

When recorded, please return to:

Andrew S. Dyer, President/CEO
MacAljon/SCL, Inc.
Post Office Box 7090
Savannah, Georgia 31418

EASEMENT AGREEMENT

STATE OF GEORGIA

COUNTY OF CHATHAM

THIS EASEMENT AGREEMENT (this "Agreement") is entered into to be effective as of the 22nd day of October 2020 (the "Effective Date"), by and between **THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA**, a municipal corporation existing under the laws of the State of Georgia (the "City"), whose address is City Hall, Post Office Box 1027, Savannah, Georgia 31402, and **MACALJON/SCL, INC.**, a Georgia corporation ("MacAljon") whose address is 4524 Ogeechee Road, Savannah, Georgia 31405-1208.

RECITALS:

WHEREAS, the City, in order to promote and encourage economic development in the City of Savannah, has agreed to grant a perpetual exclusive easement to MacAljon for the use and enjoyment of that certain tract of land in the City of Savannah (hereinafter referred to as the "Property") having an area of 254,456 square feet (5.84 acres) and described on that certain Easement Plat prepared for MacAljon by EMC Engineering Services, Inc., Gordon D. Mobley, Georgia R.L.S. No. 003046, dated November 20, 2013, last revised August 2020, as (i) *Access Easement 16,118 S.F. (0.37 Acres)*, (ii) *Proposed 60' Right of Way 27,191 S.F. (0.62 Acres)*, (iii) *Proposed 25' Access Easement 1612 S.F. (0.04 Acres)*, and (iv) *Access Easement 209,545 S.F. (4.81 Acres)*, which Easement Plat is set forth on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Easement Plat");

WHEREAS, the Property is part of a larger tract of land in the City of Savannah that was formerly a landfill used by the City of Savannah, and includes a sixty foot (60') right of way having an area of 27,191 square feet (0.62 acres) shown on the Easement Plat as *Proposed 60' Right of Way* (the "Right of Way");

WHEREAS, the City desires to grant and convey to MacAljon the aforementioned easement, subject to the terms and conditions hereof.

W I T N E S S E T H :

NOW, THEREFORE, in consideration of the Recitals hereinabove stated and incorporated in this Agreement by reference, and the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the City and MacAljon (collectively, the "Parties") hereby covenant, grant and agree as follows:

1. Recitals. The Recitals are incorporated herein by reference as if set out for all purposes set forth herein.

2. Grant of Easement by the City. The City, as the owner and holder of fee simple title in and to the Property, for itself and its successors and assigns, does hereby grant, bargain, sell, transfer convey and warrant unto MacAljon, its successors and assigns, a perpetual, exclusive easement (the "Easement") over, under, upon, through and across the Property for the purposes of any and all industrial uses consistent with the Property's character as a former landfill, including without limitation storage of industrial equipment and vehicles; notwithstanding the foregoing, MacAljon shall at all times keep the Right of Way (or a similar right of way approved by the City) open to the general public for vehicular and pedestrian access. As additional consideration to the City for the Easement, MacAljon shall pay to the City the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) immediately upon execution of this Agreement by the Parties.

3. Resurfacing Obligation. As further consideration for the Easement granted to MacAljon under this Agreement, MacAljon shall from time to time pay the expense of a one inch (1") resurfacing overlay of the existing paved road in the sixty foot (60') right of way shown on the Easement Plat, including that portion of said right of way situated on the Property, which road extends for approximately 1,418 linear feet, commencing at the intersection of said right of way with U.S. Highway 17 (Ogeechee Road) and continues through the northern terminus of the right of way as marked on the Easement Plat as "Benchmark Spike set in 18" Pine Elev 35.18 NAVD88" (the "Resurfacing Obligation"). MacAljon shall meet and honor the Resurfacing Obligation at such times as the City determines such resurfacing overlay is necessary, the first of which is anticipated to be within 5 to 10 years from the date of this Agreement and thereafter from time to time at such times as the City determines such resurfacing overlay is necessary, provided that MacAljon shall not be subject to such Resurfacing Obligation more often than once every fifteen (15) years.

3. Successors and Assigns. All of the rights, privileges, and easements granted under this Agreement shall continue as long as MacAljon, or its successors or assigns, continues to use the Easement granted herein.

4. Insurance. MacAljon shall obtain and maintain commercially reasonable policies of insurance as may be reasonably requested by the City in connection with MacAljon's use of the Property, and the City shall be named as an additional insured on all such insurance policies.

5. Declaration; Persons Benefitted and Bound. The City hereby declares that the Property shall be held, developed, occupied, used, leased, transferred, encumbered, sold and conveyed subject to the rights, covenants, obligations, duties, benefits, burdens, easements and other provisions created, declared or contained in this Agreement, all of which shall benefit MacAljon and shall bind the City and the Property or any portion thereof, and each purchaser, tenant, invitee, licensee, user, security deed holder, mortgage holder, and lien holder, of any portion of the Property and each of their respective heirs, personal representatives, successors and assigns, and shall at all times hereafter be appurtenant to, affect, and run with the Property.

6. Maintenance and Repair of Property. If MacAljon or any of its agents, employees, customers, licensees or invitees cause any material damage to the Property in exercising its rights under the MacAljon Easement, MacAljon shall promptly restore, or cause to be restored, the same to its condition immediately prior to the occurrence of such material damage.

7. Indemnification. MacAljon shall indemnify and hold harmless the City, its officers, agents, and employees, against any cost, damage, liability or expense, including reasonable attorneys' fees, incurred by any of them which arises out of any claim, action or lawsuit by a third party alleging that MacAljon's use or misuse of the Easement has resulted in injury or damage to the third party.

8. Limitation of Rights. Nothing herein shall be construed as a gift, grant, or dedication to the general public.

9. Quiet Enjoyment. The City hereby covenants and agrees that MacAljon shall have quiet and peaceable possession, use and enjoyment of the Easement, and that the City will execute such further assurances thereof as may be reasonably requested by MacAljon.

10. Subordination. Any deed, lease, security deed, other security instrument, mortgage, or other document hereafter conveying or creating an interest in or affecting any part or all of the Property shall automatically and without further act or deed be subordinated to the terms and conditions of this Agreement.

11. Effective Date; Amendments. This Agreement shall become effective upon execution. This Agreement may be amended, from time to time, by recorded written instrument duly executed and acknowledged by the Parties, or their respective successors and assigns.

12. Invalidity. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this

Agreement, all of which shall continue in effect as if such invalid provision had not been included in this Agreement.

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

14. Run with Land. The easements granted or referred to in this Agreement shall be appurtenant to, affect and run with the land, shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that in the event that any easement granted or referred to herein shall ever be adjudicated by a final unappealable order of a court of competent jurisdiction to be an easement in gross, said easement shall be deemed to be an easement in gross of a commercial nature and may be assigned or transferred as such, subject to all limitations set forth herein.

15. Governing Law. This Agreement will be construed in accordance with the laws of the State of Georgia. The parties agree to submit to venue and jurisdiction in Chatham County, Georgia in the event of any dispute hereunder in which the Parties resort to judicial process.

TO HAVE AND TO HOLD all and singular the rights, estates and privileges of the easements granted or referred to herein unto MacAljon, its successors and assigns, and the City does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the easements granted or referred to herein unto MacAljon, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the 22nd day of October 2020.

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public
My Commission Expires:_____

City:

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA, a municipal corporation of the State of Georgia

By: _____
Patrick C. Monahan, City Manager

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public
My Commission Expires:_____

MacAljon:

MACALJON/SCL, INC., a Georgia corporation

By: _____
Andrew S. Dyer, President/CEO

Exhibits:

Exhibit “A” – Easement Plat

EXHIBIT A

[to Easement Agreement effective as of the 22nd day of October 2020 by and between The Mayor and Aldermen of the City of Savannah, Georgia and MacAljon/SCL, Inc.]

EASEMENT PLAT

[on following page]