



City Hall, 215 Sycamore St.
Muscatine, IA 52761-3840
(563) 262-4141
Fax (563) 262-4142

COMMUNITY DEVELOPMENT

MEMORANDUM

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

To: Mayor and City Council Members
Cc: Greg Jenkins, Interim City Administrator
From: Andrew Fangman, Assistant Community Development Director
Date: March 5, 2020
Re: Resolution Approving a Ramp Easement Agreement with Point Above LLC at 228 W. 2nd Street

INTRODUCTION: Hershey Property, LLC has requested an easement to encroach into right of way adjacent to their property at 216 Sycamore Street. permanent easement to construct

BACKGROUND: Point Above LLC, is currently undertaking the redevelopment of 228 W. 2nd Street. The substantial renovation and change in occupancy of this building triggers a requirement for compliance with the access requirements the Americans with Disability Act (ADA). To make the Pine Street entrance into the building ADA compliant a ramp will have to be constructed. As this building is built right up to the Pine Street right of way ramp the only place to locate the required ramp is on City right of way. Point Above LLC is requesting that the City provide an easement for such a ramp.

Attached to this memo are a diagram showing the location of the proposed ramp and associated easement area; also attached are the plans for the proposed ramp. The proposed ramp would be constructed in manner that would still leave 6' of sidewalk width between the edge of the ramp easement area and the curb. At one time, as can be seen below in a picture take in 2015, there was a set of steps attached to the building that encroached into the Pine Street right of way.

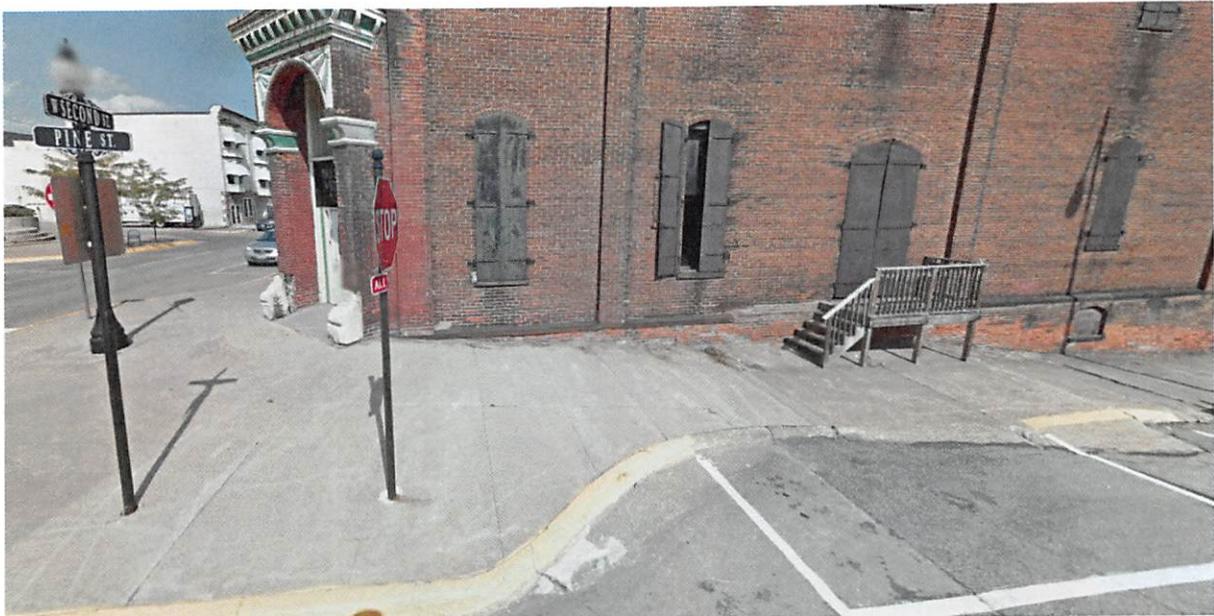


Image from 2015 showing proposed location of ramp

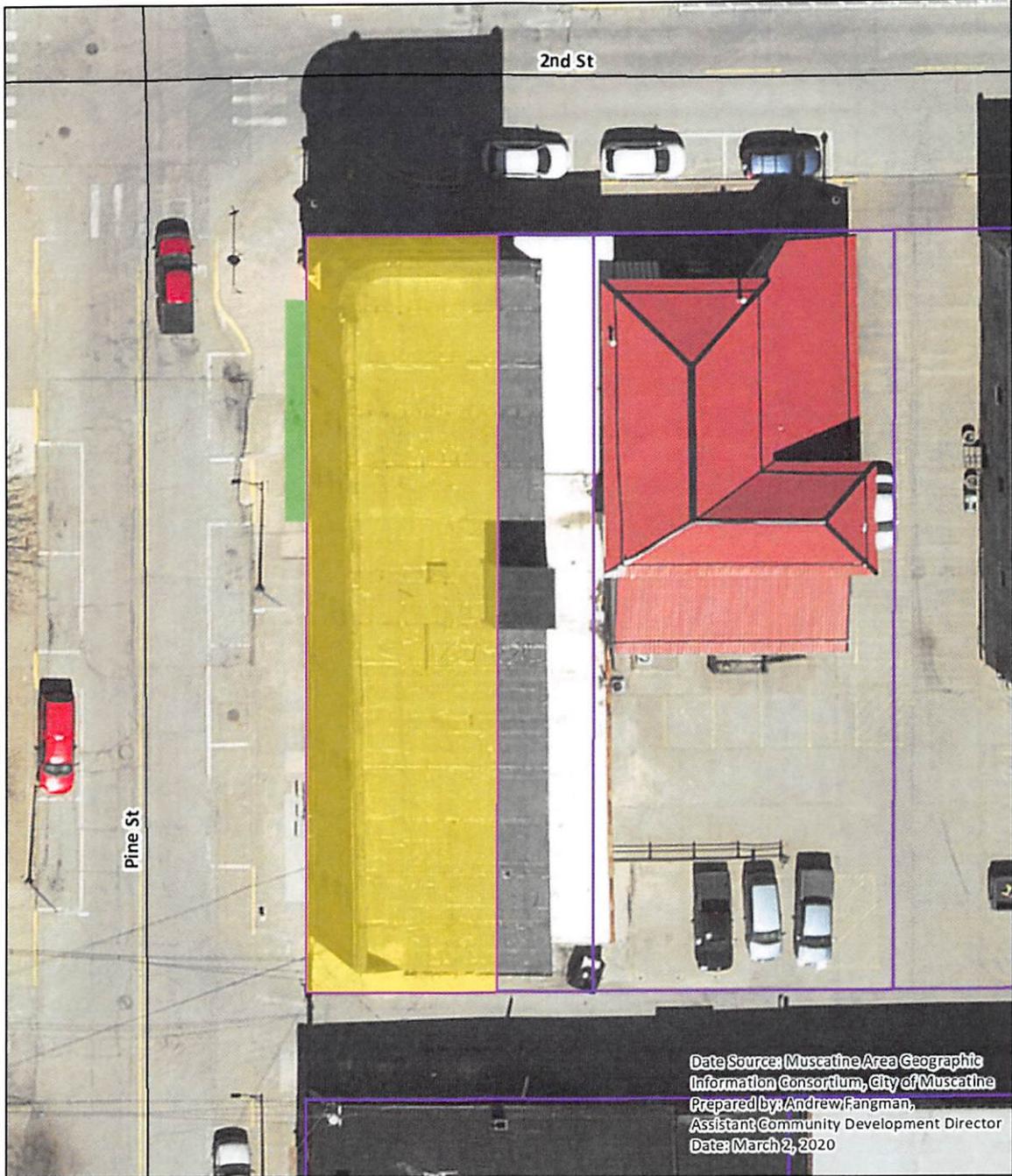
City Staff has negotiated a ramp, attached to this memo, that will allow Point Above LLC the encroachments into the public right of way necessary to successfully redeveloped this building, while protecting City's and general public's interests.

RECOMMENDATION/RATIONALE: Staff recommends approval of this resolution.

Creating ADA compliant access off of Pine Street for the Hershey Building is necessary for its successful redevelopment of this building. The renovation of 228 West 2nd Street is critical to achieve the community's vision of a thriving and vibrant downtown that is attractive to visit, work, and live in. The location and prominence of 228 West 2nd Street makes its redevelopment particularly important. For those entering Downtown Muscatine from the west, 218 W. 2nd Street which located on the southeast corner of 2nd Street and Pine Street, it is the first building that they encounter and their first impression of downtown Muscatine.

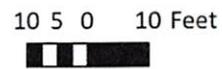
BACKUP INFORMATION:

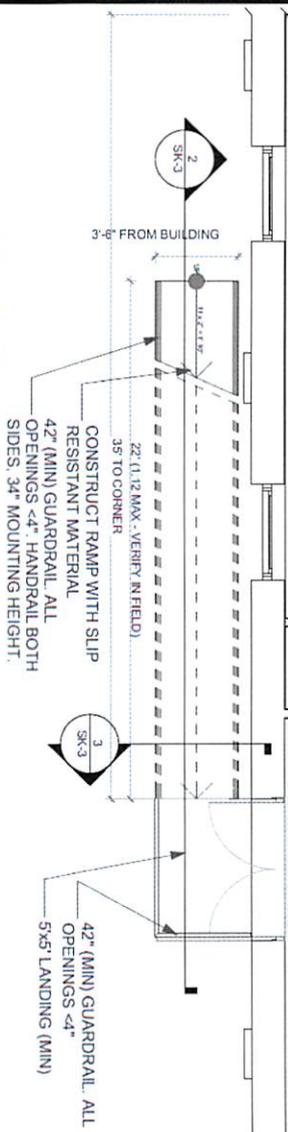
1. Resolution Approving Easement Agreement
2. Easement Agreement
3. Map
4. Plans for Proposed Ramp



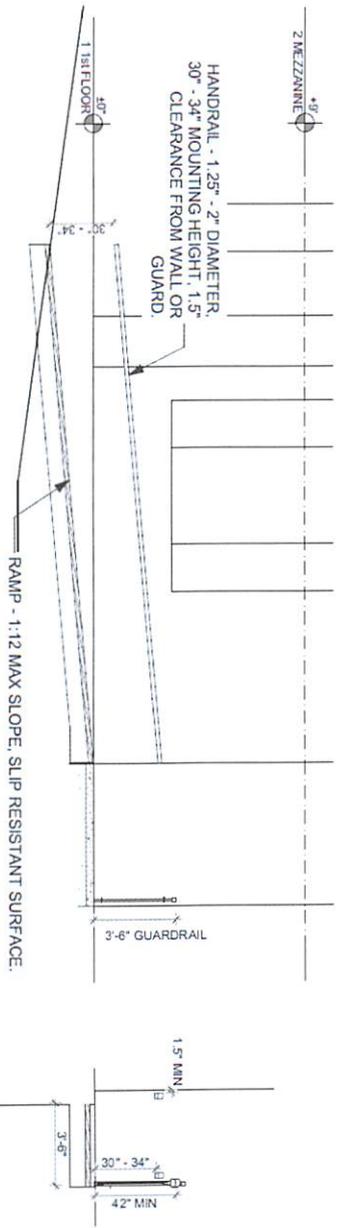
Legend

- Approximate Easement Area
- Point Above Property (228 W. 2nd St)
- Parcel Lines





1
RAMP PLAN
SCALE: 1/4" = 1'-0"



2
RAMP SECTION
SCALE: 1/4" = 1'-0"

3
RAMP SECTION
SCALE: 1/4" = 1'-0"

RESOLUTION NO. _____

RAMP AND ENCROACHMENTS EASEMENT AGREEMENT

WHEREAS, RAMP AND ENCROACHMENTS EASEMENT AGREEMENT (the "Agreement") attached as Exhibit 1 is entered into by and between, **the City of Muscatine, Iowa**, an Iowa municipal corporation, (hereinafter referred to as "City") and **Point Above, LLC**, an Iowa limited liability company (hereinafter referred to as "Point Above"); and

WHEREAS, Point Above is the owner of certain real property located in the City of Muscatine, Muscatine County, Iowa (228 West Second Street), as more particularly described as The Westerly 36 feet of Lots 10 in Block 10 of the City of Muscatine in Muscatine County, Iowa. ("Point Above's Property");

WHEREAS, Point Above desires to install and maintain an access ramp, pathway, and related appurtenances (collectively, the "Ramp") that are compliant with the requirements existing of the Americans with Disability Act of 1990 (as amended from time to time) (the "ADA") in order to provide access to Point Above's Property from property owned by the City and known as the Sycamore Street Right of Way;

WHEREAS, In consideration of the covenants and obligations set forth herein and other good and valuable consideration in the sum of One Dollar (\$1.00) paid by Point Above to the City, the receipt of which is hereby acknowledged, the City agrees to grant the Ramp Easement defined in Exhibit to Point Above for access over, across, and through the Ramp Easement Area defined in Exhibit 1; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council for the City of Muscatine, that the City of Muscatine, Iowa approve the permanent right-of-way Ramp and Encroachments Easement Agreement attached as Exhibit 1.

PASSED, APPROVED AND ADOPTED this 5th day of March, 2020.

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

Diana Broderon, Mayor

Attest:

Greg Jenkins, Interim City Clerk

Exhibit 1

Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: RAMP EASEMENT AGREEMENT

DATE OF DOCUMENT: February 23, 2020

GRANTOR/TAXPAYER: City of Muscatine, Iowa

GRANTOR'S MAILING ADDRESS: 215 Sycamore Street
Muscatine, IA 52761

GRANTEE: Point Above LLC

GRANTEE'S MAILING ADDRESS: Point Above LLC
200 E 2nd St
Muscatine IA 52761-4005

LEGAL DESCRIPTION: See Attached **Exhibits A and B**

INDIVIDUAL WHO PREPARED THIS DOCUMENT: Andrew Fangman
City of Muscatine
215 Sycamore St
Muscatine, IA 52761

AFTER RECORDING, RETURN DOCUMENT TO: Point Above LLC
200 E 2nd St
Muscatine IA 52761-4005

RAMP AND ENCROACHMENTS EASEMENT AGREEMENT

THIS RAMP EASEMENT AGREEMENT (this “*Easement Agreement*”) is made and dated effective as of [Maren 5], 2020 (“*Effective Date*”), by and between CITY OF MUSCATINE, IOWA, a body corporate of the State of Iowa (“*Grantor*” and “*City*”) POINT ABOVE LLC, an Iowa limited liability company (“*Grantee*” and “*Point Above*”).

Recitals

- A. Point Above is the owner of certain real property located in the City of Muscatine, Muscatine County, Iowa, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (“*Point Above’s Property*”).
- B. Point Above desires to install and maintain an access ramp, pathway, and related appurtenances (collectively, the “*Ramp*”) that are compliant with the requirements existing of the Americans with Disability Act of 1990 (as amended from time to time) (the “*ADA*”) in order to provide access to Point Above’s Property from property owned by the City and known as the Pine Street Right of Way.
- C. The City agrees to grant the herein defined Ramp Easement to Point Above for access over, across, and through the herein defined Ramp Easement Area, .

The parties to this Easement Agreement agree as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and incorporated herein.

2. **Grant of Ramp Easement.** The City does by these presents bargain, grant, sell, convey, and confirm, unto Point Above and its assigns, successors in interest, and Permittees (as defined hereinbelow) a non-exclusive, permanent easement (the “*Ramp Easement*”) over and across the permanent ramp easement depicted and legally described on **Exhibit B** hereto (the “*Ramp Easement Area*”). Point Above may, within the Ramp Easement Area, erect, install, own, operate, maintain, repair, replace, improve, and remove the Ramp. The Ramp shall provide access, ingress, and egress over, across, and through the Ramp Easement Area to and from the Point Above Property.

3. **Permittees Defined.** “*Permittees*” as used herein, shall mean the parties permitted by Point Above or its assigns and successors in interest to enter upon the Point Above Property. Such term may include, without limitation, such parties’ tenants, employees, agents, guests, invitees, customers, subtenants, concessionaires, employees, and patrons.

4. **Construction and Maintenance of Ramp.** Point Above shall, at its sole cost and expense, erect, install, own, operate, maintain, repair, replace, improve, and remove in a safe and good condition, the Ramp in compliance with applicable governmental laws, rules, regulations, orders, and ordinances including the ADA, as necessary for Point Above, its assigns, successors in interest, and Permittees to be able to exercise their rights in the Ramp Easement pursuant to

this Easement Agreement. Point Above shall have the right to replace such improvements, at its sole cost and expense, in compliance with applicable governmental laws, rules, regulations, orders, and ordinances, including the ADA.

5. **City's Improvements.** Point Above shall replace and restore any and all improvements of the City on the Ramp Easement Area and City's adjoining land which are disturbed by Point Above's activities including, but not limited to, curbing, paving, and/or utility infrastructure. Point Above agrees to restore the Ramp Easement Area to a condition after construction substantially the same as prior to entry by Point Above.

6. **Self-Help Remedies.** If Point Above fails to perform any of its repair and maintenance obligations under this Easement Agreement, in whole or in part, the City shall have the right, but not the obligation, upon thirty (30) days' written notice to Point Above (unless within that thirty (30)-day period Point Above shall cure the default, or in the case of a default which by its nature cannot be cured within such thirty (30)-day period, Point Above shall have commenced the curing of the default within such thirty (30)-day period and thereafter shall diligently prosecute the curing of the default to completion) to proceed to take such action as shall be necessary to cure the default, all in Point Above's name and account; provided, however, in the event of an emergency, the City may take such action to cure the default without notice to Point Above.

7. **Indemnification.** To the extent legally permitted, each party hereby indemnifies the other and holds the other harmless from and against any loss, cost, damage, claim, or expense, including reasonable attorneys' fees and expenses, incurred by the indemnified party as a result of (i) any death or injury to persons or damage to property occurring in connection with the use by such party, its assigns, successors in interest, or Permittees, of the Ramp or the Ramp Easement Area, and (ii) any breach of the indemnifying party's representations, warranties, and covenants contained in this Easement Agreement.

8. **Perpetual Easement Agreement.** Each and every agreement, promise, restriction, benefit, undertaking, easement, right, privilege, and restriction contained in this Easement Agreement shall be appurtenant to and for the benefit of Point Above's Property; shall run with the land; shall be binding upon the parties to this Easement Agreement, so long as they own any portion of Point Above's Property or the Ramp Easement Area, respectively, and upon any successor to any portion of Point Above's Property or the Ramp Easement Area, respectively; and shall inure to the benefit of the property to be benefited and its owner, assigns, and successors in interest.

9. **No Liens.** Point Above shall not permit any liens to stand against the Ramp Easement Area for any work done or materials furnished in connection with the performance of the maintenance or repair work performed in connection with the Ramp; provided, however, that Point Above may contest the validity of any such lien, but upon a final determination of the validity thereof, Point Above shall cause the lien to be satisfied and released of record. Point Above shall, within thirty (30) business days after receipt of written notice from the City cause any such outstanding lien or claim of lien to be released of record in accordance with applicable law or obtain a surety bond in favor of the City. If Point Above fails to timely release the lien or obtain a surety bond pursuant to this Section, the City shall have the right, at Point Above's

expense, to transfer said lien to bond and obtain the release of any lis pendens recorded against the Ramp Easement Area. Point Above shall indemnify, defend, and hold harmless the City from any and all liability, claims, damages, expenses (including reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on any appeal), liens, claims of lien, lis pendens, judgments, proceedings, and causes of action, arising out of or in any way connected with the performance of any maintenance or repair work performed in connection with the Ramp by or on behalf of Point Above, its assigns and successors in interest, unless caused by the negligent or willful act or omission of the City or due to pre-existing conditions on the Ramp Easement Area.

10. **Non-Disturbance.** The City agrees not to permanently disturb, impede, or interfere with the reasonable use by Point Above and others claiming by and through Point Above of the Ramp Easement, and the City covenants that free access to the Ramp Easement Agreement Area will be maintained, except for temporary disturbances reasonably caused by development, governmental regulation and rules, adjacent property development, and other such causes.

11. **Notices.** All notices or other communications required to be given or served on any party pursuant to this Easement Agreement must be in writing and given to the parties at the addresses set forth below:

City: City of Muscatine, Iowa
215 Sycamore Street
Muscatine, IA 52761

Point Above: Point Above Property, LLC
200 E 2nd St
Muscatine IA 52761-4005

Any such notice or other communication shall be deemed given on the earliest to occur of the following (a) the first business day following the day sent by United States express mail, postage prepaid, return receipt requested; (b) on the first business day following the day sent by an overnight carrier service that operates on a nationwide basis; (c) on the third business day following the day sent by United States certified mail, postage prepaid, return receipt requested; or (d) on the date delivered by hand to the address above or sent by facsimile or email, whether or not actually received by the person to whom directed, provided, however, if sent by fax or email, a copy shall also be sent by one of the other above described methods. From time to time either party may designate another address within the continental United States for purposes of this Agreement by giving the other party not less than ten (10) days advance written notice of such change of address in accordance with the provisions of this Section.

12. **General Provisions.**

(a) *Headings.* The headings in this Easement Agreement are used as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Easement Agreement or in any way affect its terms.

(b) *No Limitation of Remedies.* The rights and remedies contained in this Easement Agreement and reserved to the owners, assigns, and successors, except as otherwise provided in this Easement Agreement, shall not be exclusive of any other right or remedy, but shall be cumulative and in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power, or remedy or be construed as a waiver of any default or nonperformance or as acquiescence in such delay or omission.

(c) *Document Modification and Cancellation.* This Easement Agreement may be modified or canceled only by written agreement executed by the owner(s) of Point Above's Property and the Ramp Easement Area.

(d) *Severability.* If any term or provision of this Easement Agreement or the application of it to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Easement Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected, and each term and provision of this Easement Agreement shall be valid and shall be enforced to the extent permitted by law.

(e) *Legal Fees.* In the event of any litigation or arbitration proceedings between the parties in connection with this Easement Agreement, the prevailing party shall be entitled to recover its legal fees and expenses, including attorney's fees and expenses and court costs, including any such costs incurred in connection with appeals, in connection with any such proceeding.

(f) *Governing Law.* This Easement Agreement is entered into in the State of Iowa and shall be construed, enforced, and governed, as to both validity and performance, in accordance with the laws of the State of Iowa and all of the rights and obligations of the parties hereunder shall be determined in pursuant to the laws of the State of Iowa.

(g) *Recording of Easement Agreement.* This Easement Agreement shall be recorded, at Point Above's expense, in the Office of the County Recorder of Muscatine County, Iowa.

(h) *Integration of Agreements.* This Easement Agreement, when executed, shall constitute the entire agreement between the parties in respect of the subject matter hereof and the parties shall not be bound by any oral or written discussions, negotiations, correspondence, terms, or conditions not contained herein.

(i) *Execution in Counterpart.* This Easement Agreement may be executed in any number of counterparts. Each such executed counterpart shall together constitute but one and the same instrument, which instrument shall for all purposes be sufficiently evidenced by any such executed counterpart.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, Point Above has caused this Ramp and Encroachments Easement Agreement to be executed as of the Effective Date.

POINT ABOVE:

POINT ABOVE PROPERTY, LLC, an Iowa limited liability company

By: _____
Name _____
: _____
Title: _____

STATE OF IOWA, COUNTY OF MUSCATINE, ss.

This instrument was acknowledged before me on _____,
2020 by _____, as _____
of Point Above Property, LLC, an Iowa limited liability company.

Notary Public in and for the State of Iowa

IN WITNESS WHEREOF, the City has caused this Ramp Easement Agreement to be executed as of the Effective Date.

CITY:

CITY OF MUSCATINE, IOWA, a body corporate of the State of Iowa

By: _____
Name
:
Title: _____

STATE OF IOWA, COUNTY OF MUSCATINE, ss.

This instrument was acknowledged before me on _____,
2020 by _____, as _____
of the City of Muscatine, Iowa, a body corporate of the State of Iowa.

Notary Public in and for the State of Iowa

EXHIBIT A

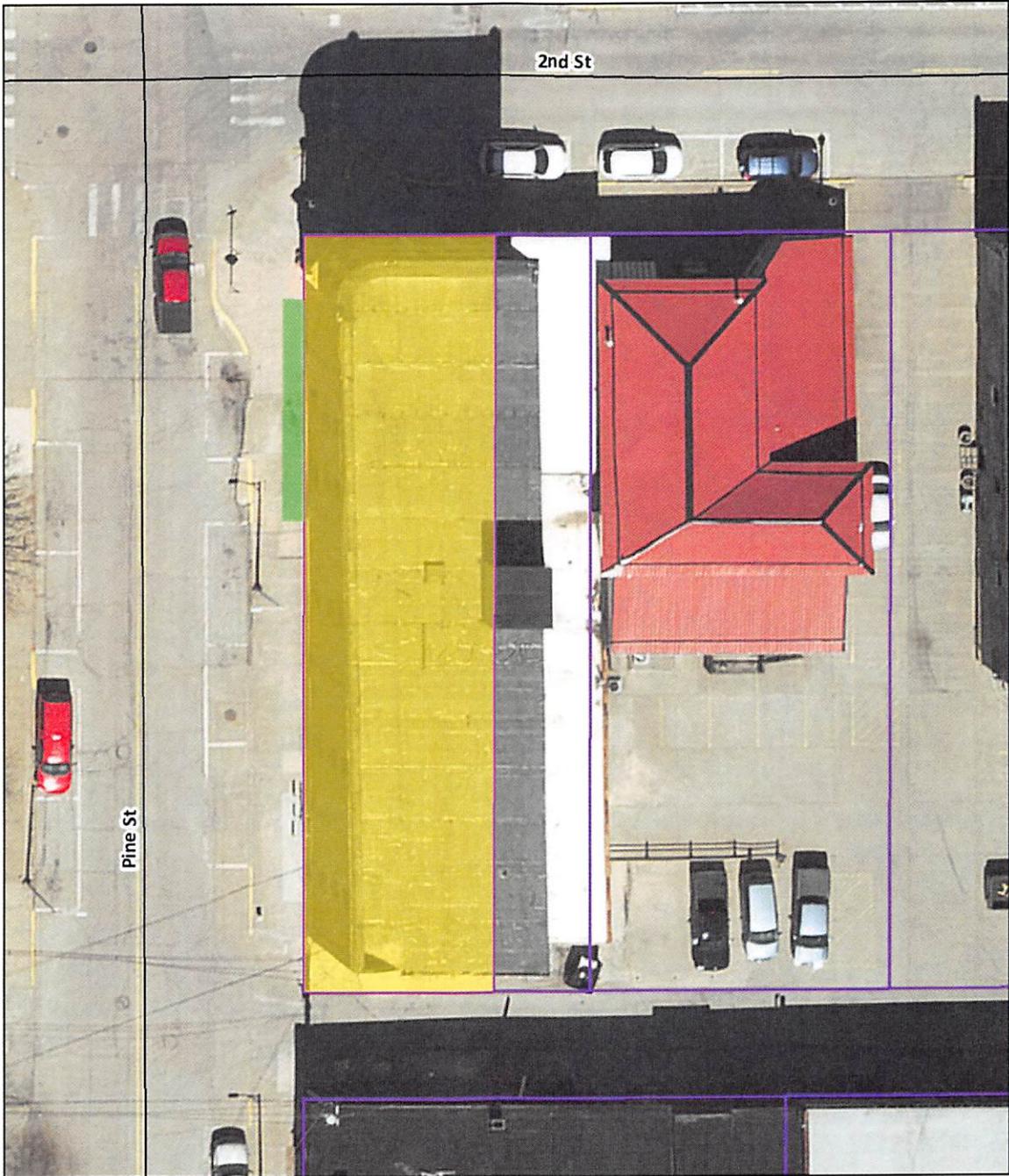
Point Above's Property

The Westerly 36 feet of Lots 10 in Block 10 of the City of Muscatine in Muscatine County, Iowa.

EXHIBIT B

Ramp Easement Area

The portion of the easterly 4' of the Pine Street Right of Way, that is located adjacent to Lot 10 in Block 10 of Original Town in the City of Muscatine, Muscatine County Iowa, and which is located between 12' and 41' southerly from the southerly right of way line of 2nd Street.

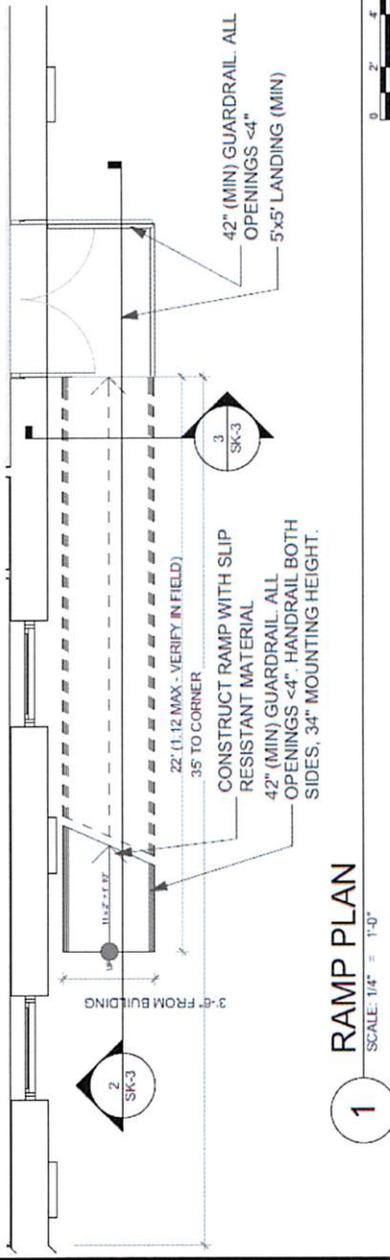


Legend

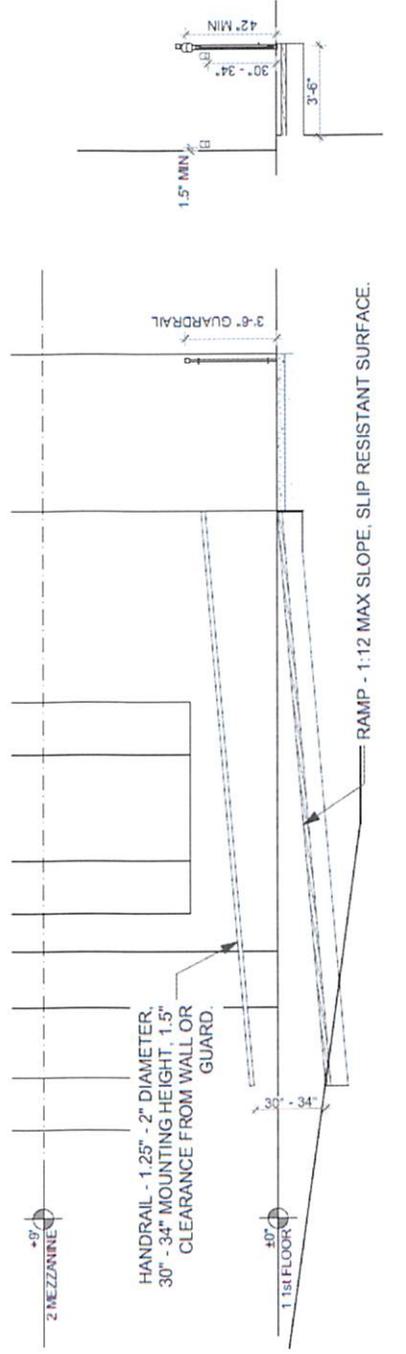
-  Approximate Easement Area
-  Point Above Property (228 W. 2nd St)
-  Parcel Lines

10 5 0 10 Feet



1 RAMP PLAN
SCALE: 1/4" = 1'-0"



2 RAMP SECTION
SCALE: 1/4" = 1'-0"

3 RAMP SECTION
SCALE: 1/4" = 1'-0"