ENV.
Klostermann Brothers
2998 197th St
Earlville, IA 52041

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Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Prepared by & Return to: George Davis, P.O. Box 304, Dyersville, Iowa 52040-0304 Phone: 563-875-9112

# WAIVER OF REQUIRED SETBACK DISTANCE FOR LIVESTOCK CONFINEMENT BUILDING

THIS AGREEMENT is made this 8th day of July, 2016, between Rahe Family, Inc. whose address is 1542 280th Avenue, Earlville, Iowa 52041 and who is referred to in this Agreement as Grantor, and Klostermann Bros, Inc., whose address is 2998 197th Street, Earlville, Iowa 52041, and who is referred to in this Agreement as Grantee.

**Recitals**

1. Ownership of real estate.

a. Grantors are the owners of real estate located in Delaware County, Iowa, and legally described as:

PARCEL 1: The Northwest Quarter (NW ¼) of Section 31, Township 90 North, Range 3 West of the 5th P.M., Delaware County, Iowa, subject to roadways and easements of record

PARCEL 2: The Southwest Quarter (SW ¼) of Section 31, Township 90 North, Range 3 West of the 5th P.M., Delaware County, Iowa, subject to roadways and easements of record

b. Grantees are in the process of purchasing a 2 acre parcel located in Parcel 1, along 155th Street, from the Grantors for purposes of building a 2480 head swine finishing facility.

2. Grantees, Klostermann Bros, Inc., plan to construct a 2480 head Swine Finishing Facility building with a concrete manure storage pit located beneath the building (covered formed manure storage structures) on Property 1(b) above. Pursuant to Iowa Code §459.202(1)(2013), a separation distance of 1250 feet is required between the covered formed manure storage structures and the undersigned's residences.

3. The Iowa Administrative Code currently requires a setback of 1,250 feet between the Livestock Confinement and an occupied residence in an unincorporated area.

4. Grantees desire to construct the Livestock Confinement at a distance of not less than

700 feet from one of the Grantors' occupied residences and 900 feet from another of the Grantors' occupied residences.

**Terms**

In consideration of the mutual promises, warranties and covenants contained in this Agreement, and for good and valuable consideration sufficiently acknowledged, the Grantor and the Grantee agree as follows:

1) Grantor consents and acquiesces to the activities conducted on Grantee's property, the construction and operation of a Swine Facility and therefore covenants for themselves, and for Grantor's successors, heirs and assigns (as a restrictive covenant running with the land) to not make any claim or assert any cause of action against the Grantee or Grantee's successors, heirs and assigns for construction of a Swine Facility or its operation, including, without limitation, causes of action or claims for nuisance, trespass, easement, or any other legal or equitable theory. Grantor further waives the enforcement of any county, state or federal regulation or law regarding the emission of any odors, gases, vapors or other airborne pollutants from the Swine Facility.

2) In addition and without limitation of the foregoing, Grantor grants to Grantee and Grantee's successors, heirs and assigns, a perpetual easement (as an easement appurtenant running with the land) for the Swine Facility (as currently proposed as provided herein), on and over the Grantor's real estate for use by the Swine Facility to emit odors or other gases or vapors produced by the Swine Facility.

3) Pursuant to Iowa Code §459.205(2)(2013), the undersigned as titleholders to the land where the residence is located hereby waive the enforcement of this separation distance requirement of 1,250 feet to be replaced with a 700 foot separation distance requirement between the Grantors' residences and the covered swine facility with formed manure storage structure. This waiver shall apply only to the facilities described in this agreement, shall be perpetual and shall run with the land.

4) Liability Insurance. Grantees agree to obtain and maintain liability insurance to insure the Livestock Confinement.

5) Arbitration. If any differences shall arise between the parties as to their rights or liabilities under this Agreement the difference shall be determined by a panel of three arbitrators. One arbitrator shall be selected by each of the parties. The two arbitrators shall select a third. The decision of the majority of the arbitrators shall be final as to the contents and interpretation of this Agreement and as to the proper mode of carrying the decision into effect.

Agreed to and signed this 8th day of July 2016, by Grantors.

RAHE FAMILY, INC.

BY: _____
Steve Rahe, Vice-President

STATE OF IOWA, COUNTY OF DUBUQUE

This record was acknowledged before me on the 8th day of July, 2016, by Steve Rahe as Vice-President of Rahe Family, Inc.

_____
Notary Public in and for the State of Iowa

GEORGE A. DAVIS
Commission Number 199715
My Commission Expires
December 17, 2016

Agreed to and signed this 8th day of July, 2016, by Grantees.

KLOSTERMANN BROS, INC.

BY: _____
Bruce Klostermann, President

STATE OF IOWA, COUNTY OF DUBUQUE

This record was acknowledged before me on the 8th day of July, 2016, by Bruce Klostermann, President of Klostermann Bros, Inc.

_____
Notary Public in and for the State of Iowa

GEORGE A. DAVIS
Commission Number 199715
My Commission Expires
December 17, 2016