



Document 2013 3533

Book 2013 Page 3533 Type 06 001 Pages 6

Date 11/22/2013 Time 1:56 PM

Rec Amt \$32.00

INDX
ANNO
SCAN

LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

CHEK

Prepared by and when recorded return to: Nathan Allen, 5820 Westown Parkway, West Des Moines, IA 50266
(515) 267-2870

✓ City Hall - Mark Nitchals

PUBLIC UTILITY EASEMENT

THIS PUBLIC ACCESS EASEMENT (the "Easement") is effective as of this ____ day of September, 2013 (hereinafter referred to as the "Effective Date") by and between HY-VEE, INC., an Iowa corporation (hereinafter referred to as "Grantor"), with principal place of business at 5820 Westown Parkway, West Des Moines, IA 50266, and THE CITY OF WINTERSET, IOWA, an Iowa municipal corporation.

RECITALS:

WHEREAS, Grantor is the lawful owner of certain real property located in Winterset, Iowa, and legally described as follows, to-wit:

see Exhibit "A" attached hereto and incorporated herein (the "Grantor Tract"); and

WHEREAS, Grantor desires to establish the location of an easement for the benefit of the City of Winterset, Iowa (the "City"), and the general public (hereinafter collectively referred to as "Grantee") for purposes of the construction, reconstruction, repair, replacement, enlargement, inspection and maintenance of public utilities, together with all necessary structures and appurtenances thereto, under, over, upon, through, across and within said Easement Area.

NOW, THEREFORE, for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The Recitals are hereby incorporated by this reference.
2. Grant of Easement. Grantor hereby grants in favor of Grantee a non-exclusive easement in, over, upon, under and through, that portion of the Grantor Tract legally described and visually depicted on Exhibit "B" attached hereto and incorporated herein (the "Easement Area"), for the purpose of the City constructing, reconstructing, repairing, replacing, enlarging, inspecting, maintaining, and thereafter operating, public utility lines and

facilities, including but not limited to electric, water, natural gas, sanitary sewer, and storm sewer lines and facilities.

3. Erection and Placement of Structures Prohibited. Grantor shall not erect any permanent structure under, over, on, through, across or within the Easement Area without obtaining the prior written consent of the City; provided, however, Grantor may install, construct, reconstruct, repair, replace, enlarge and maintain paving, fencing, landscaping, sidewalk and/or parking lot improvements within the Easement Area without the prior written consent of Grantee.
4. Right of Access. The City shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including but not limited to, the right to remove any unauthorized structures erected under, over, on, through, across or within the Easement Area.
5. Liability. Except as may be caused by the negligent or intentional acts or omissions of the City, its employees, agents or its representatives, the City shall not be liable for injury or property damage occurring in or to the Easement Area, the property abutting said Easement Area, nor for property damage to any improvements or obstructions thereon resulting from the City's exercise of this Easement. Grantor agrees to indemnify and hold the City, its employees, agents and representatives harmless against any loss, damage, injury or any claim or lawsuit for loss, damage or injury arising out of or resulting from the negligent or intentional acts or omissions of Grantor or its employees, agents or representatives.
6. Maintenance. After the initial installation of utilities within the Easement Area, the City shall be responsible for, including the costs associated therewith, the inspection, maintenance, repair, reconstruction, and replacement of public utilities within the Easement Area. After exercising its rights and obligations hereunder, the City shall restore the Easement Area to substantially the condition it was in prior to exercising such rights. In the event the City desires to enter upon the Easement Area to perform its obligations hereunder, the City shall provide adequate advance written notice thereof to Grantor and shall coordinate its activities on the Grantor Tract with Grantor so as to minimize disruptions to Grantor's business operations conducted on the Grantor Tract.
7. Vacation of Existing Public Utility Easement. It is hereby acknowledged by the parties that the City has vacated the 20.00 ft. wide utility easement located in Lot 2 of the Gold Buffet Subdivision in the City of Winterset, Madison County, Iowa shown on the Final Plat of Gold Buffet Subdivision, City of Winterset, Madison County, Iowa filed in the Madison County, Iowa Recorder's office in Town Plat Book 2 at Page 74.
8. Covenants Running with the Land. The Grantor Tract shall be held, sold and conveyed subject to the easements, covenants and restrictions contained herein, all of which shall be covenants running with the land and shall be binding upon, and inure to the benefit of,

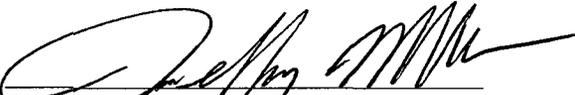
all parties having any right, title and interest in said property, or any part thereof, and their respective heirs, successors and assigns.

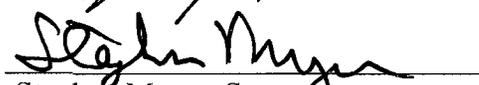
9. Waiver. No covenant, restriction, condition or provision of this Easement shall be deemed to have been abrogated or waived by reason of any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.
10. Savings Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Easement, as the case may be, shall not render the remainder of the Easement invalid.
11. Amendment; Modification. This Easement may be amended by the written consent and mutual agreement of all the record owners of the tracts of the Grantor Tract and the City. Any such modification or amendment shall be effective when duly recorded in the records of the Recorder of Madison County, Iowa.

Signed this 25th day of September, 2013

GRANTOR:

HY-VEE, INC., an Iowa corporation

By: 
Jeffrey Markey, Vice President

By: 
Stephen Meyer, Secretary

STATE OF IOWA, COUNTY OF POLK, ss

On this 25th day of September, 2013, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Jeffrey Markey and Stephen Meyer, to me personally known, who being by me duly sworn did say that they are the Vice President and Secretary, respectively, of Hy-Vee, Inc., an Iowa corporation, that the instrument to which this is attached was signed on behalf of said corporation by authority of its Board of Directors; and that the said Jeffrey Markey and Stephen Meyer as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.




Notary Public in and for the
State of Iowa

EXHIBIT "A"
LEGAL DESCRIPTION OF GRANTOR TRACT

Lots One (1) and Two (2) of Gold Buffet Subdivision of the City of Winterset, Madison County, Iowa, EXCEPT Parcel "A" located in said Lot One (1) as shown in Plat of Survey filed in Book 2, Page 199 on February 9, 1994 in the Office of the Recorder of Madison County, Iowa: AND EXCEPT the North 15 feet of said Lot Two (2).

AND

Parcel "A", a part of Lots One (1) of Gold Buffet Subdivision of the City of Winterset, Madison County, Iowa, containing 11,227 square feet, as shown in Plat of Survey filed in Book 2, Page 199 on February 9, 1994 in the Office of the Recorder of Madison County, Iowa:

AND

Parcel "E" located in the Northwest Fractional Quarter (1/4) of the Northwest Quarter (1/4) of Section Thirty-one (31), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M., City of Winterset, Madison County, Iowa, containing 621.3 square feet, as shown in Plat of Survey filed in Book 2, Page 343 on February 26, 1998 in the Office of the Recorder of Madison County, Iowa:

EXHIBIT "B"
LEGAL DESCRIPTION OF EASEMENT AREA

A 20.00 foot wide public utility easement along the South and East line of Lot 2 of Gold Buffet Subdivision, City of Winterset, Madison County, Iowa more particularly described as follows: Beginning at a point on the South line of Lot 2 of Gold Buffet Subdivision which is 115 feet West of the Southeast Corner thereof; thence along said South line to the Southeast Corner of said Lot 2; thence 254.39 feet along the East line of said Lot 2 to the South line of Mills Street right of way.

