Book 2021 Page 1207
Document 2021 1207 Type 04 008 Pages 8
Date 4/05/2021 Time 10:20:36AM
Rec Amt $42.00

Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Prepared by and return to: Werner Hellmer, Day & Hellmer, PC, PO Box 342, Dyersville, IA 52040, Phone: 563-875-9733

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement ("Agreement") is made as of the 24th day of February, 2021, by and between Dyersville Ready Mix, Inc., an Iowa Corporation, a/k/a "Bard Concrete", ("Grantor"), and Daniel C. Deutmeyer & Heidi J. Deutmeyer, husband and wife, and Wessels Farms, LLC, and Gerald A. Deutmeyer & Alice M. Deutmeyer, husband and wife, (collectively, "Grantees").

RECITALS

A. This agreement amends agreements dated December 8, 1973 and filed of record in the records of Delaware County, Iowa, December 10, 1973 as file number 116-2677 and subsequently amended and acknowledged on April 5,8,9,10, 11 and 12, 2002 and filed April 15, 2002, Book 2002, Page ~~XXXX~~ 1401.

B. The primary purpose of the "Second Amendment to Agreement" is to approve the relocation of the existing tile line currently running between "Lots 3 and 4 of Tegeler Lake Addition in the City of Dyersville, Delaware County, Iowa to a location directly from the currently installed culvert crossing 332nd Avenue, Dyersville, Iowa in an easterly direction from the cell tower access road onto Grantor's property adjoining Tegeler Lake, Dyersville, Iowa.

C. Dyersville Ready Mix, Inc., a/k/a "Bard Concrete, is an Iowa Corporation.

D. Grantor has agreed to grant Grantees the right to construct a tile drainage line across a portion of the "Bard Concrete Property", with a point of terminus on the western boundary of the "Bard Concrete Property" (the "Point of Terminus") to discharge at the surface near the western edge of the dredged quarry within the established (the "Point of Discharge").

E. Grantor is the titleholder of real property legally described as:

The South One-half (S1/2) of the Northeast Quarter (NE1/4), except the East two hundred twenty nine and seven-tenths (229.7) feet thereof, in Section Thirty Six (36), Township Eighty Nine (89) North, Range Three (3), West of the Fifth P.M., subject to easements of record,

which property was previously owned by Tegeler Land Development, Inc., an Iowa corporation, at the time of the aforementioned agreement and upon which the drainage tile line crosses.

F. Grantees, Gerald A. Deutmeyer and Alice M. Deutmeyer, husband and wife, are the owner of real estate legally described as:

The West One-Half (W1/2) of the Southeast Quarter (SE1/4) and the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section Thirty Five (35), Township Eighty Nine (89) North, Range Three (3) West of the Fifth P.M., except that tract deeded to the State of Iowa, by Deed recorded in Book 80, L.D., Page 114, subject to easements of record, which was the property owned by Albert Deutmeyer at the time of the aforesaid agreement.

G. Grantees, Daniel C. Deutmeyer and Heidi J. Deutmeyer, husband and wife, are the owner of real estate legally described as:

The Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section Thirty Five (35), and the South one-half (S1/2) of the Northwest Quarter (NW1/4) of Section Thirty Six (36) except that part of the Southeast Quarter (SE 1/4) of said Northwest Quarter (NW 1/4) described as commencing at the center of said Section Thirty Six (36) and running thence North 89° 39' West two hundred Sixty (260) feet, thence North one hundred sixty nine (169) feet, thence South 88° 30' East two hundred sixty and one-tenth (260.1) feet, thence South along the East line of said Southeast Quarter (SE 1/4) of the Northwest Quarter (NW 1/4) one hundred sixty three and eight-tenths (163.8) feet to the point of beginning, all in Township Eighty Nine (89) North, Range Three (3), West of the Fifth P.M., which was the property owned by Henry Deutmeyer at the time of the aforesaid agreement.

H. Grantee, Wessels Farms, LLC, is the owner of real estate legally described as:

West Half (W1/2) of the Southwest Quarter (SW1/4); Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) except the South 286 feet of the East 220 feet thereof; Northeast Quarter (NE1/4) of the Southwest Quarter (SW1/4) except the North 1298 feet of the East 260 feet thereof, all in Section 36, Township 89 North, Range 3, West of the 5th P.M., Delaware County, Iowa, subject to easements of record, which was the property owned by Gladys R. Wessels at the time of the aforesaid agreement.

I. All rights, privileges, and burdens created or imposed upon Grantees shall likewise bind and inure to the benefit of the successors-in-interest, assigns, and mortgagees of Grantee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
GRANT

1.1 Grant. Grantor hereby grants to Grantees a perpetual, non-exclusive easement on, over, across, and through portions of the "Bard Concrete Property" for purposes of installing, constructing, maintaining, repairing, and replacing a tile drainage line which shall be 20 foot in width, 10 feet on each side of the center line as-built, from 332nd Avenue, Dyersville, Iowa up to the Point of Terminus to discharge below the surface at the quarry. (Approximate location of the tile line and easement area is referenced in Attachment 1.)

1.2 Maintenance. Grantees, at their sole cost and expense, shall install, maintain, and repair, as necessary, the drainage tile on the "BARD Property", and shall repair the damage to the Easement Area caused by such installation, maintenance, or repair. The tile line installed by Grantees shall at all times be the sole and separate property of Grantees. Grantees shall, upon completion of any construction, reconstruction, repair, or maintenance of any portion of the Easement Area, or land appurtenant thereto, restore such portion of the Easement Area or such appurtenant areas in a good and workmanlike manner, and in a condition comparable to its condition before construction, reconstruction, maintenance, repair, or alteration.

1.3 Erection of Structures Prohibited. Grantor shall not erect or construct any building, structure or other improvement in the Easement Area which will interfere with the operation of the tile drainage line without obtaining Grantees' prior written approval.

1.4 Change of Grade. Grantor may reasonably change the grade, elevation or contour of any part of the Easement Area in a manner that does not materially obstruct or impede the operation of the tile drainage line without obtaining Grantees' prior written approval.

1.5 Right of Access. Grantees and their agents, contractors, and representatives (the "Related Persons") shall have the right to enter onto the Easement Area in order to repair, replace or fix the drain tile line.

1.6 Indemnification. Subject to Section 1.7, below, as part of the consideration for the easement rights granted herein, Grantees hereby agrees to defend, indemnify, and hold Grantor harmless from any and all claims, lawsuits, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, asserted against or incurred by Grantor due to any injury occurring to persons or property and arising from or related to the use of the Easement Area by Grantees or any Related Person, except to the extent caused by Grantor's intentional, reckless, or negligent acts, or the intentional, reckless, or negligent acts of Grantor's tenants, invitees, licensees, contractors, agents, and representatives.

1.7 Future Connections. As part of the consideration of this Agreement, Grantor and Grantees agree that Grantor shall be permitted to connect any future private tile line to the tile

line constructed by Grantees, subject to the prior written consent of Grantees, which shall not be unreasonably withheld. Grantor shall bear the cost related to any future connection as contemplated by this Section 1.7, and shall hold Grantees harmless therefrom.

ARTICLE II
MISCELLANEOUS

2.1 Enforcement. Any party to this Agreement may enforce it against another party by seeking injunctive relief, specific performance, or any other remedy available at law or in equity. The parties agree that, in the event of a default by any party under the terms of this Agreement, the other parties will be irreparably harmed and such parties' damages will be extremely difficult or impossible to ascertain or quantify with precision. The parties specifically agree that, in the event of a default by any party under the terms of this Agreement, the other parties shall be entitled to specific performance to enforce the terms of this Agreement, including, without limitation, the right to obtain a temporary or permanent injunction without the requirement of a bond, in addition to any other remedy that may be available at law or in equity. In the event of litigation to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover its costs of litigation, including, without limitation, reasonable attorney's fees.

2.2 Binding Effect. This Agreement shall run with the land, and shall inure to the benefit of, and be binding upon, the parties hereto, their tenants and their respective heirs, personal representatives, successors, mortgagees, and assigns.

2.3 Entire Agreement. This Agreement constitutes the entire Agreement and understanding between the parties relating to the subject matter hereof, superseding all earlier agreements or representations, oral or written.

2.4 Amendment. Any change or amendment to this Agreement shall be effective only if it is in writing and signed by all of the parties to this Agreement, and properly recorded.

2.5 Waiver. Any failure, forbearance, delay, or omission to exercise any rights under this Agreement in the event of a breach of any term of this Agreement shall not be deemed to be a waiver by any party of such term or any subsequent breach of the same or any other term, or of any rights of any party under the terms of this Agreement.

2.6 Severability. If any provision of this Agreement, or the application of it to any circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to other circumstances than those to which it is found to be invalid, as the case may be, shall not be affected. Moreover, if such invalidity is based upon its scope or breadth, a court of competent jurisdiction shall be empowered to reform such provision(s) to make the same effective to the fullest scope or breadth permitted by law.

2.7 Governing Law. This Agreement shall be construed in accordance with the State of Iowa.

2.8 Headings. The article and section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in

any construction or interpretation of this Agreement or any part thereto.

2.9 Constructive Notice. The parties shall take all reasonable steps necessary to insure that their respective successors, assignees, transferees, and occupants have knowledge of all the terms and conditions of this Agreement.

2.10 Construction of Terms. Words and phrases herein, including the acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GRANTOR: Dyersville Ready Mix, Inc., a/k/a Bard Concrete

By _____

Name: Ben Schroeder
Title: Land Manager

STATE OF IOWA)
) SS:
COUNTY OF DUBUQUE)

This instrument was acknowledged before me on the 29 day of March, 2021 by Ben Schroeder as Land Manager for Dyersville Ready Mix, Inc.

NOTARIAL SEAL IOWA
TARA M. McSHANE
Commission Number 746469
My Commission Expires
4-18-2022

_____
Notary Public

GRANTEES: Gerald A. Deutmeyer & Alice M. Deutmeyer

Gerald A. Deutmeyer

Alice M. Deutmeyer

STATE OF IOWA)
) SS:
COUNTY OF DUBUQUE)

This instrument was acknowledged before me on the 25th day of February, 2021 by Gerald A. Deutmeyer & Alice M. Deutmeyer, husband and wife.

KARLA KLUESNER
Commission Number 145960
My Commission Expires
January 14, 2024

Karla K Luesner
Notary Public

GRANTEES: Daniel C. Deutmeyer & Heidi J. Deutmeyer

Daniel C. Deutmeyer

Heidi J. Deutmeyer

STATE OF IOWA)
) SS:
COUNTY OF DUBUQUE)

This instrument was acknowledged before me on the 24th day of February, 2021 by Daniel C. Deutmeyer & Heidi J. Deutmeyer, husband and wife.

CHRISTINA LUDWIG
Commission Number 7899[illegible]
My Commission Expires
May 12, 2021

Christina Ludwig
Notary Public

GRANTEE: Wessels Farms, LLC

Gary G Wessels

By Gary G. Wessels, Managing Member

STATE OF IOWA)
) SS:
COUNTY OF DUBUQUE)

This instrument was acknowledged before me on the 11 day of March, 2021 by Gary G. Wessels, Managing Member of Wessels Farms, LLC.

Tiffany B. Wulfekuhle

Notary Public

NOTARIAL SEAL IOWA

TIFFANY B. WULFEKUHLE
Commission Number 823405
My Commission Expires
1-28-2023

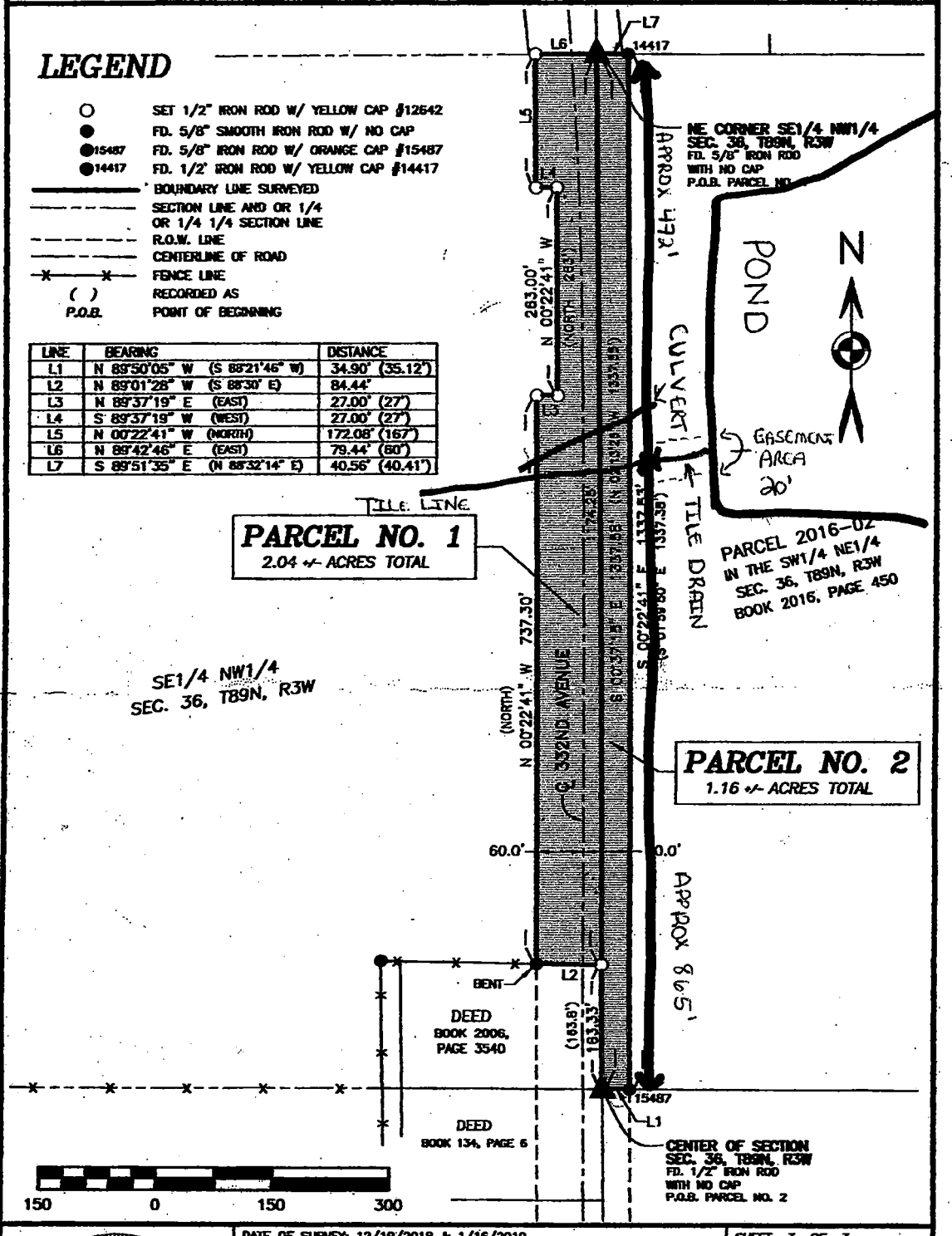
PREPARED BY BILL BURGER 510 3RD STREET WEST COURT, WORTHINGTON, IOWA 52078 (563) 855 2028

ACQUISITION PLAT

PARCEL NO. 1 AND PARCEL NO. 2

332ND AVENUE ROAD PROJECT

SECTION 36, T89N, R3W OF THE FIFTH PRINCIPAL MERIDIAN, DELAWARE COUNTY, IOWA



LINE	BEARING	DISTANCE
L1	N 89°50'05" W (S 88°21'46" W)	34.90' (35.12')
L2	N 89°01'28" W (S 88°30' E)	84.44'
L3	N 89°37'19" E (EAST)	27.00' (27')
L4	S 89°37'19" W (WEST)	27.00' (27')
L5	N 00°22'41" W (NORTH)	172.08' (167')
L6	N 89°42'46" E (EAST)	79.44' (80')
L7	S 89°51'35" E (N 88°32'14" E)	40.56' (40.41')

DATE OF SURVEY: 12/19/2018 & 1/16/2019 | SHEET 3 OF 3

PROPRIETORS: SEE INDEX LEGEND ON SHEET 1 | SCALE: 1" = 150'

LICENSED LAND SURVEYOR
WILLIAM H. BURGER
12642
IOWA

I HEREBY CERTIFY THAT THIS LANDSURVEYING DOCUMENT WAS PREPARED AND RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA. MY LICENSE RENEWAL DATE IS DECEMBER 31, 2020

Wm. Burger LandSurveyor
510 3rd Street West Court
Worthington, Iowa 52078

ATTACHMENT 1