Abstract Co.

DELAWARE COUNTY IOWA
FILED

2002 JUN 27 AM 11: 36

BOOK 2002 PAGE 2384
DEBORAH L. PEYTON
DELAWARE CO. RECORDER
36.00

Kathy Flynn Thurlow
10854-02

02 JUN 17 AM 10: 23

KATHY FLYNN THURLOW
COUNTY RECORDER
DUBUQUE CO., IOWA FEES 36.00

Prepared by Stephen W. Scott, 100 W. 12th, P.O. Box 703, Dubuque, IA 52004-0703 (563) 588-0547

MANURE APPLICATION AGREEMENT

Iva M. Ungs (referred to herein as "LANDOWNER") and Scott Ungs (referred to herein as "OPERATOR"), agree as follows:

1. PREMISES. The legal description of the farm land owned by the LANDOWNER consists of farm real estate on the eastern side of Delaware County, and on the western side of Dubuque County.

A. **Dubuque County Land.** The real estate in Dubuque County, Iowa, which is subject to this Agreement is:

> South 900 feet of Lot 2 of Lot 2 of the NW 1/4 of the SW 1/4 of Section 18, Township 90 North, Range 2 West of the 5th P.M., according to the United States Government Survey and the recorded plats thereof, Dubuque County, Iowa; and the NE 1/4 of the SW 1/4, except the North 17 feet of the E ½ of the NE 1/4 of the SW 1/4; Lots 1 and 2 of the SE 1/4 of the SW 1/4; the N ½ of the SW 1/4 of the SW 1/4 of Section 18; and Lot 1 of UNGS ADDITION, a Subdivision of the South ½ of the SW 1/4 of the SW 1/4 of Section 18, Township 90 North, Range 2 West of the 5th P.M., Dubuque County, Iowa; the NW 1/4 of the NW 1/4, and the W 1/4 of the NE 1/4 of the NW 1/4, of Section 19; all in Township 90 North, Range 2 West of the 5th P.M., according to the United States Government Survey and the recorded plats thereof, subject to highway and easements of record, Dubuque County, Iowa

containing 165 acres, more or less.

B. **Delaware County Land.** The real estate in Delaware County, Iowa, which is subject to this Agreement is:

> The South one-fourth (S 1/4) of Southeast Quarter (SE 1/4) of Northeast Quarter (NE 1/4) and the East One-half (E ½) of Southeast Quarter (SE 1/4) of Section Twenty-Four (24), and the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section Twenty-Five (25), and that part of the Southeast Quarter (SE 1/4) of Northeast Quarter (NE 1/4) of Section Twenty-five (25) described as commencing at the Northeast (NE) corner thereof and running thence South (S) Forty-eight (48)

Rods, thence West (W) fourteen (14) Rods, thence North (N) Eleven (11) Rods, thence Northwesterly to a point on the North (N) line of said Southeast Quarter (SE 1/4) of Northeast Quarter (NE 1/4) which is Twenty-six (26) Rods West (W) of beginning, thence East (E) Twenty-six (26) Rods to place of beginning, all in Township Ninety (90) North (N), Range Three (3), West (W) of the Fifth (5th) P.M., Delaware County, Iowa

containing 136 acres, more or less.

C. A map showing the location of the livestock facilities of OPERATOR and of LANDOWNER's land available for manure application is attached as Exhibit "A".

2. PURPOSE AND USE. OPERATOR shall be allowed to apply animal manure to the LANDOWNER's property described above at such regular intervals as is necessary for the OPERATOR.

A. Permits and Licenses. OPERATOR agrees to obtain and be responsible for the cost of all permits or licenses for manure application and agrees to comply with all federal, state and local laws and regulations, as well as any conservation farm plans in the application of animal manure.

B. This Agreement gives OPERATOR the right to apply animal manure to LANDOWNER's land, but does not obligate OPERATOR to do so.

C. Manure application shall be by soil injection except during times when manure application is necessary because of lack of storage, but soil conditions will not allow injection or, if injection is not inconsistent with tillage methods. During these times, application may be made by surface application with no incorporation.

3. TIME, AMOUNT AND METHOD OF APPLICATION.

A. The right of OPERATOR to apply animal manure on the above described property is limited to the fall following crop harvest. However, manure may be applied in the spring before planting of crops if weather conditions or other circumstances do not allow fall application. Application and distribution of animal manure shall not be done when it will interfere with the productivity, growing, cultivation and harvesting of crops on the above described premises.

B. OPERATOR shall give LANDOWNER at least 48 hours notice when manure is to be applied to the premises. If in LANDOWNER's judgment, the application equipment would damage the soil structure as a result of inclement weather, LANDOWNER may refuse the application of animal manure until soil conditions improve.

C. Manure application shall further be limited by the amount of manure to be applied to the described premises. The amount shall mutually be agreed upon by LANDOWNER and

OPERATOR based on the analysis of the soil and the analysis of the animal manure, taking into account the intended farming use of the farm property by LANDOWNER. If the parties are unable to mutually agree upon the amount of animal manure to be applied under this Agreement, the parties agree to submit samples of the soil from the farm and the animal manure to a reputable soil testing laboratory and to abide by the testing laboratory's recommendations as to the amount of animal manure that can be applied to the above described property. The cost of all soil and manure testing shall be the responsibility of OPERATOR.

D. If requested by LANDOWNER in writing, OPERATOR shall submit a manure management plan to LANDOWNER to be attached to and made a part of this Agreement. The manure management plan shall include, but not be limited to, methods of manure application to be used by OPERATOR and calculations of allowable levels of manure to be applied. The OPERATOR will submit proposed changes in the plan to LANDOWNER for approval.

Nutrient applications other than OPERATOR's manure, including but not limited to, commercial fertilizers and other manure shall supplement and not replace OPERATOR's manure applications. LANDOWNER shall not apply soil nutrients from other sources in excess of amount allowed in OPERATOR's manure management plan.

E. All manure from livestock operation will be hauled or pumped with hoses and piping and shall be incorporated in the soil at the time of application. The cost for the application will be split with 2/3 of the responsibility assumed by OPERATOR and 1/3 of the responsibility assumed by LANDOWNER.

F. LANDOWNER shall keep and provide OPERATOR with records of nutrient applications other than OPERATOR's manure, including commercial fertilizer and other manure.

G. Pursuant to Iowa law, manure cannot be applied on crop land within 200 feet of a known sink hole, cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface inlet, drinking water well, lake, farm pond or other privately owned lake (these are collectively referred to as "designated areas") unless the manure is injected or incorporated within 24 hours of application or the land has permanent vegetation within 50 feet of the water source; provided manure cannot be applied within the 50 foot distance. LANDOWNER shall note any designated areas on the map attached to this Agreement.

H. LANDOWNER shall advise OPERATOR in writing of any known dangers existing on the land. Such list shall be attached to and made part of this Agreement and shall be noted on the map attached to this Agreement.

The points of ingress and egress that OPERATOR is to use when applying manure shall be noted on the map attached as Exhibit "A" and OPERATOR shall use those designated points for ingress and egress.

4. CONSIDERATION. Neither OPERATOR nor LANDOWNER will be required to pay the other for services performed under this Agreement or for manure to be provided unless otherwise agreed in this writing or set forth in an attached exhibit signed by both parties.

5. TERM OF AGREEMENT. This Agreement shall commence on the 10th day of June, 2002. The terms shall be for a period of 20 years.

This Agreement shall automatically renew from year to year, unless either party gives 120 days written notice to the other party that they intend to terminate the Agreement. The Agreement shall terminate before the scheduled termination date only if either party assigns its interest to a third party without the consent of the other party to this Agreement, or if OPERATOR ceases to produce livestock at the location specified after a period of six months.

In addition, either party many terminate this Agreement upon a breach or violation of its terms by the other party. Breaches include, but are not limited, to persistent or significant soil compaction caused by OPERATOR or the sale or transfer of the livestock facilities by OPERATOR. Such termination shall occur only after the non-breaching party has notified the breaching party of the breach or violation and the breaching party has failed to correct the breach or violation within 30 days of the notification.

6. VIOLATION OF TERMS OF AGREEMENT. If either party violates the terms of this Agreement, the other party shall have the right to pursue all legal and equitable remedies to which that party is entitled, in addition to any remedies provided in this Agreement.

7. ASSIGNMENT. This Agreement shall not be assigned by either party without the express prior written consent of the other party.

8. 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 or the manure or whether the manure, when applied pursuant to the terms of this Agreement, will be beneficial or detrimental to the land, crops or other items on the land.

9. ATTORNEY FEES AND COURT COSTS. If either party files suit to enforce any terms of this Agreement, the prevailing party shall be entitled to recover court costs and reasonable attorney fees.

10. CHANGE 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 signed by both parties as an addendum or attached exhibit to this Agreement.

11. NON-WAIVER OF UNEXERCISED RIGHTS. The failure of a party to assert rights or claims that it is entitled to assert shall not be deemed a waiver of those rights.

12. 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 paragraphs of this Agreement are for convenience only and are not to be used to interpret or define the provisions thereof.

13. NOTICES. The notices contemplated in this Agreement shall be made in writing and shall be delivered either in person or mailed by U.S. postal service by certified mail, return receipt requested, to the recipient's last known address. The parties' current addresses are set forth below. Any party changing its address shall give written notice of the new address to the other party.

14. SUCCESSORS AND ASSIGNS. This Agreement shall run with LANDOWNER's land and inure to the benefit of and be binding upon the heirs, executors, personal representatives and successors of each party.

15. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

16. INDEMNIFICATION.

A. Each party shall indemnify, defend and hold harmless the other party from all costs, losses, liabilities, claims, penalties or expenses (including reasonable attorney fees) imposed upon or incurred by or asserted against the party by reason of:

i. Any failure by the other party to perform or comply with any terms of this Agreement; or

ii. 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 the other party; or

iii. Any litigation, negotiation or transaction in which the party becomes involved or concerned (without that party's fault) respecting the Agreement, the described premises or the use or occupancy thereof by the other party.

B. Because OPERATOR is responsible for the proper application of manure on LANDOWNER's land, OPERATOR agrees to hold harmless and indemnify, including reasonable attorney fees, LANDOWNER for:

i. 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; or

ii. Any action brought by the State of Iowa or other governmental units or agencies for environmental damage or degradation caused by the application of manure on

LANDOWNER's land.

C. LANDOWNER shall be responsible for any damages, penalties or other liabilities for application of commercial fertilizer or nutrients other than OPERATOR's manure in excess of amounts allowed by OPERATOR's manure management plan or applicable law.

LANDOWNER:

Iva M. Ungs 6/10/02
Iva M. Ungs

OPERATOR:

Scott Ungs 6/11/02
Scott Ungs

STATE OF IOWA)
) ss.
Dubuque COUNTY)

On this 11th day of June, 2002, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Scott Ungs, OPERATOR, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

NOTARIAL SEAL IOWA
LINUS R. KUBOUSHEK
Commission Number 113688
My Commission Expires
Feb 19,04

Linus R Kubousheh
Notary Public in and for the State of Iowa

STATE OF IOWA)
) ss.
Dubuque COUNTY)

On this 10th day of June, 2002, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Iva M. Ungs, LANDOWNER, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

NOTARIAL SEAL IOWA
LINUS R. KUBOUSHEK
Commission Number 113688
My Commission Expires
Feb 19,04.

Linus R. Kubousheh
Notary Public in and for the State of Iowa

E:\USERS\SHIRLEY\UNGSAGRE.MIS

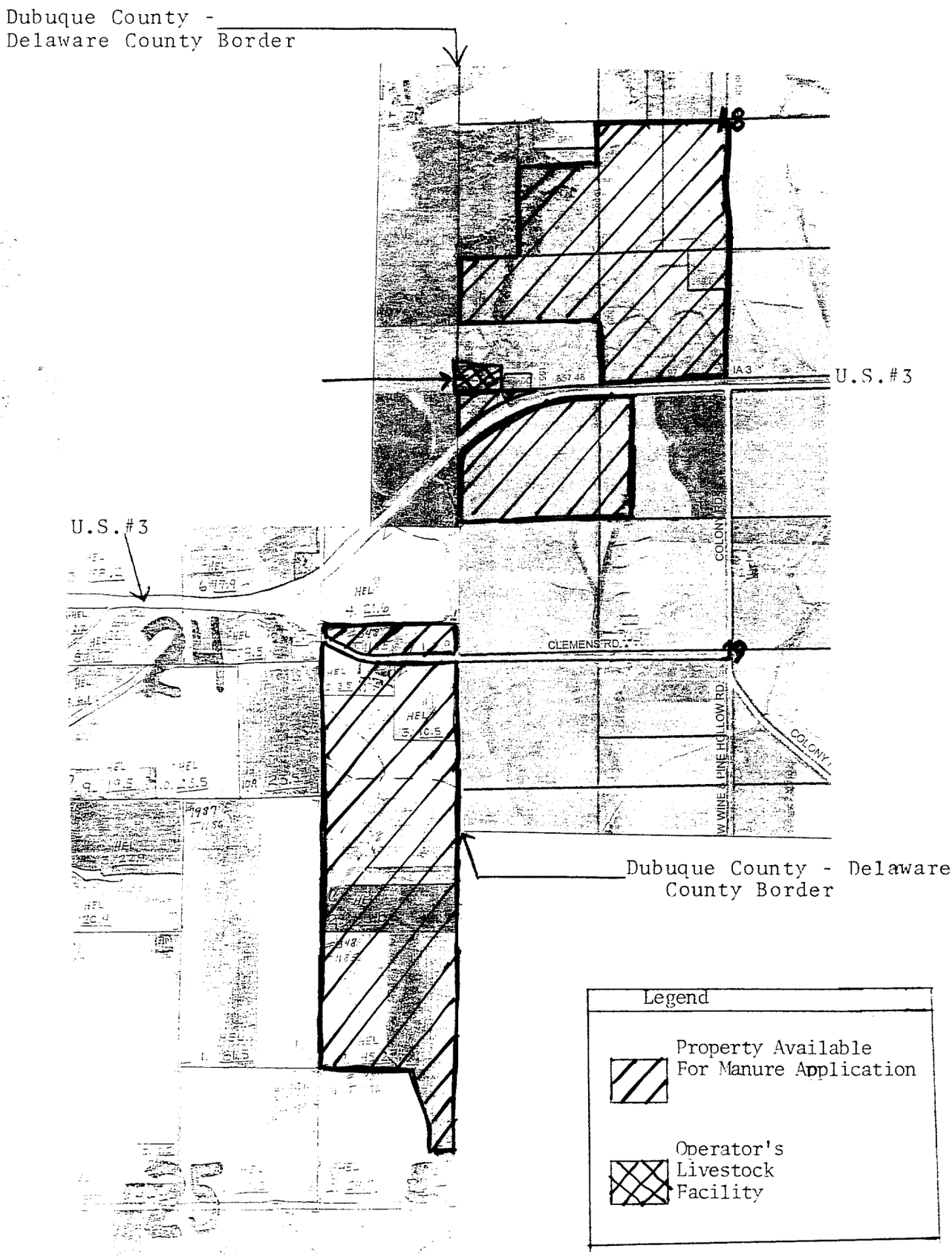

Dubuque County - Delaware County Border
U.S.#3
U.S.#3
CLEMENS RD.
COLONY RD.
W. WINE & PINE HOLLOW RD.
COLONY L
Dubuque County - Delaware County Border
Legend
Property Available For Manure Application
Operator's Livestock Facility

EXHIBIT "A"