

WHEN RECORDED RETURN TO:

City of Ankeny
Attn: City Clerk
410 West First Street
Ankeny, IA 50023

Preparer Information: Amy S. Beattie, Brick Gentry, P.C., 6701 Westown Parkway, Suite 100, West Ankeny, IA 50266 (515) 963-3541

**TEMPORARY EASEMENT FOR CONSTRUCTION AND
CONSTRUCTION-RELATED ACTIVITIES**

Jaylor Group Holdings II, LLC (hereinafter referred to as the "Grantor"), in consideration of Three Hundred and Five and No/100 Dollars (\$305.00), to be paid by the City of Ankeny, Iowa, to ERJ Dining IV, LLC, upon final approval and acceptance of this Easement, does hereby convey unto the State of Iowa (hereinafter referred to as the "State"), a Temporary Easement for Construction under, over, through and across the following described property.

See Acquisition Plat attached hereto as Exhibit "A"

(hereinafter referred to as the "Easement Area"). Said Easement allows the State of Iowa, its agents, contractors and employees, and other permitted parties including but not limited to electric, cable and telecommunications utilities and their respective agents, contractors and employees, a right of entry in, upon and onto the above described Easement Area for the IA 160/SE Oralabor Road and SE Delaware Avenue Roadway and Traffic Signal Improvements Project, which purpose includes any and all construction-related activities. **Provided, however, the State shall in no event interfere with the parking upon Grantor's property.**

It is understood that, upon completion of this project, the State shall restore the Easement Area to its original condition as reasonably possible, including but not limited to restoration of lawns by sodding or seeding, replacement of concrete or asphalt driveways removed for grading or access purposes, and replacement of fences or other structures that may be removed or damaged by the State and/or permitted parties during the course of construction, except that the following items shall not be restored by the State or permitted parties but are instead compensated for the consideration paid for in this Easement by the State as set forth above. (List items below or state "none").

NONE

It is further understood that the consideration set forth in this Easement shall constitute full and adequate compensation for damages to the above listed items.

It is further understood that the foregoing Easement and release shall be null and void and of no effect whatsoever unless accepted by the City of Ankeny and shall be subject to the following terms and conditions to which the State, upon acceptance of this instrument, shall be deemed and to have stipulated and agreed:

1. **DURATION.** It is understood and agreed that this Easement allowing entry in, upon and onto the Easement Area described shall be in effect beginning on the date that the Grantor signs this document until the earlier of (i) completion of construction of the improvement above described and the State's performance of its obligations hereunder, or (ii) two (2) years after the date Grantor signs this document. This Easement shall be binding on Grantor and on Grantor's successors and assigns during construction of this improvement.

2. **GRANTOR'S REPRESENTATION AS TO TENANTS.**

The Grantor states and warrants that there are no tenants on the property where the Property Interests are located, except as listed below:

Brinker Restaurant Corporation, tenant, and ERJ Dining IV, LLC, subtenant

Furthermore, subject to the interests of the foregoing parties, Grantor shall convey the Property free and clear of leasehold interests and leasehold claims and shall indemnify the State against any such claims as a result of this project, unless the claim is due to the State's gross negligence.

3. **REMOVAL OF EQUIPMENT.** It is further understood and agreed that the State and/or permitted parties will remove all of said materials and equipment from the above described premises within 10 days after the above described project has been completed.

4. **SPECIAL PROVISIONS.** The property owner has the right to renegotiate construction or maintenance damages in accordance to Iowa Code Section 6B.52.

Signed this 30th day of September, 2016.

GRANTOR:

Jaylor Group Holdings II, LLC

By: 
Name: Kenneth Freed
Title: President

See Attached Acknowledgment

DONATION (OPTIONAL)

It is the understanding of the Grantor that, although the City will provide compensation for the granting of this easement, it is the Grantor's wish to **donate** this temporary easement and **not** receive said compensation, and Grantor waives any and all rights to compensation.

ACCEPTANCE BY CITY:

I, Pamela DeMouth, City Clerk of the City of Ankeny, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Ankeny by Resolution and Roll Call No. _____, passed on the _____ day of _____, 20____, and this certificate is made pursuant to authority contained in said Resolution.

Pamela DeMouth
City Clerk of the City of Ankeny, Iowa

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)

On September 30, 2016 before me, T. MALEKSAEIDI, NOTARY,
(here insert name and title of the officer)

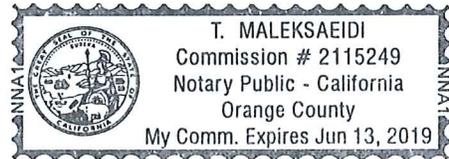
personally appeared Kenneth Freed

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature T. Maleksaeidi



(Seal)

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Temporary Easement for Construction & Construction-Related Activities, containing _____ pages, and dated _____.

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) _____ Title(s)

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
 form(s) of identification credible witness(es)

Notarial event is detailed in notary journal on:
Page # _____ Entry # _____

Notary contact: _____

Other

Additional Signer(s) Signer(s) Thumbprint(s)

ACKNOWLEDGEMENT OF TEMPORARY EASEMENT FOR CONSTRUCTION AND CONSTRUCTION-RELATED ACTIVITIES

Brinker Restaurant Corporation (“Brinker”) does hereby acknowledge and agree to the Temporary Easement for Construction and Construction-Related Activities granted unto the State of Iowa by Jaylor Group Holdings II, LLC (hereinafter “Easement”) under, over, through and across the following described property:

See Acquisition Plat attached hereto as Exhibit "A" (hereinafter “Easement Area”).

Brinker acknowledges that said Easement allows the State, its agents, contractors and employees, and other permitted parties including but not limited to electric, cable and telecommunications utilities and their respective agents, contractors and employees, a right of entry in, upon and onto the above described Easement Area for the IA 160/SE Oralabor Road and SE Delaware Avenue Roadway and Traffic Signal Improvements Project, which purpose includes any and all construction-related activities.

Signed this 27th day of September, 2016.

**GRANTOR:
BRINKER RESTAURANT CORPORATION**

By: 
Name: Bryan D. McCrory
Title: President

ACCEPTANCE BY CITY:

I, Pamela DeMouth, City Clerk of the City of Ankeny, Iowa, do hereby certify that the within and foregoing Acknowledgement of Easement was duly approved and accepted by the City Council of said City of Ankeny by Resolution and Roll Call No. _____, passed on the _____ day of _____, 20____, and this certificate is made pursuant to authority contained in said Resolution.

Pamela DeMouth
City Clerk of the City of Ankeny, Iowa

ACKNOWLEDGEMENT OF TEMPORARY EASEMENT FOR CONSTRUCTION AND CONSTRUCTION-RELATED ACTIVITIES

ERJ Dining IV, LLC does hereby acknowledge and agree to the Temporary Easement for Construction and Construction-Related Activities granted unto the State of Iowa by Jaylor Group Holdings II, LLC (hereinafter "Easement") under, over, through and across the following described property:

See Acquisition Plat attached hereto as Exhibit "A" (hereinafter "Easement Area").

ERJ Dining IV, LLC acknowledges that said Easement allows the State, its agents, contractors and employees, and other permitted parties including but not limited to electric, cable and telecommunications utilities and their respective agents, contractors and employees, a right of entry in, upon and onto the above described Easement Area for the IA 160/SE Oralabor Road and SE Delaware Avenue Roadway and Traffic Signal Improvements Project, which purpose includes any and all construction-related activities.

Signed this 27 day of September, 2016.

GRANTOR:
ERJ DINING IV, LLC

By: Troy Hanko
Name: Troy Hanko
Title: Member

ACCEPTANCE BY CITY:

I, Pamela DeMouth, City Clerk of the City of Ankeny, Iowa, do hereby certify that the within and foregoing Acknowledgement of Easement was duly approved and accepted by the City Council of said City of Ankeny by Resolution and Roll Call No. _____, passed on the _____ day of _____, 20____, and this certificate is made pursuant to authority contained in said Resolution.

Pamela DeMouth
City Clerk of the City of Ankeny, Iowa