



Document 2020 2651

Book 2020 Page 2651 Type 06 001 Pages 11

Date 7/23/2020 Time 2:43:01PM

Rec Amt \$57.00

INDX
ANNO
SCAN

LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

CHEK

DECLARATION OF PRIVATE ROAD AND UTILITIES ACCESS EASEMENT AGREEMENT

Preparer Information: (name, address and phone number)

Justin Dalton, Dalton Law, PLC, 2521 128th Street, Urbandale, IA 50323
Phone 515-229-9078

Taxpayer Information: (name and complete address)

N/A

✓ **Return Document To: (name and complete address)**

Justin Dalton, Dalton Law, PLC, 2521 128th Street, Urbandale, IA 50323

Preparer

Grantors:

Stephen I. Roney , Ashley J. Roney

Justin J. Dalton, Ann W. Dalton

Grantees:

To Whom It May Concern

Legal Description: See on Pages 10 and 11.

Document or instrument number of previously recorded documents:

NOTE: This cover page is prepared in compliance with Iowa Code Section 331.606b, (2013). This cover page is provided for information purposes only.

DECLARATION OF PRIVATE ROAD AND UTILITIES ACCESS EASEMENT AGREEMENT

FOR VALUABLE CONSIDERATION, Stephen Roney and Ashley Roney, husband and wife ("Roney Grantors"), and Justin Dalton and Ann Dalton, husband and wife ("Dalton Grantors"), on this 23rd day of July, 2020, do hereby enter this Declaration of Private Road and Utilities Access Easement Agreement ("Agreement"), including the easement and maintenance terms contained herein, as follows:

RECITALS - WITNESSETH:

WHEREAS, Roney Grantors and Dalton Grantors (hereafter, collectively "Grantors") wish to establish rights and responsibilities with respect to public utilities access and a private road shared by certain legal parcels defined herein;

WHEREAS, Roney Grantors own a 40.62 acre parcel, noted as Parcel "AA" on the plat of survey attached hereto and incorporated herein by reference as Exhibit "A" ("Plat of Survey"). Parcel AA's legal description is provided on Exhibit "B", attached hereto;

WHEREAS, Dalton Grantors own a 37.37 acre parcel, noted as Parcel "AB" on the Plat of Survey. Parcel AB's legal description is provided on Exhibit "C", attached hereto;

(individually, each of the above-mentioned parcels is referred to herein as a "Parcel," and collectively as "Parcels");

WHEREAS, the private access road easement and public utility easement ("EASEMENT") is marked on the Plat of Survey as, "PRIVATE INGRESS/EGRESS & PUBLIC UTILITY EASEMENT", and consists of a 50' wide easement that runs 893.11' as measured from the centerline of the 80' public right of way easement known as Warren Avenue;

WHEREAS, Grantors desire that the EASEMENT serve the Parcels as currently defined and as may be subdivided or otherwise partitioned in the future; more specifically, if either or both of the Parcels are subdivided or partitioned into smaller lots or parcels, then any future owner whose property is subservient to the EASEMENT ("Accessing Parcels") will have shared access to the EASEMENT, subject to the terms of this Agreement;

WHEREAS, Grantors intend that the present and future owner(s) of the Parcels, however then subdivided or partitioned, shall jointly and equally share in all decisions regarding the private road that will be constructed on the EASEMENT, as well as the maintenance, snowplowing and repair costs thereof.

NOW, THEREFORE, the following permanent easement and restrictions are hereby imposed upon the Parcels as follows:

1. The Recitals to this Agreement are incorporated into and constitute a part of this Agreement as if fully set forth herein.
2. The EASEMENT, as defined above, is hereby established as a permanent fifty foot-wide (50') private road easement for the benefit of the Parcels and any Accessing Parcels.

3. The EASEMENT shall be used for private road and public utility purposes only. The EASEMENT may also be used by firefighting, emergency and other public vehicles and personnel for public services, emergencies, fires and similar events, provided, however, the EASEMENT is intended to maintain its private access character. It is intended that the EASEMENT shall permit year-around access for vehicles and foot traffic to and from Warren Avenue for the Parcels and/or Accessing Parcels.

4. The EASEMENT shall be jointly maintained by the then-owners of the Parcels or Accessing Parcels, with the owner of each parcel or lot paying an equal fractional share of the reasonable costs of repairing and maintaining the private road located within the EASEMENT. The owners of each parcel or lot shall also pay an equal fractional share of the reasonable costs of snowplowing and/or deicing the private road once three (3) or more inches of snow has fallen or when snow has formed drifts that are a reasonable safety concern. No maintenance, repair, upgrading of the private road or snowplowing work shall be done, however, until the owners of a majority of the parcels or lots jointly agree on the contractor or contractors to do the work, as well as what work will be done.

As used anywhere in this Agreement, the term "equal fraction share" means the fraction represented by one divided by the total number of owners, e.g. 1/3 owners = 33.33%.

Each Parcel and/or Accessing Parcel is burdened with an easement of ingress and egress for maintenance, repair and replacement of public utilities. With respect to new construction on the Parcels, water lines, electrical lines, and telephone lines may be installed within the EASEMENT at a cost to the benefiting owner if the benefit is exclusive to such owner. Any turf disturbance or other damage caused to land or utilities inside the EASEMENT shall be restored at the expense of the owner benefiting from the utility work. Restoration is complete with the property is returned to a condition similar to that before such work commenced.

If any utility is installed for a common utility line, the owners of each benefiting parcel or lot shall pay an equal fractional share of the costs of installing and maintaining it. The cost of installing such utility lines shall be paid for at the time the utility lines are installed.

Grantors and any future owners of the Parcels or Accessing Parcels agree to consent to additional utility easements that may be reasonably requested by one or more public utilities that propose to bring water or electric lines into a home, provided such easements do not extend 40 feet beyond the centerline of the EASEMENT.

If the owners of the Parcels or Accessing Parcels by majority vote cannot agree on the installation or maintenance of utilities or how maintenance, alteration, repair, upgrading, or snowplowing work for the private road will be done or cannot agree upon the costs thereof, the owners shall together choose one (1) arbitrator whose decision(s) regarding such item(s) shall be final and shall bind the parties. Each owner shall then be obligated to pay an equal fractional share of the costs of such arbitration.

Notwithstanding anything contained in this Agreement, at a minimum, the owners of each Parcel or Accessing Parcel are obligated to maintain, repair and snowplow the private road right-of-way so as to comply with the requirements of applicable Madison County ordinances, if any, for safety of private roads, as such ordinances may be modified from time to time.

The owners of each Parcel shall also pay an equal fractional share of the cost of installing the private road within the EASEMENT. Such allocation of the expense of installing the private road among the owners of the Parcels can be varied only by written agreement between the Parcel owners as to the cost allocations, so long as the owners of one or more of the Parcels in total pay 100% of the cost of installing the private road.

5. A private road sign built to the specifications, if any, of Madison County shall always be maintained at the intersection of the EASEMENT with Warren Avenue. Upon mutual written agreement of the Grantors, the private road may be given a name. No structures (except utilities) shall be placed, installed, or maintained within the EASEMENT without the written consent of the owners of a majority of the Parcels or Accessing Parcels.

6. No vehicle shall be parked on or within the EASEMENT, nor shall any impediment be placed, stored or maintained on or within the EASEMENT. It is the intent of this document that the EASEMENT shall remain free and clear to allow the owner of each Parcel or Accessing Parcel (and his or her invitees) to have full, unimpeded access to their respective parcels and any individual driveways which branch off of the EASEMENT.

No person shall in any way prohibit, restrict, limit or in any matter interfere with normal ingress and egress and use of the EASEMENT (or the private road therein) by any of the other Parcel owners benefitted by the EASEMENT or their invitees. Normal ingress and egress and use shall include not only use by the owner or owners of each Parcel or Accessing Parcel, but also by their family, guests, invitees, trades people and others bound for or returning from any of the properties having a right to use the private road.

7. If any part of the EASEMENT, private road or properly placed structures within the EASEMENT are damaged by the owner of a Lot (or by his or her family or invitees), then that owner shall be fully responsible for repairing the damage and paying for the same.

8. By accessing the EASEMENT or inviting others to do so, whether for installing or maintaining utilities or private road access, each Grantor, their successors, and any and all future owners of any Parcel or Accessing Parcel shall indemnify, save and hold Roney Grantors and Dalton Grantors harmless for, from and against any and all claims, causes of action, costs, or damages for personal injury and/or property damages arising out of or related to the use of the EASEMENT or the private road, or the failure to properly construct, maintain, repair, and/or install the appurtenance thereto. This Agreement shall also be enforceable by any Grantor or owner of an Accessing Parcel at his or her option.

9. Self-Help / Liens. If, in the reasonable business judgment of any owner of a Parcel or Accessing Parcel, the owner of another parcel or lot at any time fails to maintain and repair as provided herein, then such owner may, upon thirty (30) days prior written notice to the owner, make such repairs or perform such maintenance, and must restore the surrounding area to a condition similar to that before the work commenced, and the cost thereof shall become a personal debt and a charge of the owner of who failed to perform, and a continuing lien on the defaulting owner until reimbursement is made to the performing owner(s). Any reimbursement of costs or expenses of maintenance, repair or restoration not so reimbursed by the nonperforming owner to the performing owner within thirty (30) days after receipt by the non performing owner of copies of the invoices for any maintenance, repair or restoration work performed, together with reasonable supporting documentation as may be requested

by the non performing owner, shall bear interest from the due date until paid in full at the rate of seven percent (7%) per annum. The performing owner may bring an action at law or in equity against the non performing owner to pay the same and/or foreclose its lien against non performing owner's parcel. In addition thereto, the cost of collection including reasonable attorneys' fees (at trial and on appeal) and the expenses of collection shall be added to the amount of reimbursement due, which amount shall also be secured by a lien against non performing owner's parcel. The performing owner may record a claim of lien against the nonperforming owner's parcel as evidence of record that such party has a lien.

10. Mechanic's / Judgment Liens. In the event any non performing owner fails to pay for materials and or labor furnished, then such party shall promptly pay or have bonded over any mechanic's liens or judgment liens filed against any part of the EASEMENT on which work is being done by reason of or arising out of any labor or material furnished or alleged to have been furnished to that party, or for or by reason of any change, alteration, or addition or the cost or expense thereof or any contract relating to the maintenance, repair or restoration of such parcel.

11. PROHIBITION OF SITING WIRELESS FACILITIES. As used in this Agreement, the term "wireless facilities" means equipment that enables the provision of wireless telecommunications services or the infrastructure required for wireless telecommunications services, including any towers and/or antenna apparatus designed for the purpose of emitting radiofrequency or other radiation in order to provide wireless service. Without limiting the generality of the foregoing definition, the term "wireless facilities" also includes "small wireless facilities" as that term is defined by the Federal Communications Commission in 47 CFR Section 1.6002(l), as may be amended or superseded. **No Grantor, successor, or future owner may install or consent to the siting of wireless facilities on or about any Parcel or future parcels or lot. This prohibition applies to all 77.99 acres of Parcel AA and Parcel AB combined.** This paragraph 11 is not intended to prohibit any Grantor or owner from installing or having installed fiber optic line or other cabling from an internet service provider, nor is it intended to prevent personal cell phone use or wi-fi routers from locating on Parcel AA and Parcel AB; provided, however, any wi-fi signal should not be detectible on a signal receiving consumer device more than 200 feet from the emitting device. The intent of this paragraph is to prevent siting of wireless facilities that transmit signals resulting in human exposure to radio frequencies.

12. Each Parcel or Accessing Parcel shall have only one (1) driveway that accesses the private road within the EASEMENT at only one place.

13. Grantors and/or the owner of each Accessing Lot shall each have the right to enforce the restrictions and provisions of this Agreement by filing a lawsuit in the Iowa District Court in and for Madison County or other court having jurisdiction at the time. If any party who seeks to enforce any provision of this Agreement prevails in court in whole or in part, that person as the prevailing party shall be awarded its, his or her reasonable attorney fees and costs.

If a private road entrance is secured by a security gate, retractable gate or similar barrier or mechanism, the Madison County fire and law enforcement departments shall always be given a current key, security code or other mechanism to ensure access to all portions of the private road in case of a fire or other emergency.

14. No restriction or requirement contained in this Agreement shall be amended to lessen a requirement or standard contained herein except in a recordable writing signed by Grantors or the

majority of all of the then-owners of all Parcels and Accessing Parcels, so long as any such amendment does not attempt to remove, lessen or negate any of the restrictions contained herein which are based upon Madison County ordinance requirements for the private road.

15. Covenants Run with the Land. All the terms and provisions hereof are and shall be deemed to run with the property described herein and shall burden and benefit such property as described herein and, with respect to such property, each Grantor, owner, the holders or owners of any mortgage, indenture, deed of trust or deed to secure debt encumbering any of such property, any purchaser at a foreclosure sale, and their respective heirs, executors, administrators, representatives, successors and assigns. This Agreement and its provisions may be released by a writing signed by Grantor Roneys and Grantor Daltons and recorded in the books and records of the Madison County Recorder's Office.

16. The EASEMENT and restrictions, terms and conditions of this Agreement shall be in addition to any existing deed restrictions binding the Parcels (if any) and shall in no way lessen, negate or alter any existing deed restrictions.

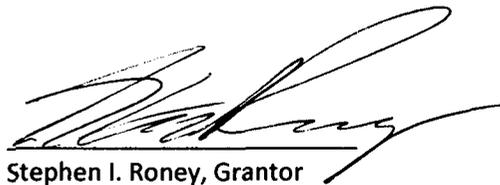
17. The road covered by this Agreement is private.

RONEY GRANTORS

DALTON GRANTORS


Ashley J. Roney, Grantor


Ann W. Dalton, Grantor


Stephen I. Roney, Grantor


Justin V. Dalton, Grantor

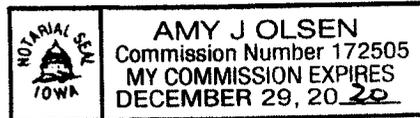
INDIVIDUAL ACKNOWLEDGEMENTS

STATE OF IOWA COUNTY OF POLK

This record was acknowledged before me on July 23, 2020, by Justin J. Dalton.



Signature of Notary Public

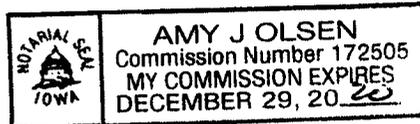


STATE OF IOWA COUNTY OF POLK

This record was acknowledged before me on July 23, 2020, by Ann W. Dalton.



Signature of Notary Public

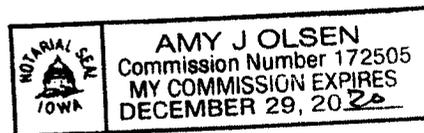


STATE OF IOWA COUNTY OF POLK

This record was acknowledged before me on July 23, 2020, by Ashley J. Roney.



Signature of Notary Public



STATE OF IOWA COUNTY OF POLK

This record was acknowledged before me on July 23, 2020, by Stephen I. Roney.



Signature of Notary Public

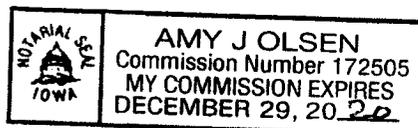


EXHIBIT A

Plat of Survey

PLAT OF SURVEY
 NMI/4 SE/4 & NE/4 SE/4, SEC. 13-77-26
 1267 WARREN AVENUE, CUMINGS, IA
 SHEET 2 OF 2

DATE: PRINTED ON JUL 22, 2020
 2ND EDITION
 1ST EDITION JUL 21, 2020
 DESIGNED BY: [Redacted]
 DRAWN BY: [Redacted]



Civil Engineering Consultants, Inc.
 2400 86th Street Unit 12 Des Moines, Iowa 50322
 515.276.4884 mail@cec.com



SCALE: 1"=100'

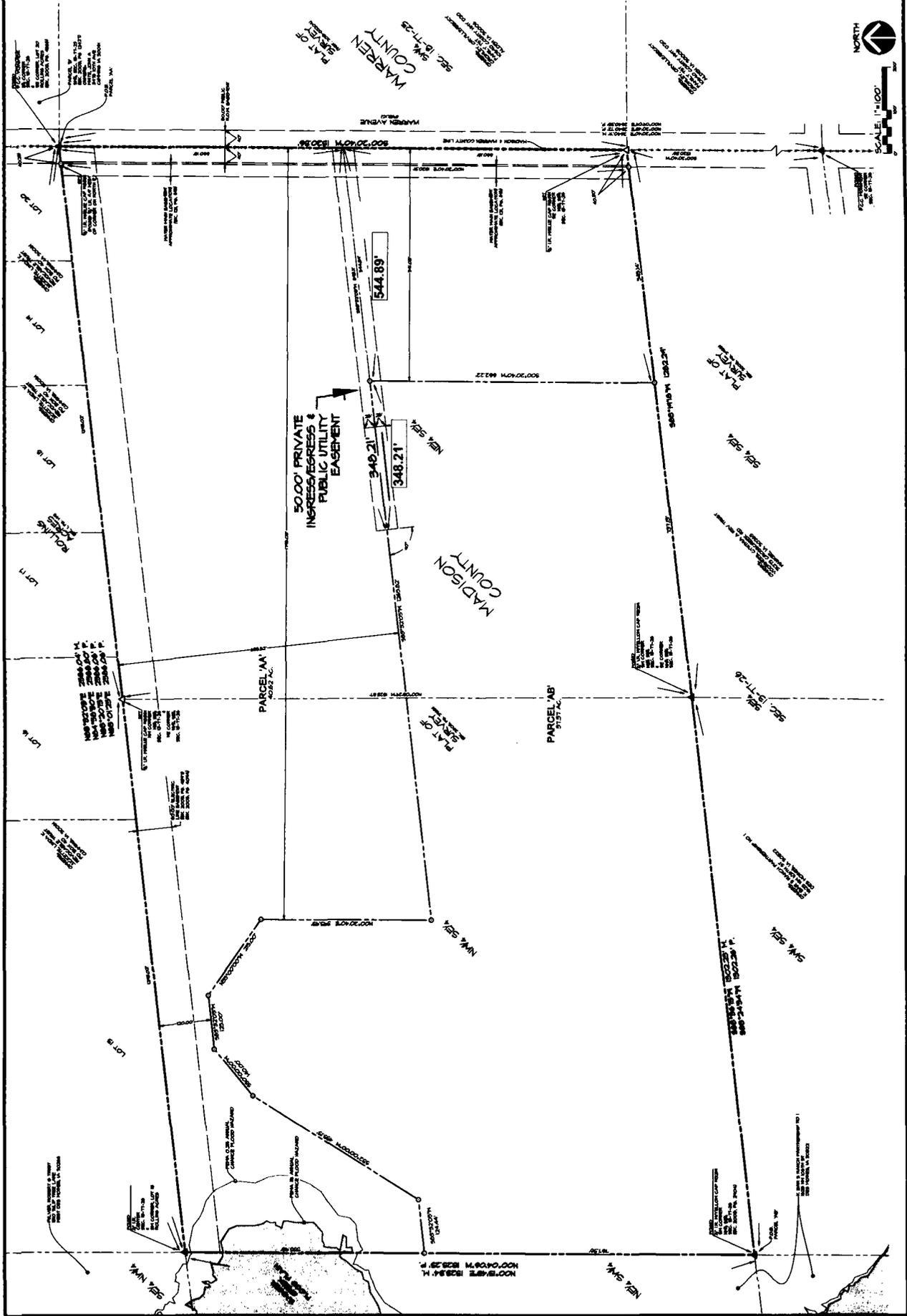


EXHIBIT B

PARCEL "AA" LEGAL DESCRIPTION _ GRANTOR RONEYS' LAND

A PARCEL OF LAND IN NE1/4 SE1/4 & NW1/4 SE1/4 OF SECTION 13, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH P.M., MADISON COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE E1/4 CORNER OF SAID SECTION 13, SAID E1/4 CORNER ALSO BEING THE SE CORNER OF ROLLING ACRES, AN OFFICIAL PLAT RECORDED IN BOOK 1, PAGE 149 AT THE MADISON COUNTY RECORDER'S OFFICE; THENCE S00°20'40"W, 1320.36 FEET ALONG THE EAST LINE OF SAID NE1/4 SE1/4 TO THE SE CORNER OF SAID NE1/4 SE1/4; THENCE S83°19'18"W, 545.14 FEET ALONG THE SOUTH LINE OF SAID NE1/4 SE1/4 TO A POINT; THENCE N00°20'40"E, 662.22 FEET ALONG A LINE THAT IS PARALLEL TO SAID EAST LINE OF THE NE1/4 SE1/4 TO A POINT ON THE SOUTH LINE OF THE NORTH 655.52 FEET OF SAID NE1/4 SE1/4; THENCE S83°32'05"W, 1265.82 FEET ALONG SAID SOUTH LINE OF THE NORTH 655.52 FEET TO A POINT; THENCE N00°20'40"E, 395.95 FEET ALONG A LINE THAT IS PARALLEL TO SAID EAST LINE OF THE NE1/4 SE1/4 TO A POINT; THENCE N55°00'00"W, 215.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 120.00 FEET OF SAID NW1/4 SE1/4; THENCE S83°32'05"W, 125.00 FEET ALONG SAID SOUTH LINE OF THE NORTH 120.00 FEET OF THE NW1/4 SE1/4 TO A POINT; THENCE S50°00'00"W, 140.00 FEET TO A POINT; THENCE S32°00'00"W, 453.15 FEET TO A POINT; THENCE S83°32'05"W, 124.44 FEET ALONG A LINE THAT IS PARALLEL TO THE NORTH LINE OF SAID NW1/4 SE1/4 TO A POINT ON THE WEST LINE OF SAID NW1/4 SE1/4; THENCE N00°15'45"E, 555.98 FEET ALONG THE WEST LINE OF SAID NW1/4 SE1/4 TO THE NW CORNER OF SAID NW1/4 SE1/4, SAID NW CORNER ALSO BEING THE SW CORNER OF ROLLING ACRES; THENCE N83°32'05"E, 2586.04 FEET ALONG THE NORTH LINE OF SAID SE1/4, SAID NORTH LINE ALSO BEING THE SOUTH LINE OF SAID ROLLING ACRES TO THE POINT OF BEGINNING AND CONTAINING 40.62 ACRES INCLUDING 1.21 ACRES OF PUBLIC RIGHT-OF-WAY EASEMENT MORE OR LESS.

EXHIBIT C

PARCEL "AB" LEGAL DESCRIPTION _ GRANTOR DALTONS' LAND

A PARCEL OF LAND IN NE1/4 SE1/4 & NW1/4 SE1/4 OF SECTION 13, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH P.M., MADISON COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF SAID NW1/4 SE1/4; THENCE N00°15'45"E, 767.36 FEET ALONG THE WEST LINE OF SAID NW1/4 SE1/4 TO A POINT; THENCE N83°32'05"E, 124.44 FEET ALONG A LINE THAT IS PARALLEL TO THE NORTH LINE OF SAID NW1/4 SE1/4 TO A POINT; THENCE N32°00'00"E, 453.15 FEET TO A POINT; THENCE N50°00'00"E, 140.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 120.00 FEET OF SAID NW1/4 SE1/4; THENCE S83°32'05"W, 125.00 FEET ALONG SAID SOUTH LINE OF THE NORTH 120.00 FEET OF THE NW1/4 SE1/4 TO A POINT; THENCE S55°00'00"E, 215.00 FEET TO A POINT; THENCE S00°20'40"W, 395.95 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 655.52 FEET OF SAID SE1/4; THENCE N83°32'05"E, 1265.82 FEET ALONG SAID SOUTH LINE OF THE NORTH 655.52 FEET TO A POINT; THENCE S00°20'40"W, 662.22 FEET ALONG A LINE THAT IS PARALLEL TO THE EAST LINE OF SAID NE1/4 SE1/4 TO A POINT ON THE SOUTH LINE OF SAID NE1/4 SE1/4; THENCE S83°19'18"W, 737.15 FEET ALONG SAID SOUTH LINE TO THE SW CORNER OF SAID NE1/4 SE1/4; THENCE S83°36'15"W, 1302.23 FEET ALONG THE SOUTH LINE OF SAID NW1/4 SE1/4 TO THE POINT OF BEGINNING AND CONTAINING 37.37 ACRES MORE OR LESS.