

Clarke County Peggy Cummings, Recorder
Fee Book 2012-1557
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XE EASEMENT
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INDEX
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Preparer

Information Lawrence P. Van Werden, 200 West Jefferson Street, Osceola, Iowa 50213, (641) 342-2157

Individual's Name	Street Address	City	Phone
Lawrence P. Van Werden ISBA # AT0008162			

EASEMENT FOR USE OF POND

This EASEMENT FOR USE OF POND is made, granted and reserved this 31 day of July, 2012, by Sandra K. Baringer as Executor of the Estate of Dorothy M. Baringer, deceased, whose Estate is being administered in the Iowa District Court for Clarke County where it is docketed as Probate No. ESPR009812.

ACKNOWLEDGMENTS

- a) Dorothy M. Baringer, deceased, owns fee simple title in and to the following described tracts of real estate located in Clarke County, Iowa:

Tract 1

The North Three-fifths of the East Half of the Southwest Quarter of the Southeast Quarter (N 3/5 E 1/2 SW 1/4 SE 1/4) of Section Ten (10), Township Seventy-three (73) North, Range Twenty-four (24) West of the 5th P.M., Clarke County, Iowa;

Tract 2

The North Three-fifths of the West Half of the Southeast Quarter of the Southeast Quarter (N 3/5 W 1/2 SE 1/4 SE 1/4) of Section Ten (10), Township Seventy-three (73) North, Range Twenty-four (24) West of the 5th P.M., Clarke County, Iowa.

- b) A farm pond currently exists which is partially located in the Southeast corner of Tract 1 and the Southwest corner of Tract 2.

- c) Tract 1 includes a house which is the former residence of Maurice E. Baringer (deceased) and Dorothy M. Baringer (deceased).
- d) Sandra K. Baringer is the duly nominated, appointed, and serving Executor of the Estates of Maurice E. Baringer (deceased, Clarke County, Iowa, Probate No. ESPR009777) and Dorothy M. Baringer (deceased, Clarke County, Iowa Probate No. ESPR009812).
- e) Sandra K. Baringer, as Executor of the Estates of Maurice E. Baringer (deceased) and Dorothy M. Baringer (deceased) desires that the Owners and occupants of Tract 1 have a permanent easement to use that part of the pond which is on Tract 2 for recreational purposes, ice skating, fishing, swimming, picnicking, exploring, and sightseeing, including that portion of Tract 2 which lies within a 75 foot radius from the high water line of the pond.

NOW, THEREFORE, in consideration of the mutual benefits inuring to Tracts 1 and 2:

- 1) The Owners of Tract 1 are granted a permanent non-exclusive easement to use the pond on Tract 2 for recreational purposes, ice skating, fishing, swimming, picnicking, exploring, and sightseeing uses, including that portion of Tract 2 which lies within a 75 foot radius of the high water line of the pond.
- 2) The Owners of Tract 2 shall have a permanent easement to impound water on that part of Tract 1 up to the high water mark of the existing pond which is located on Tract 1.
- 3) The Owners of both Tract 1 and Tract 2 shall not do anything to pollute or contaminate the water in the pond or make it unfit for swimming, fish habitat, or livestock water; nor knowingly permit anyone else to so pollute or contaminate the pond water.
- 4) Persons fishing in the pond shall only be permitted to catch fish with live or artificial bait, and not through netting, seining, electrocuting or chemically killing or incapacitating the fish except for purposes of killing and/or removing undesirable species of fish from the pond and within one year thereafter of restocking the pond with an appropriate quantity of compatible and desirable fish species.
- 5) The Owners of Tract 1 may, at their expense, maintain a walkthrough gate in the partition fence between Tract 1 and Tract 2 as long as it is located within a 100 foot radius of the pond's high water mark. The gate shall be kept closed except when persons are going through the gateway. The Owners of Tract 1 may place a lock on the gate if they so desire.
- 6) The Owners of Tract 1 may maintain a swimming raft or swimming platform on the pond and may store it on or near the pond bank during the winter.

- 7) The Owners of Tract 2 shall not drain the water from the pond except when it might be reasonably necessary to remove something from the pond or recover a drowning victim(s). After such drainage of the pond, the pond's ability to store water to its prior capacity shall be restored.
- 8) The Owners of Tract 1 may use water from the pond to water livestock or use for spraying herbicides on farm pastures or crops which are located within a one-half mile radius of the pond.

Livestock shall not be permitted to have access to the pond in order to avoid the pond water being stirred up, muddied, etc. The pond shall be fenced off from adjacent pastures, if necessary, to prevent livestock from getting into the pond.

- 9) The Owners of Tract 1 may permit themselves, their relatives, friends, and invitees, to use the pond for the purposes granted herein.
- 10) The Owners of Tract 2 shall not be legally liable for any injuries to persons or damage to livestock or personal property through use of the pond for the purposes granted herein except for any injury or damage caused through the intentional or negligent contamination of the water by the Owners of Tract 2 or persons they encouraged or permitted to contaminate the pond water.
- 11) The Owner of Tract 1 shall contribute one third, and the Owner of Tract 2 shall contribute two thirds, of the reasonable expenses necessary to maintain the pond. The expenses of maintaining the pond shall include the costs of erecting and/or maintaining a fence around the pond so that livestock is not permitted to have direct access to the pond; except the Owner of Tract 2 shall maintain the existing fence on Tract 2 or shall assume all costs of moving the existing fence line corresponding to the North half of the partition boundary.
- 12) Construction: This easement shall be given a reasonable construction according to the laws of the State of Iowa with the intention of the parties for a commercially usable right of enjoyment on the Grantee as carried out herein.
- 13) This easement shall be a covenant running with the land and shall apply to the Owners of Tracts 1 and 2 as well as their assigns and successors in title to Tracts 1 and 2.

IN WITNESS WHEREOF, the Grantor and Grantee have duly executed this EASEMENT Agreement of the date first above written.

GRANTOR:

Dorothy M. Baringer Estate

By *Sandra K. Baringer*
Sandra K. Baringer, Executor

GRANTEE:

Dorothy M. Baringer Estate

By *Sandra K. Baringer*
Sandra K. Baringer, Executor

STATE OF IOWA)
)ss:
COUNTY OF CLARKE)

On this 3 day of August, 2012, before me, the undersigned, personally appeared Sandra K. Baringer, Executor of the Estate of Dorothy M. Baringer, deceased, to me known to be the person named in and who executed the foregoing instrument and acknowledge that she executed same as her voluntary act and deed.

L. P. Van Werden
Notary Public in and for the State of Iowa

