

Prepared by: Richard J. Scieszinski, City Attorney, PO Box 65320, West Des Moines, IA 50265-0320 (515) 222-3614  
Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines IA 50265 (515) 222-3600

SPACE ABOVE THIS LINE FOR RECORDER

**STORM SEWER EASEMENT**

**KNOW ALL MEN BY THESE PRESENTS:**

1. Grant of Easement.

The undersigned, General Manufacturing Co., an Iowa corporation, (hereinafter "Grantor"), in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, and convey to the City of West Des Moines, Iowa, a municipal corporation (hereinafter referred to as "the City"), a permanent and perpetual Storm Sewer Easement (hereinafter referred to as the "Easement") upon, over, under, through and across the real property legally described as:

As shown on the attached Permanent Easement Acquisition Plat marked Exhibit "011-02-P" (hereinafter referred to as "Easement Area").

2. Use and Purpose of Easement.

This Easement shall be granted to the City for the purpose of constructing and permanently maintaining permanent storm sewer improvements and to allow the City or its agents to enter at any time upon and into the easement area as shown on the attached Exhibit "011-02-P" and to use as much of the surface and subsurface thereof to locate, construct, replace, rebuild, enlarge, reconstruct, add to, patrol, repair and maintain the storm sewer improvements whenever necessary, subject to the following terms and conditions:

- a) No structure or building of any kind whatsoever shall be erected upon property that is the subject of this Easement without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. "Structure" or "building" shall not include Grantor's use of the surface for facilities such as drives, parking, sidewalks, streets, street lights, fences, berms, and landscaping, and which if installed or constructed shall be done so at Grantor's sole risk
- b) The City shall take reasonable steps to ensure that all work performed by the City in the Easement Area will be initiated and completed within a reasonable period. Following completion of the work performed by the City, the Easement Area described herein shall be restored in a workmanlike manner to a condition similar to that which existed prior to the performance of work by the City. The City shall also be responsible for removal of all debris, spoils, equipment, etc. used by the City in connection with the work performed in the Easement Area. During the term of this Easement, the City may make use of gasoline or other fuels for equipment used for constructing, maintaining, or repairing the public improvements,

provided the City handles such substances in accordance with all applicable laws, rules, regulations, and ordinances. Use of the Property by City or City's designee(s) will not include, however, the use of any hazardous substance, but if a hazardous substance is used, City shall obtain the written consent of the Grantor prior to its use. City acknowledges and agrees that the Grantor's consent is at the Grantor's sole option and discretion and that such consent will not be unreasonably withheld but may be granted with any conditions or requirements that the Grantor deems appropriate.

During the term of this Easement, City shall be fully liable for all costs and expenses related to the use, storage, removal and disposal of hazardous substances used or kept on the Property, and City shall give immediate notice to the Grantor of any violation or any potential violation of any environmental regulation, rule, statute or ordinance relating to the use, storage or disposal of any hazardous substance.

City, at its sole cost and expense, agrees to remediate, correct or remove from the Property any contamination of the Property caused by any hazardous substances which have been used or permitted by City, its contractors, agents or assigns during the term of this Easement. Remediation, correction or removal shall be done in a safe and reasonable manner, and in conformance with all applicable laws, rules and regulations. City reserves all rights allowed by law to seek indemnity or contribution from any person or entity other than the Grantor who is or may be liable for any such cost and expense.

City agrees to indemnify and hold the Grantor harmless from and against all claims, causes of action, damages, loss, costs, expense, penalties, fines, lawsuits, liabilities, attorney fees and engineering and consulting fees arising out of or in any manner connected with hazardous substances which are caused or created by City, its contractors, agents or assigns on or after the termination of this Easement, including but not limited to injury or death to persons or damage to property, and including any diminution in the value of the Property which may result from the foregoing. This indemnity shall survive the cessation, termination, abandonment or expiration of this Easement.

- c) Unless done at the direction or authority of the City, nothing in this Easement shall obligate the City to perform any work or engage in any repair or restoration of the Easement Area resulting from actions taken by other individuals or entities (i.e., utility companies) other than the City or its contractors. Any individuals or entities (i.e., utility companies) other than the City or its contractors that make use of the Easement shall be deemed to undertake the City's obligations under this Easement and are hereby notified of the same.
- d) It is understood and agreed that the consideration for this Easement includes full compensation to Grantor(s) for acquisition of this Easement as agreed upon by the City and the Grantor(s).
- e) In considering future requests for the City's consent with respect to "structures" and "buildings" in the Easement Area, City acknowledges and agrees that significant development is likely to occur along the Easement Area, and accordingly, neither the Easement granted herein nor the requirement of obtaining City's consent with respect to such matters shall be used to impede or impair such development if Grantor's proposed action does not unreasonably interfere with the City's use of the Easement.

### 3. Hold Harmless.

The City shall indemnify and hold the Grantor harmless from and against any loss, expense (including Grantor's attorney fees) or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, related to this Agreement, unless such damage or injury is attributable to the negligence or willful misconduct of the Grantor; provided, Grantor gives the City prompt notice of any such claim and all necessary information and assistance so that the City, at its option, may defend or settle such claim, and Grantor does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

4. Successors and Assigns.

The terms and conditions of this Easement are binding upon the City and Grantor(s) including, but not limited to, future owners, developers, lessees, or occupants. All provisions of this record, including benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, successors, tenants, and personal representatives of the parties hereto.

5. Lawful Authority.

The Grantor covenants with the City that it holds the above-described legal property by good and marketable title, free and clear of liens, easements, and encumbrances, except any of record, and that the Grantor has a right and lawful authority to make and execute this Easement. Grantor warrants and defends said Easement against the lawful claims of all person claiming by, through and under Grantor.

6. Jurisdiction and Venue.

The City and the Grantor(s) agree that the district court in and for the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties consent to the district court for Madison County, Iowa as proper venue.

7. Approval of City.

This Easement shall not be binding until it has received the final approval and acceptance of the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Easement by the City Clerk.

8. Words and Phrases.

Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or gender neutral, according to the context.

9. Attorney's Fees.

Either party may enforce this Easement by appropriate action and the prevailing party shall recover as part of its costs the reasonable attorney fees incurred in such action.

10. Parties.

The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, and contractors. The term "Grantors" shall refer to the undersigned, its assigns, successors in interest, or lessees, if any.

11. Integration.

This Easement shall constitute the entire agreement between the parties and no amendments or additions to this Easement shall be binding unless in writing and signed by both parties.

12. Right of Renegotiation.

The City hereby gives notice of Grantor's five-year right to renegotiate construction and maintenance damages not apparent at the time of the signing of this Easement, as required by Section 6B.52 of the Code of Iowa.

13. Paragraph Headings.

The paragraph headings in this Easement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Easement.

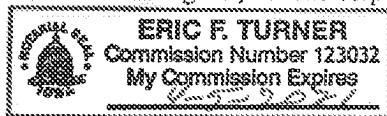
Dated this 29<sup>th</sup> day of June, 2018.

GENERAL MANUFACTURING CO.

By Misty Witter Lee VP  
Misty Witter Lee, Vice President

STATE OF IOWA )  
                          ) SS  
COUNTY OF Polk )

This record was acknowledged before me on the 29<sup>th</sup> day of June, 2018 by Misty Witter Lee, as Vice President of General Manufacturing Co., an Iowa corporation, on behalf of whom the record was executed.



[Signature]  
NOTARY PUBLIC

CERTIFICATION BY CITY OF WEST DES MOINES, IOWA

I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that acquisition of the within and foregoing Storm Sewer Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. 18-421, passed on June 29, 2018, and that this certificate is made pursuant to the authority of said City Council.

Signed this 29<sup>th</sup> day of June, 2018.

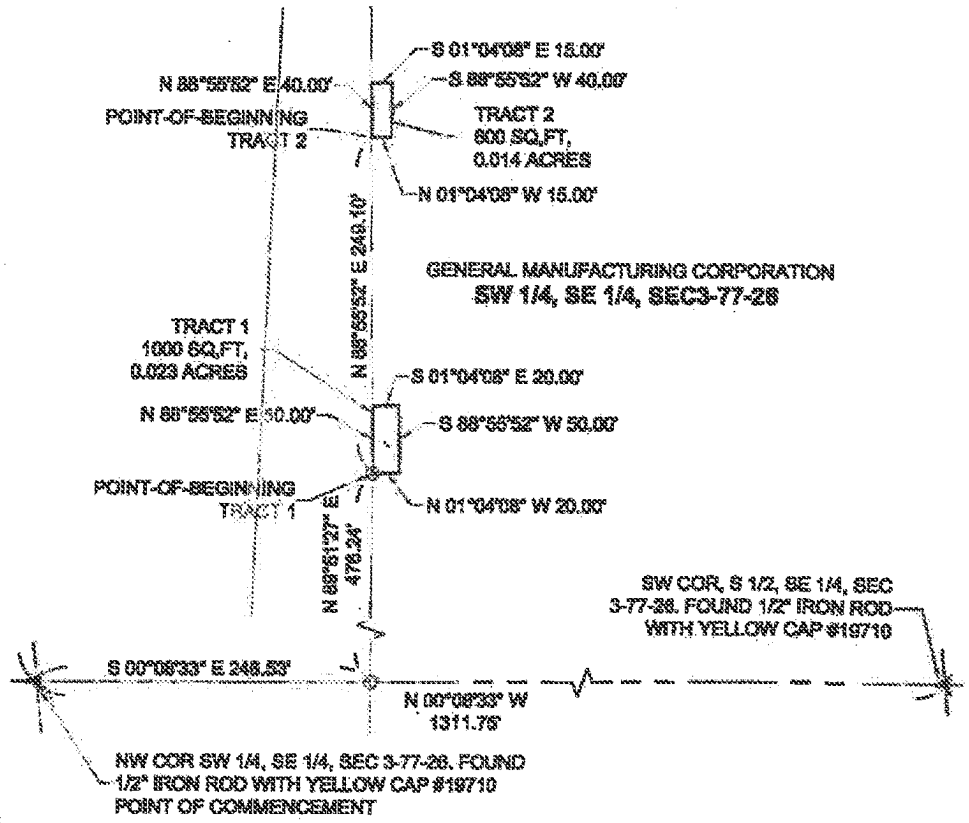
CITY OF WEST DES MOINES, IOWA

BY: Ryan T. Jacobson  
Ryan T. Jacobson, City Clerk

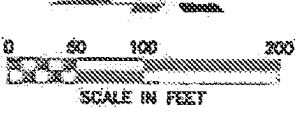
**NOTICE TO ORDER**  
 LOCATION : S 1/2, SE 1/4 SEC 3, SW 1/4, SW 1/4 SEC 2-77-28  
 REQUESTOR : CITY OF WEST DES MOINES, IOWA  
 PROJECTOR : GENERAL MANUFACTURING CORPORATION  
 SURVEYOR : MURRAY B. BERTING  
 COMPANY : SHIVEHATTERY  
 RETURN TO : 4125 Woodmen Pkwy, Suite 100, West Des Moines, Iowa 50325  
 PHONE NO : 515-281-1234

**ACQUISITION PLAT**  
**PARCEL 011-02-P**  
**PERMANENT EASEMENT**  
**VETERANS PARKWAY**

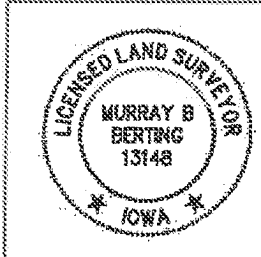
1100 000000 0000000000 0000 0000000000 0000



**LEGEND:**



MONUMENT FOUND AS NOTED  
 MONUMENT SET 1/2" IRON ROD 13148  
 SECTION LINE  
 RIGHT-OF-WAY LINE  
 ACQUISITION AREA



I HEREBY CERTIFY THAT THIS LAND SURVEYING DECLARATION WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
 NAME: MURRAY B. BERTING  
 LICENSE NUMBER: 13148  
 MY LICENSE EXPIRES DATE: DECEMBER 31, 2018  
 PARCEL SHEETS OR DRAWINGS COVERED BY THIS DECLARATION: 1 OF 2, 3 OF 2

**SHIVEHATTERY**  
 ARCHITECTURE+ENGINEERING  
 2103 Eastland Drive | Bloomington, Illinois 61704  
 309.882.8882 | fax: 309.882.8808 | www.shive-hattery.com  
 Iowa | Illinois | Indiana

ACQUISITION PLAT PARCEL 011-02-P		PROJECT NO.
TRACT 1 AND TRACT 2		496820
PROJECT NO. 0010-011-0017		
WEST DES MOINES, IOWA		
DATE	SCALE	SHEET NO.
DRAWN	BY: FSL/D	1 OF 2
APPROVED	DATE: 10/01/18	

**INDEX/LEGEND**

LOCATION : S 1/4, SE 1/4 SEC 3, SW 1/4, SW 1/4 SEC 3-77-28  
REQUESTOR : CITY OF WEST DES MOINES, IOWA  
PROPRIETOR : GENERAL MANUFACTURING CORPORATION  
SURVEYOR : MURRAY B. SCOTTING  
SURVEY : SHIVE-HATTERY  
COMPANY : 4125 Webster Hwy, Suite 103, West Des Moines, Iowa 50325  
RETURN TO : SHIVE-HATTERY

THIS SPACE RESERVED FOR RECORDED DATE

**ACQUISITION PLAT**

**PARCEL 011-02-P  
PERMANENT EASEMENT  
VETERANS PARKWAY**

LEGAL DESCRIPTION PARCEL 011-02-P, TRACT 2, PART OF THE SW1/4, SE1/4, SECTION 3:

A PARCEL OF LAND LYING ENTIRELY WITHIN AND FORMING A PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 3, TOWNSHIP 77 NORTH, RANGE 28 WEST OF THE 5TH P.M. NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, MADISON COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 3;

THENCE SOUTH 00°08'33" EAST, ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 3, FOR A DISTANCE OF 246.53 FEET;

THENCE NORTH 88°51'27" EAST, FOR A DISTANCE OF 476.24 FEET;

THENCE NORTH 88°55'52" EAST, FOR A DISTANCE OF 248.10 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 88°55'52" EAST, FOR A DISTANCE OF 40.00 FEET;

THENCE SOUTH 01°04'08" EAST, FOR A DISTANCE OF 15.00 FEET;

THENCE SOUTH 88°55'52" WEST, FOR A DISTANCE OF 40.00 FEET;

THENCE NORTH 01°04'08" WEST, FOR A DISTANCE OF 15.00 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 800 SQUARE FEET (0.014 ACRES) MORE OR LESS.

LEGAL DESCRIPTION PARCEL 011-02-P, TRACT 1, PART OF THE SW1/4, SE1/4, SECTION 3:

A PARCEL OF LAND LYING ENTIRELY WITHIN AND FORMING A PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 3, TOWNSHIP 77 NORTH, RANGE 28 WEST OF THE 5TH P.M. NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, MADISON COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 3;

THENCE SOUTH 00°08'33" EAST, ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 3, FOR A DISTANCE OF 246.53 FEET;

THENCE NORTH 88°51'27" EAST, FOR A DISTANCE OF 476.24 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 88°55'52" EAST, FOR A DISTANCE OF 50.00 FEET;

THENCE SOUTH 01°04'08" EAST, FOR A DISTANCE OF 20.00 FEET;

THENCE SOUTH 88°55'52" WEST, FOR A DISTANCE OF 50.00 FEET;

THENCE NORTH 01°04'08" WEST, FOR A DISTANCE OF 20.00 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1,000 SQUARE FEET (0.023 ACRES) MORE OR LESS.

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**SHIVE-HATTERY**  
ARCHITECTURE+ENGINEERING  
2103 Eastland Drive | Bloomington, Illinois 61704  
309.882.8902 | fax 309.882.5508 | www.shive-hattery.com  
Iowa | Illinois | Indiana

ACQUISITION PLAT PARCEL 011-02-P  
TRACT 1 AND TRACT 2  
PROJECT NO. 011-011-2017  
WEST DES MOINES, IOWA

DATE	SCALE	PROJECT NO.
DRAWN	DATE	4168090
APPROVED	FIELD BOOK	
	DATE	

2 OF 2