Recorded: 12/12/2019 at 9:32:59.0 AM
County Recording Fee: $62.00
Iowa E-Filing Fee: $4.16
Combined Fee: $66.16
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2019 PG: 3521

Space above this line reserved for recording data

DRIVEWAY EASEMENT AGREEMENT & TERMINATION OF EASEMENT
Recorder's Cover Sheet

Prepared by & Return to: Shuttleworth & Ingersoll, P.L.C., Attn: Jared S. Adam, P.O. Box 2107, Cedar Rapids, IA 52406, Telephone: (319) 365-9461

Grantors Parcel 1: JEFFERY L. PUFFETT AND JODY PUFFETT, HUSBAND AND WIFE

Grantors Parcel 2: MARCHETA R. COOEY (undivided 1/2 interest) AND MARCHETA R. COOEY AND RALPH DOUGLAS COOEY AS TRUSTEES OF THE ARCHIE W. COOEY, JR. TRUST (undivided 1/2 interest)

Grantee: STEVEN R. HARBAUGH, A SINGLE PERSON

Legal Description of Easement: See attached Exhibit A.

Legal Description of Grantors Parcel 1's Property:

Lots Seven (7), Eight (8) and Nine (9) of H.L.C. Second Subdivision of Part of the North one-half (N 1/2) of Section Thirty (30), Township Eighty-eight (88) North, Range Four (4), West of the Fifth Principal Meridian, Delaware County, Iowa, according to Plat recorded in Book 4 Plats, Pages 76-77, and Plat recorded in Book 2005, Page 1927.

Legal Description of Grantors Parcel 2's Property:

Lot 10, of H.L.C. Second Subdivision of Part of the North one-half (N 1/2) of Section Thirty (30), Township Eighty-eight (88) North, Range Four (4) West of the Fifth Principal Meridian, Delaware County, Iowa, according to Plat recorded in Book 4 Plats, Page 76 and 77, subject to affidavit recorded on the 14th day of May, 1985, in Affidavit Book 14, Page 66.

Legal Description of Grantee's Property:

Lot No. Eleven (11) of H.L.C. Second Subdivision of Part of the North one-half (N 1/2) of Section Thirty (30), Township Eighty-eight (88) North, Range Four (4), West of the Fifth Principal Meridian, Delaware County, Iowa, according to a Plat recorded in Book 4 Plats, Pages 76-77.

DRIVEWAY EASEMENT AGREEMENT
&
TERMINATION OF EASEMENT

This Driveway Easement Agreement & Termination of Easement (this "Agreement") is made effective as of September 3, 2019 (the "Effective Date"), by and among **Jeffery L. Puffett and Jody Puffett**, husband and wife, as joint tenants with full rights of survivorship (collectively, the "Grantor #1"), **Marcheta R. Cooey**, a single person (undivided 1/2 interest), and **Marcheta R. Cooey and Ralph Douglas Cooey, as trustees of the Archie W. Cooey, Jr. Trust** (undivided 1/2 interest) (collectively, the "Grantor #2"), and **Steven R. Harbaugh**, a single person (the "Grantee"). Grantor #1, Grantor #2 and Grantee are referred to herein collectively as the "Parties" and each individually as a "Party".

RECITALS

A. Grantor #1 is currently the fee simple owner of the following described real property in Delaware County, Iowa (the "Grantor #1's Property"):

> **Lots Seven (7), Eight (8) and Nine (9) of H.L.C. Second Subdivision of Part of the North one-half (N 1/2) of Section Thirty (30), Township Eighty-eight (88) North, Range Four (4), West of the Fifth Principal Meridian, Delaware County, Iowa, according Plat recorded in Book 4 Plats, Pages 76-77, and Plat recorded in Book 2005, Page 1927.**

B. Lot Nine (9) of Grantor #1's Property is referred to herein as the "Grantor #1's Subject Parcel".

C. Grantor #2 is currently the fee simple owner of the following described real property in Delaware County, Iowa (the "Grantor #2's Property"):

> **Lot 10, of H.L.C. Second Subdivision of Part of the North one-half (N 1/2) of Section Thirty (30), Township Eighty-eight (88) North, Range Four (4) West of the Fifth Principal Meridian, Delaware County, Iowa, according to Plat recorded in Book 4 Plats, Page 76 and 77, subject to affidavit recorded on the 14th day of May, 1985, in Affidavit Book 14, Page 66.**

D. Grantee is currently the fee simple owner of the following described real property in Delaware County, Iowa (the "Grantee's Property"):

> **Lot No. Eleven (11) of H.L.C. Second Subdivision of Part of the North one-half (N 1/2) of Section Thirty (30), Township Eighty-eight (88) North, Range Four (4), West of the Fifth Principal Meridian, Delaware County, Iowa, according to a Plat recorded in Book 4 Plats, Pages 76-77.**

E. The Grantor #1's Property, Grantor #2's Property and Grantee's Property are subject to that certain Roadway Easement dated June 17, 1980 and recorded on July 2, 1980 in

Book T, Misc., Page 242 of the Delaware County, Iowa Recorder's Office (File No. 256-27) (the "1980 Easement").

F. The Parties desire to enter into this Agreement to replace the 1980 Easement in its entirety with the easement provided for herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed:

1. **Termination of 1980 Easement**. By execution of this Agreement, the Parties (on behalf of themselves, their successors and assigns) do hereby (1) declare that the 1980 Easement is no longer needed and (2) vacate and terminate the 1980 Easement in its entirety, including but not limited to any and all rights that may have or might hereafter flow therefrom.

2. **New Driveway Easement**.
   2.1. **Certain Definitions.**
      2.1.1. "Access Area" means the portion of Grantor #1's Subject Parcel and the portion of Grantor #2's Property described on **Exhibit A** hereto.
      2.1.2. "Authorized Users" means Grantee, Grantee's guests, invitees and agents.
      2.1.3. "Maintenance" means such maintenance, upkeep, repair, replacement and resurfacing of the paved driveway to be located on the Access Area as is necessary to keep such driveway in Reasonable Condition. "Maintenance" does not include removal of snow and ice and further does not include trimming and removal of trees and brush.
      2.1.4. "Reasonable Condition" means a condition that is reasonably serviceable as a driveway for vehicular traffic. The Parties acknowledge and agree that ordinary cracking and chipping as a result of reasonable use and/or passage of time shall not prevent the roadway from being in Reasonable Condition. For clarity, Reasonable Condition includes having the shoulders of the paved driveway (*i.e.*, the portion of the Access Area on either side of the paved driveway) be reasonably flush with the paved driveway.

   2.2. **Access Easement**. Grantor #1 and Grantor #2 each hereby grants and conveys to Grantee a non-exclusive perpetual easement for ingress and egress over the Access Area. The sole purpose and sole permitted use of this easement is to provide access for ingress and egress for vehicular traffic by the Authorized Users from 225th Avenue to Grantee's Property. The Parties shall not do or permit any act or acts, or construct any fence or other barrier, which would unreasonably prevent or obstruct the free and uninterrupted passage of vehicular traffic over the Access Area; provided, however, each Party shall each have the right (but not the obligation), at such party's sole cost and expense, to install a gate to restrict access from 225th Avenue into the Access Area, provided the Party electing to construct such gate provides the other Parties with a key, in duplicate, to any lock on such gate prior to ever locking such gate. Additionally, no Party shall park vehicles in the Access Area, except on a short-term basis.

2.3. **Maintenance and Repair**

2.3.1. Grantor #2, and the successors and assigns of Grantor #2's Property, shall not have any responsibility, obligation or liability whatsoever with respect to construction, Maintenance, snow removal or tree trimming.

2.3.2. From the Effective Date through December 31, 2019, Maintenance and trimming and removal of trees and brush shall be the sole responsibility of Grantor #1, at Grantor #1's sole expense.

2.3.3. From January 1, 2020 through December 31, 2026, Maintenance shall be the responsibility of Grantee and Grantor #1, with one-half (1/2) of the expense of Maintenance to be paid by Grantee and one-half (1/2) by Grantor #1.

2.3.4. From and after January 1, 2027, Maintenance shall be the sole responsibility of the Party, at such Party's sole expense, that desires the Maintenance to be performed.

2.3.5. Snow & Tree Removal. At all times, the removal of snow and ice and, at all times after December 31, 2019, the trimming and removal of trees and brush, shall be the sole responsibility of the Party, at such Party's sole expense, that desires such removal; provided, however, Grantee's right to trim and/or remove trees and brush is strictly limited to the Access Area and Grantee may only remove such branches as necessary to maintain eighteen (18) feet high clearance.

2.3.6. Damage. Notwithstanding the above provisions of this Section 2.3, to the extent any Maintenance is required due to the acts of a Party (its guests, invitees, agents, contractors, etc.) (*e.g.*, movement of heavy equipment over the driveway or the use of salt or other corrosive substances on the driveway), such Maintenance shall be the sole responsibility of such Party, at such Party's sole expense.

2.4. **Mechanic's Liens**. Grantee shall not permit any mechanic's lien to attach to any portion of the Access Area in connection with any work performed or arranged to be performed by Grantee, and in the event any such mechanic's lien shall attach, Grantee shall, within thirty (30) days after notice thereof, either bond against such lien in a manner reasonably satisfactory to Grantor #1 and Grantor #2 or otherwise cause such lien to be discharged of record.

2.5. **Liability**. Each Party hereto shall be solely responsible for any accident, action, claim, death, demand, injury, loss or other liability, of any kind or nature, suffered, incurred, threatened or caused by such Party or by any employee, agent, contractor, invitee or other person on or about the Access Area at the request, permission or invitation of such Party, express or implied. Each such Party shall indemnify and hold harmless the other Parties from any and all such liability threatened against or incurred by such other Parties (including, without limitation, reasonable attorneys' fees and expenses).

2.6. **Easement Runs with the Land**. The easement set forth in this Agreement shall run with the land in perpetuity and inure to the benefit of the respective parties and their successors and assigns who later acquire equitable or legal interests in Grantor's Subject

Parcel or Grantee's Property.

3. **Disclaimer**. Except for the easement across the Access Area set forth in **Section 2** hereof, Grantee hereby represents, warrants, acknowledges and covenants, as applicable, that Grantee (A) has no interest, claim or right whatsoever to any part of Grantor #1's Property or any interest therein, (B) has not adversely possessed or used any potion of Grantor #1's Property and (C) shall not bring any action for (or otherwise assert, whether as a claim, counterclaim, crossclaim or defense) adverse possession, easement by prescription, boundary line by acquiescence or similar action to establish title or the right to use any portion of the Grantor #1's Property. Without limiting the generality of the foregoing, Grantee hereby disclaims, releases and waives all of its right, title, claim and interest, if any, in and/or to (A) the "Existing Gravel Drive" illustrated on that certain Plat of Survey recorded on June 1, 2005 in Book 2005, Page 1927 of the Delaware County, Iowa Recorder's Office and (B) the easement across the Grantor #1's Property conveyed by the 1980 Easement.

4. **General**.

4.1. Enforcement. Each Party and their successors in interest may bring an action at law or in equity to enforce the terms and conditions of this Agreement, to recover damages and to seek any other remedy as may be permitted by law. The attorneys' fees and expenses of the prevailing party in any such action, as well as court costs, shall be paid/reimbursed by the other party.

4.2. Successors and Assigns. This Agreement shall be binding upon the undersigned and their respective successors and assigns who later acquire equitable or legal interests in the Grantor #1's Subject Parcel, Grantor #2's Property or Grantee's Property. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective legal representatives, heirs, successors and assigns), any rights, remedies, obligations or liabilities.

4.3. Entire Agreement. This Agreement (together with, with respect to Grantor #1 and Grantee, that certain Release Agreement between Grantee and Grantor #1 dated on or about the Effective Date) supersede all agreements previously made and all discussion previously had between the Parties relating to the subject matter of this Agreement.

4.4. Notices. All notices under this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to Grantor and Grantee at their last known addresses. Until notice to the contrary is provided, the parties last known addresses are:

Grantor #1:	Grantor #2:	Grantee:
Jody & Jeffrey Puffett	Marcheta R. Cooey	Steven R. Harbaugh
1647 200th Ave	2607 220th Ave	1433 South Hill Drive
Manchester, IA 52057	Delhi, IA 52223	Waterloo, IA 50702

4.5. Non-Waiver. No delay or failure by a Party to exercise any right under this Agreement

shall constitute a waiver of that or any other right unless otherwise expressly provided in this Agreement.

4.6. Headings & Counterparts. Headings of this Agreement are for convenience only and shall not be used to interpret or construe its provisions. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

4.7. Trustee Authority Provision. Marcheta R. Cooey and Ralph Douglas Cooey represent that (a) they are the only presenting existing trustees of the Archie W. Cooey, Jr. Trust (the "Trust") and are authorized to execute this Agreement on behalf of the Trust and (b) the Trust is in existence, the grantor of the Trust is no longer living and the Trust is not revocable.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have signed this Driveway Easement Agreement & Termination of Easement effective as of the Effective Date set forth above.

Grantor #1:

Jeffery L. Puffett

Jody Puffett

STATE OF IOWA, COUNTY OF Linn, ss:

This instrument was acknowledged before me on August 26, 2019, by Jeffrey L. Puffett and Jody Puffett, husband and wife.

JARED S ADAM
Commission Number 799436
My Commission Expires
September 23, 2022

Notary Public

[Signature Page to Driveway Easement Agreement & Termination of Easement – Signatures Continue on Following Page]

Grantor #2:

Marcheta R Cooey Trx

Marcheta R. Cooey

STATE OF IOWA, COUNTY OF DELAWARE, ss:

This instrument was acknowledged before me on AUGUST 22, 2019, by Marcheta R. Cooey, a single person.

RANDY RATTENBORG
Commission Number 224055
My Commission Expires
8-17-2020

Notary Public

Archie W. Cooey, Jr. Trust

By: Marcheta R. Cooey Trx/ By:

Marcheta R. Cooey, Trustee

Ralph Douglas Cooey, Trustee

STATE OF IOWA, COUNTY OF DELAWARE, ss:

This instrument was acknowledged before me on AUGUST 22, 2019, by Marcheta R. Cooey, as Trustee of the Archie W. Cooey, Jr. Trust.

RANDY RATTENBORG
Commission Number 224055
My Commission Expires
8-17-2020

Notary Public

STATE OF IOWA, COUNTY OF DELAWARE, ss:

This instrument was acknowledged before me on AUGUST 22, 2019, by Ralph Douglas Cooey, as Trustee of the Archie W. Cooey, Jr. Trust.

RANDY RATTENBORG
Commission Number 224055
My Commission Expires
8-17-2020

Notary Public

[Signature Page to Driveway Easement Agreement & Termination of Easement – Signatures Continue on Following Page]

Grantee:

Steven R. Harbaugh

Steven R. Harbaugh

STATE OF IOWA, COUNTY OF Black Hawk, ss:

This instrument was acknowledged before me on September 3, 2019, by Steven R. Harbaugh, a single person.

RICHARD R. MORRIS
NOTARIAL SEAL
IOWA
COMMISSION # 106916
MY COMMISSION EXPIRES
2/19/22

Notary Public

[Signature Page to Driveway Easement Agreement & Termination of Easement]

Exhibit A

Legal Description of Access Area

EASEMENT "A", AN 18 FOOT WIDE EASEMENT ACROSS LOT 9 AND LOT 10 OF H.L.C. SECOND SUBDIVISION, BEING 9 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING at the Southwest Corner of Lot 9 of H.L.C. Second Subdivision, as recorded in Plat Book 4, Page 76 & 77 and Retraced in Book 2005, Page 1927;

THENCE along the Westerly Line of said Lot 9, North 19° 59' 12" West, 9.50 feet to the POINT OF BEGINNING;

THENCE North 64° 06' 25" East, 10.00 feet;

THENCE North 78° 19' 08" East, 40.50 feet;

THENCE South 88° 33' 48" East, 46.50 feet;

THENCE North 65° 40' 49" East, 43.54 feet to the Easterly Line of Lot 10 of said H.L.C. Second Subdivision to the POINT OF TERMINUS.

The above described Easement "A" being set forth in that certain Easement Plat, recorded in the Delaware County, Iowa Recorder's Office in Book 2019, Page 3503, a copy of which is attached hereto as Exhibit B.

Exhibit B

Copy of Recorded Easement Plat

Please see attached.

COUNTY: DELAWARE
SECTION 30, T 88 N, R 4 W
ALIQUOT PART:
CITY:
SURVEY: H.L.C. SECOND SUBDIVISION
BLOCK: LOTS: EASEMENT A
PROPRIETOR: SEE BELOW
REQUESTED BY: JEFFERY PUFFETT
SURVEYOR: RANDALL L. RATTENBORG
COMPANY: BURRINGTON, GROUP, INC.
105 W. MAIN STREET, MANCHESTER, IA 52057
INFO@BURRINGTONGROUP.COM 563-927-2434

FILED
Delaware Co. Assessor
DEC 11 2019

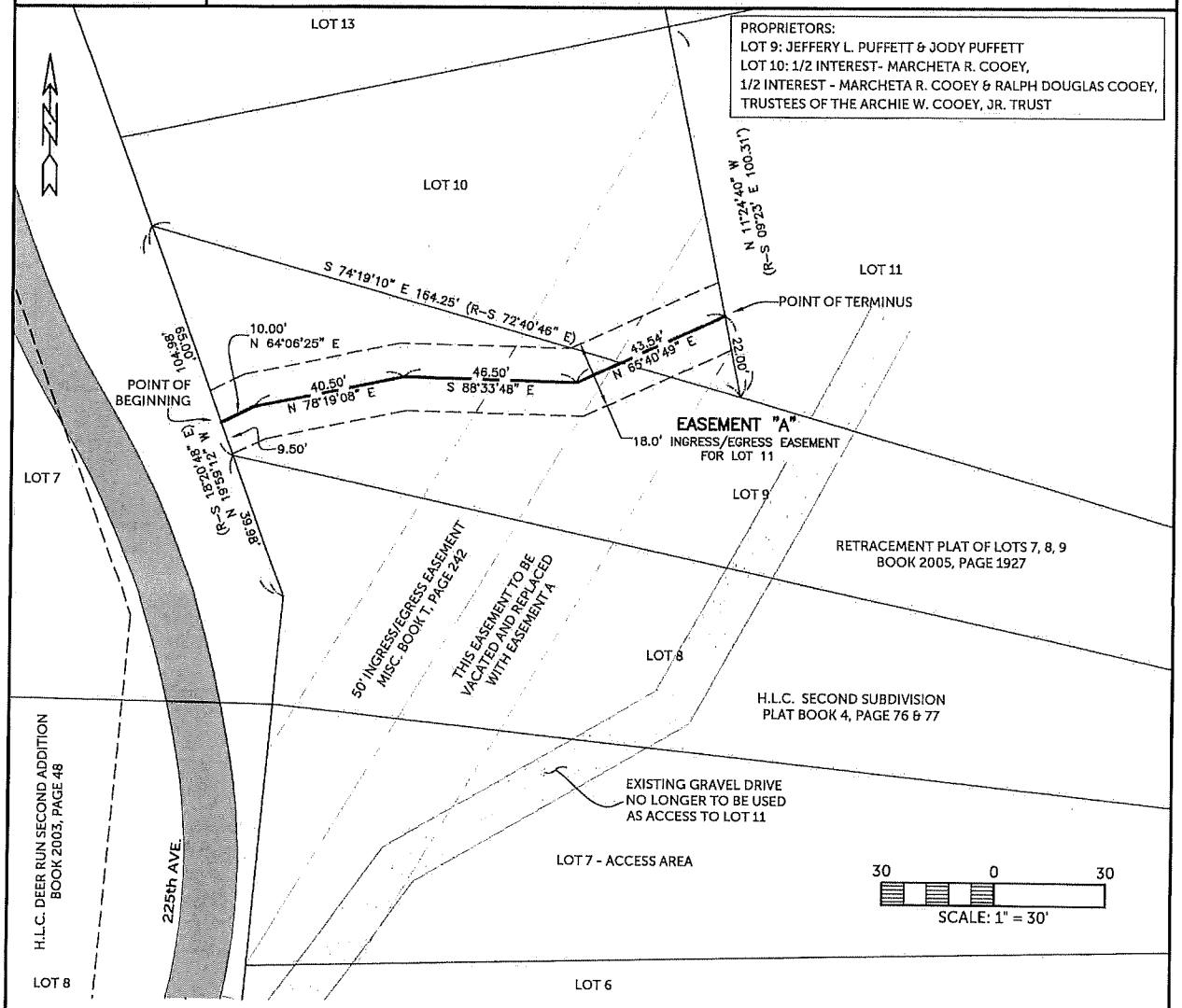
FILED
Delaware Co. Auditor
DEC 11 2019

Book 2019 Page 3503
2019 3503 Type 06 002 Pages 1
Date 12/11/2019 Time 10:03:55AM
Rec Amt $7.00

Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

EASEMENT PLAT

EASEMENT A, AN 18' WIDE INGRESS/EGRESS EASEMENT ACROSS LOTS 9 & 10 OF H.L.C. SECOND SUBDIVISION SEC. 30, T88N, R4W OF THE FIFTH P.M., DELAWARE COUNTY, IOWA



LEGAL DESCRIPTION:

EASEMENT "A", AN 18 FOOT WIDE EASEMENT ACROSS LOT 9 AND LOT 10 OF H.L.C. SECOND SUBDIVISION, BEING 9 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;

COMMENCING at the Southwest Corner of Lot 9 of H.L.C. Second Subdivision, as recorded in Plat Book 4, Page 76 & 77 and Retraced in Book 2005, Page 1927;

THENCE along the Westerly Line of said Lot 9, North 19° 59' 12" West, 9.50 feet to the POINT OF BEGINNING;

THENCE North 64° 06' 25" East, 10.00 feet;

THENCE North 78° 19' 08" East, 40.50 feet;

THENCE South 88° 33' 48" East, 46.50 feet;

THENCE North 65° 40' 49" East, 43.54 feet to the Easterly Line of Lot 10 of said H.L.C. Second Subdivision to the POINT OF TERMINUS.

SURVEYED ON: 10/08/2018 & 05/06/2019
SURVEY REQUESTED BY: JEFFERY PUFFETT

Q:\Civil3D_Survey\Lake Delhi\Lake Delhi 2018.dwg

LICENSED PROFESSIONAL LAND SURVEYOR
RANDALL L. RATTENBORG
17939
IOWA

SHEETS COVERED BY THIS SEAL: THIS SHEET

PROPRIETORS: SEE ABOVE

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR ~~UNDER THE~~ LAWS OF THE STATE OF IOWA.

12/11/19
RANDALL L. RATTENBORG P.L.S. LIC. #17939 DATE
MY LICENSE RENEWAL DATE IS DECEMBER 31, 2021

BURRINGTON GROUP, INC.
Civil Engineering | Land Surveying
105 W. Main Street Manchester, Iowa 52057 burringtongroup.com

PROJECT NO. 18-139
SCALE: 1" = 30'
DATE: 07/11/2019
DRAWN BY: RLR
CHECKED BY: DM/DDK
GPS BOX: LAKE DELHI
SHEET 1 OF 1

LEGEND
- FD. 5/8"ø IRON ROD
- CALCULATED POINT
- CENTER LINE
- EASEMENT OR ROW LINE
- LOT LINE
- CENTERLINE ESTABLISHED