



Document 2011 1503

Book 2011 Page 1503 Type 06 001 Pages 14  
Date 6/09/2011 Time 10:34 AM  
Rec Amt \$74.00

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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

**ACCESS EASEMENTS AGREEMENT**  
Recorder's Cover Sheet

**Preparer Information:**

Claire B. Patin  
Elgin and Patin  
P. O. Box 215  
Indianola, IA 50125

**Taxpayer Information:**

Adam G. O'Neal and Jennifer E. O'Neal  
1809 South 4<sup>th</sup> Avenue  
Winterset, IA 50273

✓ **Return Address**

Claire B. Patin  
Elgin and Patin  
P. O. Box 215  
Indianola, IA 50125

**Grantor:**

Adam G. O'Neal and Jennifer E. O'Neal

**Grantee:**

Patricia W. Barry, Trustee of the Survivor's Trust under the Philip and Patricia Barry Family Trust dated May 6, 1998 and Stephen W. Dunn, Trustee of the Dunn Family Trust dated June 10, 1990

**Legal Description:** See Pages 11, 12 and 13

**Document or instrument number if applicable:**

## ACCESS EASEMENTS AGREEMENT

This Access Easements Agreement, dated for reference purposes May 27, 2011, and effective upon recordation with the Madison County, Iowa recorder, is made by and between Adam G. O'Neal and Jennifer E. O'Neal ("Grantor"), Patricia W. Barry, Trustee of the Survivor's Trust under the Philip and Patricia Barry Family Trust dated May 6, 1998 ("Barry"), and Stephen W. Dunn, Trustee of the Dunn Family Trust dated June 10, 1990 ("Dunn").

### RECITALS

**A.** Barry has sold and conveyed to Grantor the property described on Exhibit "A" attached hereto ("Grantor Parcel"). In order to induce Barry to so sell the Grantor Parcel to Grantor, Grantor agreed to grant certain easements rights on and over a portion of the Grantor Parcel as described herein for the benefit of "Parcel A" and "Parcel B," as to which Barry and Dunn are the titleholders, and subject to certain contingencies, and as a contingent third party beneficiary, for the benefit of Parcel C, as to which Arthur Hartman is currently the titleholder. All references to Parcels "A," "B" and "C" shall refer to each such parcel as a whole, as well as all lots or sublots legally divided off with any of said parcels. Parcels A, B and C are legally described on the attached Exhibit "B" hereto.

**B.** Subject to certain contingencies and conditions, Dunn and Barry have agreed to grant certain easement rights on and over a portion of Parcel B, as further described herein.

### GRANT OF ACCESS EASEMENTS

In consideration of the facts recited above, and other good and valuable consideration, Grantor, Dunn and Barry hereby agree and grant as follows:

**1. Grantor Easement to Parcel A.** Grantor hereby grants and conveys to the owners of Parcel A, and to each of them (collectively, the "Parcel A Easement Holders") a perpetual, non-exclusive rent-free easement for ingress and egress to and from Parcel A and for the installation and maintenance of public and private utilities thereon, on, over and through such portion of the Grantor Parcel as is legally described and depicted on the Plat of Survey attached as Exhibit "C" hereto, together with any easement rights of ingress and egress adjacent thereto, if any, which for purposes of this Agreement shall be deemed a part of the Grantor Parcel (the "Easement Area").

**2. Grantor Easement to Parcel B.** Within the Easement Area is an existing 20 foot wide road, depicted and marked as the "crushed rock drive" on the Plat of Survey of the Easement Area and described in paragraph one of the legal description of the Easement Area set forth on the attached Exhibit C hereto. Said 20 foot wide road is referred to herein as the "20 Foot Wide Road," and the portion of the Easement Area on which it is located as the "20 Foot Wide Strip Area." If the owners of Parcel B, or any one or more

of them, construct road improvements on Parcel B along the western boundary of Parcel B, or a portion thereof, which has the effect of widening the 20 Foot Wide Road, or a portion thereof, then grants to the owners of Parcel B ("Parcel B Easement Holders"), a perpetual, non-exclusive rent-free easement for ingress and egress to and on such portion of the 20 Foot Wide Strip Area on which the 20 Foot Wide Road has been so widened. If the 20 Foot Wide Road is so widened in stages over time, then as each additional portion thereof is so widened, then Grantor at each such time grants to the Parcel B Easement Holders, and to each of them, the same such easement rights as to such additional portion of the 20 Foot Wide Strip Area on which such additional portion of the 20 Foot Wide Road has been so widened.

**3. Grantor Easement to Parcel C.** As and when the condition precedent is met set forth in the following paragraph, then Grantor hereby grants and conveys to the owners of Parcel C (the "Parcel C Easement Holders"), as a contingent third party beneficiary, the same easement rights on and to the 20 Foot Wide Strip Area as Grantor granted and conveyed to the Parcel B Easement Holders, and to each of them, as and when and upon the 20 Foot Wide Road being widened as described above.

*Notwithstanding* the above grant and conveyance from Grantor to the Parcel C Easement Holders of the easement rights described in the paragraph immediately above, such easement rights will not take effect or be exercisable by the Parcel C Easement Holders, unless and until all of the Parcel A Easement Holders, in their sole discretion, execute and record with the Madison County Recorder a written consent that the Parcel C Easement Holders (the "Parcel A Easement Holders Consent Instrument(s)") may exercise such rights to the 20 Foot Wide Strip Area. The Parcel A Easement Holders, or any one of them, in addition to refusing to execute and record the Recorded Consent, may stipulate and impose such further terms and conditions as any such Parcel A Easement Holder may so elect to restrict or condition the exercise of such easement rights by the Parcel C Easement Holders, including without limitation the payment to or conferring upon one or more of the Parcel A Easement Holders additional monetary or other consideration in exchange for the execution and recordation of the Recorded Consent.

**4. Parcel B Owners Easement to Grantor Parcel.** Dunn and Barry, as titleholders to Parcel B, hereby grant and convey to Grantor as the owner of the Grantor Parcel a perpetual, non-exclusive rent-free easement for ingress and egress to and from said Grantor Parcel and for the installation and maintenance of public and private utilities thereon, on, over and through such portion of Parcel B on which have been construct road improvements on the western boundary of Parcel B, or a portion thereof, which has the effect of widening the 20 Foot Wide Road ("20 Foot Wide Road Expansion Area"), if and when and from time to time as the 20 Foot Wide Road Expansion Area comes into existence.

**5. Parcel B Owners Easement to Parcel C.** Dunn and Barry, as titleholders to Parcel B, further grant and convey to the Parcel C Easement Holders, as a contingent third party beneficiary, the same such easement rights to the 20 Foot Wide Road Expansion Area as they granted to the Grantor in the paragraph immediately above, when and if, and upon, and only upon, the execution and recording with the Madison County

Recorder by all of the Parcel A Easement Holders of all of the Parcel A Easement Holders Consent Instruments as described above, and unless and until all of such Parcel A Easement Holder Consent Instruments have been so recorded as provided above, in each such Parcel A Easement Holder's sole discretion, the Parcel C Easement Holders shall have no rights of use, or any other legal rights of any kind or nature whatsoever, with respect to the 20 Foot Wide Road Expansion Area pursuant to this Access Easements Agreement.

### **GENERAL CONDITIONS**

- 1. Limitation on Parcel C Easement Holders Rights.** Although the Parcel C Easement Holders are not a party to this agreement, with respect to each and every right granted to them herein, as contingent third party beneficiaries, such rights so granted are subject to all of the General Conditions set forth below and other conditions set forth herein, including without limitation the meeting of all of the conditions precedent set forth herein prior to the exercise of any such rights by the Parcel C Easement Holders, and their use of the 20 Foot Wide Strip Area and the 20 Foot Wide Road Expansion Area thereafter.
- 2. Improvements and Maintenance.** The Parcel A Easement Holders, the Parcel B Easement Holders, and the Parcel C Easement Holders, are collectively referred to herein as the "Easement Holders." The Easement Holders, or any one or more of them, shall have the right, but not the obligation, at such Easement Holder or Easement Holders sole expense, to maintain the existing roadway and any other improvements with the Easement Area, and to construct roadway expansion or other improvements within the Easement Area to the make such area suitable or more suitable, or to meet Madison County, Iowa or City of Winterset legal requirements, as such may exist from time to time, for pedestrian or vehicular traffic and utility installation, and to maintain the same, in order to legally subdivide Parcel A or Parcel B for development purposes or for any other reason.
- 3. Damage to Easement Area.** Grantor and the Easement Holders shall be responsible for any damage they, or their licensees and/or invitees, may cause to any improvements within the Easement Area or the 20 Foot Wide Road Expansion Area. The party responsible for such damage shall promptly make all needed repairs, restoring the Easement Area or the 20 Foot Wide Road Expansion Area to its condition prior to the damage.
- 4. Obstructions to Use of Easement Area and 20 Foot Wide Road Extension Area.** Neither the Grantor nor the Easement Holders nor any person permitted to use the Easement Area or the 20 Foot Wide Road Expansion Area under the terms of this Access Easements Agreement, may utilize the Easement Area or the 20 Foot Wide Road Expansion Area in a way that interferes with its intended uses as provided herein.
- 5. Enforcement of Agreement.** The Grantor and each Easement Holder shall have the right to legally enforce whatever rights each of them has been granted herein, by

whatever action or actions are legally available, including, without limitation, enjoining any violation or threatened violation thereof.

**6. Integration and Amendments.** This Access Easements Agreement contains all of the terms and conditions upon which the parties have agreed, superseding any prior agreements or discussions about the subject matter hereof. This Access Easements Agreement shall not be modified, amended or terminated except by written execution and recording of a written instrument signed by Grantor and the Easement Holders, or their successors in interest.

**7. Successors.** All of the easement rights granted herein are as easements appurtenant to Parcel A and Parcel B as applicable. All the terms, covenants, conditions, and obligations set forth in this Access Easements Agreement shall inure to the benefit of and bind the Grantor and each Easement Holder, and their respective personal representatives, heirs, successors, transferees and assigns, and shall continue as a servitude running in perpetuity with the Grantor Parcel, and Parcel B, respectively, to the extent said parcels are encumbered by this Access Easements Agreement.

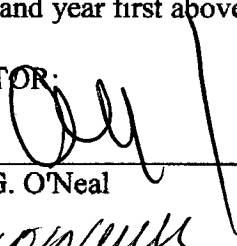
**8. Severability.** If any provision or specific application of this Access Easements Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions or specific applications of this Access Easements Agreement shall remain valid and binding.


**9. Governing Law.** This Access Easements Agreement shall be governed by and construed under the laws of the State of Iowa.

**10. Counterparts.** This Access Easements Agreement may be executed in separate counterparts, which when the signature page of each of the parties hereto with the appropriate acknowledgement is attached, shall be deemed a fully enforceable and recordable agreement and document.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

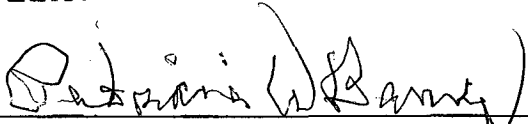
GRANTOR:

  
\_\_\_\_\_  
Adam G. O'Neal

  
\_\_\_\_\_  
Jennifer E. O'Neal

[SIGNATURES CONTINUED]

BARRY:

A handwritten signature in cursive script, appearing to read "Patricia W. Barry", written over a horizontal line.

Patricia W. Barry, Trustee of the Survivor's Trust  
under the Philip and Patricia Barry Family Trust  
dated May 6, 1998

DUNN:

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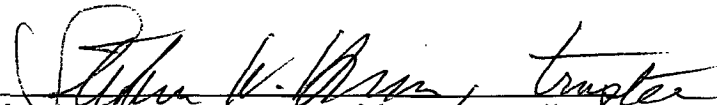
Stephen W. Dunn, Trustee of the Dunn Family  
Trust dated June 10, 1990

BARRY:

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Patricia W. Barry, Trustee of the Survivor's Trust  
under the Philip and Patricia Barry Family Trust  
dated May 6, 1998

DUNN:



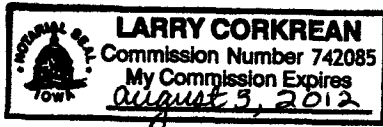
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Stephen W. Dunn, Trustee of the Dunn Family  
Trust dated June 10, 1990

STATE OF IOWA

COUNTY OF MADISON

On this \_\_\_\_ day of May, 2011, before me, the undersigned, a Notary Public in and for said county and said state, personally appeared Adam G. O'Neal and Jennifer E. O'Neal, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.



*Larry Corkrean*  
Notary Public



STATE OF CALIFORNIA

COUNTY OF Los Angeles:

On this 31 day of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Patricia W. Barry, as Trustee of the Survivor's Trust under the Philip and Patricia Barry Family Trust dated May 6, 1998, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that she, as Trustee, executed the foregoing instrument as her voluntary act and deed.

Elaine E. Love  
Notary Public in and for the State of California



# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On June 1, 2011 before me, David P. Lee, notary public  
(Here insert name and title of the officer)

personally appeared Stephen W. Dunn

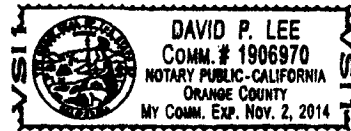
who proved to me on the basis of satisfactory evidence to be the person ~~(s)~~ whose name ~~(s)~~ is ~~(s)~~ subscribed to the within instrument and acknowledged to me that he ~~(s)~~ executed the same in his ~~(s)~~ authorized capacity ~~(s)~~, and that by his ~~(s)~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*David P. Lee*

Signature of Notary Public



(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Access Easement Agreement

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 6 + Exhibits A-C Document Date 5/27/11

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

## **EXHIBIT A**

### **Legal Description of Grantor Parcel**

**The West Half (1/2) of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of Section Twelve (12) and the West 20 feet of the South 71 rods of the Southeast Quarter (1/4) of the Southeast Quarter of Section One (1) in Township Seventy-five (75) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa**

## **EXHIBIT B**

### Legal Description of Parcel A

The Northwest Quarter (1/4) of the Northeast Quarter (1/4) of land in Section Twelve (12), Township Seventy-five (75) North, Range Twenty-eight (28) West of the 5th P.M., subject to public highways, Madison County, Iowa.

### Legal Description of Parcel B

The Southeast Quarter (1/4) of the Southeast Quarter (1/4) of land in Section One (1), Township Seventy-five (75) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa, except a tract described as follows: Commencing at the Southwest corner of said 40 acre tract, and running thence North 71 rods, thence East 20 feet, thence South 71 rods, thence West 20 feet to the place of the beginning.

### Legal Description of Parcel C

A parcel of land described as commencing at the South Quarter Corner of Section One (1), Township 75 North, Range 28 West of the 5<sup>th</sup> P.M., Madison County, Iowa; thence N90°00'00" East 864.55 feet along the South line of the Southeast Quarter (1/4) of said Section One (1) to the Point of beginning; thence continuing N 90°00'00" East 427.82 feet to the East line of the Southwest Quarter of the Southeast Quarter of said Section One (1), thence N 0°49'21" East 938.04 feet; thence S 53°10'47" West 332.00 feet; thence N 0°38'02" East 408.62 feet to the County Road and the South line of Seven Oaks Subdivision; thence South 87°48'28" West 163.83 feet along the county road; thence South 25°41'56" West 216.99 feet to the Point of beginning containing 8.0263 acres including 0.1186 acres of county road right-of-way.

Note: The South line of the Southeast Quarter (1/4) of Section One (1), Township 75 North, Range 28 West of the 5<sup>th</sup> P.M. is assumed to bear due East and West.

## EXHIBIT C

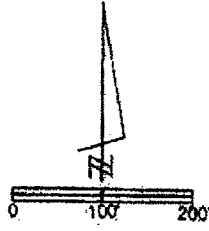
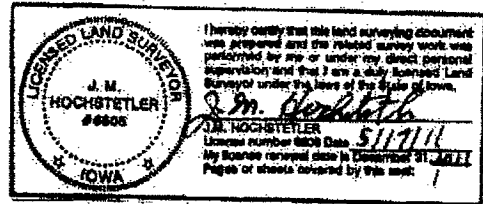
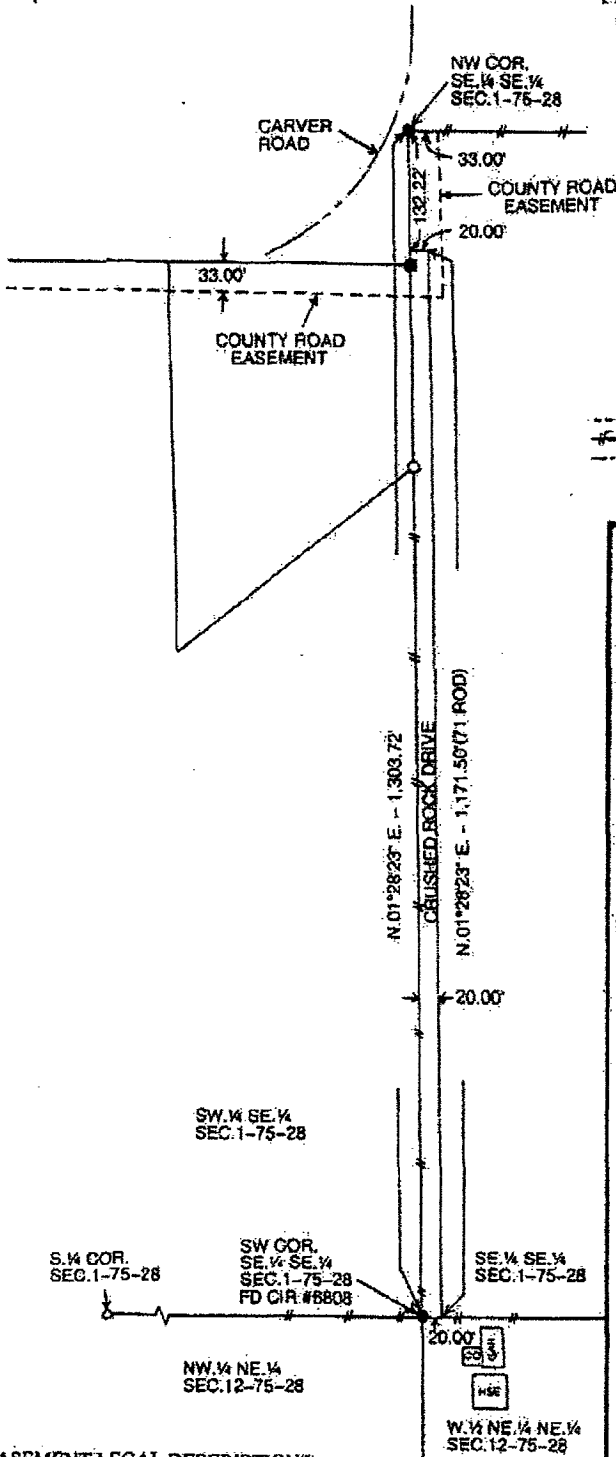
### Legal Description of Easement Area

1. The West 20 feet of the South 71 rods of the Southeast Quarter of the Southeast Quarter of Section One (1), Township Seventy-five (75) North, Range Twenty-eight (28) West of the 5<sup>th</sup> P.M., Madison County, Iowa, together with such easement rights of ingress and egress adjacent thereto which may exist, if any; and
2. The certain portion of the West Half of the Northeast Quarter of the Northeast Quarter of Section Twelve (12), Township Seventy-five (75) North, Range Twenty-eight (28) West of the 5<sup>th</sup> P.M., Madison County, Iowa, more particularly described as follows:

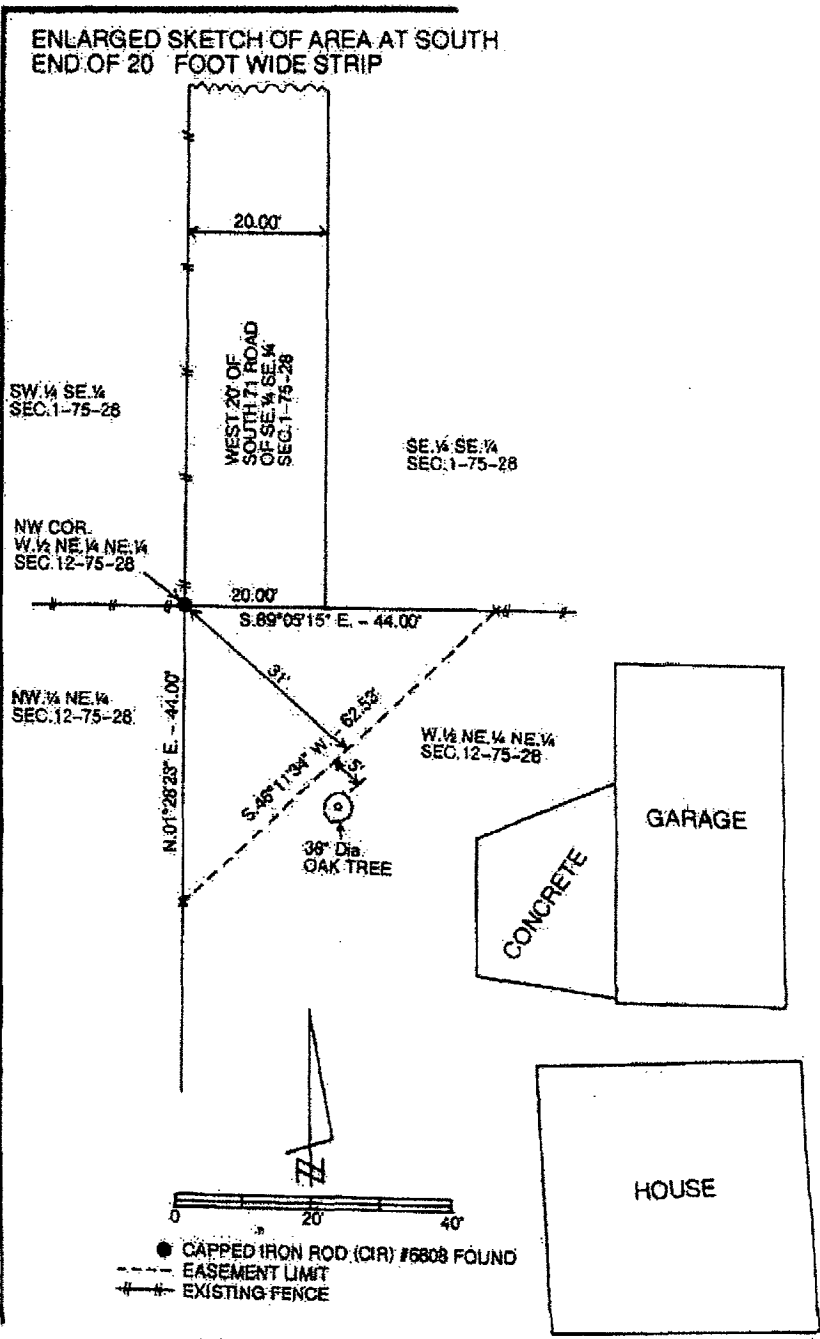
Beginning at the Northwest Corner of said West Half thence South  $89^{\circ}05,15''$  East 44.00 feet along the North line of said West Half; thence South  $46^{\circ}11'34''$  West 62.53 feet to a point on the West line of said West Half; thence North  $01^{\circ}28'23''$  East 44.00 feet to the Point of Beginning.

Said Easement Area, exclusive of any easement rights of ingress and egress adjacent thereto, is depicted and described on that certain Plat of Survey prepared by J.M. Hochstetler, License number 6808, dated May 17, 2011, a copy of which is attached to this Exhibit C, and incorporated herein by reference.

PLAT OF THE WEST 20 FEET OF THE SOUTH 71 RODS OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 75 NORTH, RANGE 28 WEST OF THE 5<sup>TH</sup> P.M., MADISON COUNTY, IOWA.

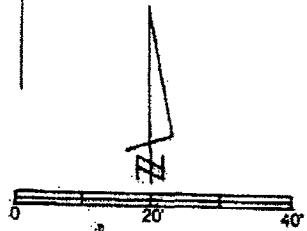


- CAPPED IRON ROD (CIR) #6808 FOUND
- 1/2" IRON ROD FOUND
- - - COUNTY ROAD ROW
- - - EXISTING FENCE
- - - CENTERLINE COUNTY ROAD



EASEMENT LEGAL DESCRIPTIONS:

1. An ingress/egress and public and private utility easement over and across the West 20 feet of the South 71 rods of the Southeast Quarter of the Southeast Quarter of Section 1, Township 75 North, Range 28 West of the 5<sup>th</sup> P.M., Madison County, Iowa.
2. An ingress/egress and public and private utility easement over and across a portion of the West Half of the Northeast Quarter of the Northeast Quarter of Section 12, Township 75 North, Range 28 West of the 5<sup>th</sup> P.M., Madison County, Iowa more particularly described as follows:  
 Beginning at the Northwest Corner of said West Half thence South 89°05'15" East 44.00 feet along the North line of said West Half; thence South 46°11'34" West 62.53 feet to a point on the West line of said West Half; thence North 01°28'23" East 44.00 feet to the Point of Beginning.



- CAPPED IRON ROD (CIR) #6808 FOUND
- - - EASEMENT LIMIT
- - - EXISTING FENCE