

EASEMENT FOR USE OF
COUNTY ROAD RIGHT-OF-WAY

THIS EASEMENT AGREEMENT is made and entered into between BROOKINGS COUNTY, SOUTH DAKOTA, a South Dakota public corporation (hereinafter "County") and Old Tree Farms / Frido Verpaalen, (hereinafter "Easement Tenant".)

RECITALS:

WHEREAS, Easement Tenant, operates a Concentrated Animal Feeding Operation, located in Section 10 + 15, Township Oslo Township 109 N Range 51 W, Brookings County, South Dakota; and

WHEREAS as part of its manure disposal system, Easement Tenant uses hoses or pipes to transport manure to other locations for purposes of treatment or disposal; and

WHEREAS Easement Tenant desires to place one of its manure hoses or pipes across the right-of-way and under the road surface of Brookings County Road 216 St at the location as shown in Exhibit "A", attached hereto and by this reference incorporated herein; and

WHEREAS, County is willing to grant to Easement Tenant an Easement for the use of such right-of-way for such purposes on the terms and conditions as hereafter set forth.

THEREFORE, in consideration of the mutual agreements herein set forth, the Parties agree as follows:

1. County does hereby grant to Easement Tenant the non-exclusive right to use the Brookings County Road 216 St right-of-way for the purpose of placing a manure disposal hose or pipe at the location identified in Exhibit "A" under the following conditions:

a. The exact location and manner of placing the culvert for such manure hose or pipe shall be as approved by the Brookings County Highway Superintendent;

b. The culvert shall be a minimum size of 10;

c. The culvert shall be (bored under) (trenched under) the road surface;

d. The Easement Tenant shall pay all costs for the installation of such culvert and manure hose or pipe;

e. The culvert and manure hose or pipe shall be placed so as to prevent the manure from entering areas of drainage and the culvert shall be sloped so that the manure will flow to one end in the event of a leak;

f. The Easement Tenant shall at all times at its sole cost properly maintain the manure hose or pipe and culvert so as to prevent leaks;

g. The Easement Tenant or agent acting on behalf of the Easement Tenant shall inspect the manure hoses or pipes and culvert on a daily basis while land application of process wastewater or manure is occurring. This inspection is to ensure that the manure hoses or pipes are not leaking and runoff from the land application site and irrigation system is not occurring. If a discharge or leaks are found where process wastewater or manure is reaching any surface waters of the state or flowing onto property not owned by the Easement Tenant or not included in the nutrient management plan, the Easement Tenant is responsible for taking immediate steps to stop the discharge or leaks and to immediately report such discharge to the County. The Easement Tenant shall maintain documentation of these inspections consistent with the requirements of the Department of Environment and Natural Resources, which documentation shall be available for inspection by County upon County's request.

h. The Easement Tenant shall at its sole cost restore the road right-of-way and road surface to its condition prior to the installation to the satisfaction of the Brookings County Highway Superintendent; and

i. In the event the road right-of-way or road surface at any time thereafter collapses or deteriorates as a result of such culvert installation, Easement Tenant shall at its sole cost restore such road right-of-way or road surface.

j. In the event County determines it to be necessary to grade or otherwise improve such County Road which grading or improvement requires the temporary or permanent removal and/or relocation of such manure hose or pipe and culvert, Tenant shall promptly upon notice from County remove and/or relocate such manure hose or pipe and culvert as per the request of County at tenant's sole expense.

2. This easement shall be personal to Easement Tenant. In the event Easement Tenant sells the Concentrated Animal Feeding Operation which benefits from this easement, then this easement and all rights thereunder shall cease and Easement Tenant at its sole expense shall remove the manure hose or pipe and restore the road right-of-way to the satisfaction of the County Highway Superintendent, unless a new easement is entered with the purchaser of such operation.

3. In the event at any time Easement Tenant fails to perform any of the obligations under 1 above, including the obligation to properly maintain the manure hose or pipe, then and in such event County may terminate this easement and Easement Tenant shall remove such manure hose or pipe and restore the road right-of-way. In the event Easement Tenant, upon demand of County, fails to remove such manure hose or pipe and restore the road right-of-way, County may do so and shall be entitled to recover from Easement Tenant all costs for such removal and restoration.

4. In the event of a leak or spill of manure from the manure hose or pipe, Easement Tenant shall promptly clean up such leak or spill and shall be solely responsible for and shall pay all costs involved in such cleanups.

5. In the event a civil lawsuit arising from the acts or omissions of the Easement Tenant, its officers, employees, agents, and representatives in the placing or maintaining of such

manure hose or pipe and culvert under this Agreement or arising in any manner regarding the operation of the Concentrated Animal Feeding Operation of Easement Tenant, the Easement Tenant shall defend, indemnify, and hold harmless the County, its officers, employees, agents, and representatives from and against any and all liability, claims, damages, actions, judgment, losses, costs, and expenses, including costs of litigation and attorney's fees, whether at law, in equity before an administrative agency or otherwise.

6. Easement Tenant shall provide and at all times maintain General Liability Insurance in the amount of at least \$1,000,000.00, with an Environmental Protection Insurance rider in the amount of at least \$100,000.00; to clean up any spills or environmental damages which might occur as a result of the operation of the Concentrated Animal Feeding Operation. Such insurance shall name County as an additional insured with regard to Tenant's use of this Easement

7. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written understandings, agreements, promises, or other undertakings by and among the parties. This Agreement may not be modified or amended, nor any rights thereunder waived, other than by a written document signed by all parties.

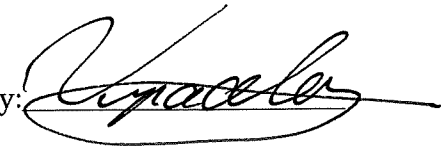
8. This Agreement shall be governed by, interpreted and construed in accordance with the laws of South Dakota. The venue of any suit or arbitration arising under this Agreement shall be in Brookings, Brookings County, South Dakota.

9. Nothing herein shall be construed to constitute or establish any type of joint venture, partnership, or any other type of legal relationship between the parties relating to such manure pipe and culvert.

Dated this _____ day of _____, 20_____.

BROOKINGS COUNTY, SOUTH DAKOTA EASEMENT TENANT
A Governmental Corporation

By: _____
Chairperson
Brookings County Board
Of County Commissioners

By: 

Its: 

ATTEST:

Brookings County Auditor

(Corporate
Seal)

