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Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

COMMERCIAL LEASE

THE IOWA STATE BAR ASSOCIATION
Official Form No. 164
Recorder's Cover Sheet



CHG
EW **Preparer Information: (Name, address and phone number)**
(X) George Davis, 225 First Avenue East, Dyersville, Iowa 52040 563-875-9112

Taxpayer Information: (Name and complete address)

John E. Kluesner Trust, 2245 170th Street, Manchester, Iowa 52057

Return Document To: (Name and complete address)

George Davis, 225 First Avenue East, Dyersville, Iowa 52040

Grantors:

John E. Kluesner Trust

Grantees:

**Chad Arthur Funke
Nicole Marie Funke**

Legal description: See Page 2

Document or instrument number of previously recorded documents:

Prepared by George A. Davis, Attorney at Law, Locher & Davis, P.L.C.
225 1st Avenue East; P.O. Box 304; Dyersville, Iowa 52040-0304
Telephone: (563) 875-9112; Facsimile: (563) 875-7809
E-Mail: gdavis@locherlaw.com

COMMERCIAL LEASE

THIS LEASE is made between **John E. Kluesner Trust**, hereinafter referred to as "**Lessor**" of 2245 170th Street, Manchester, Iowa 52057, and **Chad Arthur Funke and Nicole Marie Funke, husband and wife**, hereinafter referred to as "**Lessee**" of 2152 180th Street, Manchester, Iowa 52057. Lessee hereby leases from Lessor and Lessor demises to the Lessee, the following legally described property:

Parcel 2018-127 Part of the NE ¼ of the NW ¼ and part of the NW ¼ of the NE ¼ of Section 13, Township 89 North, Range 5 West of the 5th P.M., Delaware County, Iowa (this includes Parcel A including the house and garage)

upon the following terms and conditions:

1. TERM AND RENT:

The Lease shall have an initial term of 10 years, commencing on April 1, 2019, at 12:00 a.m., and terminating on April 30, 2029, at 11:59 p.m. The agreed upon rent is due and payable, on or before, the last day of each month for the duration of this lease. There shall be an initial lease payment of \$10,000 and thereafter the monthly rent is Four Thousand Five Hundred Fifty Five Dollars (\$4,555). All rental payments shall be made payable to, "**John E. Kluesner Trust**" and mailed to the address specified below, unless changed. Lessee is to be notified in writing at least thirty (30) days prior to the changing of the address:

PAYMENT ADDRESS: John E. Kluesner
2245 170th Street
Manchester, Iowa 52057

If the monthly \$4,555 payment has not been received within three (3) days of the due date (last day of each month), there will be a late fee penalty of fifty-dollars (\$50.00) per day. The daily late fee penalty of fifty-dollars (\$50.00) will run continuous until full payment is received.

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2. LEASE TERM:

Ten (10) years

3. POSSESSION:

April 1, 2019, at 12:00 a.m.

4. USE:

The Lessee shall use and occupy the premises for agriculture and cattle feed yard. The premises shall not be used for any other purpose(s) without the prior written consent of the Lessor; said consent not to be unreasonably withheld. The Lessee shall not manufacture, sell, or store any hazardous material(s), or waste on said premises in violation of any Environmental Laws of the State of Iowa, the United States, or local ordinances (if any). If violation(s) of any hazardous material(s) or waste laws are broken by the Lessee, the Lessee shall be obligated for the cost and clean-up of said material from the date of this lease. The obligation for said clean-up, on the Lessee, shall run perpetually.

5. QUIET ENJOYMENT:

Lessor covenants and agrees with Lessee that as long as rents are paid when due, according to the terms and conditions of this lease, the Lessee's possession of the above described premises will not be disturbed by anyone claiming by, through or under the Lessor.

6. CARE AND MAINTENANCE OF PREMISES:

Lessee shall be required to perform all future maintenance and repairs to maintain improvements to current condition.

7. ALTERATIONS:

Lessee shall not, without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld or delayed, make any alterations, additions, or improvements, in, to or about the premises. If any alterations, additions, or improvements are made during the course of

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this lease, those alterations, additions or improvements shall become the property of the Lessor at the end of this lease.

8. ORDINANCES AND STATUTES:

Lessee shall comply with all statutes, ordinances, and requirements of all municipal, State and Federal authorities now in force, or which may hereafter be enacted, or put in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.

9. ASSIGNMENT AND SUBLETTING:

Lessee shall not have the right to sublet, assign, or otherwise transfer its/their interest in the lease without Lessor consent. The consent by lessor to any other assignment, subletting, license, or concession agreement or hypothecation shall not be unreasonably withheld, conditioned, or delayed. Provided however Lessee may sublet and rent the house without the consent of the Lessor.

10. UTILITIES:

All applications and connections for necessary utility services on the premises shall be made in the name of the Lessee only, and the Lessee shall be solely liable for one-hundred percent (100%) of the utility charges as they become due, including, but not limited to sewer, water, gas, garbage, telephone, cable, and/or electricity, and any other service normally considered as an utility. The individual services and the billings therefore shall be in the name of the Lessee and paid directly to the utility company by the Lessee.

11. ENTRY AND INSPECTION:

Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the premises.

12. INDEMNIFICATION OF LESSOR:

Lessor hereby expressly agrees to indemnify and hold Lessee harmless from any and all damages to person(s) or property, or from any other claims, liabilities, costs of expenses (including

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attorney's fees), resulting from the acts or omissions, including default or negligence, of Lessor, or it's/their employees, principals, agents, successors or assigns arising from or as a result of the performance of this lease. Lessee hereby expressly agrees to indemnify and hold Lessor harmless from any and all damages to persons or property, or from any other claims, liabilities, costs of expenses (including attorney fee's), resulting from the acts or omissions, including default or negligence, of Lessee or its employees, principals, agents, successors or assigns, arising from or as a result of the performance of this lease.

13. INSURANCE LESSEE:

Lessee, at its own expense, shall maintain, with an insurance carrier authorized to do business in the state of Iowa having an "A rating" or better, Commercial General Liability insurance, including plate glass and public liability insurance with bodily injury and property damage, as well as workers' compensation as required by statutory law, and automobile liability coverage, assuring Lessee and Lessor with minimal coverage of seven hundred fifty thousand dollars (\$750,000.00) per occurrence and one million five hundred thousand dollars (\$1,500,000.00) aggregate.

Lessee shall provide Lessor, prior to the commencement date, with a certificate of insurance showing Lessor as a loss payee as its interest appear, and naming Lessor as additional insured under the Commercial General Liability and Umbrella policies through the ISO endorsement called, "Additional Insured-Managers or Lessor of Premises CG 2011" or its equivalent. The certificate shall provide for thirty (30) day written notice to Lessor in the event of cancellation or material change in coverage. Lessee shall provide broad form, extended coverage, property insurance to cover the damages of any and all real property in an amount no less than \$500,000, naming Lessor as loss payee.

14. EMINENT DOMAIN:

If the premises or any part thereof or any estate herein, or any other part of the building materially affecting Lessee's use of the premises shall be taken by eminent domain, this lease

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shall terminate on the date when title vests to the taking party. The rent, and any additional rents, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof. Lessee shall be entitled to make a separate claim for damages with respect to Lessee's personal property.

15. DESTRUCTION OF PREMISES:

In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations.

Such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within sixty (60) days, Lessor, at their option, may make the same within a reasonable amount of time and shall notify Lessee of its election to make such repair but not later than thirty (30) days after the date of such destruction. This lease will continue in effect with the rent proportionately abated as stated above. In the event that Lessor shall not elect to make such repairs that cannot be made within sixty (60) days, or if the repairs are not complete within ninety (90) days of the date of destruction, this lease may be terminated at the option of either party. In the event that the property in which the demised premises may be situated is destroyed to an extent of not less than fifty-percent (50%) of the replacement costs thereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

16. REAL ESTATE TAXES:

Lessor and Lessee agree the Lessee is solely responsible for the real estate taxes due and owing on the premises for the duration of this lease.

17. DEFAULT:

The Lessee further agrees if they fail to make payments as herein specified, or fail to fulfill any of the covenants and agreements herein contained, or fails to keep and perform the same within

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thirty (30) days after written notice of such violation and failure, then the Lessor shall have the right to cancel and terminate this lease, and enter into and take possession of said premises. Any such taking shall be subject to the right of the Lessee to remove its property from the premises. Or, the Lessor may refrain from reentering and taking possessions of said premises and sue. Notwithstanding the foregoing, if a non-monetary default may not reasonably be cured within a thirty (30) day period, Lessee shall not be deemed to be in default under this lease if Lessee commences to cure such default within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

Lessee's vacation or abandonment of the premises shall not be considered a default under this lease; however, in such event Lessee shall continue to maintain the premises so as to cause no waste or disrepair, and shall notify Lessor and insurance carrier prior to doing so. Each of the following shall constitute a default or breach of this lease by Lessee:

- (1) If Lessee or his/her/its agent files a petition of bankruptcy or insolvency;
- (2) If Lessee fails to pay Lessor any rent or additional rent according to the terms and conditions of this lease;
- (3) If Lessee fails to perform or comply with any of the material conditions of this lease;
- (4) If Lessee allows any illegal activities to take place on the premises;
- (5) If Lessee violates any environmental laws with respect to the premises.

18. LESSOR'S REMEDIES ON DEFAULT:

If Lessee defaults in the payment of any rent, or additional rent, or defaults in the performance of any of the other covenants or conditions, Lessor may give Lessee notice of such default and if Lessee does not cure any such default, Lessor may terminate this lease, and Lessee shall then quietly surrender the premises to Lessor, and Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce this term shall be deemed a waiver. Lessor may have whatever other additional remedies are available to Lessor under the laws of the State of Iowa. Lessor shall use reasonable efforts to mitigate damages resulting from any default on the part of Lessee and, in no event shall Lessor be entitled to double recovery of damages. Lessor hereby waives any

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25. GOVERNING LAW:

This lease will be governed by the internal laws of the State of Iowa without reference to its conflict of law provisions. Should any clause or provision of this lease be invalid or void, said clause shall not affect the whole of this instrument, thus all remaining provisions contained herein shall remain in full force and effect.

26. BINDING EFFECT:

This lease will bind and inure to the benefit of Lessor and Lessee and their respective successors, heirs, administrators and assigns, except as otherwise provided in this lease.

27. TIME OF THE ESSENCE:

Time is of the essence of each and every provision of this lease.

28. ADDITIONAL PROVISIONS:

1) This lease includes all improvements on the property, including the three cattle yard feeding facilities.

2) On December 31, 2023, and upon Lessee making 57 lease payments of \$4,555 as scheduled in the Lease, the Lessee shall have the option to purchase the property subject to the lease for \$328,554. Lessor shall have the option of taking the purchase price on December 31, 2023 or January 2, 2024, or to split the payment between the two dates. In the event the Lessee does not exercise this purchase option, the Lease shall continue on for the remainder of the 120 payment term.

3) On April 30, 2029, and upon Lessee making 120 lease payments of \$4,555 as scheduled in the Lease, the Lessee shall have the option to purchase the property subject to the lease for \$99,982.

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lien or security interest in Lessee's inventory, trade fixtures, furnishings, accounts or any other property of Lessee.

19. ATTORNEY'S FEE.

In case suit should be brought for recovery of the premises or for any sum due thereunder, or because of any act which may arise out of the possession for the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

20. ENVIRONMENTAL CONDITION:

Lessor warrants that the premises are free of any environmental contamination.

21. WAIVER:

No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

22. NOTICES:

Any notice that either party may be required to give, shall be given by mailing the same, postage prepaid, to Lessee at 2152 180th Street, Manchester, Iowa 52057, and to Lessor at the address specified above, or at such other place as may be designated by the parties from time to time. Notice shall be deemed give (i) three (3) business days after mailing, postage prepaid, in the United States mail, (ii) the business day following delivery to a nationally recognized overnight courier, and (iii) on the date of delivery, if hand delivered.

23. *This space left intentionally blank*

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29. ENTIRE AGREEMENT AND EXHIBITS:

The foregoing constitutes the entire agreement between the parties and may be modified only in writing, signed by both parties.

March 28, 2019

Date

John E. Kluesner

John E. Kluesner, Trustee of
the John E. Kluesner Trust

March 28, 2019

Date

Chad A. Funke

Chad Arthur Funke, Lessee

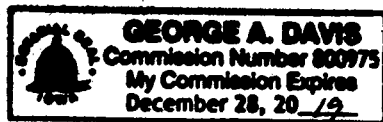
March 30, 2019

Date

Nicole Marie Funke

Nicole Marie Funke, Lessee

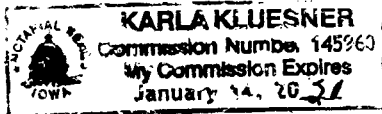
This record was acknowledged before me by John E. Kluesner, Trustee of the John E. Kluesner Trust and Chad Arthur Funke this 28th day of March, 2019.



[Signature]

Notary Public in and for the State of Iowa

This record was acknowledged before me by Nicole Marie Funke this 30th day of March, 2019.



Karla Kluesner

Notary Public in and for the State of Iowa

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