

RESOLUTION NO. _____

RESOLUTION APPROVING AN EASEMENT AGREEMENT WITH HNI CORPORATION REGARDING TEMPORARY CONSTRUCTION EASEMENTS NECESSARY FOR THE 2ND STREET AND MULBERRY AVENUE ROUNDABOUT PROJECT

WHEREAS, on December 19, 2019 the City Council of Muscatine, Iowa approved a property exchange and temporary construction easement agreement between HNI Corporation, and the City of Muscatine; and

WHEREAS, HNI Corporation, has submitted an easement agreement, attached hereto as Exhibit 1 that will grant the City of Muscatine the temporary construction easements necessary to complete the 2nd Street and Mulberry Avenue Roundabout Project;

WHEREAS, said agreement grants the City of Muscatine permission to demolish a building partially located in one the areas, identified as Area "D" in said agreement, for which HNI is granting a temporary construction easement; and

WHEREAS, said agreement commits the City of Muscatine to restoring Area "D" as a parking lot, the City's cost to construct this parking is capped, as per the easement agreement at \$44,500, with HNI being obligated to pay the rest of such costs.

NOW, THEREFORE, BE IT RESOLVED, by the City Council for the City of Muscatine, that the City of Muscatine, Iowa to approve said easement agreement and the Mayor is authorized and directed to sign the Easement Agreement, attached as Exhibit 1, and the City Clerk is authorized and directed to attest to the Mayor's signature.

PASSED, APPROVED AND ADOPTED this 19th day of December, 2019.

BY THE CITY COUNCIL OF THE

CITY OF MUSCATINE, IOWA

Diana L. Broderson, Mayor

Attest:

Greg Jenkins, Interim City Clerk

Exhibit 1

EASEMENT AGREEMENT

This Easement Agreement ("Easement Agreement") is entered into as of December 19, 2019 ("Effective Date"), between HNI Corporation, an Iowa corporation ("Grantor"), and the City of Muscatine, Iowa, an Iowa municipality ("Grantee").

1. **Background.** Grantor is the owner of certain real estate in Muscatine, Iowa, legally described on the attached Exhibit A. Grantee wishes to temporarily use and access a portion of the real estate (depicted on Exhibit B as Area B and Area D and referred to herein as the "Grantor Real Estate") for ingress and egress to construct a traffic roundabout and associated structures and features (collectively, the "Roundabout"), substantially in accordance with the rendering attached as Exhibit C.

2. **Easements.**

a. **Construction Easement.** Grantor grants to Grantee a temporary construction easement (the "Construction Easement") on and over the Grantor Real Estate to for the purpose of constructing the Roundabout. The Construction Easement shall include the right of Grantee and its contractors to enter the Grantor Real Estate with the necessary labor, equipment, and material for constructing the Roundabout. The Construction Easement shall automatically expire upon the completion of the Roundabout construction.

b. **Access Easement.** Grantor grants to Grantee a permanent easement on and over the Grantor Real Estate (the "Access Easement") for the purpose of ingress and egress to maintain and repair the Roundabout.

3. **Building Demolition; Maintenance and Repair; Construction of a Parking Lot.**

a. As part of the Roundabout construction project, Grantor grants to Grantee the right to demolish the building situated on the Grantor Real Estate depicted as Area D on Exhibit B (the "Building"). Grantee represents and warrants to Grantor it will perform all demolition work in a safe manner in compliance with all applicable laws and best practices.

b. Grantee, at its sole cost, is responsible for all necessary maintenance and repairs required to keep the Roundabout in good operating condition, in accordance with all applicable laws. Further, following construction of the Roundabout, the City agrees, at its sole expense, to repair any damage to the Grantor Real Estate.

c. Grantee shall, at its sole cost, pave Area B following completion of the Roundabout project. Further, Grantee shall construct a parking lot on the shaded area shown on the attached Exhibit D, subject to following terms:

- i. Grantee shall provide the design services for said parking lot.
- ii. The parking lot shall meet all applicable City of Muscatine design specifications and regulations for private parking lots.
- iii. The design of said parking shall incorporate all of the Grantor's specifications provided that said specification are in compliance with all applicable City of Muscatine regulations.

Exhibit 1

- iv. The cost to the Grantee to construct said parking shall not exceed \$44,500. Grantor agrees to reimburse Grantee for all design and construction costs for said parking lot exceeding \$44,500.
 - v. Grantee shall determine the cost to construct said parking lot as a change order to the Roundabout project. Grantee shall notify, in writing the Grantor of said cost. Grantee shall not approve said change to construct said parking lot until the sooner or 30 days after notification to Grantor of the cost of said change order or Grantor's written approval.
 - vi. In lieu of the Grantee constructing said parking lot, the Grantor may elect to construct said parking lot. Should Grantor elect to make use of this option, Grantee shall reimburse Grantor an amount that is the lesser of: (a) an amount equal to half the actual cost incurred by the Grantor to construct said parking lot minus \$10,000; or (b) \$44,500.
4. **No Interference.** Grantor agrees that it will use and operate the Grantor Real Estate in a manner that does not materially interfere with the use and maintenance of the Roundabout and Grantee's rights hereunder.
5. **Perpetual Easements.** The Access Easement granted herein is appurtenant to and runs with the land and shall be perpetual, unless terminated by HNI upon at least 180 days' prior written notice to the City. Any conveyance of title to any part of the Grantor Real Estate shall be subject to the provisions of this Easement Agreement, and any transferee of any interest in any part of the Grantor Real Estate shall automatically be deemed, by acceptance of such interest, to have agreed to be bound by all of the provisions of this Easement Agreement. The parties bind themselves and their respective successors and assigns to warrant and forever defend the Access Easement granted herein.
7. **Non-Exclusive Benefit.** Grantor reserves the right to grant such other or similar easements, rights, rights-of-way, and privileges over, across, and under the Grantor Real Estate, so long as such easements, rights, rights-of-way, and/or privileges do not have a material adverse effect on the use of the Construction Easement or Access Easement.
8. **Indemnification.** Grantee shall indemnify and hold harmless Grantor from liability or damages that Grantor may suffer to the extent arising out of or as a result of use by Grantee of the Construction Easement or Access Easement or arising in any respect to the Roundabout or the demolition of the Building, except to the extent attributable to the negligence of Grantor or any Grantor invitee on the Grantor Real Estate. Grantor shall reasonably cooperate in the defense of any claim.
9. **Grantor's Warranty.** Grantor warrants to Grantee that it is the lawful owner of the Grantor Real Estate, it will warrant and defend the Grantor Real Estate against all lawful claims, and it has good and lawful authority to grant the Easements.
10. **General Provisions.** This Easement Agreement: (a) constitutes the entire understanding between the parties as to the subject matter hereof and merges all prior negotiations, agreements, or discussions between them relating thereto; (b) is binding upon the parties and their respective successors and permitted assigns; (c) may not be amended or modified unless such amendment or modification is made in writing and signed by all of the parties; (d) may not be assigned by any party without the prior written consent of the other parties; and (e) shall be governed by the laws of the State of Iowa (excluding Iowa law with respect to conflict of laws). No provision of this Easement Agreement may be waived unless such waiver is made in writing and signed by the party to be bound thereby. The unenforceability, invalidity, or illegality of any provision of this

Exhibit 1

Easement Agreement does not affect or impair any other provision or render it unenforceable, invalid, or illegal. The rights and remedies of the parties set forth herein are cumulative and are not exclusive of any other rights or remedies which the parties would otherwise have at law, in equity or otherwise. All exhibits referred to in this Easement Agreement are incorporated by reference.

[Signature Page Follows]

Exhibit 1

The parties have executed this Easement Agreement as of the Effective Date.

Grantor
HNI Corporation

Grantee
City of Muscatine

By [Signature]
Name Steven M Bradford
Title Secretary

By _____
Name _____
Title _____

STATE OF IOWA, MUSCATINE COUNTY, ss.

This instrument was acknowledged before me on December 18, 2019, by Steven M. Bradford, as the Secretary of HNI Corporation.



[Signature]
Notary Public in and for the State of Iowa

STATE OF IOWA, MUSCATINE COUNTY, ss.

This instrument was acknowledged before me on December ____, 2019, by _____, as the _____ for the City of Muscatine, Iowa.

Notary Public in and for the State of Iowa

Exhibit A of Exhibit 1

EXHIBIT A Legal Description

Parcel ID 0836352034:

**36-77-2W (EX TRACT NW COR LOT 10 & EX S PRT LOTS 1-3) BLK 16 OT & ORANGE ST ADJ 1997-7587 OAK LAMINATE
PARKING**

And

Parcel ID 0835477012:

35-77-2W LOTS 1 & 2 & W 20' LOT 3 BLK 29

EXHIBIT B

Grantor Real Estate

1. AREA "A"

2. AREA "B"

3. AREA "C"

4. AREA "D"

5. AREA "E"

6. AREA "F"

7. AREA "G"

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 Phone: 216.781.1234
 Email: cleveland@bolton-mcnk.com

BOLTON & MENK

City of Muscatine, Iowa
 Main Street Roundabout
 Overall View

SHEET
 1

Exhibit D of Exhibit 1

