

Prepared by and  
After recording, return to:  
James S. Levi  
Hodges, Loizzi, Eisenhammer,  
Rodick & Kohn LLP  
3030 Salt Creek Lane, Suite 202  
Arlington Heights, Illinois 60005

*This space reserved for Recorder's use only.*

### **TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

This Temporary Construction Easement Agreement ("Agreement") is made this 10<sup>th</sup> day of February 2016, by and between the Board of Education of Pleasantdale School District No. 107, ("Grantor") and M&J Asphalt Paving Company ("Grantee").

**WHEREAS**, Grantee is the developer of certain real estate located at 10932 German Church Road, Willow Springs, Illinois ("Development Property"); and

**WHEREAS**, Grantee desires to develop the Development Property for use by residential homes and to be known as the Powers Subdivision; and

**WHEREAS**, to provide water to the aforementioned subdivision, Grantee desires to tap on to the watermain located on Grantor's property; and

**WHEREAS**, Grantee is able to utilize existing easements granted to the West Suburban Water Commission to install a watermain to service the Development Property; and

**WHEREAS**, Grantee desires to obtain a temporary construction easement across Grantor's property to install a watermain to serve the Development Property; and

**WHEREAS**, Grantor desires to grant Grantee a temporary construction easement to install a watermain to service the Development Property; and

**WHEREAS**, Grantor determines that it is in the best interest of the Grantor and its constituents to grant the easement provided herein to Grantee.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **GRANT OF TEMPORARY CONSTRUCTION EASEMENT:** In order to install a watermain to service the Development Property, Grantee is granted a temporary construction easement as identified in Exhibit A. The Temporary Construction Easement granted hereunder shall commence on the recording of this Agreement and shall terminate 6 months thereafter. Any work performed by Grantee under this Agreement must be performed on days or hours when school is not in session.
2. **TERM:** Upon the payment of the consideration required in Paragraph 3, this Agreement shall be effective on the date Grantee records this Agreement. This Agreement shall terminate without further action 6 months from the date of recording.
3. **CONSIDERATION:** In consideration for granting the easement hereunder, Grantee shall reimburse the Grantor for all costs and expenses incurred with the preparation of this Agreement (“Costs”) up to a total of \$2,500. Grantee shall reimburse the Grantor for the Costs within 15 days of demand thereof. The grant of easement hereunder is conditioned upon the payment required under this Paragraph.
4. **IMPROVEMENTS & MAINTENANCE:** Grantee shall not be permitted to construct any improvements on top of the Temporary Construction Easement. Additionally, Grantee shall continually maintain the Temporary Construction Easement Area in a clean and workman-like condition for the Term of this Agreement. Upon completion of the installation of the watermain servicing the Development Property or the expiration of this Agreement, the Temporary Construction Easement shall be restored to a substantially similar condition that existed before any work commenced. Without limiting the foregoing, Grantee shall replace any trees, shrubs, grass and other landscaping that may have been removed or damaged by Grantee with the same size and type.
5. **INDEMNIFICATION AND WAIVER:**
  - A. *Indemnification.* Grantee shall indemnify and hold harmless Grantor, and its individual Board members, agents and employees (“Indemnitees”) from and against any and all liabilities, penalties, interest, losses, damages to person (including death) or property and expenses of every kind, nature and character, including reasonable costs and attorneys’ fees, arising out of, relating to or connected with (i) any breach of this Agreement and (ii) the negligent acts or omissions of Grantee or its employees or its contractors.
  - B. *Waiver.* Grantee acknowledges that it is accepting the easement in “AS-IS” conditions and that Grantor makes no representations or warranties as to the suitability of the easement for Grantee’s uses or otherwise. To the fullest extent permitted by law, Grantee waives any and all claims Grantee may have against the Indemnitees arising from relating to or connected with this Agreement.
6. **INSURANCE:**
  - A. *Commercial General Liability Insurance.* The Grantee shall maintain during the term of this Agreement, Commercial General Liability Insurance, on an occurrence

basis, with policy limits of not less than two million dollars (\$2,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

- B. *Excess Insurance.* Grantee shall also maintain during the term of this Agreement, Excess Liability Insurance with policy limits of not less than five million dollars (\$5,000,000) for each occurrence and in the aggregate. The excess insurance shall follow the form of the underlying Commercial General Liability Insurance in all respects.
- C. *Additional Insureds, Priority of Insurance and Subrogation.* Grantee shall name, by endorsement if necessary, the Indemnitees as additional insureds on the Excess and Commercial General Liability Insurance policies. All insurance required of the Grantee under this Agreement shall be primary insurance and any insurance maintained by the Grantor that is applicable to any loss arising out of, related to or connected with the Agreement shall be on an excess basis. To the fullest extent permitted by the insurance policies required under this Paragraph 6, Grantee waives any and all rights of subrogation it and its insurers may have against the Indemnitees.
- D. *Evidence of Insurance.* Upon request, Grantee shall promptly tender a current insurance certificate evidencing the insurance required under this Paragraph 6 and or a copy of the insurance policies, with all endorsements thereto.

7. **DEFAULT:** In the event that Grantee fails to comply with any of the terms of this Agreement, Grantee shall be considered in default and the Grantor may take any action in law or equity to enforce compliance with the terms of this Agreement or terminate Grantee's rights hereunder. In the event Grantor incurs any expenses, fees or costs whatsoever, including attorney fees, as a result of, arising out of related to a default by Grantee, Grantee shall be responsible for such expenses, fees or costs and shall reimburse Grantor immediately upon demand for such expenses, fees or costs.

8. **BINDING EFFECT:** This Easement Agreement shall bind and inure to the benefit of the respective parties, personal representatives, assigns and successors of the parties hereto.

9. **GOVERNING LAW AND JURISDICTION:** This Agreement shall be governed by the laws of the State of Illinois; however, the rule of strict construction shall not apply to this Agreement. Any action brought under this Agreement shall be brought in the Cook County Circuit Court or the U.S. District Court, Northern District, Eastern Division. This Easement Agreement shall be given a reasonable construction so that the intention of the parties is carried out.

10. **RECITALS:** The recitals set forth above in this Agreement are incorporated into and made a part hereof.

11. **AUTHORITY TO EXECUTE:** Each signature hereto represents and warrants that he or she has the proper corporate authority to execute this Agreement and to bind his or her respective authority hereto.

12. **ASSIGNMENT:** Grantee shall not assign, sublet or transfer any rights or obligations under this Agreement without the prior written consent of the Grantor, which may be withheld in its sole discretion.

13. **NOTICES:** Except as specifically noted otherwise in this Agreement, all notices related to this Agreement shall be in writing and shall be sent by nationally recognized overnight mail service, with confirmation of receipt. Notices shall be deemed to have been given upon deposit with the aforementioned service. Notices shall be given at the following addresses:

**Grantor:**

Pleasantdale School District No. 107  
7450 South Wolf Road  
Burr Ridge, IL 60527

**Grantee:**

M&J Asphalt Paving Company  
3124 S. 60th Court  
Cicero, IL 60804

**IN WITNESS WHEREOF** the parties have entered into this Agreement as of the date set forth above.

**GRANTOR:**

**BOARD OF EDUCATION OF  
PLEASANTDALE SCHOOL DISTRICT  
NO. 107**

**GRANTEE:**

**M&J ASPHALT PAVING COMPANY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

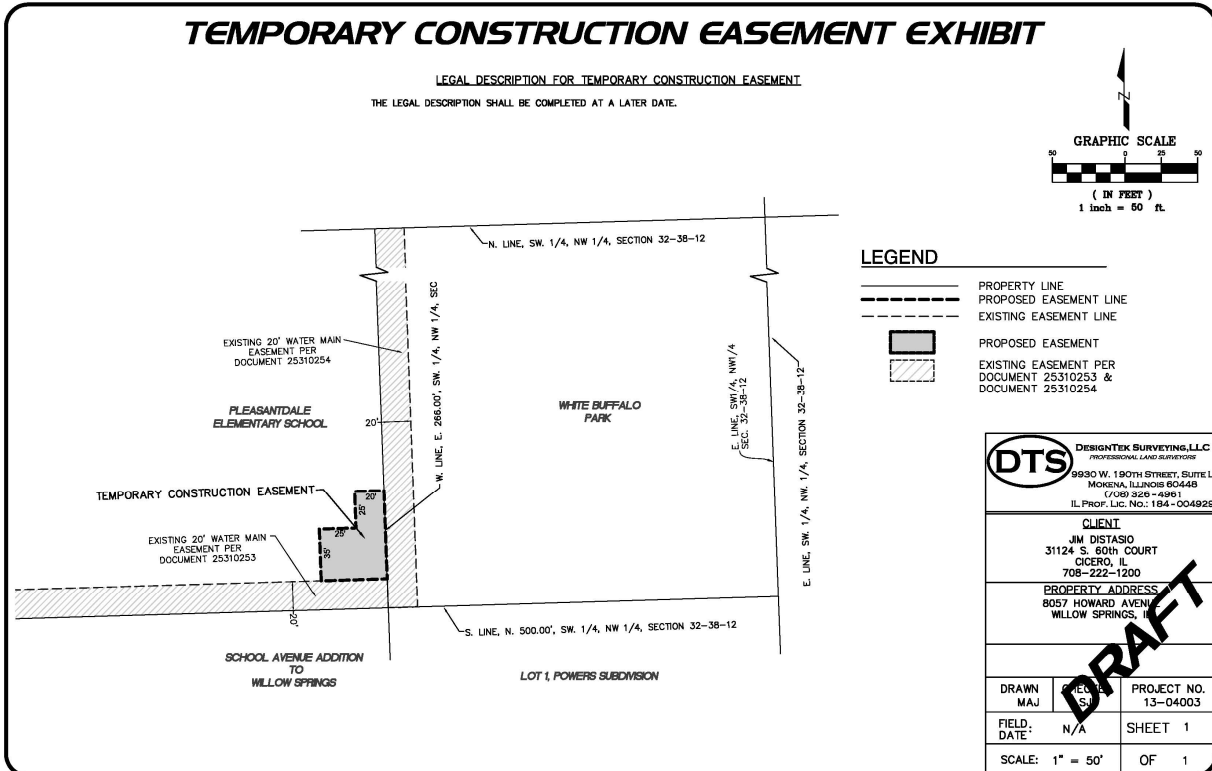
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT A

### TEMPORARY CONSTRUCTION EASEMENT



STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

**GRANTOR ACKNOWLEDGMENT**

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_

\_\_\_\_\_, personally known to me to be the same  
person(s) whose name(s) are subscribed to the foregoing instrument appeared before me this day  
in person and acknowledged that they signed, sealed, and delivered the said instrument as a free  
and voluntary act for the uses and purposes therein set forth.

Given under my hand and notaries seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

SEAL

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF COOK     )

**GRANTEE ACKNOWLEDGMENT**

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_  
\_\_\_\_\_, personally known to me to be the same  
person(s) whose name(s) are subscribed to the foregoing instrument appeared before me this day  
in person and acknowledged that they signed, sealed, and delivered the said instrument as a free  
and voluntary act for the uses and purposes therein set forth.

Given under my hand and notaries seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

SEAL

\_\_\_\_\_  
NOTARY PUBLIC