



27

Date October 2, 2023

**SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR AND SUBSURFACE RIGHTS WITHIN 13<sup>TH</sup> STREET, FALCON DRIVE, MULBERRY STREET, AND NORTH/SOUTH ALLEY RIGHT-OF-WAY ADJOINING 1301 MULBERRY STREET, AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO 13<sup>TH</sup> AND MULBERRY, LLC FOR \$24,100**

**WHEREAS**, on October 24, 2022, by Roll Call No. 22-1635, 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 to vacate the air and subsurface rights-of-way adjoining 1301 Mulberry Street, within 13th Street, Falcon Drive, Mulberry Street, and a north/south alleyway, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and

**WHEREAS**, 13<sup>th</sup> and Mulberry, LLC, the owner of 1301 Mulberry Street, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$24,100.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Subsurface Building Encroachment On City-Owned Property (“Easements”) over and below portions of 13th Street, Falcon Drive, Mulberry Street, and north/south alley rights-of-way adjoining 1301 Mulberry Street (hereinafter “Easement Area”), for the purpose of constructing, repairing, and maintaining balcony projections and canopies over the right-of-way, and building footings and subsurface encroachments into the right-of-way from such building as part of a 5-story mixed-use building project at 1301 Mulberry Street; which price reflects the fair market value of the Easements as determined by the City’s Real Estate Division; and

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

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

1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating air and subsurface rights-of-way within 13th Street, Falcon Drive, Mulberry Street, and a north/south alleyway all adjoining 1301 Mulberry Street, legally described as follows:

AIR RIGHTS

A PART OF MULBERRY STREET RIGHT OF WAY, A PART OF 13TH/ STREET RIGHT OF WAY, A PART OF FALCON DRIVE RIGHT OF WAY, AND A PART OF THE NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 34, KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND BEING A PART OF THE CITY



**Date** ..... October 2, 2023 .....

OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 IN BLOCK 34 IN KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; THENCE S29°20'46"W A DISTANCE OF 11.37 FEET TO THE POINT OF BEGINNING; THENCE N15°21'07"W A DISTANCE OF 148.99 FEET; THENCE N73°29'18"E A DISTANCE OF 148.36 FEET; THENCE S15°25'33"E A DISTANCE OF 150.43 FEET; THENCE S74°02'40"W A DISTANCE OF 148.53 FEET TO THE POINT OF BEGINNING, EXCEPT LOTS 8 & 9 BLOCK 34 KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES,

LYING BETWEEN ELEVATIONS 50.57 AND 95.33 FEET, CITY OF DES MOINES DATUM (REFERENCE GROUND LEVEL ELEVATION OF 36.85 FEET, CITY OF DES MOINES DATUM, AT THE POINT OF COMMENCEMENT OF THE ABOVE-DESCRIBED LOCATION). HORIZONTALLY CONTAINING 4,382 SQUARE FEET, MORE OR LESS.

SUBSURFACE RIGHTS

A PART OF MULBERRY STREET RIGHT OF WAY, A PART OF 13TH/ STREET RIGHT OF WAY, A PART OF FALCON DRIVE RIGHT OF WAY, AND A PART OF THE NORTH/SOUTH ALLEY RIGHT OF WAY IN BLOCK 34, KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND BEING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 IN BLOCK 34 IN KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; THENCE S29°20'46"W A DISTANCE OF 11.37 FEET TO THE POINT OF BEGINNING; THENCE N15°21'07"W A DISTANCE OF 148.99 FEET; THENCE N73°29'18"E A DISTANCE OF 148.36 FEET; THENCE S15°25'33"E A DISTANCE OF 150.43 FEET; THENCE S74°02'40"W A DISTANCE OF 148.53 FEET TO THE POINT OF BEGINNING, EXCEPT LOTS 8 & 9 BLOCK 34 KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES. CONTAINING 4,382 SQUARE FEET, MORE OR LESS. THE ABOVE-DESCRIBED AREA IS INTENDED TO ENCOMPASS THE ENTIRETY OF THE SUBSURFACE STRUCTURE BENEATH 1301 MULBERRY STREET WHICH EXTENDS INTO THE RIGHT-OF-WAY OF MULBERRY STREET, 13TH STREET, FALCON DRIVE AND ALLEY.

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Subsurface Building Encroachment On City-Owned Property, as legally below, to 13<sup>th</sup> and Mulberry, LLC for \$24,100.00 subject to any and all easements, restrictions and covenants of record.
3. That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such right-of-way is to be considered shall be on October 23, 2023, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

**Date** October 2, 2023

At that time the City Council will consider the above-described proposal and any other(s) submitted prior to or during the public hearing. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

4. That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached all in accordance with §362.3 of the Iowa Code.
5. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

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

APPROVED AS TO FORM:

/s/ Chas M. Cahill  
 Chas M. Cahill, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	

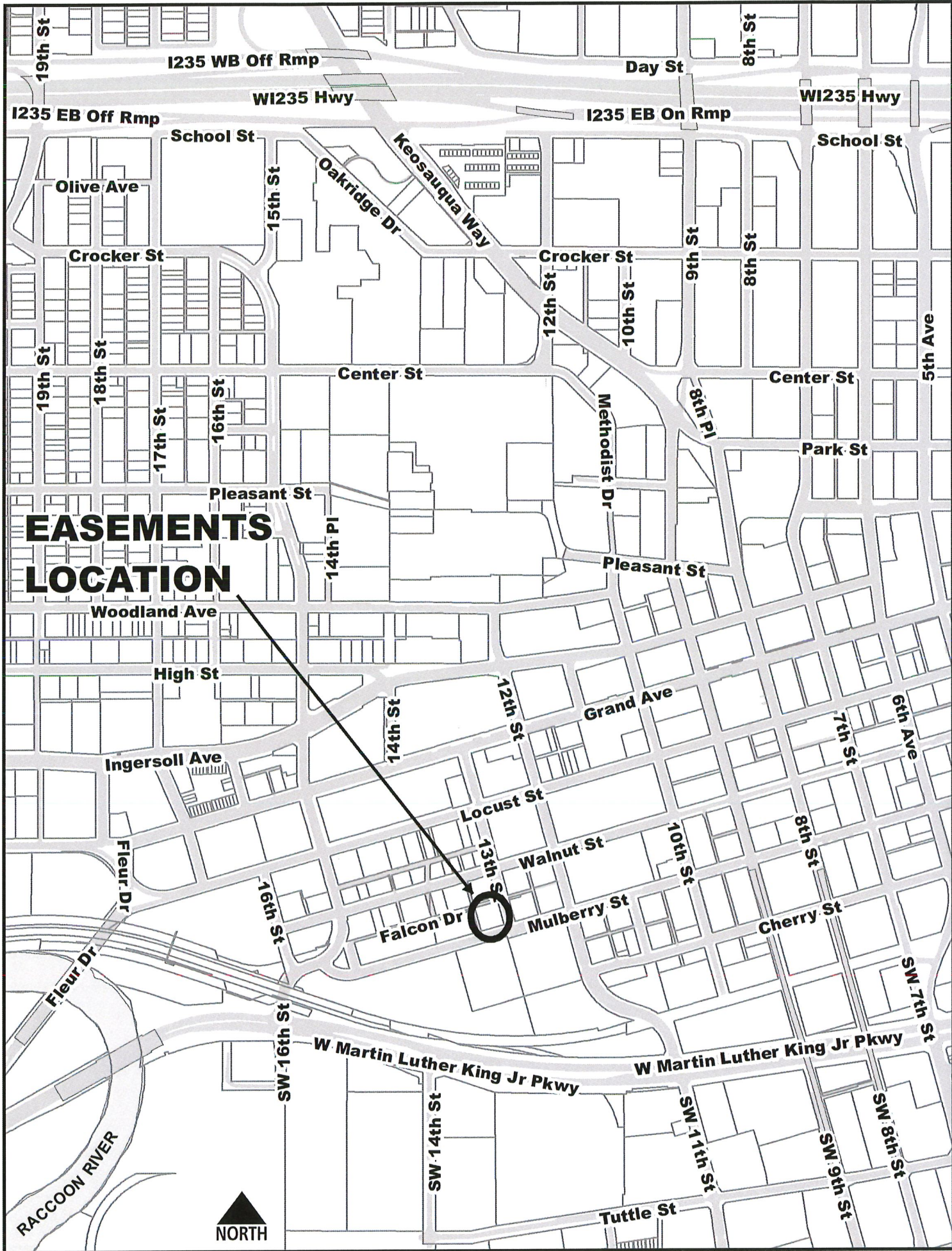
\_\_\_\_\_  
 Mayor

**CERTIFICATE**

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

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

\_\_\_\_\_  
 Laura Baumgartner, City Clerk



October 18, 2022

Communication from the City Plan and Zoning Commission advising that at their October 6, 2022 meeting, the following action was taken regarding a request from 13<sup>th</sup> and Mulberry, LLC (owner), represented by Byron Schafersman (officer), regarding the vacation of air and subsurface rights-of-way adjoining 1321 Mulberry Street, within 13<sup>th</sup> Street, Falcon Drive, Mulberry Street, and a north/south alleyway.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 15-0 as follows

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dan Drendel	X			
Leah Rudolphi	X			
Dory Briles	X			
Abby Chungath	X			
Kayla Berkson	X			
Chris Draper	X			
Todd Garner	X			
Johnny Alcivar	X			
Justyn Lewis	X			
Carolyn Jenison	X			
William Page	X			
Andrew Lorentzen	X			
Emily Webb	X			
Katie Gillette	X			

**ARPROVAL** of the requested vacation of air rights and subsurface rights, subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.

Written Responses

0 in Favor

0 in opposition

## STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of air rights and subsurface rights, subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation of air rights and subsurface rights within the 13<sup>th</sup> Street, Falcon Drive, Mulberry Street, and alleyway rights-of-way adjoining the subject property is being requested to allow balconies to project from the building and to allow the encroachment of building footings. The applicant is proposing a 5-story, mixed-use (commercial and residential) building. The requested air rights would also allow ground level commercial spaces to have canopies projection above the entries. The proposed building would be built to maximize the building footprint on the property. In some locations, the footings would extend a maximum of approximately 2 feet past the property line.
2. **Size of Site:** The requested segments of air and subsurface rights-of-way encompass a total of 4,382.12 square feet of area.
3. **Existing Zoning (site):** "DX2" Downtown Mixed-Use District.
4. **Existing Land Use (site):** The subject areas are within 13<sup>th</sup> Street, Falcon Drive, Mulberry Street, and alleyway rights-of-way.
5. **Adjacent Land Use and Zoning:**
  - North** – "DX2"; Use is multi-tenant office building.
  - South** – "P2"; Uses are government offices and City of Des Moines Fire Station Number 1.
  - East** – "DX1"; Use is an office building.
  - West** – "DX2"; Use is a surface parking lot.
6. **General Neighborhood/Area Land Uses:** The subject area to be vacated is located in the Downtown Des Moines Neighborhood. The area contains a mix of commercial, civic, and residential uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Downtown Des Moines Neighborhood. The neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on September 16, 2022 and by mailing of the Final Agenda on September 30, 2022. Additionally, separate notifications of the hearing for this specific item were mailed on September 26, 2022 (10 days prior to the

public hearing) to the primary titleholder on file with the Polk County Assessor for each property adjacent to the request right-of-way.

All agendas are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Downtown Des Moines Neighborhood Association mailings were sent to Brandon Brown, 120 Southwest 5<sup>th</sup> Street, Unit 101, Des Moines, IA 50309.

8. **Relevant Zoning History:** None
9. **PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Downtown Mixed Use.
10. **Applicable Regulations:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

## **II. ADDITIONAL APPLICABLE INFORMATION**

1. **Utilities:** Existing utilities have been identified within the requested right-of-way. Easements must be reserved for any such existing utilities until such time that they are abandoned or relocated at the applicant's expense.
2. **Traffic/Access:** The requested vacation would not negatively impact access to private properties or traffic patterns, including pedestrian circulation on sidewalks.
3. **Permanent Easement for Air Space:** The requested air-rights vacation shall comply with the terms and conditions of any necessary easements for air space above City-owned property.

## **SUMMARY OF DISCUSSION**

Emily Webb asked if any member of the public or commission desired to speak on the item. No one requested to speak.

## **COMMISSION ACTION:**

Dory Briles made a motion for approval of the requested vacation of air rights and subsurface rights, subject to the reservation of easements for any existing utilities until such time that they are abandoned or relocated at the applicant's expense.

Motion passed: 15-0

Respectfully submitted,

*Bert Drost*

Bert Drost, AICP  
Planning & Urban Design Deputy Administrator

BAD:tjh





13th and Mulberry LLC, Parcel in Vicinity of 1321 Mulberry Street

ROWV-2022-000022



Updated on: 9/16/2022

1 inch = 73 feet

# SCHEMMER

Design with Purpose. Build with Confidence.

PROJECT: GREEN ACRE COMPANIES  
FALCON DRIVE APARTMENTS

JOB NO: 08284.001

DATE: 05/25/2022

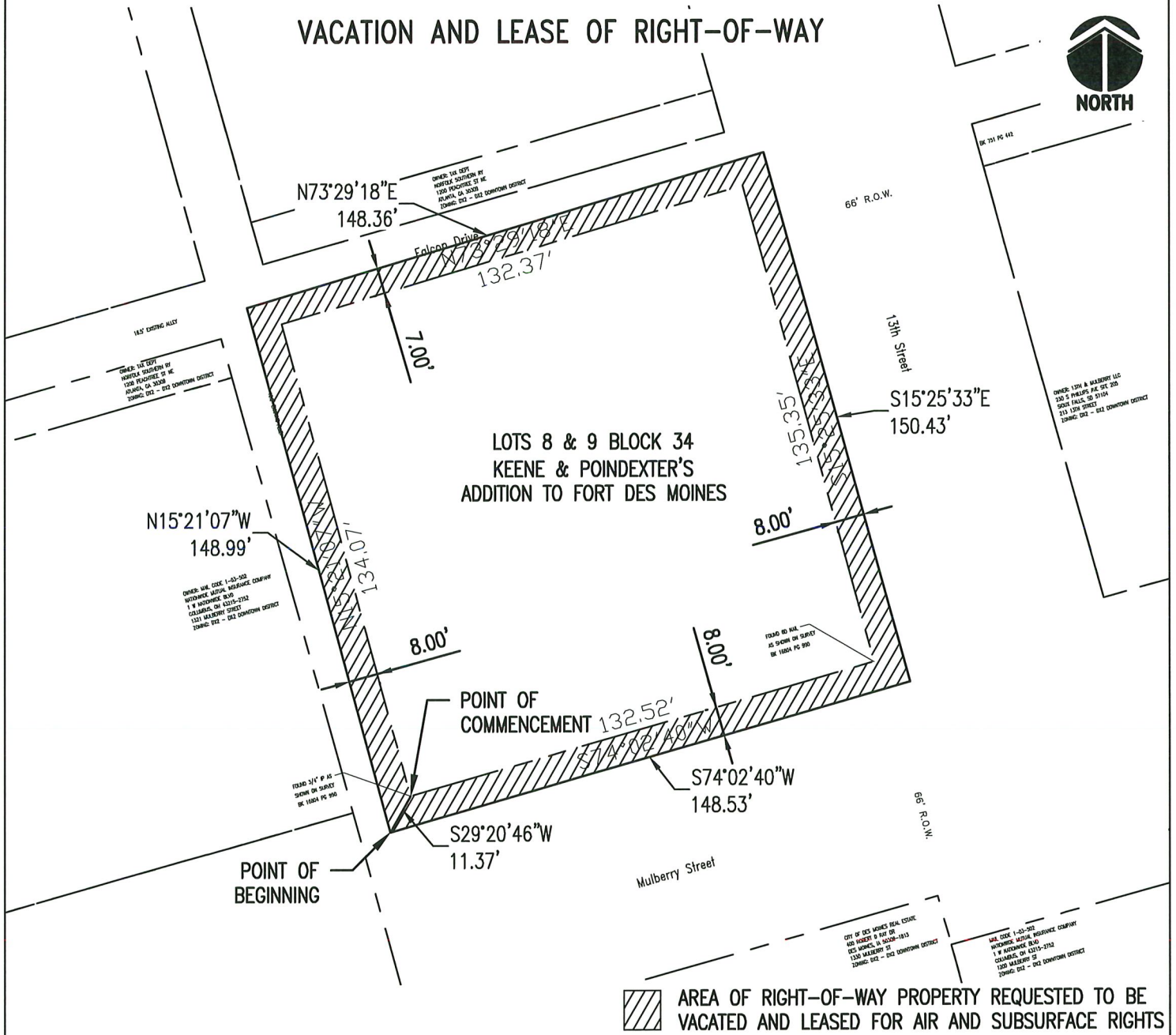
DRAWN: DGD

SCALE: 1"=40'

SHEET NO: 1 OF 1

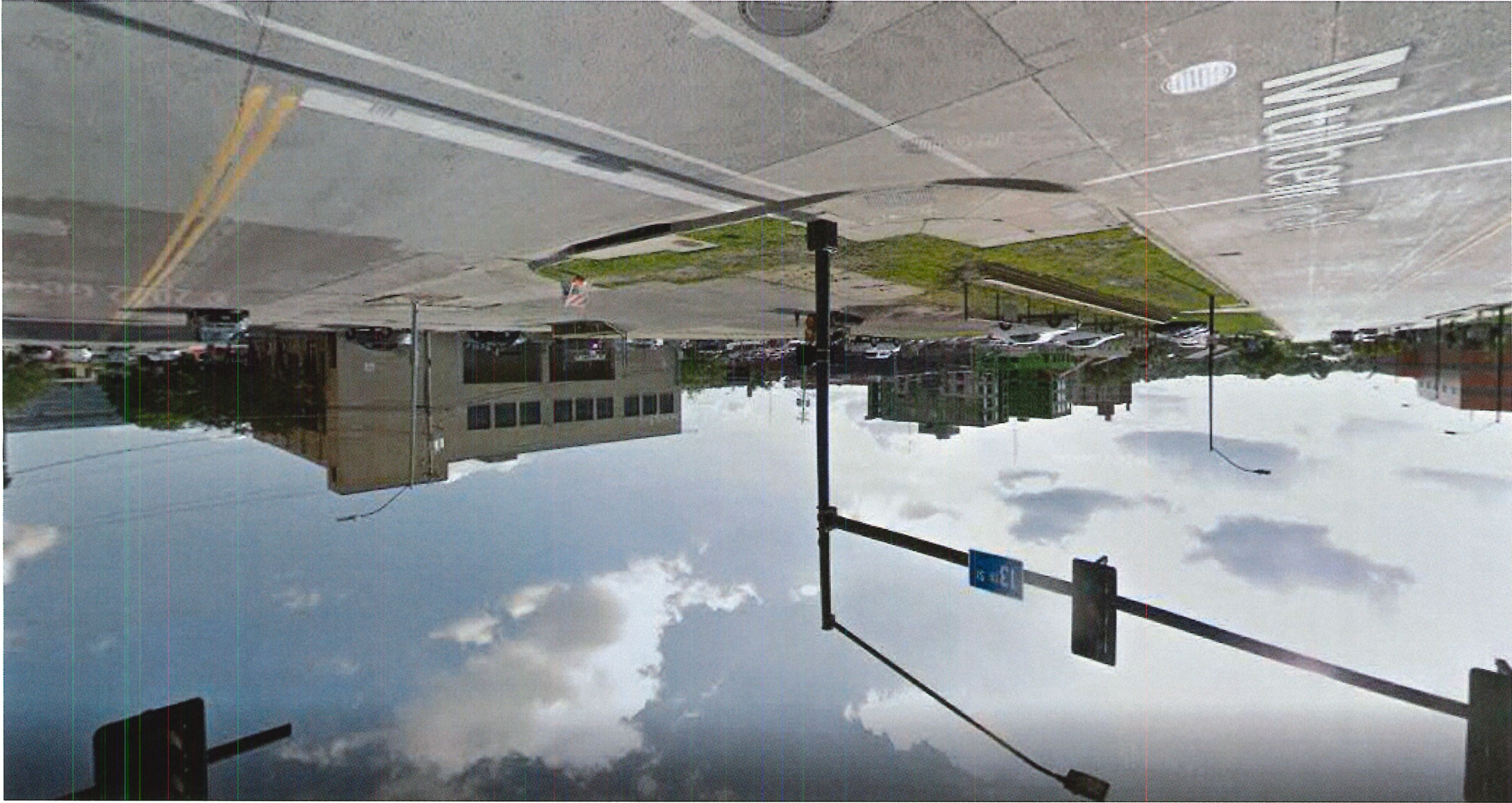
SHEET TITLE: RIGHT-OF-WAY REQUEST EXHIBIT

## VACATION AND LEASE OF RIGHT-OF-WAY



### LEGAL DESCRIPTION:

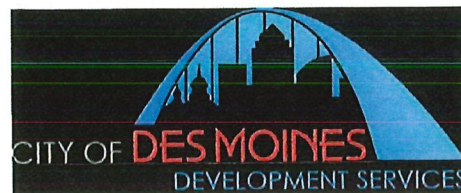
COMMENCING AT THE SOUTHWEST CORNER OF LOT 8 IN BLOCK 34 IN KEENE & POINDEXTER'S ADDITION: THENCE S29°20'46"W A DISTANCE OF 11.37 FEET TO THE POINT OF BEGINNING; THENCE N15°21'07"W A DISTANCE OF 148.99 FEET; THENCE N73°29'18"E A DISTANCE OF 148.36 FEET; THENCE S15°25'33"E A DISTANCE OF 150.43 FEET; THENCE S74°02'40"W A DISTANCE OF 148.53 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPT LOT 8 & 9 BLOCK 34 KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES. ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. CONTAINING 4,382 SQUARE FEET OR 0.101 ACRES, MORE OR LESS.



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# OWNER AFFIDAVIT



The City of Des Moines requires Property Owner's Consent for each development application. A completed and signed copy of this form is required to be included with every application request. For property with more than one owner/titleholder, each owner/titleholder must sign a copy of this form. If the owner/titleholder of the property is an organization/entity, proof of signature authority on behalf of the organization/entity must be attached to this form.

I Byron Scholten am the Titleholder(s)/Owner(s), or authorized representative of  
(printed name)

the Titleholder(s)/Owner(s), of the property located at 1321 Mulberry St, Des Moines, IA,  
(address) parcel: 782409103022  
in Des Moines, Iowa.

I hereby give consent to the submittal and consideration of the following application regarding my property:

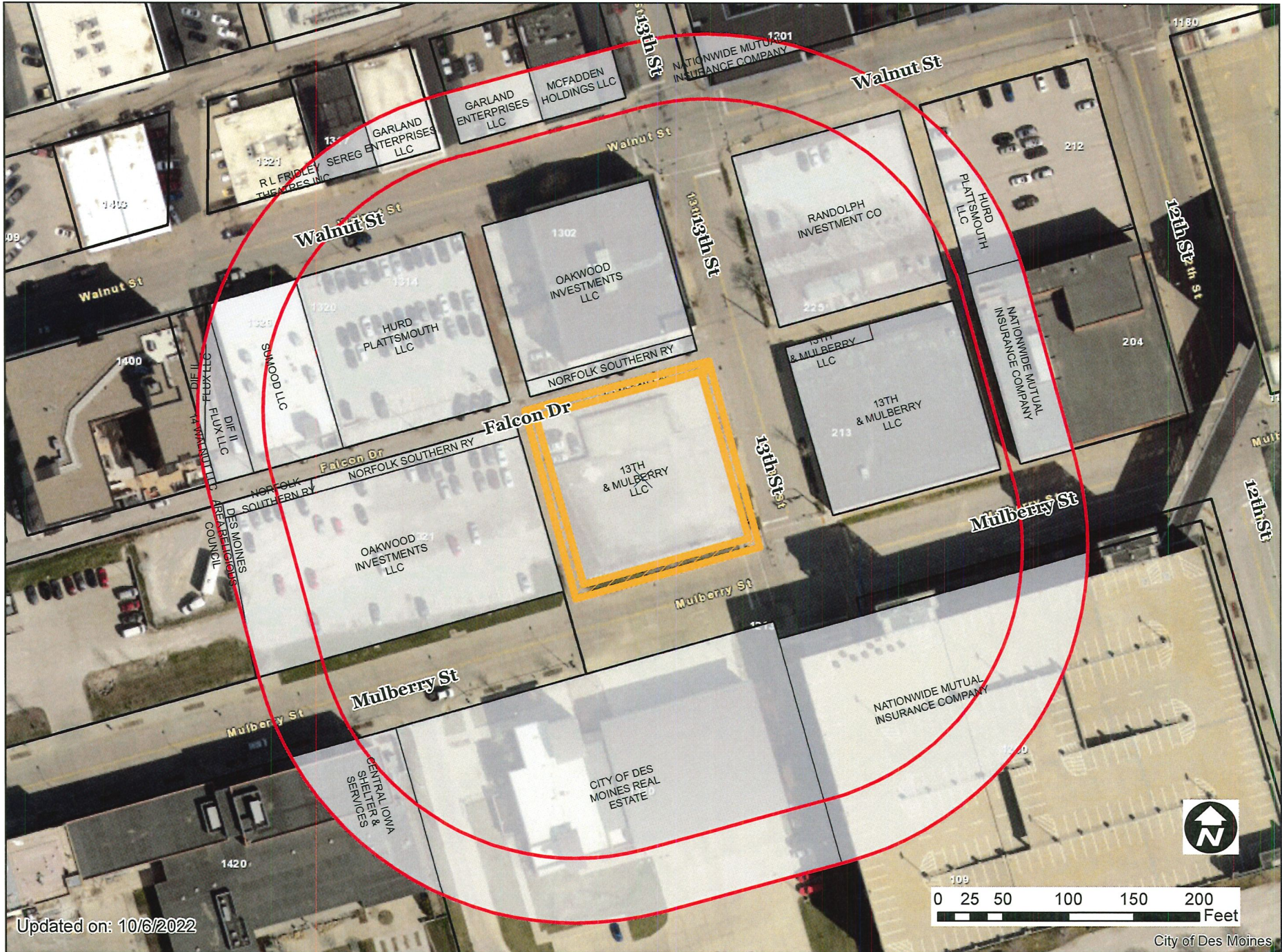
- Zoning Map Amendment (Rezoning)
- Land Use Plan Amendment
- PUD Amendment
- Conditional Use Approval
- Zoning Exception
- Zoning Variance
- Site Plan
- Plat of Survey
- Preliminary Plat
- Vacation Request
- Other (write in): Subsurface & Air Rights

I am authorized to submit this application on behalf of the Titleholder/Owner. I certify under penalty of perjury and according to the laws of the State of Iowa that the foregoing is true and correct.

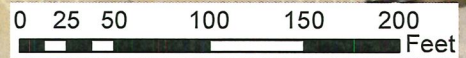
Signature:  Date: 8/8/22  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

13th and Mulberry LLC, Parcel in Vicinity of 1321 Mulberry Street

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ROWV-2022-000022



Updated on: 10/6/2022



City of Des Moines

1 inch = 98 feet