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COMMUNITY DEVELOPMENT

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

Date: October 31, 2017
To: Mayor and City Council
From: Dave Gobin, Community Development Director
Cc: Gregg Mandsager, City Administrator
Re: Resolution to Approve Easement for MLC Land Company LLC

INTRODUCTION: Over the last several years, the City has engaged in discussions to assist the development of a new downtown hotel and provided significant efforts to assist with financing the facility.

BACKGROUND: Staff has been involved with coordinating the Hotel project, aka MLC Land Company LLC and the upgrades to the Mississippi Drive corridor project. As part of the Hotel project, they are under construction of building a parking ramp.

During the construction, the Hotel had to pound pylons into an area about 2 feet in the City right-of-way as a temporary measure. Now, it is become too difficult to remove those pylons and as remedy, the City is proposing to give an easement to the Hotel with the condition of cutting those pylons 5 feet below the surface before proceeding with the completion of the ramp.

In lieu of payment, the Hotel will landscape the prepared areas along the welcome/departure ramp on the Mississippi Drive side of the Hotel.

RECOMMENDATION: Staff is requesting Council approve a Resolution to grant an easement to the Hotel of a small portion of the sidewalk area on Second Street.

RESOLUTION NO. _____

ACCEPTANCE OF A PERMANENT RIGHT-OF-WAY EASEMENT AGREEMENT

WHEREAS, THIS PERMANENT RIGHT-OF-WAY EASEMENT AGREEMENT (the "Agreement") attached as Exhibit A is entered into by and between, **the City of Muscatine, Iowa**, an Iowa municipal corporation, (hereinafter referred to as "Grantor") and **MLC Land Company LLC**, an Iowa limited liability company (hereinafter referred to as "Grantee"); and

WHEREAS, Grantor is the owner of certain real estate located in the Second Street right-of-way adjacent to the Grantee's property, as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property"). Grantee desires to obtain a perpetual, non-exclusive easement and ingress and egress rights over and across the Property in order to install shoring beams, that are at least five feet below grade, that are necessary to the construction of the foundation of a parking garage on an adjoining parcel. Grantor is willing to grant Grantee an easement for said purpose, subject to the terms and conditions set forth in the attached right of way easement; and

WHEREAS, In consideration of the covenants and obligations set forth herein and other good and valuable consideration in the sum of One Dollar (\$1.00) paid by Grantee to Grantor, the receipt of which is hereby acknowledged, Grantor hereby grants, conveys and declares unto Grantee, its successors and assigns, a perpetual, non-exclusive right-of-way easement including ingress and egress rights over and across the Property, for the purpose of installation of shoring beams, that are at least five feet below grade, that are necessary to the construction of the foundation of a parking garage on an adjoining parcel (hereinafter the "Project"), the renderings and geographic map of which are attached to Exhibit A:

NOW, THEREFORE, BE IT RESOLVED, by the City Council for the City of Muscatine, that the City of Muscatine, Iowa approve the permanent right-of-way easement agreement attached as Exhibit A

PASSED, APPROVED AND ADOPTED this 2nd day of November 2017.

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

Diana Broderson, Mayor

Attest:

Gregg Mandsager, City Clerk

PERMANENT RIGHT-OF-WAY EASEMENT AGREEMENT

THIS PERMANENT 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 "Grantor") and **MLC Land Company LLC**, an Iowa limited liability company (hereinafter referred to as "Grantee").

1. **Property and Purpose.** Grantor is the owner of certain real estate located in the right-of-way adjacent to the Grantee's property, as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property"). Grantee desires to obtain a perpetual, non-exclusive easement and ingress and egress rights over and across the Property in order to install shoring beams, that are at least five feet below grade, that are necessary to the construction of the foundation of a parking garage on an adjoining parcel. Grantor is willing to grant Grantee an easement for said purpose, subject to the terms and conditions set forth below.

2. **Grant of Easement.** In consideration of the covenants and obligations set forth herein and other good and valuable consideration in the sum of One Dollar (\$1.00) paid by Grantee to Grantor, the receipt of which is hereby acknowledged, Grantor hereby grants, conveys and declares unto Grantee, its successors and assigns, a perpetual, non-exclusive right-of-way easement including ingress and egress rights over and across the Property, for the purposed installing shoring beams necessary to the construction of the foundation of a parking garage on an adjoining parcel. (hereinafter the "Project"), the renderings and geographic map of which are attached hereto as Exhibit "B."

4. **Use by Grantor.** Grantor retains the right to use the Property. The Property is subject to all matters of record, including all easements of record, the retained rights of Grantor and whatever other easements, rights, licenses or grants that contemporaneous herewith or subsequent hereto, may be granted, or otherwise created by Grantors, provided that any subsequently created interest does not prevent Grantee from utilizing this Easement for its intended purpose. This Easement shall revert to Grantor upon release.

5. **Grantor's Improvements.** Grantee shall replace and restore any and all improvements of Grantor on the Property and Grantor's adjoining land which are disturbed by Grantee's activities, including, but not limited to, curbing, landscaping, paving, irrigation systems, utility infrastructure and/or traffic controls (collectively, "Grantor's Improvements"). Grantee agrees to restore the Property to a condition after construction that complies with the approved site plan for the parking garage.

6. **Approvals.** Erection of the Project will require a permit and compliance with the City of Muscatine, Iowa ordinances. Nothing in this Agreement shall be construed to exempt the Grantee from full compliance with any requirements imposed by the City Code or other applicable laws, rules, and regulations regarding any permits or approvals necessary for the anticipated use of the Easement by Grantee, including but not limited to building permits, zoning or conditional use permits as may be legally required. By executing this Agreement, Grantor does not waive any of its regulatory authority over the Project.

7. Maintenance. After Grantee commences construction and/or erection of the Project on the Property, Grantee shall maintain, repair and replace the Project and keep it in good order, condition and state of repair. In the event Grantee fails to fulfill its obligations to maintain, repair and replace the Project as set forth herein, Grantor shall have the right, but not the obligation, to perform such maintenance, repair and replacement after providing Grantee thirty (30) days written notice of Grantor's intent to perform the same and opportunity to cure, and assess such costs to the Grantee. Grantee shall maintain, repair and replace any and all of Grantor's Improvements that are affected by Grantee's maintenance, repair and replacement of the Project.

8. Indemnification. Grantee, with respect to its use of the Property for the Project, agrees to indemnify, protect, defend, and hold harmless Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers, from any and all loss, damage, liability, cost or expense (including but not limited to, attorneys fees and court costs) and all other sums which Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers may incur, be subjected to, or may reasonably pay or become obligated to pay on account of any, all and every demand, claim, or action arising out of any act or omission of Grantee, its agents, servants or employees.

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

10. 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.

11. 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.

Diana Broderson, Mayor

ATTEST:

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

MLC LAND COMPANY LLC

By: James Howl
Name: James Howl
Title: CFO

STATE OF _____, COUNTY, ss:

On this 31 day of October, 2017, before me the undersigned, a Notary Public in and for the State of _____, personally appeared James Howl, to me personally known, who, being by me duly sworn, did say that he/she is CFO of MLC Land Company LLC, 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 MLC Land Company LLC, by authority of its Board of Directors, and that James Howl, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of MLC Land Company LLC by it and by him/her voluntarily executed.

Christa Bailey

Notary Public in and for the State of Iowa

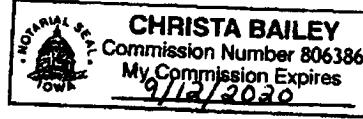


EXHIBIT A

**MLC LAND COMPANY TO PROVIDE LEGAL DESCRIPTION OF PERMANENT
EASEMENT AREA**

EXHIBIT B

**MLC LAND COMPANY TO PROVIDE A DIAGRAM SHOWING THE EXACT LOCATION
OF SHORING BEAMS THAT ARE TO REMAIN WITHIN THE PUBLIC RIGHT OF
WAY**

