



2007000728

FOR REGISTRATION REGISTER OF DEEDS
KIMBERLY S. HARROVE
HARNETT COUNTY, NC
2007 JAN 11 03:06:54 PM
BK:2328 PG:988-1002 FEE:\$53.00

INSTRUMENT # 2007000728

DECLARATION OF EASEMENTS AND OPERATING AGREEMENT

**STATE OF NORTH CAROLINA
COUNTY OF HARNETT**

Prepared by and return after recording to:
Francis C. Bagbey, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.
P.O. Box 2611, Raleigh, NC 27602.

THIS DECLARATION OF EASEMENTS AND OPERATING AGREEMENT (this "Agreement") is made and entered into as of this the 11th day of January, 2007, by and among DEAL, INC., a North Carolina corporation (hereinafter referred to as "Deal"), LEE-MOORE OIL COMPANY, a North Carolina corporation (hereinafter referred to as "LMOC"), and THE PANTRY, INC., a Delaware corporation (hereinafter referred to as "Pantry").

WITNESSETH:

WHEREAS, Deal is the fee simple owner of title to the real property located in Barbecue Township, Harnett County, North Carolina and more particularly described as Lot 2 (such tract of land may be referred to herein as the "Deal Parcel") as shown on that certain subdivision plat entitled "Property of Deal, Inc." dated December 21, 2006, prepared by Dowell G. Eakes, PLS, and bearing the seal of Dowell G. Eakes (the Plat"), and recorded in Book of Maps 2007, Page 15 in the office of the Harnett County Register of Deeds (the "ROD Office").

WHEREAS, LMOC, by deed dated January 11, 2007 to be recorded in the ROD Office, will be the fee simple owner of title to the real property described as Lot 1 and Lot 3 as shown on the Plat (such tracts of land may be collectively referred to herein as the "Store Parcels"; the Store Parcels and the Deal Parcel may be collectively referred to herein as the "Entire Premises"; any lot on the Entire Premises presently existing or hereafter created may be referred to herein individually as a "Lot" or collectively as the "Lots").

WHEREAS, Pantry, by Lease Agreement dated as of January 11, 2007 (the "Lease"), a memorandum of which will be recorded in the ROD Office, will lease Tract 1 and Tract 3 from

LMOC for the operation of a convenience store business on Lot 3 (the "Store") and a car wash on Lot 1.

WHEREAS, it is necessary and desirable in the operation of the Store and the car wash, and the possible future development of the Deal Parcel, to provide for certain easements and agreements as set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and legal sufficiency of which the parties expressly acknowledge, Deal, LMOC, and Pantry agree as follows:

1. **Establishment of Easements.**

(a) **Underground Utility Easement – Lot 2.** Deal does hereby declare, create, and establish for the benefit of Lots 1 and 3 a non-exclusive easement in perpetuity for the construction, inspection, utilization, maintenance, and replacement of telephone, data, electric, and other utilities under Lot 2 within the thirty (30) foot wide area along and immediately adjacent to the right of way margin of N.C. Highway 27 and running from the western property line of Lot 3 to the eastern property line of Lot 1.

(b) **Access Easements – Lots 1 and 3.**

(i) Deal does hereby declare, create and establish for the benefit of Lots 1 and 3 a non-exclusive driveway easement in perpetuity over the property more particularly described in Exhibit A attached hereto and hereby incorporated herein by reference (the "Pantry Driveway Easement Area") for pedestrian and vehicular access, ingress and egress and over the Pantry Driveway hereinafter defined. Deal agrees that Pantry, at its cost, is permitted to construct a paved driveway (the "Pantry Driveway") on and over the Pantry Driveway Easement Area, including all curbcuts, entrances, exits, sidewalks and walkways that abut Lot 1 and/or Lot 3 as the Pantry and/or LMOC shall deem necessary. Notwithstanding the foregoing, Pantry and /or LMOC shall have the right of vehicular and pedestrian access from the Pantry Driveway to Buffalo Lake Drive over the paved areas on Lot 2 existing from time to time. Before Deal or any future owner of Lot 2 subdivides for development any portion of Lot 2 to the south of Lots 1 and 3, Deal or the then owner or owners of Lot 2 shall discuss with LMOC and/or Pantry the general plan of development for Lot 2 as same relates to access to Buffalo Lake Drive by LMOC and /or Pantry; it being understood and agreed that the general plan of development for Lot 2 shall provide LMOC and/or Pantry access over Lot 2 to Buffalo Lake Drive. The parties agree to record an amendment to this Declaration specifically locating the Pantry Driveway Easement Area and the Pantry Driveway as built upon completion of the Pantry Driveway if, due to inadvertence or the agreement of the parties, any material portion of the Pantry Driveway is installed outside the Pantry Driveway Easement Area. Pantry agrees to submit to Deal plans and specifications for the Pantry Driveway and its location prior to construction. The Pantry Driveway shall generally be constructed of 8 inches of crushed stone as its base, 2 inches of binder, and 2 inches of finish asphalt. Deal agrees to review and deliver comments on such plans and specifications to Pantry no later than ten (10) days after receipt of the same, and said approval not to be unreasonably withheld, conditioned, or delayed, Pantry

shall cause the driveway to be completed promptly, subject to events of force majeure. Deal grants to Pantry, its agents, representatives, employees, and contractors the right and easement to enter upon Lot 2 for purposes of evaluating, designing, constructing, and completing the Pantry Driveway. Pantry shall defend, indemnify, and hold harmless Deal and its tenants, invitees, customers, employees, licensees, and contractors from personal injury or property damage caused by Pantry, its employees or contractors in connection with such construction. Pantry shall cause such construction to be done in accordance with applicable laws and in a good and workmanlike manner free and clear of all liens.

(ii) In addition to the easement granted over the Pantry Driveway Easement Area, Deal does hereby declare, create, and establish for the benefit of Lots 1 and 3, non-exclusive easements in perpetuity for pedestrian and vehicular access, ingress, and egress over and across all parking areas, driveways (including the Pantry Driveway), roadways, curbcuts, entrances, exits, sidewalks, and walkways, as such may exist from time to time located upon Lot 2 (the "**Lot 2 Access Facilities**"); provided, however, that no easement for parking is granted hereunder except for the customers and invitees (including tenants, subtenants, and employees) of any business owner operating a business on one or more lots within the Store Parcels or the Deal Parcel, as the case may be. The easements described in this Section 1(b) shall include, without limitation, access for tenants, invitees, customers, employees, licensees, and contractors of Pantry and LMOC and their tenants and subtenants on Lot 1 and/or Lot 3 on, over, upon, and across the Lot 2 Access Facilities. Such easements include the right to enter upon said easements areas to construct, inspect, install, maintain, repair, and replace roadways, curbcuts, and related driveway facilities and walkways on such easement, as approved by Deal in its reasonable discretion, subject to the terms and conditions of this Agreement.

(c) Utility Easement – Sewer Lift Station. Deal does hereby declare, create, and establish for the benefit of Lots 1 and 3, non-exclusive easements in perpetuity over Lot 2 for the inspection, construction, replacement, utilization, repair, and maintenance of a sewer lift station and related lines, piping, and facilities (the "**Lift Station**") located on Lot 2 as shown on the Plat.

(d) General Easement for Access. Each owner of the Deal Parcel and the Store Parcels does hereby declare, create, and establish for the benefit of each tract within the Entire Premises, reciprocal, non-exclusive easements in perpetuity for pedestrian and vehicular access, ingress, and egress over and across all parking areas, driveways, roadways, curbcuts, entrances, exits, sidewalks, and walkways, as such may exist from time to time upon the Entire Premises ("**Common Access Facilities**"). The Common Access Facilities shall include, without limitation, access and parking for tenants, invitees, employees, licensees, customers, and contractors of each owner, tenant, and subtenant of the Deal Parcel and the Store Parcels on, over, upon, and across the Common Access Facilities, provided, however, that no easement for parking is granted hereunder except for the customers and invitees (including tenants, subtenants, and employees) of any business owner operating a business on one or more lots within the Store Parcels or the Deal Parcel, as the case may be.

(e) General Utility Easements – Lot 2.

(i) Deal does hereby declare, create, and establish for the benefit of Lot 1 and Lot 3, non-exclusive easements in perpetuity for the construction, inspection, utilization, maintenance, and replacement of water, sewer, gas, telephone, electric, and all other utilities over, under, and across Lot 2 in addition to the easement granted in Section 1(a), expressly including an easement for an existing 8" drain coming under Lot 2 in the vicinity of the southeastern corner of Lot 3 and running northerly across a portion of Lot 2 near the western property line of Lot 3 and crossing the northwestern corner of Lot 3 to a drain on or near the right of way of NC Highway 27; provided, however, that such utilities shall not be located or installed without first obtaining the approval of Deal (or the current owner of Lot 2 if not Deal), which approval shall not be unreasonably withheld, conditioned, or delayed. Any installation shall be at the sole cost and expense of the installing party and in a manner consistent with a modern, first class development and shall be undertaken in a manner so as not to interfere unreasonably with the use of the burdened property. Upon completion of each such general utility easement, LMOC, Deal, and Pantry agree to record an amendment to this Declaration providing a legal description of the area comprising such utility easement. The installing party, on behalf of itself, shall indemnify Deal, LMOC, and/or Pantry as the case may be, and their respective successors in interest, employees, agents, representatives, customers, invitees, licensees, tenants, and subtenants from and against personal injury or property damage caused by the installing party or such future owners in connection with exercise of their rights under this subparagraph (e).

(ii) The parties acknowledge that underground conduit originally intended for electric lines runs from the western line of Lot 3 to the eastern line of Lot 1 as shown on "ALTA/ACSM Land Title Survey, Survey of: Pantry #3868, dated 1/9/2007, prepared by Dowell G. Eakes, PLS" (the "ALTA Plat"). No such electric lines were ever installed in the existing conduit in the approximate location shown on the ALTA Plat. LMOC and Pantry and any party claiming by, through, or under LMOC or Pantry shall not have any right to use such existing conduit without the prior written consent of Deal, which consent may be withheld in Deal's absolutely discretion.

(f) Drainage Easement. Deal does hereby reserve unto itself and future owners of real property immediately adjacent to the Deal Parcel on the west a non-exclusive easement in perpetuity over, across, and upon a ten (10) feet wide area immediately adjacent to and running with the western property line of Lot 1 for the purposes of storm water drainage to be contained within underground piping. In connection with such easement, Deal shall have the right of access, ingress, and egress upon the Store Parcels for the sole purpose of installing and maintaining an underground stormwater drainage line. Deal, on behalf of itself and future owners of real property immediately adjacent to the Deal Parcel benefiting from this easement, shall indemnify LMOC, Pantry, and their respective employees, agents, representatives, customers, invitees, licensees, tenants, and subtenants from and against personal injury or property damage caused by Deal or such future owners in connection with exercise of their rights under this subparagraph (f).

(g) Easement for Use of Area Light. Deal does hereby declare, create, and establish, for the benefit of Lot 3, a non-exclusive easement in perpetuity over, across, and upon

Lot 2 for the utilization, maintenance, and replacement of the existing area light fixture located on Lot 2.

(h) Easement for Use of Propane Tank. Deal does hereby declare, create, and establish, for the benefit of Lots 1 and 3, a non-exclusive easement in perpetuity over, across, and upon Lot 2 for the utilization, maintenance, and replacement of the existing propane tank located on Lot 2 as shown on the Plat.

(i) 20' Sewer/Utility Easement.

(i) The parties acknowledge and agree and hereby dedicate to Harnett County a temporary construction easement 5' in width running along the outer edge of each side of the 20' sewer/utility easement for its length as shown on the Plat, said easement to be for the purpose of constructing, installing, repairing, replacing, inspecting, and maintaining public utilities installed within such 20' sewer/utility easement area.

(ii) Subject to the foregoing dedication to Harnett County, Deal does hereby declare, create, and establish for the benefit of Lots 1 and 3 a non-exclusive easement in perpetuity for sewer, water, electric, communication, data, and other utilities over and across the area on the Plat denoted as 20' sewer/utility easement. The owners of Lots 1 and 3 (or Pantry if Pantry shall be the tenant at such lots at the time the damage occurred but excluding any damage directly caused by such owners, their employees, agents, representatives, or contractors) shall be responsible for any damage done to any public utilities installed within the 20' sewer/utility easement area caused by their use of the easement granted in this subparagraph (B) and shall defend, indemnify, and hold harmless Deal and any future owner of Lot 2 from any loss, claim, expense, or liability asserted or threatened against Deal or any future owner of Lot 2 arising out of or in connection with the use of such easement area by the owner or owners of Lots 1 and 3.

(j) Private Easements. The easements granted in Sections 1(a) through 1(h) above, as well as any other easements granted herein, are private easements, and nothing contained herein shall be construed as a dedication to the public of any such easements.

2. Barriers. Except as hereinafter provided in this Section 2, no barriers, fences, or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic across the Common Access Facilities or the Lot 2 Access Facilities, or in any manner restrict or interfere with the full and complete use and enjoyment of the rights and easements granted herein. Notwithstanding the foregoing, any owner of the Deal Parcel or the Store Parcels may close or block traffic on its parcel for the time necessary to prevent loss of ownership rights as the result of adverse possession, and may temporarily fence off portions of its parcel as reasonably required for repair, construction, and reconstruction of improvements on its parcel.

3. Maintenance.

(a) Lift Station. The owner of Lot 3 shall be responsible for the inspection, maintenance, repair, and replacement of the Lift Station located on Lot 2. Any party that uses

the Lift Station shall be required to pay its pro-rata share of all costs arising from the operation of the Lift Station, including, without limitation, costs related to permitting, pumping, maintenance, repair, and replacement (the "Lift Station Costs"). The Lift Station Costs shall be allocated among the parties using the Lift Station based on each such party's relative usage of water on its parcel compared to the aggregate water usage of all parties using the Lift Station. The owner of Lot 3 shall bill the other parties using the Lift Station for such parties' share of the Lift Station Costs on an as-needed basis, but no more frequently than once every calendar quarter. In the event that any party does not pay its share of the Lift Station Costs within thirty (30) days of its receipt of a bill therefor, (i) such debt shall become a lien on such party's real property that is served by the Lift Station, which lien shall be enforceable in the same manner that liens for homeowner's assessments are enforced under N.C. Gen. Stat. § 47F-3-116, and/or (ii) the owner of Lot 3 may pay such party's share of the Lift Station Costs, in which case the owner of Lot 3 shall be entitled to seek reimbursement (plus 8% interest) from the non-paying party. The provisions of this Section 4(a) shall apply to all parties to this Agreement and to any other party who ties in to the Lift Station.

(b) Lot 2 Access Facilities. The Lot 2 Access Facilities (i.e., The Pantry Driveway) shall be constructed at the expense of Pantry, and the owner of Lot 3 will repair and maintain the Lot 2 Access Facilities (which shall initially be the obligation of Pantry as set forth in Section 6). The owner(s) of the Deal Parcel shall have the right to tap into and use the Lot 2 Access Facilities in connection with any future development on the Deal Parcel, provided that such owner(s) will be required to pay a pro rata share of the maintenance costs of the Lot 2 Access Facilities in the proportion that the portion of the Deal Parcel using the Lot 2 Access Facilities bears to the Entire Premises. In the event that the owner of Lot 3 desires to make any repairs to the Lot 2 Access Facilities and the cost of such repairs does not exceed \$10,000 (such amount, the "Cost Threshold"), such owner may do so without approval of any other owners then using the Lot 2 Access Facilities. However, if the owner of Lot 3 desires to make any repairs or improvements to the Lot 2 Access Facilities and the cost of such repairs exceeds the Cost Threshold, the owner of Lot 3 shall not commence such repair work without the approval of the owners then using the Lot 2 Access Facilities, which approval shall not be unreasonably withheld, conditioned, or delayed and which approval shall be deemed to have been given if such owners have not responded to the request for approval within ten (10) days of receipt of such request. The Cost Threshold shall be adjusted each year on the anniversary date of this Agreement based on the increase in the Consumer Price Index For All Urban Consumers, All Items, All Groups (1982-1984=100) published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI") from the CPI on the date hereof, provided, however, that the Cost Threshold shall never decrease, even if there is a decrease in CPI.

(c) General. Each owner of the Lots comprising the Entire Premises shall maintain or cause to be maintained all improvements located on its Lot, including the exterior of any building, Common Access Facilities, and landscaped areas and improvements, in a clean, sightly, and safe condition. Further, each Lot owner shall at all times and from time to time cause the prompt removal of all paper, debris, refuse, snow, and ice on its Lot, and will sweep paved areas when and as necessary in order that the Entire Premises be maintained as provided above. Each Lot owner shall maintain any unimproved portion of its Lot in a clean, sightly, and safe condition. In all events, any trash or garbage areas shall be properly screened and shall

conform to all local health and safety standards. In addition, each owner shall cause all buildings and improvements located within its Lot and its operation thereof to comply with all applicable requirements of law and governmental regulations applicable thereto.

4. **Damage and Restoration.** In the event all or a portion of the improvements situated on a Lot are damaged or destroyed by casualty, insured or uninsured, and the applicable owner does not restore such damaged or destroyed building, or portion thereof, promptly upon the occurrence thereof, but in any event not fewer than twenty four (24) months after the occurrence of the casualty, such owner shall (or if the damaged Lot owner fails to do so, the other Lot owner(s) may, at its option and at the damaged Lot owner's expense) raze the portions thereof that are not restored or rehabilitated, clear away all debris, and take all other reasonable action (including paving and landscaping) required by good construction practice so that the area that had been occupied by the razed building, or portions thereof, will be attractive; provided, however, this provision shall not prevent the damaged Lot owner from subsequently building on the area so cleared, provided that any such subsequent construction shall be in accordance with the provisions of this Agreement and applicable laws and regulations.

5. **Insurance; Indemnification.**

(a) Each owner (or the tenant of such owner) of any Lot comprising a portion of the Entire Premises will at all times maintain or cause to be maintained, commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in, or about the easements described in this Agreement located on its Lot, with combined single limit coverage of not less than \$1,000,000.00 per occurrence.

(b) The owners of each Lot, with respect to each Lot, shall comply with all laws, rules, regulations, and requirements of all public authorities. In the event that the Lots, or any of them, are separately owned, the owner of each Lot shall indemnify, defend, and hold the other owners and the tenants of the other Lots harmless against all claims, demands, loss, damage, liabilities, and expenses and all suits, actions, and judgments (including, but not limited to, costs and reasonable attorneys' fees) arising out of or in any way related to such owner's failure to maintain its respective Lot as provided in this Agreement in a safe condition.

6. **Obligations of Pantry.** Pantry agrees that so long as Pantry is the lessee under the Lease, Pantry shall be liable (a) for the performance of any obligations of LMOC under this Agreement that would devolve upon LMOC as owner of all or any portion of the Store Parcels, and (b) for the costs thereof, other than any costs attributable to the negligence or intentional misconduct of LMOC or its partners, officers, employees, agents, representatives, consultants, contractors, lenders, or invitees.

7. **Binding Effect.** Any party in possession of all or any part of a Lot (whether as owner, tenant, subtenant, mortgagee, or otherwise) shall have the right to extend to its tenants, subtenants, customers, business guests, and invitees the benefit of the rights and easements established hereby, but no such tenant, subtenant, customer, business guest or invitee shall by virtue thereof be deemed to have acquired any interest whatsoever in the Lot or any part thereof. The benefits and burdens of the easements and restrictions created in this Agreement shall run

with the land and shall be binding upon and inure to the benefit of the owners of each of the Lots and their respective heirs, executors, successors-in-title, tenants, subtenants, and assigns, and all those holding under any of them. The easements, restrictions, and obligations contained in this Agreement shall be unaffected by any change in the ownership of any property covered by this Agreement or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. Each of the rights created hereunder may be enforceable in a court of equity by the owner of any Lot covered by this Agreement.

8. **Breach.**

(a) In the event of a breach or threatened breach of this Agreement, the owners of the Lots shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach (including, without limitation, the right to obtain injunctive relief). In the event such proceedings are instituted, the non-prevailing litigant shall pay the reasonable attorneys' fees of the prevailing litigant. It is expressly agreed that no breach of this Agreement shall result in a cancellation, rescission, or termination of this Agreement.

(b) In addition, in the event an owner of a Lot violates the criteria set forth in this Agreement or any amendments or supplements thereto (the "Noncompliant Owner"), then the other owners may take all action reasonably necessary at the expense of the Noncompliant Owner to correct such violations. The other owners shall have the right and license to enter upon the Noncompliant Owner's Lot with persons, equipment, materials, and other necessary articles, all without being guilty of trespass or subject to any liability or damages, to perform such work as is necessary to correct said violations. In the event that such corrective action is necessary, or in the event that in the opinion of compliant owners it shall be necessary to secure the services of an attorney to enforce any provision of this Agreement, then the cost of such work and/or the fee of such attorney and all other costs in such connection shall be assessed against and paid by the Noncompliant Owner. Such assessment shall become a lien on the Noncompliant Owner's Lot and shall be billed to the Noncompliant Owner by certified mail and shall be due and payable within ten (10) days after posting. If said assessment remains unpaid for thirty (30) days, it shall be considered delinquent and the other owners shall record necessary documents in the records of the Office of the Register of Deeds of Harnett County, North Carolina, setting forth such lien on the Lot in question and the lien shall be collectable in the manner provided for herein. Provided, however, that any such lien shall be subordinate and inferior to (a) all liens for taxes or special assessments levied by any governmental entity or any political subdivision or special district thereof; and (b) all liens for sums paid on any mortgage or other similar security instruments recorded prior to the date of the imposition of such assessment and all amounts advanced pursuant to any such deed of trust and secured in accordance with the terms of such instrument.

9. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, or by pre-paid nationally recognized overnight courier service, and addressed to the party being notified at the address which any

party may designate for itself from time to time hereafter by written notice to the other parties. The present address for each of the parties is as follows:

Deal: Deal, Inc.
Post Office Box 8
Lemon Springs, North Carolina 28355
Attn: Connie M. Deal

LMOC: Lee-Moore Oil Company
Post Office Drawer 9
Sanford, North Carolina 27331
Attn: Kirk J. Bradley
If by overnight courier:
102 S. Steele Street, Suite 201
Sanford, North Carolina 27330

Pantry: The Pantry, Inc.
Post Office Box 1410
Sanford, North Carolina 27331
If by overnight courier:
1801 Douglas Drive
Sanford, North Carolina 27330
Attention: Director of Real Estate

10. **Severability**. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

11. **Relationship of the Parties**. Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the parties. It is understood that the relationship between the parties is an arms length one that shall at all times be and remain separate with respect to their interests in each Lot. No party shall have the right to act for or on behalf of another party, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the party to be charged or bound.

12. **Modifications**. Except as otherwise expressly provided in this Agreement, this Agreement may not be modified in any respect whatsoever or rescinded or terminated, in whole or in part, except by the written consent (in their sole discretion) of each owner of each Lot owner and Pantry so long as the Lease remains in effect, and then only by written instrument duly executed, acknowledged by all of the owners and tenants (if applicable), and properly recorded in the public records of Harnett County, North Carolina.

13. **Term of Agreement.** Except as specifically set forth in this Agreement, the easements, covenants, conditions, restrictions and agreements contained herein which bind and benefit the parties shall be deemed to be perpetual and shall be construed to run with the land and shall continue as long as any portion of the Entire Premises is used for retail or commercial purposes.

14. **Limitation of Liability.** Any person acquiring fee or leasehold title to the Lots, or any portion thereof, shall be bound by this Agreement only as to the parcel or portion of the parcel acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Lot or portion of the Lot; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder except as to the obligations, liabilities, or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section, the easements, covenants, and restrictions in this Agreement shall continue to be benefits to and servitudes upon each of the Lots.

15. **No Dedication for Public Use.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Lots to the general public, or for any public use or purpose whatsoever.

16. **No Merger.** Unless a document is recorded to explicitly effect such a merger, there shall be no merger of the easements, covenants, and restrictions created by this Agreement by reason of the fact that the same person or entity may be the holder of the burdened property and the benefited property.

17. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

18. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.

[signature page to Declaration of Easements and Operating Agreement]

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

DEAL:

Deal, Inc

By: [Signature]
Connie M. Deal, [President]

Acknowledgment

STATE OF North Carolina
COUNTY OF Moore

I certify that the following person personally appeared before me this day, and (I have personal knowledge of the identity of the person) (I have seen satisfactory evidence of the person's identity, by a current state or federal identification with the person's photograph in the form of a Driver's License) (a credible witness has sworn to the identity of the person); acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Connie M. Deal.

(name of person)

Date: January 10, 2007

[Signature], Notary Public
Lojudna B. Pages
(print name)

(official seal)



My commission expires: 3/13/2010

LMOC:

Lee-Moore Oil Company

By: [Signature]
Name: Kirk J. Bradley
Title: President

STATE OF N.C.
COUNTY OF Lee

I certify that the following person personally appeared before me this day, and (I have personal knowledge of the identity of the person) (I have seen satisfactory evidence of the person's identity, by a current state or federal identification with the person's photograph in the form of a _____) (a credible witness has sworn to the identity of the person); acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Kirk J. Bradley.

(name of person)

Date: January 9, 2007

[Signature], Notary Public
Ann C. Laws
(print name)

My commission expires: 1-20-2009



PANTRY:

The Pantry, Inc.

By: *James D. Bosworth*
Name: James D. Bosworth
Title: Vice President

STATE OF NC
COUNTY OF LEE

I certify that the following person personally appeared before me this day, and (I have personal knowledge of the identity of the person) (I have seen satisfactory evidence of the person's identity, by a current state or federal identification with the person's photograph in the form of a Personal Knowledge (a credible witness has sworn to the identity of the person); acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: James D. Bosworth.

(name of person)

Date: January 9, 2007

Belinda S. Wright Notary Public
BELINDA S. WRIGHT
(print name)

(official seal)

My commission expires: 3-30-10

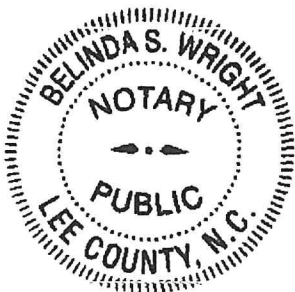
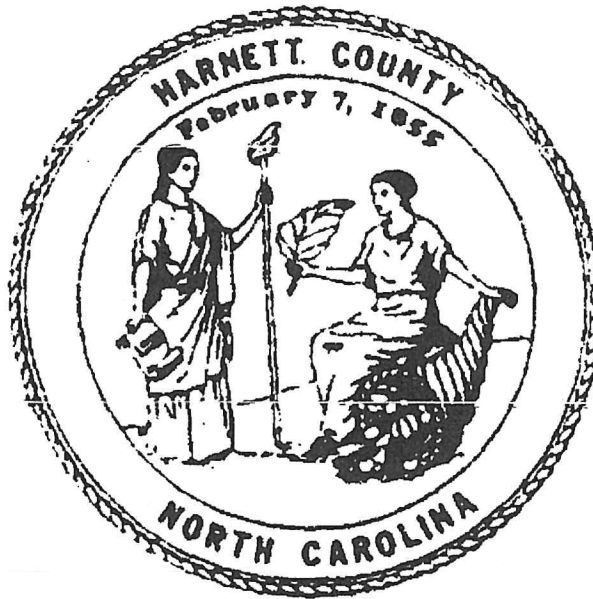


Exhibit A

All that certain parcel of land located in Barbecue Township, North Carolina being more particularly described as follows:

BEGINNING at a PK Nail (PKN) on the southern right of way (R/W) of NC Hwy 27, said Beginning point is located S88°43'29"E 128.14' and S88°22'09"E 56.07' along R/W NC 27 from an Existing Concrete Monument (ECM), a corner with Cameron (1072/577) and being the northeast most corner of Lot #1, Map #2007/15, thence from said Beginning point along the southern R/W of NC Hwy 27 S86°22'09"E 41.54' to a PKN; thence leaving R/W S08°04'15"W 149.88' to an iron pipe (IP); ; thence S02°47'07"W 58.91 to a point; thence with a curve to the left with a Radius 35.33, Arc 55.17, Chord Distance 49.73 and Cord Bearing of S41°56'32"E to a point; thence S86°40'11"E 134.10 to a point in the western line of Lot #3; thence with the western line of Lot #3 S02°48'44"W 20.00' to a point; thence N86°40'11"W 192.06' to a point; thence N02°47'07"E 4.49' to an IP, the southeast most corner of Lot #1; thence with the eastern side of Lot #1 N02°47'07"E 109.20' to an IP; thence N02°35'33"E 67.06' to an IP; thence N00°21'02"W 82.92' to the BEGINNING and containing 0.25 acres, more or less, and being a portion of Lot #2, Map #2007/15, Harnett County Registry.



KIMBERLY S. HARGROVE
REGISTER OF DEEDS, HARNETT
305 W CORNELIUS HARNETT BLVD
SUITE 200
LILLINGTON, NC 27546

Filed For Registration: 01/11/2007 03:06:54 PM
Book: RE 2328 Page: 988-1002
Document No.: 2007000728
AGREE 15 PGS \$53.00
Recorder: ELMIRA MCLEAN

State of North Carolina, County of Harnett

KIMBERLY S. HARGROVE , REGISTER OF DEEDS

DO NOT DISCARD

2007000728

2007000728