

Prepared by Andrew Fangman, 215 Sycamore St, Muscatine, IA, 52761 (563) 262-4141

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION**

**TO VACATE AND CONVEY CERTAIN DRAINAGE EASEMENTS AT LOT 8 OF  
NORTH PORT COMMONS SUBDIVISION, NORTH PORT DRIVE, IN THE CITY OF  
MUSCATINE, IOWA**

**WHEREAS**, Beaver Development, L.L.C., acting as the agent for VMI - North Port Commons L.L.C., has requested, in order to accommodate a residential development, the vacation of a drainage easement; and

**WHEREAS**, an alternate method of drainage acceptable to the City of Muscatine has been proposed, through the construction of a new storm water infrastructure;

**WHEREAS**, a drainage agreement will ensure that adequate drainage is maintained during construction of the proposed storm water infrastructure; and

**WHEREAS**, VMI-North Port Commons, L.L.C. is the owner of the adjoining property; and

**WHEREAS**, VMI-North Port Commons, L.L.C. has offered in exchange for obtaining title to the Property to enter into the attached drainage agreement; and

**WHEREAS**, the Property proposed to be vacated and conveyed has been determined by the City to have no significant impact on public access, and the City will not be inconvenienced by the vacation and conveyance of said Property; and

**WHEREAS**, a resolution was adopted by the City Council of Muscatine, Iowa, on August 3, 2017 providing for the proposed vacation and conveyance of all right, title and interest of the City of Muscatine, Iowa, in and to a certain drainage easement located at Lot 8 of North Port Commons Subdivision, North Port Drive, in the City Of Muscatine, Iowa; and

**WHEREAS**, the resolution provided that notice of intention to vacate and convey the drainage easement should be given by publication of a Public Notice in the Muscatine Journal prior to the meeting of the City Council to be held on August 17, 2017, and the notice was duly published in the newspaper as required by law; and

**WHEREAS**, the resolution provided for a public hearing on the proposed vacation and conveyance, and such hearing has been held; and

**WHEREAS**, the Planning and Zoning Commission of the City of Muscatine, after a public hearing at its July 13, 2017 meeting, has recommended approval of the proposed vacation and conveyance; and

**WHEREAS**, the City Council found and determined that the proposed vacation of said utility easements would serve the public interest.

**BE IT RESOLVED BY THE CITY COUNCIL OF MUSCATINE, IOWA, AS FOLLOWS:**

1. The City of Muscatine, Iowa, hereby vacates and conveys, subject to drainage agreement (attached hereto as Exhibit A) with VMI - North Port Commons L.L.C, being signed and recorded and the required new drainage easement being dedicated, all rights, title, and interest in and to the following described drainage easement:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 NORTHPOR  
COMMONS DOCUMENT NUMBER 2004-07781.; THENCE, NORTH 36 DEGREES  
28 MINUTES 32 SECONDS WEST, TO THE POINT OF BEGINNING, A DISTANCE  
OF 10.00 FEET; THENCE, CONTINUING NORTH 36 DEGREES 28 MINUTES 32  
SECONDS WEST, A DISTANCE OF 200.00 FEET; THENCE, NORTH 53 DEGREES  
31 MINUTES 28 SECONDS EAST, A DISTANCE OF 86.50 FEET; THENCE,  
NORTH 36 DEGREES 28 MINUTES 32 SECONDS WEST, A DISTANCE OF 128.57  
FEET; THENCE, NORTH 30 DEGREES 32 MINUTES 43 SECONDS EAST, TO AN  
ARC, A DISTANCE OF 44.96 FEET; THENCE, ALONG SAID ARC CONCAVE  
NORTHEASTERLY, A DISTANCE OF 18.29 FEET, SAID ARC HAVING A RADIUS  
OF 655.00 FEET AND A DELTA ANGLE OF 01 DEGREES 35 MINUTES 58  
SECONDS, SAID ARC HAVING A CHORD BEARING OF SOUTH 60 DEGREES 15  
MINUTES 16 SECONDS EAST AND A CHORD OF 18.29 FEET; THENCE, SOUTH  
27 DEGREES 13 MINUTES 09 SECONDS EAST, A DISTANCE OF 112.92 FEET;  
THENCE, SOUTH 07 DEGREES 40 MINUTES 43 SECONDS EAST, A DISTANCE  
OF 160.06 FEET; THENCE, SOUTH 36 DEGREES 28 MINUTES 32 SECONDS  
EAST, A DISTANCE OF 77.67 FEET; THENCE, SOUTH 53 DEGREES 31 MINUTES  
28 SECONDS WEST, A DISTANCE OF 40.00 FEET, TO THE POINT OF  
BEGINNING.

THE ABOVE DESCRIBED CONTAINS 17,387 SQUARE FEET, MORE OR LESS.  
FOR THE PURPOSES OF THIS DESCRIPTION THE WEST LINE OF LOT 8, HAS A  
BEARING OF NORTH 36 DEGREES 28 MINUTES 32 SECONDS WEST.

2. The Mayor is authorized and directed to sign the drainage agreement and the quit claim deed for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
3. The City Planner and/or City Clerk is authorized and directed to forward the original of the quit claim deed, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Muscatine County Recorder's Office for the purpose of causing these documents to be recorded.

4. Upon receipt of the recorded documents back from the Muscatine County Recorder, the City Planner shall mail the original of the Deed and copies of the other documents to the grantee.
5. Any resolution or part thereof in conflict or inconsistent with this resolution is repealed.

**PASSED, APPROVED AND ADOPTED** this 17th day of August, 2017.

CITY COUNCIL OF THE CITY  
OF MUSCATINE, IOWA

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Diana L. Broderson, Mayor

ATTEST:

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Gregg Mandsager, City Clerk

## **Exhibit A**

**WHEN RECORDED RETURN TO:**

Andrew Fangman  
City Planner  
City of Muscatine  
215 Sycamore Street  
Muscatine, Iowa 52761

Preparer Information: Andrew Fangman, City Planner, City of Muscatine, 215 Sycamore St, Muscatine, IA 52761, 563.262.4141

### **DRAINAGE AGREEMENT**

THIS TEMPORARY RIGHT-OF-WAY EASEMENT AGREEMENT (the "Agreement") is entered into by and between, **the City of Muscatine, Iowa**, an Iowa municipal corporation, (hereinafter referred to as "the City") and VMI - North Port Commons L.L.C, an Iowa limited liability company (hereinafter referred to as "the Property Owner")

1. **Purpose.** The Property Owner desires for the City to vacate a drainage easement "the drainage area" more particularly described in Exhibit A. The property owner has proposed the construction of alternate storm water drainage infrastructure and the drainage easement that it will be located. The City has reviewed and finds this alternate storm water drainage infrastructure and the drainage easement to be acceptable. The purpose of this agreement is to ensure adequate drainage during the process to construct said alternate storm water drainage infrastructure.
2. **No Reduction in Storm Water Capacity Through the Drainage Area.** The Property Owner shall not cause a reduction in the capacity of storm water to flow through the drainage area unless the following conditions are met.
  - a. Storm water from south of North Port Drive which currently discharges into the drainage easement, and any storm water from the north side of North Port Drive is conveyed through a storm sewer of a design approved by the City of Muscatine. There shall also be an emergency overland flow routes that have been approved by the City of Muscatine.
  - b. During the construction of the storm sewer and emergency overland flow route required as part of this agreement, the following requirements shall be met all times.
    - i. Positive drainage shall be maintained during construction.

ii. Phase embankment construction and proposed storm sewer accordingly.

iii. Maintain emergency overland flow route at all times.

c. The Property Owner shall dedicate to the City of Muscatine, Iowa a new drainage easement more particularly described in Exhibit B

4. Recording Costs. The Grantee hereby agrees to pay the recording costs to record this easement with the Muscatine County Recorder.

3. Covenants with the Land. All rights, privileges, benefits and burdens created herein are covenants running with the land, binding upon and inuring to the benefit of Grantor, Grantee and their respective assigns and successors in title.

4. Termination of This Agreement. This agreement shall terminate when the improvements required by Section 2.b have been completed, and have been determined by the City of Engineer of the City of Muscatine to meet all applicable standards and requirements; and the drainage easement required by Section 2.c has dedicated and recorded.

5. Captions and Governing Law. The captions included herein are for reference only and should not be used in construing any of the terms hereof. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, we have hereunto affixed our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Diana Broderson, Mayor

ATTEST:

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Gregg Mandsager, City Clerk

STATE OF IOWA, COUNTY OF MUSCATINE, ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **DIANA BRODERSON** and **GREGG MANDSAGER**, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine, Iowa, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, and the said **DIANA BRODERSON** and **GREGG MANDSAGER** acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

## Notary Public in and for the State of Iowa

VMI - North Port Commons L.L.C

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

Name: \_\_\_\_\_

**Title:** \_\_\_\_\_

**STATE OF** \_\_\_\_\_, **COUNTY, ss:**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is \_\_\_\_\_ of **VMI - North Port Commons L.L.C.**, that the seal affixed to the foregoing instrument to which this is attached is the corporate seal; that the instrument was signed and sealed on behalf of **VMI - North Port Commons L.L.C.**, by authority of its Board of Directors, and that \_\_\_\_\_, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of **VMI - North Port Commons L.L.C LLC** by it and by him/her voluntarily executed.

**Notary Public in and for the State of Iowa**

EXHIBIT A

COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 NORTHPORT COMMONS DOCUMENT NUMBER 2004-07781.; THENCE, NORTH 36 DEGREES 28 MINUTES 32 SECONDS WEST, TO THE POINT OF BEGINNING, A DISTANCE OF 10.00 FEET; THENCE, CONTINUING NORTH 36 DEGREES 28 MINUTES 32 SECONDS WEST, A DISTANCE OF 200.00 FEET; THENCE, NORTH 53 DEGREES 31 MINUTES 28 SECONDS EAST, A DISTANCE OF 86.50 FEET; THENCE, NORTH 36 DEGREES 28 MINUTES 32 SECONDS WEST, A DISTANCE OF 128.57 FEET; THENCE, NORTH 30 DEGREES 32 MINUTES 43 SECONDS EAST, TO AN ARC, A DISTANCE OF 44.96 FEET; THENCE, ALONG SAID ARC CONCAVE NORTHEASTERLY, A DISTANCE OF 18.29 FEET, SAID ARC HAVING A RADIUS OF 655.00 FEET AND A DELTA ANGLE OF 01 DEGREES 35 MINUTES 58 SECONDS, SAID ARC HAVING A CHORD BEARING OF SOUTH 60 DEGREES 15 MINUTES 16 SECONDS EAST AND A CHORD OF 18.29 FEET; THENCE, SOUTH 27 DEGREES 13 MINUTES 09 SECONDS EAST, A DISTANCE OF 112.92 FEET; THENCE, SOUTH 07 DEGREES 40 MINUTES 43 SECONDS EAST, A DISTANCE OF 160.06 FEET; THENCE, SOUTH 36 DEGREES 28 MINUTES 32 SECONDS EAST, A DISTANCE OF 77.67 FEET; THENCE, SOUTH 53 DEGREES 31 MINUTES 28 SECONDS WEST, A DISTANCE OF 40.00 FEET, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED CONTAINS 17,387 SQUARE FEET, MORE OR LESS. FOR THE PURPOSES OF THIS DESCRIPTION THE WEST LINE OF LOT 8, HAS A BEARING OF NORTH 36 DEGREES 28 MINUTES 32 SECONDS WEST.

## EXHIBIT B

Part of Lots 7, 8, & 9, as platted on North Port Commons, being an addition to the City of Muscatine, Iowa, situated in part of the NW Fractional 1/4 of Section 19, Township 77 N., Range 1 W. of the 5th P.M., more particularly described as follows;

Beginning at the Southwest corner of said Lot 8, thence, along the northerly right of way line of North Port Drive, South 53 degrees 31 minutes 28 seconds West, a distance of 7.94 feet; thence, North 36 degrees 28 minutes 32 seconds West, a distance of 15.00 feet; thence, along a line 15.00 feet northerly of and parallel to said right of way line, North 53 degrees 31 minutes 28 seconds East, to a common of said Lot 7 and Outlot A of said addition, a distance of 603.69 feet; thence, along said line South 36 degrees 30 minutes 55 seconds East, a distance of 15.00 feet; thence, along the extension of said right of way line and said right of way line, South 53 degrees 31 minutes 28 seconds West, a distance of 595.76 feet, to the point of beginning, said easement contains 9,055 square feet more or less.

For the purposes of this description the northerly right of way line of North Port Drive, is assumed to have a bearing of South 53 degrees 31 minutes 28 seconds West.