



Date March 4, 2024

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR, SURFACE AND SUBSURFACE RIGHTS WITHIN PORTIONS OF ALLEY, UNIVERSITY AVENUE AND 22<sup>ND</sup> STREET RIGHT-OF-WAY ADJOINING 2211 UNIVERSITY AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY, A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY, AND A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO NEIGHBORHOOD DEVELOPMENT CORPORATION FOR \$2,710**

**WHEREAS**, on January 8, 2024, by Roll Call No. 24-0042, the City Council of the City of Des Moines, Iowa, voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request from Neighborhood Development Corporation for the following regarding property located at 2211 University Avenue: A) Vacation of approximately 40 square feet of air right-of-way on University Avenue to allow the encroachment of a proposed building awning, B) Vacation of approximately 24 square feet of surface right-of-way on 22<sup>nd</sup> Street to allow the encroachment of a proposed building door swing, C) Vacation of approximately 90 square feet of surface right-of-way on the western north/south alleyway adjoining the subject property to allow the encroachment of proposed trash enclosure gates, and D) Vacation of approximately 1,761 square feet of subsurface right-of-way on 22<sup>nd</sup> Street, University Avenue, and the adjoining western north/south alleyway to allow the encroachment of proposed building footings, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and

**WHEREAS**, Neighborhood Development Corporation, the owner of 2211 University Avenue, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$2,710.00 for the purchase of a Permanent Easement for Building Encroachment, a Permanent Easement for Building Encroachment-Door Swing, a Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and a Permanent Easement for Air Space Above City-Owned Property (“Easements”) over through and across portions of vacated University Avenue, 22<sup>nd</sup> Street, and alley right-of-way adjoining 2211 University Avenue (hereinafter “Easement Area”), for the purpose of constructing and maintaining building, building footing and awning encroachments into the University Avenue, 22<sup>nd</sup> Street, and alley right-of-way; which price reflects the fair market value of the Easements as determined by the City’s Real Estate Division; and

**WHEREAS**, there is no known current or future public need for the street right-of-way proposed to be vacated, and the City will not be inconvenienced by the vacation of said street right-of-way and the conveyance of the Easements in such vacated right-of-way; and

**WHEREAS**, on February 19, 2024, by Roll Call No. 24-0247, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation of the street right-of-way and conveyance of the Permanent Easement for Air Space Above City-Owned Property and Permanent Easement for Building Encroachment be set for hearing on March 4, 2024, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and



Date March 4, 2024

**WHEREAS**, due notice of said proposal to vacate the street right-of-way and convey the Easements was given as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in the proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation of the air, surface and subsurface rights within portions of University Avenue, 22<sup>nd</sup> Street, and alley right-of-way adjoining 2211 University Avenue, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the rights-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the air, surface and subsurface rights within portions of University Avenue, 22<sup>nd</sup> Street, and alley right-of-way adjoining 2211 University Avenue, legally described as follows, and said vacation is hereby approved:

AIR RIGHTS

A VACATION OF PART OF THE UNIVERSITY AVENUE PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOT 363, UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, AN OFFICIAL PLAT RECORDED IN BOOK 'C', PAGE 48 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE SE CORNER OF SAID LOT 363; THENCE N89°41'10"W, 12.00 FEET ALONG THE SOUTH LINE OF SAID LOT 363, SAID SOUTH LINE COINCIDES WITH THE NORTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE AS IT IS PRESENTLY ESTABLISHED, TO THE POINT OF BEGINNING; THENCE S00°18'50"W, 5.00 FEET TO A POINT THAT IS 5.00 FEET SOUTH OF SAID NORTH RIGHT-OF-WAY LINE; THENCE N89°41'10"W, 12.00 FEET ALONG A LINE THAT IS 5.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH RIGHT-OF-WAY LINE TO A POINT; THENCE N00°18'50"E, 5.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 363; THENCE S89°39'51"E, 12.00 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING AND CONTAINING 60 SQUARE FEET MORE OR LESS.

THE PREVIOUS DESCRIPTION IS RESTRICTED BETWEEN THE FOLLOWING ELEVATIONS:

BOTTOM OF EASEMENT = 181.14

TOP OF EASEMENT = 185.14

.....  
**Date**..... March 4, 2024.....

A REFERENCE ELEVATION OF THE FIRST FLOOR OF 170.14 FEET AND A GROUND ELEVATION OF 169.93 FEET.

SURFACE RIGHTS – 22<sup>nd</sup> STREET

A VACATION OF PART OF THE 22ND STREET PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOT 363, UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, AN OFFICIAL PLAT RECORDED IN BOOK 'C', PAGE 48 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE SE CORNER OF SAID LOT 363; THENCE N00°11'14"W, 42.00 FEET ALONG THE EAST LINE OF SAID LOT 363, SAID EAST LINE COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF 22ND STREET AS IT IS PRESENTLY ESTABLISHED, TO THE POINT OF BEGINNING; THENCE CONTINUING N00°11'14"E, 6.00 FEET TO A POINT; THENCE N89°48'46"E, 4.00 FEET TO A POINT THAT IS 4.00 FEET EAST OF SAID WEST RIGHT-OF-WAY LINE; THENCE S00°11'14"E, 6.00 FEET ALONG A LINE THAT IS 4.00 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S89°48'46"W, 4.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 24 SQUARE FEET MORE OR LESS.

AND,

SURFACE RIGHTS - ALLEY

A VACATION OF PART OF THE PUBLIC ALLEY RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO THE WEST LINE OF LOT 365, UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, AN OFFICIAL PLAT RECORDED IN BOOK 'C', PAGE 48 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE NW CORNER OF SAID LOT 365; THENCE S00°07'57"E, 6.00 FEET ALONG THE WEST LINE OF SAID LOT 365 TO THE POINT OF BEGINNING; THENCE CONTINUING S00°07'57"E, 18.00 FEET ALONG SAID WEST LINE TO A POINT; THENCE S89°52'03"W, 5.00 FEET TO A POINT THAT IS 5.00 FEET WEST OF THE WEST LINE OF SAID LOT 365; THENCE N00°07'57"W, 18.00 FEET ALONG A LINE THAT IS 5.00 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 365 TO A POINT; THENCE N89°52'03"E, 5.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 90 SQUARE FEET MORE OR LESS.

SUBSURFACE RIGHTS

A VACATION OF PART OF THE 22ND STREET PUBLIC RIGHT-OF-WAY, A PART OF THE UNIVERSITY AVENUE PUBLIC RIGHT-OF-WAY, AND A PART OF THE PUBLIC ALLEY RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 363 AND 364, UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, AN OFFICIAL PLAT RECORDED IN BOOK 'C', PAGE 48 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:



Date March 4, 2024

BEGINNING AT THE SE CORNER OF SAID LOT 363; THENCE N00°11'14"W, 60.26 FEET ALONG THE EAST LINE OF LOTS 363 AND 364 IN SAID UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, SAID EAST LINE COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF 22ND STREET AS IT IS PRESENTLY ESTABLISHED, TO A POINT; THENCE N89°48'46"E, 6.00 FEET TO A POINT THAT IS 6.00 FEET EAST OF SAID WEST RIGHT-OF-WAY; THENCE S00°11'14"E, 66.31 FEET ALONG A LINE THAT IS 6.00 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT THAT IS 6.00 FEET SOUTH OF THE NORTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE AS IT IS PRESENTLY ESTABLISHED; THENCE N89°41'10"W, 173.34 FEET ALONG A LINE THAT IS 6.00 FEET SOUTH OF AND PARALLEL TO SAID NORTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE TO A POINT THAT IS 6.00 FEET WEST OF THE WEST LINE OF SAID LOT 363; THENCE N00°07'57"W, 63.95 FEET ALONG A LINE THAT IS 6.00 FEET WEST OF THE WEST LINE OF SAID LOT 363 TO A POINT; THENCE N89°52'03"E, 6.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 363; THENCE S00°07'57"E, 58.00 FEET ALONG SAID WEST LINE TO THE SW CORNER OF SAID LOT 363; S89°41'10"E, 161.34 FEET ALONG THE SOUTH LINE OF SAID LOT 363 TO THE POINT OF BEGINNING CONTAINING 1,750 SQUARE FEET MORE OR LESS.

- 3. The proposed conveyance of the Permanent Easement for Building Encroachment, Permanent Easement for Building Encroachment-Door Swing, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Air Space Above City-Owned Property in such vacated street right-of-way, as legally described below, to Neighborhood Development Corporation for \$2,710.00, and said conveyance is hereby approved:

AIR SPACE ENCROACHMENT:

AN AIR RIGHTS EASEMENT IN A PART OF VACATED UNIVERSITY AVENUE PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOT 363, UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, AN OFFICIAL PLAT RECORDED IN BOOK 'C', PAGE 48 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE SE CORNER OF SAID LOT 363; THENCE N89°41'10"W, 12.00 FEET ALONG THE SOUTH LINE OF SAID LOT 363, SAID SOUTH LINE COINCIDES WITH THE NORTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE AS IT IS PRESENTLY ESTABLISHED, TO THE POINT OF BEGINNING; THENCE S00°18'50"W, 5.00 FEET TO A POINT THAT IS 5.00 FEET SOUTH OF SAID NORTH RIGHT-OF-WAY LINE; THENCE N89°41'10"W, 12.00 FEET ALONG A LINE THAT IS 5.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH RIGHT-OF-WAY LINE TO A POINT; THENCE N00°18'50"E, 5.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 363; THENCE S89°39'51"E, 12.00 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING AND CONTAINING 60 SQUARE FEET MORE OR LESS. THE PREVIOUS DESCRIPTION IS RESTRICTED BETWEEN THE FOLLOWING ELEVATIONS: BOTTOM OF EASEMENT = 181.14, TOP OF EASEMENT = 185.14

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A REFERENCE ELEVATION OF THE FIRST FLOOR OF 170.14 FEET AND A GROUND ELEVATION OF 169.93 FEET.

BUILDING ENCROACHMENT:

A SURFACE RIGHTS EASEMENT IN A PART OF VACATED PUBLIC ALLEY RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO THE WEST LINE OF LOT 365, UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, AN OFFICIAL PLAT RECORDED IN BOOK 'C', PAGE 48 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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DOOR SWING ENCROACHMENT

A SURFACE RIGHTS EASEMENT IN A PART OF VACATED 22<sup>ND</sup> STREET PUBLIC RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOT 363, UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, AN OFFICIAL PLAT RECORDED IN BOOK 'C', PAGE 48 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS A POINT OF REFERENCE AT THE SE CORNER OF SAID LOT 363; THENCE N00°11'14"W, 42.00 FEET ALONG THE EAST LINE OF SAID LOT 363, SAID EAST LINE COINCIDES WITH THE WEST RIGHT-OF-WAY LINE OF 22<sup>ND</sup> STREET AS IT IS PRESENTLY ESTABLISHED, TO THE POINT OF BEGINNING; THENCE CONTINUING N00°11'14"E, 6.00 FEET TO A POINT; THENCE N89°48'46"E, 4.00 FEET TO A POINT THAT IS 4.00 FEET EAST OF SAID WEST RIGHT-OF-WAY LINE; THENCE S00°11'14"E, 6.00 FEET ALONG A LINE THAT IS 4.00 FEET EAST OF AND PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE TO A POINT; THENCE S89°48'46"W, 4.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 24 SQUARE FEET MORE OR LESS.

SUBSURFACE ENCROACHMENT:

A SUBSURFACE RIGHTS EASEMENT IN A PART OF VACATED 22ND STREET PUBLIC RIGHT-OF-WAY, A PART OF VACATED UNIVERSITY AVENUE PUBLIC RIGHT-OF-WAY, AND A PART OF VACATED PUBLIC ALLEY RIGHT-OF-WAY LYING DIRECTLY ADJACENT TO LOTS 363 AND 364, UNIVERSITY LAND COMPANY'S SECOND ADDITION TO UNIVERSITY PLACE, AN

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OFFICIAL PLAT RECORDED IN BOOK 'C', PAGE 48 AT THE POLK COUNTY RECORDER'S OFFICE, CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Building Encroachment, Permanent Easement for Building Encroachment-Door Swing, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Air Space Above City-Owned Property for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon proof of payment of the consideration, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, Permanent Easement for Building Encroachment-Door Swing, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Air Space Above City-Owned Property, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, Permanent Easement for Building Encroachment-Door Swing, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Air Space Above City-Owned Property, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.



Date March 4, 2024

7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment, Permanent Easement for Building Encroachment-Door Swing, Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and Permanent Easement for Air Space Above City-Owned Property and a copy of the other documents to the grantee.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

Moved by \_\_\_\_\_ to adopt.

Second by \_\_\_\_\_.

APPROVED AS TO FORM:

/s/ Mackenzie L. Moreno
Mackenzie L. Moreno, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include BOESEN, VOSS, COLEMAN, WESTERGAARD, MANDELBAUM, GATTO, TOTAL, MOTION CARRIED, APPROVED, Mayor.

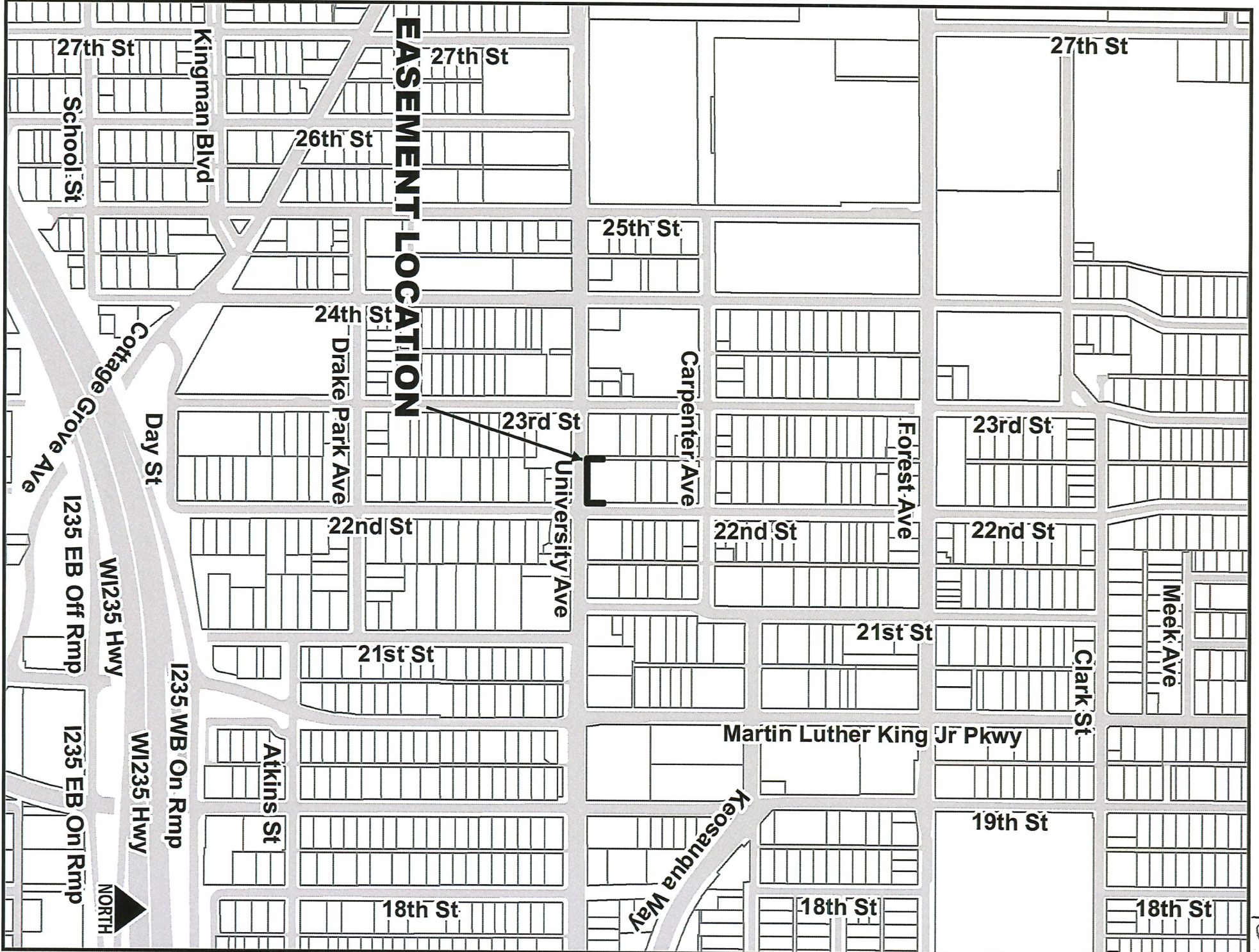
CERTIFICATE

I, Laura Baumgartner, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Laura Baumgartner, City Clerk

**EASEMENT LOCATION**



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