



Gaston County

Gaston County
Board of Commissioners
www.gastongov.com

Economic Development Commission Board Action

File #: 16-132

Commissioner Brown - To Approve a Deed of Easement for Use in Support of TOSAF USA Rail Spur Project.

STAFF CONTACT

Derek Keener, Economic Development Commission - 704.825.4046

BUDGET IMPACT

N/A

BUDGET ORDINANCE IMPACT

N/A

BACKGROUND

As part of the TOSAF USA building and rail project, this easement allows the Company to have rail access to the Norfolk Southern main line in Bessemer City. The County will grant an easement on the Norfolk South line along the North side boundary of the property. Granting the easement will allow the spur to be built and will not materially affect the future use of the County land.

POLICY IMPACT

N/A

ATTACHMENTS

Deed of Easement

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	Brown	Carpenter	Fraley	Keigher	Philbeck	Price	Williams	Vote
2016-078	03/22/2016	MP	AF	A	A	A	A	N	A	A	6 - 1

DISTRIBUTION:

Laserfiche Users

A=AYE, N=NAY, AB=ABSENT, ABS=ABSTAIN, U=UNANIMOUS

DRAWN BY/RETURN TO: Samuel J. Shames, Asst. County Attorney
PO Box 1578, Gastonia, NC 28053

STATE OF NORTH CAROLINA

DEED OF EASEMENT

COUNTY OF GASTON

This Deed of Easement (the "Agreement") entered into as of this ____ day of February, 2016 by and between the **COUNTY OF GASTON**, a North Carolina Political Subdivision having a mailing address of P.O. Box 1578, Gastonia, North Carolina, 28053, hereinafter referred to as "Grantor" and **TOSAF USA, INC.**, a Delaware corporation licensed to conduct business in the State of North Carolina, hereinafter referred to as "Grantee", having a mailing address of PO Box 758, Bessemer City, NC 28016.

WITNESSETH:

WHEREAS, Grantee owns a parcel of land having an address of 330 Southridge Parkway, Bessemer City, NC, having a PID of 223168 and being found in Book 4778 Page 2464 of the Gaston County Registry, said parcel being immediately west of two parcels Gaston County owns, described herein ("Grantee Property"); and

WHEREAS, Grantor owns two relevant parcels of land, the first being immediately adjacent to the above-mentioned property having a PID of 223166 and being found in Book 4405 Page 1749 of the Gaston County Registry. Said parcel has no assigned street number and is located on Southridge Parkway, Bessemer City, NC, and the second relevant Grantor-owned parcel of land is found immediately east of the above-mentioned property having a PID of 151944 and being found in Book 4722 Page 2412 of the Gaston County Registry. Said parcel has no assigned street number and is located on Watterson Farm Road, Bessemer City, NC (collectively, "Grantor Property"); and

WHEREAS; a map showing these three parcels is found in **Exhibit "A"**; and

WHEREAS, Grantee has received under an Economic Infrastructure Program

Grant awarded by the Rural Infrastructure Authority and managed by the North Carolina Department of Commerce, Rural Economic Development Division (the "Grant"). The Grant shall be applied toward the construction of railroad tracks to be located on parcel numbers 223166 and 151944, (such portion of the track hereinafter, the "Tracks", as depicted on the attached Exhibit "A" as the "Proposed Spur Per Burton Engineering"); and

WHEREAS, the purpose of the Tracks described herein is to function as a spur line connecting a main rail line with a production facility of Grantee located on Grantee Property; and

WHEREAS, the Gaston County Board of Commissioners have entered into that certain Agreement with Grantee dated on or about the date of this Agreement ("Development Agreement"); and

WHEREAS, the parties desire that the Grantee has the exclusive right to use the Tracks; and

WHEREAS, Grantor desires to grant, and Grantee desires to obtain, upon the terms and conditions set forth in this Agreement, an easement which will allow Grantee to construct the Tracks (utilizing in part funds from the Grant) as shown and described on Exhibit "A" as the "Proposed Rail Spur Easement" (the "Easement"). It is the intention of this document to include the right and privilege of Grantee to enter upon Grantor's property in the described easement area to access, construct, install, maintain and to inspect the Tracks, and the exclusive right and privilege of Grantee to use and maintain the Tracks.

NOW, THEREFORE, the Grantor, for and in consideration of the Development Agreement and other good and valuable consideration paid by Grantee the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto Grantee, its successors and assigns, the Easement together with the attendant customary uses along and upon all that certain lot, tract, or parcel of land of the Grantor situated in Gaston County, North Carolina, and more particularly described as follows, to-wit (the "Easement Area"):

BEGINNING AT A #5 REBAR SET AT THE NORTHEAST CORNER OF LOT 1, PLAT BOOK 83, PAGE 17, GASTON COUNTY REGISTER OF DEEDS OFFICE, SAID POINT BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF THE SOUTHERN RAILWAY; THENCE ALONG SAID RAILROAD RIGHT OF WAY, S 79°05'24" E 357.26' TO A POINT ON THE WESTERLY LINE OF ALLIANCE REAL ESTATE III, INC, DEED BOOK 3509, PAGE 343; THENCE ALONG SAID WESTERLY LINE S 08°42'51" E 6.71'; THENCE PARALLEL WITH AND LYING 50 FEET SOUTH OF THE PROPOSED RAILROAD SPUR LINE, S 88°16'37" W 331.83' TO A POINT ON THE EASTERLY LINE OF SAID LOT# 1; THENCE N

13°26'43" W 86.60'; TO THE POINT OF BEGINNING, CONTAINING 15199 SQUARE FEET, OR 0.349 ACRES, MORE OR LESS.

TO HAVE AND TO HOLD the same, together with all the rights and appurtenances belonging thereto, unto Grantee, its successors and assigns forever, and Grantor is hereby bound, together with all heirs, executors, administrators, or successors, to warrant and forever defend the Easement granted herein unto Grantee, its successors and assigns, against every person lawfully claiming the easement or any part thereof.

The Easement shall include the right of ingress and egress over the Easement Area of the Grantor for the construction, maintenance, and inspection of the Tracks. The consideration cited herein shall be considered full compensation for the Easement, and for any diminution in value that may result to the remaining portions of Grantor Property by virtue of this Easement and its customary uses. Grantor reserves the right to use and enjoy Grantor's property for all purposes not inconsistent with or which do not materially limit or interfere with the Easement and other rights granted hereunder.

Grantor represents that it owns in fee simple the Grantor Property and that said Grantor Property is free from any and all liens and encumbrances, except those which appear of public record; and any covenants, conditions, or restrictions of record; and real estate taxes not yet due and payable.

The Easement and other rights and obligations created by this agreement shall (i) benefit the Grantee, and (ii) inure to the benefit of, and shall bind, the successors and assigns of Grantee, and (iii) shall run with and bind Grantor Property. The grant of the Easement created herein will not (i) conflict with, violate, result in a breach of, constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or give rise to any right of termination, cancellation, or acceleration under the provision of any note, license, contract, commitment, agreement, understanding, or other instrument or obligation to which Grantor or Grantee is a party or by which Grantor Property may be bound, or (ii) to Grantor's or Grantee's knowledge, violate any law, rule or regulation of any government or governmental agency or body, or any judgment, order, writ, or decree of any court or governmental agency or body applicable to Grantor, Grantee or Grantor Property.

Should Grantor be a legal entity other than a natural person, it shall be conclusively presumed that the person signing on behalf of that party has been duly and legally authorized to so sign said easement.

[Signature Pages Follow]

DEED OF EASEMENT

[Signature Page]

IN TESTIMONY WHEREOF, the Grantor and Grantee have hereunto set their hands and seals the day and year first above written.

ATTEST:

GRANTOR:

GASTON COUNTY

By: _____

Name: _____

Title: County Clerk

By: _____

Tom Keigher, Chairman

Gaston County Board of Commissioners

[Municipal Seal]

STATE OF NORTH CAROLINA

COUNTY OF GASTON

I, _____, a Notary Public of the County and State aforesaid, certify that _____, personally appeared before me this day and acknowledged that s/he is the County Clerk of the County of Gaston, a municipal corporation, and that by authority duly given and as the act of the County of Gaston, the foregoing instrument was signed in its name by its Chairman of its Board of Commissioners, sealed with its corporate seal and attested to by her/his as its Town Clerk.

Witness my hand and official stamp or seal, this _____ day of _____, 2016.

Notary Public

My Commission Expires: _____

(SEAL)

DEED OF EASEMENT

[Signature Page]

IN TESTIMONY WHEREOF, the Grantor and Grantee have hereunto set their hands and seals the day and year first above written.

GRANTEE:

TOSAF USA, INC.

A Delaware Corporation

By: _____

Print Name: Amos Megides

Title: Chairman of the Board

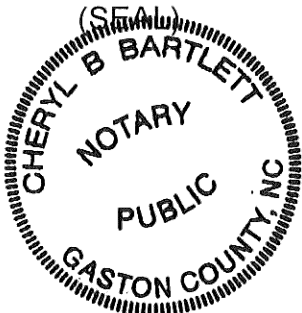
**STATE OF NORTH CAROLINA
COUNTY OF GASTON**

I, Cheryl B. Bartlett, a Notary Public of the County and State aforesaid, certify that Amos Megides personally came before me this day and acknowledged that s/he is the Chairman of the Board of TOSAF, Inc. (the "Corporation") and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Chairman of the Board, sealed with its corporate seal and attested by her/him as its _____.

Witness my hand and official stamp or seal, this 23rd day of February, 2016
2016.

Cheryl B. Bartlett
Notary Public

My Commission Expires: 7/28/2019



[illegible]

The map above is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.