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 Book 50 of MISC
 Page 763 # of Pages: 5
 By Carol J. Viet
 Carol J Viet, Register of Deeds 90851
 Fee \$ 30.00

This instrument prepared by:
 Kristi M. Laber
 CADWELL, SANFORD, DEIBERT & GARRY, LLP
 200 East 10th Street, Suite 200
 Sioux Falls, South Dakota 57104
 Telephone: (605) 336-0828

Return To:
 CADWELL, SANFORD, DEIBERT & GARRY LLP
 ATTN: KRISTI LABER -PO BOX 2498
 SIOUX FALLS SD 57101

DECLARATION OF WELL EASEMENT

This Declaration of Well Easement (hereinafter referred to as the "Declaration") is made this 3rd day of December, 2015, by The Jerome Five Limited Partnership, a South Dakota limited partnership, of 27219 - 473rd Avenue, Sioux Falls, South Dakota 57108 (hereinafter referred to as the "Partnership").

A. The Partnership is the owner of certain real estate located in Turner County, South Dakota and legally described as:

Tract 2 of Jerome Five's Addition in the North Half (N $\frac{1}{2}$) of Section Sixteen (16), Township Ninety-Eight (98) North, Range Fifty-three (53) West of the 5th P.M., Turner County, South Dakota,

(hereinafter referred to as the "Tract 2"); and

B. The Partnership is the owner of certain real estate located in Turner County, South Dakota and legally described as:

Tract 1 of Jerome Five's Addition in the North Half (N $\frac{1}{2}$) of Section Sixteen (16), Township Ninety-Eight (98) North, Range Fifty-three (53) West of the 5th P.M., Turner County, South Dakota,

(hereinafter referred to as "Tract 1"). Tract 1 and Tract 2 are sometimes collectively referred to herein as "Tracts"; and

C. The water well that provides water to Tract 1 is located on Tract 2. Such well shall hereinafter be referred to as the "Well", which shall include the well pump, well accessories, distribution piping, meters, power lines, equipment, materials and such other facilities as may be necessary to maintain the well, any right of use of the water pumped out of

Alpha ☒
 Paid ☒
 Num ☒
 Margin ☒
 Trans ☒
 Scan ☒
 Seal ☒
 Comp ☒
 Comp ☒
 Micro ☒
 Comp ☒

the Well recognized by any governmental authority or simply by rights of land ownership interest, and any equipment for use of the water and well; and

D. The purpose of this Declaration is to provide water from the Well to Tract 1 and to declare use and costs of maintenance of the Well; and

E. It is the Partnership's intent that the benefits and burdens created under this Declaration shall run with the land and be binding on all subsequent owners of the Tracts, all upon the terms and conditions hereinafter provided;

NOW, THEREFORE, the Partnership declares as follows:

1. *Well License.* There are two Wells located on Tract 2, the Well serving Tract 1 (referred to herein as the Well) and a second well serving Tract 2 (the "East Well"). The Well is located to the West of the East Well. The Well and the East Well on the date of this Declaration are operated under a single Water Rights Permit No. 290-3 (the "License"). The License shall be split between the Well and the East Well and two permits issued.
2. *Grant of Easement.* The Partnership, in its capacity as owner of Tract 2 ("Grantor"), grants to the Partnership, in its capacity as owner of Tract 1 ("Grantee"), the permanent right, privilege and authority to continued use of and the right to draw water from the Well along with a permanent easement to and right of access over, across, under, and upon: (i) that thirty foot (30') wide strip of land (extending fifteen feet (15') on either side of any distribution piping and equipment used in conjunction with the Well) commencing at the Well and running to Tract 1; and (ii) that area extending thirty feet (30') from all sides of the Well (collectively referred to herein as the "Easement Area") for the purpose of the operation, maintenance, repair, replacement, and reconstruction of the Well and the distribution piping, meters or other equipment. The Easement Area is more specifically shown on Exhibit "A" attached hereto.
3. *Cost of Maintenance*
 - (a) Grantee shall be solely responsible for the installation, maintenance, and repair of the Well. Grantee shall further be responsible for the cost of any excavation, digging, or trenching necessary for its use of the Well. Grantee shall reasonably restore the surface of the Easement Area to its condition prior to any maintenance, repair, excavation, digging, or trenching of the Easement Area for purposes of exercising its right herein. Unless an emergency would require immediate repairs and maintenance, Grantee shall provide Grantor reasonable advance notice of any repairs or maintenance which may be necessary or required to the Well in the Easement Area.

- (b) Grantee shall be responsible for all costs of operation, maintenance, repair, replacement, and reconstruction of the Well from time to time, excepting only any repairs or replacements made necessary by an intentional or negligent act of Grantor (which in such event such costs shall be solely that of Grantor). The Well shall have its own separate meter to measure the electricity consumption directly from the Well to Tract 1 and billing by the utility company shall be made directly to Grantee for Grantee's payment thereof. Grantee shall be responsible for all costs related to, and for performance of, any water quality sampling and water use reporting required by the State of South Dakota.
4. *Preserving the Easement Area.* Grantor agrees that no structure or obstruction shall be erected or permitted, or any trees planted on or within the Easement Area, and that it will not change the ground elevation thereof without the written consent of Grantee, or perform any act which would interfere or endanger the Well or Grantee's use thereof.
5. *Usage.* Grantee shall have exclusive use of the Well. No water from the Well shall be furnished to Grantor or any other persons or property without Grantee's prior written approval. If at anytime water usage from the Well and East Well is restricted for any reason so that the use of one well reduces the ability to use the other well, Grantor and Grantee shall alternate days of use. If such restriction commences on an even number day of the month, Tract 2 shall have the first day of use. If such restriction commences on an odd number day of the month, Tract 1 shall have the first day of use and the Owners shall alternate days thereafter. If use of the Well is restricted so as not to permit use of the wells on alternating days, use of the Well by Grantee and use of the East Well by Grantor shall be divided equally. If separate use restrictions are placed on the Well and East Well, such separate use restrictions shall be followed and no division of use under this Paragraph 5 shall apply.
6. *Duration; Running With the Land.* This easement is perpetual, touches and concerns the Tracts, runs with such land, and is binding upon all heirs, successors, assigns and occupants of the Tracts.
7. *No Public Dedication.* Nothing contained in this Declaration shall, or is intended to, constitute a gift or dedication of any portion of Tract 2 to the public or for the benefit or use of the general public or for any public purpose whatsoever.
8. *Construction.* In the construction of this Declaration, the use of the neuter shall include the feminine and the masculine, and the use of the singular shall include the plural.
9. *Indemnity.* Grantee, and its successors and assigns, shall protect, defend and indemnify Grantor from and against all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence, causing or

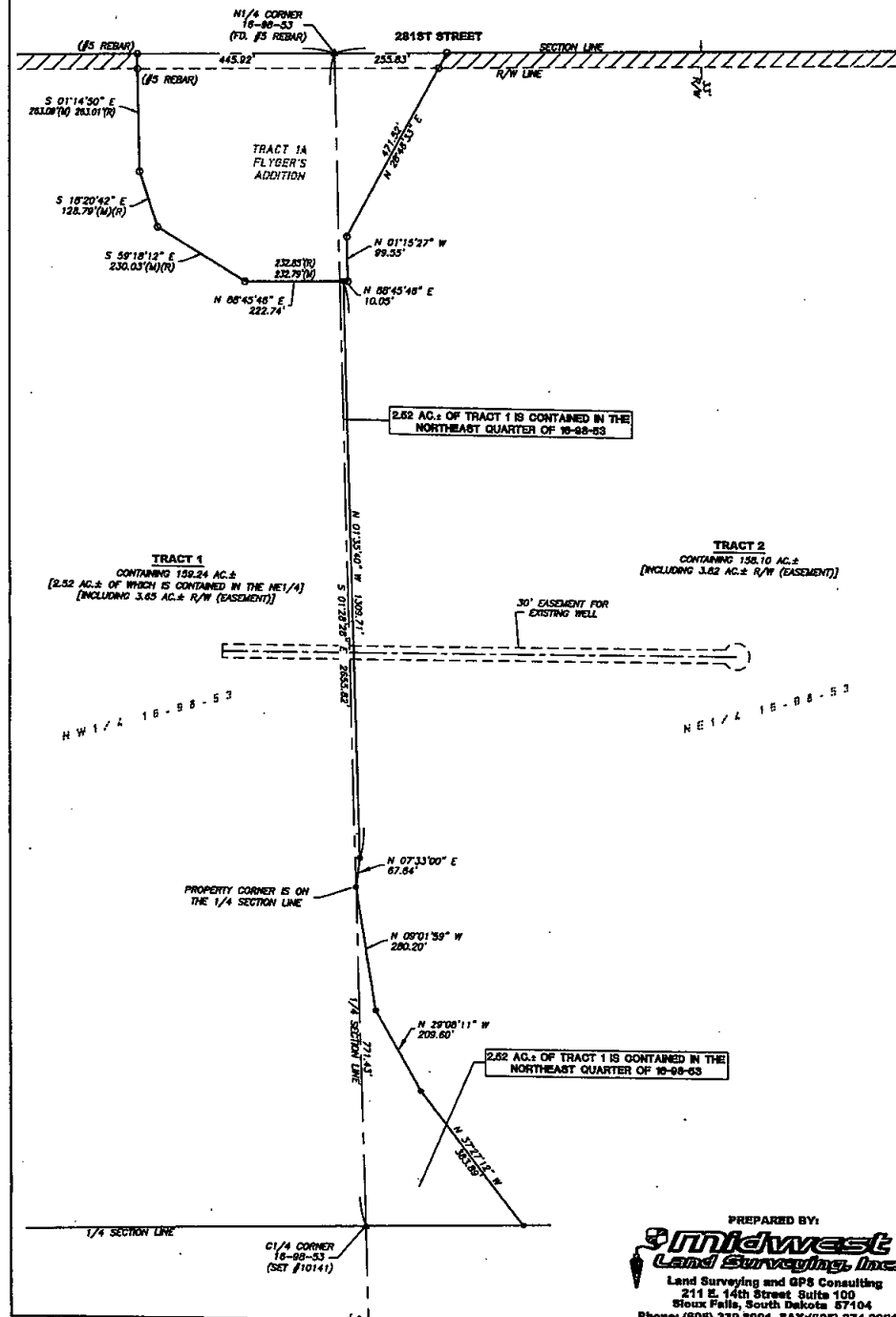
10. ***Enforceability.*** Unenforceability of any provision contained in this Declaration shall not effect or impair the validity of any other provision of this Declaration.
11. ***Legal Compliance.*** Grantee shall comply with all applicable federal, state, and local laws and ordinances in exercise of their rights in this Declaration.

By: Sonja Adrian
Its: General Partner

My Commission Expires: 5-15-2011

EXHIBIT

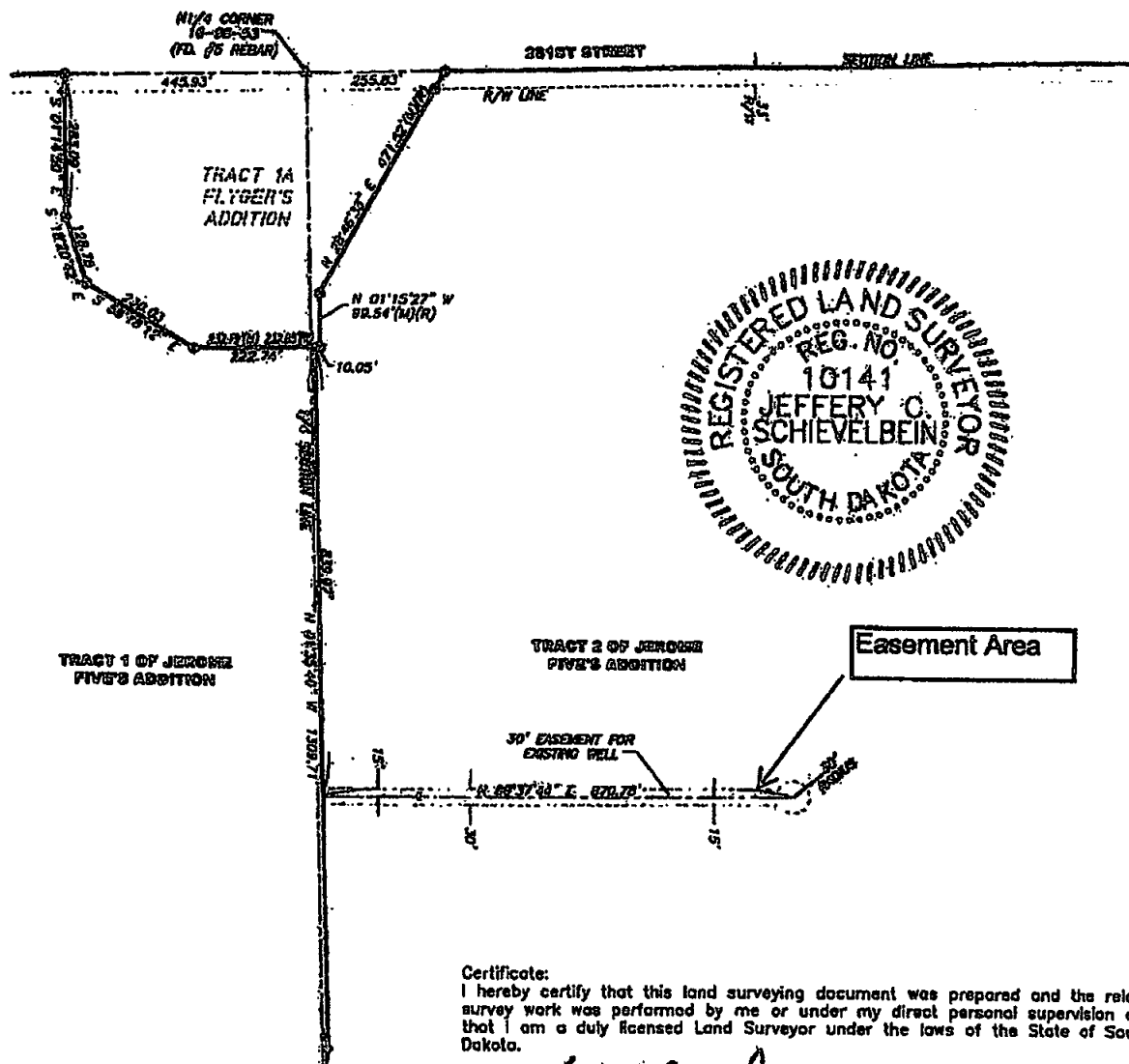
IN THE NORTH HALF OF SECTION 16, TOWNSHIP 98 NORTH, RANGE 53 WEST
OF THE 5TH PRINCIPAL MERIDIAN, TURNER COUNTY, SOUTH DAKOTA.



PREPARED BY:

Midwest
Land Surveying, Inc.
Land Surveying and GPS Consulting
211 E. 14th Street Suite 100
Sioux Falls, South Dakota 57104
Phone: (605) 339-8901 FAX: (605) 274-8981

EASEMENT EXHIBIT A



Certificate:

I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of South Dakota.

Jeffery C. Schiavelbein

11/24/2015

Jeffery C. Schiavelbein
License number 10141

Date

Pages or sheets covered by this seal: 1

LEGAL DESCRIPTION:

TRACT 2 OF JEROME FIVE'S ADDITION IN THE NORTH HALF OF SECTION 16, TOWNSHIP 98 NORTH, RANGE 53 WEST OF THE 5TH PRINCIPAL MERIDIAN, TURNER COUNTY, SOUTH DAKOTA.

NOTES:

1. BASIS OF BEARINGS IS UTM-ZONE 14

LEGEND:

- △ SECTION CORNER
- SET 5/8" REBAR W/ CAP #10141
- FID. MONUMENT
- (R) RECORD DISTANCE
- (M) MEASURED DISTANCE
- AC. ACRES
- R/W RIGHT-OF-WAY
- N.T.S. NOT TO SCALE
- PREVIOUSLY PLATTED LINE
- - - EASEMENT LINE

PREPARED BY:

Midwest
Land Surveying, Inc.

Land Surveying and GPS Consulting
211 E. 14th Street Suite 100
Sioux Falls, South Dakota 57104

Phone: (605) 339-8801 FAX: (605) 274-8951

DRAWN BY:
AJR

APPROVED BY:
JCS

DATE:
11/19/15

PROJECT NO
15-680

SHEET
1 OF 1

PLAT OF TRACT 1 AND TRACT 2 OF JEROME FIVE'S ADDITION

IN THE NORTH HALF OF SECTION 16, TOWNSHIP 98 NORTH, RANGE 53 WEST
OF THE 5TH PRINCIPAL MERIDIAN, TURNER COUNTY, SOUTH DAKOTA.

COPY

SURVEYOR'S CERTIFICATE

I, Jeffery C. Schievelbein, of Midwest Land Surveying, Inc., a Registered Land Surveyor in the State of South Dakota, do hereby state that I did, on or before this date, survey a portion of the North Half Section 16, Township 98 North, Range 53 West of the 5th Principal Meridian, Turner County, South Dakota, and plotted the same into Tract 1 and Tract 2 of Jerome Five's Addition in the North Half of Section 16, Township 98 North, Range 53 West of the 5th Principal Meridian, Turner County, South Dakota, as shown on the foregoing PLAT.

The same shall be known and described as TRACT 1 AND TRACT 2 OF JEROME FIVE'S ADDITION IN THE NORTH HALF OF SECTION 16, TOWNSHIP 98 NORTH, RANGE 53 WEST OF THE 5TH PRINCIPAL MERIDIAN, TURNER COUNTY, SOUTH DAKOTA.

I further certify that the above PLAT correctly represents the same, is true and correct and that it was made at the request of the owners.

Dated this 18th day of November 20 15

Jeffery C. Schievelbein
Jeffery C. Schievelbein, Registered Land Surveyor No. 10141

OWNER'S CERTIFICATE

We, the undersigned, do hereby certify that we are the owners of all land included in the above plat and that said plat has been made at our request and in accordance with our instructions for the purposes of transfer, and that the development of this land shall conform to all existing applicable zoning, subdivision and erosion and sediment control regulations.

We hereby dedicate to the public for public use forever, the streets, roads, alleys, ports and public grounds, if any, as shown on said plat, including all sewers, culverts, bridges, water distribution lines, sidewalks and other improvements on or under the streets, roads, alleys, ports and public grounds whether such improvements are shown or not. We also hereby grant easements to run with the land for water, drainage, sewer, gas, electric, telephone, cable television, or other public utility lines or services, under, on or over those strips of land designated herein as easements.

Dated this 21st day of November 20 15

by *Lonnie B. Adkinson*
Jerome Five United Partnership

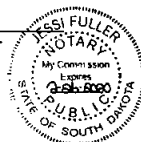
RE GENERAL PARTNER No Seal on Document

State of SD
County of Minnehaha

On this the 27th day of Nov 2015, before me, the undersigned officer, personally appeared *Lonnie B. Adkinson*, who acknowledged themselves to be the *GENERAL PARTNER* of Jerome Five United Partnership, and that they, as such *GENERAL PARTNER*, being authorized as to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Partnership by themselves as *GENERAL PARTNER*.

In witness whereof I hereunto set my hand and official seal.

Paul Fuller
Notary Public - State of South Dakota
My Commission Expires 2-06-2020



TOWNSHIP ACCEPTANCE OF ROAD DEDICATION

I hereby certify that the Board of Supervisors of Township 98 North, Range 53 West of the 5th Principal Meridian, Turner County, South Dakota, at an official meeting conducted on the 2nd day of Dec 20 15, accepted the roads indicated on the plat of TRACT 1 AND TRACT 2 OF JEROME FIVE'S ADDITION IN THE NORTH HALF OF SECTION 16, TOWNSHIP 98 NORTH, RANGE 53 WEST OF THE 5TH PRINCIPAL MERIDIAN, TURNER COUNTY, SOUTH DAKOTA.

No Seal on Document

Supervisor:
Don Herley
Don Herley, Supervisor
Turner County, South Dakota

COUNTY PLANNING AND ZONING DIRECTOR'S CERTIFICATE

I, Planning and Zoning Director, of Turner County, do hereby certify that this plat has been reviewed by me or my authorized agent and has been approved.

Approved this 2nd day of Dec 20 15

Don Herley
PLANNING AND ZONING DIRECTOR
Turner County, South Dakota

COUNTY AUDITOR CERTIFICATE

I, County Auditor of Turner County, South Dakota, do hereby certify that the above certificate of approval is a true and correct including the contents thereof.

Dated this 2nd day of Dec 20 15

Don Herley
COUNTY AUDITOR
Turner County, South Dakota

DIRECTOR OF EQUALIZATION

I, the Director of Equalization of Turner County, South Dakota, do hereby certify that a copy of the above and foregoing described plat has been filed in my office.

Dated this 2nd day of Dec 20 15

Don Herley
DIRECTOR OF EQUALIZATION
Turner County, South Dakota

TREASURER

I, the Treasurer of Turner County, South Dakota, do hereby certify that all taxes which are due upon any land shown in the above plat, as shown by the records of my office have been paid in full.

Dated this 2nd day of December 20 15

Don Herley
TREASURER
Turner County, South Dakota

REGISTER OF DEEDS

Filed for record this 2nd day of December 20 15

2:00 o'clock P. M., and recorded in Book 8 of 1916

Don Herley
REGISTER OF DEEDS
Turner County, South Dakota

PREPARED BY:

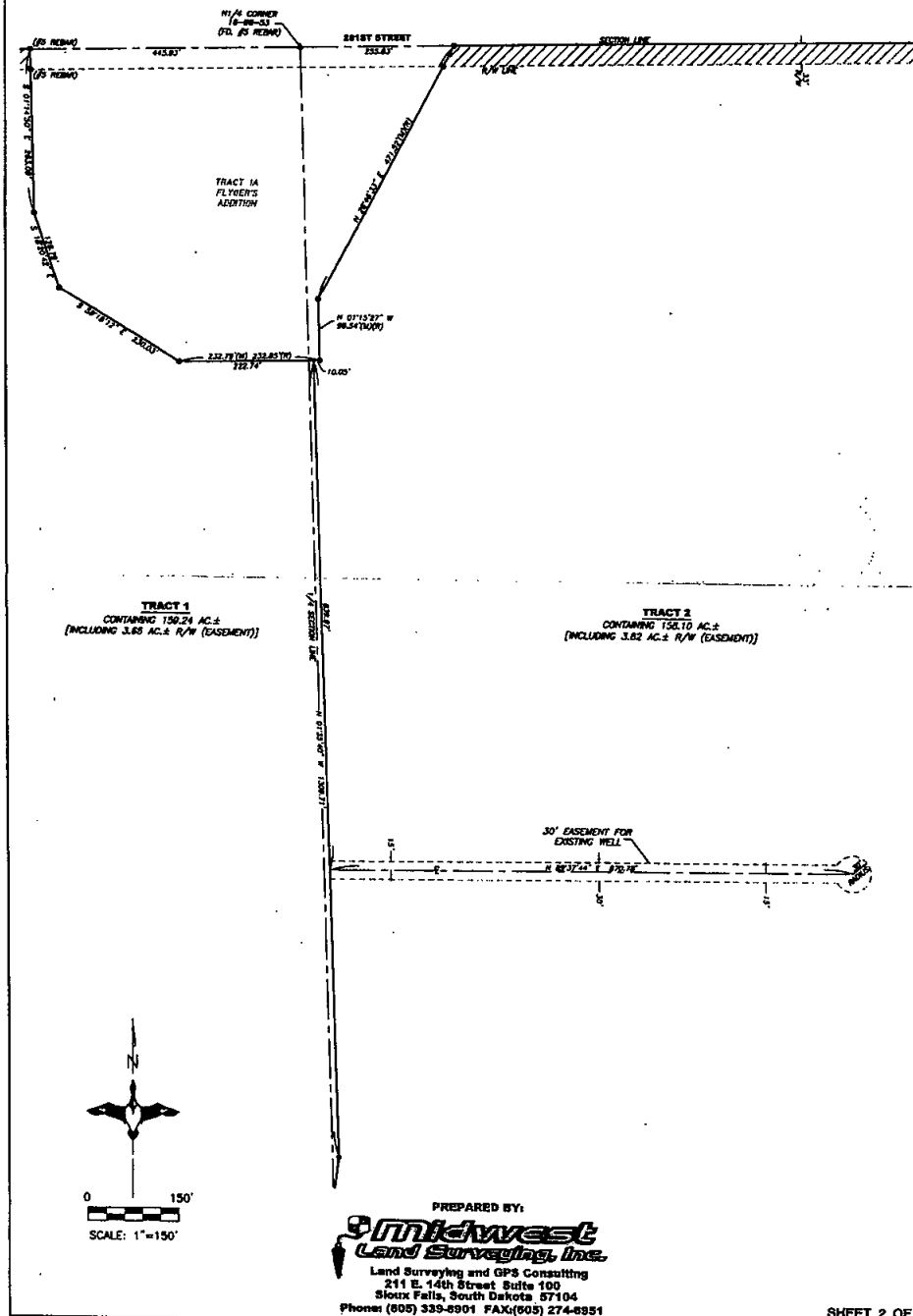
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Land Surveying, Inc.
Land Surveying and GPS Consulting
211 E. 14th Street Suite 100
Sioux Falls, South Dakota 57104
Phone: (605) 335-8904 FAX: (605) 274-8951

SHEET 3 OF 3

PLAT OF TRACT 1 AND TRACT 2 OF JEROME FIVE'S ADDITION

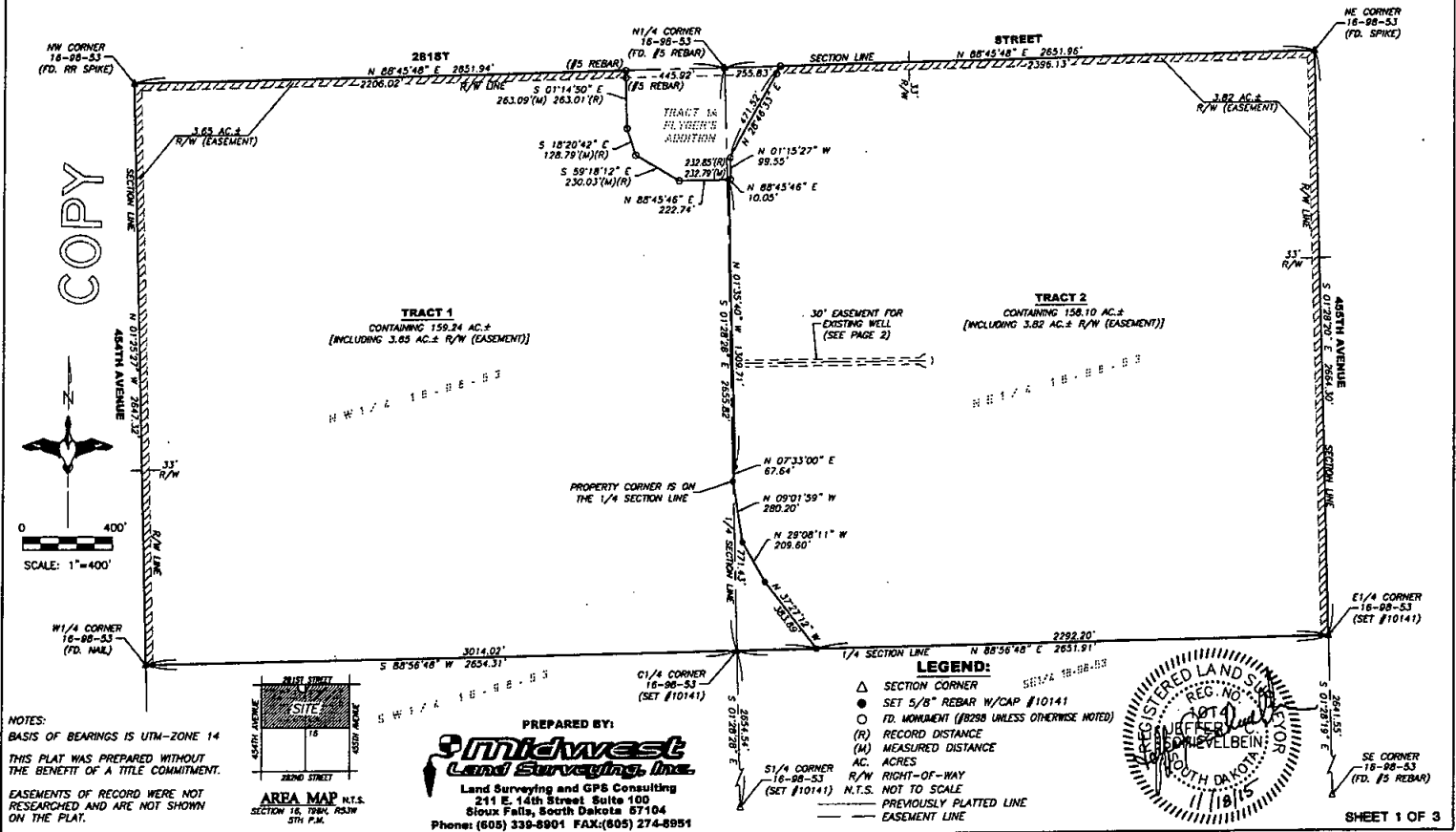
IN THE NORTH HALF OF SECTION 16, TOWNSHIP 98 NORTH, RANGE 53 WEST
OF THE 5TH PRINCIPAL MERIDIAN, TURNER COUNTY, SOUTH DAKOTA.

COPY



PLAT OF TRACT 1 AND TRACT 2 OF JEROME FIVE'S ADDITION

IN THE NORTH HALF OF SECTION 16, TOWNSHIP 98 NORTH, RANGE 53 WEST OF THE 5TH PRINCIPAL MERIDIAN, TURNER COUNTY, SOUTH DAKOTA



NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

RECEIVED

DEC 24 2015

WATER RIGHTS
PROGRAM

Mail to: PMB 2020
DENR - Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

Water Right/Permit No. 290-3Date: 12-22-15I/We request that Water Right/Permit No. 290-3 formerly owned by:Jerry Adrian

be transferred to:

New Owner Name: Scott VannorsdelAddress: 28888 455 AVECity, State, Zip Urbor SD Telephone No. 605-310-8610

Title to the following described land(s)/property has been transferred as described above:

NW 1/4 Section 16 T98R R53W

☒ I understand that the validity of Water Right/Permit No. 290-3 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

A fee of Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, Scott Vannorsdel, the new owner, certify that the above information is true and correct.

Scott Vannorsdel
(signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five year construction period has expired. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 12/24, 20 15

RECEIVED OF Vannorsdel's Inc 28891 455th Ave Viborg SD 57070

The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>290-3</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	50 00

No. 07585

By

James Headman
Chief Engineer



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

JAN 29 2016

290B-3

Scott Vannorsdel
28888 455th Ave
Viborg SD 57070

Dear Mr. Vannorsdel:

Enclosed is Reissued Water License No. 290A-3.

Based on ownership changes filed in December, 2015, Water Right No. 290-3 has been divided and reissued to reflect separate ownership as follows:

- **No. 290A-3: Tony Brown, Brown Land**, authorizing diversion of 1.78 cfs from one well located in the NE $\frac{1}{4}$ Section 16 to irrigate 160 acres in the NE $\frac{1}{4}$ (Tract 2) Section 16, all in T98N, R53W;
- **No. 290B-3: Scott Vannorsdel**, authorizing diversion of 1.78 cfs from one well located in the NE $\frac{1}{4}$ Section 16 to irrigate 160 acres in the NW $\frac{1}{4}$ (Tract 1) Section 16, all in T98N, R53W.

For your information SDCL 46-6-27 requires that if the owner of an existing well, such as the well authorized by Water Right No. 290A-3, constructs a replacement well and does not plan to use the old well, the old well is considered abandoned and must be plugged. Also, any well that is being used or is not considered abandoned must be valved and controlled, if flowing, or sealed and capped so that no leaking occurs either underground or at the surface.

As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 290B-3
(DIVISION OF WATER RIGHT NO. 290-3 INTO 290A-3 AND 290B-3)

(1) Roy Flyger, Hurley SD was issued Water License No. 290-3, November 24, 1970 for a water right to divert 3.56 cubic feet of water per second from ground water (two wells – Parker Centerville Aquifer), Turner County, South Dakota for irrigation purposes. Water License No. 290-3, with a priority date of September 12, 1956 was issued to the permit holder authorizing irrigation of 320 acres in the N ½ Section 16, T98N, R53W from two wells located in the NE ¼ Section 16, T98N, R53W.

The following ownership changes have been filed with Water Right No. 290-3:

- January 29, 1982 – transferred from Roy Flyger to Merle Flyger;
- July 18, 1989 – transferred from Merle Flyger to Jerry Adrian;
- December 23, 2015 – the NE ¼ (Tract 2) Section 16, T98N, R53W was transferred from Jerry Adrian to Tony Brown, Brown Land, 26983 Sundowner Ave., Sioux Falls SD 57106
- December 24, 2015 – the NW ¼ (Tract 1) Section 16, T98N, R53W was transferred from Jerry Adrian to Scott Vannorsdel, 28888 455th Ave, Viborg SD 57070

Based on the last two ownership changes filed, Water Right No. 290-3 is being divided and reissued to reflect separate ownership as follows:

- **No. 290A-3: Tony Brown, Brown Land**, authorizing diversion of 1.78 cfs from one well located in the NE ¼ Section 16 to irrigate 160 acres in the NE ¼ (Tract 2) Section 16, all in T98N, R53W;
- **No. 290B-3: Scott Vannorsdel**, authorizing diversion of 1.78 cfs from one well located in the NE ¼ Section 16 to irrigate 160 acres in the NW ¼ (Tract 1) Section 16, all in T98N, R53W.

(2) It is certified that the water right holder has complied with the provisions of South Dakota State Law and is entitled to divert 1.78 cubic feet of water per second for beneficial use.

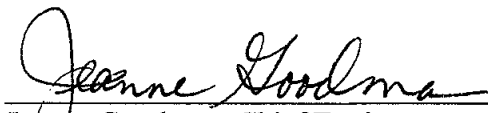
The location of the diversion point is approximately 1,340 feet south and 3,700 feet east of the NW corner of Section 16, T98N, R53W (E ½ NE ¼ (Tract 2)). A copy of the "Declaration of Well Easement" filed with the Turner County Register of Deeds is a part of the water right file. The easement states the owner of the NW ¼ (Tract 1) has a permanent right and continued access to the well in the E ½ NE ¼ (Tract 2).

(3) The water right holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

- 160 acres – NW ¼ Section 16, T98N, R53W (Tract 1)

(4) Pursuant to South Dakota Water Law 46-5-30.1 Scott Vannorsdel, 28888 455th Ave, Viborg SD 57070 the holder and/or owner of Water Right No. 290B-3 is issued a license to appropriate water, the right to use 1.78 cubic feet of water per second from ground water (one well – Parker Centerville Aquifer) with a priority date of September 12, 1956 from the location specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 290-3.



Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

JAN 29 2016

date

