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Edgewood IA 52014-0400

Book 2015 Page 2893  
Document 2015 2893 Type 06 006 Pages 2  
Date 10/22/2015 Time 2:49:16PM  
Rec Amt \$57.00

Daneen Schindler, RECORDER/REGISTRAR  
DELAWARE COUNTY IOWA

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Return to: Patrick B. Dillon, 209 E 1<sup>st</sup>, Sumner, IA 50674 563 578-1850

### MANURE APPLICATION AGREEMENT

Whereas James C. Funké, James F. Funke and Michael J. Funke herein (FUNKE) or ("Landowner"), and Kevin J. Perrinjaquet, herein or ("Producer"), agree as follows:

The Land owner has first right for all manure produced from any hog / livestock buildings located on property. Producer shall supply manure to Landowner, and Landowner shall accept Producer's manure, for application on Landowner's farmland. Landowner shall be responsible for application of manure from the confinement feeding operation located on land described on the attached Exhibit "A" to the land owned by the Landowner described on the attached Exhibit "B".

Term and Termination. This agreement shall be for a term of 20 years beginning on October 15, 2015. The land owners have an automatic option to extend this agreement for an additional 10 years after the end of this period, under the same terms and conditions, unless terminated in writing at least sixty days prior to the automatic renewal.

The Landowner has the option to terminate the agreement prior to the scheduled termination date only if (1) the Producer breaches the terms of the Agreement by ceasing to produce livestock at the location specified for a period of eighteen months or more; or (2) upon any other breach or violation of the terms of the Agreement by Producer. Termination under either (1) or (2) of this paragraph shall occur only if the non-breaching party desiring to terminate the lease provides written notice of the breach to the breaching party. The breaching party shall have 30 days from the date of notice to correct the breach or violation. If the breach or violation is corrected within this period of time, or if the non-breaching party does not provide written notice of the breach or violation to the breaching party, the Agreement shall not terminate.

Time of application. Manure shall not be applied between the time crops are



the non-breaching party does not provide written notice of the breach or violation to the breaching party, the Agreement shall not terminate.

Time of application. Manure shall not be applied between the time crops are planted and harvested or when the Landowner determines that soil conditions exist which would result in manure application being detrimental to crop production. Producer shall give the Landowner at least 48 hours notice when manure is to be applied to the land.

Application. Land owner shall be responsible for obtaining the services of a mutually agreed upon commercial manure applicator to timely apply manure in accordance with Producer's manure management plan. Landowner shall pay shall pay for 100% of the cost of application of manure. This shall be the only payment ever required for the land owner to get access to the manure.

Regulations, permits and manure management plan. Producer shall be responsible for obtaining and complying with government permits required for the confinement feeding operation and application of manure from the operation. However, Landowner shall be responsible, at Landowner's expense, for all soil tests required by all applicable governmental regulations, including but not limited to soil tests required to comply with the Iowa Phosphorus Index.

Landowner shall be responsible for application of manure in compliance with applicable law or regulations, including Producer's manure management plan. Landowner shall cooperate with Producer as necessary to obtain required permits.

Pursuant to Iowa law, manure cannot be applied on cropland within 200 feet of a known sinkhole, cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface inlet, drinking water well, lake, farm pond, privately owned lake, watersource (creeks and other such water bodies as defined by Iowa law), major watersource (rivers and other navigable waters as defined by Iowa law, or designated wetland (as defined by Iowa law)(these areas are collectively referred to as "designated areas") or within 800 feet of a "high quality water resource" as designated by Iowa law, unless the manure is injected or incorporated on the same date of application or the land has permanent vegetation within 50 feet of the water source (manure cannot be applied within the 50 feet). Landowner shall note any designated area or high quality water resource on the map attached to this Agreement. Landowner shall also advise Producer in writing of any known dangers existing on the land. Such list shall be attached to and made part of this Agreement.

Pursuant to Iowa law, manure shall not be land surface applied without incorporation within 24 hours within 750 feet of a residence, business, church, school, or public use area (including a cemetery).



Level of soil nutrients. Landowner shall apply manure in compliance with the manure management plan. In addition, manure shall be applied to maximize soil fertility of other soil nutrients and prevent buildup of those nutrients or trace elements, based on soil tests conducted by a reputable soil test service at the expense of Landowner. If soil tests show nutrient levels in excess of soil test recommendations, application of manure on those specific fields shall be limited to crop utilization rates until subsequent soil tests show nutrient levels are reduced to acceptable levels. However, such a determination shall not by itself result in termination of the agreement.

Nutrient applications other than the Producer's manure, i.e., commercial fertilizers and manure from other sources, shall supplement and not replace the Producer's manure applications. Landowner shall not apply nutrients from other sources in excess of amounts allowed in Producer's manure management plan.

Consideration. Landowner will not be required to pay Producer for manure to be provided under this Agreement now or in the future. In the event the landowner is not provided the manure from this facility, the operator shall be responsible for the cost of replacement fertilizer, its application and any yield loss that is attributable application of no manure fertilizer. No manure produced from a calamity event not controllable by the Producer shall constitute a breach of this agreement.

Nature and Type of Manure. Producer agrees to use wet/dry feeders in the production of manure supplied under this agreement or a feeding system that delivers like nature and quality of beneficial nutrient content manure, subject to Producer's hog owner requirements.

Covenant and Waiver. Landowner covenants for themselves, and for Landowner's successors, heirs and assigns (as a restrictive covenant running with the land) to not make any claim or assert any cause of action against the Producer or Producer's successors, heirs and assigns for application of manure pursuant to this Agreement, including, without limitation, causes of action or claims for nuisance, trespass, easement or any other legal or equitable theory. Landowner further waives the enforcement of any county, state or federal regulation or law, including but not limited to any required separation distance from Landowner's residence, regarding the emission of any odors, gases, vapors or other airborne pollutants from the manure application.

Warranty and disclaimer. There is no warranty, representation, or guarantee regarding the manure, express or implied, oral or written, including any warranty or guarantee of merchantability or fitness for a particular purpose of the manure or the quality or quantity (Producer has no obligation to provide any manure during the term of this Agreement) of the manure or whether the manure will be beneficial or detrimental to the land, crops or other items on the land.



Binding Effect. This agreement shall run with the land and inure to the benefit of and be binding upon the heirs, executors, personal representatives, and successors of each party.

Assignment. This agreement shall not be assigned by either party without the express prior written consent of all parties. The agreement may be assigned to a lender requiring a security interest in the operation of either party without further consent required from either party. This agreement may also be assigned to Perrinjaquet Funke Site, LLC without further written consent.

Limitation of liability and indemnification. Each party shall indemnify, defend and hold harmless the other parties from all costs, losses, liabilities, claims, penalties or expenses (including reasonable attorney's fees) imposed upon or incurred by or asserted against the party by reason of: a) any failure on the part of any other party to perform or comply with any of the terms of this agreement, b) any enforcement or remedial action taken by the party in the event of a failure to perform or comply with the terms of this agreement by any other party; or c) any litigation, negotiation or transaction in which the party becomes involved or concerned (without that party's fault) respecting the agreement, the described premise or the use or occupancy thereof by any other party. Without limitation of the preceding sentence, because Landowner is responsible for the proper application of manure on Landowner's land, landowner expressly agrees to hold harmless and indemnify, including reasonable attorney's fees, Landowner for (1) any nuisance, trespass, negligence, or other action brought by a third party involving unreasonable interference with that party's reasonable use and enjoyment of their land caused by the application of manure on Landowner's land.

Entire agreement. This agreement constitutes the entire agreement between the parties; and it supersedes all negotiations and other discussions prior to and after the execution of this agreement.

Amendments. No amendment of the terms of this agreement will be effective unless made in writing and signed by the parties. The waiver of a provision of this agreement will not be deemed a waiver of future compliance with this agreement.

Severability. In the event any provision of this agreement is held unenforceable, in whole or in part, the remaining provisions of this agreement will not be affected thereby unless the unenforceable provision materially alters the rights of either party and it is impossible to adjust for the unenforceable provision.



Changes in Agreement Terms. The conduct of either party by act or omission shall not be construed as a material alteration of this agreement until such provision is reduced to writing and executed by all parties as an addendum to this agreement.

Construction. Words and phrases herein, including the acknowledgment, are construed as in the singular or plural and as the appropriate gender according to the context. The captions and headings of the paragraphs of this agreement are for convenience only and are not to be used to interpret or define the provisions thereof.

Notices. The notices contemplated in this agreement shall be made in writing and shall be delivered either in person or mailed by the U.S. Postal Service by registered mail return receipt requested to the recipient's last known mailing address.

Spousal Signatures Spouses executing this document are doing so to release spousal interests in real estate as they may appear. The execution of this document by a spouse shall not be construed to imply ownership.

10-9-15  
Date  
James C. Funke  
James C. Funke

Kathleen Funke  
Kathleen. Funke

Michael J. Funke  
Michael J. Funke

Stephanie J. Funke  
Stephanie Funke

James F. Funke  
James F. Funke

Elaine M. Funke  
Elaine Funke

Kevin J. Perrinjaquet  
Kevin J. Perrinjaquet

Margaret M. Perrinjaquet  
Margaret M. Perrinjaquet

State of Iowa :

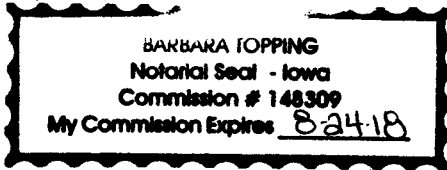
:ss

County of Delaware :

On this 9 day of October, 2015 before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared James C. Funke and his



spouse KATHLEEN to me known to be the identical person named in and who executed the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

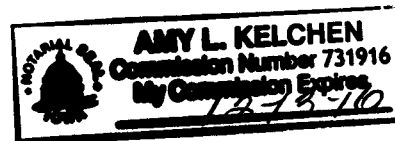


Barbara Topping  
NOTARY PUBLIC - STATE OF IOWA

State of Iowa :  
County of Delaware :SS

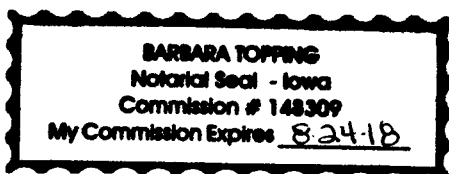
On this 9th day of October, 2015, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared James F. Funke and his spouse Elaine, to me known to be the identical person named in and who executed the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

Amy L. Kelchen  
NOTARY PUBLIC - STATE OF IOWA



State of Iowa :  
County of Delaware :SS

On this 9 day of October, 2015, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Michael J. Funke and his spouse Stephanie J. Funke. to me known to be the identical person named in and who executed the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

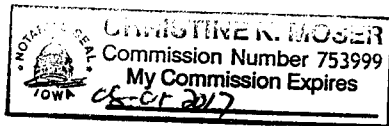


Barbara Topping  
NOTARY PUBLIC - STATE OF IOWA



State of Iowa Iowa :  
County of Clayton :SS  
:

On this 9th day of October, 2015, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Kevin J. Perrinjaquet and his spouse Margaret to me known to be the identical person named in and who executed the within and foregoing instrument and acknowledged that they executed the same as their voluntary act.



Christopher K. Moser  
NOTARY PUBLIC - STATE OF IOWA



**Exhibit A**

**Parcel 2013-92 in the South east quarter of the southwest quarter of Section 7, T90N,Range 4W of the 5<sup>th</sup> PM, Delaware, County, Iowa.**

**Exhibit B**

**1.**

**90**

**The South ½ of the SW ¼ of Section 7, Township ~~92~~<sup>90</sup>N,R4W, Delaware County, Iowa**

**2.**

**The N ½ of the SW ¼ and the S ½ of the NW ¼ and the NW ¼ of the NW ¼ of Section 7, all in Township 90N, R4W of the 5<sup>th</sup> PM, except Lots 1 and 2 and Except parcel B of Lot 3 , and Parcel C as recorded in plat at 2002-2185, Delaware County, Iowa**

**3**

**North ½ of the SW ¼ of Section 1, T90N R5W of the 5<sup>th</sup> P.M., Delaware County, except the cemetery grounds in the NW corner thereof, and Except Parcel D in the Southwest ¼ of the SW ¼ and the west 209' of the South 209' of the Southwest ¼ of the Southwest ¼ of Section 1, Township 90N Range 5 W of the 5<sup>th</sup> PM in Delaware County.**

**4.**

**Parcel 2013-56 in the Fr'l NW ¼ and in the W ½ of the NE ¼ of Section 18, T90N-R4W, Delaware, County, according to plat recorded in Book 2013-2163**

**5.**

**and the E ½ of the SE ¼ of section 12, except the railroad right of way and the North ½ of the NE ¼ of Section 13 (subject to easement for power line)in Township 90N,R5W of the 5<sup>th</sup> PM, Delaware County, Iowa and all of the Chicago, Milwaukee, St. Paul and Pacific railroad Company's 100 foot wide right of way across the SE ¼ of the SE ¼ Section 12 and NE ¼ NE ¼ Section 13, Township 90N, R5 West, Delaware county, Iowa.**