

>

LOUISA COUNTY
LEANNE BLACK

Fee Book 2013-1641

04/24/2013 @09:38AM

AGR. AGREEMENT

Book: Page:

Total Fees: \$37.00

Pages: 7

Type of Document: Settlement Agreement and Addendum to Manure Application Easements

Eldon McAfee 321 E. Walnut St., Ste. 200, Des Moines, IA 50309

Preparer Information: (Individual's Name, Street Address, City, Zip, Phone)

Taxpayer Information: (Individual/Company Name, Street Address, City, Zip, Phone)

Eldon McAfee 321 E. Walnut St., Ste. 200, Des Moines, IA 50309

Return Document to: (Individual/Company Name, Street Address, City, Zip, Phone)

Grantors: Marvin M. Jorgensen

Grantees: LDR Real Estate, LLP

Legal Description:

See Attached Exhibit "A"

Book & Page Reference:

Book 658, Page 335

Book 660, Page 138

Book 662, Page 238



A parcel of land located in the Southeast Quarter of the Southeast Quarter of Section 3, Township 75 North, Range 4 West of the 5th Principal Meridian, Louisa County, Iowa, more particularly described as follows: Beginning at the Northeast corner of the Southeast Quarter of the Southeast Quarter of said Section 3 (found iron pin in concrete monument), thence South 00°00'00" West, 250.00 feet along the east line of the Southeast Quarter of said Section 3 and the centerline of "P" Avenue; thence South 89°59'17" West, 608.00 feet; thence North 00°00'00" East, 250.00 feet to a point lying on the North line of the Southeast Quarter of the Southeast Quarter of said Section 3; thence North 89°59'17" East, 608.00 feet to the Point of Beginning. Said parcel of land containing 3.489 acres more or less, including 0.189 acres more or less of county road easement.

A parcel of land located in the Northwest Quarter of the Northwest Quarter of Section 7, Township 75 North, Range 3 West of the 5th Principal Meridian, Louisa County, Iowa, more particularly described as follows: Commencing at the Northwest Corner of the Northwest Quarter of said Section 7 (found stone in place); thence South 01°58'33" East (assumed bearing), 992.47 feet along the West line of the Northwest Quarter of said Section 7 to the Point of Beginning; thence South 90°00'00" East, 583.63 feet; thence South 0°00'00" West, 250.00 feet; thence North 90°00'00" West, 575.00 feet to the West line of the Northwest Quarter of said Section 7; thence North 01°58'33" West, 250.15 feet along said West line to the Point of Beginning. Said Parcel "H" contains 3.325 acres more or less.

A parcel of land located in the Southwest Quarter of the Southeast Quarter and part of the Southeast Quarter of the Southeast Quarter all in Section 7, Township 75 North, Range 3 West of the 5th Principal Meridian, Louisa County, Iowa, more particularly described as follows: Commencing at the Southwest corner of the Southeast Quarter of said Section 7 (found iron pin in place); thence South 89°58'24" East, 1,116.35 feet along the south line of said Southeast Quarter of Section 7 to the Point of Beginning of Parcel "I"; thence North 00°01'36" East, 283.00 feet; thence South 89°58'24" East, 625.00 feet; thence South 00°01'36" West, 283.00 feet to a point lying on the South line of the Southeast Quarter of said Section 7; thence North 89°58'24" West, 625.00 feet along said South line to the Point of Beginning of said Parcel "I". Said parcel contains 4.060 acres including 0.473 acres of county road easement.

EXHIBIT "A"

SETTLEMENT AGREEMENT AND ADDENDUM TO MANURE APPLICATION EASEMENTS

THIS SETTLEMENT AGREEMENT AND ADDENDUM TO MANURE APPLICATION EASEMENTS ("Agreement") is made and entered into by, LDR Real Estate, LLP, Lilienthal Enterprises Ltd, and Rock Solid Ag, Inc., Iowa companies and Plaintiffs in the Lawsuit ("LDR"), and Marvin M. Jorgensen, Defendant in the Lawsuit ("Jorgensen")(collectively, the "Parties").

LDR filed a lawsuit in the District Court of Iowa in and for Louisa County identified as LALA 018646 (the "Lawsuit") and the Parties now desire to conclude this Lawsuit, all claims related to the Lawsuit and all claims between the Parties.

In the Lawsuit, LDR sought a declaratory judgment against Jorgensen with regard to three different Manure Application Easements ("Easements") for land in Louisa County entered into on April 6, 2006, by LDR Real Estate, LLP as Grantee and Jorgensen as Grantor. The Easements are recorded with the Louisa County Recorder at Book 658, Page 335; Book 660, Page 138; and Book 662, Page 238; respectively. In settling all claims between the Parties, the Parties are amending the Easements as set out in this Agreement.

In consideration of the premises and mutual promises contained in this Agreement, it is agreed as follows:

1. No Admission. This Agreement is executed as a compromise settlement of a disputed claim and shall not in any way be construed as an admission of any wrongful act by any party to this Agreement.

2. Consideration. As consideration for the resolution of the Lawsuit, LDR and Jorgensen agree as follows:

- a. Calculation of CFCE Pursuant to the Easements. Under section 8 of the Easements, the Parties are to calculate the Commercial Fertilizer Cost Equivalent (CFCE) of the manure applied from LDR's hog operation on Jorgensen's land each year. In section 8 of the Easements, the following sentence shall be deleted:

"Also, each year a calculation of the Commercial Fertilizer Cost Equivalent (CFCE) of the manure will be done based on the average price of the three closest commercial fertilizer providers to the Facility."

In place of this deleted sentence, the calculation of the CFCE for nitrogen, phosphorus, and potassium shall be determined by using the price that Jorgensen, any subsequent land owner, or tenant of the land, can negotiate with Eldon C. Stutsman, Inc. of Hills, Iowa, or a fertilizer seller mutually agreed upon by the Parties. For nitrogen, the negotiated price shall be for 32% UAN and anhydrous ammonia. The price for nitrogen for determining the CFCE shall be one half of the combined

negotiated price of 32% UAN and anhydrous ammonia. The negotiated price for nitrogen, phosphorus, and potassium shall be the price Eldon C. Stutsman, Inc., or any other fertilizer seller mutually agreed upon by the Parties, would charge to deliver on the requested date of delivery to any of LDR's or successor's or assign's other land. The negotiated price shall not include fertilizer application costs. The value of nitrogen, phosphorus and potassium for purposes of determining the CFCE shall be determined at the time that the manure will be applied. Jorgensen, or his tenant, shall provide the price for nitrogen, phosphorus and potassium for purposes of the CFCE no later seven days after manure application.

- b. Maximum Cost to Jorgensen. In no event will the manure application costs plus fifty percent (50%) of the CFCE exceed 100% of the applied cost per acre that it would cost to purchase the commercial fertilizer equivalent, less \$1.00 per acre for the retail fertilizer application costs.
- c. Custom Application Customer List. For each year that LDR applies manure on Jorgensen's land under the Easements LDR shall provide Jorgensen with a complete list of customers for whom they custom apply manure so that Jorgensen, upon three day advance notice to LDR, of the customer or customers to be contacted, may contact any customer on the list to verify that the manure application rate being charged Jorgensen is equivalent to rates charged LDR's other customers. Jorgensen shall not be charged more than the rate being charged to LDR's other customers. Jorgensen shall keep information contained in the customer list confidential and shall only use it for the purpose of verifying the application rates charged to Jorgensen.
- d. Funds Held in Trust Account. Money that was being held in the Beving, Swanson & Forrest, P.C. trust account for calendar years 2010, 2011 and 2012 has been allocated based on the method for determining CFCE in Paragraph 2(a) of this agreement using the pricing information for nitrogen, phosphorus and potassium contained in the trial exhibits submitted by and exchanged between the Parties.
- e. Future Payments. All future funds payable to LDR for the CFCE and manure application charges shall be paid to LDR no later than thirty days after Jorgensen receives an invoice from LDR.

LDR accepts this Agreement as a full, final and complete settlement of and release for any claims LDR may have against Jorgensen, known or unknown, from the past up to the date of the Agreement, relating to the claims that were the subject of the Lawsuit. LDR further agrees to unconditionally release Jorgensen for any act or occurrence, known or unknown, from the past and up to the date of this Agreement, including those claims LDR alleged or could have alleged in the Lawsuit.

Jorgensen accepts this Agreement as a full, final and complete settlement of and release for any claims he may have against LDR, known or unknown, from the past up to the date of the Agreement, relating to the claims that were the subject of the Lawsuit. Jorgensen further agrees to unconditionally release LDR for any act or occurrence, known or unknown, from the past and up to the date of this Agreement, including those claims Jorgensen alleged or could have alleged in the Lawsuit.

3. Dismissal. Upon the execution of this Agreement by the Parties, LDR will file a dismissal with prejudice of the Lawsuit and LDR's counsel shall receipt for all court costs advanced and LDR and Jorgensen will equally share remaining court costs.

4. Binding Effect. This Agreement shall run with the Parties' real estate as described in the Easements and this Agreement shall be binding upon and inure to the benefit of LDR and Jorgensen, and their successors in title.

5. Reliance. Each party signatory hereto represents and certifies that such party has carefully read and fully understands all of the provisions and effects of this Agreement, and that such party is voluntarily entering into this Agreement solely in reliance upon their own knowledge, belief and judgment and that no other party, nor any of the their agents, representatives or attorneys, have made any representations concerning the terms or effects of this Agreement other than those contained herein.

6. No Assignment. LDR represents and covenants that each has not heretofore assigned, transferred, or purported to assign or transfer, to any person or entity, any claim or portion thereof or interest therein, which is the subject of the Lawsuit.

7. Ratification. Except as modified by this Agreement, the Easements are ratified and affirmed and remain in full force and effect.

8. Governing Law. This Agreement is made and entered into in the State of Iowa, and shall in all respects be interpreted, enforced and governed under the laws of said State. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

9. Severability. Should any provision or portion of any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

10. Entire Agreement. This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior agreements or understandings between the Parties hereto pertaining to the subject matter hereof.

11. Legal Representation. LDR acknowledges that they are represented by attorney Eric Knoernschild, Stanley, Lande and Hunter of Muscatine, Iowa, in connection with this

matter. Jorgensen acknowledges that he is represented by Eldon McAfee, Beving, Swanson & Forrest, P.C. of Des Moines, Iowa in connection with this matter. Each party acknowledges that such party has had an opportunity to discuss this Agreement with their legal counsel, that they have carefully read and fully understand all of the provisions of this Agreement, and that they are freely and voluntarily entering into this Agreement after having an opportunity to be fully advised by their legal counsel of their rights in this matter and of the scope and effect of this Agreement.

LDR Real Estate LLP

By: Robert Lilienthal
Robert Lilienthal
Title: V Pres

Lilianthal Enterprises, Ltd.

By: Robert Lilienthal
Robert A. Lilienthal
Title: Pres

Rock Solid Ag, Inc.

By: Chad M Rockow
Chad Rockow
Title: President

Marvin M. Jorgensen
Marvin M. Jorgensen

STATE OF IOWA)
)ss
COUNTY OF Audubon)

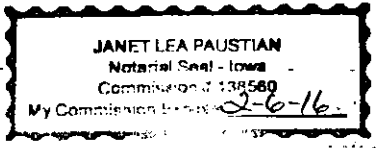
On this 6th day of March, 2013, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Marvin M. Jorgensen, to me personally known to be the identical person named in and who executed the within and foregoing instrument, and acknowledges that he executed the same as his voluntary act and deed.



Alice M. Hemmingsen
_____, Notary Public

STATE OF IOWA)
)ss
COUNTY OF Cedar)

On this 4th day of ~~March~~ ^{April}, 2013, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Robert A. Lilienthal, to me personally known, who being by me duly sworn, a Partner in LDR Real Estate, LLP; that no seal has been procured by said company; that said instrument was signed on behalf of said company by authority of its Board of Directors; and that the said Partner acknowledged the execution of said instrument to be the voluntary act and deed of said company, by it and by him voluntarily executed.



Janet Lea Paustian, Notary Public

STATE OF IOWA)
)ss
COUNTY OF Muscatine)

On this 4th day of ~~March~~ ^{April}, 2013, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Chad Rockow, to me personally known, who being by me duly sworn, a Partner in LDR Real Estate, LLP; that no seal has been procured by said company; that said instrument was signed on behalf of said company by authority of its Board of Directors; and that the said Partner acknowledged the execution of said instrument to be the voluntary act and deed of said company, by it and by him voluntarily executed.



Lora L Knouse, Notary Public

Attorneys' Acknowledgement

The attorneys for the Parties as designated below hereby execute this Agreement, not as Parties hereto, but only to approve the same as to form and substance on behalf of their respective clients.

[Signature]
Eric Knoernschild
Attorney for LDR

[Signature]
Eldon McAfee
Attorney for Jorgensen