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Revenue Tax:

LISA SMITH RECORDER

Madison County, Iowa

INDX ✓

ANNO

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GRANT OF TERRACE MAINTENANCE EASEMENT

Recorder's Cover Sheet

Taxpayer Information:

Stephen W. Dunn, as trustee of the Dunn Family Trust dated June 10, 1990, as to an undivided one half interest, and Patricia Barry, as Trustee of the Survivor's Trust under the Philip and Patricia Barry Family Trust dated May 6, 1998, c/o Stephen W. Dunn, 29572 Avante, Laguna Niguel, CA 92677

Preparer and Return Document To:

Brett T. Osborn, 974 73rd Street, Suite 20, Des Moines, IA 50324 (515) 223-6000

Grantors:

Stephen W. Dunn, as trustee of the Dunn Family Trust dated June 10, 1990, as to an undivided one half interest, and Patricia Barry, as Trustee of the Survivor's Trust under the Philip and Patricia Barry Family Trust dated May 6, 1998, as to an undivided one half interest, as tenants in common

Grantee:

Danny J. Allen and Sonia B. Allen

Legal Description: See Exhibit 2

TERRACE MAINTENANCE AGREEMENT AND EASEMENT

WHEREAS, Patricia W. Barry, Trustee of the Survivor's Trust under the Philip Barry and Patricia Barry Family Trust dated May 6, 1998, and Stephen W. Dunn, Trustee of the Dunn Family Trust dated June 10, 1998, fee titleholder (hereinafter referred to as "Dunn/Barry" or the "Grantor"), is the owner of the real property in rural Madison County, Iowa, legally described as follows:

Parcel E in the Southwest Fractional Quarter of the Northwest Quarter of Section 7, Township 75 North, Range 27 West of the 5th P.M., Madison County, Iowa; AND the Northwest Quarter of the Northwest Quarter of Section 7, Township 75 North, Range 27 West of the 5th P.M., Madison County, Iowa; AND Parcel "H" in the Southeast Quarter of the Northeast Quarter of Section 12, Township 75 North, Range 28 West of the 5th P.M., Madison County, Iowa;

(hereinafter referred to as the "Servient Tenement").

WHEREAS, Danny J. Allen and Sonia B. Allen, husband and wife (hereinafter referred to as "Allens" or the "Grantee"), are the purchasers of certain real property legally described in the attached Exhibit 1 and incorporated herein by reference (hereinafter referred to as the "Dominant Tenement").

WHEREAS, in order to facilitate the Allens' current intended use of the Dominant Tenement, Grantor desires to grant to the Allens an easement over the "Easement Area" described and depicted in Exhibit 2 attached hereto and incorporated by reference for, and only for, the purpose of (i) maintaining that currently existing terraced ground (hereinafter the "Terrace Improvements"), located north and south of a certain rivulet as described on Exhibit 2 (the "Rivulet") such that the Terrace Improvements continue to prevent the water flowing through the rivulet from flowing outside of its current terrace banked course, and flows smoothly within it, and (ii) affording reasonable access to the Terrace Improvements from the Dominant Tenement so as to be able to reasonably perform such maintenance activities (hereinafter the "Easement Purpose"), and the Allens have requested Grantor for such an accommodation.

NOW THEREFORE, in consideration of One Dollars (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, subject to the terms and conditions set forth herein, Dunn/Barry and the Allens hereby agree as follows:

1. Grant of Easement. Dunn/Barry does hereby convey to the Allens a permanent easement over and on the Easement Area for the sole purpose of effecting the Easement Purpose, and for no other purpose (hereinafter referred to as the Terrace Maintenance Easement.)

2. Terms and Conditions of Use of the Easement Area.

(a) Access to the Terrace Improvements over the Easement Area from the Dominant Tenement. Provided that such restrictions to not unreasonably interfere with the Easement Purpose of maintaining the Terrace Improvements, Grantor shall have the right from time to time to prescribe to Grantee the routes of ingress and egress within the Easement Area from the Dominant Tenement to the Terrace Improvements within which Grantee must traverse and not wander beyond ("Access Routes"). Grantor shall have the right to change from time to time the Access Routes, and Grantee shall have no right of ingress and egress outside of the Access Routes. Provided such Access Routes continue to exist, Grantor has the right to construct any improvements in the Easement Area, or otherwise modify it, as Grantor so chooses as long as it does not unreasonably interfere with the carrying out by Grantee of the Easement Purpose.

(b) Maintenance of the Terrace Improvements. Allen shall have the right to remove trees, vegetation, obstructions, damaging conditions and otherwise maintain the Terrace Improvements (and the surrounding area to and only to the extent necessary to adequately maintain the Terrace Improvements themselves), including but not limited to the slope of the Terrace Improvements, vegetation thereon, and other appurtenances and characteristics of the Terrace Improvements, including the right to lay and maintain agricultural drain tile, such that the Terrace Improvements can continue to work as designed. Notwithstanding any other provision hereof to the contrary however, the current landscape within the Easement Area and the appearance of the Terrace Improvements shall not be substantially changed without the prior written consent of the Grantor or their successors or assigns. The Grantor wishes to preserve the view and contour within and over the Easement Area to the extent possible as it currently exists, and in all events, no change to the Terrace Improvements shall be made thereto, even if Grantee deems such changes necessary or desirable, which Grantor, acting in its/their discretion, considers damaging or degrading to the aesthetics of the Easement Area or the view thereover from any real property now owned by Grantor, and not being purchased by the Allens. In addition, no changes to the Terrace Improvements shall be made which would increase the cost to Grantor from time to time of deconstructing such Terrace Improvements, and/or the cost of reconstructing such Terrace Improvements in another location, if Grantor so chooses to effect such deconstruction and reconstruction, unless Grantee assumes in writing to Grantor prior to making any such alterations, the duty to pay for the additional cost of any such deconstruction and reconstruction of the Terrace Improvements arising from the relocation thereof by Grantor. Grantor shall have the right, but not the duty, to itself maintain any and/or all of the Terrace Improvements.

(c) Maintenance, Repair and Restoration of the Easement Area. When the Grantee from time to time enters the Easement Area as provided and prescribed herein, after Grantee completes its maintenance work on the Terrace Improvements, the Grantee shall promptly fully restore the Easement Area to the condition it was prior to such entry, and remove and repair any damage to fences, or tire or other scars or marks to the landscape, or damaged vegetation, to the extent such is not otherwise expressly permitted

hereunder in order for the Grantee to adequately maintain the Terrace Improvements. Grantor may remove and replace any fences while performing the maintenance of the Terrace Improvements or traversing the Access Routes to and from the Terrace Improvements, so long as such fences are restored to a condition at least as good and serviceable as was existing at the time of the maintenance, and moved back to their original location. Grantee will restore the Easement Area to a similar condition upon the completion of any maintenance. Grantee shall endeavor in good faith to plan a program for such Terrace Improvements maintenance which reasonably minimizes the frequency of Grantee's entry onto the Easement Area in order to effect and in accordance with the Easement Purpose and the other terms and conditions of use set forth herein. Grantee shall give Grantor reasonable prior written notice to Grantor prior to entry into the Easement Area, and cooperate with Grantor to minimize the disruption to Grantor of each such entry and maintenance work on the Terrace Improvements, including without limitation keeping in place to the extent necessary temporary fencing or other appropriate barriers so that any cattle or other livestock grazing in the Easement Area or adjacent property remained contained within such fenced area as may exist prior to Grantee temporarily creating openings along such fencing in order to effect entry onto the Easement Area.

(d) Relocation of Terrace Improvements and Rivulet. Grantor reserves the right from time to time in the future, to move, at Grantor's cost, the Terrace Improvements and/or the Rivulet in the event of additional development, change of use, or otherwise at Grantor's sole discretion. In no event shall Grantee have the right to relocate the Terrace Improvements or the Rivulet, without the prior written consent of Grantor.

3. If there is more than one person or entity that constitutes the Grantor, or Grantor's successors or assigns, consent of the Grantor shall mean the consent of each and every one of said persons or entities.

4. It is further understood and agreed by and between the parties hereto that the Terrace Maintenance Easement granted herein is to be held by Allen, their heirs and assigns, as appurtenant to the land owned by Allen.

5. This Terrace Maintenance Easement shall be deemed to run with the land and shall be binding upon Grantor and Grantee as well as their heirs, successors in interest, and assigns of each.

6. The parties agree mutually and do hereby bind their heirs, successors and assigns to cooperate with one another in carrying out the terms and conditions of this Terrace Maintenance Easement, and in the event of any relocation of the Terrace Improvements and Rivulet, to the execution of an amendment to this Terrace Maintenance Easement to document the new location thereof in Exhibit 2 hereof as the Easement Area, without causing unreasonable delay, obstruction, burden, cost or inconvenience on the other.

7. The words and phrases herein shall be construed in the singular, plural or neuter

gender as necessary to the situation. Any headings are to be read in relation to the content. Ambiguities shall not be construed against the drafter. Any headings set forth herein are for the sole convenience of the parties hereto, and shall not otherwise modify the meaning of the terms and conditions of this Terrace Maintenance Easement. The parties mutually agree to cooperate in the correction or amendment to the agreement to accomplish the intent of the parties as set forth herein. This agreement contains the entire agreement between the parties hereto, and supersedes any other prior oral or written agreement with respect thereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the dates set forth in the acknowledgments below.

Patricia W Barry by Stephen F. Breimer as her attorney in fact
Patricia W. Barry, as Trustee of the Survivor's Trust under the Philip Barry and Patricia Barry Family Trust dated May 6, 1998, by Stephen F. Breimer, her attorney in fact pursuant to a Power of Attorney recorded in the records of Madison County, Iowa in Book 2012 at Page 3062

Stephen W. Dunn
Stephen W. Dunn, as Trustee of the Dunn Family Trust dated June 10, ~~1998~~ 1990
SWD

CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Los Angeles } ss.

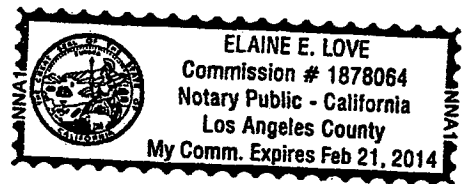
On November 5, 2012, before me, Elaine E. Love, Notary Public, personally appeared Stephen F. Breimer who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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.

Signature Elaine E. Love

(Seal)



CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange } ss.

On November 2, 2012, before me, David P Lee, Notary Public, personally appeared Stephen W. Dunn who proved to me on the basis of satisfactory evidence to be the person ~~(s)~~ whose name ~~(s)~~ is ~~/are~~ subscribed to the within instrument and acknowledged to me that he ~~/she/they~~ executed the same in his ~~/her/their~~ authorized capacity(ies), and that by his ~~/her/their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.

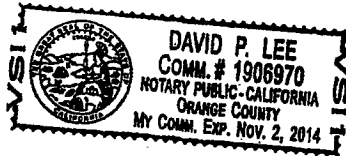
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

David P Lee

(Seal)



Danny J. Allen
Danny J. Allen

Sonia B. Allen
Sonia B. Allen

STATE OF IOWA)
)ss
COUNTY OF Madison)

On this 12 day of November, 2012, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **Danny J. Allen and Sonia B. Allen**, husband and wife, to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Donald R. Smith
NOTARY PUBLIC - STATE OF IOWA

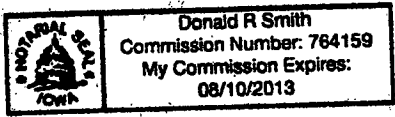


Exhibit 1

[Dominant Tenement Legal Description]

A. In Section 12 in Township 75N. of Range 28W of the 5th P.M.:

1. The SE quarter of the NE fractional quarter, excluding therefrom Parcel H of a plat of survey dated 9-28-12 recorded on September 28, 2012 in book 2012, page 2922 in the official records of the County Recorder of Madison County, Iowa.
2. That portion of the W. 26 $\frac{2}{3}$ rods of the E 53 $\frac{1}{3}$ rods of the S. 120 rods of the E half of the SE fractional quarter (also known as a portion of Lot 9), which lies N. and E. of the main channel of the Middle River, and estimated at one time to contain 2 $\frac{3}{4}$ acres, more or less.
3. That portion of the E 26 $\frac{2}{3}$ rods of the S half of the NE quarter of the SE fractional quarter (also known as a portion of Lot 8), which lies N. and E. of the Middle River.
4. The N half of the NE quarter of the SE fractional quarter, also known as Lot 10 per a survey recorded on April 9, 1873 in book 3, page 306 of the Madison County Recorder's records (except that part thereof lying south and west of the Middle River).

B. In Section 7 in Township 75N. of Range 27W of the 5th P.M.:

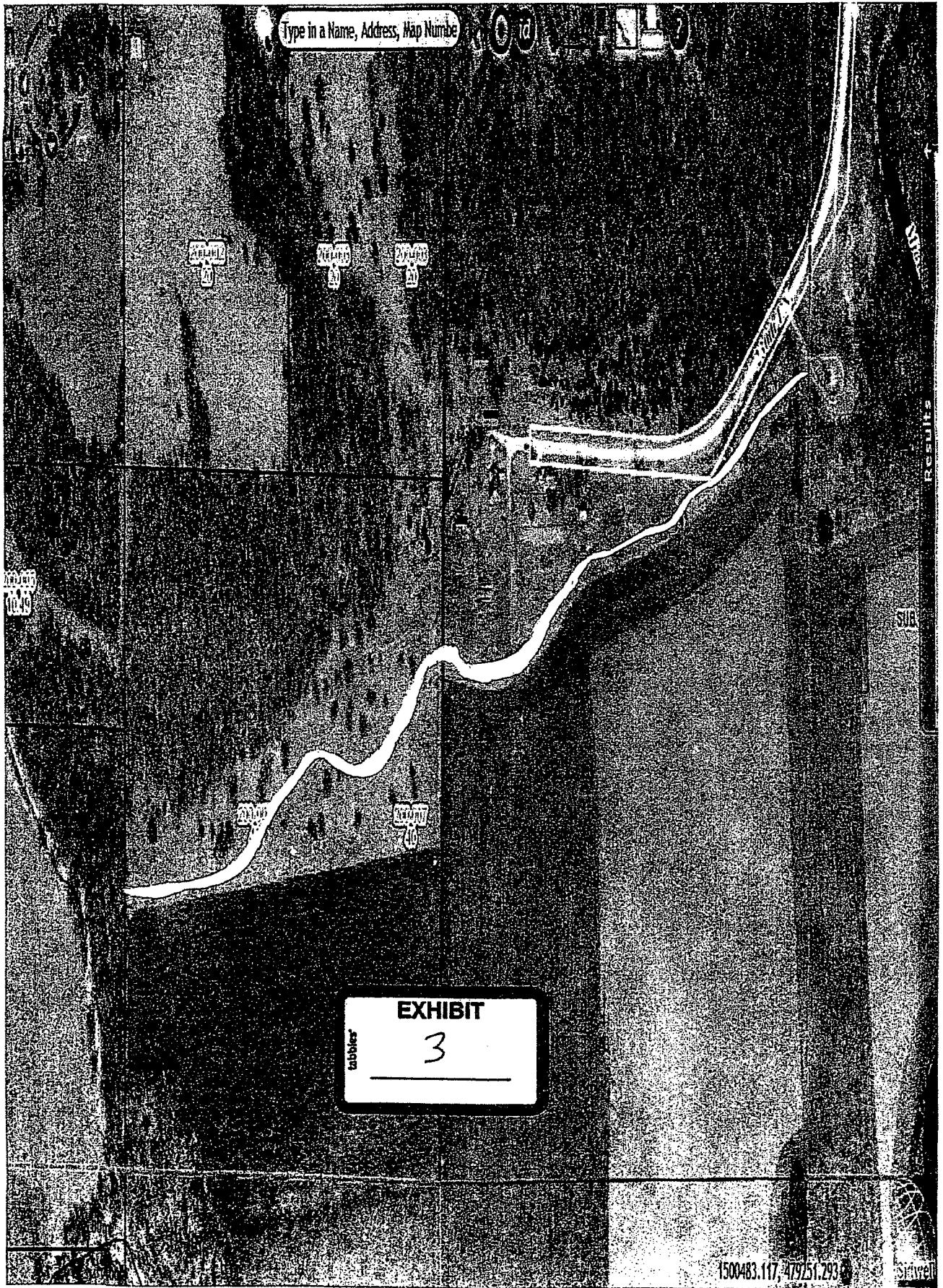
1. All of that part of the north 21.25 rods of the SW quarter of the SW fractional quarter which lies north and west of the Middle River.
2. All of that part of the S. half of the NW quarter of the SW fractional quarter which lies north and west of the Middle River.
3. The N half of the NW quarter of the SW fractional quarter.
4. The SW quarter of the NW fractional quarter, excluding therefrom Parcel E of a plat of survey dated 9-28-12 recorded on September 28, 2012 in book 2012, page 2919 in the official records of the County Recorder of Madison County Iowa, and except a tract commencing at a point on the NE corner of said SW quarter of the NW fractional quarter, running thence west 33 feet, thence south 120 feet, thence east 33 feet, and thence north 120 feet to the point of beginning.
5. Lots 7 and 8 of the SE quarter of the NW fractional quarter.

6. All of that part of Lot 3 in the east half of the NW fractional quarter which lies south of the public highway formerly traveled across said Lot 3, and containing .229 of an acre more or less.
7. Lot 5 of the SE quarter of the NW fractional quarter, EXCEPT the following portions of said Lot 5 which comprise all or a part of the areas described in the records of the Madison County Recorder: (1) the legal parcel depicted and surveyed on that certain Property Line Retracement Survey for Albert L. Little dated 4-11-01 recorded on May 14, 2001 in book 2001, page 1940, (2) the legal parcel described in the warranty deed recorded on August 3, 2005 in book 2005, page 3651, (3) the legal parcel described in the warranty deed recorded on December 23, 2002 in book 2002, page 6253, (4) the legal parcel described in the warranty deed recorded in book 2005, page 3651, Parcel F of a plat of survey dated 9-28-12 recorded on September 28, 2012 in book 2012, page 2923, and (5) Parcel G of a plat of survey dated 9-28-12 recorded on September 28, 2012 in book 2012, page 2920, all recorded in the official records of the County Recorder of Madison, County, Iowa.
8. Lot 6 of the SE quarter of the NW fractional quarter, EXCEPT the following portions of said Lot 6 which comprise all or a part of the areas described in the records of the Madison County Recorder: (1) Parcel F of a plat of survey dated 9-28-12 recorded on September 28, 2012 in book 2012, page 2923 in the official records of the County Recorder of Madison, County, Iowa, and (2) Parcel G of a plat of survey dated 9-28-12 recorded on September 28, 2012 in book 2012, page 2920 in the official records of the County Recorder of Madison, County, Iowa.
9. Parcel F of a plat of survey dated 9-28-12 recorded on September 28, 2012 in book 2012, page 2923 in the official records of the County Recorder of Madison, County, Iowa situated in the NW fractional quarter, EXCEPT that portion thereof described as follows: commencing at the NW corner of the SE quarter of the NW fractional quarter, thence west 33 feet, thence north $00^{\circ} 33' 20''$ east 170 feet, thence north $65^{\circ} 10' 44''$ east 36.52 feet, thence south $00^{\circ} 33' 20''$ west 185.09 feet to the point of beginning.
10. Parcel D of a plat of survey dated 9-28-12 recorded on September 28, 2012 in book 2012, page 2921 in the official records of the County Recorder of Madison, County, Iowa situated in the NW quarter of the NW fractional quarter.

Exhibit 2

[Easement Area Legal Description]

The Easement Area is described as the southern boundary of Parcel E in the Southwest Fractional Quarter of the Northwest Quarter of Section 7, Township 75 North, Range 27 West of the 5th P.M., Madison County, Iowa; AND the Northwest Quarter of the Northwest Quarter of Section 7, Township 75 North, Range 27 West of the 5th P.M., Madison County, Iowa; AND the southern boundary of Parcel "H" in the Southeast Quarter of the Northeast Quarter of Section 12, Township 75 North, Range 28 West of the 5th P.M., Madison County, Iowa on its south side and 35 feet north of the Rivulet on its north side, which Rivulet is depicted by a thin white line thirty-five feet to the north of the Rivulet as shown in Exhibit 3 attached hereto.



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EXHIBIT
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