City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Honorable Mayor and City Council Members

FROM: Mike Pogge-Weaver, City Manager MJP-W

DATE: October 5, 2017

SUBJECT: Former Iowa Power – Power Plant Encroachment
Property Transfer – DMBA Property & Consulting, Inc.

October 9 is the date established for a public hearing on the transfer of City property by permanent easement to DMBA Property & Consulting, Inc. portions of North Clark Street, East 4th Street, and East 5th Street.

In preparing to transfer the former Iowa Power – Power Plant from DMBA Property & Consulting, Inc. to the owners of Carroll Brewing Company it was discovered that the building encroaches into the right-of-way of North Clark Street, East 4th Street, and East 5th Street. Additionally, it was discovered that the north wall of the former coal storage area encroaches into the right-of-way of East 5th Street.

It appears that the power plant was originally constructed sometime in or prior to the 1920's. Then in the 1940's the building appears to have been renovated and expanded over the originally constructed building. This is likely when the encroachment occurred.

There is a number of methods that could be used to cure this issue. At this time staff is recommending that the City Council consider conveying an easement to DMBA Property & Consulting, Inc. and their successors. The purpose of the easement would be to permit the buildings to remain in their current location and permit ongoing maintenance of the buildings.

Two easements are proposed, one for the former Iowa Power – Power Plant and one for the new Biokinemetrics building built on the wall of the former coal storage area. Each easement would remain until such time that the building associated with that easement is destroyed or removed. This would legitimize the encroachment while protecting the City right-a-way for street and utility needs now and into the future.

Superficially the request is for easements over the western 1.8 feet of Clark Street, the northern 1 foot of 4th Street, and the southern 1 foot of 5th Street all adjacent to the former Iowa Power – Power Plant. The attached easement plats depict the requested easements in detail.

DMBA Property & Consulting, Inc. has agreed to purchase said easement for a total of $250.00 plus City incurred legal expenses. Attached to this report are copies of two easements which is necessary to completed the property transfer to DMBA Property & Consulting, Inc.

RECOMMENDATION: Mayor and City Council consideration, conduction of the public hearing and passage and approval of the Resolutions approving documents for the transfer of a easement to DMBA Property & Consulting, Inc.

RESOLUTION NO. _____

RESOLUTION APPROVING THE OFFER TO PURCHASE AND EASEMENTS FOR TRANSFER TO DMBA PROPERTY & CONSULTING, INC.

WHEREAS, DMBA Property & Consulting, Inc. has requested easements for the below described areas be granted to them due to building encroachments into North Clark Street, East 4th Street, and East 5th Street:

EASEMENT DESCRIPTION:

A PORTION OF FIFTH STREET BLOCK 25 ORIGINAL TOWN OF CARROLL, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF LOT 1 OF SAID BLOCK 25; THENCE NORTH 70°50'26" WEST ALONG THE NORTH LINE OF SAID LOT 1, 77.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 70°50'26" WEST ALONG THE NORTH LINE OF SAID BLOCK 25, 162.60 FEET; THENCE NORTH 19°18'21" EAST, 1.00 FEET; THENCE SOUTH 70°50'26" EAST, 162.60 FEET; THENCE SOUTH 19°04'30" WEST, 1.00 FEET TO THE POINT OF BEGINNING CONTAINING 162.6 SQUARE FEET.

EASEMENT DESCRIPTION:

A PORTION OF FOURTH STREET, FIFTH STREET, AND CLARK STREET, BLOCK 25 ORIGINAL TOWN OF CARROLL, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT A OF LOT 1 OF SAID BLOCK 25; THENCE NORTH 70°50'26" WEST ALONG THE NORTH LINE OF SAID LOT A OF LOT 1, 77.40 FEET; THENCE NORTH 19°04'30" EAST, 1.00 FEET; THENCE SOUTH 70°50'26" EAST, 79.20 FEET; THENCE SOUTH 19°18'21" WEST, 102.00 FEET; THENCE NORTH 70°50'26" WEST, 81.40 FEET; THENCE NORTH 19°04'30" EAST, 1.00 FEET TO A POINT ON THE SOUTH LINE OF LOT A OF LOT 2 OF SAID BLOCK 25; THENCE SOUTH 70°50'26" EAST ALONG SAID SOUTH LINE 79.60 FEET TO THE SOUTHEAST CORNER OF SAID LOT A OF LOT 2; THENCE NORTH 19°18'21" EAST ALONG THE EAST LINES OF SAID LOT A OF LOT 2 AND LOT A OF LOT 1, 100.00 FEET TO THE POINT OF BEGINNING CONTAINING 341 SQUARE FEET.

and,

WHEREAS, a public hearing on the proposed granting of easements was conducted on this date, after published notice thereof, and the council has given due consideration to objections and evidence for and against the proposed easements, as reflected by the record of the public hearing; and

WHEREAS, it is determined to be in the interest of the City of Carroll, Iowa, to transfer said easements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa, that the Offer to Purchase said easements for $250.00 plus legal expenses is accepted; and,

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized and directed to execute said easements on behalf of the City of Carroll, Iowa.

Passed and approved this 9th day of October, 2017.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

Prepared by and return to: David S. Bruner, 225 E 7th, PO BOX 863, Carroll, IA 51401 712-792-3480

ENCROACHMENT EASEMENT

RE: A portion of Fifth Street Block 25 Original Town of Carroll, Iowa and more particularly described as follows: Commencing from the Northeast Corner of Lot 1 of said Block 25; thence North 70°50'26" West along the North line of said Lot 1, 77.40 feet to the point of beginning; thence continuing North 70°50'26" West along the North line of said Block 25, 162.60 feet; thence North 19°18'21" East, 1.00 feet; thence South 70°50'26" East, 162.60 feet; thence South 19°04'30" West, 1.00 feet to the point of beginning containing 162.6 square feet.

This Encroachment Easement is made between DMBA Properties & Consulting, Inc. (DMBA) and City of Carroll, Iowa (City).

RECITALS

1. The parties are adjoining landowners. DMBA is the legal titleholder of: Lots 1, 2, 3, and 4; and the alley between said Lots 1, 2, and 3, extending from the North Line of Fourth Street to the South line of Fifth Street, except Lot A of Lot 1 and Lot A of Lot 2 all in Block 25, Original Town of Carroll, Carroll County, Iowa and the City is the legal owner of: A portion of Fifth Street Block 25 Original Town of Carroll, Iowa and more particularly described as follows: Commencing from the Northeast Corner of Lot 1 of said Block 25; thence North 70°50'26" West along the North line of said Lot 1, 77.40 feet to the point of beginning; thence continuing North 70°50'26" West along the North line of said Block 25, 162.60 feet; thence North 19°18'21" East, 1.00 feet; thence South 70°50'26" East, 162.60 feet; thence South 19°04'30" West, 1.00 feet to the point of beginning containing 162.6 square feet.

2. DMBA owns a structure that encroaches onto the property of the City as stated above.

3. The above-stated parties desire to bind themselves, their heirs, transferees, assigns and successors to an agreement for an easement over, and across, the above-stated property and maintenance and other responsibilities thereof, so that the parties and future owners will have clearly defined authority, responsibilities and duties, all to the end that good relations between owners of the above stated properties may be maintained.

AGREEMENT

In consideration of the mutual covenants set forth herein and of the mutual benefits to be derived hereunder, the parties agree as follows:

1. The DMBA structure is constructed on the City's real estate and encroaches onto real estate owned by the City.

2. The City hereby gives, grants and conveys to DMBA a perpetual easement over and across the above-stated encroachment, until such time as the building is demolished, removed, or destroyed.

3. DMBA shall be responsible for all maintenance and liability associated with the above-stated encroachment and the City shall not be responsible for any maintenance, costs, or liability associated with the property and any care and maintenance of the encroachment. DMBA shall hold the City harmless and indemnify the City from any loss, costs, damage and expense incurred or arising out of an accident or occurrence causing injury or damage to any person or property associated with the encroachment.

4. If or when the DMBA structure is demolished, removed, or destroyed this easement shall immediately terminate and the DMBA building shall not be rebuilt upon the above stated City's real estate and no further easement shall be granted by the City.

5. DMBA shall not do anything or perform any act that would add to or increase the encroachment presently on the City's real estate and if so done, this easement shall be immediately terminated.

6. This agreement shall run with the land and shall be binding upon the parties and their heirs, transferees, assigns and successors.

The undersigned have caused this agreement to be duly executed this _____ day of September, 2017.

CITY OF CARROLL, IOWA

BY_____
Eric P. Jensen, Mayor

ATTEST:

_____
Laura A. Schaefer, City Clerk

DMBA Properties & Consulting, Inc.

BY_____
Steven J. Kraus aka Steven Kraus,
President

STATE OF IOWA, CARROLL COUNTY, ss

On this _____ day of September, 2017, before me, a Notary Public in and for the State of Iowa, personally appeared Eric P. Jensen and Laura A. Schaefer, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Carroll, Iowa; and that the instrument was signed on behalf of the City, by authority of its City Council, and that Eric P. Jensen and Laura A. Schaefer acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

_____
Notary Public

STATE OF IOWA, COUNTY OF CARROLL, ss

This instrument was acknowledged before me on September _____, 2017, by Steven J. Kraus aka Steven Kraus, as President, of DMBA Properties & Consulting, Inc.

_____
Notary Public

m:\janet\word\dsb\0-1850\doc-17\easement-dmba-1

INDEX LEGEND

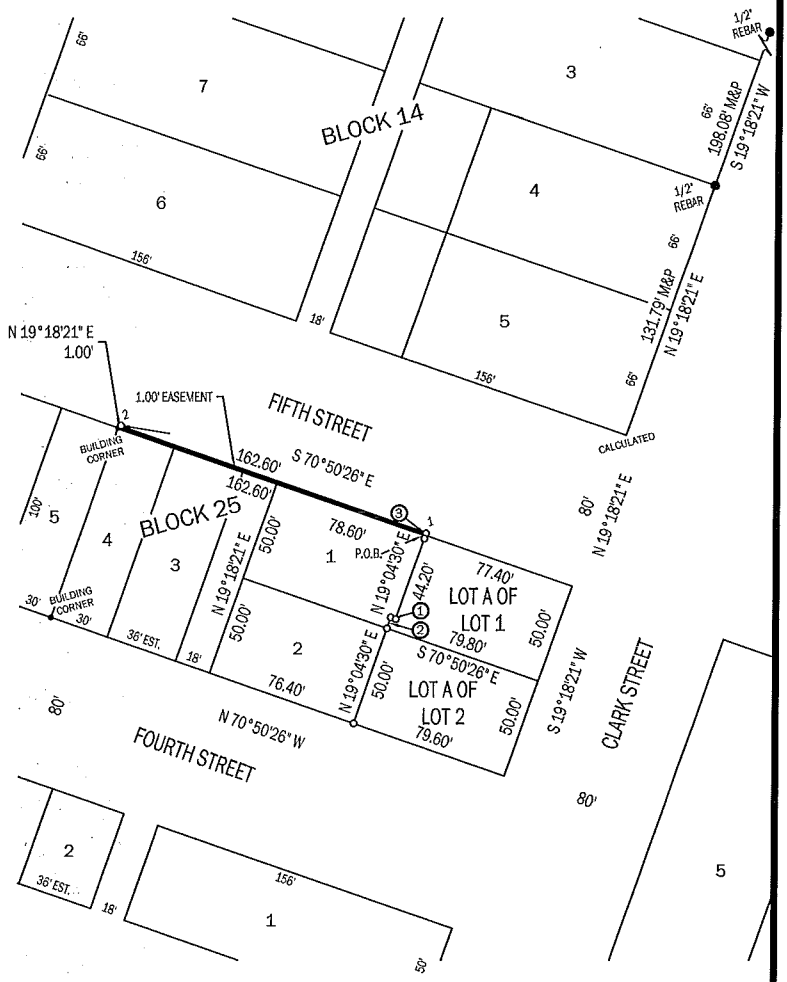
SURVEYOR'S NAME/RETURN TO:
MIKE SCHULTE, SCHULTE SURVEYING, INC.
2003 390TH STREET
WESTSIDE, IA 51467
712-790-3489
MIKE@SCHULTESURVEY.COM
REQUESTED BY:
DR. STEVEN KRAUSE
OWNER:
DMBA PROPERTIES & CONSULTING, INC.
SURVEY LOCATED:
5TH STREET
BLOCK 25, ORIGINAL TOWN, CARROLL, IOWA
SURVEY DATE: 2017/08/10

EASEMENT PLAT

SURVEY REPORT:

THE SURVEY WAS REQUESTED TO SEPARATE A BRICK STRUCTURE FROM THE EXISTING PROPERTY. THE EXISTING BRICK STRUCTURE WAS PREVIOUSLY A POWER PLANT. IT WAS READILY FOUND THAT THE STRUCTURE ENCROACHED ON FIFTH, CLARK AND FOURTH STREETS. A GREAT DEAL OF TIME WAS SPENT PREVIOUS UTILITIES LOOKING FOR A SITE PLAN, EASEMENTS OR OTHER DESIGN DOCUMENTS THAT WOULD HELP BRING TO LIGHT THE ENCROACHMENTS, YET NOTHING WAS FOUND. THROUGH MY RESEARCH A RAILROAD MAP IN THE AUDITOR'S OFFICE SHOWED A "POWER PLANT" LOCATED IN THE SOUTHEAST CORNER OF LOT 2. THIS STRUCTURE WAS NOT THE SAME DIMENSIONS AS THE CURRENT STRUCTURE. I DISCUSSED THESE FINDINGS WITH DR. KRAUS AND HE INDICATED THAT THERE MAY BE OLD REMNANTS OF THAT STRUCTURE WITHIN THE EXISTING STRUCTURE. LOCATIONS WERE MADE INSIDE OF THE BUILDING LOCATING EDGES OF CONCRETE SLABS AND INTERIOR WALLS. THESE LOCATIONS CONFIRMED THE CALCULATED PROPERTY LINES. UPON REVIEW OF THE STRUCTURE IT IS MY ASSUMPTION THAT THERE WAS A RENOVATION IN THE 1940'S WHERE THE PREVIOUS 1920'S BUILDING WAS BUILT-OVER AND SURROUNDED BY THE NEW RENOVATIONS. THIS WOULD EXPLAIN HOW THE ENCROACHMENTS OCCURRED. PROPERTY LINES SHOWN WERE ESTABLISHED USING THE SPLIT OF THE EAST FACE OF THE BUILDING ALONG CLARK STREET, THE BUILDING LOCATED ON LOTS 5 & 6 OF BLOCK 25 AND SURVEYS PERFORMED IN BLOCK 14.

LINE	BEARING	DISTANCE
1	S 70°50'26" E	2.60'
2	N 19°04'46" E	5.80'
3	S 19°04'30" W	1.00'



EASEMENT DESCRIPTION:

A PORTION OF FIFTH STREET BLOCK 25 ORIGINAL TOWN OF CARROLL, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF LOT 1 OF SAID BLOCK 25; THENCE NORTH 70°50'26" WEST ALONG THE NORTH LINE OF SAID LOT 1, 77.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 70°50'26" WEST ALONG THE NORTH LINE OF SAID BLOCK 25, 162.60 FEET; THENCE NORTH 19°18'21" EAST, 1.00 FEET; THENCE SOUTH 70°50'26" EAST, 162.60 FEET; THENCE SOUTH 19°04'30" WEST, 1.00 FEET TO THE POINT OF BEGINNING CONTAINING 162.6 SQUARE FEET.

0 60 120

BASIS OF BEARING

IaRCS ZONE 7 - US SURVEY FEET
IaRTN DERIVED - NAD83(2011)(EPOCH 2010.00)

Point	Northing	Easting
1	7461003.95	17437013.62
2	7461057.31	17436860.03

LEGEND

SURVEY	FOUND	SET
SECTION CORNER	▲	△
5/8" REBAR YPC #17979 (UNLESS NOTED)	●	○
MAG NAIL	•	∘
PLATTED DISTANCE	P	
MEASURED DISTANCE	M	
SECTION LINE	— — — —	

PROFESSIONAL LAND SURVEYOR
MIKE SCHULTE
17979
IOWA

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

2017/09/08
MIKE SCHULTE — DATE
LICENSE NUMBER: 17979
LICENSE RENEWAL DATE IS DECEMBER 31, 2017
PAGES COVERED BY THIS SEAL: 1 OF 1

5TH STREET - BLOCK 25
ORIGINAL TOWN, CARROLL IOWA
SCHULTE SURVEYING, INC.

DRAWN BY: MLS
PROJ NUMBER: 17-040
SHEET: 1 OF 1
SCALE: 1"= 60'

Prepared by and return to: David S. Bruner, 225 E 7th, PO BOX 863, Carroll, IA 51401 712-792-3480

ENCROACHMENT EASEMENT

RE: A portion of Fourth Street, Fifth Street, and Clark Street, Block 25 Original Town of Carroll, Iowa and more particularly described as follows: Beginning at the Northeast Corner of Lot A of Lot 1 of said Block 25; thence North 70°50'26" West along the North line of said Lot A of Lot 1, 77.40 feet; thence North 19°04'30" East, 1.00 feet; thence South 70°50'26" East, 79.20 feet; thence South 19°18'21" West, 102.00 feet; thence North 70°50'26" West, 81.40 feet; thence North 19°04'30" East, 1.00 feet to a point on the South line of Lot A of Lot 2 of said block 25; thence South 70°50'26" East along said South line 79.60 feet to the Southeast corner of said Lot A of Lot 2; thence North 19°18'21" East along the East lines of said Lot A of Lot 2 and Lot A of lot 1, 100.00 feet to the point of beginning containing 341 square feet.

This Encroachment Easement is made between DMBA Properties & Consulting, Inc. (DMBA) and City of Carroll, Iowa (City).

RECITALS

1. The parties are adjoining landowners. DMBA is the legal titleholder of: Lot A of Lot 1 and Lot A of Lot 2 of Block 25, Original Town of Carroll, Carroll County, Iowa and the City is the legal owner of: A portion of Fourth Street, Fifth Street, and Clark Street, Block 25 Original Town of Carroll, Iowa and more particularly described as follows: Beginning at the Northeast Corner of Lot A of Lot 1 of said Block 25; thence North 70°50'26" West along the North line of said Lot A of Lot 1, 77.40 feet; thence North 19°04'30" East, 1.00 feet; thence South 70°50'26" East, 79.20 feet; thence South 19°18'21" West, 102.00 feet; thence North 70°50'26" West, 81.40 feet; thence North 19°04'30" East, 1.00 feet to a point on the South line of Lot A of Lot 2 of said block 25; thence South 70°50'26" East along said South line 79.60 feet to the Southeast corner of said Lot A of Lot 2; thence North 19°18'21" East along the East lines of said Lot A of Lot 2 and Lot A of lot 1, 100.00 feet to the point of beginning containing 341 square feet.

2. DMBA owns a building that encroaches onto the property of the City as stated above.

3. The above-stated parties desire to bind themselves, their heirs, transferees, assigns and successors to an agreement for an easement over, and across, the above-stated property and

maintenance and other responsibilities thereof, so that the parties and future owners will have clearly defined authority, responsibilities and duties, all to the end that good relations between owners of the above stated properties may be maintained.

AGREEMENT

In consideration of the mutual covenants set forth herein and of the mutual benefits to be derived hereunder, the parties agree as follows:

1. The DMBA building is constructed on the City's real estate and encroaches onto real estate owned by the City.

2. The City hereby gives, grants and conveys to DMBA a perpetual easement over and across the above-stated encroachment, until such time as the building is demolished, removed, or destroyed.

3. DMBA shall be responsible for all maintenance and liability associated with the above-stated encroachment and the City shall not be responsible for any maintenance, costs, or liability associated with the property and any care and maintenance of the encroachment. DMBA shall hold the City harmless and indemnify the City from any loss, costs, damage and expense incurred or arising out of an accident or occurrence causing injury or damage to any person or property associated with the encroachment.

4. If or when the DMBA building is demolished, removed, or destroyed this easement shall immediately terminate and the DMBA building shall not be rebuilt upon the above stated City's real estate and no further easement shall be granted by the City.

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BY_____
Eric P. Jensen, Mayor

ATTEST:

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Laura A. Schaefer, City Clerk

DMBA Properties & Consulting, Inc.

BY_____
Steven J. Kraus aka Steven Kraus,
President

STATE OF IOWA, CARROLL COUNTY, ss

On this _____ day of September, 2017, before me, a Notary Public in and for the State of Iowa, personally appeared Eric P. Jensen and Laura A. Schaefer, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Carroll, Iowa; and that the instrument was signed on behalf of the City, by authority of its City Council, and that Eric P. Jensen and Laura A. Schaefer acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

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712-790-3489
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REQUESTED BY:
DR. STEVEN KRAUSE
OWNER:
DMBA PROPERTIES & CONSULTING, INC.
SURVEY LOCATED:
4TH, 5TH, AND CLARK STREETS
BLOCK 25, ORIGINAL TOWN, CARROLL, IOWA
SURVEY DATE: 2017/08/10

EASEMENT PLAT

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THE SURVEY WAS REQUESTED TO SEPARATE A BRICK STRUCTURE FROM THE EXISTING PROPERTY. THE EXISTING BRICK STRUCTURE WAS PREVIOUSLY A POWER PLANT. IT WAS READILY FOUND THAT THE STRUCTURE ENCROACHED ON FIFTH, CLARK AND FOURTH STREETS. A GREAT DEAL OF TIME WAS SPENT PREVIOUS UTILITIES LOOKING FOR A SITE PLAN, EASEMENTS OR OTHER DESIGN DOCUMENTS THAT WOULD HELP BRING TO LIGHT THE ENCROACHMENTS, YET NOTHING WAS FOUND. THROUGH MY RESEARCH A RAILROAD MAP IN THE AUDITOR'S OFFICE SHOWED A "POWER PLANT" LOCATED IN THE SOUTHEAST CORNER OF LOT 2. THIS STRUCTURE WAS NOT THE SAME DIMENSIONS AS THE CURRENT STRUCTURE. I DISCUSSED THESE FINDINGS WITH DR. KRAUS AND HE INDICATED THAT THERE MAY BE OLD REMNANTS OF THAT STRUCTURE WITHIN THE EXISTING STRUCTURE. LOCATIONS WERE MADE INSIDE OF THE BUILDING LOCATING EDGES OF CONCRETE SLABS AND INTERIOR WALLS. THESE LOCATIONS CONFIRMED THE CALCULATED PROPERTY LINES. UPON REVIEW OF THE STRUCTURE IT IS MY ASSUMPTION THAT THERE WAS A RENOVATION IN THE 1940'S WHERE THE PREVIOUS 1920'S BUILDING WAS BUILT-OVER AND SURROUNDED BY THE NEW RENOVATIONS. THIS WOULD EXPLAIN HOW THE ENCROACHMENTS OCCURRED. PROPERTY LINES SHOWN WERE ESTABLISHED USING THE SPLIT OF THE EAST FACE OF THE BUILDING ALONG CLARK STREET, THE BUILDING LOCATED ON LOTS 5 & 6 OF BLOCK 25 AND SURVEYS PERFORMED IN BLOCK 14.

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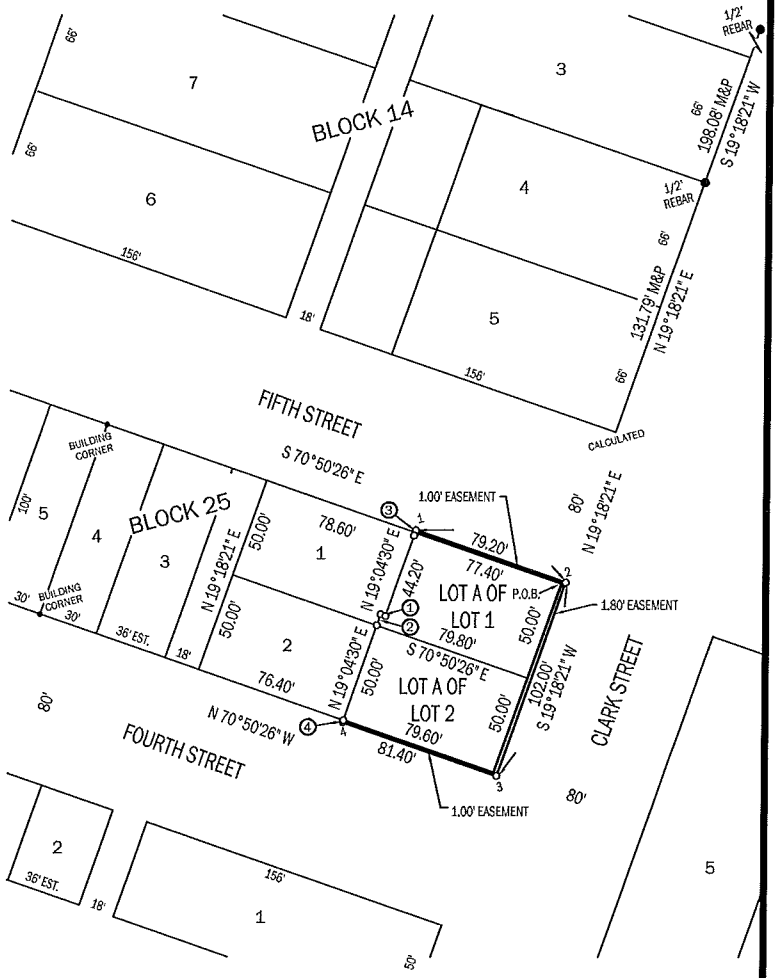

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LEGEND

SURVEY	FOUND	SET
SECTION CORNER	▲	△
5/8" REBAR YPC #17979 (UNLESS NOTED)	●	○
MAG NAIL	•	∘
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PROFESSIONAL LAND SURVEYOR
MIKE SCHULTE
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MIKE SCHULTE DATE
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LICENSE RENEWAL DATE IS DECEMBER 31, 2017
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4TH, 5TH, & CLARK STREETS - BLOCK 25
ORIGINAL TOWN, CARROLL, IOWA
SCHULTE SURVEYING, INC.

DRAWN BY: MLS
PROJ NUMBER: 17-040
SHEET: 1 OF 1
SCALE: 1"= 60'