



Date May 4, 2020

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF
PORTIONS OF 24TH STREET AND UNIVERSITY AVENUE RIGHT-OF-WAY
ADJOINING 2331 UNIVERSITY AVENUE AND CONVEYANCE OF CERTAIN
EASEMENT INTERESTS TO NEIGHBORHOOD DEVELOPMENT CORPORATION
FOR \$343.00**

WHEREAS, on March 9, 2020, by Roll Call No. 20-0420, 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, owner of property at 2331 University Avenue, to vacate the following portions of street right-of-way, subject to the reservation of any existing utilities until such time that they are abandoned or relocated at the applicant's expense; and further subject to the provision of bollards or planters on both sides of the 3-foot by 3.5-foot proposed door swing vacations into the public right-of-way on University Avenue as approved by the Planning Administrator:

- (1) Two 3-foot by 3.5-foot segments of University Avenue, to allow for an exterior door swings;
- (2) A 43.73-foot long by 0.40-foot segment of University Avenue to accommodate an existing building encroachment;
- (3) Two 7.5-foot by 5-foot segments of University Avenue air rights to allow for sign canopies; and
A 46.77-foot by 0.90-foot segment of 24th Street to allow for an existing building encroachment;
and

WHEREAS, Neighborhood Development Corporation, owner of property at 2331 University Avenue, has offered to the City of Des Moines ("City") the purchase price of \$343.00 for the purchase of a Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment – Door Swing, and a Permanent Easement for Building Encroachment in portions of the vacated University Avenue and 24th Street right-of-way adjoining 2331 University Avenue, Des Moines, Iowa (hereinafter "Property"), for the purpose of installing, operating, maintaining, or repairing sign canopies and door swings on the building at 2331 University Avenue, and for the purpose of mitigating an existing building encroachment into the right-of-way, which price reflects the fair market value of the Property as determined by the City's Real Estate Division; and

WHEREAS, the City has no known current or anticipated public need for the Property proposed to be vacated and conveyed, subject to: 1) the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at applicant's expense; and 2) the provision of bollards or planters on both sides of the 3-foot by 3.5-foot proposed door swing vacations into the public right-of-way on University Avenue as approved by the Planning Administrator, and the City will not be inconvenienced by the vacation and sale of easements within said Property; and

WHEREAS, on April 20, 2020, by Roll Call No. 20-0616, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the Property be set for hearing on May 4, 2020, at 5:00 p.m., in the MSC Board Room, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa; and



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WHEREAS, due notice of said proposal to vacate (1) two 3-foot by 3.5-foot segments of University Avenue; (2) a 43.73-foot long by 0.40-foot segment of University Avenue; (3) two 7.5-foot by 5-foot segments of University Avenue air rights; and a 46.77-foot by 0.90-foot segment of 24th Street, all adjoining 2331 University Avenue, Des Moines, Iowa; subject to: 1) the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at applicant's expense; and 2) the provision of bollards or planters on both sides of the 3-foot by 3.5-foot proposed door swing vacations into the public right-of-way on University Avenue as approved by the Planning Administrator, was given to all necessary parties 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 and conveyance of (1) two 3-foot by 3.5-foot segments of University Avenue; (2) a 43.73-foot long by 0.40-foot segment of University Avenue; (3) two 7.5-foot by 5-foot segments of University Avenue air rights; and a 46.77-foot by 0.90-foot segment of 24th Street, all adjoining 2331 University Avenue, Des Moines, Iowa as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said street right-of-way, legally described as follows, and said vacation is hereby approved:

AIR RIGHTS ENCROACHMENT

Area #1

That part of University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast corner of said West 84.25 feet of Lot 34; thence South 89°(degrees) 33'(minutes) 45"(seconds) West (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 40.51 feet along the South line of said Lot 34 to the Point of Beginning; thence South 00°26'15" East, 7.50 feet; thence South 89°33'45" West, 5.00 feet; thence North 00°26'15" West, 7.50 feet to the South line of said Lot 34; thence North 89°33'45" East, 5.00 feet to the point of beginning.

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Lying between elevations 183.76 feet and 189.76 feet, City of Des Moines Vertical Datum (reference ground level elevation of 174.26 feet, City of Des Moines Vertical Datum). Horizontally containing 37.50 square feet.

Area #2

That part of University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast corner of said West 84.25 feet of Lot 34; thence South 89°(degrees) 33'(minutes) 45"(seconds) West (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 79.15 feet along the South line of said Lot 34 to the Point of Beginning; thence South 00°26'15" East, 7.50 feet; thence South 89°33'45" West, 5.00 feet; thence North 00°26'15" West, 7.50 feet to the South line of said Lot 34; thence North 89°33'45" East, 5.00 feet to the point of beginning.

Lying between elevations 183.76 feet and 189.76 feet, City of Des Moines Vertical Datum (reference ground level elevation of 174.26 feet, City of Des Moines Vertical Datum). Horizontally containing 37.50 square feet.

DOOR SWING ENCROACHMENT:

That part of University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 34; thence North 89°(degrees) 33'(minutes) 45"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 38.90 feet along the South line of said Lot 34; thence South 00°01'16" West, 0.36 feet to the Point of Beginning; thence South 89°58'44" East, 3.50 feet; thence South 00°01'16" West, 3.00 feet; thence North 89°58'44" West, 3.50 feet; thence North 00°01'16" East, 3.00 feet to the point of beginning. Containing 10.50 square feet.

SURFACE ENCROACHMENT:**24th Street**

That part of 24th Street right-of-way lying West of and adjoining the West 84.25 feet of Lots 33 and 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 34; thence North 00°(degrees) 15'(minutes) 47"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 24.39 feet along the West line of said Lot 34 to the Point of Beginning; thence North 00°01'56" East, 46.77 feet; thence South 89°44'13" East,

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0.19 feet to the West line of said Lot 33; thence South 00°15'47" West, 46.77 feet along the West lines of said Lots 33 and 34 to the point of beginning. Containing 4.41 square feet.

University Avenue

That part of University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Beginning at the Southwest corner of said Lot 34; thence North 89°(degrees) 33'(minutes) 45"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 43.73 feet along the South line of said Lot 34; thence South 00°26'15" East, 0.40 feet; thence North 89°58'44" West, 43.74 feet; thence North 00°15'47" East, 0.05 feet to the point of beginning. Containing 9.84 square feet.

3. The proposed sale of convey a Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment – Door Swing, and a Permanent Easement for Building Encroachment, as legally described and to the grantees and for the consideration identified below, subject to: 1) the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at applicant's expense; and 2) the provision of bollards or planters on both sides of the 3-foot by 3.5-foot proposed door swing vacations into the public right-of-way on University Avenue as approved by the City Planning Administrator, is hereby approved:

Grantee: Neighborhood Development Corporation

Consideration: \$343.00

Legal Description:

AIR RIGHTS EASEMENT**Area #1**

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

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That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

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DOOR SWING EASEMENT:

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SURFACE EASEMENT:24th Street

That part of Vacated 24th Street right-of-way lying West of and adjoining the West 84.25 feet of Lots 33 and 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

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University Avenue

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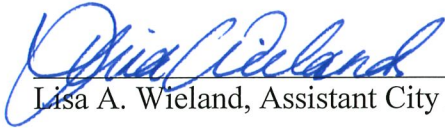
4. The Mayor is authorized and directed to sign the Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment – Door Swing, and a Permanent Easement for Building Encroachment for the conveyances as identified above, and the City Clerk is authorized and 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 Air Space Above City-owned Property, a Permanent Easement for Building Encroachment – Door Swing, and a Permanent Easement for Building Encroachment, 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 Air Space Above City-owned Property, a Permanent Easement for Building Encroachment – Door Swing, and a Permanent Easement for Building Encroachment, 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.
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 Air Space Above City-owned Property, a Permanent Easement for Building Encroachment – Door Swing, and a Permanent Easement for Building Encroachment, 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.

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Moved by Gray to adopt.

APPROVED AS TO FORM:


Lisa A. Wieland, Assistant City AttorneyPSW**CERTIFICATE**

I, P. KAY CMELIK, 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.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED


J. M. Franklin Cownie
Mayor
P. Kay Cmelik
City Clerk

Prepared by: David DeForest Colvig, Real Estate Coordinator, City of Des Moines, (515) 283-4984
Return to: Real Estate Division, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891
Taxpayer: Neighborhood Development Corporation, 2331 University Avenue, Suite 202, Des Moines, IA 50311
Title of Document: Permanent Easement for Building Encroachment – Door Swing
Grantor's Name: City of Des Moines, Iowa
Grantee's Name: Neighborhood Development Corporation
Legal Description: See below on this page.

Project: Disposition – No Acquisition Project

Parcel No.: 614

Activity ID: 341111000

PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY

The **City of Des Moines, Iowa** (hereinafter referred to as the "Grantor" or "City"), in consideration of the sum of Two Hundred Forty-nine and No/100 Dollars (\$249.00), receipt of which is hereby acknowledged, does hereby convey unto **Neighborhood Development Corporation, an Iowa non-profit corporation** (hereinafter referred to as the "Grantee"), a Permanent Easement for Air Space Above City-owned Property (hereinafter referred to as the "Easement") through and across the following described real property, and as shown on the Air Rights Easement Exhibit attached hereto:

Area #1

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

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(VACATED BY ORDINANCE NO. 15,893, PASSED May 4, 2020.)

Subject to any and all easements, restrictions, and covenants of record

(hereinafter referred to as the "Easement Area") for the purpose of allowing architectural element encroachments for signage into the right-of-way adjoining the real property locally known as 2530 University Avenue, Des Moines, Iowa, more particularly described as follows:

LOTS 38 THROUGH 43, AND -EXCEPT THE NORTH 7 FEET- LOT 44, DRAKE UNIVERSITY'S SECOND ADDITION, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA;

(hereinafter referred to as the "Benefited Property").

This Easement shall be subject to the following terms and conditions:

1. **CITY REVIEW AND APPROVAL: CONSTRUCTION REQUIREMENTS.** The location, design and proposed manner of construction of any structures or facilities to be placed within the Easement Area under authority of this Easement shall be subject to review and approval by the City and shall conform to all requirements of the Municipal Code, including but not limited to all zoning regulations. Construction within the Easement Area shall comply with the following requirements: Any overhang elements shall generally be in accordance with the submitted building elevations and site sketch, including all comments from the City's Traffic and Transportation Division.
2. **SURFACE RIGHTS EXCLUDED.** Nothing in this Easement provides Grantee any right to use, alter, or impact the surface or above-surface improvements below the Easement Area, and said surface and above-surface improvements are excluded from the Easement and Easement Area and remain dedicated City right-of-way subject to pedestrian and/or vehicular access by the City and the public, and subject to all pertinent local, state and federal laws and regulations.
3. **MAINTENANCE OF AND LIABILITY FOR EASEMENT AREA.** The Grantee shall be solely responsible for all activities related to and costs of maintenance of the Easement Area and construction, use, maintenance and repair of the improvements, in accordance with City ordinance, policies and regulations, and State and federal law. Grantee shall maintain the Easement Area in a safe condition and in a manner so as not to physically conflict or

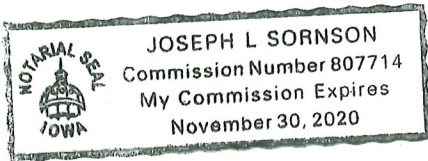
electronically interfere with the facilities of the City, and so as not to conflict or interfere with pedestrian or vehicular use of City right-of-way below the Easement Area.

4. **EASEMENT RUNS WITH LAND.** Except as otherwise provided herein, this Easement shall be deemed to run with the land for the benefit of the Benefited Property, and shall remain binding on the City and the City's successors and assigns and on Grantee and Grantee's successors and assigns for its duration. For purposes of this Easement and enforcement thereof, the term "Grantee" shall include Grantee's successors and assigns unless otherwise specified. The use of the Easement Area by Grantee, its successors and assigns, for the installation, operation, maintenance or repair of the improvements shall constitute acceptance of the provisions and of the obligations of Grantee as set forth in this Easement.
5. **DURATION AND REMOVAL OF IMPROVEMENTS UPON TERMINATION.** This Easement shall remain in full force and effect for the life of the building now existing upon the Benefited Property, or for the life of Grantee's use of the Easement Area for operation and maintenance of the improvements, whichever is shorter in duration. In the event that the building upon the Benefited Property is ever destroyed by any means whatsoever, to such a degree that the estimated cost of the repairs necessary to restore the building to its condition prior to such destruction exceed 60% of the assessed value of the building prior to such destruction, then this Easement shall automatically terminate with or without recorded release.


Grantee shall have sixty (60) days from the termination of this Easement to remove the improvements from the Easement Area and to commence restoration thereof. If Grantee fails to remove the improvements as provided herein, they shall be deemed abandoned and the City may remove part of or all of the improvements at Grantee's, or its successors or assigns, cost, at City's sole discretion.
6. **INDEMNIFICATION AND HOLD HARMLESS.** Grantee and Grantee's successors and assigns in ownership of the Benefited Property agree (a) to indemnify, defend, pay on behalf of and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City, as more particularly provided in Attachment 1 hereto, which obligation shall include payments made under workers' compensation laws and shall also include the obligation to pay all reasonable expenses incurred by the City in defending itself with regard to any of the claims listed in Attachment 1, including all out-of-pocket expenses incurred by the City in defending itself, such as attorney's fees, expert witness fees, and the value of any services rendered by the Legal Department of the City or any other officers or employees of the City, and (b) to obtain and maintain in continuous effect during the term of this Easement, the insurance coverage set forth in Attachment 1 hereto.
7. **ENFORCEMENT OF EASEMENT TERMS.** The terms and obligations set forth in this Easement are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Grantee agrees to pay and discharge all costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from enforcing any of the terms of this Easement.
8. **ACCEPTANCE.** This Permanent Easement for Air Space Above City-Owned Property shall be of no force or effect unless accepted by Grantee by execution of the Acceptance below.

ACCEPTANCE BY GRANTEE

The undersigned hereby accepts this Permanent Easement for Air Space Above City-Owned Property and agrees to be bound by the terms set forth above.



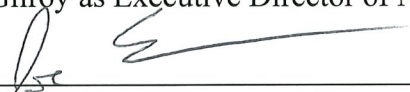
Neighborhood Development Corporation



Abbey Gilroy, Executive Director

State of Iowa)
County of Polk) ss.

This instrument was acknowledged before me on April 22nd, 2020, by Abbey Gilroy as Executive Director of Neighborhood Development Corporation.



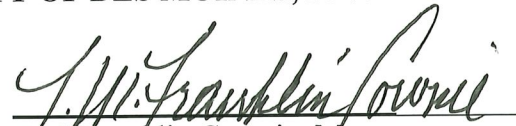
Notary Public in and for the State of Iowa

Signed this 4th day of May, 2020.

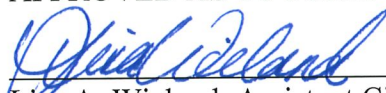
ATTEST

CITY OF DES MOINES, IOWA

By: 
P. Kay Cmelik, City Clerk

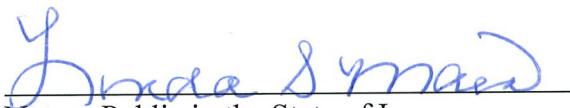
By: 
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM


Lisa A. Wieland, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 4th day of May, 2020 before me, the undersigned, a Notary Public, personally appeared T. M. Franklin Cownie and P. Kay Cmelik, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution and Roll Call No. 20-0791 adopted by the City Council on the 4th day of May, 2020, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.


Notary Public in the State of Iowa



ATTACHMENT 1

CITY STANDARD EASEMENT – MAJOR

INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The GRANTEE shall purchase and maintain insurance to protect the GRANTEE and CITY throughout the duration of the Agreement to which these Requirements are attached (hereinafter “Agreement”). Said insurance shall be provided by an insurance company(ies), “admitted” and “non-admitted” to do business in the State of Iowa, having no less than an A. M. Best Rating of “B+.” All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of GRANTEE’S use or occupancy of CITY Property including that of GRANTEE’S officers, agents, employees, contractors, subcontractors and any other party working for, through, or on behalf of GRANTEE.

The City of Des Moines, Iowa hereby reserves the right to revise and enforce the requirements in this Attachment over the term of this Agreement but only after providing GRANTEE at least sixty (60) days advance written notification of any such change

2. INSURANCE REQUIREMENTS

- A. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground – XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001 including standard exclusions or a non-ISO equivalent form).

- B. **UMBRELLA/EXCESS LIABILITY INSURANCE:** The Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***

- C. **WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE:** As required by State of Iowa Workers’ Compensation Law, the GRANTEE shall procure and maintain Worker’s Compensation Insurance, including Employer’s Liability Coverage. The Workers’ Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the GRANTEE is not required to purchase Workers’ Compensation Insurance, the GRANTEE shall have a copy of the State’s Nonelection of Workers’ Compensation or Employers’ Liability Coverage form on file with the Iowa Workers’ Compensation Insurance Commissioner, as required by Iowa Code Section

87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.***

- D. **ADDITIONAL INSURED ENDORSEMENT:** The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their non-ISO equivalents. GRANTEE'S insurance shall be primary to that of the CITY and noncontributory to any other insurance or similar coverage available to the CITY whether the other available coverage is primary, contributing or excess.
- E. **GOVERNMENTAL IMMUNITY ENDORSEMENT:** The General Liability Insurance policy shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

**CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT**

1. **Nonwaiver of Government Immunity.** The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
 2. **Claims Coverage.** The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
 3. **Assertion of Government Immunity.** The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
 4. **Non-Denial of Coverage.** The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
 5. **No Other Change in Policy.** The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.
- F. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The Workers Compensation Insurance, General Liability Insurance and Automobile Liability Insurance policies shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. ***Written notifications shall be sent to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***

- G. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, GRANTEE hereby releases the CITY from and against any and all liability or responsibility to the GRANTEE or anyone claiming

through or under the GRANTEE by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The GRANTEE'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.

H. **PROOF OF INSURANCE**: The GRANTEE shall provide the following proof of insurance to the CITY:

- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
- A copy of the Cancellation and Nonrenewal Notification Endorsements required in paragraph 2.F. above, or its equivalent.
- Copies of Additional Insured Endorsements ISO CG 20 26 07 04 and ISO CG 20 37 07 04 or their equivalents as required in paragraph 2.D. above.

Mail Certificate of Insurance to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

- I. **AGENTS, CONTRACTORS AND SUBCONTRACTORS**: The GRANTEE shall require all its agents, contractors and subcontractors who perform work and/or services on behalf of the GRANTEE to purchase and maintain the types of insurance customary to the industry or trade related to the services provided.
- J. **RESPONSIBILITY FOR THE PROPERTY OF OTHERS** – GRANTEE shall assume full responsibility for all loss or damage from any cause whatsoever to any property brought onto CITY Property that is owned or rented by GRANTEE, or any of GRANTEE'S employees, agents, contractors, subcontractors or any other party working for, through, or on behalf of GRANTEE.

3. **INDEMNIFICATION REQUIREMENTS**

To the fullest extent permitted by law, GRANTEE agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including, but not limited to, attorneys' fees and court costs, that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss, including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE.

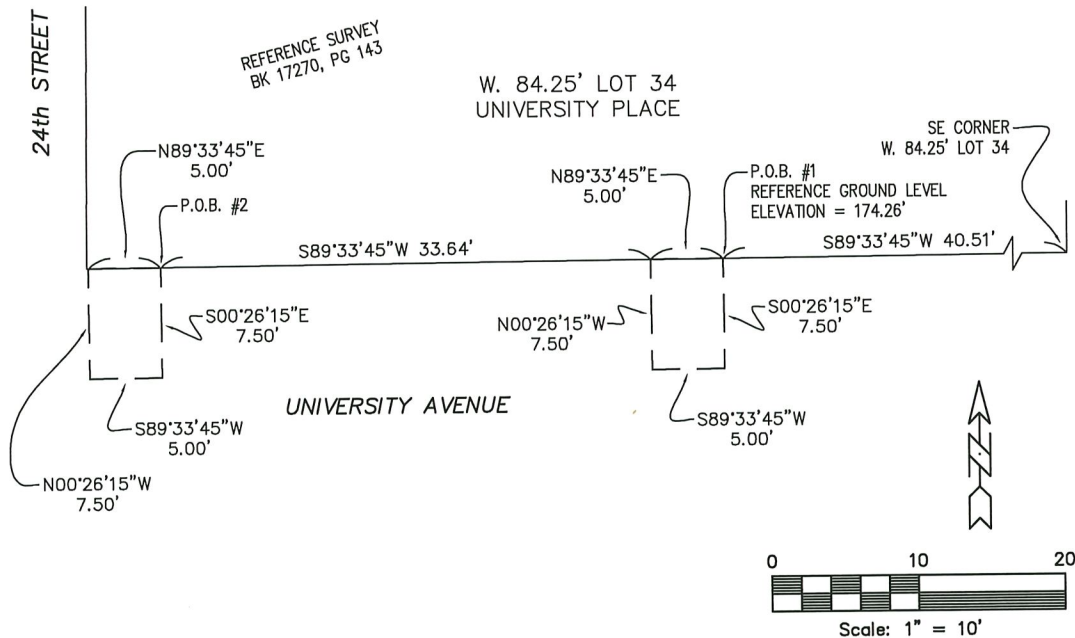
GRANTEE's obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by GRANTEE arising out of or in any way connected or associated with the Agreement and/or GRANTEE's use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE, except to the extent caused by or resulting from the negligence of the CITY.

GRANTEE expressly assumes responsibility for any and all damage caused to CITY Property arising out of or in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE.

GRANTEE shall ensure that its activities on CITY Property will be performed and supervised by adequately trained and qualified personnel, and GRANTEE will observe all applicable safety rules.

AIR RIGHTS EASEMENT EXHIBIT



EASEMENT DESCRIPTION

Easement #1

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast corner of said West 84.25 feet of Lot 34; thence South 89°(degrees) 33'(minutes) 45"(seconds) West (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 40.51 feet along the South line of said Lot 34 to the Point of Beginning; thence South 00°26'15" East, 7.50 feet; thence South 89°33'45" West, 5.00 feet; thence North 00°26'15" West, 7.50 feet to the South line of said Lot 34; thence North 89°33'45" East, 5.00 feet to the point of beginning.

Lying between elevations 183.76 feet and 189.76 feet, City of Des Moines Vertical Datum (reference ground level elevation of 174.26 feet, City of Des Moines Vertical Datum). Horizontally containing 37.50 square feet.

And

Easement #2

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast corner of said West 84.25 feet of Lot 34; thence South 89°(degrees) 33'(minutes) 45"(seconds) West (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 79.15 feet along the South line of said Lot 34 to the Point of Beginning; thence South 00°26'15" East, 7.50 feet; thence South 89°33'45" West, 5.00 feet; thence North 00°26'15" West, 7.50 feet to the South line of said Lot 34; thence North 89°33'45" East, 5.00 feet to the point of beginning.

Lying between elevations 183.76 feet and 189.76 feet, City of Des Moines Vertical Datum (reference ground level elevation of 174.26 feet, City of Des Moines Vertical Datum). Horizontally containing 37.50 square feet.

ERG

Engineering Resource Group, Inc.
2413 GRAND AVENUE
DES MOINES, IOWA 50312
(515) 288-4823

AIR RIGHTS EASEMENT EXHIBIT

DATE: 3/31/2020

PROJ. NO.:

DWG: 19-016-EASE.DWG

19-016

Prepared by: David DeForest Colvig, Real Estate Coordinator, City of Des Moines, (515) 283-4984
Return to: Real Estate Division, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891
Taxpayer: Neighborhood Development Corporation, 2331 University Avenue, Suite 202, Des Moines, IA 50311
Title of Document: Permanent Easement for Building Encroachment – Door Swing
Grantor's Name: City of Des Moines, Iowa
Grantee's Name: Neighborhood Development Corporation
Legal Description: See below on this page.

Project: Disposition – No Acquisition Project

Parcel No.: 614

Activity ID: 341111000

PERMANENT EASEMENT FOR BUILDING ENCROACHMENT – DOOR SWING

The **CITY OF DES MOINES, IOWA**, a municipal corporation of the County of Polk, the State of Iowa (hereinafter referred to as the "City"), in consideration of the sum of Forty and no/100 Dollars (\$40.00) and other valuable consideration, receipt of which is hereby acknowledged, does hereby convey unto Neighborhood Development Corporation, an Iowa non-profit corporation (hereinafter referred to as the "Grantee"), a Permanent Easement for Building Encroachment – Door Swing through and across the area above grade as shown on Exhibit A attached hereto, and legally described as follows (hereinafter referred to as the "**Easement Area**"):

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 34; thence North 89°(degrees) 33'(minutes) 45"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 38.90 feet along the South line of said Lot 34; thence South 00°01'16" West, 0.36 feet to the Point of Beginning; thence South 89°58'44" East, 3.50 feet; thence South 00°01'16" West, 3.00 feet; thence North 89°58'44" West, 3.50 feet; thence North 00°01'16" East, 3.00 feet to the point of beginning. Containing 10.50 square feet.

for the sole purpose of the Grantee constructing, repairing, and maintaining building door swing areas, with planters or other City-approved barriers on each side of each door, into and upon the vacated University Avenue right-of-way adjoining 2331 University Avenue, in Des Moines, Iowa, and more specifically described as follows:

THE WEST 84.25 FEET OF LOTS 33 AND 34 UNIVERSITY PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA;

(hereinafter referred to as the "**Benefited Property**").

This Easement shall be subject to the following terms and conditions:

1. **CITY REVIEW AND APPROVAL: CONSTRUCTION REQUIREMENTS.** The location, design and proposed manner of construction of any structures or facilities to be placed within the Easement Area under authority of this Easement shall be subject to review and approval by the City.
2. **EXISTING AND FUTURE PUBLIC UTILITIES.** This Easement is subject to continued use, maintenance, repair and/or reconstruction of any and all existing and future public and private utilities within the Easement Area, including those for the benefit and use of the City of Des Moines.
3. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed to run with the land for the benefit of the Benefited Property and shall be binding on the City and the City's successors and assigns and on Grantee and Grantee's successors and assigns.
4. **DURATION; REMOVAL OF IMPROVEMENTS UPON TERMINATION.** This Permanent Easement for Building Encroachment shall remain in full force and effect for the life of the existing building upon the Benefited Property. In the event the building upon the Benefited Property is ever destroyed by any means whatsoever, to such a degree that the estimated cost of the repairs necessary to restore the building to its condition prior to such destruction exceed 60% of the assessed value of the building prior to such destruction, then this Permanent Easement for Building Encroachment shall terminate with or without recorded release. In the event that Grantee abandons or no longer uses the Easement Area, then this Permanent Easement for Building Encroachment shall automatically terminate with or without recorded release.

After either such termination, Grantee shall have Sixty (60) days from the termination of this Permanent Easement for Building Encroachment to remove the improvements from the Easement Area and to commence restoration thereof. If Grantee fails to remove the improvements as provided herein, they shall be deemed abandoned and the City may, at City's sole discretion, remove part of or all of the improvements from the Easement Area at Grantee's or its successors' or assigns' cost.

5. **MAINTENANCE; PROTECTIVE BARRIERS; AND LIABILITY FOR EASEMENT AREA.** The Grantee shall be solely responsible for all activities related to and costs of maintenance of the Easement Area and construction, use, maintenance and repair of the improvements, in accordance with City ordinance, policies and regulations, and State and federal law. Notwithstanding anything in this Easement to the contrary, the sidewalks and/or alley right-of-way within the Easement Area shall continue to be public sidewalks for pedestrian travel and alley right-of-way for vehicular travel. Grantee shall place and maintain planters or other City-approved barriers on each side of the Easement Area for the protection of pedestrian and/or

vehicular traffic when the door is opened. Nothing in this Easement shall be interpreted to relieve the Grantee and the Grantee's successors and assigns from their duty under Iowa law and the Des Moines Municipal Code to maintain the public sidewalks within the Easement Area in a safe condition, in a state of good repair, and free from defects.

6. **EXPANSION OR ALTERATION OF ENCROACHMENTS.** No future alterations shall be made to the adjoining building or to any features within the Easement Area which expand the size of the encroachments within the Easement Area without the prior written approval of the City.
 7. **INDEMNITY, HOLD HARMLESS & INSURANCE.** The City shall incur no expense related to Grantee's exercise of the rights hereby granted. Grantee and Grantee's successors and assigns in ownership of the Benefited Property agree (a) to indemnify, defend, pay on behalf of and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City, as more particularly provided in Attachment 1 hereto, which obligation shall include payments made under workers' compensation laws and shall also include the obligation to pay all reasonable expenses incurred by the City in defending itself with regard to any of the claims listed in Attachment 1, including all out-of-pocket expenses incurred by the City in defending itself, such as attorney's fees, expert witness fees, and the value of any services rendered by the Legal Department of the City or any other officers or employees of the City, and (b) to obtain and maintain in continuous effect during the term of this Easement, the insurance coverage set forth in Attachment 1 hereto.
 8. **ENFORCEMENT OF EASEMENT TERMS.** The terms and obligations set forth in this Easement are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Grantee agrees to pay and discharge all costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from enforcing any of the terms of this Easement.
 9. **ACCEPTANCE.** This Permanent Easement for Building Encroachment-Door Swing shall be of no force or effect unless accepted by Grantee by execution of the Acceptance below.
-

Signed this 4th day of May, 2020.

CITY OF DES MOINES, IOWA

ATTEST:

By:

P. Kay Cmelik
P. Kay Cmelik, City Clerk

By:

T.M. Franklin Cownie
T.M. Franklin Cownie, Mayor

FORM APPROVED:

Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 4th day of May, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 20-0791 of City Council on the 4th day of May, 2020 and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Linda S. Main
Notary Public in the State of Iowa



ACCEPTANCE BY GRANTEE

The undersigned hereby accepts this Permanent Easement for Building Encroachment-Door Swing and agrees to be bound by the terms set forth above.

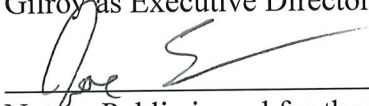


Neighborhood Development Corporation


Abbey Gilroy, Executive Director

State of Iowa)
County of Polk) ss.

This instrument was acknowledged before me on April 22nd, 2020, by Abbey Gilroy as Executive Director of Neighborhood Development Corporation.


Notary Public in and for the State of Iowa

ATTACHMENT 1

CITY STANDARD EASEMENT – MAJOR

INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The GRANTEE shall purchase and maintain insurance to protect the GRANTEE and CITY throughout the duration of the Agreement to which these Requirements are attached (hereinafter “Agreement”). Said insurance shall be provided by an insurance company(ies), “admitted” and “non-admitted” to do business in the State of Iowa, having no less than an A. M. Best Rating of “B+.” All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of GRANTEE’S use or occupancy of CITY Property including that of GRANTEE’S officers, agents, employees, contractors, subcontractors and any other party working for, through, or on behalf of GRANTEE.

The City of Des Moines, Iowa hereby reserves the right to revise and enforce the requirements in this Attachment over the term of this Agreement but only after providing GRANTEE at least sixty (60) days advance written notification of any such change

2. INSURANCE REQUIREMENTS

- A. COMMERCIAL GENERAL LIABILITY INSURANCE: The GRANTEE shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground – XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001 including standard exclusions or a non-ISO equivalent form).

- B. UMBRELLA/EXCESS LIABILITY INSURANCE: The Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***

- C. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE (if applicable): As required by State of Iowa Workers’ Compensation Law, the GRANTEE shall procure and maintain Worker’s Compensation Insurance, including Employer’s Liability Coverage. The Workers’ Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section

85.1A, the GRANTEE is not required to purchase Workers' Compensation Insurance, the GRANTEE shall submit a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form filed with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.***

- D. **ADDITIONAL INSURED ENDORSEMENT:** The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their non-ISO equivalents. GRANTEE'S insurance shall be primary to that of the CITY and noncontributory to any other insurance or similar coverage available to the CITY whether the other available coverage is primary, contributing or excess.
- E. **GOVERNMENTAL IMMUNITY ENDORSEMENT:** The General Liability Insurance policy shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT

1. **Nonwaiver of Government Immunity.** The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
 2. **Claims Coverage.** The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
 3. **Assertion of Government Immunity.** The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
 4. **Non-Denial of Coverage.** The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
 5. **No Other Change in Policy.** The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.
- F. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The General Liability Insurance policy shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium.

Written notifications shall be sent to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

- G. WAIVER OF SUBROGATION: To the fullest extent permitted by law, GRANTEE hereby releases the CITY from and against any and all liability or responsibility to the GRANTEE or anyone claiming through or under the GRANTEE by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The GRANTEE'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
- H. PROOF OF INSURANCE: The GRANTEE shall provide the following proof of insurance to the CITY:
- (1) Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
 - (2) If applicable as per paragraph 2.C. above, a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form.
 - (3) A copy of the Cancellation and Nonrenewal Notification Endorsements required in paragraph 2.F. above, or its equivalent.

Mail Certificate of Insurance to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

- I. AGENTS, CONTRACTORS AND SUBCONTRACTORS: The GRANTEE shall require all its agents, contractors and subcontractors who perform work and/or services on behalf of the GRANTEE to purchase and maintain the types of insurance customary to the services provided.
- J. RESPONSIBILITY FOR THE PROPERTY OF OTHERS – GRANTEE shall assume full responsibility for all loss or damage from any cause whatsoever to any property brought onto CITY Property that is owned or rented by GRANTEE, or any of GRANTEE'S employees, agents, contractors, subcontractors or any other party working for, through, or on behalf of GRANTEE.

3. INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, GRANTEE agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including, but not limited to, attorneys' fees and court costs, that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss, including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE.

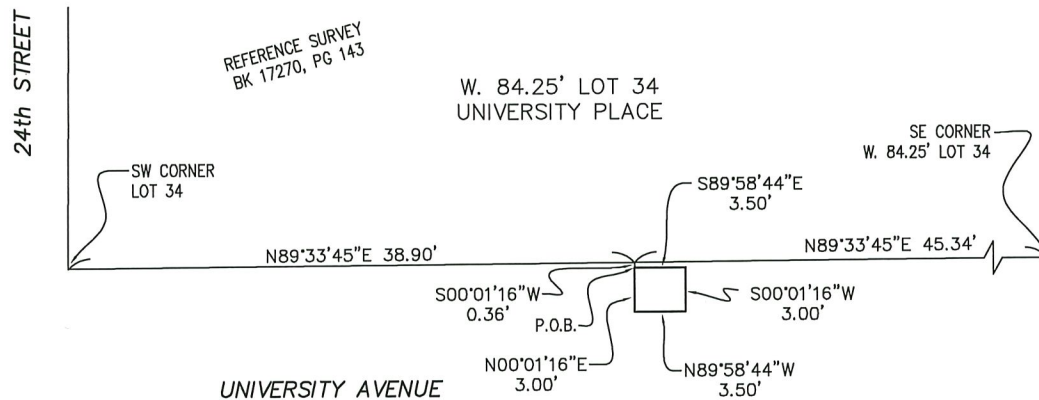
GRANTEE's obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by GRANTEE arising out of or in any way connected or associated with the Agreement and/or GRANTEE's use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE, except to the extent caused by or resulting from the negligence of the CITY.

GRANTEE expressly assumes responsibility for any and all damage caused to CITY Property arising out of or in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE.

GRANTEE shall ensure that its activities on CITY Property will be performed and supervised by adequately trained and qualified personnel, and GRANTEE will observe all applicable safety rules.

DOOR SWING EASEMENT EXHIBIT

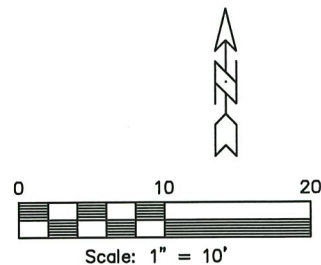


LEGAL DESCRIPTION

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 34; thence North 89°(degrees) 33'(minutes) 45"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 38.90 feet along the South line of said Lot 34; thence South 00°01'16" West, 0.36 feet to the Point of Beginning; thence South 89°58'44" East, 3.50 feet; thence South 00°01'16" West, 3.00 feet; thence North 89°58'44" West, 3.50 feet; thence North 00°01'16" East, 3.00 feet to the point of beginning.

Containing 10.50 square feet.



ERG Engineering Resource Group, Inc.
2413 GRAND AVENUE
DES MOINES, IOWA 50312
(515) 288-4823

DOOR SWING EASEMENT EXHIBIT

DATE: 4/01/2020

PROJ. NO.:

DWG: 19-016-EASE.DWG

19-016

Prepared by: David DeForest Colvig, Real Estate Coordinator, City of Des Moines, (515) 283-4984
Return to: Real Estate Division, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891
Taxpayer: Neighborhood Development Corporation, 2331 University Avenue, Suite 202, Des Moines, IA 50311
Title of Document: Permanent Easement for Building Encroachment – Door Swing
Grantor's Name: City of Des Moines, Iowa
Grantee's Name: Neighborhood Development Corporation
Legal Description: See below on this page.

Project: Disposition – No Acquisition Project

Parcel No.: 614

Activity ID: 341111000

PERMANENT EASEMENT FOR BUILDING ENCROACHMENT

KNOW ALL MEN BY THESE PRESENTS:

That the **CITY OF DES MOINES, IOWA**, a municipal corporation of the County of Polk, the State of Iowa (hereinafter referred to as the "City"), in consideration of the sum of Fifty-four and no/100 Dollars (\$54.00) and other valuable consideration, receipt of which is hereby acknowledged, does hereby convey unto **Neighborhood Development Corporation, an Iowa non-profit corporation** (hereinafter referred to as the "Grantee"), a Permanent Easement for Building Encroachment over, through and across the following described property:

24th Street

That part of Vacated 24th Street right-of-way lying West of and adjoining the West 84.25 feet of Lots 33 and 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 34; thence North 00°(degrees) 15'(minutes) 47"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 24.39 feet along the West line of said Lot 34 to the Point of Beginning; thence North 00°01'56" East, 46.77 feet; thence South 89°44'13" East, 0.19 feet to the West line of said Lot 33; thence South 00°15'47" West, 46.77 feet along the West lines of said Lots 33 and 34 to the point of beginning. Containing 4.41 square feet.

University Avenue

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Beginning at the Southwest corner of said Lot 34; thence North 89°(degrees) 33'(minutes) 45"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 43.73 feet along the South line of said Lot

34; thence South 00°26'15" East, 0.40 feet; thence North 89°58'44" West, 43.74 feet; thence North 00°15'47" East, 0.05 feet to the point of beginning. Containing 9.84 square feet.

(Vacated by Ordinance No. 15,893, passed May 4, 2020.)

hereinafter collectively referred to as the "Easement Area") for the sole purpose of the Grantee maintaining an existing building encroachment into the vacated University Avenue and 24th Street right-of-way adjoining 2331 University Avenue, in Des Moines, Iowa, and more specifically described as follows:

THE WEST 84.25 FEET OF LOTS 33 AND 34 UNIVERSITY PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA;

(hereinafter referred to as the "Benefited Property").

This Permanent Easement for Building Encroachment shall be subject to the following terms and conditions:

1. **EXISTING AND FUTURE PUBLIC UTILITIES.** This Easement is subject to continued use, maintenance, repair and/or reconstruction of any and all existing and future public and private utilities within the Easement Area, including those for the benefit and use of the City of Des Moines.
2. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed to run with the land for the benefit of the Benefited Property and shall be binding on the City and the City's successors and assigns and on Grantee and Grantee's successors and assigns. For purposes of this Easement and enforcement thereof, the term "Grantee" shall include Grantee's successors and assigns unless otherwise specified. The use of the Easement Area by Grantee, its successors and assigns, for the installation, operation, maintenance or repair of the improvements shall constitute acceptance of the provisions and of the obligations of Grantee as set forth in this Easement.
3. **DURATION.** This Easement shall remain in full force and effect for the life of the existing building upon the Benefited Property. In the event the building upon the Benefited Property is ever destroyed by any means whatsoever, to such a degree that the estimated cost of the repairs necessary to restore the building to its condition prior to such destruction exceed 60% of the assessed value of the building prior to such destruction, then this Easement shall terminate with or without recorded release. In the event that Grantee abandons or no longer uses the Easement Area, then this Easement shall automatically terminate with or without recorded release.

After either such termination, Grantee shall have sixty (60) days from the termination of this Easement to remove the improvements from the Easement Area and to commence restoration thereof. If Grantee fails to remove the improvements as provided herein, they shall be deemed abandoned and the City may, at City's sole discretion, remove part of or all of the improvements at Grantee's or its successors' or assigns' cost.

4. **INDEMNIFICATION AND HOLD HARMLESS.** The City shall incur no expense related to Grantee's exercise of the rights hereby granted. Grantee and Grantee's successors and assigns in ownership of the Benefited Property agree (a) to indemnify, defend, pay on behalf of and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City, as more particularly provided in Attachment 1 hereto, which obligation shall include payments made under workers' compensation laws and shall also include the obligation to pay all reasonable expenses incurred by the City in defending itself with regard to any of the claims listed in Attachment 1, including all out-of-pocket expenses incurred by the City in defending itself, such as attorney's fees, expert witness fees, and the value of any services rendered by the Legal Department of the City or any other officers or employees of the City, and (b) to obtain and maintain in continuous effect during the term of this Easement, the insurance coverage set forth in Attachment 1 hereto.
5. **ENFORCEMENT OF EASEMENT TERMS.** The terms and obligations set forth in this Easement are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Grantee agrees to pay and discharge all costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from enforcing any of the terms of this Easement.
6. **MAINTENANCE OF AND LIABILITY FOR EASEMENT AREA.** The Grantee shall be solely responsible for all activities related to and costs of maintenance of the Easement Area and construction, use, maintenance and repair of the improvements, in accordance with City ordinance, policies and regulations, and State and federal law.
7. **ACCEPTANCE.** This Permanent Easement for Building Encroachment shall be of no force or effect unless accepted by Grantee by execution of the Acceptance below.



LINDA S. MAIN
Commission Number 745695
My Commission Expires 3/5/2022

The undersigned hereby accepts this Permanent Easement for Building Encroachment and agrees to be bound by the terms set forth above.



Abbey Gilroy, Executive Director

County of Polk)

This instrument was acknowledged before me on April 22nd, 2020, by Abbey Gilroy as Executive Director of Neighborhood Development Corporation.

Notary Public in and for the State of Iowa

ATTACHMENT 1

CITY STANDARD EASEMENT – MAJOR

INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The GRANTEE shall purchase and maintain insurance to protect the GRANTEE and CITY throughout the duration of the Agreement to which these Requirements are attached (hereinafter “Agreement”). Said insurance shall be provided by an insurance company(ies), “admitted” and “non-admitted” to do business in the State of Iowa, having no less than an A. M. Best Rating of “B+.” All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of GRANTEE’S use or occupancy of CITY Property including that of GRANTEE’S officers, agents, employees, contractors, subcontractors and any other party working for, through, or on behalf of GRANTEE.

The City of Des Moines, Iowa hereby reserves the right to revise and enforce the requirements in this Attachment over the term of this Agreement but only after providing GRANTEE at least sixty (60) days advance written notification of any such change

2. INSURANCE REQUIREMENTS

- A. COMMERCIAL GENERAL LIABILITY INSURANCE: The GRANTEE shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground – XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001 including standard exclusions or a non-ISO equivalent form).

- B. UMBRELLA/EXCESS LIABILITY INSURANCE: The Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***

- C. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE (if applicable): As required by State of Iowa Workers’ Compensation Law, the GRANTEE shall procure and maintain Worker’s Compensation Insurance, including Employer’s Liability Coverage. The Workers’ Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the GRANTEE is not required to purchase Workers’ Compensation Insurance, the GRANTEE shall submit a copy of the Nonelection of Workers’ Compensation or Employers’

Liability Coverage form filed with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.***

- D. **ADDITIONAL INSURED ENDORSEMENT:** The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their non-ISO equivalents. GRANTEE'S insurance shall be primary to that of the CITY and noncontributory to any other insurance or similar coverage available to the CITY whether the other available coverage is primary, contributing or excess.
- E. **GOVERNMENTAL IMMUNITY ENDORSEMENT:** The General Liability Insurance policy shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT

1. **Nonwaiver of Government Immunity.** The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
 2. **Claims Coverage.** The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
 3. **Assertion of Government Immunity.** The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
 4. **Non-Denial of Coverage.** The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
 5. **No Other Change in Policy.** The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.
- F. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The General Liability Insurance policy shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium.
- Written notifications shall be sent to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***

- G. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, GRANTEE hereby releases the CITY from and against any and all liability or responsibility to the GRANTEE or anyone claiming through or under the GRANTEE by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The GRANTEE'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
- H. **PROOF OF INSURANCE:** The GRANTEE shall provide the following proof of insurance to the CITY:
- (1) Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
 - (2) If applicable as per paragraph 2.C. above, a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form.
 - (3) A copy of the Cancellation and Nonrenewal Notification Endorsements required in paragraph 2.F. above, or its equivalent.
- Mail Certificate of Insurance to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***
- I. **AGENTS, CONTRACTORS AND SUBCONTRACTORS:** The GRANTEE shall require all its agents, contractors and subcontractors who perform work and/or services on behalf of the GRANTEE to purchase and maintain the types of insurance customary to the services provided.
- J. **RESPONSIBILITY FOR THE PROPERTY OF OTHERS** – GRANTEE shall assume full responsibility for all loss or damage from any cause whatsoever to any property brought onto CITY Property that is owned or rented by GRANTEE, or any of GRANTEE'S employees, agents, contractors, subcontractors or any other party working for, through, or on behalf of GRANTEE.

3. **INDEMNIFICATION REQUIREMENTS**

To the fullest extent permitted by law, GRANTEE agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including, but not limited to, attorneys' fees and court costs, that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss, including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE.

GRANTEE's obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

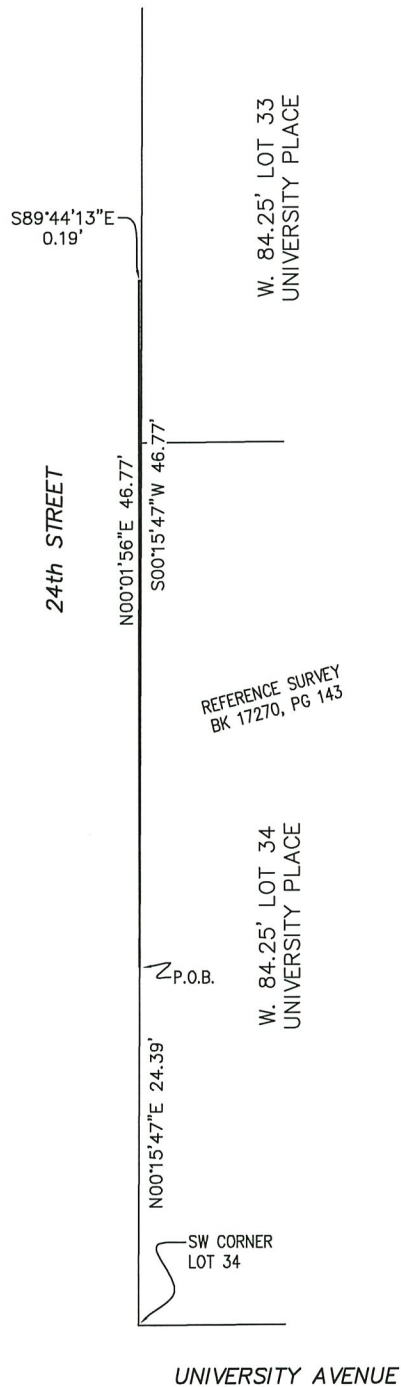
The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by GRANTEE arising out of or in any way connected or associated with the Agreement and/or GRANTEE's use or occupancy of CITY Property including that of

GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE, except to the extent caused by or resulting from the negligence of the CITY.

GRANTEE expressly assumes responsibility for any and all damage caused to CITY Property arising out of or in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE.

GRANTEE shall ensure that its activities on CITY Property will be performed and supervised by adequately trained and qualified personnel, and GRANTEE will observe all applicable safety rules.

BUILDING ENCROACHMENT EASEMENT EXHIBIT

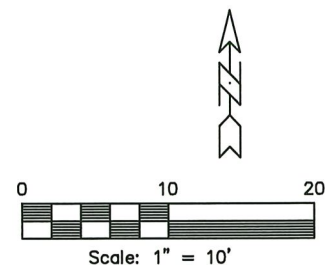


LEGAL DESCRIPTION

That part of Vacated 24th Street right-of-way lying West of and adjoining the West 84.25 feet of Lots 33 and 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 34; thence North 00°(degrees) 15'(minutes) 47"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 24.39 feet along the West line of said Lot 34 to the Point of Beginning; thence North 00°01'56" East, 46.77 feet; thence South 89°44'13" East, 0.19 feet to the West line of said Lot 33; thence South 00°15'47" West, 46.77 feet along the West lines of said Lots 33 and 34 to the point of beginning.

Containing 4.41 square feet.



ERG

Engineering Resource Group, Inc.
2413 GRAND AVENUE
DES MOINES, IOWA 50312
(515) 288-4823

BUILDING ENCROACHMENT EASEMENT EXHIBIT

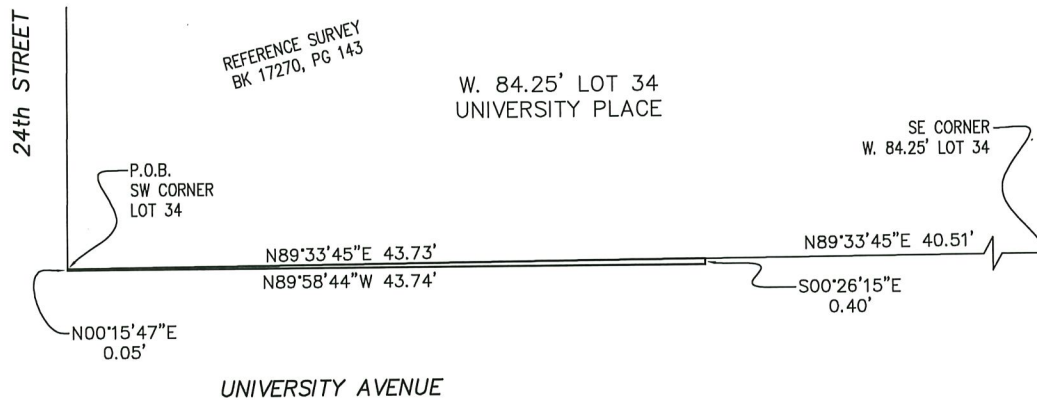
DATE: 3/31/2020

PROJ. NO.:

DWG: 19-016-EASE.DWG

19-016

BUILDING ENCROACHMENT EASEMENT EXHIBIT

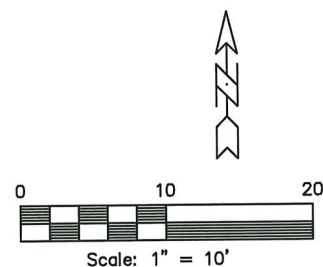


LEGAL DESCRIPTION

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Beginning at the Southwest corner of said Lot 34; thence North 89°(degrees) 33'(minutes) 45"(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 43.73 feet along the South line of said Lot 34; thence South 00°26'15" East, 0.40 feet; thence North 89°58'44" West, 43.74 feet; thence North 00°15'47" East, 0.05 feet to the point of beginning.

Containing 9.84 square feet.



ERG Engineering Resource Group, Inc.
2413 GRAND AVENUE
DES MOINES, IOWA 50312
(515) 288-4823

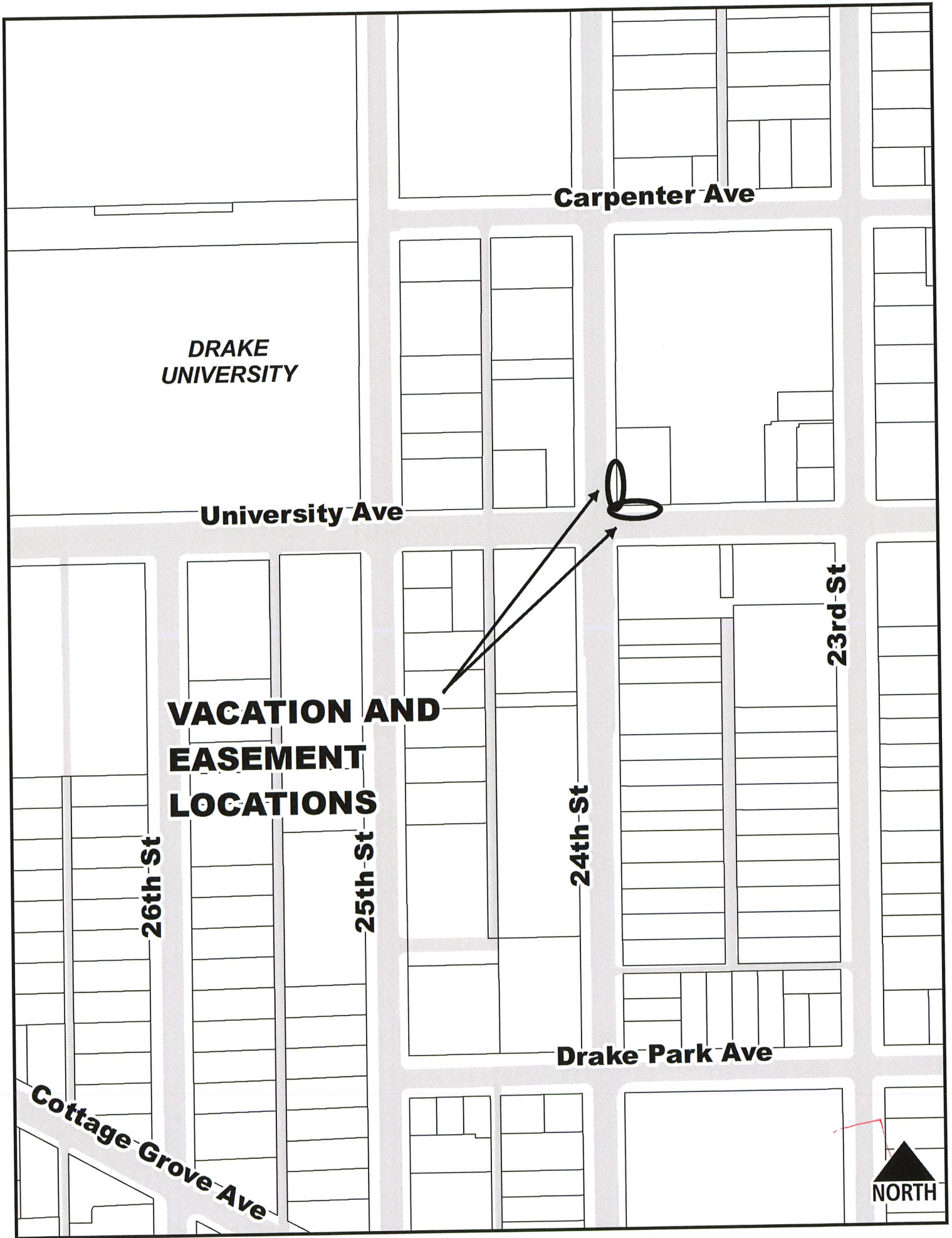
BUILDING ENCROACHMENT EASEMENT EXHIBIT

DATE: 4/01/2020

PROJ. NO.:

DWG: 19-016-EASE.DWG

19-016



DRAKE
UNIVERSITY

Carpenter Ave

University Ave

**VACATION AND
EASEMENT
LOCATIONS**

26th St

25th St

24th St

23rd St

Drake Park Ave

Cottage Grove Ave



OFFER TO PURCHASE EASEMENTS AND ACCEPTANCE

TO: The City of Des Moines, Iowa (“City”)

REAL ESTATE DESCRIPTION. Neighborhood Development Corporation, an Iowa non-profit corporation, (“Buyer”) offers to the City to purchase a Permanent Easement for Building Encroachment – Door Swing, a Permanent Easement for Building Encroachment, and a Permanent Easement for Air Space Above City-owned Property over and upon the portions of University Avenue and 24th Street right-of-way adjoining 2331 University Avenue, in Des Moines, Iowa and more specifically described as follows (the “Easement Area”):

LEGAL – DOOR SWING ENCROACHMENT:

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 34; thence North 89°(degrees) 33’(minutes) 45”(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 38.90 feet along the South line of said Lot 34; thence South 00°01’16” West, 0.36 feet to the Point of Beginning; thence South 89°58’44” East, 3.50 feet; thence South 00°01’16” West, 3.00 feet; thence North 89°58’44” West, 3.50 feet; thence North 00°01’16” East, 3.00 feet to the point of beginning. Containing 10.50 square feet.

LEGAL - SURFACE ENCROACHMENT:

24th Street

That part of Vacated 24th Street right-of-way lying West of and adjoining the West 84.25 feet of Lots 33 and 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 34; thence North 00°(degrees) 15’(minutes) 47”(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 24.39 feet along the West line of said Lot 34 to the Point of Beginning; thence North 00°01’56” East, 46.77 feet; thence South 89°44’13” East, 0.19 feet to the West line of said Lot 33; thence South 00°15’47” West, 46.77 feet along the West lines of said Lots 33 and 34 to the point of beginning. Containing 4.41 square feet.

University Avenue

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Beginning at the Southwest corner of said Lot 34; thence North 89°(degrees) 33’(minutes) 45”(seconds) East (bearing assumed to match that Retracement Survey recorded in Book 17270 at

Page 143 in the Office of the Polk County Recorder), 43.73 feet along the South line of said Lot 34; thence South 00°26'15" East, 0.40 feet; thence North 89°58'44" West, 43.74 feet; thence North 00°15'47" East, 0.05 feet to the point of beginning. Containing 9.84 square feet.

LEGAL - AIR RIGHTS ENCROACHMENT

Area #1

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast corner of said West 84.25 feet of Lot 34; thence South 89°(degrees) 33'(minutes) 45"(seconds) West (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 40.51 feet along the South line of said Lot 34 to the Point of Beginning; thence South 00°26'15" East, 7.50 feet; thence South 89°33'45" West, 5.00 feet; thence North 00°26'15" West, 7.50 feet to the South line of said Lot 34; thence North 89°33'45" East, 5.00 feet to the point of beginning.

Lying between elevations 183.76 feet and 189.76 feet, City of Des Moines Vertical Datum (reference ground level elevation of 174.26 feet, City of Des Moines Vertical Datum). Horizontally containing 37.50 square feet.

Area #2

That part of Vacated University Avenue right-of-way lying South of and adjoining the West 84.25 feet of Lot 34 in University Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast corner of said West 84.25 feet of Lot 34; thence South 89°(degrees) 33'(minutes) 45"(seconds) West (bearing assumed to match that Retracement Survey recorded in Book 17270 at Page 143 in the Office of the Polk County Recorder), 79.15 feet along the South line of said Lot 34 to the Point of Beginning; thence South 00°26'15" East, 7.50 feet; thence South 89°33'45" West, 5.00 feet; thence North 00°26'15" West, 7.50 feet to the South line of said Lot 34; thence North 89°33'45" East, 5.00 feet to the point of beginning.

Lying between elevations 183.76 feet and 189.76 feet, City of Des Moines Vertical Datum (reference ground level elevation of 174.26 feet, City of Des Moines Vertical Datum). Horizontally containing 37.50 square feet.

hereinafter collectively referred to as the "Easement Area") for the purpose of the Grantee constructing, repairing, and maintaining signs above the entrance doors; constructing, repairing, and maintaining building door swing areas with planters or other City-approved barriers on each side of each door; and for maintaining an existing building encroachment into the vacated University Avenue and 24th Street right-of-way all adjoining 2331 University Avenue, in Des Moines, Iowa, and more specifically described as follows:

THE WEST 84.25 FEET OF LOTS 33 AND 34 UNIVERSITY PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA;

(hereinafter referred to as the "Benefited Property").

1. **CONSIDERATION.** The Purchase Price is **\$343.00**, which reflects \$40.00 for the Permanent Easement for Building Encroachment – Door Swing, and \$54.00 for the Permanent Easement for Building Encroachment, and \$249.00 for the Permanent Easement for Air Space Above City-owned Property, and which is due prior to the date of hearing. Buyer will be notified of said date of hearing. In addition, Buyer agrees to pay City \$113.00 to cover the estimated costs of publishing the notice of sale of the Permanent Easement for Building Encroachment – Door Swing, the Permanent Easement for Building Encroachment and the Permanent Easement for Air Space Above City-owned Property, and the cost of recording the conveyance documents (including the Easements, Publication and Roll Call approving the sale), which is due upon Buyer's execution of the Offer and which amount is non-refundable.
2. **EASEMENT RECORDING.** Upon approval of this Offer, payment of the Purchase Price and all other costs due the City associated with the sale of the Easements, the City shall execute a Permanent Easement for Building Encroachment – Door Swing, a Permanent Easement for Building Encroachment, and a Permanent Easement for Air Space Above City-owned Property conveying the property interests to Buyer, in substantially the form attached hereto. The City shall then proceed to record said Easements and a certified copy of the City Council conveyance proceedings.
3. **NOTICE.** Notices to City will be deemed sufficient if delivered in person or sent by overnight mail to:

Real Estate Division
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891

Notices to Buyer will be deemed sufficient if delivered in person or sent by overnight mail to:

Neighborhood Development Corporation
Attn: Abbey Gilroy, Executive Director
2331 University Avenue
Des Moines, IA 50311

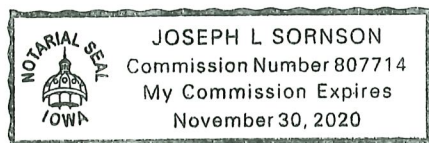
4. **NO WARRANTY OF FITNESS.** City makes no warranties as to the fitness of the Easement Area for any particular use. Buyer agrees to comply with any and all applicable laws, rules and regulations in its use of the Easement Area.
5. **BINDING EFFECT.** This Offer shall be binding upon and inure to the benefit of and be enforceable by the parties, their successors and assigns.
6. **ENTIRE AGREEMENT.** This Offer constitutes the entire agreement of the parties hereto and may be modified only in writing. The laws of the State of Iowa shall govern this Offer.
7. **TIME.** Time is of the essence in the performance of this Offer.

8. COUNCIL APPROVAL. This Offer is subject to the approval of the Des Moines City Council and neither the City nor its representatives in this matter shall be bound by the contract until said approval is given and is public record.

9. SPECIAL PROVISIONS.

- A. The Permanent Easement for Building Encroachment – Door Swing, Permanent Easement for Building Encroachment, and Permanent Easement for Air Space Above City-owned Property shall remain in full force and effect for the life of the existing building upon the Benefited Property. In the event the building upon the Benefited Property is ever destroyed by any means whatsoever, to such a degree that the estimated cost of the repairs necessary to restore such building to its condition prior to such destruction exceed 60% of the assessed value of the building prior to such destruction, then the Easement shall terminate. Buyer shall have sixty (60) days from the termination of this Easement to remove the improvements from the Easement Area and to commence restoration thereof. If Buyer fails to remove the improvements as provided herein, they shall be deemed abandoned and the City may, at City's sole discretion, remove part of or all of the improvements at Buyer's or its successors' or assigns' cost.
- B. This transaction shall be subject to the following additional requirements:
 - (1) the reservation of any existing utilities until such time that they are abandoned or relocated at the applicant's expense; and
 - (2) the provision of bollards or planters on both sides of the 3-foot by 3.5-foot proposed door swing vacations into the public right-of-way on University Avenue as approved by the City Planning Administrator.

This Offer to Purchase Easement and Acceptance is made by Buyer on this 22nd day of April 2020.

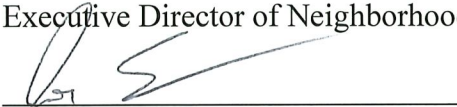


Neighborhood Development Corporation


Abbey Gilroy, Executive Director

State of Iowa)
County of Polk) ss.

This instrument was acknowledged before me on April 22nd, 2020, by Abby Gilroy as Executive Director of Neighborhood Development Corporation.


Notary Public in and for the State of Iowa

This Offer to Purchase Easement and Acceptance is accepted by the City of Des Moines on the 4th day of May, 2020.

CITY OF DES MOINES

BY: T. M. Franklin Cownie
T. M. Franklin Cownie, Mayor

Attest: P. Kay Cmelik
P. Kay Cmelik, City Clerk

APPROVED AS TO FORM:

BY: Lisa A. Wieland
Lisa A. Wieland, Assistant City Attorney

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this 4 day of May, 2020 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie, and P. Kay Cmelik, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to thereto is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Roll Call No. 20-0791 passed and approved by the City Council on May 4, 2020, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of said City by it and by them voluntarily executed.

Linda S. Main
Notary Public in and for the State of Iowa

