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Johnson County Iowa
Klm Painter County Recorder

BK 4763 PG 872-876

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Prepared by & Return to: Sara Hektoen, Asst. City Atty.; 410 E. Washington St.; Iowa City, IA 52240; 319-356-5030
Legal Description: Tract in Lot 2, Block 1, Fair Meadows Addition First Unit, Iowa City,
Johnson County, Iowa.
Grantor(s): BJS Enterprises, L.C.
Grantee(s): City of Iowa City

**PERMANENT PUBLIC UTILITY EASEMENT AGREEMENT
LOWER MUSCATINE ROAD IMPROVEMENTS PROJECT**

THIS AGREEMENT, made and entered into by and between **BJS Enterprises, L.C.**, an Iowa Limited Liability Company, hereinafter "OWNER," and the **City of Iowa City, Iowa**, a municipal corporation, hereinafter "CITY."

In consideration of their mutual promises herein, OWNER and CITY agree as follows:

1. OWNER hereby grants and conveys to CITY a permanent easement and a right-of-way with right of ingress and egress thereto, over, through and across the permanent easement area as shown and described in Exhibit "A", attached hereto and by this reference made a part hereof (hereafter "Easement Area") for the purpose of the following: constructing, reconstructing, operating, maintaining and removing existing and future underground wires and cables for the transmission and distribution of electric energy and for communication and electrical controls, including the necessary appurtenances under and on the surface of the ground; existing and future pipe lines for the transportation of natural gas and all appurtenances and equipment used and useful in the transportation of such substances; and, to permit the inclusion of and/or attachment thereto of existing and future telephone, cable television, or other public utility facilities owned by others, as the City or public utility providers shall from time to time elect for the provision of services together with all necessary appliances and fittings for use in connection with said utilities and adequate protection thereof.
2. OWNER further grants to CITY the following rights in connection with the above uses:
 - a. The right of grading said Easement Area for the full width thereof, and the right to extend the cuts and fills for such grading into and on said Easement Area.
 - b. The right, from time to time, to trim and cut down and clear away all trees and brush on the Easement Area which now or hereafter, in the opinion of CITY, may

be a hazard to said Easement Area, or which may interfere in any manner with CITY's exercise of its rights herein.

- c. The right to enter onto land beyond the Easement Area and conduct emergency repair which may extend minimally beyond the Easement Area, without obtaining a separate temporary easement. CITY's right to do such work shall be effective only upon CITY's prior notice to OWNER, and with minimal disruption of area. In the event of such emergency repair, CITY agrees to restore said area substantially to its prior condition, as set forth in Paragraphs 3 and 4 below.
3. CITY shall promptly backfill any trench made by it, and repair any damages caused by CITY within the Easement Area, including any damages by virtue of future excavation or use of the Easement Area, excluding the replacement of trees, shrubs and brush on the Easement Area. CITY shall indemnify OWNER against loss or damage which occurs as a result of CITY's negligent acts or omissions in the exercise of its easement rights herein. Once the Easement Area has been completely restored as set forth above and except as expressly provided in this Easement Agreement, CITY shall have no responsibility for maintaining the Easement Area.
4. CITY acknowledges and agrees to remove and stockpile existing topsoil from areas to be excavated; and that following installation of the public improvement, all areas within the Easement Area which are disturbed shall have stockpiled topsoil respread and seeded within a reasonable time after construction is complete and the Easement Area restored substantially to its original condition, with the exception of the replacement of trees, shrubs and brush.
5. OWNER and CITY acknowledge that OWNER reserves the right to use said Easement Area for purposes which will not interfere with CITY's full enjoyment of its rights hereby granted; provided that OWNER shall not erect or construct any building or other structures; drill or operate any well; construct any reservoirs or other obstructions on said Easement Area; and will not diminish or add to the ground cover over said Easement Area. OWNER shall not permit any other utility to be put in longitudinally in the Easement Area. OWNER may plant trees and shrubs on the Easement Area but in the event CITY must disturb or remove said trees and shrubs pursuant to its easement rights described above, CITY shall have no obligation to replace said trees and shrubs, or compensate OWNER for the same. OWNER may construct a fence over or upon the Easement Area, but only after submittal to CITY of a schematic design and prior written approval of the City Engineer, which approval shall not be unreasonably withheld. In the event of such approval and construction of a fence by OWNER, CITY shall have no obligation to repair or replace such fence, or compensate OWNER for the same, in the event that CITY must disturb or remove the fence pursuant to its easement rights described above.

CITY further agrees that nothing in this Easement Agreement shall in any way preclude OWNER from causing, allowing or permitting utilities to cross the Easement Area, but only

EXHIBIT "A"

PERMANENT UTILITY EASEMENT PLAT

PREPARED BY STEVEN N. ZEETS, L.S., FOTH INFRASTRUCTURE & ENVIRONMENT, LLC
4211 GLASS ROAD NE, SUITE B CEDAR RAPIDS, IOWA 52402

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN LOT 2, BLOCK 1, FAIR MEADOWS ADDITION FIRST UNIT TO IOWA CITY, JOHNSON COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

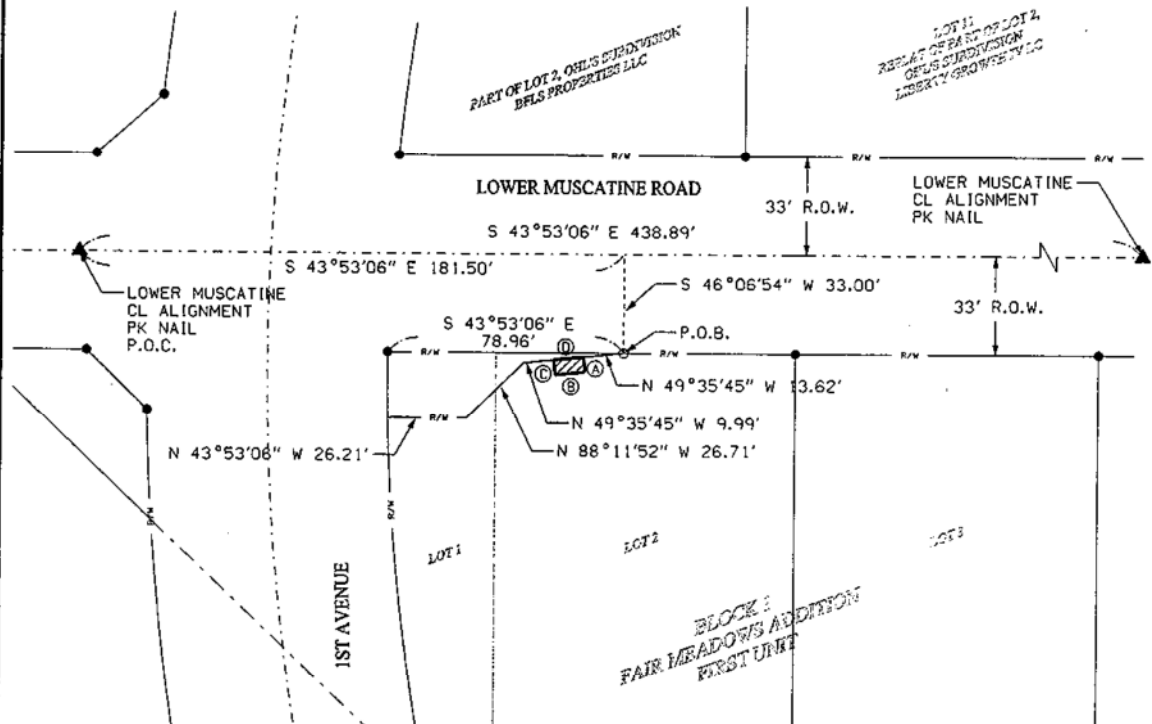
COMMENCING AT A PI POINT SET ON THE CENTERLINE OF LOWER MUSCATINE ROAD AS RECORDED IN RIGHT-OF-WAY RETRACEMENT PLAT IN BOOK 54, PAGE 2 OF THE JOHNSON COUNTY RECORDER'S OFFICE, NEAR THE INTERSECTION OF 1ST AVENUE IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23;
THENCE S43°53'06"E, 181.50 FEET ALONG THE CENTERLINE ALIGNMENT OF SAID LOWER MUSCATINE ROAD;
THENCE S46°06'54"W, 33.00 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LOWER MUSCATINE ROAD AND TO THE POINT OF BEGINNING;
THENCE N49°35'45"W, 13.62 FEET;
THENCE S40°24'15"W, 5.00 FEET;
THENCE N49°35'45"W, 10.00 FEET;
THENCE N40°24'15"E, 5.00 FEET;
THENCE S49°35'45"E, 10.00 FEET;

SAID PARCEL CONTAINS 0.01 ACRES (50 SQ.FT.).

FOR THE PURPOSE OF THIS DESCRIPTION ALL BEARINGS AND DISTANCES ARE REFERENCED TO NAD83(96 HARN) IA SPCS SOUTH ZONE, US SURVEY FOOT (JOHNSON COUNTY CONTROL).



LINE TABLE	
Ⓐ	S 40°24'15" W 5.00'
Ⓑ	N 49°35'45" W 10.00'
Ⓒ	N 40°24'15" E 5.00'
Ⓓ	S 49°35'45" E 10.00'



LEGEND

- BOUNDARY LINE
- SECTION LINE
- EXISTING ROW
- PROPOSED ROW
- PROPERTY LINE
- LOT LINE
- FOUND 5/8" REBAR
- SET 1/2" X 30" REBAR
- W/YELLOW CAP #18377
- SET SECTION/QUARTER CORNER
- FOUND CENTERLINE P.I.
- MEASURED
- RECORDED
- PERMANENT UTILITY EASEMENT
- 0.01 AC.
- 50 SQ. FEET

PROPRIETOR:
BJS ENTERPRISES, L.C.
PO BOX 466
SHENANDOAH, IA 51601

SURVEY WORK DONE: FEBRUARY 2009



I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.
Steven N. Zeets 12/28/10
STEVEN N. ZEETS, L.S. DATE
License Number: 18377
My license renewal date is DECEMBER 31, 2010.
Pages or sheets covered by this set: 1 of 1

upon CITY's approval, which approval shall not be unreasonably withheld, and only if said utilities cross the Easement Area in a perpendicular direction.

- 6. OWNER hereby covenants with CITY that OWNER is lawfully seized and possessed of the real estate above described by virtue of legal and/or equitable title, and that it has good and lawful right to convey the Easement herein.
- 7. CITY hereby gives notice of OWNER's five year right to renegotiate construction or maintenance damages not apparent at the time of the signing of this easement agreement as required by §6B.52, Code of Iowa (2009).
- 8. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto; shall be deemed to apply to and run with the land and with the title to the land; and shall be recorded in the Johnson County Recorder's Office, at CITY expense.

SIGNED this 25th day of May, 2011.

CITY OF IOWA CITY, IOWA

BJS ENTERPRISES, L.C., OWNER

By: Matthew J. Hayek
Matthew J. Hayek, Mayor

NO SEAL

By: Betty Jane Shaw
Name & Title Betty Jane Shaw Resident

By: Marian K. Karr
Marian K. Karr, City Clerk

By: William E. Shan
Name & Title William E. Shan Exec Vice President

Approved by

City Attorney's Office

OWNER'S ACKNOWLEDGEMENT

STATE OF IOWA)
Page)ss:
JOHNSON COUNTY)

On this 25 day of May, 2011, before me, a notary public in and for the State of Iowa, personally appeared Betty Jane Shaw and William E. Shaw, to me personally known, who being by me duly sworn did say that they are the President and Exec Vice President of BJS ENTERPRISES, L.C., an Iowa limited liability company, and that said instrument was signed on behalf of the said limited liability company by authority of its managers and acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.



Jennifer French
Notary Public in and for the State of Iowa.

CITY'S ACKNOWLEDGEMENT

STATE OF IOWA)
)ss:
JOHNSON COUNTY)

On this 8th day of June, 2011, before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared **Matthew J. Hayek** and **Marian K. Karr**, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of said municipal corporation executing the within and foregoing instrument; that the seal affixed thereto is the seal of said municipal corporation; that said instrument was signed and sealed on behalf of said municipal corporation by authority of City Council of said municipal corporation; and that the said **Matthew J. Hayek** and **Marian K. Karr** acknowledged the execution of said instrument to be the voluntary act and deed and said municipal corporation, by it and by them voluntarily executed.

Marian K. Karr
Notary Public in and for the State of Iowa



7/3/14