



**Date** February 19, 2024

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

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

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

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

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

.....  
**Date** ..... February 19, 2024 .....

WAY LINE TO A POINT; THENCE S89°48'46"W, 4.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 24 SQUARE FEET MORE OR LESS.

AND,

SURFACE RIGHTS - ALLEY

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

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

SUBSURFACE RIGHTS

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

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

Date February 19, 2024

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Building Encroachment, a Permanent Easement for Building Encroachment-Door Swing, a Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and a Permanent Easement for Air Space Above City-Owned Property in such vacated right-of-way, to Neighborhood Development Corporation for \$2,710.00, 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 Easements is to be considered shall be on March 4, 2024, 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. 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/ Mackenzie L. Moreno  
 Mackenzie L. Moreno, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

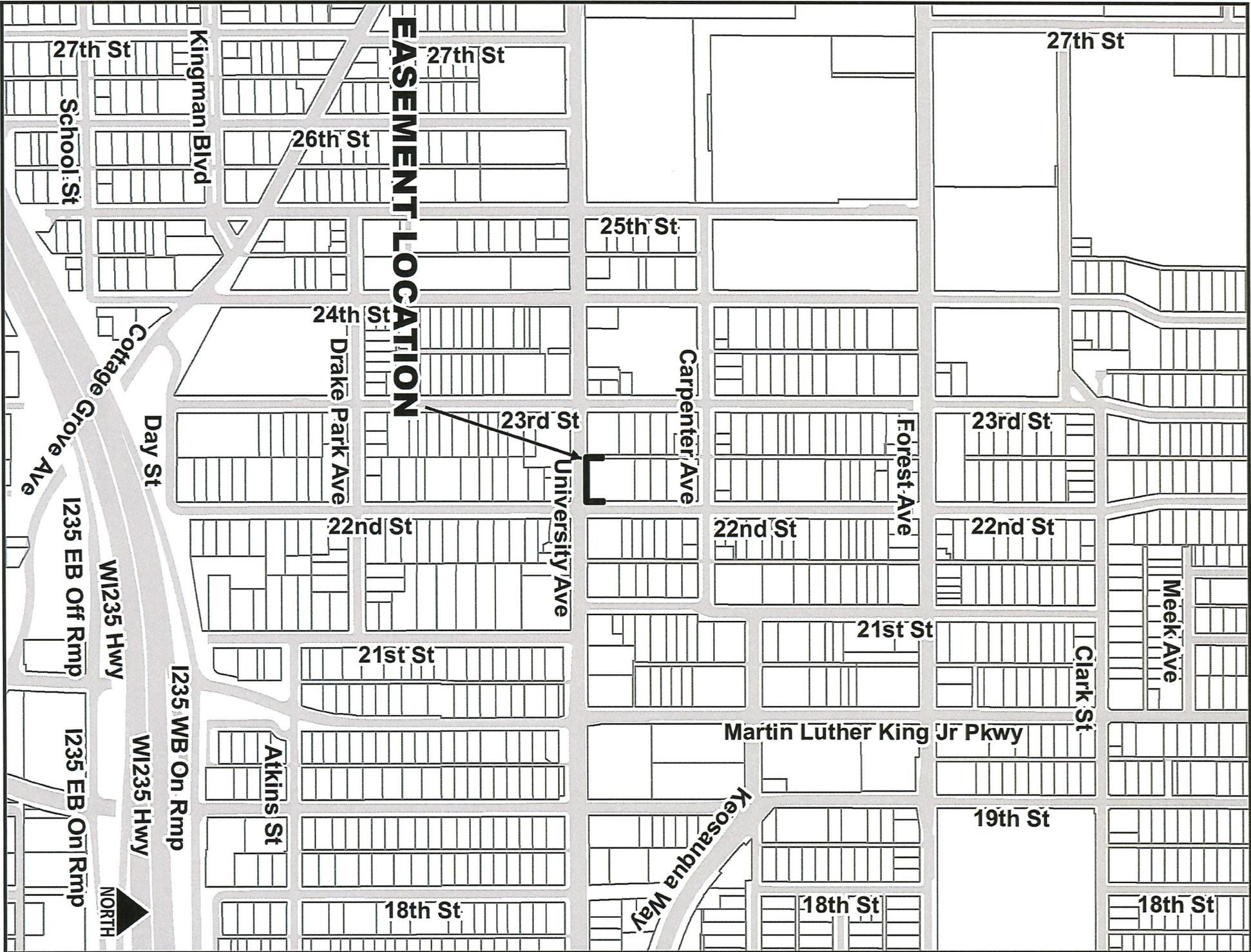
**CERTIFICATE**

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

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

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

**EASEMENT LOCATION**



22

December 22, 2023

Communication from the City Plan and Zoning Commission advising that at their December 21, 2023 meeting, the following action was taken regarding a request from Neighborhood Development Corporation (owner), represented by Abbey Gilroy (officer), for review and approval of the following regarding property located at 2211 University Avenue:

- A) Vacation of approximately 40 square feet of air right-of-way on University Avenue to allow the encroachment of a proposed building awning.
- B) Vacation of approximately 24 square feet of surface right-of-way on 22<sup>nd</sup> Street to allow the encroachment of a proposed building door swing.
- C) Vacation of approximately 90 square feet of surface right-of-way on the western north/south alleyway adjoining the subject property to allow the encroachment of proposed trash enclosure gates.
- D) Vacation of approximately 1,761 square feet of subsurface right-of-way on 22<sup>nd</sup> Street, University Avenue, and the adjoining western north/south alleyway to allow the encroachment of proposed building footings.

## COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-0 as follows.

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus					X
Leah Rudolphi	X				
Abby Chungath	X				
Kayla Berkson					X
Chris Draper					X
Laura Kessel	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				
Rick Trower					X

**APPROVAL** of the requested vacations.

## STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacations.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

- 1. Purpose of Request:** The applicant is proposing to construct a 3-story, mixed-use building. The proposed vacation of air rights is being requested to allow a canopy to project from the building. The proposed vacations of surface rights within the 22<sup>nd</sup> Street and north/south alley right-of-way adjoining the subject property are being requested to allow a building door to swing into the 22<sup>nd</sup> Street right-of-way and trash enclosures gates to swing into the alley. The proposed vacation of subsurface rights within the University Avenue, 22<sup>nd</sup> Street, and north/south alley right-of-way is being requested to allow the encroachment of building footings.
- 2. Size of Site:** The requested segment of air rights is approximately 40 square feet of area. The requested segments of surface rights are approximately 24 square feet and 90 square feet. The requested segments of subsurface rights are approximately 1,761 square feet.
- 3. Existing Zoning (site):** "MX2" Mixed-Use District.
- 4. Existing Land Use (site):** The subject areas to be vacated consist of University Avenue, 22<sup>nd</sup> Street, and alley right-of-way. The adjoining site is an undeveloped parcel that was previously home to a Kum and Go gas station and convenience store.

**5. Adjacent Land Use and Zoning:**

**North** – “NX1”; Use is a one-household dwelling unit.

**South** – “RX2” and “N5”; Uses are University Avenue and one- and multiple-household dwelling units.

**East** – “RX2” and “NX1”; Uses are 22<sup>nd</sup> Street, a commercial strip center, and one-household dwelling units.

**West** – “MX2” and “NX1”; Uses are an alley and multiple-household dwelling units.

**6. General Neighborhood/Area Land Uses:** The subject property is situated on the north side of University Avenue, between 22<sup>nd</sup> and 23<sup>rd</sup> Streets. The area is within the commercial and mixed-use corridor located east of Drake University.

**7. Applicable Recognized Neighborhood(s):** The subject property is in the Drake Neighborhood. The neighborhood associations were notified of the public hearing by emailing of the Preliminary Agenda on December 1, 2023 and the Final Agenda on December 15, 2023. Additionally, separate notifications of the hearing for this specific item were mailed on December 11, 2023 (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 Services Department by the recognized neighborhood association. The Drake Neighborhood Association mailings were sent to Lori Calhoun, 2808 Cottage Grove Avenue, Des Moines, IA 50311.

**8. Relevant Zoning History:** On January 9, 2023, the City Council, by ordinance No. 16,124, rezoned the property from “RX2” Neighborhood Mixed Use District to “MX2” Mixed Use District classification. This rezoning request was before the Commission on December 1, 2022. The Commission recommended approval by a vote of 13-0.

A site plan for the new building and related site improvements is currently under review.

**9. PlanDSM: Creating Our Tomorrow Land Use Plan Designation:** Neighborhood 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:** While no utilities have been identified within the requested right-of-way, easements must be reserved for any 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.

Trash enclosure gates would swing no more than 5 feet into the alley, and only when a garage truck is present. The existing alley is approximately 16 feet wide. City Real Estate would work with the applicant to ensure that any future easements for door swings shall note that enclosure doors are to remain closed except during trash pick-up.

## **SUMMARY OF DISCUSSION**

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

## **COMMISSION ACTION:**

Carolyn Jenison made a motion for approval of the requested vacations.

## **THE VOTE: 10-0**

Respectfully submitted,



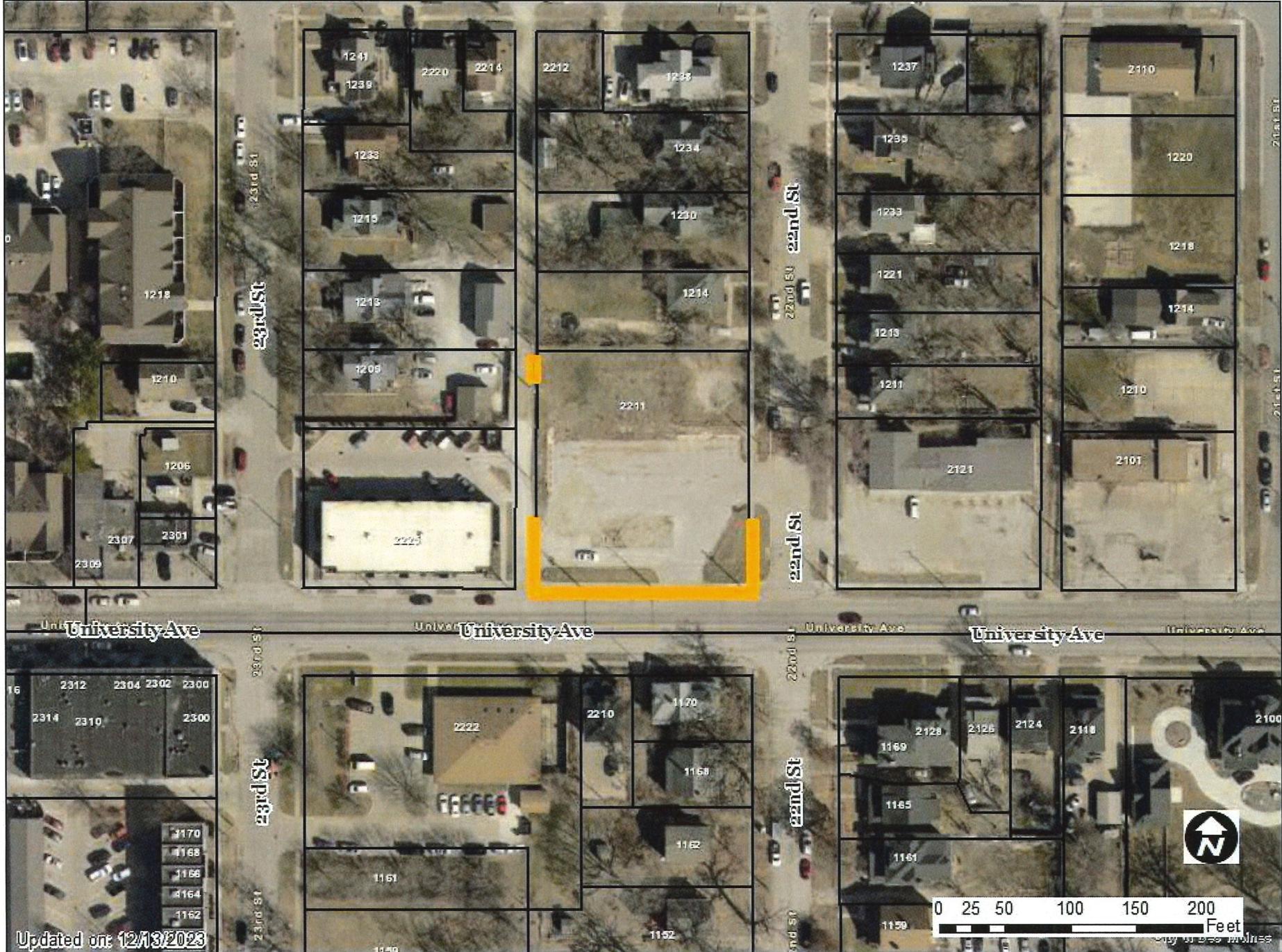
Jason Van Essen, AICP  
Planning & Urban Design Administrator

JMV:tjh

22

# Neighborhood Development Corporation, 2211 University Avenue

ROWV-2023-000013



Updated on: 12/13/2023

1 inch = 97 feet

















22

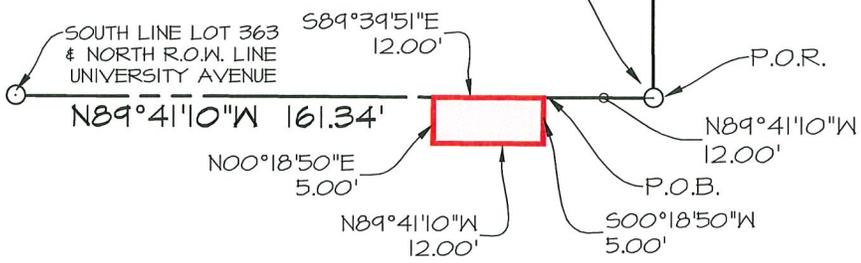
EXHIBIT  
AIR RIGHTS  
EASEMENT  
2211 UNIVERSITY AVENUE  
DES MOINES, IOWA

500°11'14"E 179.88'

22ND STREET  
(PUBLIC)

LOT 363  
UNIVERSITY LAND COMPANY'S  
SECOND ADDITION TO UNIVERSITY  
PLACE  
(BK 'C', PG 48)

SE CORNER, LOT 363 UNIVERSITY  
LAND COMPANY'S SECOND ADDITION  
TO UNIVERSITY PLACE



UNIVERSITY AVENUE  
(PUBLIC)

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Civil Engineering Consultants, Inc.

2400 86th Street . Unit 12 . Des Moines, Iowa 50322  
515.276.4884 . Fax: 515.276.7084 . mail@ceclac.com

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SHEET

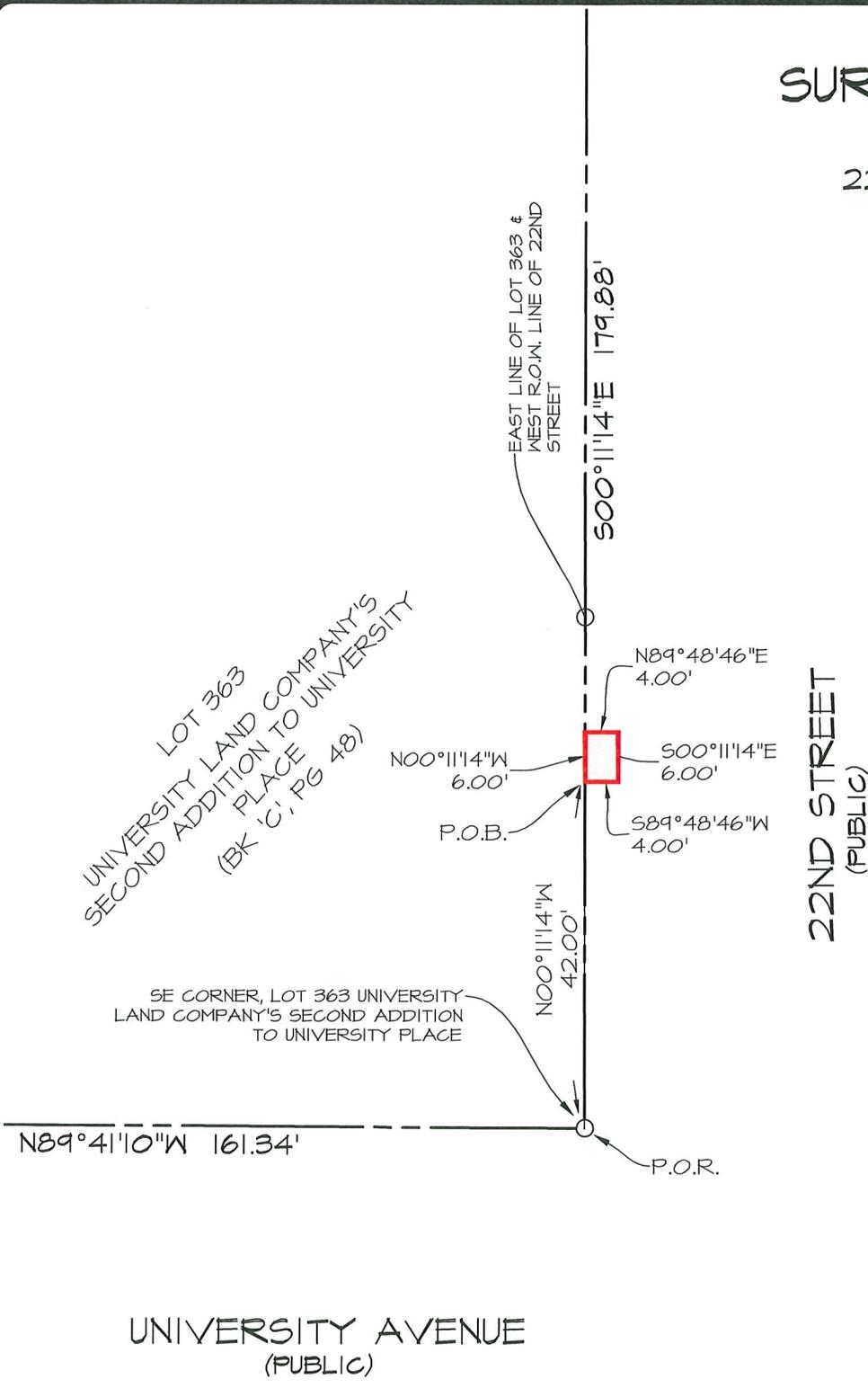
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OF 1

E8880

DATE: 12-06-2023  
DESIGNED BY: ###  
DRAWN BY: ###

EXHIBIT  
**SURFACE RIGHTS  
 EASEMENT**  
 2211 UNIVERSITY AVENUE  
 DES MOINES, IOWA



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Civil Engineering Consultants, Inc.

2400 86th Street, Unit 12, Des Moines, Iowa 50322  
 515.276.4884 . Fax: 515.276.7084 . mail@ceclac.com

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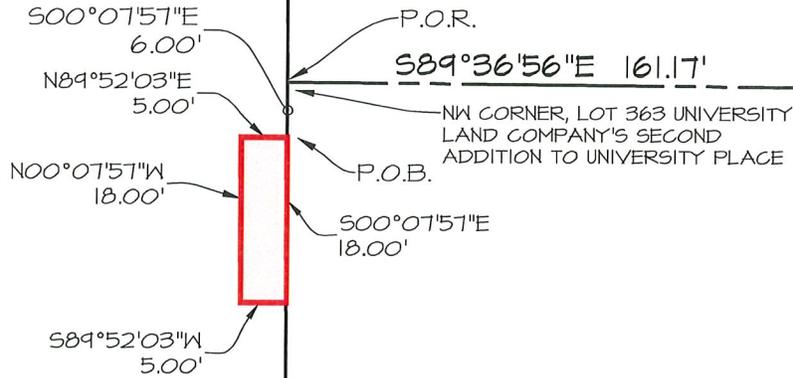


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SHEET  
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 OF 1  
 E8880

# EXHIBIT SURFACE RIGHTS EASEMENT

2211 UNIVERSITY AVENUE  
DES MOINES, IOWA



LOT 363  
UNIVERSITY LAND COMPANY'S  
SECOND ADDITION TO UNIVERSITY  
PLACE  
(BK 'C', PG 48)

ALLEY  
(PUBLIC)

WEST LINE LOT 363

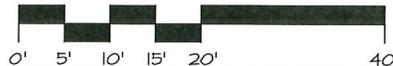
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Civil Engineering Consultants, Inc.

2400 86th Street . Unit 12 . Des Moines, Iowa 50322  
515.276.4884 . Fax: 515.276.7084 . mail@ceclac.com

SCALE: 1" = 20'



NORTH



SHEET

1

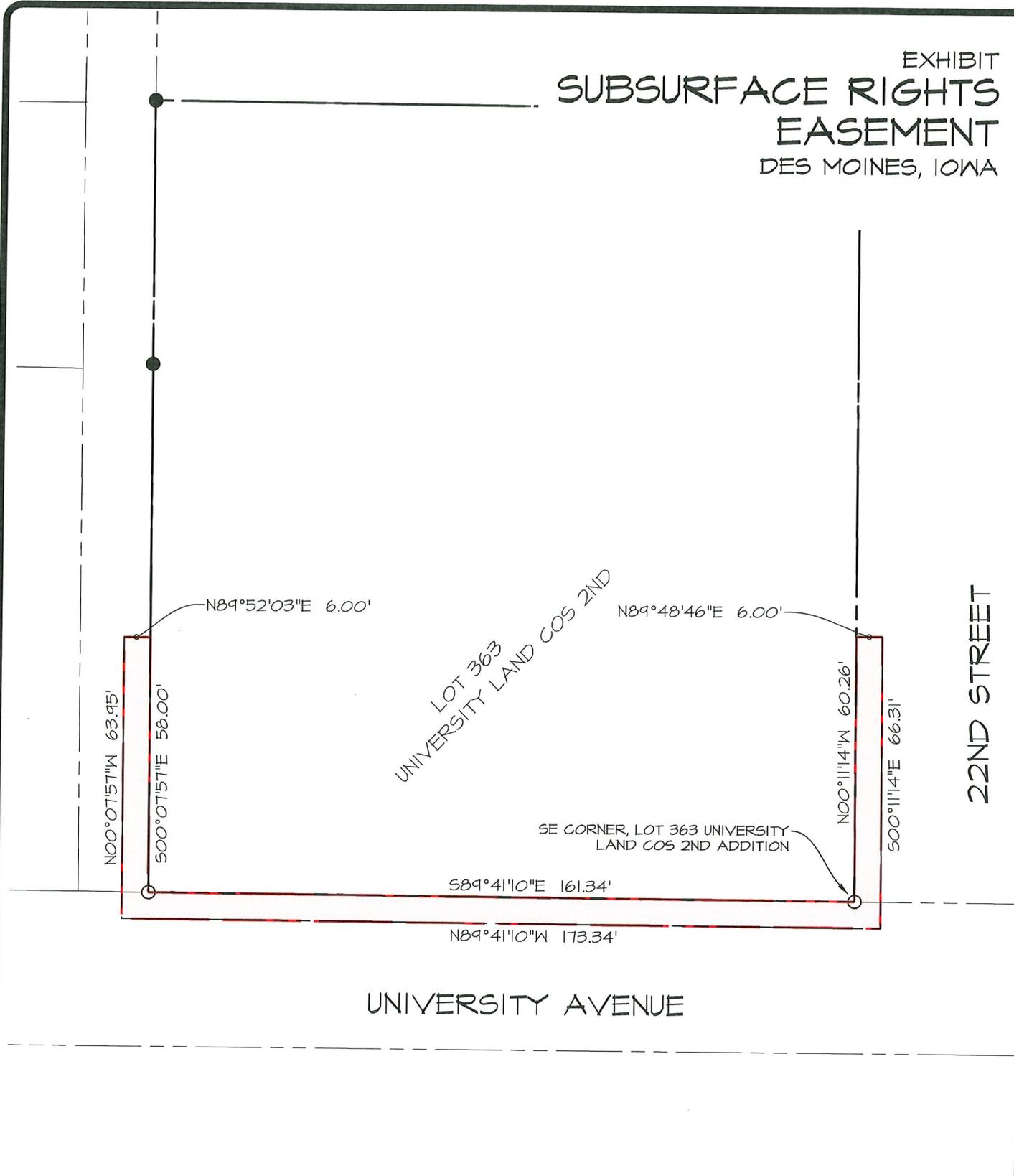
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DATE: 12-06-2023  
DESIGNED BY: ###  
DRAWN BY: ###

E8880

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EXHIBIT  
SUBSURFACE RIGHTS  
EASEMENT  
DES MOINES, IOWA



UNIVERSITY AVENUE

22ND STREET



Civil Engineering Consultants, Inc.

2400 86th Street . Unit 12 . Des Moines, Iowa 50322  
515.276.4884 . Fax: 515.276.7084 . mail@ceclac.com

SCALE: 1"=30'



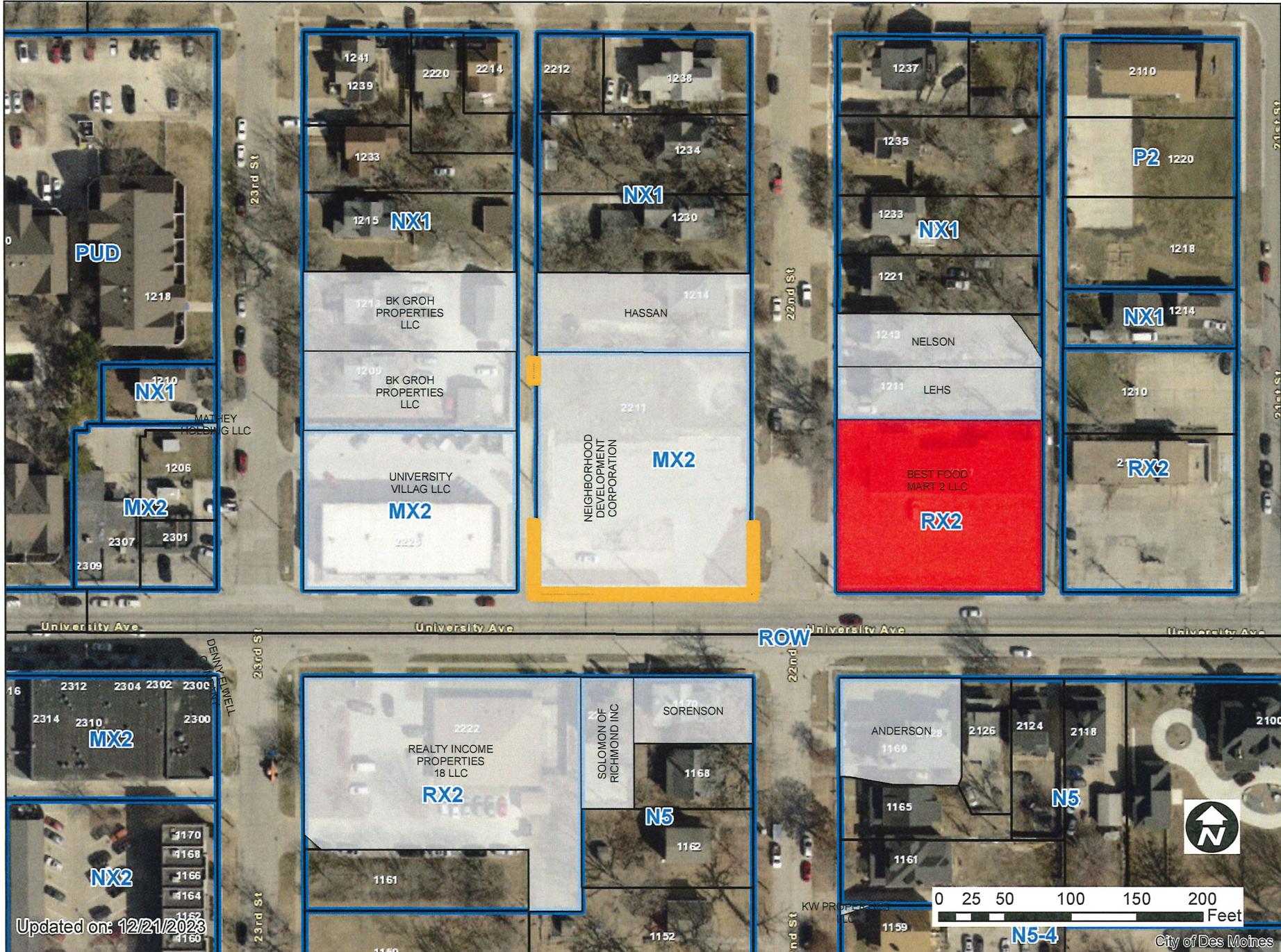
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OF 1

E8880

DATE: August 28, 2023  
DESIGNED BY: ###  
DRAWN BY: ###



Updated on: 12/21/2023

1 inch = 97 feet

Item: ROWV-2023-000013

Date: 12/21/2023

Please mark one of the following:

Staff Use Only

- I support the request
- I am undecided
- I oppose the request

Titleholder Signature: Manjeet Aulakh

Name/Business: Best Food Mart #2 LLC

Impacted Address: 2121 University Ave

Comments: Too close to the street and unnecessary nuisance to the public. M33 Zoning will conflict with other properties nearby.