

for abandonment of
condemnation proceeding
see misc rec 45-331
9-25-98

REC \$ 35.00

AUD \$

R.M.F. \$ 1.00

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FILED NO. 4975

BOOK 140 PAGE 276

98 MAY 29 PM 2:57

MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

Preparer Information Richard B. Clogg, 106 E. Salem Ave., Indianola, IA 50125-0215, (515) 981-2574
Individual's Name Street Address City Phone

SPACE ABOVE THIS LINE
FOR RECORDER

IN THE MATTER OF THE CONDEMNATION OF
EASEMENT RIGHTS IN AGRICULTURAL LAND
BY WARREN WATER DISTRICT TO
CONSTRUCT, OPERATE AND MAINTAIN
A WATER DISTRIBUTION SYSTEM
IN MADISON COUNTY, IOWA

RE: SERVICE AREA 5

- Parcel No. M5-383A (SE 1/4 NE 1/4 5-74-27)
- Parcel No. M5-383B (NE 1/4 SE 1/4 5-74-27)
- Parcel No. M5-2194A (NE 1/4 SW 1/4 32-75-27)
- Parcel No. M5-2194B (SE 1/4 SW 1/4 32-75-27)
- Parcel No. M5-359 (W 1/4 SW 1/4 NE 1/4 3-74-27)

CERTIFICATION OF APPROVAL
OF APPLICATION BY CHIEF JUDGE

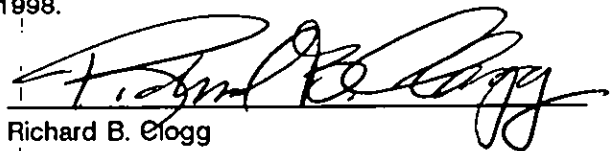
STATE OF IOWA: ss.

I, the undersigned, pursuant to the provisions of §6B.3(7) of the Code of Iowa, 1997, being first duly sworn on oath, depose and state that I am attorney for Warren Water District, Applicant in the above-captioned condemnation proceeding and that I make the following certifications upon the direction of and on behalf of the Applicant.

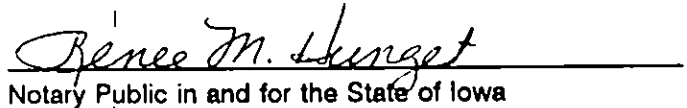
I hereby certify that attached hereto is the original Application by Warren Water District which was filed with the Honorable Arthur E. Gamble, Chief Judge of the Fifth Judicial District of Iowa, which includes Madison County, Iowa, on the 26th day of May, 1998, at his office in Des Moines, Iowa and that said Application has been approved by the said Chief Judge. I further certify that the statements accompanying the attached are true.

I further certify that the original approved application is filed with the Madison County Recorder in the manner required under § 6B.37, Code of Iowa, all pursuant to § 6B.3(7), Code of Iowa, to constitute constructive notice to all parties that a proceeding to condemn the property is pending and that the Applicant has the right to acquire the property.

Dated at Indianola, Iowa, this 29th day of May, 1998.


Richard B. Clogg

Subscribed and sworn to before me by Richard B. Clogg this 29th day of May, 1998.


Notary Public in and for the State of Iowa



IN THE MATTER OF THE CONDEMNATION OF
EASEMENT RIGHTS IN AGRICULTURAL LAND
BY WARREN WATER DISTRICT TO
CONSTRUCT, OPERATE AND MAINTAIN
A WATER DISTRIBUTION SYSTEM
IN MADISON COUNTY, IOWA

RE: SERVICE AREA 5

Parcel No. M5-383A (SE $\frac{1}{4}$ NE $\frac{1}{4}$ 5-74-27)
Parcel No. M5-383B (NE $\frac{1}{4}$ SE $\frac{1}{4}$ 5-74-27)
Parcel No. M5-2194A (NE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27)
Parcel No. M5-2194B (SE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27)
Parcel No. M5-353 (W $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ 3-74-27)

**APPLICATION FOR CONDEMNATION TO THE CHIEF JUDGE
OF THE FIFTH JUDICIAL DISTRICT AND
FOR THE APPOINTMENT OF A
COMMISSION TO APPRAISE DAMAGES**

TO THE HONORABLE ARTHUR E. GAMBLE, Chief Judge of the Fifth Judicial District of Iowa:

COMES NOW Warren Water District, sometimes hereinafter the "Applicant" or "District", a rural water district incorporated and organized pursuant to the provisions of Chapter 357A of the Code of Iowa, and pursuant to § 6B.3, Code of Iowa (1997), states:

1. Applicant, Warren Water District is a rural water district incorporated and organized pursuant to the provisions of Chapter 357A of the Code of Iowa, with its principal place of business at 1204 East 2nd Avenue, Indianola, Iowa 50125, and is authorized to make this application under the provisions of §357A.11(5) of the Code of Iowa (1997).

2. The Applicant seeks to acquire, by the process of eminent domain, a permanent and perpetual easement thirty-two (32) feet in width on, under, across and through the real estate hereinafter set forth to erect, construct, install, lay and thereafter use, operate, inspect, repair, maintain, replace and remove water lines and appurtenances thereto. Applicant shall have the right of ingress to and egress from said strip of land across the described tract for these purposes. The owners and other affected persons may continue to use and enjoy the grounds within the easement areas, but subject to Applicant's rights as set forth above; provided, however, that no building, structure or other improvement shall be constructed upon the easement strip which would directly interfere with Applicant's rights hereby acquired, including access to the easement strip and the safe operation of its water lines.

3. The purpose for which the condemnation is sought is an easement for water lines for water distribution purposes over and across the described real estate, said water distribution system to serve residents of Madison County, Iowa.

4. The easement rights of Warren Water District to be acquired pursuant to this Application and the resultant assessment of damages shall be and are limited by the following:

- (a) That during construction the Applicant will bury all pipeline to provide a minimum cover of 36 inches.
- (b) That Applicant will pay for any damages to growing crops, grasses, trees, shrubbery, fences, or other property caused by the inspection, repair, replacement, removal, maintenance or operation of Applicant's facilities on the land described above; provided, however, that the Applicant shall have the right (without liability for damages) from time to time after initial construction of the pipeline to reclear the right-of-way by cutting and removing therefrom trees, brush and other obstructions that may, in Applicant's judgment, interfere with Applicant's use of the easement strip.
- (c) That Applicant will restore the surface of all disturbed areas on said land to its original contour as nearly as practicable.

(d) Any drainage tile disturbed by the installation or repair of the pipeline will be repaired or replaced by Applicant with tile of comparable quality.

5. Exhibit "A" attached hereto, and by this reference made a part hereof, is a list showing and describing all property affected or sought to be condemned in Madison County by the Applicant.

6. That said land described in Exhibit "A" is agricultural property.

7. Exhibit "B" attached hereto, and by this reference made a part hereof, are a series of plats specifically describing the property affected or sought to be condemned, and showing the location of the right-of-way with reference to such description.

8. Exhibit "C" attached hereto, and by this reference made a part hereof, are the names of all record owners of the different tracts of land sought to be condemned or otherwise affected by these proceedings, and the names of all record holders of liens and encumbrances on such lands, together with the place of residence of all such persons so far as known to Applicant.

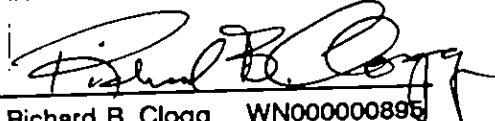
9. Warren Water District has been unable to secure the described rights in said real estate by purchase and conveyance and, therefore, requests the appointment of a commission to appraise damages.

10. You are requested to appoint a Commission in compliance with Chapter 6B of the Code of Iowa (1997) to appraise the damages, said Commission shall be six in number and shall be residents of Madison County, Iowa.

WHEREFORE, Warren Water District hereby requests the appointment of a compensation commission to view the real estate involved and appraise the damages which the owners thereof, lienholders, encumbrances, or other persons interested therein will sustain by reason of the appropriation of the easement rights for the purposes herein stated, and make their report to the Sheriff as provided by law, all in accordance with the terms and provisions of Chapter 6B, Code of Iowa, as amended.

Dated this 20th day of May, 1998.

WARREN WATER DISTRICT

By: 

Richard B. Clogg WN000000895
ELGIN, CLOGG & PATIN
108 East Salem Avenue
P.O. Box 215
Indianola, Iowa 50125
Telephone: (515) 961-2574
Facsimile: (515) 961-2577

ATTORNEYS FOR APPLICANT,
WARREN WATER DISTRICT

Application filed in duplicate in my office in Des Moines, Iowa, is approved this 26 day of May, 1998.



CHIEF JUDGE, FIFTH JUDICIAL DISTRICT OF IOWA

EXHIBIT "A"
Page 1 of 1

A description of all the property in Madison County affected or sought to be condemned by its congressional numbers in tracts not exceeding one-sixteenth of a section.

Parcel No. M5-383A (SE $\frac{1}{4}$ NE $\frac{1}{4}$ 5-74-27)

The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 5, Township 74 North, Range 27 West of the 5th P.M., Madison County Iowa.

Parcel No. M5-383B (NE $\frac{1}{4}$ SE $\frac{1}{4}$ 5-74-27)

The NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 5, Township 74 North, Range 27 West of the 5th P.M., Madison County Iowa.

Parcel No. M5-2194A (NE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27)

The NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 32, Township 75 North, Range 27 West of the 5th P.M., Madison County Iowa.

Parcel No. M5-2194B (SE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27)

The SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 32, Township 75 North, Range 27 West of the 5th P.M., Madison County Iowa.

Parcel No. M5-359 (W $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ 3-74-27)

The W $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 3, Township 74 North, Range 27 West of the 5th P.M., Madison County Iowa.

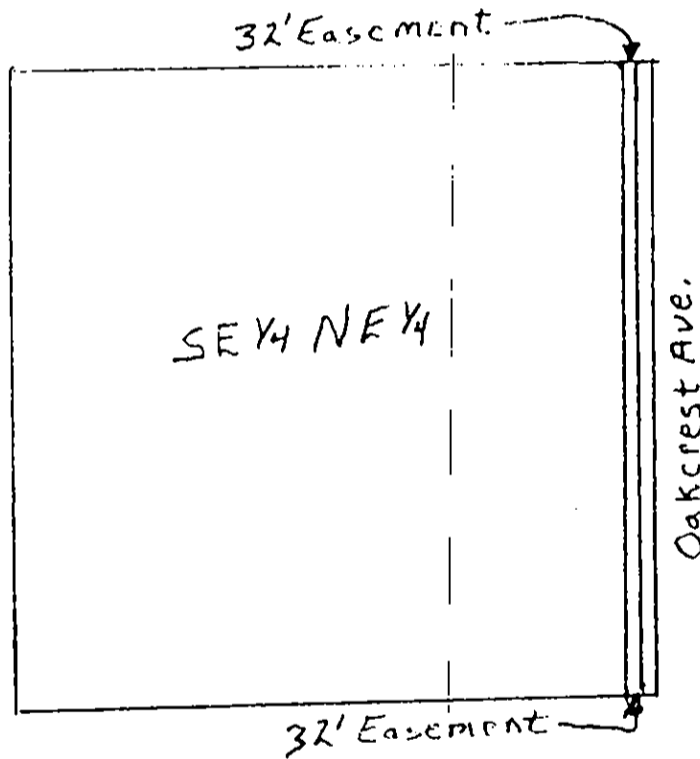
EXHIBIT "B"
Page 1 of 5

A plat of each parcel showing the location of the right-of-way or other property sought to be condemned with reference to such description.

Parcel No. M5-383A (SE $\frac{1}{4}$ NE $\frac{1}{4}$ 5-74-27)

PLAT OF AN EASEMENT for construction and maintenance of a water distribution system across all that part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 5, Township 74 North, Range 27 West of the 5th P.M., Madison County, Iowa, lying West of the Oakcrest Avenue county road right-of-way as located across the said Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of said Section, DESCRIBED AS FOLLOWS: The East 32 feet of said property which is parallel and adjacent to the Oakcrest Avenue county road right-of-way beginning at the North boundary line of said property, thence South along and adjacent to said county road right-of-way to the South boundary line of said property:

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 5-74-27



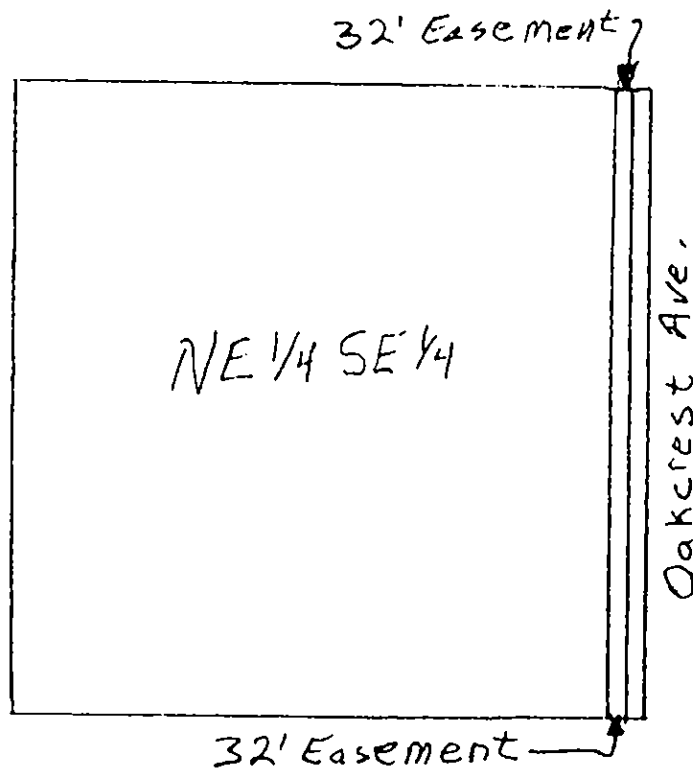
EASEMENT DESCRIPTION: A perpetual easement for erection, construction, installation, laying and thereafter use, operation, inspection, repair, maintenance, replacement and removal of water lines and appurtenances thereto, over, across and through the above-described real estate.

EXHIBIT "B"
Page 2 of 5

Parcel No. M5-383B (NE $\frac{1}{4}$ SE $\frac{1}{4}$ 5-74-27)

PLAT OF AN EASEMENT for construction and maintenance of a water distribution system across all that part of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 5, Township 74 North, Range 27 West of the 5th P.M., Madison County, Iowa, lying West of the Oakcrest Avenue county road right-of-way as located across the said Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of said Section, DESCRIBED AS FOLLOWS: The East 32 feet of said property which is parallel and adjacent to the Oakcrest Avenue county road right-of-way beginning at the North boundary line of said property, thence South along and adjacent to said county road right-of-way to the South boundary line of said property:

NE $\frac{1}{4}$ SE $\frac{1}{4}$ 5-74-27



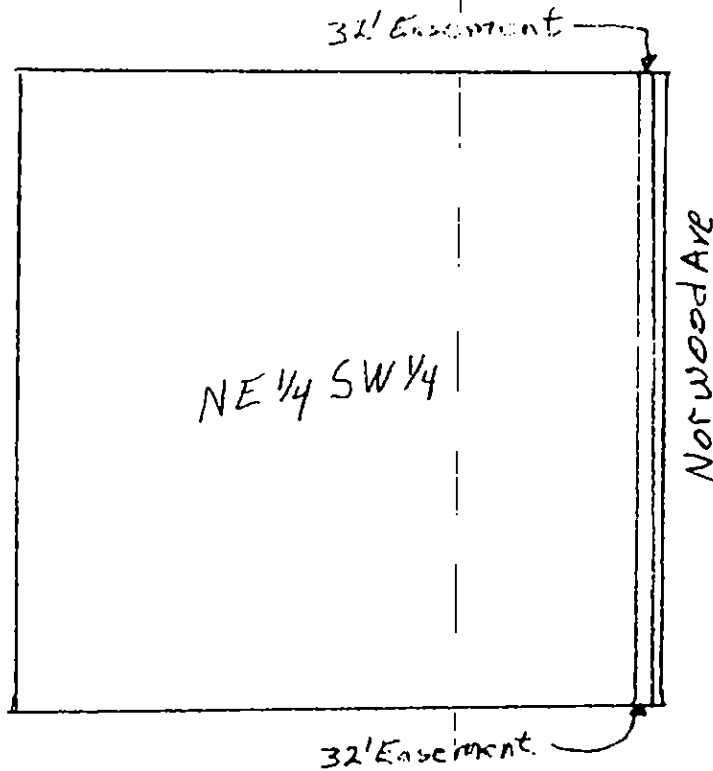
EASEMENT DESCRIPTION: A perpetual easement for erection, construction, installation, laying and thereafter use, operation, inspection, repair, maintenance, replacement and removal of water lines and appurtenances thereto, over, across and through the above-described real estate.

EXHIBIT "B"
Page 3 of 5

Parcel No. M5-2194A (NE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27)

PLAT OF AN EASEMENT for construction and maintenance of a water distribution system across all that part of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 32, Township 75 North, Range 27 West of the 5th P.M., Madison County, Iowa, lying West of the Norwood Avenue county road right-of-way as located across the said Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of said Section, DESCRIBED AS FOLLOWS: The East 32 feet of said property which is parallel and adjacent to the Norwood Avenue county road right-of-way, beginning at the North boundary line of said property, thence South along and adjacent to the county road right-of-way to the South boundary line of said property:

NE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27



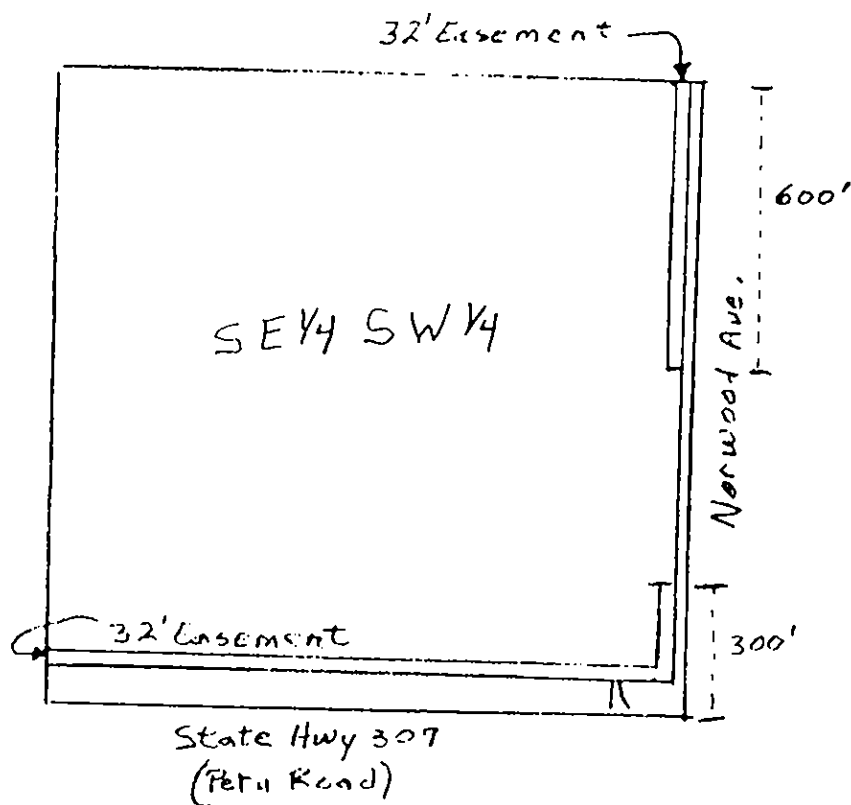
EASEMENT DESCRIPTION: A perpetual easement for erection, construction, installation, laying and thereafter use, operation, inspection, repair, maintenance, replacement and removal of water lines and appurtenances thereto, over, across and through the above-described real estate.

EXHIBIT "B"
Page 4 of 5

Parcel No. M5-2194B (SE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27)

PLAT OF AN EASEMENT for construction and maintenance of a water distribution system across all that part of the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 32, Township 75 North, Range 27 West of the 5th P.M., Madison County, Iowa, lying West of the Norwood Avenue county road right-of-way and lying North of the State Highway 307 (Peru Road) right-of-way, as located across the said Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of said Section, DESCRIBED AS FOLLOWS: The North 600 feet and the South 300 feet of the East 32 feet of said property which is parallel and adjacent to the Norwood Avenue county road right-of-way, beginning at the North boundary line of said property, thence South along and adjacent to the county road right-of-way to the South boundary line of said property, and the South 32 feet of said property which is parallel and adjacent to the State Highway 307 (Peru Road) right-of-way, beginning at the East boundary line of said property, thence West along and adjacent to the road right-of-way to the West boundary line of said property:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27



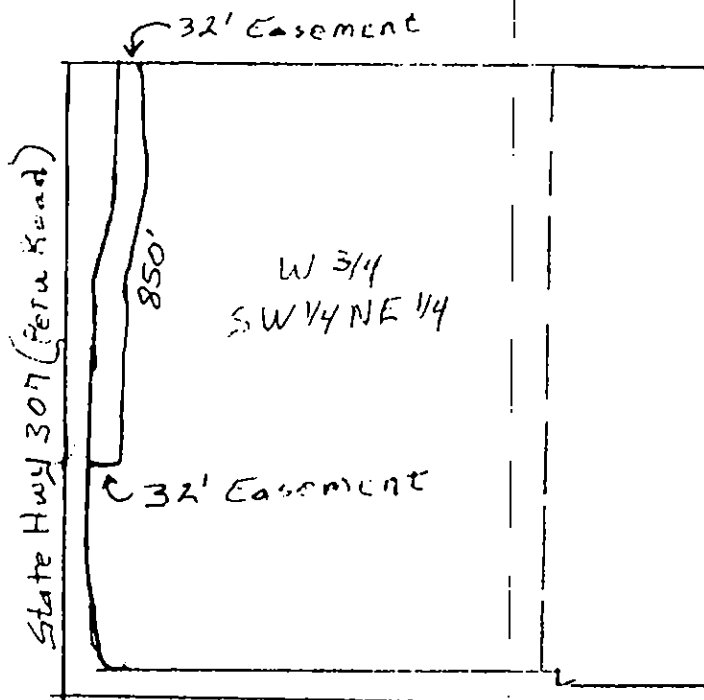
EASEMENT DESCRIPTION: A perpetual easement for erection, construction, installation, laying and thereafter use, operation, inspection, repair, maintenance, replacement and removal of water lines and appurtenances thereto, over, across and through the above-described real estate.

EXHIBIT "B"
Page 5 of 5

Parcel No. M5-359 (W³/₄ SW¹/₄ NE¹/₄ 3-74-27)

PLAT OF AN EASEMENT for construction and maintenance of a water distribution system across all that part of the North 850 feet of the West three fourths (W³/₄) of the Southwest Quarter (SW¹/₄) of the Northeast Quarter (NE¹/₄) of Section 3, Township 74 North, Range 27 West of the 5th P.M., Madison County, Iowa, lying East of the State Highway 307 (Peru Road) right-of-way as located across the said West three fourths (W³/₄) of the Southwest Quarter (SW¹/₄) of the Northeast Quarter (NE¹/₄) of said Section, DESCRIBED AS FOLLOWS: The West 32 feet of the North 850 feet of said property which is parallel and adjacent to the State Highway 307 (Peru Road) road right-of-way beginning at the North boundary line of said property, thence South along and adjacent to said road right-of-way 850 feet.

W³/₄ SW¹/₄ NE¹/₄ 3-74-27



EASEMENT DESCRIPTION: A perpetual easement for erection, construction, installation, laying and thereafter use, operation, inspection, repair, maintenance, replacement and removal of water lines and appurtenances thereto, over, across and through the above-described real estate.

EXHIBIT "C"
Page 1 of 2

Parcel No. M5-383A (SE $\frac{1}{4}$ NE $\frac{1}{4}$ 5-74-27)

Property Owners:

Dorothy L. Decker, 2863 Oakcrest Ave., Peru, 50222

Others that may be affected by the proceedings:

Madison County, Iowa, c/o County Auditor, Madison County Courthouse, Winterset, Iowa 50273

Holders of Lien or encumbrance:

NONE OF RECORD

Parcel No. M5-383B (NE $\frac{1}{4}$ SE $\frac{1}{4}$ 5-74-27)

Property Owners:

Dorothy L. Decker, 2863 Oakcrest Ave., Peru, 50222

Others that may be affected by the proceedings:

Madison County, Iowa, c/o County Auditor, Madison County Courthouse, Winterset, Iowa 50273

Holders of Lien or encumbrance:

NONE OF RECORD

Parcel No. M5-2194A (NE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27)

Property Owners:

Alan W. See, 2341 Peru Road, Peru, 50222

Others that may be affected by the proceedings:

Madison County, Iowa, c/o County Auditor, Madison County Courthouse, Winterset, Iowa 50273

Holders of Lien or encumbrance:

NONE OF RECORD

Parcel No. M5-2194B (SE $\frac{1}{4}$ SW $\frac{1}{4}$ 32-75-27)

Property Owners:

Alan W. See, 2341 Peru Road, Peru, 50222

Others that may be affected by the proceedings:

Madison County, Iowa, c/o County Auditor, Madison County Courthouse, Winterset, Iowa 50273

Holders of Lien or encumbrance:

NONE OF RECORD

EXHIBIT "C"
Page 2 of 2

Parcel No. M5-359 (W³/₄ SW¹/₄ NE¹/₄ 3-74-27)

Property Owners:

Alan W. See, 2341 Peru Road, Peru, 50222

Others that may be affected by the proceedings:

Madison County, Iowa, c/o County Auditor, Madison County Courthouse, Winterset, Iowa 50273

Holders of Lien or encumbrance:

NONE OF RECORD