

8. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, shall be deemed a covenant which runs 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 25 day of May, 2011.

CITY OF IOWA CITY, IOWA

BJS ENTERPRISES, L.C., OWNER

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

By: Betty Jane Shaw
Name & Title Betty Jane Shaw, President

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

By: William E. Shaw
Name & Title William E. Shaw Exec Vice-President

Approved by

City Attorney's Office

OWNER'S ACKNOWLEDGEMENT

STATE OF IOWA)
Page 2)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

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Fee Amt: \$29.00 Page 1 of 5
Johnson County Iowa
Kim Painter County Recorder

BK 4763 PG 877-881

Prepared by & Return to: Sara Hektoen, Asst. City Atty.; 410 E. Washington St.; Iowa City, IA 52240; 319-356-5030
Legal Description: Tract in Lots 1 thru 4, Block 1, Fair Meadows Addition First Unit, Iowa City,
Johnson County, Iowa.
Grantor(s): BJS Enterprises, L.C.
Grantee(s): City of Iowa City

**TEMPORARY CONSTRUCTION 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:

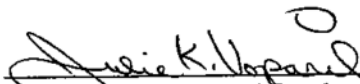
1. OWNER states and covenants that it is the owner of certain real estate described on Exhibit "A" attached hereto, by virtue of legal and/or equitable title, that it is lawfully seized and possessed of said real estate, and that it has good and lawful right to convey this easement.
2. OWNER does hereby grant and convey to CITY a temporary construction easement in, over and across that portion of OWNER's property depicted and described on Exhibit A attached hereto (hereafter "Temporary Easement Area") for the purpose of facilitating CITY's construction of the **Lower Muscatine Road Improvements Project** (public improvement"), which grant to CITY shall include necessary grading, excavation, piling of dirt, regrading, restoration, storage of materials and equipment, and ingress and egress of persons and equipment to the Temporary Easement Area, as needed to complete said public improvement.
3. The term of this Temporary Construction Easement will be for the period of time required by CITY to complete the construction of the public improvement, but in no event shall the duration of the Temporary Construction Easement extend beyond the date two (2) years after commencement of construction of the project.

4. With respect to the Temporary Construction Easement, OWNER grants the following rights:
 - a. CITY shall have the right to make excavations within the Temporary Easement Area, and to grade as CITY may find reasonably necessary for the construction. CITY covenants and agrees to protect such excavations during construction; to promptly fill said excavations following construction; and to hold OWNER harmless from third party liability during said construction.
 - b. CITY shall promptly backfill any trench made by it, and repair any damages caused by CITY within the Temporary Easement Area, but 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 Temporary Easement Area has been restored substantially to its prior condition and except as expressly provided in this Temporary Easement Agreement, CITY shall have no further responsibility for maintaining the Temporary Easement Area.
 - c. CITY shall have the right of ingress and egress to and from the Temporary Easement Area by such route within the Temporary Easement Area as shall occasion the least practical damage and inconvenience to OWNER.
 - d. CITY shall have the right to trim or remove all structures, trees, brush, and any other landscaping features which may interfere with the exercise of CITY's rights pursuant to this Temporary Easement Agreement.
5. CITY covenants and agrees that existing driveways, fences, underground drainage tile or other site features, with the exception of trees, shrubs and brush, which are removed or disturbed shall, to the extent reasonably possible, be replaced by CITY to conform with features or items removed during construction. CITY further agrees that all grassed areas disturbed by the construction shall be seeded within a reasonable time after construction is complete.
6. CITY covenants and agrees to remove and stockpile existing topsoil from areas to be excavated, to be used in the event of any repair. Following installation of the public improvement, all areas within the Temporary Easement Area which are disturbed will be graded to form a uniform slope, and topsoil shall be replaced and respread over disturbed areas, thereby restoring said area substantially to its prior condition, with the exception of the replacement of trees, shrubs and brush.
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).

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.



Notary Public in and for the State of Iowa

NOTARIAL SEAL
7/3