
Prepared by: Edward O. Henneman, Jr., Esq.
Hunter, Maclean, Exley & Dunn, P.C.
200 E. Saint Julian Street
Savannah, GA 31401

STATE OF GEORGIA)
)
COUNTY OF CHATHAM)

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (“Agreement”), is made and entered into this ____ day of _____, 2018 by and between **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH**, , a public body corporate and politic, organized and existing under the laws the State of Georgia (**“Grantor”**), and **NSC REAL ESTATE, LLC**, a Delaware limited liability company (**“Grantee”**).

W I T N E S S E T H:

WHEREAS, Grantee is the owner of certain real property in Savannah, Chatham County, Georgia being specifically located at 1315 and 1319 Dean Forest Road, such property being more particularly described on Exhibit “A” attached hereto and by this reference incorporated herein (hereinafter the “Benefitted Property”); and

WHEREAS, Grantee is constructing a warehouse facility on the Benefitted Property, which will require truck access to and from the Benefitted Property off of Dean Forest Road; and

WHEREAS, Grantor owns property adjacent to the Benefitted Property to the north and west, including a strip of land to the north and adjacent to the Benefitted Property on which Grantor has constructed driveway improvements providing access to Grantor’s property located to the west of the Benefitted Property (hereinafter “Grantor’s Driveway”); and

WHEREAS, Grantee has requested permission to use Grantor’s Driveway for truck traffic ingressing to a proposed parking lot to be constructed behind the warehouse improvements Grantee is constructing on the Benefitted Property; and

WHEREAS, Grantor has agreed to allow Grantee to use a portion of Grantor's Driveway for truck ingress to the Benefitted Property, such portion of Grantor's Driveway which may be used by trucks accessing the Benefitted Property being more particularly shown [crosshatched] on Exhibit "B" attached hereto and by this reference incorporated herein, and more particularly described in that legal description attached hereto as Exhibit "C" and by this reference incorporated herein (hereinafter the "Access Easement Area"); and

WHEREAS, as consideration for the right to use the Access Easement Area for truck traffic ingressing the Benefitted Property, Grantee has agreed to construct certain road improvements in the Access Easement Area, as more particularly described in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid at and before the execution and delivery of these presents, the above-mentioned recitals, the mutual covenants and conditions contained herein, and in other documents referenced herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties do agree as follows:

1. Easements Granted

(a) Access Easement. Grantor hereby grants, bargains, sells and conveys unto Grantee, its successors and assigns, a non-exclusive, perpetual (subject to Grantor's default remedies in Section 4 below) easement on, across, through, over and upon the Access Easement Area for vehicular ingress only to the Benefitted Property off of Dean Forest Road, a public right-of-way. The rights granted herein by Grantor to Grantee expressly include the right to use the Access Easement Area for industrial truck ingress off of Dean Forest Road, but are limited solely to ingress off of Dean Forest Road, and expressly do not include the right of egress from the Benefitted Property onto Dean Forest Road, it being the express intent of the parties hereto to create a one-way flow of truck traffic entering the Benefitted Property through the Access Easement Area located to the north of the Benefitted Property and exiting the Benefitted Property by means of road improvement that Grantee shall construct on the south end of the Benefitted Property. The easement rights granted herein shall be on, across, through, over and upon road improvements to be constructed by Grantee in accordance with Section 1(b) below within the Access Easement Area and being no less than thirty-six feet (36') in width at its narrowest point and no less than forty-eight feet (48') at the width at its widest point inclusive of the by-pass lane, and of sufficient grade and standards so as to withstand industrial truck traffic (hereinafter the "**Road Improvements**"). The Road Improvements shall include a left turn lane off of the Grantor's Driveway into the Benefitted Property, and a passing lane providing thru-traffic flow around trucks entering the Benefitted Property. The improvements are generally depicted on Exhibit B subject to finalized engineering plans submitted to and approved by the Grantor and Georgia Department of Transportation, where applicable. Grantee shall submit to Grantor for Grantor's review and approval plans and specifications for the Road Improvements, such approval not to be unreasonably delayed, conditioned, or denied, and Grantee shall construct the Road Improvements such that they comply in all material respects with such approved plans and specifications (hereinafter the "Plans and Specifications").

(b) Construction Easement. Grantor hereby grants, bargains, sells and conveys unto Grantee, its successors and assigns, a non-exclusive, temporary easement (the "Road Construction Easement") on, across, through, over and upon the Grantor's Driveway and such property adjacent to the Grantor's Driveway as is reasonably necessary or incidental to the construction of the Road Improvements, including, but not limited to, ingress and egress over the Access Easement Area, locating and storing vehicles and equipment thereon and on property immediately adjacent to the Access Easement Area, any use reasonably related to any of the foregoing uses, and all such other uses as are at any time and from time to time directly related to and made necessary by the construction, installation, repair, replacement or maintenance of the Road Improvements. This Construction Easement shall terminate and be of no further force or effect upon final construction of the Road Improvements in accordance with the Plans and Specifications, and acceptance of the Road Improvements by Grantor. All costs and expenses incurred in connection with the construction of the Road Improvements shall be the sole responsibility of Grantee, and shall be paid promptly by Grantee. Grantee shall coordinate all construction activities with Grantor so that Grantor access is not impeded or hindered during construction activities. This may mean Grantor must undertake construction activities at night.

2. Grantee's Rights of Maintenance and Repair: In addition to the right of access for ingress set forth above, Grantor expressly grants, bargains, sells and conveys to Grantee the non-exclusive right to enter upon the Access Easement Area and property immediately adjacent thereto as necessary to maintain and repair the Road Improvements as and when needed, it being, subject to the qualifications below, Grantee's sole obligation to maintain the Road Improvements. Notwithstanding the foregoing, Grantee shall have the option at any time to acquire a traffic count calculating the vehicular use of Grantor's Driveway (the result of such traffic count being hereinafter referred to as the "Baseline Traffic Count") and shall provide to Grantor the Baseline Traffic Count established thereby. Should Grantor's use of its property to the west and adjacent to the Benefitted Proper at any time increase the amount of vehicular use of, and traffic flow on, the Grantor's Driveway and the Road Improvements by more than thirty percent (30%) above the Baseline Traffic Count, Grantor shall contribute an amount equal to ten percent (10%) of future maintenance costs incurred by Grantee after such determination of increased traffic flow, and shall contribute an additional two and an half percent (2.5%) for each additional 10% increase in vehicular use of Grantor's Driveway. In addition, should Grantor at any time sell any property that it owns along with a right of the purchaser of such property (hereinafter "Grantor's Purchaser") to use Grantor's Driveway, Grantor's Purchaser shall share in maintenance costs for the Roadway Improvements pro-rata, based on the percentage of vehicular traffic that Grantor's Purchaser shall generate on, over and upon the Road Improvements as a result of its development and/or use of the property it acquires to total vehicular traffic on, over and upon the Road Improvements. Such percentage shall be based upon a traffic study prepared by Grantor's Purchaser, and reviewed and approved by Grantee.

3. Grantor's Right of Entry onto Benefitted Property: Grantee hereby grants to Grantor a license to cross the Benefitted Property for purposes of providing emergency access to Grantor's property to the west of the Benefitted Property should Grantor be unable to access its property through the Grantor's Driveway because of construction work being conducted by

Grantee thereon, whether in connection with the construction of the Road Improvements or any subsequent maintenance of the Road Improvements.

4. Term of Easements: The access easements granted herein and related maintenance obligations set forth herein shall be revocable solely in the event Grantee fails to perform its obligations as specified in this Agreement. The construction easement granted herein shall terminate upon final construction of the Road Improvements in accordance with the Plans and Specifications, and acceptance of the Road Improvements by Grantor. Should Grantor believe that Grantee has defaulted in any of its obligations hereunder, Grantor shall provide Grantee written notice of such default. Grantee shall have thirty (30) days to cure such default, unless such default is of such a nature that it cannot reasonably be cured within 30 days, in which event Grantee must commence curative action within such 30 day period and diligently and continuously pursue such action until all defaults are cured. If Grantee disagrees with Grantor's claim of a default hereunder, Grantee shall notify Grantor in writing of such disagreement within ten (10) days of receipt of Grantor's default notice, along with an explanation of why Grantee believes that no default has occurred. Grantor shall not be entitled to exercise its remedy of revocation at any time that a good faith dispute exists with respect to the occurrence of an Event of Default.

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other chosen dispute resolution procedure. All claims, disputes, or other matters in controversy arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the chosen form of binding dispute resolution. Unless the parties mutually agree otherwise, any mediation shall be administered by the American Arbitration Association. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share all costs of mediation, including the mediator's fee and any filing fees, equally. The mediation shall be held in Savannah, Chatham County, Georgia, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5. Grantor's Rights: Grantor shall retain all other customary incidents and rights of ownership with respect to the Access Easement Area, specifically including but not limited to the right to use the Access Easement Area in any manner not conflicting with or impairing the easement rights granted hereunder.

6. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matters hereof. This Agreement may be modified or amended only by a writing executed by the parties hereto.

7. Controlling Law: This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia.

8. Notices. All, notices, requests, and demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered (a) by certified mail, return receipt requested, (b) by Federal Express or other recognized, reputable overnight courier, or (c) by hand delivery by a recognized, reputable courier, to the appropriate party(ies) at the address(es) set forth below:

(a) If to Grantor: The Mayor and Aldermen of the City of Savannah, Georgia
P.O. Box 1027 _____
Savannah, Ga. 31402
Attention: City Attorney

With copy to: Director of Real Estate Services
City of Savannah
P.O. Box 1027
Savannah, GA 31402

(b) If to Grantee: NSC Real Estate, LLC
6 Landmark Square
4th Floor
Stanford, CT 06901
Attention: Peter Goulding or C.J. Carey

9. Time: Time is of the essence in the performance of this Agreement by each party hereto.

9. Counterparts: This Agreement may be signed in any number of counterparts, each of which shall, for all purposes constitute one and the same agreement.

[SIGNATURES FOUND ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have caused this Access Easement Agreement to be executed under seal as of the day and year above written.

“GRANTOR”

**THE MAYOR AND ALDERMAN OF THE CITY
OF SAVANNAH, GEORGIA**

Signed, sealed and delivered in the
presence of:

Witness

By: _____

Name: _____

Notary Public

Title: _____

My Commission Expires:

[NOTARY SEAL]

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

“GRANTEE”

NSC REAL ESTATE, LLC, a Delaware limited liability company

By: _____
Peter Goulding, Partner

Signed, sealed and delivered in the presence of:

Witness

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

EXHIBIT "A"
("BENEFITTED PROPERTY")

EXHIBIT “B”

(“DRAWING OF ACCESS EASEMENT AREA”)

EXHIBIT “C”

(“LEGAL DESCRIPTION OF ACCESS EASEMENT AREA”)