

STATE OF ALABAMA)
COUNTY OF MADISON)

PERMISSIVE USE AGREEMENT

This Agreement (“Agreement”) made and entered into on this the 28th day of August, 2023, by and between the **CITY OF MADISON, ALABAMA**, a municipal corporation (“City”), **BJ’S WHOLESALE CLUB, INC.**, a Delaware corporation (“BJ’s”), and **TOWN MADISON BUSINESS ASSOCIATION, INC.**, an Alabama non-profit corporation (“TMBA”).

W I T N E S S E T H:

WHEREAS, the City has installed and is responsible for operating and maintaining rights of way (the “ROW”) located on Wall Triana Highway adjacent to Lot 3 in Intergraph North Campus Phase 3, in Madison County, Alabama recorded in Plat Book 2018, Plat 40565 (“Lot 3”) in the Office of the Judge of Probate of Madison County, Alabama (the “Probate Office”); and

WHEREAS, BJ’s is the fee simple owner of Lot 4 as shown on the Certified Plat of Intergraph North Campus Phase 6 in Madison County, Alabama, recorded in Book 2022, Page 315 in the Probate Office (the “Tract”), as evidenced by that certain Statutory Warranty Deed dated and recorded on September 26, 2022 in Book 2022, Page 45751 in the Probate Office; and

WHEREAS, BJ’s intends to have a monument sign (“Sign”) constructed adjacent to Lot 3, and the Sign will extend into and encroach upon the ROW in the approximate locations identified on attached **Exhibit A**; and

WHEREAS, following construction of the sign by BJ’s, TMBA shall own and be responsible for the maintenance, repair and replacement of the Sign, as necessary; and

WHEREAS, the Sign could be impacted by excavation of the ROW in connection with the City’s permitted uses; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants given by the parties hereto, it is understood and agreed as follows:

1. BJ’s and TMBA agree, affirm and acknowledge as follows:
 - a. That the proposed Sign will encroach on the ROW located north of Graphics Drive and infringe upon the City’s unfettered access to the ROW for the purposes for which it was reserved.
 - b. That City’s acquiescence of BJ’s and TMBA’s encroachment and resulting infringement is permissive only and shall not be deemed to affect or diminish the

City's right to the free and unfettered use of the ROW for the purposes for which it was granted, in any fashion at any time, except as otherwise expressly set forth herein.

- c. That BJ's and TMBA's proposed encroachment and infringement is to be permitted under this Agreement subject to the limitations and express understandings stated in this Agreement. BJ's and TMBA acknowledge that the Madison City Code and Zoning Ordinance provide that the City may remove obstructions or signs in ROW at will, and that the City reserves its rights to do so, subject to the notice provisions provided in this Agreement.
- d. If the City or City-authorized franchise holders ("Franchisees") are required to maintain, repair, or replace utility lines located in the ROW, the City will provide thirty (30) days' prior written notice to BJ's and TMBA of its need to excavate or otherwise access the ROW. After providing notice consistent with this paragraph, the City may remove or cause to be removed, at TMBA's sole cost and expense, the Improvements which encroach upon the ROW to the minimum extent reasonably necessary to complete the maintenance, repair or replacement within the ROW. After the City or Franchisees complete any such maintenance, repair, or replacement within the ROWs, TMBA may restore and reconstruct the Sign in accordance with this Agreement and City building and sign permit requirements. Notwithstanding the foregoing, in the event of an emergency, the City or its Franchisees may immediately access the ROW and remove or cause to be removed the Sign, which encroaches upon the ROW, as reasonably necessary to address the emergency, without giving notice, provided that the City shall give such notice to BJ's and TMBA as soon as is reasonably practicable given the circumstances. The determination of whether an emergency exists which requires immediate maintenance, repair or replacement shall be solely within the discretion of the City.
- e. Subject to the terms of Section 1(f) below, the City shall have no obligation to repair or replace any Sign, landscaping, or related improvements so removed or disturbed or to restore the surface of the ROW to the condition that existed prior to removal of the Improvements. To the extent reasonably possible given the circumstances related to any maintenance, repair or replacement, the City will endeavor to minimize interference with the business operations being conducted on Lot 3, the Tract and any other location(s) within Town Madison while exercising its rights to use of the ROW and the rights included in this Agreement.
- f. That no additional improvement or encroachment beyond the proposed Sign referenced in this Agreement shall be allowed or permitted without the express, written, additional permission of the City.
- g. BJ's and TMBA acknowledge that this Agreement extends only to use of the ROW by the City and that no agreement, representation or warranty of any kind is made by the City whatsoever regarding any use of the ROW by persons or entities other than the City.

2. Subject to the conditions stated hereinabove, the City grants its limited permission for BJ's and TMBA to construct, operate, and maintain the proposed Sign within the ROW.
3. The Sign is subject to the dimensional and aesthetic standards of the Town Madison Master Sign Plan.
4. The provisions of this Agreement shall be covenants running with the land and shall be binding on the parties' successors and assigns.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals on the date and year first above written.

**City of Madison, Alabama,
a municipal corporation**

By: _____
Paul Finley
Mayor

Date: _____

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Mary Beth Broeren, whose name as Director of Development Services of the City of Madison, Alabama, is signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, in her capacity as Planning Director of the City of Madison, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation, on the day the same bears date.

Given under my hand and official seal this the ____ day of _____, 2023.

Notary Public

[Signature page to Permissive Use Agreement]

BJ'S:

BJ'S WHOLESALE CLUB, INC.,
a Delaware corporation

By: _____
Name: _____
Its: _____

STATE OF _____)
COUNTY OF _____)

Before me, the undersigned Notary Public, in and for said County and State, personally appeared _____, whose name as _____ of BJ's Wholesale Club, Inc., a Delaware corporation, is signed to the foregoing instrument, and who acknowledged before me on this day that, being informed of the contents of said agreement, s/he, as such officer and with full authority to do so, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this _____ day of _____, 2023.

Notary Public
My Commission Expires: _____

[Signature page to Permissive Use Agreement]

TMBA:

TOWN MADISON BUSINESS ASSOCIATION, INC.,
an Alabama non-profit corporation

By: _____
Name: _____
Its: _____

STATE OF ALABAMA)
COUNTY OF MADISON)

Before me, the undersigned Notary Public, in and for said County and State, personally appeared Louis W. Breland, whose name as President of Town Madison Business Association, Inc., an Alabama non-profit corporation, is signed to the foregoing instrument, and who acknowledged before me on this day that, being informed of the contents of said agreement, he, as such officer and with full authority to do so, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this _____ day of _____, 2023.

Notary Public
My Commission Expires: _____

