

Instr. Number: 2022-00000217
Ringgold County, Iowa
Kisha Martin - Recorder
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County Recording Fee: \$27.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$30.00
Revenue Tax:
BK: 540 PG: 106

Prepared by/Return To: Katherine McKain, 666 Grand Avenue, Suite 2000, Des Moines, Iowa 50309, 515.242.2400
Taxpayer Information: Red Owl Farms II, LLC, 824 Brooks Road, Iowa Falls, Iowa 50126

ACCESS AND POND EASEMENT AGREEMENT

THIS ACCESS AND POND EASEMENT AGREEMENT (the "Agreement"), is entered into effective Feb 2nd, 2022 (the "Effective Date"), by and between Paul C. Dykstra and Nancy K. Dykstra, husband and wife, with an address, for purposes of this Agreement, of 3260 270th Street, Kellerton, IA 50133 ("Grantor") and Red Owl Farms II, LLC, an Iowa limited liability company, with an address, for purposes of this Agreement, of 824 Brooks Road, Iowa Falls, Iowa 50126 ("Grantee"). Grantor and Grantee are each a "Party" and together, the "Parties".

WHEREAS, Grantor is the owner of certain real estate located in Ringgold County, Iowa, and more particularly described as:

N1/2 of the NE1/4 of Section 35, Township 68 North, Range 28 West of the 5th P.M., in Ringgold County, Iowa, EXCEPT Parcel "A", a parcel of land located in a portion of the NW1/4 of the NE1/4 of Section 35, Township 68 North, Range 28 West of the 5th P.M., in Ringgold County, Iowa, as shown in the Plat of Survey recorded in the Office of the Ringgold County Recorder on December 2, 2021, in Book 8, Page 318.

("Grantor's Land");

WHEREAS, Grantee is the owner of certain real estate located in Ringgold County, Iowa, and more particularly described as:

Parcel "A", a parcel of land located in a portion of the NW1/4 of the NE1/4 of Section 35, Township 68 North, Range 28 West of the 5th P.M., in Ringgold County, Iowa, as shown in the Plat of Survey recorded in the Office of the Ringgold County Recorder on December 2, 2021, in Book 8, Page 318.

("Grantee's Land"); and

WHEREAS, Grantor has agreed, upon the terms and conditions provided herein, to grant Grantee a perpetual easement on, under, over, and across a portion of Grantors Land reasonably necessary for the use and enjoyment of this Easement (the "Easement Area").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree:

1. **Recitals**. Terms used in the above recitals are hereby incorporated by this reference.
2. **Easement**.
 - a. *Grant*. Grantor hereby grants to Grantee, and its successors and assigns, a (i) non-exclusive, perpetual easement (A) on, over, and across the Easement Area for the purposes of ingress, egress, and access to and from Grantee's Land at Grantee's discretion, and (B) on, over, and across the Easement Area for the purposes of carrying out its obligations under this Agreement, including, without limitation, as arising under Section 5, below; and (C) a non-exclusive perpetual easement on, under, over, and across the Easement Area for the purposes of constructing, reconstructing, repairing, replacing, inspecting, and maintaining the existing pond as a water feature, water detention basin and overland flowage purposes used in connection with the operation of a hog confinement facility on Grantee's Land, (collectively, the "Easements").
 - b. *Location of Improvements*. Any water lines and improvements installed by Grantee under Section 2(a) will be buried, at Grantee's sole cost, to a sufficient depth so as to not unreasonably interfere with access over the Easement Area to and from Grantor's Land or Grantee's Land, as applicable.
 - c. *Permits*. Grantee is responsible for obtaining all governmental permits or licenses necessary to construct and operate the Easements. Grantor, without incurring any additional liability, cost or expense, will cooperate with Grantee to the extent reasonably necessary to obtain any said permits or licenses.
3. **Easements Run With Land**. The Easements are perpetual, run with Grantor's Land and Grantee's Land, are binding on Grantor's Land and beneficial to Grantee's Land, and the terms of this Agreement will extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the Parties, as owners of Grantor's Land or Grantee's Land, as applicable.
4. **Limitation of Liability**. No Party or a Permitted User (defined below) of a Party is an agent, contractor, employee, tenant, visitor, licensee, or guest of the other Party, and any liability arising from the actions or negligence of a Party or its Permitted User will be such Party's sole responsibility, and such responsible Party will indemnify and hold the other Party and its Permitted Users, successors and assigns, harmless from and against any claim, damage or expense (including, without limitation, reasonable attorneys' fees and court costs) related to (A) any accident, injury or death of any person, or damage or destruction of property (including the Easement Area), related to the responsible Party's or its Permitted User's use of the Easement Area, excluding normal wear and tear and use expressly contemplated in this Agreement, and/or (B) such Party's or its Permitted User's breach of this Agreement. Normal wear and tear shall not include damage occasioned by construction activities or excessive use of a Party, with any damage related thereto further subject to Section 5 below. Such indemnification shall survive termination of this Agreement.

“Permitted User” as used herein means a Party’s tenants or subtenants, and their respective agents, contractors, subcontractors, consultants, employees, licensees, customers, visitors, and invitees.

5. **Maintenance.** Grantee shall arrange for and is otherwise responsible for the maintenance, and all associated costs, of the Easement Area and the Easements. Notwithstanding the foregoing, each Party shall reimburse the other Party for all expenses of repairs or maintenance of the Easement Area or such other Party’s property required because of the indemnifying Party’s or its Permitted Users’ negligence or willful misconduct or breach of this Agreement. Upon a Party’s completion of any construction, reconstruction, repair, enlargement, or maintenance of any improvements within the Easement Area, such Party shall promptly restore the Easement Area (and any adjacent ground disturbed) in a good and workmanlike manner to a condition comparable to its condition existing before such work was performed, such obligation to survive termination of this Agreement.
6. **Obstructions Prohibited.** Neither Party will obstruct or allow obstructions to be placed within the Easement Area that impede either Party’s use of the Easement Area, except for the improvements expressly permitted and contemplated under Section 2 above, conditions that may occur as part of any maintenance or use of the Easements by Grantee or its Permitted Users, or as otherwise required by any state, federal, or local regulatory agency. In no case, will Grantor construct, nor allow any Permitted User of Grantor to construct any structure, building, fence, or other improvement within ten (10) feet on either side of water lines, without Grantee’s prior, written consent, which consent will not be unreasonably withheld. Grantee has the right, without reimbursement to Grantor, from time to time, to cut, clear, or remove trees, brush, and other obstructions, including crops, livestock, and equipment, from the Easement Area that interfere with Grantee’s use of the Easements and rights under this Agreement. No Party will change the grade, elevation, or contour of any part of the Easement Area without the prior, written consent of each other Party, which consent will not be unreasonably withheld.
7. **Warranties of Grantor.** Grantor warrants that Grantor has title to the Easement Area and the unrestricted right to convey the Easements; that Grantor’s Land is free and clear of all liens and encumbrances, other than those appearing of record as of the date hereof or hereafter and that do not interfere with Grantee’s and its Permitted User’s use of the Easements and Easement Area; and that it will warrant and defend the Easements against the lawful claims of all persons, except as above provided.
8. **Binding Effect.** This Agreement will inure to the benefit of, and is binding on, the Parties and their respective successors, assigns and personal representatives.
9. **Waiver.** The failure of a Party to insist in any one or more instances upon performance of any term or condition of this Agreement will not be construed as a waiver of future performance of any such term, covenant or condition, but the obligation of such Party with respect thereto will continue in full force and effect.
10. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Iowa.
11. **Attorneys’ Fees.** To the extent permitted by applicable law, if any claim, demand or litigation is commenced to enforce the terms of this Agreement, the prevailing Party in such proceeding, in addition to other damages or remedies available at law or in equity, is entitled to recover its reasonable costs and attorneys’ fees incurred with respect to said proceeding.

12. **Entire Agreement.** This is the entire agreement of the Parties as to the subject matter hereof and supersedes all prior negotiations and agreements, including without limitation, the Existing Easement, as reserved in the Deed. No amendment to this Agreement is valid unless in a writing signed by the Parties. If any provision of this Agreement is held invalid, the remaining provisions of this Agreement will remain in full force and effect as if that invalid provision had not been included herein. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neutered gender according to the context. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original for all purposes and all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement was executed as of the Effective Date.

GRANTOR:

Paul C Dykstra
PAUL C. DYKSTRA

Nancy Klein Dykstra
NANCY K. DYKSTRA

STATE OF Iowa) SS:
COUNTY OF Ringgold

This record was acknowledged before me on Feb 2nd, 2022, by Paul C. Dykstra and Nancy K. Dykstra, husband and wife.

Darrell D. Hunt
NOTARY PUBLIC IN AND FOR SAID STATE

GRANTEE:

Red Owl Farms II, LLC,
an Iowa limited liability company



By: Jeffrey Hansen
Print Name: Jeffrey Hansen
Its: Mgr

STATE OF IOWA)
COUNTY OF Polk) ss:

This record was acknowledged on Feb 8th, 2022, by Jeffrey Hansen, as Mgr of Red Owl Farms II, LLC, an Iowa limited liability company.



Darrell D. Hunt
Notary Public in and for said County and State