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Document 2011 2313 Type 06 006 Pages 3
Date 7/21/2011 Time 9:46:47AM
Rec Amt $17.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

PREPARED BY-RETURN TO: Matthew J. Hektoen, Simmons Perrine Moyer Bergman PLC, 115 3rd Street SE - Suite 1200, Cedar Rapids, IA 52401, (319) 366-7641

110-51

WELL AGREEMENT AND EASEMENT

THIS AGREEMENT is made July 15, 2011, by Crowley Farms, Inc. ("Crowley")

RECITALS

A. Crowley own the following described real estate located north of Linn Delaware Road, in Delaware County, Iowa and legally described as:

The W ½ of the SE ¼ and the SE ¼ SE ¼ of Section 36, Township 87 North, Range 5 West of the 5th P.M.
("Tract 1").

B. Crowley is also the titleholder of real estate located south of Linn Delaware Road, in Linn County, Iowa and legally described as follows:.

Lot 1, Crowley Farms First Addition to Linn County, Iowa
("Tract 2").

C. There is a well and pump located south of the single family residence located in the SE corner of Tract 1 that provides water to the residence on Tract 1.

D. Crowley has installed a pipe from the well located on Tract 1 for the purpose of providing water to the residence located on Tract 2.

NOW, THEREFORE, the parties mutually agree as follows:

1. **Grant of Easement**. Crowley grants and conveys to the titleholder of Tract 2 and their successors and assigns a permanent easement to maintain, repair and reconstruct the water line running from the well on Tract 1 to the southerly boundary of Tract 1. The easement area is more particularly described as shown on the Final Plat for Crowley Farms First Addition to Linn County, Iowa, a copy of which is attached hereto and incorporated herein as Exhibit "A" ("Easement Area"). Crowley also grants and conveys to the titleholder of Tract 2 and their successors and assigns an easement for ingress and egress over and upon the easement area for the sole purpose of maintaining, repairing and reconstructing the well and pump. The titleholders of Tract 1 and their successors and assigns and the titleholders of Tract 2 and their successors and assigns, shall use the well for the purpose of providing water to the single family

residences located on Tract 1 and Tract 2.

2. **Maintenance, Repair and Replacement**. The titleholders of Tract 2 and their respective successors and assigns, at their expense, shall be solely responsible for repairing, maintaining and replacing the water pipe running from the well to the residence on Tract 2. The titleholders of Tract 1 and their respective successors and assigns, at their expense, shall be responsible for maintaining, repairing and replacing all other pipes that run from the well on Tract 1. The titleholders of Tract 1 and their respective successors and assigns and the titleholders of Tract 2 and their respective successors and assigns shall equally share the cost of maintenance, repair, reconstruction and replacement of the well and pump. However, if any party intentionally or willfully damages the well or pump, that party shall be solely responsible for all of the costs of repair, reconstruction and replacement caused by the damage.

3. **Electricity**. The titleholders of Tract 1 and their respective successors and assigns and the titleholder of Tract 2 and their respective successors and assigns shall share equally in the cost for electricity to operate the pump unless the titleholder of Tract 1 use the well primarily for non-residential purposes in which case the titleholder of Tract 1 and their successors and assign shall bear the entire cost of electricity to operate the pump.

4. **Conservation**. Both parties shall take appropriate steps to conserve the use of water and each party shall limit their use of water to their respective needs.

5. **Improvements on the Easement**. The titleholders of Tract 1 and their respective successors and assigns shall not erect any buildings or other improvements or structures, except a driveway, over, upon or under the Easement Area which would in any manner interfere with the construction, reconstruction, repair or maintenance of the water line running from the well to the southerly boundary of Tract 1.

6. **Arbitration**. If the titleholders of Tract 1 and the titleholders of Tract 2 are unable to reach a mutual accord on the repair, maintenance or replacement of the well, pump and pressure system, or the cost of electricity, then the owner of each parcel shall appoint one arbitrator and the two arbitrators shall agree upon the decision. In the event the two arbitrators cannot agree, they shall select a third who shall be a person who has substantial experience in drilling wells or providing service to well pumps. The three arbitrators when duly appointed shall inspect the well and pump and hear the evidence submitted by the property owners to enable them to make a fair settlement of all issues in arbitration. Once a decision is reached, that decision shall be final and binding upon the titleholders of Tract 1 and the titleholders of Tract 2. The owners of each parcel of real estate shall appoint their respective arbitrator within five days after it is determined that they are unable to agree on a particular issue relating to this agreement. Thereafter, the arbitrators shall render their decision within five business days after their appointment.

7. **Termination**. This agreement shall terminate upon the titleholders of Tract 2 and their successors and assigns receiving their water from a source other than the well on Tract 1, which would include but not be limited to drilling their own well or receiving piped water from a water district.

8. **Effect of This Agreement**. This agreement supercedes all prior agreements and understanding between the parties relating to the subject matter of this agreement. This agreement binds and benefits the parties and their successors-in-interest, heirs, beneficiaries, legal representatives and assigns.

9. **Non-Waiver**. The parties failure to enforce, at any time or for any period of time, any provision of this agreement or to exercise any right or remedy, does not constitute a waiver of such provision, right or remedy to prevent such party from later enforcing any or all provisions and exercising any or all rights and remedies under this agreement. The election of any right or remedy does not constitute an election or prevention of the exercise of any other rights or remedies.

10. **Notice**. Unless otherwise expressly provided, any notice, demand, request, consent, approval or communication that a party desires or is required to be given to the other party must be in writing and either personally served or sent by prepaid, certified mail, addressed to the other party at his or her last known address. The mailed notice is deemed given two days after it is deposited in the United States mail properly addressed with postage prepaid.

11. **Effect of This Agreement**. This agreement shall run with the land and be binding upon the heirs, personal representatives, successors and assigns of the parties.

CROWLEY FARMS, INC.

Harold Crowley

By: Harold J. Crowley, President

STATE OF IOWA)
) ss:
COUNTY OF Linn)

This instrument was acknowledged before me on July 15, 2011, by Harold J. Crowley, as President of Crowley Farms, Inc.

Philip D. Brooks

NOTARY PUBLIC -STATE OF IOWA

PHILIP D. BROOKS
COMMISSION NO. 107505
MY COMMISSION EXPIRES
August 24, 2013