



419720

Abstract



Office of County Recorder
McLeod County, Minnesota

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GENERAL ABSTRACT: \$14.50

A419720

RECORDING FEE

\$46.00

MELCHERT HUBERT & SJODIN
ATTORNEYS AT LAW
121 WEST MAIN STREET STE 200
WACONIA, MN 55387-1023

DRAIN TILE AND DRAINAGE EASEMENT AGREEMENT

This Drain Tile and Drainage Easement Agreement (“Agreement”) is made effective as of December 5, 2014, by and between the following parties:

JEROME L. HEMERICK AND ELAINE M. HEMERICK, married to each other (“Hemerick”);

MICHAEL D. MICKOLICHEK AND BRENDA L. MICKOLICHEK, married to each other (“Mickolichек”);

JAMES D. NEISEN, a single person (“Neisen”);

MEULENERS FARM PARTNERSHIP, a Minnesota partnership (“Meuleners”);

GLENCOE GRAIN CO., LLC, a Minnesota limited liability company (“Glencoe”);

DEAN MIKOLICHEK AND KAREN MIKOLICHEK, married to each other (“Dean Mikolichек”);

DONALD J. NOWAK AND YVONNE A. NOWAK, married to each other (“Nowak”); and

FELIX J. STIFTER AND JOANNE H. STIFTER, married to each other (“Stifter”).

Hemerick, Mickolichек, Neisen, Meuleners, Glencoe, Dean Mikolichек, Nowak and Stifter are sometimes collectively referred to herein as the “Parties” or individually as a “Party.”

RECITALS

- A. Hemerick is the owner of certain real property located in McLeod County, Minnesota, as legally described on the attached Exhibit A (the “Hemerick Property”).
- B. Mickolichек is the owner of certain real property located in McLeod County, Minnesota, as legally described on the attached Exhibit B (the “Mickolichек Property”).
- C. Neisen is the owner of certain real property located in McLeod County, Minnesota, as legally described on the attached Exhibit C (the “Neisen Property”).

- D. Meuleners is the owner of certain real property located in McLeod County, Minnesota, as legally described on the attached Exhibit D (the "Meuleners Property").
- E. Glencoe is the owner of certain real property located in McLeod County, Minnesota, as legally described on the attached Exhibit E (the "Glencoe Property").
- F. Dean Mikolichек is the owner of certain real property located in McLeod County, Minnesota, as legally described on the attached Exhibit F (the "Dean Mikolichек Property").
- G. Nowak is the owner of certain real property located in McLeod County, Minnesota, as legally described on the attached Exhibit G (the "Nowak Property").
- H. Stifter is the owner of certain real property located in McLeod County, Minnesota, as legally described on the attached Exhibit H (the "Stifter Property"). The Hemerick Property, Mickolichек Property and Neisen Property are sometimes collectively referred to herein as the "Burdened Property". The Hemerick Property, Mickolichек Property, Neisen Property, Meuleners Property, Glencoe Property, Dean Mikolichек Property, Nowak Property and Stifter Property are sometimes collectively referenced herein as the "Benefitted Property". The Burdened Property and Benefitted Property are sometimes collectively referenced herein as the "Property", or individually as a "Parcel."
- I. Mickolichек, Neisen, Meuleners, Glencoe, Dean Mikolichек, Nowak and Stifter desire to install and construct a drainage tile line across a portion of the Burdened Property for the benefit of the entirety of the Property.
- J. The Parties desire to enter into a written agreement providing this easement to each other for the right to construct such drain tile on the agreed upon portion of the Burdened Property and to provide for the repair and maintenance of such easement, all for the purpose of draining waters into the Easement Area (as hereafter defined) from their individual Parcel.
- K. The Parties desire to preserve the drain tile line across, and drainage upon the Easement Area, which drainage rights will be appurtenant to the Property and will run with the land, in order to perpetuate the rights of the Parties to this Agreement.

AGREEMENT

Now, therefore, in consideration of the mutual covenants and agreements hereinafter contained, which consideration is hereby acknowledged by the Parties, it is agreed by and between the Parties as follows:

1. The foregoing recitals are hereby incorporated into the body of this Agreement.

2. The Parties do hereby grant and convey to each other, their successors and assigns, a permanent easement for drainage and drain tile line purposes, and the right of the Parties, their successors and assigns, employees, agents and/or contractors, subject to the terms and conditions contained herein, to enter upon the Burdened Property to construct, maintain and repair an 18 and 12 inch, as respectively located, subsurface drainage tile line angled at an approximate .1% grade, together with the right to drain waters from their individual Parcels into the Easement Area (the "Easement"), from and along the lines created by connecting the following latitudinal and longitudinal coordinates (the "Easement Area"), and which Easement Area is further depicted on the sketch attached hereto as Exhibit I:

Line A

44.966660,-94.145348
44.964286,-94.145539
44.961372,-94.145382
44.960865,-94.145605
44.959830,-94.147831
44.957177,-94.149138

AND

Line B

44.966660,-94.145348
44.964286,-94.145539
44.961372,-94.145382
44.961380,-94.142439

the Easement Area shall be at least two (2) rods wide on each side of the drain tile line (four (4) rods total), as measured from the center of the above described drain tile line, solely for the purposes of inspection, cleaning, making repairs and conducting general maintenance by any Party.

3. The Easement includes the right of the Parties, their successors and assigns, to connect the new tile lines described above to any tile line presently existing on a Party's Parcel or any additional tile lines constructed in the future, and the right to enter upon the Burdened Property in the Easement Area for inspection, cleaning, making repairs and conducting general maintenance.

4. The construction, installation, cleaning, repairs and general maintenance of the tile line shall be split between, based upon the current respective ownership of the fee interest of the Property, Mickolichek, Neisen, Meuleners, Glencoe, Dean Mikolichek, Nowak and Stifter proportionately, in the percentages set forth as follows, subject to change if any benefitted property type is added to the Property as described herein below:

Mickolichek Property	32.6 %
Neisen Property	24.8%
Meuleners Property	3.6%
Glencoe Property	9.6%
Dean Mikolichek Property	23.7%
Nowak Property	4.3%
<u>Stifter Property</u>	<u>1.4%</u>
TOTAL	100%

In the event that additional acreage of land is approved to be added to the then existing acreage of land that comprises the Property, the percentages as then stated and existing shall be proportionately restated to reflect the addition of the increased acreage of land. The Parties agree that the additional acreage of land shall only be added to the Property upon the prior written consent of at least seventy-five percent (75%) of the then existing percentages representing the ownership percentage of the fee interests comprising the Property existing immediately prior to consent. The Parties agree that any such described action shall cause the respective Party or Parties whose acreage of land is to be added to the Property, to promptly have prepared, executed and recorded an amendment to this Agreement reflecting such restatement of said percentages and all related costs shall be paid by the respective Party or Parties.

5. Mickolichek, Neisen, Meuleners, Glencoe, Dean Mikolichek, Nowak and Stifter agree to fund an escrow account for payment of the initial installation of the tile line in the percentages set forth above. The funding of the escrow account will occur on even date herewith. An Escrow Agreement setting forth the requirements and obligations of those that are party to it shall be executed simultaneously herewith. If any damage from construction and installation of the new tile line is caused to existing tile lines on a Parcel of a Party.

6. Any Party or Parties proposing any actions related to the inspection, cleaning, making repairs and conducting general maintenance of the tile line or Easement Area shall obtain and submit to all Parties at least two (2) bids from vendors or contractors estimating the costs of the services and materials for the proposed actions. Upon receipt of the foregoing bids, the Parties agree that any actions, and the cost thereof, related to such inspection, cleaning, making repairs and conducting general maintenance of the tile line or Easement Area must have the written consent of at least fifty-one percent (51%) of the then existing percentages representing the ownership percentage of the fee interests comprising the Property prior to the commencement of any such actions or work. The Parties agree that all maintenance, cleaning and repair of the tile line and Easement Area shall be done at such time of the year (when possible and reasonable) to minimize any damage to growing crops on the Property.

7. The Parties agree that payment for ongoing cleaning, repair, maintenance or replacement of the tile line in the Easement Area will be shared proportionally in the percentages set forth above, or as are restated from time to time. Each Party indicated in Section 4 above, or as restated from time to time, is responsible for payment of their

proportional amount of the cleaning, repair, maintenance or replacement of the tile line or Easement Area upon receipt of a statement or invoice showing the total cost of such work.

8. The Parties agree that each will not use their Parcel, and the owners of the Burdened Property agree that they will not use the portion of the tile line and Easement Area crossing their Parcel, in any way which interferes with the intended use granted by this Agreement and the Easement, or to obstruct, restrict, limit, interfere or otherwise block the use or repair of the drainage tile line and Easement Area.

9. The Parties are not liable to one another for any damage, if any, caused solely by the use of the Easement Area and tile line as drainage and carrier of water under, through and across a Parcel.

10. In the event a Party breaches or otherwise defaults under or with respect to any of the terms and conditions of this Agreement or the Easement, then such Party is liable and responsible for all losses, liabilities, costs and/or expenses, including without limitation, attorneys' fees, and the costs of enforcing the terms of this Agreement and Easement SHALL be awarded to the prevailing party by a court of competent jurisdiction, including any federal or state agencies, commissions, boards, or any other regulatory or governmental entities, and all other legal and equitable remedies, including, without limitation, injunctive relief.

11. The Parties covenant, warrant and agree that each of them are lawfully seized and possessed of their Parcel, as above described, and that each of them have good and lawful right to convey this Easement to the other Parties.

12. This Easement is appurtenant to the Property, and this Easement and Agreement shall run with the Property and be binding upon the heirs, successors and assigns of all Parties.

13. This Easement and Agreement may not be modified or amended unless such modification or amendment is signed by all Parties (or the then owners of the Property), or as otherwise described herein in Section 4.

14. This Agreement shall be construed pursuant to and governed by the laws of the State of Minnesota.

IN WITNESS HEREOF the Parties have executed this Agreement as of the day and year first above written.

(signature pages follow)

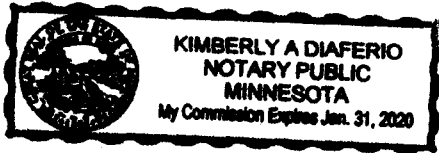
THIS IS A COUNTERPART SIGNATURE PAGE TO THAT CERTAIN DRAIN TILE AND DRAINAGE
EASEMENT AGREEMENT WITH AN EFFECTIVE DATE OF DECEMBER 5, 2014

Jerome L. Hemerick
JEROME L. HEMERICK

Elaine M. Hemerick
ELAINE M. HEMERICK

STATE OF MINNESOTA)
COUNTY OF Meeker)^{ss.}

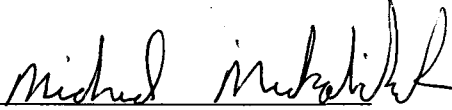
The foregoing instrument was acknowledged before me on 3-16-15
2015, by Jerome L. Hemerick and Elaine M. Hemerick, married to each other.




Kimberly A. Diaferio
Notary Public

1-31-20


THIS IS A COUNTERPART SIGNATURE PAGE TO THAT CERTAIN DRAIN TILE AND DRAINAGE
EASEMENT AGREEMENT WITH AN EFFECTIVE DATE OF DECEMBER 5, 2014

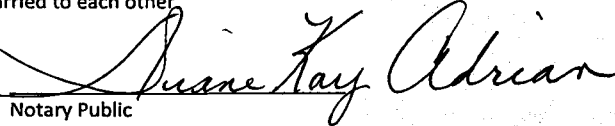

MICHAEL MICKOLICHEK


BRENDA MICKOLICHEK

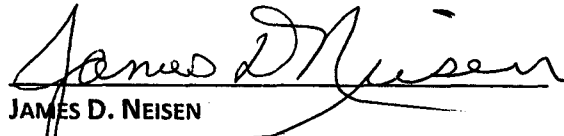
STATE OF MINNESOTA)
COUNTY OF McLeod) ss.

The foregoing instrument was acknowledged before me on 3-13
2015, by Michael Mickolich and Brenda Mickolich, married to each other.

 DIANE KAY ADRIAN
Notary Public—Minnesota
My Comm Expires Jan 31 2016

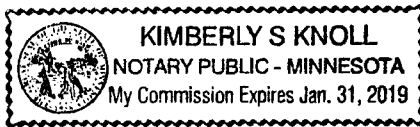

Notary Public

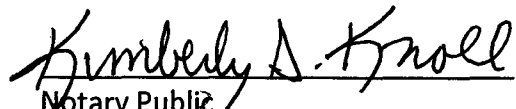
THIS IS A COUNTERPART SIGNATURE PAGE TO THAT CERTAIN DRAIN TILE AND DRAINAGE
EASEMENT AGREEMENT WITH AN EFFECTIVE DATE OF DECEMBER 5, 2014


JAMES D. NEISEN

STATE OF MINNESOTA)
) ss.
COUNTY OF Wright)

The foregoing instrument was acknowledged before me on March 13, 2015,
2015, by James D. Neisen, an individual.




Notary Public

THIS IS A COUNTERPART SIGNATURE PAGE TO THAT CERTAIN DRAIN TILE AND DRAINAGE
EASEMENT AGREEMENT WITH AN EFFECTIVE DATE OF DECEMBER 5, 2014

GLENCOE GRAIN Co., LLC

By: M. Meulenas

Its: Member

STATE OF Minnesota)
) ss.
COUNTY OF Carver)

The foregoing instrument was acknowledged before me on March 16, 2015,
2015, by M. Meulenas, the Member of Glencoe Grain Co., LLC,
a Minnesota limited liability company, on behalf of the company.

Brenda M Rothstein
Notary Public



1-31-20

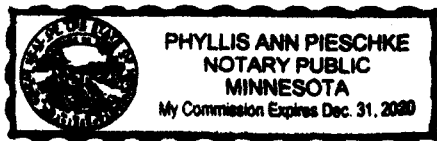
THIS IS A COUNTERPART SIGNATURE PAGE TO THAT CERTAIN DRAIN TILE AND DRAINAGE
EASEMENT AGREEMENT WITH AN EFFECTIVE DATE OF DECEMBER 5, 2014

Dean Mikolichuk
DEAN MIKOLICHEK

Karen Mikolichuk
KAREN MIKOLICHEK

STATE OF MINNESOTA)
) ss.
COUNTY OF McLeod)

The foregoing instrument was acknowledged before me on April 3, 2015
2015, by Dean Mikolichuk and Karen Mikolichuk, married to each other.



Phyllis Pieschke
Notary Public

1-31-20

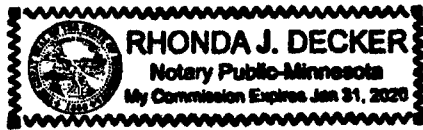
THIS IS A COUNTERPART SIGNATURE PAGE TO THAT CERTAIN DRAIN TILE AND DRAINAGE
EASEMENT AGREEMENT WITH AN EFFECTIVE DATE OF DECEMBER 5, 2014

Donald J. Nowak
DONALD J. NOWAK

Yvonne A. Nowak
YVONNE A. NOWAK

STATE OF MINNESOTA)
) ss.
COUNTY OF McLeod)

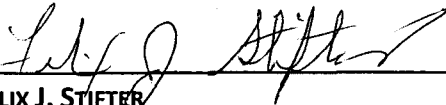
The foregoing instrument was acknowledged before me on March 20, 2015
2015, by Donald J. Nowak and Yvonne A. Nowak, married to each other.

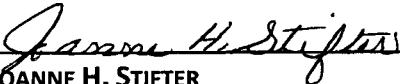


Rhonda Decker
Notary Public

1-31-20

THIS IS A COUNTERPART SIGNATURE PAGE TO THAT CERTAIN DRAIN TILE AND DRAINAGE
EASEMENT AGREEMENT WITH AN EFFECTIVE DATE OF DECEMBER 5, 2014


FELIX J. STIFTER


JOANNE H. STIFTER

STATE OF MINNESOTA)
) ss.
COUNTY OF McLeod)

The foregoing instrument was acknowledged before me on April 6,
2015, by Felix J. Stifter and Joanne H. Stifter, married to each other.




Notary Public

1-31-20

THIS INSTRUMENT WAS DRAFTED BY:

Melchert Hubert Sjodin PLLP
121 Main Street West, Suite 200
Waconia, MN 55387
952.442.7700
(rmh)

EXHIBIT A

LEGAL DESCRIPTION OF HEMERICK PROPERTY

The East Half of the Southwest Quarter of Section 1, Township 117 North of Range 28 West,
McLeod County, Minnesota.

EXHIBIT B

LEGAL DESCRIPTION OF MICKOLICHEK PROPERTY

The South Half of the Northeast Quarter EXCEPTING THEREFROM the South 446.00 feet of the East 1075.00 feet as measured along the east and south lines of said South Half ALSO EXCEPTING Lot One (1) in Block One (1) MICKOLICHEK'S SUBDIVISION AND That part of the South 20 rods of the North half of the Northeast Quarter lying South of the following described line: Commencing at the northeast corner of said South 20 rods; thence southerly, along the east line of said South 20 rods, 10.00 feet to the beginning of the line to be described; thence westerly, to a point on the west line of said South 20 rods distant 5.00 feet south of the Northwest corner of said South 20 rods and said line there terminating. ALL IN Section Twelve (12) in Township One Hundred Seventeen (117) North of Range Twenty-Eight (28) West, McLeod County, Minnesota.

The East 50 feet is subject to the right-of-way of Falcon Avenue (County Highway No. 31). The South 33 feet is subject to the right-of-way of 235th Street (County Highway No. 5).

EXHIBIT C

LEGAL DESCRIPTION OF NEISEN PROPERTY

The East Half of the Northwest Quarter of Section 12, Township 117, Range 28, McLeod County,
Minnesota

EXHIBIT D

LEGAL DESCRIPTION OF MEULENERS PROPERTY

All the tract or parcel of land, lying and being in the County of McLeod and State of Minnesota, described as follows, to wit: The West Half of the Southwest Quarter (W ½ SW ¼) of Section Twelve (12), Township One Hundred Seventeen (117) North of Range Twenty-eight (28) West.

EXHIBIT E

LEGAL DESCRIPTION OF GLENCOE PROPERTY

All the tract or parcel of land, lying and being in the County of McLeod and State of Minnesota, described as follows, to wit: The West Half of the Southwest Quarter (W ½ SW ¼) of Section One (1), Township One Hundred Seventeen (117) North of Range Twenty-eight (28) West of the Fifth Principal Meridian; EXCEPTING therefrom a strip one rod wide on the south side of the tract.

EXHIBIT F

LEGAL DESCRIPTION OF DEAN MIKOLICHEK PROPERTY

The West Half of Northwest Quarter of Section Twelve (12) in Township One Hundred Seventeen (117), Range Twenty-eight (28), McLeod County, Minnesota.

EXHIBIT G

LEGAL DESCRIPTION OF NOWAK PROPERTY

E ½ SE ¼, Sec. 12, T117N, R28W, McLeod County, Minnesota, EXCEPTING THEREFROM the following described tract:

Commencing at the NE corner of the said SE ¼; thence on a bearing of South, assumed bearing along the East line of said SE ¼, a distance of 512.00 feet to the point of beginning of the tract to be described; thence continuing on a bearing of South 940.00 feet along the East line of said SE ¼; thence on a bearing of West 357.00 feet; thence on a bearing of North 555.00 feet; thence North 38 degrees 19'07" West 318.87 feet; thence North 89 degrees 16'37" West 433.01 feet; thence North 00 degrees 24' 36" East 221.13 feet; thence South 89 degrees 19' 41" East 262.76 feet; thence South 64 degrees 26'06" East 205.50 feet; thence on a bearing of East 537.97 feet to the point of beginning.

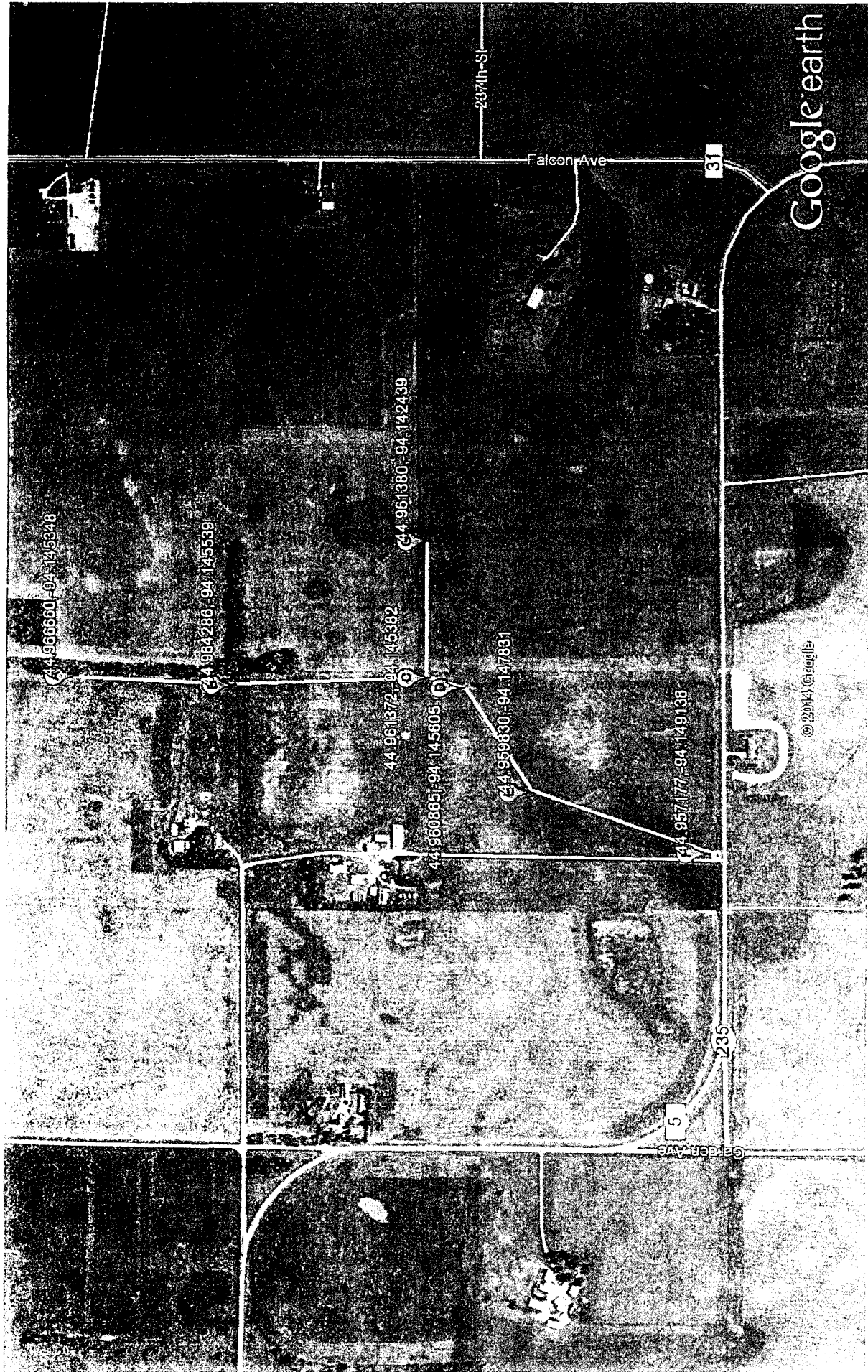
EXHIBIT H

LEGAL DESCRIPTION OF STIFTER PROPERTY

That part of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Twelve (12), Township One Hundred Seventeen (117) North of Range Twenty-eight (28) West, Described as follows, to wit: Beginning at the Northwest Corner of the said Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$); thence East a distance of 590 feet along the North line of the said Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) to a point; thence South a distance of 100 feet parallel with the East line of the said Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) to a point; thence West a distance of 590 feet parallel with the North line of the said Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) to a point thence North a distance of 1100 feet along the west line of the said Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) to the place of beginning, McLeod County, Minnesota.

EXHIBIT I

**SKETCH OF EASEMENT
(attached)**



feet 4000
km 1

Google earth