: N/A

Budgeted: Yes  No

Fund	Department	Account #	Budget	Balance	Requested	Remaining
N/A						

\*If this is a personnel-related request, has it been reviewed by Human Resources?

\*If this item is being requested to move to the same day's voting session for BOC consideration, provide *detailed justification* for the request:



Recommendation/Motion: Approve Intergovernmental Agreement between Dawson County and the City of Dawsonville regarding Burt Creek Road improvement.

Department Head Authorization: RWD

Date: April 22, 2024

Finance Department Authorization: \_\_\_\_\_

Date: \_\_\_\_\_

County Manager Authorization: J. Leverette

Date: 4/23/24

Comments/Attachments: \_\_\_\_\_

**STATE OF GEORGIA  
COUNTY OF DAWSON**

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
DAWSON COUNTY AND THE CITY OF DAWSONVILLE REGARDING  
A CROSS-JURISDICTIONAL ROAD IMPROVEMENT PROJECT**

**(Burt Creek Road)  
(from SR 136 to Dawson/Lumpkin County Line)**

THIS AGREEMENT, effective as of \_\_\_\_\_, 2024, is by and between DAWSON COUNTY, a political subdivision of the State of Georgia (“Dawson”), and the CITY OF DAWSONVILLE, a Georgia municipal corporation (“Dawsonville”). Individually, Dawson and Dawsonville may be referred to herein as a “Party,” and, collectively, as the “Parties.”

**WHEREAS**, pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia, cities and counties are authorized to contract with each other for a period not exceeding 50 years for the provision of services, or for the joint or separate use of facilities or equipment, so long as such contracts deal with activities, services, or facilities which such cities and counties are authorized by law to undertake or provide; and

**WHEREAS**, pursuant to Article IX, Section II, Paragraph III of the Constitution of the State of Georgia, Dawson and Dawsonville are authorized, jointly and severally, to exercise powers and provide services related to street and road construction maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof; and

**WHEREAS**, pursuant to Article IX, Section II, Paragraph III of the Constitution of the State of Georgia, Dawson is prohibited from exercising these powers or providing any such service inside the boundaries of Dawsonville except by contract with Dawsonville; and

**WHEREAS**, pursuant to O.C.G.A. § 32-4-62(d), Dawson has the authority provided in O.C.G.A. § 32-4-112(b) to contract with Dawsonville and expend funds for work on public roads within Dawsonville’s jurisdictional boundary; and

**WHEREAS**, a portion of Burt Creek Road between State Route (“SR”) 136 and the Dawson/Lumpkin County line lies within Dawsonville’s jurisdiction and a larger portion of that section of Burt Creek Road lies within Dawson’s jurisdiction; and

**WHEREAS**, Dawson and Dawsonville are parties to that certain Settlement and Release Agreement effective on May 20, 2021, wherein Dawson agreed as a part of such settlement to repave, as part of its road and culvert improvements projects, Burt Creek Road from SR 136 to the Dawson/Lumpkin County line; and

**WHEREAS**, following further inspection of that portion of Burt Creek Road to be repaved, the Parties agree that repaving is no longer a viable, long-term solution and additional work beyond

just repaving the road (e.g., deep patch and resurfacing and/or full depth reclamation) should be completed to extend the life of the road; and

**WHEREAS**, in accordance with the applicable state law requirements, Dawson has conducted a competitive bid solicitation which will result in an agreement between Dawson and a paving company (the “Contractor”), which agreement scope will include deep patch and resurfacing work to be completed on that portion of Burt Creek Road lying within Dawsonville’s jurisdiction (the “Project”); and

**WHEREAS**, Dawsonville has agreed to pay the difference between the bid price associated with the base repaving work for the Project and the bid price of the deep patch and resurfacing work to be completed on the roadway within Dawsonville’s jurisdiction; and

**WHEREAS**, the Parties agree that coordination of construction efforts for cross-jurisdictional road improvement projects, including the Project herein, provides cost savings and efficiencies that are in the best interest of the citizens of both Dawson and Dawsonville.

**NOW THEREFORE**, for and in consideration of the mutual promises, the public purposes, and the acknowledgment and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree to the above recitals and as follows:

1. **Agreement.**

- a. **Dawson’s Duty to Manage the Project.** The Parties agree that Dawson shall assume primary responsibility for management of the Project, including completion of the Work (described below), and its public road construction/maintenance agreement with a paving company (the “Contractor”).
- b. **General Description of the Work.** The work to be performed pursuant to this Agreement consists of deep patch and resurfacing of approximately 2,635 linear feet of Burt Creek Road lying within Dawsonville’s jurisdiction (the “Work”). Dawson shall complete the Work using the services of the Contractor.
- c. **Timing.** Dawson estimates that it will issue a Notice to Proceed to the Contractor before the end of June 2024 and that the Work shall be substantially completed before the end of December 2024.
- d. **Cost Allocation.** The Work to be completed within Dawsonville’s jurisdiction (deep patch and resurfacing) is estimated to cost \$44,383.23, which is calculated as the difference between the base repaving work (\$112,733.12) (which remains Dawson’s responsibility) and the increased cost associated with the deep patch and resurfacing work (\$157,116.35) (see Bid Tabulations Sheet attached marked “Exhibit A”). Dawsonville agrees to pay \$44,383.23 towards the completion of the Work and Dawson agrees to pay the remainder (\$112,733.12). The Parties agree

that Project costs are based on estimated quantities and that actual contract quantities will not be known until the Project is complete. The Parties agree that upon completion of the Project, when actual contract quantities are final, the Parties agree to split additional costs incurred above the estimated amount referenced above such that the County will fund 72% of the additional costs and the City will fund 28% of the additional costs (same percentage split as allocated above). Except for any reasonably disputed amounts (which shall be paid promptly upon resolution of the dispute), Dawsonville shall pay all amounts due under this IGA to Dawson within thirty (30) days of request.

- e. **Dawsonville's Right and Duty to Review the Work.** Dawsonville shall have the right and duty to review the Work and to advise Dawson of any observed discrepancies or potential problems so that these can be timely addressed with the Contractor. Dawsonville may, but shall not be required to, test or inspect the Work for compliance with applicable technical standards. Dawsonville acknowledges that its remedies against the Contractor for defective Work may be limited to those remedies available to Dawson in its contract with the Contractor to the extent such remedies can be enforced by Dawson. Dawsonville shall respond in a timely manner to any issue that may arise during the Work that requires its input. The Parties shall make reasonable and good-faith efforts to coordinate their oversight of the Work and proactively address any issues that may arise.
- f. **Disputes with the Contractor.** Dawson shall address with the Contractor any issues or concerns raised by Dawsonville concerning the Work and, subject to the limitations below, Dawson shall make good faith efforts to enforce the contract with the Contractor for the benefit of Dawsonville. Except as separately agreed between the Parties, Dawson shall not be required to write any demand letter or file any lawsuit against the Contractor or take any other similar formal legal action arising out of the Work.
- g. **Change Orders.** Dawson will discuss any proposed change orders that operate to increase the cost of the Project for the Work to be performed within Dawsonville's jurisdiction with Dawsonville in advance of approving such change orders with the Contractor. Upon Dawsonville's approval of any such proposed change order, Dawsonville agrees to timely pay all costs associated therewith in accordance with subsection d. hereinabove.
- h. **Contractor Insurance and Contract Provisions.** Dawson shall make a good faith effort to include in its contract with Contractor, or to execute an amendment to such contract, a requirement that: (1) Dawsonville is named as an additional insured on any liability policies covering the Work, (2) Dawsonville is named as an intended third-party beneficiary of such contract, and (3) the Contractor be required to give notice to the County within a reasonable time after discovering that the actual

contract quantities for the Work within Dawsonville's jurisdiction will exceed the estimated quantities, which notice the County will provide to the City upon receipt.

2. **Agreement Term.** This Agreement shall commence upon execution by the Parties and shall expire upon completion of all duties and obligations provided herein, provided that the term of the Agreement shall not exceed fifty (50) years.
3. **Termination for Convenience.** Either Party may terminate this Agreement for convenience by providing written notice of termination to the other Party. If Dawsonville terminates this Agreement for convenience: (a) Dawson shall promptly (but in any event, not later than fourteen (14) calendar days following receipt of a termination notice from Dawsonville) terminate the Work in its contract with the Contractor (but only that portion of the Work that is within Dawsonville's jurisdiction); and (b) Dawsonville shall reimburse Dawson for all reimbursable costs incurred through the date of termination of the Dawson-Contractor contract.
4. **Assignment or Transfer.** The rights, privileges and obligations under this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other party.
5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control.
6. **Public Procurement Requirements.** Each Party agrees that it will comply with all public road work procurement requirements under any applicable state or federal law related to any construction, improvements, or services contemplated by this Agreement.
7. **E-Verify and Title VI.** Each Party agrees that it will comply with all E-Verify and Title VI requirements and execute any documents reasonably required related to such compliance. Further, each Party agrees that any contracts let for the Project and/or the Work shall contain all required E-Verify and Title VI requirements under applicable law.
8. **Cooperation.** Each Party shall, at the request of the other, make, execute and deliver or obtain and deliver all instruments and documents and shall do or cause to be done all such other things which either Party may reasonably require to effectuate the provisions and intention of this Agreement.
9. **Authority to Execute.** Each of the individuals executing this Agreement on behalf of his or her respective Party agrees and represents that he or she is authorized to do so and further agrees and represents that this Agreement has been duly passed upon by the required

governmental agency or board in accordance with all applicable laws and spread upon the minutes thereof.

10. **Force Majeure.** In case by reason of force majeure, any Party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, then if such Party shall give notice and full particulars of such force majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. Such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term “force majeure,” as employed herein, shall mean (a) any cause beyond the Party’s reasonable control; (b) any act(s) of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) strikes, lockout(s) or other labor disputes or industrial disturbance(s); (e) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection, pandemic/epidemic, invasion or act(s) of a public enemy; (f) order(s) of any kind of the Government of the United States or the State of Georgia or any civil or military authority; and (g) natural disaster, catastrophe, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, or explosions, or breakage or accidents outside the Party’s control which prevent performance under this Agreement.
11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of all Parties with appropriate authorization.
12. **Waiver.** No failure by either Party to enforce any right or power granted under this Agreement, or to insist upon strict compliance, and no custom or practice of either Party at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect a Party’s right to demand exact and strict compliance with the terms and conditions of this Agreement. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.
13. **Severability.** Should any provision of this Agreement or application thereof to any person or circumstance be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

14. **Agreement Jointly Drafted by the Parties.** Each Party represents that it has reviewed and become familiar with this Agreement and has notified the other Party of any discrepancies, conflicts or errors herein. The Parties agree that, if any ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement.

15. **Records.** Each Party shall maintain records relating to matters covered by this Agreement as required by law and by any additional requirements in this Agreement. Such records shall be maintained for at least a period of three (3) years following the termination or expiration of this Agreement.

16. **Notices.** All notices, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective on being deposited or placed in the United States mail, postage prepaid and registered or certified with return receipt requested to the addresses appearing below, or when delivered by hand to the addresses indicated below:

If to Dawsonville:

City of Dawsonville, Georgia  
Administrative Offices  
415 Highway 53 East, Suite 100  
Dawsonville, GA 30534  
ATTN: City Manager

If to Dawson:

Dawson County, Georgia  
Administrative Offices  
25 Justice Way  
Dawsonville, GA 30534  
ATTN: County Manager

17. **Settlement Agreement Satisfaction.** The Parties hereto agree that Dawson's obligations regarding the repaving of Burt Creek Road as described under that certain Settlement and Release Agreement effective on May 20, 2021, a copy of which is attached hereto marked "Exhibit B," including the timing requirements stated therein, shall be fully and finally satisfied upon completion of the Project described herein.

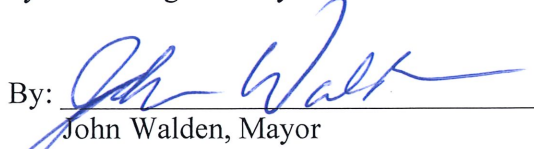
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(signature page follows)

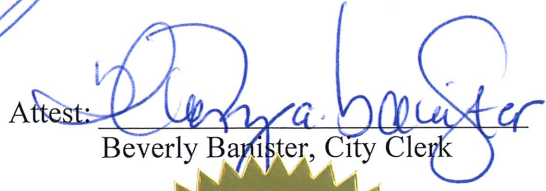
IN WITNESS WHEREOF, the Parties hereto, acting by and through their duly authorized officials and officers pursuant to appropriate ordinances and resolutions hereinbefore duly and properly adopted by each, have caused this Agreement to be executed in duplicate counterparts and the official seals of each Party properly affixed, each delivering to the other one of said duplicate counterparts, the day and year first above written.

**CITY OF DAWSONVILLE, GEORGIA,**  
by and through its City Council

**DAWSON COUNTY, GEORGIA,** by and  
through its Board of Commissioners

By:   
John Walden, Mayor

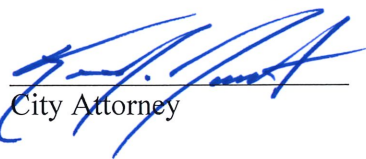
By: \_\_\_\_\_  
Billy Thurmond, Chairman

Attest:   
Beverly Barister, City Clerk

Attest: \_\_\_\_\_  
Kristen Cloud, County Clerk



(county seal)

Approved as to Form: \_\_\_\_\_  
  
City Attorney

Approved as to Form: \_\_\_\_\_  
\_\_\_\_\_  
County Attorney



## EXHIBIT A

### BID TABULATIONS

#### BURT CREEK ROAD FROM SR 136 TO NORTHERN TERMINI OF CITY LIMITS

#### Base Bid

Line Item	Description	Estimated Quantity	Unit	Unit Cost	Total Estimated Cost
<b>TASK 2:</b>	<b>Leveling and Resurfacing – Burt Creek Road – Approx. 2,635 feet</b>				
2.1	Traffic Control, Shoulders, Striping, Signage and Mobilization	1	Lump sum	\$38,600.12	\$38,600.12
2.2	9.5 mm 135 lbs/SY TP 1/H Mix SP Asphalt Topping 20' wide	450	TN	\$164.74	\$74,133.00
<b>Subtotal</b>				<b>\$112,733.12</b>	

#### Alternate Bids

<b>Alternate 1</b>	<b>BURT CREEK ROAD FDR-Approx. 2635 feet</b>				
Alternate 1.1	Traffic Control, Shoulders, Striping, Signage and Mobilization	1	Lump Sum	\$44,488.76	\$44,488.76
Alternate 1.2	10" Cement Reclaimed Base (Includes temp raised lane markers) 20 foot wide	5855	SY	\$5.33	\$31,207.15
Alternate 1.3	Portland Cement – 55 lb/SY	161	TN	\$286.93	\$46,195.73
Alternate 1.4	B-MOD Asphalt Binder 2" Depth, 20' wide	700	TN	\$154.39	\$108,073.00
Alternate 1.5	9.5 mm 135 lbs/SY TP 1/H Mix SP Asphalt Topping 20' wide	450	TN	\$164.74	\$74,133.00
<b>TOTAL COSTS FOR ALTERNATE #1</b>				<b>\$304,097.64</b>	

<b>Alternate #2 Bid for Task 2</b>					
<b>Alternate 1</b>	<b>BURT CREEK ROAD Deep Patch and Resurfacing-Approx. 2635 feet</b>				
Alternate 1.1	Traffic Control, Striping, Signage and Mobilization	1	Lump Sum	\$33,871.35	\$33,871.35
Alternate 1.2	9.5 mm 135 lbs/SY TP 1/H Mix SP Asphalt Topping 20' wide	450	TN	\$164.74	\$74,133.00
Alternate 1.3	Deep Patch 2 inch depth and replace with B-MOD Asphalt Binder	200	TN	\$245.56	\$49,112.00
<b>TOTAL COSTS FOR ALTERNATE #1</b>				<b>\$157,116.35</b>	

EXHIBIT B

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (hereinafter, the “Agreement”) is made and entered into this 20 day of May, 2021, by and between Dawson County, Georgia (hereinafter the “County”), a political subdivision of the State of Georgia, and the City of Dawsonville, Georgia (the “City”), a municipal corporation (County and City, collectively, the “Parties”).

RECITALS

**WHEREAS**, City has asserted claims against County relating to the SPLOST approved by voters on March 16, 2021 (the “SPLOST”) and filed a lawsuit in Dawson County Superior Court (2021-cv-0151) to challenge the SPLOST (the “Lawsuit”);

**WHEREAS**, County denies the validity of such claims, has asserted the legality of the SPLOST, and has filed a motion to dismiss the Lawsuit; and

**WHEREAS**, rather than litigate the validity of the claims, the Parties desire to fully and finally settle any claims, as well as all remaining differences, legal disputes, claims, actions, causes of action, charges, or complaints between and among them, arising out of the SPLOST.

**NOW THEREFORE**, in consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the signatures below, and intending to be legally bound, the Parties hereby agree as follows:

**I. NO ADMISSION OF LIABILITY**

The execution of this Agreement and the consideration given by each Party hereunder shall not be deemed to be an admission of liability or wrongdoing by any of the Parties, and each Party expressly denies for itself any liability or wrongdoing. Notwithstanding the foregoing, the City shall issue a press release wherein it states the following concepts: (1) the City in good faith challenged certain aspects of the SPLOST; (2) the County in good faith asserted the validity of the SPLOST and filed a motion to dismiss the Lawsuit; and (3) that in order to move the best interests of the citizens of Dawson County and the City of Dawsonville forward, the City and County worked together to reach an agreement that allows their dispute to end and the SPLOST to go forward without any further challenge. The County may join in the City’s press release, or may issue its own addressing the same points.

**II. COUNTY PROJECTS**

The County shall develop the following projects in accordance with the provisions set forth below. The County may use SPLOST funds or other available funds to complete the projects.

- A. Road Repaving. The County shall repave the following roads as part of its road and culvert improvements projects:
- i. Shoal Creek Road from the Historic Courthouse to State Route 136. This improvement shall be completed within the time provided for completion of projects under the SPLOST.
  - ii. Burt Creek Road from State Route 136 to the Dawson County/Lumpkin County line. This improvement shall be completed within two calendar years from execution of this Agreement.
- B. Sheriff Patrol Vehicles. The City, the Dawson County Sheriff, and the County are finalizing a separate IGA (the "Sheriff IGA") for the City to fund certain aspects of the law enforcement budget so as to provide additional services for the incorporated area of Dawson County. The Sheriff IGA contemplates the addition of two Sheriff's deputies to serve the incorporated area of Dawson County. Based on the requirement that SPLOST funds must be spent on capital assets, the County shall fund the one-time purchase of the fixed (capital) assets necessary to initially equip the two deputy positions contemplated by the Sheriff IGA, consisting of: two patrol vehicles for use by the Dawson County Sheriff, and the uniforms, vests, body cameras, firearms, and similar capital equipment associated with the two deputy positions. It is understood by the Parties that the County's requirement to fund expenses under this paragraph is contingent upon the City, the Dawson County Sheriff, and the County finalizing and entering into the Sheriff IGA. In the event the Agreement between the City, the Dawson County Sheriff and the County is not entered into by the Parties, the County's obligations under this provision shall cease.
- C. Contribution Toward Mutually Beneficial Projects. The County shall contribute \$125,000.00 toward any City project or projects which reasonably benefit the citizens of both the City and the unincorporated County. By way of example and not limitation, it would not be appropriate to utilize the funds provided for in this paragraph in order to resurface a street within a residential subdivision development. The County shall fund such project(s) as a reimbursement of incurred costs. The City may request County confirmation that the particular project(s) selected by the City are consistent with this paragraph, which confirmation shall not be unreasonably withheld or delayed. Reimbursement will be made within thirty (30) days of receipt of invoices for incurred costs.

### **III. IGA FOR PARKING**

The City and County will enter into an IGA, wherein the County shall make County-owned parking lots within the City available for City uses after-hours and on weekends. This will apply to parking spots at all County facilities in Dawsonville, including any future County facilities (e.g. Health Department) that may, in the County's discretion, be constructed within the corporate limits of the City of Dawsonville. The term of the IGA shall be for the term of SPLOST VII, with an option to renew (upon approval by both parties) for additional terms of five years after the initial term. The IGA shall include reasonable notice requirements when either party has a major event that would require significant parking needs, and City must promptly clean up the parking lot after its major events. Nothing in the IGA will prevent the County from relocating or modifying any facility or parking area in its sole discretion.

### **IV. IGA FOR SPLOST**

The Parties agree to enter into a SPLOST Intergovernmental Agreement ("SPLOST Agreement"), promptly after approval of this Agreement, reflecting the SPLOST that was approved by voters on March 16, 2021. The Agreement will also specify that after the collection of the first \$8,500,000.00 (to be used for Level II County Wide Projects), the City shall receive the next \$1,500,000.00, which amount shall be counted towards its overall 12% of the SPLOST proceeds after the collection of the \$8,500,000.00. The IGA shall provide, after the City has received its \$1,500,000.00, for the County to have an accelerated payment period, wherein the collections are balanced to the City/County respective 12%/88% parameters, and after such balance is achieved, the remainder of the SPLOST proceeds will be collected based upon those same percentages (12% and 88%).

### **V. RELEASE AND DISMISSAL OF LAWSUIT**

With the execution of this Agreement and the separate IGAs called for in paragraphs III and IV, except for the County's obligations set forth in this Agreement, City, on behalf of itself and its agents, assigns, employees, and officers, does hereby forever release and discharge the County and each of its agents, assigns, employees, and officers, and any others who may have acted in concert with the County, from any and all charges, complaints, claims, counterclaims, third-party claims, liabilities, obligations, promises, agreements, controversies, demands, damages, expenses, actions, causes of action or suits of any kind or nature, known or unknown, direct or indirect, arising out of the SPLOST, including without limitation any claim that the SPLOST is invalid or improper, that the County violated any of the City's rights in connection with the SPLOST, or that the City is entitled to any share of SPLOST proceeds not set forth in the SPLOST Agreement. (Nothing herein shall constitute a waiver or release of any claim by the City that the County has not complied with the terms of the SPLOST Agreement or this Settlement Agreement.) Within three business days after complete execution of this Agreement and the IGAs called for in paragraphs III and IV, the City shall dismiss the Lawsuit with prejudice and file an accompanying final case disposition form. Each Party shall bear its own legal fees and costs associated with the Lawsuit and the negotiation of this Agreement.

### **VI. MISCELLANEOUS PROVISIONS**

**A. Effective Date**

This Agreement shall become effective immediately upon the execution of this Agreement by all Parties hereto.

**B. Entire Agreement**

This Agreement contains the entire agreement of the Parties and no waiver, modification, or amendment of this Agreement shall be valid unless it is by an express writing and signed by the Parties.

**C. Construction of Agreement**

The Parties acknowledge and agree that this Agreement and the full and final settlement memorialized herein have been negotiated between and among the Parties. In the event of a dispute about the meaning, construction, or interpretation of this Agreement, no presumption shall apply so as to construe the language of the Agreement for or against either Party. This Agreement shall be binding upon and inure to the benefit of all of the Parties and upon their administrators, representatives, executors, successors and permitted assigns. This Agreement may be executed in multiple counterparts and all such counterparts shall be taken together so that they may constitute a completely executed agreement among the Parties. This Agreement shall not be construed to confer upon any third person or entity not a Party any rights or privileges, or to impose upon any of the Parties any obligations or responsibilities to third persons or entities not Parties. If any provision of this Agreement is held to be illegal or invalid in any suit, action or proceeding by a court of competent jurisdiction, such provision shall be deemed to be severed and deleted for purposes of such suit, action or proceeding only, unless otherwise ordered by such court, and neither such provision nor its severance and deletion shall affect the validity of the remaining provisions.

**D. Authority to Sign**

The individuals signing this Agreement hereby represent and warrant that he/she has all of the requisite power, authority and competency to execute and enter into the Agreement for the Party represented. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

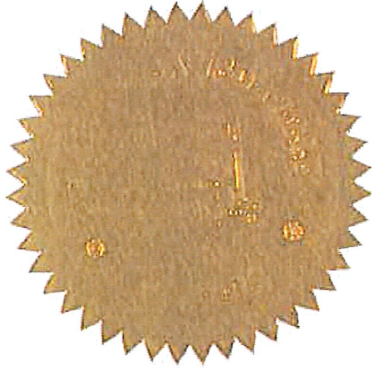
**IN WITNESS WHEREOF**, City and the County have executed this Agreement, effective as of the date first above written.

**[SIGNATURES ON FOLLOWING PAGES]**

City of Dawsonville, Georgia:

*Mike Eason*  
Mike Eason  
Mayor

Attest: *Beverly A. Panister*  
Print Name: Beverly A. Panister  
Its: City Clerk



Dawson County, Georgia:

*Billy Thurmond*  
Billy Thurmond  
Chairman, Board of Commissioners

Attest: *Kristen Cloud*  
By: Kristen Cloud  
Its: County Clerk





## DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: Public Works

Work Session: May 2, 2024

Prepared By: R. Irvin

Voting Session: May 16, 2024

Presenter: Robert W. Drewry

Public Hearing: Yes  No

Agenda Item Title: Presentation of Resolution of Dawson County Board of Commissioners Amending Transfer Station Fees

**Background Information:**

Dawson County Public Works in conjunction with Keep Dawson County Beautiful plan to begin accepting electronics for recycling. A vendor has been selected (Full Circle Electronics) to recycle said products. The vendor charges a fee of \$12 to recycle TVs and computer monitors. All other items recycled have no fee attached.

**Current Information :**

The Transfer Station Fee Schedule must be revised in order to assess a fee (\$12) from citizens who wish to recycle TVs and or computer monitors.

**Budget Information:**

Applicable:  Not Applicable:

Budgeted: Yes  No

Fund	Department	Account #	Budget	Balance	Requested	Remaining

\*If this is a personnel-related request, has it been reviewed by Human Resources?

\*If this item is being requested to move to the same day's voting session for BOC consideration, provide *detailed justification* for the request:

N/A

Recommendation/Motion: Approval of Resolution to amend Transfer Station Fee for TV's and computer monitors.

Department Head Authorization: RWD

Date: April 11, 2024

Finance Department Authorization: Vickie Neikirk

Date: 4/22/24

County Manager Authorization: J. Leverette

Date: 4/23/24

Comments/Attachments: \_\_\_\_\_

**RESOLUTION OF DAWSON COUNTY BOARD OF COMMISSIONERS  
AMENDING TRANSFER STATION FEES**

**WHEREAS**, the Board of Commissioner of Dawson County has, by virtue of Section 2-11 of the Code of Dawson County, the authority to fix and establish rate and charges for services provided by the County; and

**WHEREAS**, the current Fee Schedule for the Dawson County Transfer Station was adopted in December 2023; and

**WHEREAS**, the Board of Commissioner has held two public meetings on the proposed updated Fee Schedule, on May 2, 2024, and May 16, 2024; and

**WHEREAS**, the Dawson County Board of Commissioners deems it reasonable and appropriate to approve the proposed Fee Schedule.

**NOW, THEREFORE**, the Board of Commissioners of Dawson County does hereby adopt and establish the Fee Schedule attached as Exhibit “A” to this Resolution for use of the County Transfer Station.

DAWSON COUNTY BOARD  
OF COMMISSIONERS

ATTEST:

By: \_\_\_\_\_  
Billy Thurmond, Chairman

By: \_\_\_\_\_  
Kristen Cloud, County Clerk

Vote: Yes \_\_\_\_\_  
No \_\_\_\_\_

**EXHIBIT A**

ITEM	CURRENT	PROPOSED
Bagged Trash	\$1.00per bag	
Passenger Car/Truck Tire	\$2.00 per tire w/o rim	
Passenger Car/Truck Tire	\$5.00 per tire with rim	
All Other Tires	\$15.00 per tire w/o rim	
All Other Tires	+ \$10.00 with rim	
Weighed Trash	\$44/ton (estimated)	
Television and Computer Monitor Recycling	0.00 per item	\$12.00 per item





## DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: **Public Works**

Work Session: May 2, 2024

Prepared By: **Robert W. Drewry**

Voting Session: May 16, 2024

Presenter: **Robert W. Drewry**

Public Hearing: Yes  No

Agenda Item Title: Presentation of request to initiate professional engineering services for Lumpkin Campground Road intersection improvements and allocate funds from Impact Fees.

**Background Information:**

A portion of the Lumpkin Campground Road corridor was studied in 2019 and again in 2023. The study provided recommended improvements along the road corridor specifically at the State Route 53 intersection and the Grizzle Road/Industrial Park Road intersection. Improvements on Lumpkin Campground Road were also recommended in the 2023 Transportation Element of the Dawson County Comprehensive Plan.

Impact Fee funds were identified as a potential fund source for Lumpkin Campground Road improvements.

**Current Information :**

Staff would like to initiate professional engineering services for the following tasks:

Task 1: SR 53 at Lumpkin Campground Road. Utilizing the GDOT topographical survey and the GDOT conceptual plan, the engineering consultant will provide design services for a final concept plan, set of construction documents and right of way acquisition documents. The GDOT has committed to construct the improvements.

Task 2: Lumpkin Campground Road at Grizzle Road/Industrial Park Road intersection. The 2019 corridor study recommended further conceptual work before design plans are produced. The study identified the need for a single lane roundabout but a conceptual plan should be done to analyze geometric and topographic constraints and existing utilities. The consultant will conduct an engineering and feasibility study that develops alternative concepts for proposed intersection improvements.

**Budget Information:**

Applicable:  Not Applicable:

Budgeted: Yes  No

Fund	Department	Account #	Budget	Balance	Requested	Remaining
					\$200,000	

\*If this is a personnel-related request, has it been 257 viewed by Human Resources?

\*If this item is being requested to move to the same day's voting session for BOC consideration, provide *detailed justification* for the request:

Recommendation/Motion: Board approval to initiate professional engineering services for Lumpkin Campground Road intersection improvements and allocate funds from Impact Fees.

Department Head Authorization: RWD

Date: 4/19/2024

Finance Department Authorization: Vickie Neikirk

Date: 4/22/24

County Manager Authorization: J. Leverette

Date: 4/23/24

Comments/Attachments: \_\_\_\_\_



## DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: Planning and Development

Work Session: May 02, 2024

Prepared By: Sharon O. Farrell

Voting Session: May 16, 2024

Presenter: Sharon O. Farrell

Public Hearing: Code Change

Agenda Item Title: Presentation of amendment of Chapter 105 Buildings and Building Regulations

**Background Information:**

The department must provide for the administration and enforcement of the Dawson County Minimum Standards Code adopted from the Georgia State Minimum Standard Code for Construction as adopted and amended by the Georgia Department of Community Affairs.

**Current Information:**

Attached is an updated chapter to stay current with the construction industry (ICC), and a new article addressing third-party inspections has been added.

**Budget Information:**

Applicable:    Not Applicable: **X**

Budgeted: Yes \_\_\_\_\_ No \_\_\_\_\_

Fund	Department	Account #	Budget	Balance	Requested	Remaining

\*If this is a personnel-related request, has it been reviewed by Human Resources? n/a

\*If this item is being requested to move to the same day's voting session for BOC consideration, provide *detailed justification* for the request:

N/A

Recommendation/Motion: 1

Department Head Authorization: Sharon O. Farrell  
4/12/24

Date:

Finance Department Authorization: Vickie Neikirk

Date: 4/22/24

County Manager Authorization: J. Leverette

Date: 4/23/24

Comments/Attachments: Chapter 105

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Chapter 105 – BUILDINGS AND BUILDING REGULATIONS

**ARTICLE I. MINIMUM STANDARDS CODE**

DIVISION 1. SCOPE AND APPLICATION

**Sec. 105-1. Minimum Standards Code.**

This division provides for the administration and enforcement of the Dawson County Minimum Standards Code, adopted from the Georgia State Minimum Standard Building Code, as adopted and amended by the Georgia Department of Community Affairs. The Dawson County Minimum Standards Code shall be referred to as "this code."

**Sec. 105-2. - Scope.**

Dawson County implements comprehensive administrative provisions to properly administer and enforce the state minimum standard codes. The power to adopt administrative procedures is outlined in O.C.G.A Section 8-2-26 (a) (1). The provisions of this code cover the construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

**Sec. 105-3. - Intent.**

The purpose of this code is to establish the minimum requirements to provide a reasonable level of safety, public health, and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire, explosion, and other hazards, and to provide a reasonable level of protection to emergency responders during emergency operations.

**Sec. 105-4. - Referenced Codes.**

Codes listed and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Dawson County enforces the current state minimum standard codes adopted by the Georgia Department of Community Affairs.

- (1) *Construction.* The provisions of the Georgia State Minimum Standard Building Code shall apply to the construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.
- (2) *Administration.* Dawson County further adopts Sections 101 through 116 of the International Building Code, as amended, to administer such code.
- (3) *Gas.* The provisions of the Georgia State Minimum Standard Gas Code shall apply to the installation of gas piping from the point of delivery, gas appliances, and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and installing and operating residential and commercial gas appliances and related accessories.
- (4) *Mechanical.* The provisions of the Georgia State Minimum Standard Mechanical Code shall apply to the installation, alterations, repairs, and replacement of mechanical systems, including equipment, appliances, fixtures, fittings, and appurtenances, including ventilating, heating, cooling, air-conditioning, refrigeration systems, incinerators, and other energy-related systems.

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- (5) *Plumbing.* The provisions of the Georgia State Minimum Standard Plumbing Code shall apply to the installation, alteration, repair, and replacement of plumbing systems, including equipment, appliances, fixtures, fittings, and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the International Private Sewage Disposal Code shall apply to private sewage disposal systems.
- (6) *Electrical.* The provisions of the Georgia State Minimum Standard Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings, and appurtenances.
- (7) *Energy.* The provisions of the Georgia State Minimum Standard Energy Code shall apply to all matters governing the design and construction of buildings for energy efficiency.
- (8) *Detached One- and Two-Family Dwellings.* The provisions of the Georgia State Minimum Standard One and Two-Family Dwelling Code shall apply to detached one- and two-family dwellings and multiple single-family dwellings.
- (9) *Townhouses.* The provisions of the Georgia State Minimum Standard One and Two-Family Dwelling Code shall apply to two-family dwellings and multiple single-family dwellings. Townhouses shall be separated by a 2-hour fire-resistance-rated wall assembly not more than three stories above grade plane in height with a separate means of egress and their accessory structures.
- (10) *Fire Prevention.* The provisions of Georgia State Minimum Fire Prevention Code, as supplemented by Chapter 22 – Fire Prevention and Protection, of the Dawson County Code, shall apply to matters affecting or relating to structures, processes, and premises from the hazard of fire and explosion arising from the storage, handling, or use of structures, materials, or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression, automatic sprinkler systems, and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

**Section 105-5. - Applicability.**

- (a) *General.* Where a general requirement conflicts with a specific requirement, the specific requirement shall be applicable. Where, in any specific case, different sections of this code specify different materials, construction methods, or other requirements, the most restrictive shall govern.
- (b) *Other Laws.* The provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law.
- (c) *Application of References.* References to chapter or section numbers or to provisions not specifically identified by number shall be construed to refer to such chapter, section, or provision of this code.
- (d) *Referenced Codes and Standards.* The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Section 105-5.
- (e) *Provisions in Referenced Codes and Standards.* Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code or the Georgia State Minimum Standard Codes listed in Section Sec. 105-4, the provisions of this code or the Georgia

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State Minimum Standard Codes listed in Section Sec. 105-4, as applicable, shall take precedence over the provisions in the referenced code or standard.

- (f) *Conflicts.* Where conflicts occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.
- (g) *Partial Invalidity.* If any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions.
- (h) *Existing Structures.* The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as otherwise specifically provided in the Georgia State Minimum Fire Protection Code, as supplemented by Chapter 22 of the Dawson County Code, or Chapter 121 of the Code of Dawson County, Georgia.
- (i) *Buildings Not Previously Occupied.* A building or portion of a building that has not been previously occupied or used for its intended purpose by the laws in existence at the time of its completion shall comply with the provisions of the Georgia State Minimum Standard Building Code or the Georgia State Minimum Standard One and Two-Family Dwelling Code, as applicable, for new construction or with any current permit for such occupancy.
- (j) *Buildings Previously Occupied.* The legal occupancy of any building existing on the date of adoption of this code shall be permitted to continue without change, except as otherwise specifically provided in this code, the Georgia State Minimum Fire Protection Code, or Chapter 121 of the Code of Dawson County, Georgia, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

## ***DIVISION 2. ADMINISTRATION AND ENFORCEMENT***

### **Section 105-6. - The Department of Planning and Development.**

- (1) **Enforcement Agency**  
The Department of Planning and Development is hereby designated as the enforcement agency, and the official in charge shall be known as the Planning and Development Director.
- (2) **Appointment**  
The Planning and Development Director shall appoint the building official.
- (3) **Employing Inspectors**  
The building official shall have the authority to employ inspectors and other personnel necessary to enforce codes. Such employees shall have powers as delegated by the building official.

### **Section 105-7. - Duties and Powers of Building Official.**

- (1) *General.* The building official is hereby authorized and directed to enforce the provisions of this code. Such interpretations, policies, and procedures shall comply with this code's intent and purpose. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

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- (2) *Applications and Permits.* The building official shall receive applications, review construction documents, and issue permits for the erection, alteration, demolition, and moving of buildings and structures. The official shall also inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.
  - (3) *Determination of Substantially Improved or Substantially Damaged Existing Buildings and Structures in Flood Hazard Areas.* For applications for reconstruction, rehabilitation, repair, alteration, addition, or other improvement of existing buildings or structures located in flood hazard areas, the building official shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the building official determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this code, the building official shall require the building to meet the requirements of Section 1612 of the Georgia State Minimum Standard Building Code.
  - (4) *Notices and Orders.* The building official shall issue necessary notices or orders to ensure compliance with this code.
  - (5) *Inspecting buildings and other structures to ensure compliance with the code.* The building official shall make the required inspections or have the authority to accept inspection reports by state-certified agencies or individuals. Reports of such inspections shall be in writing and certified by a responsible officer of such approved agency or the accountable individual. The building official is authorized to engage such expert opinion as necessary to report on unusual technical issues that arise, subject to the approval of the appointing authority.
  - (6) *Identification.* The building official shall carry proper identification when inspecting structures or premises in performing duties under this code.
  - (7) *Right of Entry.* Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or on-premises a condition that is contrary to or in violation of this code that makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises are unoccupied, the building official shall first make a reasonable effort to locate the owner or other person in charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.
  - (8) *Department Records.* The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official documents for the period required to maintain public records.
  - (9) *Liability.* The building official, members of the construction board of appeals, and employees charged with the enforcement of this code, while acting for Dawson County in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be civilly or criminally rendered liable personally and are hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or because of an act or omission in the discharge of official duties.
  - (10) *Legal Defense.* Any suit or criminal complaint instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the



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provisions of this code shall be defended by the Dawson County legal representatives until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit, or proceeding instituted in pursuance of the provisions of this code.

- (11) *Approved Materials and Equipment* Materials, equipment, and devices approved by the building official shall be constructed and installed in compliance with such approval.
- (12) *Used Materials and Equipment.* Reused materials must comply with the requirements of this code for new materials. Used equipment and devices may not be reused unless the building official approves.
- (13) *Modifications.* Where there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases upon application of the owner or the owner's authorized agent, provided that the building official shall first find that unique individual reason makes the strict letter of this code impractical, the modification complies with the intent and purpose of this code and that such modification does not lessen the health, accessibility, life, and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered into the Planning and Development department files. Any provisions for the Fire Code shall reference the Georgia State Minimum Fire Prevention Code, as supplemented by Chapter 22 – Fire Prevention and Protection, of the Dawson County Code.
- (14) *Alternative Materials, Design, and Methods of Construction and Equipment.* The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that the building official has approved any such alternative. An alternative material, design, or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code and that the material, method, or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability, and safety. Where the alternative material, design, or construction method is not approved, the building official shall respond in writing, stating why the alternative was not approved. Any provisions for the Fire Code shall reference Chapter 22 – Fire Prevention and Protection.
- (15) *Technical Reports.* Supporting data, where necessary to approve materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved industry sources.
- (16) *Tests.* Whenever there is insufficient evidence of compliance with the provisions of this code or evidence that material or method does not conform to the requirements of this code or to substantiate claims for alternative materials or techniques, the building official shall have the authority to require tests as evidence of compliance to be made without expense to the Dawson County. Test methods shall be specified in this code or other recognized test standards. Without recognized and accepted test methods, the building official shall approve the testing procedures. An approved agency shall perform tests. Reports of such tests shall be retained by the building official for the period required to maintain public records.

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**Sec. 105 – 8. - Permits.**

(1) Required

Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure or to erect, install, enlarge, adjust, repair, remove, convert, or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required building permit.

(2) Annual Permit

Instead of an individual permit for each alteration to an already approved electrical, gas, mechanical, or plumbing installation, the building official is authorized to issue an annual permit upon application therefor to any person, firm, or corporation regularly employing one or more qualified trade persons in the building, structure or on the premises owned or operated by the applicant for the permit.

(3) Annual Permit Records

The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such records at all times, or such records shall be filed with the building official as designated.

(4) Work Exempt from Permit

Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of Dawson County. Building Permits shall not be required for the following:

a. Building:

- i. One-story detached accessory structures that are used as tool and storage sheds, playhouses, and similar residential uses, provided the floor area is not over 200 square feet.
- ii. One-story detached accessory structures in commercial or industrial zoning districts, provided the floor area is not greater than 120 square feet
- iii. Fences not over 7 feet high.
- iv. Retaining walls not over 4 feet in height measured from the bottom of the footing to the top of the wall unless supporting a surcharge or impounding Class I, II, or IIIA liquids.
- v. Water tanks that are supported directly on grade if the capacity is not greater than 5,000 gallons and the height-to-diameter or width ratio is not greater than 2:1.
- vi. Sidewalks and driveways that are not more than 30 inches above adjacent grade, not over any basement or story below, and are not part of an accessible route.
- vii. Painting, papering, tiling, carpeting, cabinets, countertops, and similar finish work.
- viii. Prefabricated swimming pool less than 24 inches deep and installed entirely above ground.
- ix. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
- x. Swings and other traditional playground equipment accessory to detached one- and two-family dwellings.

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- x. Window awnings in Group R-3 and U occupancies that are supported by an exterior wall that does not project more than 54 inches from the exterior wall and does not require additional support.
  - xii. Non-fixed and movable fixtures, cases, racks, counters, and partitions not over 5 feet 9 inches in height.
  - xiii. Buildings and Structures specifically regulated and preempted by the Federal Government
  - xiv. Temporary buildings or sheds used exclusively for construction purposes.
  - xv. Mobile or modular structures used as temporary offices, except that the provisions relating to accessibility by persons with disabilities apply to such mobile or modular structures.
  - xvi. Those structures or facilities of electric utilities directly involved in generating, transmitting, or distributing electricity.
  - xvii. Temporary sets, assemblies, or structures used in commercial motion picture or television production or any sound recording equipment used in such production, on or off premises.
- b. Electrical:
- i. Repairs and maintenance: Minor repair work, including replacing lamps or connecting approved portable electrical equipment to approved permanently installed receptacles.
  - ii. Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions but shall apply to equipment and wiring for a power supply and the installation of towers and antennas.
  - iii. Temporary testing systems: A permit shall not be required to install any temporary system to test or service electrical equipment or apparatus.
- c. Gas:
- i. Portable heating appliance.
  - ii. Replacement of any minor part that does not alter equipment approval or make such equipment unsafe.
- d. Mechanical:
- i. Portable heating appliance.
  - ii. Portable ventilation equipment.
  - iii. Portable cooling unit.
  - iv. Steam, hot, or chilled water piping within any heating or cooling equipment.
  - v. Replacement of any part that does not alter its approval or make it unsafe.
  - vi. Portable evaporative cooler.
  - vii. A self-contained refrigeration system containing 10 pounds or less of refrigerant and actuated by one horsepower or fewer motors.
- e. Plumbing:
- i. Stopping leaks in drains, water, soil, waste, or vent pipes; provided, however, that if any concealed trap, drain pipe, water, soil, waste, or vent pipe becomes defective and it becomes necessary to remove and replace it with new material, such work shall be considered new work. A permit shall be obtained and an inspection made.

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- ii. Clearing stoppages or repairing leaks in pipes, valves, or fixtures and removing and reinstalling water closets are permitted, provided such repairs do not involve replacing or rearranging valves, pipes, or fixtures.
  
  - f. Emergency Repairs  
Where equipment replacements and repairs must be performed in an emergency; however, a permit application shall be submitted to the building official within the next working business day.
  
  - g. Public Service Agencies  
A permit shall not be required for the installation, alteration, or repair of generation, transmission, distribution or, metering or other related equipment under the ownership and control of public service agencies by established right.

**Sec. 105- 9. - Manufactured/Mobile Homes.**

This division applies to all mobile homes used as residences, places of business, classrooms, or other activities of a non-temporary nature. Mobile homes used temporarily at construction sites, mobile health units, or similar uses of a temporary nature may be exempt from this regulation at the discretion of the board of commissioners where the public health, safety, and welfare are served by such exemption and subject to such conditions as the board of commissioners deems appropriate to protect the public health, safety, and welfare.

**Sec. 105-.10. - Manufactured/mobile home compatibility standards.**

- (a) Manufactured or mobile homes shall meet the following compatibility standards:  
Every pre-owned manufactured home located in the county shall comply with the Federal Manufactured Housing Construction and Safety Standards Act, [43](#) U.S.C. § 5401-5455 ("HUD Code"), and shall not have been altered in such a way that it no longer meets the HUD Code.
  - (1) The home shall be attached to a permanent foundation; each home shall be provided with anchors and tie-downs, such as cast-in-place concrete dead men or other similar devices approved by the building official, that secure the stability of the home.
  - (2) All towing devices, wheels, axles, and hitches must be removed.
  - (3) Each exit door must have a landing of at least 48 inches by 48 inches. Landings shall not be attached to the structure and must be freestanding and fully self-supporting.
  - (4) The roof shall have a surface of wood shakes, asphalt composition, wood shingles, concrete, fiberglass, metal tiles, slate built-up gravel materials, or other similar materials approved by the building official. All roofs shall have a minimum of 3/12 pitch to approximate the traditional architecture within the county and protect public health, safety, and welfare.
  - (5) The exterior siding materials shall consist of wood, masonry, concrete, stucco, Masonite metal or vinyl lap, or other materials of like appearance. The exterior of all pre-owned manufactured homes shall be free of loose or rotting boards or timbers and any other conditions that might admit rain or moisture to the interior portions of the walls or occupied spaces. The exterior siding shall be free of rot and rust. Roofs shall be structurally sound and

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have no obvious defects that might admit rain or cause moisture to collect on the interior portion of the home.

(6) Each home shall be skirted entirely with an appropriate barrier, properly ventilated, to enclose the area between the bottom of the structure and the ground. Such skirting shall not be required for a home with a complete masonry or concrete perimeter foundation.

(7) Each home shall be established according to the manufacturer's installation instructions, as appropriate. If manufacturer instructions are unavailable, installation shall follow the HUD model manufactured home installation standards available from the housing and urban development website.

(8) All utility connections, including, but not limited to, water, sanitary sewer/septic tank, electricity, and gas, shall be made as required by the county's building codes.

(9) There is no age restriction on a manufactured home, mobile home, or moved-in house; however, any pre-owned manufactured home, mobile home, or moved-in house proposed for setup and placement within Dawson County shall be inspected pursuant to below to determine sound condition and compliance with this resolution prior to permitting.

**Sec. 105.- 11. - Inspection checklist for pre-owned manufactured/mobile homes.**

All pre-owned manufactured or mobile homes being located in the county or moved into the county under this division must meet the following regulations:

(1) *Electric.*

a. *Electrical systems.* All parts of the home's electrical systems (including, but not limited to, switches, receptacles, fixtures, etc.) shall be properly installed and wired and shall be in working condition. Distribution panels shall be in compliance with the approved listing, complete with required breakers, and all unused openings covered with solid covers approved and listed for that purpose. The home shall be subject to an electrical continuity test to ensure that all metallic parts are properly bonded.

b. *Smoke detectors.* Each pre-owned manufactured home shall contain one operable battery-powered smoke detector in each bedroom and the kitchen, which must be installed per the manufacturer's recommendations.

(2) *Plumbing.*

a. Every plumbing fixture, water, and waste pipe of a pre-owned manufactured home shall be in sanitary working condition when properly connected and free from leaks and obstructions. Each home shall contain a kitchen sink. Each bathroom shall contain a lavatory and water closet. At least one bathroom shall include a tub and/or shower facility. Each of these fixtures shall be checked upon being connected to ensure they are in good working condition.

b. *Hot water supply.* Each home shall contain a water heater that is safe and working condition.

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(3) *HVAC—Heating system.*

*Heating systems.* Heating systems shall be safe and in working condition. Un-vented heaters shall be prohibited.

(4) *Manufactured or mobile home unit.*

a. Every floor, interior wall, and ceiling of a pre-owned manufactured home shall be in sound condition. Doors and windows shall be operable, watertight, and in good working condition. The floor system shall be in sound condition and free of warping, holes, water damage, or deterioration.

b. Roofs shall be structurally sound and have no apparent defects that might admit rain or cause moisture to collect on the interior portion of the home.

c. The exterior of all pre-owned manufactured homes shall be free of loose or rotting boards or timbers and any other conditions that might admit rain or moisture to the interior portions of the walls or to occupied spaces.

d. *HUD code.* Every pre-owned manufactured home located in Dawson County shall be in compliance with the Federal Manufactured Housing Construction and Safety Standards Act, [42](#) U.S.C. 5401-5445 (the HUD Code), and shall not have been altered in such a way that it no longer meets the HUD code.

*Note.* Newly manufactured units that have never been used must be verified by the manufacturer.

(5) **Additional requirements for pre-owned manufactured/mobile homes.**

Manufactured or mobile homes can be moved into Dawson County only after passing an inspection on all requirements hereinabove set out. Inspections requested to be conducted by county inspection staff shall be limited to a 50-mile radius of the City of Dawsonville; these inspections shall be:

a. Scheduled by building inspector;

b. If inside the county: Subject to the following fees: \$500.00 per inspection;

c. If outside the county: Subject to the following fees: \$500.00 per inspection plus \$0.25 per mile. These fees are in addition to permit fees for manufactured or mobile homes, which include inspection fees on manufactured or mobile homes after being located inside the county.

d. Inspections may be performed by a licensed structural engineer regardless of distance; however, an inspection by a licensed structural engineer shall be required for all manufactured or mobile homes within a 50-mile radius of the City of Dawsonville.

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e. All third-party inspections shall cover the requirements of this division, and the licensed structural engineer shall stamp the inspection results.

**Sec. 105-12. - Application for Permit.**

- (1) To obtain a permit, the applicant shall first apply in writing on a form furnished by the Department of Planning and Development. Such application shall:
- a. Identify and describe the work to be covered by the permit for which the application is made;
  - b. Describe the land on which the proposed work is to be done by legal description, street address, and tax parcel identification that will readily identify and locate the proposed building or work;
  - c. Indicate the use and occupancy for which the proposed work is intended;
  - d. Be accompanied by construction documents and other information as required by this code;
  - e. State the valuation of the proposed work;
  - f. Be signed by the applicant, or the applicant's authorized agent; and
  - g. Give such other data and information as reasonably required by the building official to ensure compliance with this code.

(2) Action on Application

The building official shall examine or cause to be examined applications for permits and amendments to it within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject such application in writing, stating the reasons. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances, the building official shall issue a permit therefor as soon as practicable.

(3) Time Limitation of Application

An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing unless such application has been pursued in good faith or a permit has been issued, except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing, and justifiable cause demonstrated.

(4) Validity of Permit

The issuance or granting of a permit shall not be construed as a permit for, or approval of, any violation of any of the provisions of this code or any other ordinance of Dawson County. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of Dawson County shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is authorized to prevent occupancy or use of a structure violating this code or any other ordinances of Dawson County.

(5) Expiration

Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance or if the work authorized on the site by such permit is suspended or abandoned for 180 days after the time the work is commenced, or if the expiration date on

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the face of the permit has been reached without any inspections for 180 days. The building official is authorized to grant one or more extensions of time for periods not more than 180 days each from the expiration date. The extension shall be requested in writing, and justifiable cause demonstrated. A permit previously issued may be suspended or revoked if a subsequent violation occurs with respect to the project.

(6) Suspension or Revocation

The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or based on incorrect, inaccurate, or incomplete information or in violation of any ordinance or regulation or any of the provisions of this code.

(7) Placement of Permit

The building permit or copy shall be kept on the job site in a conspicuous place until the project's completion.

**Sec. 105-13. Floor and Roof Design Loads**

(1) Live Loads Posted

In commercial or industrial buildings, for each floor or portion designed for live loads exceeding 50 psf, the owner or the owner's authorized agent shall conspicuously post such designed live load limits using durable signs in that part of each story to which they apply. It shall be unlawful to remove or deface such signs.

(2) Issuance of Certificate of Occupancy

A certificate of occupancy required by Section 105-15 shall not be issued until the floor load signs required by this code have been installed.

(3) Restrictions on loading

It shall be unlawful to place, cause, or permit the placement of a load greater than the limit set by the Georgia State Minimum Standard Building Code on any floor or roof of a building, structure, or portion thereof.

**Sec. 105- 14. Submittal Documents**

(1) General

Submittal documents consisting of construction documents, statements of special inspections, geotechnical reports, and other data shall be submitted in two or more sets and digital media as required, e.g., pdf., with each permit application. A registered design professional shall prepare the construction documents. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.



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Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for makes a review of construction documents unnecessary to obtain compliance with this code.

(2) Information on Construction Documents

Construction documents shall be dimensioned and drawn on suitable material. Electronic media documents shall be submitted. Construction documents shall be sufficiently clear to indicate the location, nature, and extent of the proposed work and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules, and regulations determined by the building official.

(3) Fire Protection System Shop Drawings

Shop drawings for the fire protection system(s) shall be submitted to indicate conformance to this code and the construction documents and shall be approved before the start of system installation. Shop drawings shall contain all information required by the referenced installation standards in Chapter 9 of the International Building Code. Any provisions for the Fire Code shall reference the Georgia State Minimum Fire Prevention Code.

(4) Means of Egress

The construction documents shall show in sufficient detail the location, construction, size, and character of all portions of the means of egress, including the path of the exit discharge to the public way, in compliance with the provisions of this code. Other than occupancies in Groups R-2, R-3, and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor and in all rooms and spaces. Any provisions for the Fire Code shall reference the Georgia State Minimum Fire Prevention Code.

(5) Exterior Wall Envelope

Construction documents shall describe the exterior wall envelope in sufficient detail to determine compliance with this code. Construction documents shall provide details of the exterior wall envelope as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane, and details around openings.

Construction documents shall include the manufacturer's installation instructions, which provide supporting documentation that the proposed penetration and opening details described in the construction documents maintain the exterior wall envelope's weather resistance. The supporting documentation shall fully describe the tested exterior wall system, where applicable, and the test procedure used.

(6) Exterior Balconies and Elevated Walking Surfaces

Where balconies or other elevated walking surfaces are exposed to water from direct or blowing rain, snow, or irrigation, and an impervious moisture barrier protects the structural framing, the construction documents shall include details for all impervious moisture barrier system elements. Construction documents shall consist of the manufacturer's installation instructions.

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(7) Site Plan

Construction documents submitted with the permit application shall be accompanied by a site plan showing the scale, size, and location of new construction and existing structures on the site, distances from lot lines, the established street grades, and the proposed finished grades and, as applicable, flood hazard areas, floodways, stream buffers, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey.

(8) Site Plan for a demolition permit

The site plan submitted with an application for a demolition permit shall show the construction to be demolished and the location and size of existing structures and construction that remain on the site or tract. The building official is authorized to waive or modify the requirement for a site plan where the permit application is for an interior alteration or repair or where otherwise warranted.

(9) Design Flood Elevations

Where design flood elevations are not specified, they shall be established in accordance with Section 1612.3.1 of the Georgia State Minimum Standard Building Code.

(10) Structural Information

The construction documents shall provide the information specified in Section 1603 of the Georgia State Minimum Standard Building Code.

(11) Relocatable Buildings

Construction documents for relocatable buildings shall comply with Section 3113 of the Georgia State Minimum Standard Building Code.

(12) Examination of Documents

The building official shall examine or cause the submittal documents to be reviewed and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

(13) Approval of Construction Documents

When the building official issues a permit, the construction documents shall be approved, in writing or digital format, as "Reviewed for Code Compliance." The building official shall retain one set of construction documents so reviewed. The other set shall be returned to the applicant, kept at the work site, and opened to inspection by the building official or a duly authorized representative.

(14) Previous Approvals

This code shall not require changes in the construction documents, construction, or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

(15) Phased Approval

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The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted.

(16) Design Professional in Responsible Charge

Where it is required that documents be prepared by a registered design professional, the building official shall be authorized to require the owner or the owner's authorized agent to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner or the owner's authorized agent shall designate a substitute registered design professional in the responsible charge who shall perform the duties required of the original registered design professional in the responsible charge. The building official shall be notified in writing by the owner or the owner's authorized agent if the registered design professional in responsible charge is changed or cannot continue to perform the duties.

The registered design professional in charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

(17) Deferred Submittals

Deferral of any submittal items shall have the prior approval of the building official. The registered design professional in charge shall list the deferred submittals on the construction documents for review by the building official. Documents for deferred submittal items shall be submitted to the registered design professional in responsible charge, who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and found to be in general conformance to the design of the building. The deferred submittal items shall not be installed until the building official has approved the deferred submittal documents.

(18) Amended Construction Documents

Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with them shall be resubmitted for approval as an amended set of construction documents.

(19) Retention of Construction Documents

The building official shall retain one set of approved construction documents for not less than 180 days from the completion date of the permitted work or as required by state or local laws.

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**Sec. 105-15. Temporary Structures and Uses****(1) General**

The building official is authorized to permit temporary structures and uses. Such permits shall be limited in time of service but not for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.

**(2) Conformance**

Temporary structures and uses shall comply with Section 3103 of the Georgia State Minimum Standard Building Code requirements.

**(3) Temporary Power**

The building official is authorized to permit the temporary supply and use of power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. As amended, the part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat, or power in NFPA 70.

**(4) Termination of Approval**

The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

**Sec. 105- 16. Fees****(1) Payment of Fees**

A permit shall not be valid until the fees prescribed by law have been paid, nor shall an amendment to a permit be released until any additional fees, if any, have been paid.

**(2) Schedule of Permit Fees**

A fee for each permit shall be paid per the schedule established by the Dawson County Board of Commissioners for buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit.

**(3) Building Permit Valuations**

The applicant for a permit shall provide an estimated permit value at the time of application. Permit valuations shall include the total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment, and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied unless the applicant can show detailed estimates to meet the building official's approval, or the building official shall evaluate the final building permit based on the ICC (International Code Council) Building Valuation Data.

**(4) Work Commencing Before Permit Issuance**

Anyone who commences any work on a building, structure, electrical, gas, mechanical, or plumbing system before obtaining the necessary permits shall be subject to twice the required fees.

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(5) Related Fees

The payment of the fee for the construction, alteration, removal, or demolition of work done in connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees prescribed by law.

**Sec. 105-17. Inspections**

(1) Required Inspections.

The Building Official, upon notification from the permit holder or his or her agent, shall make the minimum required inspections or any other such inspection as deemed necessary and shall either release that portion of the construction or shall notify the permit holder or his or her agent of any violations which must be corrected to comply with the adopted codes. The Building Official shall determine the timing and sequencing of when inspections occur and what elements are inspected at each inspection.

(2) General

Construction or work for which a permit is required shall be subject to inspection by the building official, and such construction or work shall remain visible and able to be accessed for inspection purposes until approved. Approval as a result of an inspection shall not be construed as an approval of a violation of this code's provisions or other county ordinances. Inspections presuming giving authority to violate or cancel the provisions of this code or other ordinances of Dawson County shall not be valid. It shall be the owner's or the authorized agent's duty to make the work visible and accessible for inspection. Neither the building official nor Dawson County shall be liable for the expense of removing or replacing any material required to allow inspection.

(3) Preliminary Inspection

Before issuing a permit, the building official is authorized to examine or cause to be examined buildings, structures, and sites for which an application has been filed.

(4) Lot Grading inspection

If required, site staking and erosion control measures in compliance with an approved grading plan shall be taken before any construction activities.

(5) Required Inspections

Upon notification, the building official shall perform the inspections outlined in Sections 105-17 of this code.

(6) Footing and Foundation Inspection

Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. Any required forms for concrete foundations shall be in place before the inspection. Materials for the foundation shall be on the job, except where concrete is ready-mixed in accordance with ASTM C94; the concrete need not be on the job.

(7) Concrete Slab and Under-Floor Inspection

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Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories, and other ancillary equipment items are in place but before any concrete is placed or floor sheathing installed, including the subfloor.

(8) Lowest Floor Elevation

In flood-hazard areas, the elevation certification required in Section 1612.4 of the Georgia State Minimum Standard shall be submitted to the building official upon placement of the lowest floor, including the basement, and before further vertical construction.

(9) Frame Inspection

Framing inspections shall be made after the roof deck or sheathing, all framing, fire-blocking, and bracing are in place, pipes, chimneys, and vents to be concealed are complete, and the rough electrical, plumbing, heating wires, pipes, and ducts are approved.

(10) Lath, Gypsum Board and Gypsum Panel Product Inspection

Lath, gypsum board, and gypsum panel product inspections shall be made after lathing, gypsum board, and gypsum panel products, interior and exterior, are in place, but before any plastering is applied or gypsum board and gypsum panel product joints and fasteners are taped and finished.

*Exception:* Gypsum board and gypsum panel products are not part of a fire-resistance-rated or shear assembly.

(11) Weather-exposed balcony and Walking Surface Waterproofing

Where balconies or other elevated walking surfaces are exposed to water from direct or blowing rain, snow, or irrigation, and an impervious moisture barrier protects the structural framing, all elements of the impervious moisture barrier system shall not be concealed until inspected and approved.

*Exception:* Where special inspections are provided in accordance with Section 1705.1.1, Item 3 of the Georgia State Minimum Standard Building Code.

(12) Fire- and Smoke-Resistant Penetrations

Protection of joints and penetrations in fire-resistance-rated assemblies, smoke barriers, and smoke partitions shall not be concealed from view until inspected and approved.

(13) Energy Efficiency Inspections

Inspections shall be made to determine compliance with Chapter 13 of the Georgia State Minimum Standard Building Code. They shall include, but are not limited to, inspections for envelope insulation R- and U-values, fenestration U-value, duct system R-value, and HVAC and water-heating equipment efficiency.

(14) Other Inspections

In addition to the inspections specified in this code, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with its provisions and other laws that the Department of Planning and Development enforces.

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(15) Special Inspections

Qualified, independent agents may perform special inspections and tests with special expertise as approved by the Building Official. Special inspections are in addition to the inspections conducted by the Building Official, Structural Observation by the Design Professional, and tests or inspections required by the Construction Documents. Reference the Special Inspections Guide on the Georgia Department of Community Affairs web page.

(16) Final Inspection

The final inspection shall be made after all work authorized by the building permit is completed.

(17) Flood Hazard Documentation

If located in a flood hazard area, documentation of the elevation of the lowest floor, as required by the Federal Emergency Management Agency (FEMA), shall be submitted to the building official before the final inspection.

(18) Inspection Agencies

The building official is authorized to accept reports from approved and licensed inspection agencies, provided that such agencies satisfy the requirements regarding qualifications and reliability.

(19) Inspection Requests

The holder of the building permit or their duly authorized agent shall notify the building official when work is ready for inspection and provide access to and means for inspections of such work as required by this code.

(20) Work not ready for inspection.

It shall be the duty of the holder of the building permit or their duly authorized agent to ensure the work is ready for inspection. A complete re-inspection shall be required if the work is not ready for inspection.

(21) Approval Required.

Work shall not be done beyond the point indicated in each successive inspection without first obtaining the building official's approval. The building official, upon notification, shall make the requested inspections and either indicate the portion of the construction that is satisfactory as completed or notify the permit holder or his or her agent wherein the same fails to comply with this code. Any portions that do not comply shall be corrected, and such portions shall not be covered or concealed until authorized by the building official.

(22) Site Debris.

The contractor and owner of any active or inactive construction project shall be responsible for cleaning up and removing all construction debris or any other miscellaneous discarded articles before receiving final inspections. Construction job sites must be kept clean, such that accumulation of construction debris must not remain on the property for a time exceeding thirty (30) days. All debris shall be kept in such a manner as to prevent it from being spread by any means.

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**Sec. 105-18. - Certificate of Occupancy.**

(1) Change of Occupancy

A building or dwelling structure shall not be used or occupied, and a change of occupancy or change of use of a building or dwelling structure or portion thereof shall not be made until the building official has issued a certificate of occupancy, as provided herein. Issuing a certificate of occupancy shall not be construed as approval of violating this code's provisions or other Dawson County ordinances. Certificates of occupancy presuming to give authority to violate or cancel the provisions of this code or other ordinances of Dawson County shall not be valid. Certificates of occupancy are issued to permits where occupancy applies.

*Exception:*

- 1) Certificates of occupancy are not required for work exempt from permits in accordance with Section Sec. 105-8 of this code.
- 2) Certificates of completion are issued for trade-specific permits, retaining walls, white box or shell buildings, and pools.

(2) Certificate of Occupancy Issued

After the building official inspects the building or dwelling structure and does not find violations of the provisions of this code or other laws that the Department of Planning and Development enforces, the building official shall issue a certificate of occupancy that contains the following:

- The building permit number.
- The address of the structure.
- The owner's or authorized agent's name and address.
- Use and Occupancy
- The name of the building official.
- Certificate issue date

(3) Temporary Occupancy

The building official shall not issue a temporary certificate of occupancy before the completion of all the work covered by the permit,

(4) Revocation

The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code whenever the certificate is issued in error, based on incorrect information supplied, or where it is determined that the building, structure, or portion thereof violates any ordinance or regulation or any of the provisions of this code.



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**Sec. 105-19. - Service Utilities.**

(1) Connection of Service Utilities

A person shall not make connections from a utility, energy source, fuel, or power to any building or system regulated by this code for which a permit is required until released by the building official.

(2) Temporary Connection

The building official shall have the authority to authorize the temporary connection of the building or system to the utility, source of energy, fuel, or power.

(3) Authority to Disconnect Service Utilities

The building official shall have the authority to authorize disconnection of utility service to the building, structure, or system regulated by this code and the referenced codes and standards outlined in Section Sec. 105-4 of this code in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without the approval required by Section 105-1 or 105-2 or 105-16 (a) and (b) of this code. The building official shall notify the serving utility and, wherever possible, the owner and occupant of the building, structure, or service system of the decision to disconnect before taking such action. If not notified before disconnecting, the owner or occupant of the building, structure, or service system shall be informed in writing as soon as possible.

(4) On-site Septic System

The holder of the building permit or their duly authorized agent shall notify the Dawson County Environmental Health Department of the necessity to inspect infrastructure associated with an on-site septic system(s).

**Sec. 105- 20. - Construction Board of adjustment and appeals.**

(1) General

The Construction Board of Adjustment and Appeals shall be and is hereby created to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code. The commissioners shall appoint the construction Board of Adjustment and Appeals, which consists of five members. The CBAA board adopts rules of procedure for conducting its business.

(2) Terms

The terms of the office of the board members shall be three years staggered so no more than one-third of the board is appointed or replaced within any 12 months.

(3) Limitations on Authority

An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The board shall not have the authority to waive building code requirements. Qualifications

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The construction board of adjustment and appeals shall consist of members qualified by experience and training, such as design professionals, contractors, or building industry representatives, to advise on building construction matters, not Dawson County employees.

(4) Meetings

The Construction Board of Adjustment and Appeals shall hold meetings as needed.

**Sec. 105-21. Violations**

(1) Unlawful Acts

It shall be unlawful for any person, firm, or corporation to erect, construct, alter, extend, repair, move, Remove, demolish, or occupy any building, structure, or equipment regulated by this code or cause the Same to be done, in conflict with or in violation of any of the provisions of this code.

(2) Notice of Violation

The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this code, or violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

(3) Prosecution of Violation

If the notice of violation is not complied with promptly, the building official is authorized to request the County Attorney to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

(4) Violation Penalties

Any person who violates a provision of this code or fails to comply with any of its requirements or who erects, constructs, alters, or repairs a building or structure in violation of the approved construction documents or directive of the building official or of a permit or certificate issued under the provisions of this code shall be subject to penalties as prescribed by law.

**Sec. 105-22. Stop Work Order**

(1) Authority

Where the building official finds any work regulated by this code being performed either contrary to its provisions or dangerous or unsafe, the building official is authorized to issue a stop work order.

(2) Issuance

A stop-work order shall be in writing and given to the property owner, the owner's authorized agent, or the person performing the work. The stop-work order shall be posted on the job site. The cited

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work shall immediately cease upon issuance of a stop work order. The stop-work order shall state the reason for the order and the conditions under which the cited work will be permitted to resume.

(3) Unlawful Continuance

Any person who continues work after being served with a stop work order, except work directed to be performed to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

**Sec. 105-23    Unsafe Structures and Equipment**

(1) Conditions

Structures or existing equipment that are or hereafter become unsafe, unsanitary, or deficient because of inadequate means of egress facilities, inadequate light, and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy, shall be deemed an unsafe condition. Unsafe structures shall be taken down, removed, or made safe as the building official deems necessary and as provided in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

(2) Record

The building official shall report an unsafe condition to Dawson County. The report shall state the occupancy of the structure and the nature of the unsafe condition.

(3) Notice

If an unsafe condition is found, the building official shall serve the owner, agent, or person in control of the structure a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order.

(4) Method of Service

Such notice of an unsafe condition shall be deemed properly served if a copy is delivered to the owner personally, sent by certified or registered mail addressed to the owner at the last known address with the return receipt requested, or delivered in any other manner as prescribed by local law. If the certified or registered letter is returned showing that the letter was not delivered, a copy shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the preceding manner on the owner's agent or the person responsible for the structure shall constitute service of notice on the owner.

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PART II - CODE OF ORDINANCES  
Chapter 105 - BUILDINGS AND BUILDING REGULATIONS  
ARTICLE II. THIRD-PARTY INSPECTION

***ARTICLE II. THIRD-PARTY INSPECTION: A Program for Enhanced Quality Assurance***

**Sec. 105-21. Definitions.**

- (a) For purposes of this third-party inspection ordinance, the following definitions shall apply unless the context indicates otherwise:

*Approved third-party inspectors and plans reviewer list.* The department maintains a comprehensive list comprising the names of qualified and experienced professionals who have complied with the application and renewal requirements of the Dawson County Third Party Inspection and Plans Review Program. These individuals have been approved to perform third-party inspections and plan reviews, ensuring the minimum safety and quality standards in unincorporated Dawson County.

*An approved third-party inspector, a registered professional engineer, or an architect plays a significant role in the inspection process. They have successfully met the application and renewal requirements of the Dawson County Third Party Inspection and Plans Review Program.* These professionals are authorized to conduct third-party inspections in unincorporated Dawson County, as per the provisions of this article of the Dawson County Code. It's important to note that an Approved third-party inspector is intended to function as a 'private, professional provider' for inspections, as described in the State Act.

*An approved third-party plans reviewer, a registered professional engineer, or architect, is critical in the plan review process. They have successfully met the application and renewal requirements of the Dawson County Third Party Inspection and Plans Review Program.* These professionals are authorized to conduct third-party plan reviews in unincorporated Dawson County, as per the provisions of this article of the Dawson County Code. Approved third-party plans reviewer is intended to function as a 'private, professional provider' for the review of building construction plans, as described in the State Act.

*The department establishes fees, an integral part of the process.* These fees are to be paid to the county when an applicant chooses to use a third-party inspector or third-party plan reviewer. This is applicable even if the department can provide inspection and plan review services within the time frames mandated by the State Act. These fees are equivalent to any regulatory fees assessed by the department for inspections and plan review services performed by the department.

*County.* Dawson County is outside of the municipal limits of the City of Dawsonville.

*Department.* The Dawson County Department of Planning and Development, or the other department the Dawson County Board of Commissioners may assign, is responsible for performing inspections and overseeing the third-party inspection and plans review system described herein.

*Inspection.* The observance of work and the performance of tests for specific components and elements to establish conformance with Dawson County approved construction documents, building codes and ordinances

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adopted by Dawson County, and the requirements of the state minimum standards as adopted and amended by the Georgia Department of Community Affairs.

*Inspection certification.* A written statement signed by an approved third party inspector or their approved technician, which shall indicate that the item(s) being inspected, in the authorized third party inspector's professional opinion and to the best of their knowledge, complies with Dawson County-approved construction documents, building codes and ordinances adopted by Dawson County, the requirements of the state minimum standards as adopted and amended by the Georgia Department of Community Affairs, and any other applicable inspections that inspectors employed by Dawson County typically performs.

*Inspection field report.* A written report prepared by an approved third-party inspector or a technician working under an approved third-party inspector's direct supervision describes the work conducted and the findings of an inspection.

*Plans review affidavit.* A written affidavit that is completed and signed under oath by an approved third-party plans reviewer, which shall indicate the plans that have been reviewed for a building permit for the application in question, in the approved third-party plans reviewer's professional opinion and to the best of their knowledge, complies with the regulatory requirements as designated by Dawson County, including the Georgia State Minimum Standard Codes most recently adopted by the department of community affairs and any locally adopted ordinances and amendments to such codes, applicable zoning ordinances and conditions, design standards, and any other applicable laws and regulations that would otherwise be required of staff employed by the Dawson County Planning and Community Development Department.

*Registered professional architect.* An individual that holds a certificate of registration issued under O.C.G.A. tit. 43, ch. 4.

*Registered professional engineer.* An individual that holds a certificate of registration issued under O.C.G.A. tit. 43, ch. 15.

*Regulatory fees.* All fees established by the department are to be paid to the department for any regulatory action, inspection services, or plan review services as provided by the State Act and this article.

*State Act.* O.C.G.A. § 8-2-26.

*Technician.* An individual who performs inspections under the direct supervision of an approved third-party inspector.

*Third-party inspection.* Inspection is performed in conformance with this program by approved third-party inspectors.

*Third-party inspection and plan review program.* This ordinance describes the rules and procedures for this program.

*Third-party plans review.* A review of building construction plans was performed in conformity with this program by approved third-party plan reviewers.;

## **Sec. 105-22. Third-party inspection and plans review program.**

- (a) The department will establish and maintain an approved list of third-party inspectors and plan reviewers from whom it will accept third-party inspections and third-party plan reviews in accordance with this third-party inspection and plan review ordinance.

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- (b) In full compliance with the requirements of the State Act, Dawson County shall allow owners, developers, and contractors to submit inspection certifications by approved third-party inspectors and plans review affidavits by approved third-party plans reviewers to satisfy specific inspection and plans review requirements.
  - (c) The department will only consider inspection certifications and plans review affidavits from individuals listed on the approved third-party inspector and plans reviewer list. Dawson County makes no representation concerning the approved third-party inspectors and approved third-party plan reviewers other than that they have submitted evidence that they have met the minimum criteria necessary to qualify for the third-party inspection and plans review program described herein.
  - (d) For an inspection certification or plans review affidavit to be accepted by the department for a particular project, an approved third-party inspector or approved third-party plans reviewer must be independent of and must not be an employee of, otherwise affiliated with, or financially interested in the person, firm, or corporation engaged in the construction project to be inspected.
  - (e) The person, firm, or corporation retaining an approved third-party inspector or approved third-party plans reviewer to conduct an inspection or plans review shall be required to pay to the county the same regulatory fees that would have been required had a county inspector, or county plan reviewer has conducted the inspection or plans review. Upon paying in full the convenience fees associated with the complete application, the applicant may nevertheless choose to retain, at its own expense, an approved third-party inspector or approved third-party plans reviewer to provide the required inspection or plan review, subject to the requirements outlined in this article. Any regulatory fees or convenience fees paid to the county are nonrefundable.
  - (f) All other fees and costs related to the performance of the third-party inspections or third-party plans review are matters solely between the approved third-party inspector or approved third-party plans reviewer and the person, firm, or corporation engaging the approved third-party inspector or approved third-party plans reviewer.
  - (g) Notwithstanding the submission of an inspection certification or plans review affidavit, the department retains the authority to make all code interpretations and to monitor the quality of all third-party inspections and third-party plans reviews. Nothing in this article shall be construed as authorizing any approved third-party inspector or approved third-party plans reviewer to issue a certificate of occupancy.
  - (h) The department will continue to provide full support to customers who choose not to utilize the services of approved third-party inspectors or approved third-party plan reviewers.
  - (i) The department will follow all applicable procedures outlined in the State Act for all inspections and plan reviews. For processing applications compliant with the State Act, an application submitted to the department shall not be considered complete until all applicable fees have been paid and all applicable county departments have previously received the application and provided any required approvals.

**Sec. 105-23. Inspections types.**

- (a) The department will, at minimum, accept third-party inspections in compliance with the State Act for any construction inspections required by state and local codes.
- (b) Approved third-party inspectors shall be authorized to conduct any inspection required by the county necessary or required to determine compliance with all regulatory requirements and for the issuance of a

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building permit or certificate of occupancy, provided that the inspection being performed is within the scope of the approved third-party inspector's area of competency. Nothing in this article shall be construed as authorizing any approved third-party inspection of local fire safety standards.

- (c) Nothing in this article shall be construed as authorizing any approved third-party inspection of site staking and erosion control measures in compliance with an approved grading plan, which shall be taken before any construction activities if required.

**Sec.105 -24. Approved third-party inspector qualifications.**

- (a) Individuals wishing to be placed on the approved third-party inspectors and plans reviewer list must submit an initial application to the department.
- (b) To qualify as an approved third-party inspector, an individual must:
  - (1) Be a registered professional engineer or architect as defined in this article.
  - (2) Otherwise, be in good standing with all pertinent certification and professional accreditation boards.
  - (4) Possess and maintain minimum insurance as described herein.
  - (5) Demonstrate relevant experience of at least one year.
- (c) An individual shall not be qualified to be placed on the approved third-party inspectors and plans reviewer list if he/she has had his/her authority to issue third-party inspection certifications in any other jurisdictions revoked. If an individual previously qualified to be on the approved third-party inspectors and plans reviewer list and subsequently has his/her authority to issue third-party inspection certifications revoked, the individual shall be removed from the approved third-party inspectors and plans reviewer list.
- (d) An approved third-party inspector may not submit an inspection certification if the inspector is an officer or employee of the owner, developer, contractor, or other party or if the inspector is employed by or a partner in a firm that is affiliated with or financially interested in the owner, developer, contractor, or other party on whose behalf the inspection certification is submitted.
- (e) Technicians may perform inspections under the supervision of an approved third-party inspector provided that the technician has satisfied any specific requirements as may be designated by the building official.
- (f) Technicians performing inspections under the supervision of an approved third-party inspector shall possess ICC certifications relevant to the types of inspections performed. For zoning inspections, technicians shall provide documentation demonstrating three years of experience and training, including general building construction, construction trades, and code enforcement/interpretation, or any equivalent combination of education, training, and experience to be determined at the building official's discretion.
- (g) Approved third-party inspectors shall obtain and maintain the following minimum insurance coverages and provisions, evidence of which shall be submitted to the department with the initial application:
  - (1) Comprehensive general liability insurance for liability and property damage for not less than \$1,000,000.00 per occurrence.
  - (2) Professional liability insurance for errors and omissions in an amount of not less than \$1,000,000.00 per occurrence and \$1,000,000.00 in aggregate coverage for any project with a construction cost of \$5,000,000.00 or less. For any project with a construction cost of more than \$5,000,000.00, the

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amount of professional liability insurance for errors and omissions shall not be less than \$2,000,000.00 per claim and \$2,000,000.00 in aggregate coverage.

- (3) Such insurance may be a practice policy or project-specific coverage. If the insurance is a practice policy, it shall contain prior acts coverage for the private professional provider. If the insurance is project-specific, it shall continue in effect for two years following the issuance of the final certificate of occupancy or certification of completion for the project.
  - (4) The cancellation provision shall provide for 30 days' cancellation notice.
  - (5) Dawson County, Georgia, its officers, officials, employees, and representatives shall be named additional insureds on the required insurance policies.
  - (6) The required insurance coverages shall be provided by an insurance company licensed to do business by and in good standing with the Georgia Department of Insurance at all times.
  - (7) Approved third-party inspectors shall maintain the minimum insurance coverage as required above at all times during which they are listed as approved third-party inspectors. Approved third-party inspectors shall provide the department with evidence of minimum insurance coverages and provisions annually before any policy or coverage expiration and upon request by the department. Should any insurance coverage or information change, the approved third-party inspector shall provide written notice of any such change to the county within ten business days. If at any time an approved third-party inspector fails to maintain the required insurance coverage, the department may remove them from the approved third-party inspectors and plans reviewer list.
- (h) Suspension of technicians and approved third-party inspectors:
- (1) An individual who performs inspections under this article, whether a Technician or an individual approved third-party inspector, shall be subject to suspension from the authorized third-party inspector and plans reviewer list and from submitting inspection field reports and inspection certifications for the following infractions:
    - a. Inspections are provided without an appropriate license or certification.
    - b. Inspection services are provided before the issuance of a valid building permit.
    - c. Failing to identify any noncompliance with any applicable code, as amended, governing individual and public safety and welfare (including, but not limited to, sections 308, 310-312, 314, and 315 of the International Residential Code, Section 607 of the International Plumbing Code, Sections 406, 502, and 503 of the International Fuel Gas Code, and Sections 210, 240, and 250 of the National Electric Code, as adopted by the Georgia Department of Community Affairs) as determined in the sole good faith discretion of the Building Official of the County. However, it is the express intent of the County not to impose sanctions on an individual under this Article for failing to identify multiple instances of noncompliance in one inspection, such as that each such failure constitutes an individual and separate infraction. Instead, various failures contained in a single inspection under this paragraph shall be treated as a single infraction.
    - d. Authorizing any deviation from the approved permit.
    - e. Falsifying reports.
    - f. Unauthorized employee performing inspections.



- g. Performing unauthorized types of inspections.
  - h. Inspections are passed with a hold on a project or under-stop work.
  - i. Failure to identify noncompliance with any applicable code not captured in subsection (c) above upon identification of such failure by the county on multiple occasions, as determined in the sole good faith discretion of the county's chief building official.
- (2) Infractions within 12 months. Suspension for submitting inspection field reports and inspection certifications for infractions by a technician or individual approved third-party inspector shall be progressive based on the number of infractions in the previous 12-month period. For any combination of infractions within 12 months, the following actions and suspensions against a technician or individual approved third-party inspector shall be assessed:

First infraction:	Warning letter
Second infraction:	Warning letter and notice to permit holder
Third infraction:	A 30-day suspension from eligibility to perform inspections and submit inspection field reports and inspection certifications
Fourth infraction:	90-day suspension from eligibility to perform inspections and submit inspection field reports and inspection certifications
Fifth infraction:	1-year suspension from eligibility to perform inspections and submit inspection field reports and inspection certifications

- (3) Violations within 24 months. An approved third-party inspector shall be subject to progressive action based on the number of infractions in the previous 24-month period by individuals performing inspections, including the individual approved third-party inspector or any one or more technicians acting under the supervision of the authorized third-party inspector (which shall include technicians serving as employees, independent contractors, agents, etc.). Violations under this paragraph shall accrue upon every third infraction by an individual contemplated in paragraph (2) above. They shall subject approved third-party inspectors to the following actions and suspensions for any combination of infractions within 24 months:

First violation (upon third individual infraction):	A written letter of reprimand from the Building Official
Second violation (upon sixth individual infraction):	Seven-day suspension from approved third-party inspector and plans reviewer list

Third violation (upon ninth individual infraction):	A 30-day suspension from approved third-party inspector and plans reviewer list
Fourth violation (upon 12th individual infraction):	A 90-day suspension from approved third-party inspector and plans reviewer list
Fifth violation (upon 15th individual infraction):	Two-year suspension from approved third-party inspector and plans reviewer list

The county shall send a written notice to the approved third-party inspector for each infraction as contemplated in paragraph (2) above, the purpose of which shall be to inform the approved third-party inspector of the number of infractions accruing under paragraph (2) to put the authorized third party inspector on notice of possible violations under this paragraph (3), and so the approved third party inspector has the opportunity to take any remedial action necessary to prevent future infractions and violations.

- (4) Notwithstanding any other provision of this article, in the event a technician or individual approved third-party inspector is found to have violated subsection (h)(1) e. - falsifying reports, the progressive actions and suspensions of this article may, at the county's discretion, be bypassed with an immediate suspension and disqualification imposed.
- (5) Suspension and disqualification appeals shall be processed through the Construction Board of Appeals at its next meeting as appeals of building official decisions.

**Sec. 105-25. Procedures for conducting third-party inspections.**

- (a) An approved third-party inspector shall not suggest, direct, or authorize any deviation from approved construction documents without obtaining the Building Officials approval.
- (b) The following procedures shall apply to all third-party inspections:
  - (1) To ensure quality control of the third-party inspection and plans review program, the department shall receive a copy of all inspection field reports within one business day of the inspection.
  - (2) All inspection field reports shall note the type of inspection and any deficiencies observed.
  - (3) Inspection certifications shall be submitted one business day after the inspection. Once the certification is received, the department will update the inspection status in the ordinary course of business.
  - (4) Final inspections will not be scheduled until all outstanding reinspection fees have been paid.
  - (5) Third-party inspectors shall not be authorized to perform final inspections.
  - (6) When performing re-inspections for violations initially noted by department staff, each corrected item shall be addressed individually.
- (c) The department shall have a right to enter any premises inspected by an approved third-party inspector or technician to ensure compliance with this article and the State Act.

**Sec. 105-26. Approved third-party plans reviewer qualifications.**

- (a) Individuals wishing to be placed on the approved third-party inspectors and plans reviewer list as approved plans reviewers must submit an initial application to the department.
- (b) To qualify as an approved third-party plans reviewer, an individual must:
  - (1) Be a partner in or employed by an engineering or architect firm in full compliance with Chapter 22 of the Dawson County, Georgia Code of Ordinances.
  - (2) Be a registered professional engineer or registered professional architect as defined in this article.
  - (3) Otherwise, be in good standing with all pertinent certification and professional accreditation boards.
  - (4) Possess and maintain minimum insurance as described herein.
  - (5) Demonstrate relevant experience of at least one year.
- (c) An individual shall not be qualified to be placed on the approved third-party inspectors and plans reviewer list if they have had the authority to revoke third-party plans review affidavits in other jurisdictions. Suppose an individual previously qualified to be on the approved third-party inspectors and plans reviewer list and subsequently has their authority to issue third-party plans review affidavits revoked. In that case, the individual shall be removed from the approved third-party inspectors and plans reviewer list.
- (d) An approved third-party plans reviewer may not submit a plans review affidavit if the approved third-party plans reviewer is an officer or employee of the owner, developer, contractor, or other party or if the approved third-party plans reviewer is employed by or a partner in a firm that is affiliated with or financially interested in the owner, developer, contractor, or other party on whose behalf the plans review affidavit is submitted.
- (e) Approved third party plans reviewers shall obtain and maintain the following minimum insurance coverages and provisions, evidence of which shall be submitted to the department with the initial application:
  - (1) Comprehensive general liability insurance for liability and property damage for not less than \$1,000,000.00 per occurrence.
  - (2) Professional liability insurance for errors and omissions in an amount of not less than \$1,000,000.00 per occurrence and \$1,000,000.00 in aggregate coverage for any project with a construction cost of \$5,000,000.00 or less. For any project with a construction cost of more than \$5,000,000.00, the amount of professional liability insurance for errors and omissions shall not be less than \$2,000,000.00 per claim and \$2,000,000.00 in aggregate coverage.
  - (3) Such insurance may be a practice policy or project-specific coverage. If the insurance is a practice policy, it shall contain prior acts coverage for the private professional provider. If the insurance is project-specific, it shall continue in effect for two years following the issuance of the final certificate of occupancy or certification of completion for the project.
  - (4) The cancellation provision shall provide for 30 days' cancellation notice.
  - (5) Dawson County, Georgia, its officers, officials, employees, and representatives shall be named additional insureds on the required insurance policies.
  - (6) The required insurance coverages shall be provided by an insurance company licensed to do business by and in good standing with the Georgia Department of Insurance at all times.

(7) Approved third-party plan reviewers shall maintain the minimum insurance coverage as required above at all times during which they are listed as approved third-party plan reviewers. Approved third-party plan reviewers shall provide the department with evidence of minimum insurance coverages and provisions annually before any policy or coverage expiration and upon request by the department. Should any insurance coverage or information change, the approved third-party plans reviewer shall provide written notice of any such change to the county within ten business days. If an approved third-party plans reviewer fails to maintain the required insurance coverage, the department may remove them from the approved third-party inspectors and plans reviewer list.

(f) Suspension of approved third-party plans reviewers:

(1) An individual who performs plans review under this article shall be subject to suspension from the approved third-party inspector and plans reviewer list and from submitting plans review affidavits for the following infractions:

- a. Providing plan reviews without appropriate license or certification.
- b. Failing to identify any noncompliance with any applicable code, as amended, governing individual and public safety and welfare (including, but not limited to, Sections 308, 310—312, 314, and 315 of the International Residential Code, Section 607 of the International Plumbing Code, Sections 406, 502, and 503 of the International Fuel Gas Code, and Sections 210, 240, and 250 of the 2020 National Electric Code, etc.) as determined in the sole good faith discretion of the building official of the county. However, it is the express intent of the county not to impose sanctions on an individual under this article for failing to identify multiple instances of noncompliance in one inspection, such as that each such failure constitutes an individual and separate infraction. Instead, various failures contained in a single inspection under this paragraph shall be treated as a single infraction.
- c. Falsifying plans review affidavits.
- d. Performing unauthorized types of plan reviews.

(2) Suspension for submitting plans review affidavits for infractions by an approved third-party plans reviewer shall be progressive based on the number of infractions in the previous 12-month period. For any combination of infractions within 12 months, the following actions and suspensions against an approved third-party plans reviewer shall be assessed:

First infraction:	A written letter of reprimand from the building official.
Second infraction:	A 10-day suspension from approved third-party inspector and plans reviewer list
Third infraction:	A 30-day suspension from approved third-party inspector and plans reviewer list
Fourth infraction:	A 90-day suspension from approved third-party inspector and plans reviewer list
Fifth infraction:	One-year suspension from approved third-party inspector and plans reviewer list

(3) The county shall send a written notice to the approved third-party plans reviewer for each infraction as contemplated in paragraph (2) above, the purpose of which shall be to inform the approved third-party plans reviewer of the number of infractions accruing under paragraph (2) and so the approved third-

party plans reviewer has the opportunity to take any corrective action necessary to prevent future infractions.

- (4) Notwithstanding any other provision of this article, in the event an approved third-party plans reviewer is found to have violated subsection (f)(1)c. - falsifying plans review affidavits, the progressive actions and suspensions of this article may, at the county's discretion, be bypassed with an immediate suspension and disqualification imposed.
- (5) Suspension and disqualification appeals shall be processed through the Construction Board of Appeals at its next meeting as appeals of building official decisions.

**Sec. 105-27. Procedures for conducting third-party plan reviews.**

- (a) Any plan review conducted by an approved third-party plan reviewer shall be no less extensive than plan reviews conducted by county personnel.
- (b) The following procedures shall apply to all third-party plans reviewed:
  - (1) To ensure quality control of the third-party inspection program, the department shall receive a copy of all plan review affidavits within five business days of completion.
  - (2) All plans review affidavits shall certify that:
    - a. The plans were reviewed by the affiant, who is duly authorized to perform plan review under the third-party inspection and plans review program;
    - b. The plans comply with all applicable regulatory requirements and
    - c. The plans submitted for plan review conform with plans previously submitted to obtain county approvals required in the plan submittal process. Do not change the project reviewed for such approvals.

**Secs. 105-28—105-40. Reserved.**



## DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST FORM

Department: County Administration

Work Session: May 2, 2024

Prepared By: Melissa Hawk

Voting Session: May 16, 2024

Presenter: Joey Leverette

Public Hearing: Yes XX No \_\_\_\_\_

Agenda Item Title: Presentation of Professional Exemption and Budget Request for Design of Style Park Trails

**Background Information:**

Quotes were requested from three engineering firms to design the trails, utilities, parking, restroom and rest area benches. The scope and pricing received varied in work and cost ranging from \$48,680 with very limited work included, to \$110,000, which did not include all needed work. A formal RFQ was released combining all the scope of work in the quotes and that which was excluded, but was needed. This was sent out to the three firms, along with a few others. The RFQ opened on March 1, 2024, receiving two responses. These ranged from \$198,500 to \$212,000.

**Current Information:**

We requested and received a quote from Ensite Civil Consulting, LLC for the amount of \$60,500. This quote included all the work necessary to complete Phase 1 (trail system, pavilion pads and signage) confirm public/and private utilities on-site, preliminary drawings of pre-fabricated bathhouse, parking lot and others, rough stake and flag trails every 25'; preparation of civil plans, which includes site & utility plan, septic plan, grading, erosion control, notes and details; final civil plans and hydrology study; and construction administration.

**Budget Information:**

Applicable: \_\_\_\_\_ Not Applicable: \_\_\_\_\_

Budgeted: Yes \_\_\_\_\_ No \_\_\_\_\_

Fund	Department	Account #	Budget	Balance	Requested	Remaining

\*If this is a personnel-related request, has it been reviewed by Human Resources? \_\_\_\_\_

\*If this item is being requested to move to the same day's voting session for BOC consideration, provide *detailed justification* for the request:

Recommendation/Motion: Staff respectfully r 294 s the Board to approve the professional

exemption of Ensite Civil Consulting, LLC to perform scope of work listed on the April 12, 2024, Proposal, in the amount of \$60,500 AND to determine the source of funding for the Purchase Order.

Department Head Authorization: \_\_\_\_\_

Date: \_\_\_\_\_

Finance Department Authorization: Vickie Neikirk

Date: 4/22/24

County Manager Authorization: J. Leverette

Date: 4/23/24

Comments/Attachments: \_\_\_\_\_