

DAIRY LEASE AND OPTIONS TO PURCHASE
("LEASE")

Basic Terms

Date: This Lease is being executed on May 17, 2023. Notwithstanding the foregoing, the Lease shall be effective as of April 7, 2023, when Tenant took possession of the Real Property and Personal Property described herein. Monthly Rent due and owing for April and May, 2023, has been paid by Tenant to Landlord.

Landlord: Klaas Talsma, a single person, and
Anastasia Thiele, a single person, and
Two Sisters Dairy, LLC, a Texas limited liability company

as their interests may appear

Landlord's Address: Klaas Talsma and Two Sisters Dairy, LLC
7469 CR 209
Hico, Texas 76457
Erath County

Anastasia Thiele
717 S. Palmway
Lake Worth Beach, Florida 33460
Palm Beach County

Tenant: 3 T Martins Farm LLC,
an Idaho limited liability company

Tenant's Address: 3105 Mesquite Rd.
Dalhart, Texas 79022-7635
Dallam County

Guarantor: Tony Martins

Guarantor's Address: 3105 Mesquite Rd.
Dalhart, Texas 79022-7635
Dallam County

Premises: The following Real Property and Personal Property:

1. **Real Property:**
 - A. *Option 1 Land:* Surface only, including water rights, if any, of the following tracts, including Improvements thereon:

934.143 acres, more or less, out of various surveys in Erath County, Texas, and being more particularly described on Exhibit A, attached hereto and made a part hereof for all purposes.
 - B. *Option 2 Land:* Surface only, including water rights, if any, of the following tracts, including Improvements thereon:

502.035 acres, more or less, out of various surveys in Erath County, Texas, and being more particularly described on Exhibit B, attached hereto and made a part hereof for all purposes.
2. **Personal Property:**

All milking equipment, irrigation equipment, and livestock handling equipment, and manufactured homes located on the Real Property and owned by Seller, as their interests may appear.

Milking equipment will include without limitation scales, milk silos, motors, hoppers, augers, pipelines, couplers, compressors, feed drops, cow lockups, corral shades, stalls, stands, tubes, pumps, tanks, valves, washers, milk receivers, dispensers, controls, filters, take-offs, pulsators, pulsations controllers, claws, automatic detachers, chillers, mounting material, in ground wash heads, runner parlor mats, power generators, sanitation equipment and any other presently existing components of the milking parlors owned by Seller, as their interests may appear, and located on the Real Property.

Irrigation equipment will include without limitation wells, above- and underground pipeline, main lines, hand lines, wheel lines, pivots, pumps, motors and all allied equipments such as switch panels, pivot controls, wiring, shafting, openers, tubing, bowls, suction pipe, cones, valve openers, reducers, end plugs, risers, stems, sprinkler heads, hoses, nozzles and any other presently existing components of the irrigation system owned by Seller, as their interests may appear, and located on the Real Property.

Livestock handling equipment will include without limitation corrals, cow stands, lockups, feed alleys, water troughs, wastewater management systems, loading chutes and windbreaks and any other presently existing components of the livestock handling system owned by Seller, as their interests may appear, and located on the Real Property.

The Personal Property specifically excludes rolling stock and feed.

Monthly Rent: Except as otherwise provided in this Lease:
a. for the period beginning April 7, 2023, through December 31, 2023: the sum of \$50,000 per month
b. for the period beginning January 1, 2024, through December 31, 2024: the sum of \$70,000 per month

Commencement Date: April 7, 2023

Termination Date: midnight, December 31, 2024, unless sooner terminated as provided herein.

Permitted Use: Commercial dairy and farming operation only

Definitions

"Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

"Applicable Law" means, collectively, all applicable federal, state and local statutes, ordinances, codes, rules, regulations, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority having jurisdiction over the Premises, Tenant, and Tenant's business, and includes "Hazardous Materials Laws" as defined below, all provisions of the Americans With Disabilities Act, the Occupational Safety and Health Act ("OSHA"), Resource Conservation and Recovery Act of 1976, Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the rules and regulations of TCEQ, Environmental Protection Agency ("EPA"), Texas Department of Health ("TDH"), United States Department of Agriculture, Texas Agriculture Commissioner, Middle Trinity Groundwater Conservation District, and County of Erath.

"Hazardous Material" means any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including, without limitation, petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and those materials, substances and/or wastes, including infectious waste, medical waste, and potentially infectious biomedical waste, which are or later become regulated by any local governmental or regulatory authority, the State of Texas or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances," "extremely hazardous waste," or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1989, as amended, 42 U.S.C. Section 9601, et seq; the Hazardous Materials Transportation Act, 49 U.S. C. Section 1801, et seq; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq; all corresponding and related State of Texas and local statutes, ordinances and regulations, including without limitation, any dealing with underground storage tanks; and in any other environmental law, regulation or ordinance now existing or hereinafter enacted (collectively, "Hazardous Materials Laws") and includes any substance that is or becomes regulated by any federal, state, or local governmental authority.

"Hazardous Material Laws" means any federal, state, or local state or local statute, ordinance, order, rule, or regulation of any type relating to the storage, handling, use, disposal of any Hazardous Material, the contamination of the environment, or removal of such contamination, including but not limited to, the Clean Water Act, Comprehensive Environmental Response, Compensation, and Liability Act, and Resource Conservation and Recovery Act, the Hazardous Material Transportation Act, all as amended from time to time.

"Injury" means (a) harm to or impairment or loss of property or its use or (b) harm to or death of a person.

"Lienholders" include, but are not necessarily limited to, AgTexas, FLCA, Central Texas Farm Credit, ACA, and O and B Farms, Inc., holders of deed of trust liens covering the Real Property or parts thereof.

"Occupant" means those other than Tenant living on the Real Property.

"Rent" means Monthly Rent plus any other amounts of money due Landlord by Tenant.

"TCEQ" means Texas Commission on Environmental Quality.

"TALT" means the Texas Agricultural Land Trust, a Texas non-profit organization, which promotes the conservation of open space, wildlife habitats, and natural resources on Texas' private working lands through conservation easements and ecosystem services.

Clauses and Covenants

A. Tenant agrees to -

1. Lease the Premises for the entire term of the Lease beginning on the Commencement Date and ending on the Termination Date.

2. Accept the Premises in their present condition "AS IS," the Option 1 Land and Personal Property thereon being a Grade A dairy facility and the Option 2 Land and Personal Property thereon being farming and grazing land, all currently suitable for Tenant's intended Permitted Use, and subject to the terms of this Lease.

3. Obey all Applicable Law.

4. Comply and maintain in good standing, at Tenant's expense, using the best highest standards of animal husbandry in dairying, the Concentrated Animal Feeding Operation General Permit No. WQ0003190000, issued on September 19, 2017, for 9150 total dairy cattle of which 5500 are milking dairy cattle (the "Permit"); pay prior to delinquency all maintenance fees required under the Permit and by TCEQ; keep the Option 1 Land scraped and cleaned of manure and dispose of liquid manure, wastewater, and dry manure produced in the dairy operation and maintain the lagoons on the Premises in compliance with the Permit and Applicable Law; and have no more cattle at any one time on the Premises as are allowed under the Permit and any renewals thereof and under all Applicable Law, without Landlord's written permission and without Landlord obtaining the appropriate permit issued by the applicable governmental and regulatory authorities. A copy of the Permit is attached hereto as Exhibit C and made a part hereof for all purposes. Tenant acknowledges the review of the Permit and associated documentation relating thereto prior to or on the date of this Lease.

5. Cultivate in a farmer-like manner the Option 2 Land, employing the best methods of farming customarily practiced on crops in the area, and use the highest standards of animal husbandry in grazing the Option 2 Land.

6. Pay the Monthly Rent in advance at Landlord's Address by check payable to "Klaas Talsma and Anastasia Thiele" (and pay a fee of \$30.00 for each returned check), or at such other place and/or manner as Landlord may designate, the first Monthly Rent payable on April 7, 2023, with the second and all other Monthly Rent payable on the 5th day of each month thereafter beginning May 5, 2023; pay the Option Fee under section E.29 below on the execution of this Lease.

7. Pay a late charge of 5% of any Rent not received by Landlord by the 10th day after it is due.

8. Maintain complete and accurate records of all cattle kept on the Premises and allow Landlord to inspect such records upon Landlord's request.

9. Pay for all labor, fuel, and utility services, including, but not limited to, electricity, gas, water, telephone, and garbage services, for Tenant's operations on the Real Property; and pay for the annual fees and all costs relating to the Permit, including costs for making real property improvements to obtain the renewal, renewal and engineering fees, and costs for preparation of the renewal applications.

10. Allow Landlord to enter the Real Property to perform Landlord's obligations; inspect the Premises; inspect the number of cattle on the Real Property; review Tenant's obligations under this Lease; review records relating to the Premises, the Permit, cattle numbers, and manure and wastewater disposal; review Applicable Law compliance or noncompliance; remove Landlord's property; show the Premises to prospective purchasers, tenants, and/or lenders, TALT representatives, and to Lienholders; and for any other purpose the Landlord deems necessary, in Landlord's sole discretion.

11. Report to Landlord, within 24 hours of its occurrence, any damage to the Premises where such damage appears to exceed \$1,000.00; repair and maintain the Premises in good repair and in a safe, sanitary and clean condition; remove or cause to be removed all garbage and refuse from the Premises (for purposes of garbage collection, Tenant agrees to place and maintain on the Real Property, at Tenant's expense, substantial size and numbers of dumpsters or large roll-off containers); keep the Real Property mowed and clean of weeds; make such repairs, replacements, and improvements to the Premises, after approval by Landlord, which may be required by Applicable Law and applicable authorities to operate a Grade A dairy in Erath County, Texas, under the Permit; remove, at Tenant's cost, all alterations, additions, or improvements installed or made by Tenant if requested to be removed by Landlord and all other property placed by Tenant on the Premises, on or before the Termination Date, and repair, at Tenant's cost, any damage to the Premises caused by such removal. In the event Tenant fails to perform the obligation to repair, replace,

maintain, and remove as set forth in this Lease and after a ten (10) day notice from Landlord of the need for such repair, replacement, removal, or maintenance (except for emergency situations as deemed by Landlord, when no notice shall be required), Landlord may make such repairs or replacements or perform such maintenance or removal, or cause such repairs and replacements to be made or maintenance or removal to be performed. Tenant shall reimburse Landlord immediately for all amounts incurred by Landlord for such repairs, replacements, removal and/or maintenance, with interest at the rate of ten percent (10%) per annum from the date of payment by Landlord until reimbursement by Tenant. Tenant agrees to cause all repairs, replacements, removal, and maintenance to be done in a good and workmanlike manner and by trained, qualified, licensed or bonded, and manufactured-approved, and agrees to use materials of at least the same quality and size as presently in or on the Premises. Tenant shall acquire no right, title, or interest in or to the Premises or replacements thereof. This Section shall survive the termination of this Lease.

12. (Unless termination is due to Tenant's purchase of the Premises) Move off of the Real Property at termination, clean and scrape the Real Property; return all keys to the Premises to Landlord at termination; and surrender possession of the Premises in good repair, working order, and clean, safe and sanitary condition, normal wear excepted, and in such manner that the Option 1 Land on the Termination Date can be immediately occupied, permitted, and operated as a Grade A dairy facility under the Permit and that the Option 2 Land on the Termination Date can be immediately occupied and operated for farming and grazing purposes, all subject to Section E.1. of this Lease.

13. Use the areas designated by the Landlord for ingress and egress and parking; and place all used oil in appropriate containers and, when full, deliver, or cause to be delivered (through reputable pickup service) to a certified recycling center for disposal in accordance with Applicable Law.

14. RELEASE AND INDEMNIFY, DEFEND, AND HOLD LANDLORD, LIENHOLDERS, AND THEIR RESPECTIVE AGENTS, HEIRS, SUCCESSORS, AND ASSIGNS HARMLESS FROM ANY INJURY TO PROPERTY OR INJURY TO OR DEATH OF ANY PERSON, ON OR ABOUT THE PREMISES, AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS, OCCURRING IN ANY PORTION OF THE PREMISES IF CAUSED, IN WHOLE OR IN PART, BY THE ACTS OR OMISSIONS OF TENANT, ITS AGENTS, SUCCESSORS, AND ASSIGNS, OR THOSE ACTING ON TENANT'S BEHALF, INCLUDING IN WHOLE OR IN PART BY THEIR NEGLIGENT ACTS OR OMISSIONS OR ARISING FROM THE PRESENCE, DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS SUBSTANCES OR MATERIALS IN OR ON THE PREMISES. THIS INDEMNITY IS INDEPENDENT OF TENANT'S INSURANCES, WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, WILL SURVIVE THE END OF THE TERM OF THIS LEASE. TENANT WAIVES ALL CLAIMS OR DEMANDS, EXCEPT AS OTHERWISE ALLOWED UNDER THIS LEASE, ON TENANT'S BEHALF AGAINST LANDLORD, AND LANDLORD SHALL NOT BE LIABLE FOR ANY SUCH LOSS, DAMAGE, PENALTY, OR INJURY OF ANY KIND OR CHARACTER DESCRIBED ABOVE. TENANT ALSO WAIVES ANY CLAIM FOR ABATEMENT OR REDUCTION OF RENT OR FOR ANY DAMAGES FOR INJURY OR INCONVENIENCE TO OR INTERFERENCE WITH TENANT'S BUSINESS, FOR ANY LOSS OF OCCUPANCY OR USE OF THE PREMISES, ANY LOSS, DAMAGE, PENALTY, OR INJURY CAUSED BY THE EXERCISE OF LANDLORD'S RIGHTS UNDER THIS LEASE, INCLUDING, BUT NOT LIMITED TO, SECTION A.10. AND C.1., BY ANY LIENHOLDER, LENDER, OR CREDITOR OF ITS RIGHTS AGAINST THE PREMISES OR ANY PART THEREOF OR ANY OF TENANT'S PERSONAL PROPERTY, AND FOR ANY OTHER LOSS OCCASIONED THEREBY. THE PROVISIONS OF THIS SECTION SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES TENANT MAY HAVE TO LANDLORD AT LAW, IN THIS LEASE, OR IN EQUITY. THIS RELEASE AND INDEMNITY IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF TEXAS.

15. Maintain, at Tenant's expense, the following insurance in form acceptable to Landlord: (a) commercial general liability insurance covering the Premises and the conduct of Tenant's business, endorsed to cover farm and ranch operations, naming the Landlord and Lienholders as "additional insured," on an occurrence basis, including contractual liability covering Tenant's operations within or about the Real Property, in the following amounts: \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate; (b) commercial property and casualty insurance covering the Premises, fixtures, and Leasehold improvements in and on the Premises for the replacement value and naming Landlord as "building Owner Loss Payable" and Lienholders as "additional insured," and (c) worker's compensation insurance in the minimum amount of \$1,000,000.00. Tenant shall maintain insurance required by this Lease with a company or companies licensed to do business in Texas with a Best's rating of "A" or better and indicated to be of sufficient size to qualify for Best's designation VI. acceptable to Landlord issued as a primary or excess policy (however, Tenant may carry the insurance under a blanket policy), that contain endorsements requiring at least 30 days' written notice from the insurance company to the parties and Lienholders, if any, before cancellation or change in the scope, coverage, or amount; deliver certificates of insurance to Landlord on the Commencement Date and thereafter when requested, and provide on the anniversary date of this Lease each year and when requested by Landlord proof of payment of all insurance required under this Lease. Tenant may, but is not required to, obtain and maintain, at Tenant's expense, insurance on Tenant's personal property. (NOTE: Landlord's insurance, if any, on the Premises does NOT include coverage for Tenant's personal property. Tenant will have no claims to any proceeds of any of Landlord's insurance policies.)

16. If any mechanic's or other liens are placed on the Premises or any improvements situated thereon, which are the result of Tenant or Tenant's Agent's actions or inactions, Tenant, at Tenant's expense, must either cause the lien to be promptly paid and removed, or, if Tenant in good faith wishes to contest the lien, take timely action to do so. If Tenant contests the lien, Tenant will indemnify Landlord and hold Landlord harmless from all liability for damages occasioned by the lien or the lien contest and will, in the event of a judgment of foreclosure on the lien, cause the lien to be discharged and removed before the judgment is executed. Notwithstanding the foregoing, if Tenant elects not to contest the lien, then Landlord may choose to pay for the costs of removal of any such lien or liens, and in such event,

Tenant shall promptly repay Landlord on rendition of notice together with interest at 10% per annum until repaid. This Section shall survive termination of this Lease.

17. Continuously and in good faith conduct on the entire Real Property the type of business for which the Premises is Leased in an efficient, safe, and reputable manner, and use Tenant's best efforts to operate Tenant's business for which the Premises are Leased at the highest reasonable efficiency, safety, and cleanliness.

18. Cooperate fully with Landlord in obtaining consents, approvals, inspections, and reviews which may be necessary or required by any governmental and/or regulatory agency and/or Lienholders and/or TALT.

19. Execute upon request of Landlord estoppel certificate(s) that states information requested by Landlord, including but not limited to, commencement and termination dates of the Lease, amendments to the Lease, and any other information relating to the status of this Lease requested by Landlord.

20. Store and dispose of all Hazardous Material in a manner that complies with all Applicable Law (Title to Hazardous Material will remain and be stored or disposed solely in Tenant's name); If Tenant or Tenant's Agents violated Applicable law or the Permit or this Lease and caused or permitted the presence of any Hazardous Materials on the Premises which resulted in contamination, damages to, or a lien on the Premises, Tenant agrees, at Tenant's expense, to either (a) pay the claim and remove the lien from the Premises, or (b) furnish either (i) a bond satisfactory to Landlord in the amount of the claim on which the lien is based, or (ii) other security satisfactory to Landlord in an amount sufficient to discharge the claim on which the lien is based.); promptly take any and all necessary actions, at Tenant's expense and after obtaining Landlord's written approval, promptly pay all cleaning costs necessary for compliance with Applicable Law, and return the Premises to the condition existing prior to the violation of Applicable Law. This Section shall survive termination of this Lease.

21. Provide to Landlord, within 7 days of receipt by Tenant, a complete copy of each written report received by and any notice of scheduled meetings with Tenant from any governmental or regulatory agency or from TALT with respect to any inspection, investigation, or similar TALT or governmental action relating to the Premises, including, but not limited to, reports from TCEQ, EPA, TDH, and OSHA. This Section shall survive termination of this Lease.

22. Report immediately to Landlord (a) any change in control of Tenant, (b) any outstanding or threatened claims, litigation, investigations, injunctions, orders, or other process or restrictions against or involving Tenant and the Premises, and (c) change in the Tenant's name, trade name, address or location.

B. Tenant agrees not to -

1. Create or permit a nuisance or interfere with any neighbor's use of its property; permit any waste; use the Premises in any way that is extra hazardous, would increase insurance premiums, or would void insurance on the Premises; unlawfully discriminate, hunt or fish on the Real Property or allow fishing or hunting on the Real Property.

2. Change Landlord's lock system, without Landlord's prior written consent and Tenant providing Landlord keys and access to the Premises at all times.

3. Except as provided in Section E.1. below, alter the Real Property, without Landlord's prior written consent.

4. Allow a lien to be placed on the Premises (except liens of the Lienholders); if such a lien is placed against the Premises or any improvements on the Real Property, Tenant's obligations relating thereto are set forth in Section A. 16. above.

5. Assign this Lease or sublease any portion of the Premises without Landlord's written consent. Notwithstanding the foregoing, Tenant may assign this Lease or sublease any portion of the Premises to one or more of its related and/or affiliated entities under the control of the Guarantor. Tenant must provide to Landlord written notice of any such assignment or sublease within 10 days of its occurrence and provide a copy of the lease or sublease with the notice.

6. Litter or leave trash or debris in, on or around the Premises; pile or burn any trash or debris on the Real Property, except in areas designated by Landlord and in accordance with Applicable Law.

7. Keep or maintain on the Real Property any domestic or wild animals, except dairy cattle, without the prior written consent of Landlord.

8. Conduct any offensive, noisy, or dangerous activity on the Real Property, or cause or permit any hazardous or toxic substances or materials (as defined by Applicable Law) to be used, stored, generated or disposed of on, or in the Real Property except in compliance with Applicable Law.

9. Remove any sand or caliche from the Real Property or bring on to the Real Property any raw or unprocessed rock, gravel, or caliche without Landlord's prior written consent. Notwithstanding the foregoing, Tenant may

utilize any sand or caliche located on the Real Property, and/or may bring onto the Real Property raw or unprocessed rock, gravel, or caliche, if the same is being utilized to make improvements to the Real Property consistent with the allowed improvements identified within Section E.1 of this Lease.

10. Abandon the Premises (Tenant is presumed to have abandoned the Premises if Tenant has not conducted for a period of 10 consecutive business days the Tenant's normal course of business).

11. Place any signs on the Premises without Landlord's written consent, except suitable signs at the entrance of the facilities situated on the Real Property subject to Landlord's prior written approval as to number, size, design, color, material and method of attachment and subject to Tenant's compliance with applicable local, federal and state requirements and regulations.

12. Make any new or change any existing agreement with any governmental or regulatory entity or with TALT relating to the Premises without Landlord's prior written consent. Notwithstanding the foregoing, Tenant pursuant to Sale Contract #2 shall have the absolute right to elect not to proceed with the TALT election provided therein.

13. Remove any of Landlord's personal property, including the Personal Property, without Landlord's prior written consent. Notwithstanding the foregoing, Tenant does not need additional written consent to remove items of Personal Property, if any, identified within Section E.1. of this Lease.

14. Place any manufactured or mobile homes on the Real Property without the prior written consent of Landlord, except as allowed under Section E.1. below.

C. Landlord agrees to -

1. Lease to Tenant the Premises "AS IS" beginning on the Commencement Date and ending on the Termination Date, except as otherwise provided in this Lease, including, but not limited to, exceptions provided in this subsection 1., and subject to liens, encumbrances, and other matters affecting the Premises. Notwithstanding anything contained herein to the contrary, Tenant knowingly and with full understanding grants to Landlord [without any obligation on the Landlord] the express consent of Tenant [which consent shall be continuing without the necessity of any further action by Landlord] to provide Tenant's lender(s) access to the Premises at any time for any reason, including, but not limited to, to inspect, care for, tend to, and/or to remove Tenant's personal property. Should Landlord provide Tenant's lender(s) access to the Premises at any time for any reason, including, but not limited to, to inspect, care for, tend to, and/or to remove Tenant's personal property, Tenant acknowledges and declares that this is not a default under this Lease, and Tenant expressly releases Landlord from, and Tenant waives all claims or demands on Tenant's behalf against, Landlord, and Landlord shall not be liable for any loss, damage, penalty, or injury of any kind or character, including, but not limited to, any claim for abatement or reduction of rent or for any damages for injury or inconvenience to or interference with Tenant's business or this Lease or use of the Premises, for any loss of occupancy or use of the Premises, including but not limited to, any loss, damage, penalty, or injury caused by the exercise of Landlord's rights under this subsection 1. and Section A.10., by any lienholder, lender, or creditor of its rights against the Premises or any part thereof or any of Tenant's personal property, and for any other loss occasioned thereby. The provisions of this Section shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law, in this Lease, or in equity.

2. Pay ad valorem taxes on the Premises (Tenant is responsible for paying all ad valorem taxes on Tenant's personal property).

3. Apply the Monthly Rent to payment of ad valorem taxes on the Premises and obligations owed to AgTexas, FLCA, to O and B Farms, Inc., and to other lienholders for liens created by Landlord and which affect the Premises.

4. Not further encumber the Premises if the extent that the relevant Purchase Price under Sales Contract #1 or Sales Contract #2, as applicable, could not satisfy the encumbrances created by Landlord.

5. If Tenant's lender, Rabo AgriFinance, LLC and/or its successors or assigns requests Landlord to execute a subordination agreement subordinating Landlord's liens to liens of said lender, Landlord will negotiate in good faith and upon commercially reasonable terms with said lender toward the execution of the same within 7 business days of written request made by Tenant and/or said lender.

D. Representations:

1. Landlord's Representations: Landlord represents to Tenant that the following are true and correct as of the Commencement Date:

- (a) Landlord, Two Sisters Dairy, LLC, is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Texas.
- (b) Landlord has all requisite power and authority to execute and deliver this Lease and to

- (c) consummate the transactions contemplated hereby.
- (c) There are no existing mortgages or liens encumbering the Premises, except for taxes not yet due and payable and liens to the Lienholders.
- (d) Landlord has received no written notice that Landlord is not in compliance under the Concentrated Animal Feeding Operation General Permit No. WQ0003190000 or that the Permit has expired or will not be renewed on expiration.

2. **Tenant's Representations:** Tenant represents to Landlord that the following are true and correct as of the Commencement Date:

- (a) Tenant is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Idaho and is authorized to do business in the state of Texas.
- (b) Tenant has all requisite power and authority to execute and deliver this Lease and to consummate the transactions contemplated hereby.

E. Landlord and Tenant agree to the following:

1. **Alterations.** Tenant may, at any time and from time to time during the term of this Lease, make the following alterations to the Premises:

- (a) remodel the free stall barns and repair loops and stanchions therein
- (b) remodel the milk barns, including building new stalls and replacing existing equipment with new equipment
- (c) repair existing employee housing
- (d) erect a building for an office or bring onto the Premises a manufactured or mobile home for an office
- (e) repair and replace existing irrigation equipment
- (f) clean lagoons and expand lagoon capacity
- (g) remodel or otherwise improve the commodity areas
- (h) make repairs and alterations to maintain existing improvements in a useful state of repair and operation
- (i) make alterations and additions required in order for Tenant to comply with Applicable Law.

subject to the following:

- (a) Tenant bears the cost and risk of such work.
- (b) The Premises must at all times be kept free of mechanics' and materialmen's liens (as provided in this Lease).
- (c) Tenant must diligently prosecute the work to completion.
- (d) All alterations must comply with Applicable Law, be performed in a good and workmanlike manner, in accordance with general accepted construction standards, by trained, qualified, licensed or bonded, and manufactured-approved workers, and of at least the same or better quality as presently in or on the Premises.

Otherwise, Tenant may not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent. Landlord will not unreasonably withhold consent for the Tenant to make other alterations, modifications, or improvements to the Premises.

Tenant shall be entitled to the salvage value of the equipment and improvements being removed for the purpose of making the alterations. However, any physical additions, replacements, or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this Lease, and at Tenant's expense, to remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition of the Premises existing on the Commencement Date, normal wear excepted. Landlord's approval of any alterations shall not create any liability on Landlord.

2. **Landlord's Lien.** Tenant grants Landlord a security interest in all Tenant's personal property now or subsequently located on the Premises, including but not limited to, goods, including documents covering goods, livestock, equipment, and inventory, proceeds therefrom, now owned and hereafter acquired. This property shall not be removed from the Premises without the consent of Landlord, except in the ordinary course of Tenant's business, until all arrearages in Rent and all other sums of money due Landlord under this Lease have been paid and discharged, and all covenants, agreements, and conditions of this Lease have been fully complied with and performed by Tenant. This Lease is a security agreement under the Uniform Commercial Code. **LANDLORD SHALL HAVE A CONTRACTUAL LIEN FOR UNPAID RENT THAT IS DUE, AND THE LIEN ATTACHES TO TENANT'S PERSONAL PROPERTY NOW OR SUBSEQUENTLY LOCATED ON THE PREMISES, INCLUDING, BUT NOT LIMITED TO, TENANT'S GOODS, INCLUDING DOCUMENTS COVERING GOODS, LIVESTOCK, EQUIPMENT, AND INVENTORY, PROCEEDS THEREFROM, NOW OWNED AND HEREFTER ACQUIRED AND NOW OR SUBSEQUENTLY LOCATED ON THE PREMISES.** This contractual lien is in addition to and cumulative of landlord's liens and rights otherwise provided by

law or by other terms and provisions of this Lease. Landlord may enforce this Landlord's lien and security interest immediately upon a breach of this Lease by Tenant, or if Tenant vacates or is threatening to or in the process of vacating the Premises. If Tenant defaults under this Lease, Landlord will have a lien upon Tenant's personal property now or subsequently located on the Premises, including but not limited to, goods, including documents covering goods, livestock, equipment, and inventory, proceeds therefrom, now owned and hereafter acquired that is placed in, or becomes a part of, the Premises, as security for Rent due and to become due for the remainder of the current Lease term. If Landlord exercises the option to terminate the Leasehold and to reenter and relet the Premises as this Lease provides, then Landlord, after giving Tenant reasonable notice of the intent to take possession and after giving Tenant and opportunity for a hearing, may take possession of all of such personal property and Tenant's nonexempt property on the Premises and sell it at public or private sale after ten (10) days' written notice to Tenant, for cash or on credit, for such prices and terms as Landlord considers best, with or without having the property present at the sale. The sale proceeds will be applied first to the necessary and proper expense of removing, storing, and selling the property, then to paying any rent due or to become due under this Lease, with the balance, if any, to be paid to Tenant. If such proceeds are not sufficient to cover such costs and all other sums due from Tenant to Landlord under this Lease, Tenant will reimburse Landlord for any deficiency upon demand. If requested, Tenant shall deliver to Landlord a financing statement perfecting the security interest created by this Lease. Tenant authorizes Landlord to file a financing statement and any addendums, amendments, extensions, continuation statements, assignments, termination statements or releases of collateral thereto on all Tenant's assets. This authorization shall survive termination of this Lease and is not revocable and shall continue so long as the obligations secured by the collateral remain unpaid, or for so long as this Lease remains in effect, whichever is later. This Lease is a security agreement under the Uniform Commercial Code. Notwithstanding the foregoing, the liens created under this subsection will be subordinate to the liens of Rabo Agri-Finance, LLC, and/or its successors and assigns.

3. *Casualty/Condemnation.*

(a) Casualty.

- (1) Tenant shall give to Landlord immediate notice of any damage to the Premises by fire or other casualty and the cause of such damage, if known.
- (2) If the damage is **without the fault of Tenant or Tenant's Agents** but is so extensive as to amount practically to the total destruction of the Premises as determined by Landlord, or if Landlord, within 30 days of the destruction, at Landlord's sole discretion, decides that it is not practical to rebuild the improvements situated on the Land or to replace Landlord's Personal Property, this Lease shall terminate, and any prepaid rent shall be prorated and returned to Tenant on termination.
- (3) Where the Premises are damaged by fire or other casualty **not the fault of Tenant or Tenant's Agents** and the damage is not so extensive as to terminate the Lease under subsection (2) above Tenant, at Tenant's expense and after consultation with Landlord regarding the repairs, reconstruction, and/or replacements, shall repair the damage in compliance with Applicable Laws and the Permit, with reasonable dispatch, and with due diligence and skill to repair, reconstruct, or replace the damaged or destroyed Premises so that the Premises shall be restored to substantially the same condition and location as the Premises were in prior to the happening of the damage or destruction. In such event, if the damage has rendered the Premises untenable, in whole or in part, the rent shall be abated on a per day basis until the damage has been repaired. Landlord's approval or disapproval of any repairs, reconstruction, and/or replacements shall not create any liability on Landlord.
- (4) In all other cases, Tenant, at Tenant's expense, shall proceed with due diligence and skill to repair, reconstruct, or replace the damaged or destroyed Premises so that the Premises shall be restored to substantially the same condition as the Premises were in prior to the happening of the damage or destruction.

- (b) Condemnation. If the Premises or any part thereof cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, this Lease shall terminate on the date of the taking, and any prepaid rent prorated and returned to Tenant on termination. Whether or not any portion of the Premises is taken by condemnation or purchase in lieu of condemnation, Landlord or Tenant may elect to terminate this Lease if 50% or more of the Premises is taken. If there is condemnation or purchase in lieu of condemnation and this Lease is not terminated, Landlord, at Landlord's expense, may restore the Premises, and the rent payable during the unexpired portion of the term will be adjusted as may be fair and reasonable as determined by Landlord. No part of any condemnation awarded shall belong to Tenant.

4. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this Lease within thirty days after written notice.

5. *Default by Landlord/Tenant's Remedies.* Tenant's sole remedies for Landlord's default are to sue

for actual damages, terminate this Lease, and/or sue for injunctive relief.

6. **Default by Tenant/Events.** Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, (c) failing to comply within ten days after written notice with any provision of this Lease other than the defaults set forth in (a) and (b), (d) issuance of execution against Tenant, (e) bankruptcy proceedings begun by or against Tenant, (f) making an assignment for the benefit of creditors, (g) a receiver or assignee for creditors is appointed of Tenant's property; (h) making any false warranty, covenant, or representation in this Lease, (i) a levy is made on Tenant's property under execution of judgement; (j) default under either Sales Contract 1 or Sales Contract 2; or (k) dissolution or termination of Tenant.

7. **Default by Tenant/Landlord's Remedies.** Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant on Landlord's terms and conditions and receive the rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet, including, but not limited to, attorney's fees, brokerage commissions, and other re-renting expenses, (b) enter the Premises and perform Tenant's obligations, (c) terminate this Lease by written notice and sue for possession or damages, or both; (d) change the locks on the door(s) to the Premises by Tenant upon as provided in the Texas Property Code; (e) terminate this Lease by written notice and sue for possession or damages or both and (f) accelerate payment of the Rent for the balance of the term such that the entire Rent for the balance of the term shall at once become due and payable as if by the terms of this Lease it were all payable in advance. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

8. **Default/Waiver/Mitigation.** It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this Lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.

9. **Holdover.** If Tenant does not vacate the Premises following termination of this Lease (unless termination is due to Tenant's purchase of the Premises), Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the term of the Lease. Tenant will indemnify Landlord and any prospective tenants from any and all damages caused by the holdover. Rent for any holdover period will be 150% of the Monthly Rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice of demand. This section shall survive termination of this Lease.

10. **Attorney's Fees.** If either party retains an attorney to enforce this Lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and any other costs.

11. **Texas Law and Venue.** This Lease shall be construed under and in accordance with the laws of the State of Texas and exclusive venue is in Erath County, Texas.

12. **Entire Agreement.** This Lease, together with the attached exhibits and riders, is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this Lease or to any expressly mentioned exhibits and riders not incorporated in writing in this Lease.

13. **Amendment of Lease.** This Lease may be amended only by an instrument in writing signed by Landlord and Tenant.

14. **Limitation of Warranties.** Tenant has been given an adequate opportunity to fully inspect the Premises. Landlord expressly disclaims any warranty of title or suitability that otherwise may have arisen by operation of law. Except as expressly stated in this Lease, Tenant accepts the Premises in their present condition, whether suitable or not, and waives any claim for any latent defect in the Premises that are vital to the use of the Premises for their intended commercial purpose. Except as otherwise provided in this Lease, Tenant agrees to release and to indemnify, save and hold harmless Landlord from any claim made by Tenant against Landlord arising out of latent defects in the facilities or breach of any implied warranties of title, merchantability, of fitness for a particular purpose, or of any other kind arising out of this Lease. **THERE ARE NO IMPLIED WARRANTIES OF TITLE, OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND ARISING OUT OF THIS LEASE.** This section shall survive termination of this Lease.

15. **Notices.** Any notice required or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of

these methods to the attorney of the party to whom notice is given.

To Tenant: 3 T Martins Farm LLC
ATTN: Tony Martins, Manager
3105 Mesquite Rd.
Dalhart, Texas 79022-7635

with copy to:

Sawtooth law Offices, PLLC
ATTN: Evan Roth
213 Canyon Crest Dr., Ste. 200
Twin Falls, Idaho 83301

To Guarantor: Tony Martins

3105 Mesquite Rd.
Dalhart, Texas 79022-7635
Dallam County

with copy to:

Sawtooth law Offices, PLLC
ATTN: Evan Roth
213 Canyon Crest Dr., Ste. 200
Twin Falls, Idaho 83301

To Landlord: Klaas Talsma
Two Sisters Dairy, LLC
7469 CR 209
Hico, Texas 76457

Anastasia Thiele
717 S. Palmway
Lake Worth Beach, Florida 33460

with copy to:

Coan & Elliott, P.C.
ATTN: James J. Elliott
188 North Graham Street
Stephenville, Texas 76401

16. *Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at termination. Any damages caused by removal of the property by Tenant or the retention, removal, destruction, or disposition of the property by Landlord after the Termination Date shall be at the expense of Tenant. This Section survives the termination of this Lease.

17. *Waiver of Property Tax Protest Rights.* Tenant waives all rights to protest the appraised value of the Premises or to appeal the same and all rights to receive notices of reappraisal as set forth in sections 41.413 and 42.015 of the Texas Tax Code, or as amended.

18. *Subordination/Exceptions.* This Lease, Tenant's Leasehold interest under this Lease, and the options granted under this Lease are and shall be subject, subordinate, and inferior to liens of the Lienholders (including any and all renewals, extensions, and modifications of such liens); rights of O and B Farms, Inc. to the Option 2 Land, including but not limited to, those rights under that certain Lease Agreement and Option to Purchase Agreement dated on or about March 15, 2023, between O and B Farms, Inc. as Lessor/Seller and Anastasia Anne Thiele, as Lessee/Purchaser, a copy of which is attached hereto as Exhibit D, attached hereto and made a part hereof for all purposes; and any encumbrances placed on or given by prior owners and/or the Landlord on or against the Premises now existing or, as allowed by Tenant, in the future, including, but not limited to, easements, rights-of-way, and prescriptive rights, whether of record or not; all recorded restrictions, reservations, covenants, conditions, oil and gas Leases, mineral severances, and other instruments, including liens and conveyances, that affect the Premises; rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters emanating from and existing by reason of the creation, establishment, maintenance, and operation of TALT and/or any applicable governmental district, or agency, authority, including, but not limited to, the Middle Trinity Groundwater Conservation District; and ad valorem taxes and assessments.

19. *Time of Essence.* Time is of the essence in this Lease.

20. *Binding on Heirs, Successors.* Subject to the provisions of this Lease against assignment of Tenant's

interest, all provisions of this Lease shall extend to and bind or inure to the benefit of the parties and to every one of the heirs, executors, representatives, successors and assigns where allowed.

21. *Rights and Remedies Cumulative; Waiver of Breach.* The rights and remedies provided by this Lease are cumulative, and the use of any one right or remedy by Landlord shall not preclude or waive the Landlord's right to use any or all other remedies. These rights and remedies are given in addition to rights the Landlord may have by law, statute, ordinance, or otherwise. The waiver by Landlord of any breach of this Lease shall not constitute a continuing waiver of any subsequent breach of the same or different provision of this Lease.

22. *Legal Construction.* In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease, and this Lease must be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Lease.

23. *Identity.* Landlord reserves the right to verify the identity of all persons on the Premises.

24. *No Joint Venture or Partnership.* Nothing herein contained shall be deemed to constitute Landlord as partner of Tenant in the conduct of Tenant's business or a joint adventurer or a member of a joint enterprise with Tenant.

25. *Joint and Several Liability.* Tenant and Guarantor shall be jointly and severally liable for performance of all obligations under this Lease.

26. *No Setoff.* Tenant has no right of setoff or deduction against any amounts payable by Tenant to Landlord under this Lease. However, Tenant may register a protest with Landlord in connection with any amounts being paid to Landlord.

27. *Early Termination.* Notwithstanding anything contained herein to the contrary, in the event the state of Texas does not grant a renewal of the Permit, either party may terminate this Lease within 60 days of receipt of notice of the nonrenewal. Any termination of this Lease or any part thereof shall not terminate Tenant's obligations due prior to or at the time of termination.

28. *No Sale or Security Interest Intended.* This agreement constitutes a Lease of the Premises and is not a sale or creation of a security interest in the Premises. Landlord at all times retains sole ownership and title to the Premises, and Tenant does not have and will not, at any time, acquire any right, title, equity, or other interest in the Premises, except the right to possession and use as set out in this Lease. Notwithstanding the foregoing, Tenant is receiving an option to purchase the properties as provided in Section 29. below.

29. *Options to Purchase Premises.*

For the sum of \$10,000.00 (the "Option Fee") and other good and valuable consideration, the receipt of which is hereby acknowledged by Landlord, Landlord hereby grants to Tenant, only so long as this Lease is in full force and effect without any uncured default by Tenant, the exclusive right and option to purchase the following properties on the following terms and conditions:

- (a) Option 1: Option 1 Land together with the Personal Property situated thereon under the terms set forth in the Sales Contract #1 attached hereto as Exhibit E and made a part hereof for all purposes.
- (b) Option 2: Option 2 Land together with the Personal Property situated thereon under the terms set forth in the Sales Contract #2 attached hereto as Exhibit F and made a part hereof for all purposes.

Option 1 shall commence on the Commencement Date and shall continue until termination of this Lease.

Option 2 shall commence on April 15, 2024, and shall continue until termination of this Lease.

Tenant may exercise Option 1 but only if this Lease continues in full force and effect without any uncured default by Tenant.

Tenant may exercise Option 2 but only if this Lease continues in full force and effect without any uncured default by Tenant and if Option 1 has been exercised and Sales Contract #1 has been consummated.

Subject to the previous provisions, Tenant may exercise an option by execution and tender to Landlord of the applicable Sales Contract for that property. Landlord will execute and deliver to Tenant an executed copy of said Contract within 10 days thereafter.

If Tenant fails to exercise the option described in the particular Sales Contract, the option relating to that property shall automatically and immediately terminate without notice, and Tenant thereafter shall properly execute, acknowledge, and deliver to Landlord within 10 days of request therefor, a release, quitclaim, or any other document required by Landlord or a title insurance company to verify the termination of the option. Tenant may not assign either option.

Upon consummation of Sales Contract #1, this Lease shall terminate only as to that property purchased thereunder and no further rents will be due for such property purchased. However, this Lease will continue as to the other property not purchased and the Monthly Rental will be reduced as follows: for the period beginning April 7, 2023, through December 31, 2023, will be the sum of 16,666.67 per month, and for the period beginning January 1, 2024, through December 31, 2024, will be the sum of \$23,333.33 per month.

The Option Fee will be credited to the Purchase Price of the first of Sales Contract #1 or Sales Contract #2 that is consummated.

Landlord and Tenant agree to execute a recordable Memorandum of Lease and Options to Purchase ("Memorandum") substantially in the form and substance of that attached hereto as Exhibit G and made a part hereof for all purposes.

30. *Investment Tax Credit.* Any right to any investment tax credit permitted under the Internal Revenue Code is reserved to Landlord and shall not pass through or be transferred to Tenant in any manner. Notwithstanding the foregoing, to the extent that the investment tax credit is available for the improvements allowed and made by Tenant under Section E.1. of this Lease, Tenant shall be entitled to the same.

LANDLORD:


Klaas Talsma

Anastasia Thiele

Two Sisters Dairy, LLC:

by: _____
Anastasia Thiele, Manager

TENANT:

3 T Martins Farm LLC:

by: 
Tony Martins, Manager

GUARANTY

For value received, the receipt and sufficiency of which are hereby acknowledged, I absolutely, irrevocably, and unconditionally guarantee performance of this Lease and waive all demands and all notices and waive defenses based on suretyship and all requirements of law, if any, that any collection or performance efforts be made against Tenant or that any action be brought against Tenant before resorting to this guaranty, including rights under section 17.001 and chapter 43 of the Texas Civil Practice and Remedies Code and rule 31 of the Texas Rules of Civil Procedure, and I acknowledge that this is an unconditional guarantee of payment and performance, not of collection, and it is an agreement of guaranty, not of suretyship. This guaranty agreement is binding upon me and my heirs, executors, administrators, legal representatives, successors and permitted assigns.

GUARANTOR:


Tony Martins

If Tenant fails to exercise the option described in the particular Sales Contract, the option relating to that property shall automatically and immediately terminate without notice, and Tenant thereafter shall properly execute, acknowledge, and deliver to Landlord within 10 days of request therefor, a release, quitclaim, or any other document required by Landlord or a title insurance company to verify the termination of the option. Tenant may not assign either option.

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LANDLORD:

Klaas Talsma
Anastasia Thiele
Two Sisters Dairy, LLC:
by: Anastasia Thiele, Manager

TENANT:

3 T Martins Farm LLC:
by: Tony Martins, Manager

GUARANTY

For value received, the receipt and sufficiency of which are hereby acknowledged, I absolutely, irrevocably, and unconditionally guarantee performance of this Lease and waive all demands and all notices and waive defenses based on suretyship and all requirements of law, if any, that any collection or performance efforts be made against Tenant or that any action be brought against Tenant before resorting to this guaranty, including rights under section 17.001 and chapter 43 of the Texas Civil Practice and Remedies Code and rule 31 of the Texas Rules of Civil Procedure, and I acknowledge that this is an unconditional guarantee of payment and performance, not of collection, and it is an agreement of guaranty, not of suretyship. This guaranty agreement is binding upon me and my heirs, executors, administrators, legal representatives, successors and permitted assigns.

GUARANTOR:

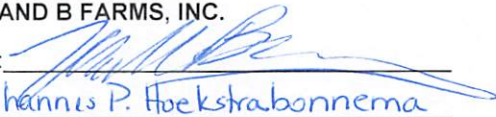
Tony Martins

CONSENT OF LESSOR/SELLER

Lessor/Seller, O and B Farms, Inc., under that certain Lease Agreement and Option to Purchase Agreement (a copy of which is attached to this Lease as Exhibit D) dated on or about March 15, 2023, between O and B Farms, Inc. as Lessor/Seller and Anastasia Anne Thiele, as Lessee/Purchaser, which covers Option 2 Land, hereby consents to the sublease and option to purchase set forth in the above Lease.

LESSOR/SELLER:

O AND B FARMS, INC.

by: 

Johannis P. Hoekstra-bonnema

Jim Oosterhof, Director



TRACT ONE:

All that certain land situated, lying and being in the County of Erath, State of Texas, to-wit:

BEING the East 142.257 acres of Block No. 11, and 3.4 acres off the S.E. Side of Block No. 8, of the J.N. Reed Survey, Abstract No. 644;

BEGINNING at the N.E.C. of Block No. 11, and S.E.C. of Block No. 8, for N.E.C. of this;

THENCE S. 72-45 W. 225 vrs. to iron pipe which is South 20 feet from a fence line;

THENCE S. 66-55 W. 132 vrs. and S. 53-30 W. 342.5 vrs., a point which is South 20 feet from a wire fence;

THENCE S. 56-13 W. 153.3 vrs., an iron pipe which is South 20 feet from wire fence for N.W.C. of this;

THENCE S. 28-50 E. with center of old road 968 vrs. an iron pipe for S.W.C. of this;

THENCE N. 60 E. 845.5 vrs. to iron pipe, the S.E.C. of Block No. 11;

THENCE N. 30 W. 950 vrs. to the place of beginning, containing a calculated area of 146.257 acres of land, and being the same land as described in Warranty Deed from Louise Turley et al, to Klaas Talsma and wife, Wilma Talsma dated May 1, 1998, recorded in Volume 954, Page 414, Real Property Records of Erath County, Texas.

TRACT TWO:

All that certain 200.00 acre tract of land, more or less, being part of the Wm. Murphree Survey, Abstract No. 565, part of the J. N. Reed Survey, Abstract No. 644, part of the Geo. W. Hoover Survey, Abstract No. 801 and part of the Gilbert Villeneuve Survey, Abstract No. 799, in Erath County, Texas, being part of that certain 559.67 acre tract described in deed from Executors and Trustees under will of H. C. Nercer, Jr. et al to Arthur Kalsbeek et ux, dated July 28, 1987 and recorded in Volume 723, page 449 of the Deed Records of Erath County, Texas and described as follows:

BEGINNING at an iron rod at a fence corner post at the intersection of the South line of a County Road and the west line of another County Road, being the NE corner of said 559.67 acre tract described in deed mentioned above for the NE corner of this tract from which the SE corner of the J. N. Reed Survey bears N 59° 51' 06" E, 23.22' and S 30° 00' E, 1253.45';

THENCE along the west line of a County Road and the east line of said 559.67 acre tract as follows, S 30° 10' 29" E 1076.17' to an iron rod, S 00° 44' 26" E 103.47' to an iron rod, S 18° 28' 50" W, 135.71' to an iron rod, S 11° 26' 20" W 306.68' to an iron rod, S 03° 12' 40" E, 186.83' to an iron rod and S 39° 56' 33" E, 164.78' to an iron rod set for the SE corner of this tract;

THENCE S 60° 00' W, 3273.37' to an iron rod set in a fence line for an inner corner of this tract;

THENCE S. 26° 50' 25" E. along a fence line, 304.88' to an iron rod set for an exterior corner of this tract;

THENCE S. 60° 00' W, 2339.30' to an iron rod set in a fence line for the SW corner of this tract;

THENCE N 40° 45' 17" W along a fence line, 839.57' to an iron rod set at a fence corner post in a north line of said 559.67 acre tract for the westerly NW corner of this tract;

THENCE N 60° 06' 25" E along a fence line, 49.15' to an iron rod at a fence corner post, being a corner of said 559.67 acre tract for a corner of this tract;

THENCE N. 28° 16' 24" W along a fence line, 14.58' to an iron rod at a fence corner post at a corner of said 559.67 acre tract for a corner of this tract;

THENCE along a fence line along a north line of said 559.67 acre tract as follows, N 60° 27' 12" E. 941.17' to a fence corner post and N 59° 33' 49" E at 1307.01' end fence, continuing in all 1410.49' to an iron rod at an inner corner of said 559.67 acre tract for an inner corner of this tract;

THENCE N 29° 10' 10" W along a west line of said 559.67 acre tract, at 274.34' pass an iron spike at a fence corner post, continuing along a fence line in all 1305.05' to an iron rod at a fence corner post at a turn in a County Road, being the northerly NW corner of said 559.67 acre tract for the northerly NW corner of this tract;

THENCE along a fence line along the south line of said County Road, being a north line of said 559.67 acre tract as follows, N 59° 59' 02" E, 2195.42' to an iron rod, N 64° 36' 25" E, 391.13' to an iron rod and N 59° 51' 06" E, 1188.39' to the place of beginning.

TRACT THREE:

All that certain 227.98 acre tract of land, being part of the N. P. Browning Survey, Abstract No. 53, in Erath County, Texas, being part of that certain 760 acre tract of land described in deed from Catherine Cook to David Cook, dated August 3, 1989 and recorded in Volume 773, Page 420 of the Deed Records of Erath County, Texas and described as follows:

BEGINNING at a railroad spike found in place in a paved County Road, being in the west line of the N. P. Browning Survey, the SW corner of the David Cook 760 acre tract and the NW corner of a 189.04 acre tract of land described in deed from Glenda Noland, et vir to Klaas Talsma, dated January 29, 1992 and recorded in Volume 821, Page 728 of the Deed Records of Erath County, Texas, for the SW corner of this tract, from which a railroad spike found in place at the SW corner of the N. P. Browning Survey, being at a tee intersection of County Roads bears S 30 deg. 02' 35" E, 1709.5';

THENCE N 30 deg. 02' 35" W along said County Road and the west line of said 760 acre tract, 3009.17' to a railroad spike set in paving, for the NW corner of this tract;

THENCE N 63 deg. 28' 19" E, at 2632, pass an iron rod set in the east line of said road, at 1545.47' pass an iron rod set at a field fence corner, at 2602.17' pass an iron rod set at a fence corner, continuing in all 2857.70' to an iron rod set for the NE corner of this tract;

THENCE S 52 deg. 16' 28" E, 3037.97' to an iron rod set in the south line of said 760 acre tract and in the north line of said 189.04 acre tract, for the SE corner of this tract;

THENCE S 59 deg. 38' 40" W along or near a fence line, at 3985.39, pass an iron rod found in the east line of said County Road, continuing in all 4001.79' to the place of beginning and containing 227.98 acres of land and including 1.47 acres within the right of way of said County Road.

SAVE AND EXCEPT:

All that certain 11.044 acre tract of land, more or less, being part of the N.P. Browning Survey, Abstract No. 53, in Erath County, Texas, being part of that certain 227.98 acre tract of land described in deed from David Cook and wife, Joyce Cook, to Klaas Talsma and wife, Wilma Talsma, dated January 12, 1994, and recorded in Volume 859, Page 385 of the Deed Records of Erath County, Texas, and described as follows:

BEGINNING at a railroad spike found in place in a paved County Road, being in the west line of the N.P. Browning Survey, the SW corner of the Klaas Talsma 227.98 acre tract and the NW corner of a 189.04 acre tract of land described in deed from Glenda Noland, et vir, to Klaas Talsma, dated January 29, 1992, and recorded in Volume 821, Page 728 of the Deed Records of Erath County, Texas, for the SW corner of this tract, from which a railroad spike found in place at the SW corner of the N.P. Browning Survey, being at a tee intersection of County Roads, bears S 30 deg. 02' 35" E, 1709.5';

THENCE N 30 deg. 02' 35" W along said County Road and the west line of said 227.98 acre tract, 126.95' for corner;

THENCE N 59 deg. 49' 04" E, 3952.5' to a point in east line of said 227.98 acre tract, for corner of this;

THENCE S 52 deg. 16' 28" E, 124' to a point in south line of 227.98 acre tract and north line of 189.04 acre tract mentioned above for corner;

THENCE S 59 deg. 38' 40" W along or near a fence line, being the south line of 227.98 acre tract, 4001.79' to the place of beginning.

TRACT FOUR:

All that certain 500.95 acre tract of land, being part of the George W. Hoover Survey, Abstract No. 801 and the Gilbert Villeneuve Survey, Abstract No. 799, in Erath County, Texas, being the remainder of that certain 559.67 acre tract described in deed from the Executors and Trustees under the will of H. C. Mercer, Jr. and the Trustee of the Wilma Mercer Management Trust to Arthur Kalsbeek, and wife, Joann Kalsbeek, dated July 28, 1987 and recorded in Volume 723, Page 449 of the Deed Records of Erath County, Texas and all that certain 137.314 acre tract described in deed from Jimmie N. Wooten, III, et al to Art Kalsbeek and Joann Kalsbeek, dated March 18, 1994 and recorded in Volume 863, Page 547 of the Deed Records of Erath County, Texas, and described as follows:

BEGINNING at an iron rod set at the SW corner of the George W. Hoover Survey, being the SW corner of the Art Kalsbeek 137 3/4 acre tract and in the north line of a 40 acre tract described in Contract of Sale from the Veterans Land Board to Alton O. Lyons, dated August 28, 1988 and recorded in Volume 585, Page 401 of the Deed Records of Erath County, Texas, for the most easterly SW corner of this tract;

THENCE N 40 deg. 57' 58" W along the west line of said 137 3/4 acre tract, at 356.7' pass an iron spike set in a 30" live oak tree fence corner, continuing along a fence line in all 2611.63' to an iron rod set at a fence corner post at the NW corner of said 137 3/4 acre tract and in the south line of the Art Kalsbeek 559.67 acre tract, for an inner corner of this tract;

THENCE S 59 deg. 33' 37" W along or near a fence line, 2816.35' to an iron rod found at a fence corner post at an inner corner of said 559.67 acre tract, for a corner of this tract;

THENCE S 40 deg. 50' 20" E along a fence line, 506.90' to an iron rod set at a fence corner post at an external corner of said 559.67 acre tract, for an external corner of this tract;

THENCE along a fence line along south line of said 559.67 acre tract and north lines of a 80 acre tract described as Second Tract in deed from Geo. O. Ferguson, et al to Elzie O. Pate, dated December 27, 1943 and recorded in Volume 279, Page 173, of the Deed Records of Erath County, Texas as follows, S 57 deg. 33' 10" W, 444.76' to an iron rod set at a fence corner, N 89 deg. 15' 44" W, 365.33' to an iron rod found at a fence corner, S 63 deg. 58' 23" W, 701.39' to an iron rod found at a fence corner, N 31 deg. 19' 08" W, 350.08' to an iron rod set at a fence corner post, and S 67 deg. 18' 01" W, at 729.26' pass an iron spike found in an elm tree fence corner, continuing in all 858.34' to a point in the centerline of Little Duffau Creek, being the SW corner of said 559.67 acre tract and in the east line of the E. O. Pate 73 acre tract described as Third Tract, for the SW corner of this tract;

THENCE up the centerline of Little Duffau Creek and east lines of said 73 acre tract as follows, N 89 deg. 59' 18" W, 53.68', S 81 deg. 50' 25" W, 112.19', N 12 deg. 09' 34" W, 143.36', N 53 deg. 09' 33" E, 142.18', N 18 deg. 37' 07" E, 123.73', N 51 deg. 17' 02" E, 72.95', N 40 deg. 10' 08" E, 90.20', N 13 deg. 35' 41" E, 72.91', N 00 deg. 01' 08" W, 207.49', N 50 deg. 13' 44" W, 119.18', S 88 deg. 45' 13" W, 38.47', S 39 deg. 17' 27" W, 31.06', N 81 deg. 49' 50" W, 69.26', and S 37 deg. 28' 35" W, 19.91' to a point of leaving said creek, for a corner of this tract;

THENCE along a fence line along the east line of said 73 acre tract as follows, N 47 deg. 20' 53" W, at 71.0' pass a 4" iron pipe fence corner post on the north side of said creek, continuing in all 422.54' to an iron rod set at a fence corner post and N 28 deg. 31' 06" W, 1198.41' to an iron rod found at the NE corner of said 73 acre tract and in the south line of the E. O. Pate 80 5/6 acre First Tract, being the most westerly NW corner of said 559.67 acre tract, for the NW corner of this tract;

THENCE N 60 deg. 04' 01" E along a fence line along the south line of said 80 5/6 acre tract, 1406.64' to an iron rod found at the most westerly NW corner of a 200.00 acre tract described in deed from Arthur Kalsbeek, et ux to Klaus Talsma and Wilma Talsma, dated May 19, 1988 and recorded in Volume 744, Page 269 of the Deed Records of Erath County, Texas, for a corner of this tract;

THENCE S 40 deg. 49' 11" E along a fence line, 839.50' to a 4" iron pipe fence corner post at the SW corner of said 200 acre tract, for an inner corner of this tract;

THENCE N 59 deg. 57' 15" E along a fence line, at 2158.9' pass end of said fence, continuing in all 2339.30' to an iron rod found at an external corner of said 200.00 acre tract, for a corner of this tract;

THENCE N 26 deg. 53' 10" W, 304.88' to an iron rod set at a fence corner post at an inner corner of said 200 acre tract, for a corner of this tract;

THENCE N 59 deg. 57' 15" E along or near a fence line, 3273.37' to an iron rod set at the SE corner of said 200 acre tract, being in the west right of way line of Erath County Road No. 209 and in the east line of said 559.67 acre tract, for the NE corner of this tract;

THENCE along a fence line along the west line of said County Road and east lines of said 559.67 acre tract as follows, S 39 deg. 59' 18" E, 607.17' to an iron rod set in a gate and S 34 deg. 55' 51" E, 1508.98' to an iron rod set at a fence corner post at the SE corner of said 559.67 acre tract, for a corner of this tract;

THENCE S 60 deg. 05' 49" W along the south line of said 559.67 acre tract, 10.99' to an iron rod set at the NE corner of said 137 3/4 acre tract, for a corner of this tract;

THENCE along a fence line along the west line of Erath County Road No. 209 and east line of said 137 3/4 acre tract as follows, S 33 deg. 35' 48" E, 727.91' to an iron rod set at a fence corner and S 19 deg. 06' 45" E, 1875.61' to an iron rod found at the SE corner of said 137 3/4 acre tract and the NE corner of the Alton O. Lyons 40 acre tract, for the SE corner of this tract;

THENCE S 60 deg. 03' 52" W along or near a fence line, 1939.35' to the place of beginning and containing 500.95 acres of land, with 1.70 acres along the vicinity of Little Duffin Creek not being under fence and with approximately 275.86 acres being in the George W. Hoover Survey and 225.09 acres being in the Gilbert Villeneuve Survey.

SAVE AND EXCEPT THE FOLLOWING DESCRIBED TRACT OF LAND:

All that certain 130.00 acre tract out of the George W. Hoover Survey Abstract No. 801 in Erath County, Texas, being part of a 500.95 acre tract described in a Deed from Khas Takama, et ux to Two Sisters Dairy, LLC, dated December 30, 2003 and recorded in Volume 1267, Page 1147 of the Deed Records of Erath County, Texas, and described as follows:

Beginning at an iron rod found in West line of Erath County Road No. 209, being the NE corner of a 40.00 acre tract described in a Deed from Veterans Land Board to Alton O. Lyons, dated August 22, 1980 and recorded in Volume 583, Page 401 of the Deed Records of Erath County, Texas, being the SE corner of said 500.95 acre tract, for the SE corner of this tract;

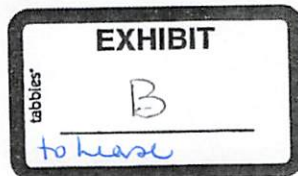
Thence S 59 Deg. 45' 31" W, along the South line of said 500.95 acre tract, 1939.31' to an iron rod found, being the most Easterly SW corner of said 500.95 acre tract, for the SW corner of this tract, from which an iron rod found at a fence corner bears: S 59 Deg. 45' 31" W, 2.91';

Thence N 41 Deg. 15' 55" W, along the West line of said 500.95 acre tract, 2426.94' to an iron rod set, for the NW corner of this tract;

Thence N 59 Deg. 47' 32" E, across a pasture, 2673.68' to an iron rod set, being in the West line of said County Road, being in the East line of said 500.95 acre tract, for the NE corner of this tract;

Thence S 38 Deg. 53' 36" E, along the West line of said County Road and the East line of said 500.95 acre tract 544.63' to an iron rod found at a fence corner, being a corner of said 500.95 acre tract, for a corner of this tract;

Thence S 19 Deg. 25' 04" E, along the West line of said County Road and the East line of said 500.95 acre tract, 1875.51' to the point of beginning and containing 130.00 acres of land.



TRACT ONE:

All that certain 123.26 acre tract in the G.B. Innes Survey, A - 420, being a part of that certain 138.018 acre tract described in deed from Carol Morrison to David E. Jones, et ux dated May 17, 2000, and recorded in Volume 1006, Page 772 of the Deed Records of Erath County, Texas, and described as follows:

Beginning at a 3/8 Iron rod found at a fence corner post at the southwest corner of the said 138.018 acre tract, the southeast corner of a former 256.48 acre tract described in deed from Members Trust Credit Union to Randy Wyly, dated February 4, 2005, and recorded in Volume 1207, Page 1026 of the Deed Records of Erath County, Texas, at the southwest corner of the G.B. Innes Survey, the southeast corner of the W.M. Murphee Survey, A - 565, and in the north line of a 119.3 acre tract two of parcel two described in an Affidavit of Heirship to Roberson, recorded in Volume 1350, Page 133 of the Deed Records of Erath County, Texas, for the southwest corner of this tract:

Thence N 39° 24' 02" W, along a fence and the west line of the said 138.018 acre tract, 1655.64' to a 3/8 Iron rod found at a fence corner post at the northwest corner of the said 138.018 acre tract, the southwest corner of a 217.586 acre tract described in deed from the Texas Veterans Land Board to Dean Hamilton, recorded in Volume 730, Page 326 of the Deed Records of Erath County, Texas (for description see Volume 374, Page 622), for the northwest corner of the said 138.018 acre tract:

Thence along the fenced north line of the said 138.018 acre tract as follows:

N 59° 16' 37" E, 1193.81' to a 4" pipe post:

N 59° 21' 51" E, 807.13' to a capped 3/8 Iron rod found at a fence corner post:

N 59° 15' 52" E, 992.54' to a 4" pipe post:

N 61° 52' 19" E, 54.62' to the most northerly northeast corner of the said 138.018 acre tract, the northwest corner of the remainder of a 165 acre tract described in deed from Leona Boucher to Carol Morrison, recorded in Volume 526, Page 382 of the Deed Records of Erath County, Texas, for the most northerly northeast corner of this tract, from which a 3" pipe post bears N 26° 27' 59" E, 1.08':

S 52° 00' 24" E, 313.14' to a capped 3/8 Iron rod found:

And N 73° 33' 37" E, 234.11' to a 3" pipe post at a corner of the said 138.08 acre tract, for a northeast corner of this tract:

Thence crossing the said 138.018 acre tract as follows:

S 18° 15' 08" E, 873.37' to a capped 3/8 Iron rod set:

N 73° 06' 38" E, 383.19' to a capped 3/8 Iron rod set:

N 16° 36' 17" W, 406.06' to a capped 3/8 Iron rod set:

And N 83° 20' 30" E, 399.90' to a capped 3/8 Iron rod set in the west right of way of F.M. Highway No. 2481, for the most easterly northeast corner of this tract:

Thence S 00° 24' 05" E, along the east line of the said 138.018 acre tract and the west line of F.M. Highway No. 2481, 534.00' to a capped 3/8 Iron rod found at the southeast corner of the said 138.018 acre tract, the northeast corner of a 1 acre tract described in deed to Wendell Scott, recorded in Volume 397, Page 522 of the Deed Records of Erath County, Texas, for the southeast corner of this tract:

Thence along the fenced south line of the said 138.018 acre tract as follows:

S 55° 17' 58" W, 289.89' to a 4" pipe post:

S 37° 11' 12" W, 249.20' to a 4" pipe post:

S 59° 36' 26" W, 535.99' to a 4" pipe post:

S 60° 10' 40" W, 218.23' to a 4" pipe post:

S 60° 58' 20" W, 407.99' to a spike set in a 32" post oak tree:

S 59° 27' 10" W, 329.63' to a 4" pipe post:

S 59° 37' 50" W, 446.45' to a capped 3/8 Iron rod found at a fence corner post:

S 58° 19' 32" W, 1058.85' to the point of beginning and containing 123.26 acres of land.

TRACT TWO:

All that certain 59.625 acres out of the George B. Innes Survey, A-420, Erath County, Texas, being same land called 59.5 acres in Deed dated July 12, 1993, from Alvin L. Barton, et ux, to Steve Vandermeer, recorded in Vol. 846, Page 958, Deed Records of Erath County, Texas, and the 59.625 acres being described as follows:

BEGINNING at a 4" pipe corner post in West line of the George G. Innes Survey, A420, from which point the NWC of said Innes Survey (per deed) bears N. 39 30 W. 878.89 feet, for NWC of this tract;

THENCE with fence and South line of 59 acres conveyed to J. R. Bunch by deed recorded in Vol. 305, Page 237, said records, as follows: N. 59 21 15 E. 1440.35 feet, a 36" P. O. Tree; and N. 59 34 46 E. 1773.58 feet to a point in center of Duffau Creek, from which point a 3/8" Iron rod set at end of fence bears S. 59 34 46 W. 26.2 feet, for NEC of this tract;

THENCE along center of Duffau Creek, with West line of 125.5 acres conveyed to Billie Jean Little Trust, by deed recorded in Vol. 760, Page 79, said records, as follows:

S. 16 14 35 E. 223.75 feet;

S. 25 13 51 W. 69.82 feet;

N. 81 27 29 W. 126.90 feet;

S. 01 39 02 E. 86.50 feet;

S. 43 18 51 E. 405.43 feet;

S. 15 04 10 E. 81.46 feet; and

S. 53 44 26 E. 166.61 feet to a point in center of creek, from which point a 2" pipe corner post bears S. 59 21 15 W. 30.0 feet, for the SEC of this tract;

THENCE leaving creek, along a fence and North line of 217.583 acres conveyed to R. D. Hamilton by deed recorded in Vol. 730, Page 316, said records, as follows:

S. 59 21 15 W. 379.72 feet, a 2" pipe post;

S. 58 53 24 W. 342.53 feet, a 2" pipe post;

S. 60 32 23 W. 439.48 feet, a 2" pipe post;

S. 65 07 31 W. 132.66 feet, a 14" L. O. Tree at fence corner; and

S. 59 36 44 W. 1670.93 feet to a 3/8" iron rod set by fence corner, in West line of the Innes Survey, for SWC of this tract;

THENCE N. 39 30 W. (base bearing) with West line of the Innes Survey and East line of 160 acres out of the Wm. Murphree Survey, A-565, conveyed to H. C. Mercer, Jr., by deed recorded in Vol. 418, Page 120, said records, 866.38 feet to the place of beginning, containing 36.625 acres.

TRACT THREE:

All that certain 236.48 acre tract of land out of the George W. Hoover Survey, Abstract No. 801 and the Wm. Murphree Survey, Abstract No. 565, in Erath County, Texas, being all of that certain 420 acre tract conveyed by C. Elman Stark to H. C. Mercer, Jr. and wife, Vilma Mercer by deed dated July 10, 1971 and recorded in Volume 462, Page 443 of the Deed Records of Erath County, Texas that lies east of the east line of a paved County Road and all that certain 252 acre tract conveyed by Morris B. Couch and W. C. Nunn to H. C. Mercer, Jr. by deed dated September 19, 1967 and recorded in Volume 418, Page 120 of the Deed Records of Erath County, Texas, that lies southeast of the southeast line of said paved County Road and described as follows:

BEGINNING at an iron rod set at a fence corner post at the SE corner of the Wm. Murphree Survey, being the SE corner of the H. C. Mercer, Jr. 92 acre tract described as Second Tract in deed recorded in Volume 418, Page 120 of the Deed Records of Erath County, Texas, for the SE corner of this tract;

THENCE S 59 deg. 15' 34" W along a fence line, 1481.61' to an iron rod set at a fence corner post at the SW corner of said 92 acre tract, for the easterly SW corner of this tract;

THENCE along a fence line along the west line of said 92 acre tract as follows, N 39 deg. 58' 37" W, 1259.68' to a fence corner and N 48 deg. 45' 25" W, 1407.92' to an iron rod set at a fence corner post at the NW corner of said 92 acre tract and in the south line of the H. C. Mercer, Jr. 160 acre tract described as First Tract in deed recorded in Volume 418, Page 120 of the Deed Records of Erath County, Texas for an inner corner of this tract;

THENCE S 60 deg. 25' 06" W along a fence line, passing the SW corner of said 160 acre tract, continuing in all 1396.58' to an iron rod set at a fence corner post in the east line of a paved County Road, for the northerly SW corner of this tract;

THENCE along a fence line along the east line of said road as follows, N 34 deg. 54' 10" W, 1417.0' to an iron rod set at a fence corner, N 39 deg. 40' 32" W, 680.90' to an iron rod set at a fence corner, 13 deg. 30' W, 179.55' to an iron rod set at a fence corner, N 08 deg. 35' 17" E, 344.59' to an iron rod set at a fence corner post for the NW corner of this tract;

THENCE along a fence line along the south line of a County Road as follows, N 35 deg. 04' 50" E, 160.90' to an iron rod set at a fence corner and N 59 deg. 43' 42" E, 2339.5' to an iron rod set at a fence corner post in the east line of the Wm.

Murphree Survey, for the NE corner of this tract, from which the calculated NE corner of said survey bears N 39 deg. 06' 38" W, 26.15';

THENCE along a fence line along the occupied east line of the Wm. Murphree Survey as follows, S 39 deg. 06' 38" E, 867.45' to an iron pipe fence corner post, S 39 deg. 14' 28" E, 863.87' to a fence corner post, S 39 deg. 29' 08" E, 859.43' to a fence corner post, S 39 20' 57" E, 983.25' to a fence corner post and S 39 deg. 04' 20" E, 1655.93' to the place of beginning and containing 256.48 acres of land with 255.70 acres being out of the Wm. Murphree Survey and 0.78 acres being out of the Geo. W. Hoover Survey.

SAVE AND EXCEPT THE FOLLOWING DESCRIBED TRACT OF LAND:

All that certain 37.33 acre tract of land out of the Wm. Murphree Survey, Abstract No. 565, in Erath County, Texas, and being part of that certain 256.48 acre tract of land described in Foreclosure Deed from Steve Vandermeer et ux to Members Trust of the Southwest Federal Credit Union, dated January 13, 1999, and recorded in Volume 1165, Page 1050 of the Deed Records of Erath County, Texas, and described as follows:

BEGINNING at an iron rod found at a fence corner post at the SE corner of the Wm. Murphree Survey, being the SE corner of said 256.48 acre tract, the SW corner of a 138.018 acre tract described in deed from Carol Morrison to David E. Jones et ux, dated May 17, 2000, and recorded in Volume 1006, Page 772 of the Deed Records of Erath County, Texas, and in the North line of a 119.3 acre tract described in Deed from Miriana Herrin to Dorris Herrin Roberson, dated December 29, 1989, and recorded in Volume 783, Page 82 of the Deed Records of Erath County, Texas, for the SE corner of this tract;

THENCE S 59 deg. 12' 32" W (base bearing and TNCZ 1927 NAD) along a fence line along the North line of the Roberson Tract, 1482.60' to an iron rod found at a fence corner post at the most southerly SW corner of said 256.48 acre tract, being in the East end of Erath County Road No. 210 and the SE corner of a 80 acre tract described as first tract in Deed from A. L. Graves et ux to N. E. Little, dated January 15, 1937, and recorded in Volume 249, Page 154 of the Deed Records of Erath County, Texas, for the SW corner of this tract;

THENCE N 40 deg. 03' 26" W along a fence line along the East line of the Little 80 acre tract, at 18.93' pass the NE corner of Erath County Road No. 210, continuing in all 1260.23' to an iron rod set at an iron pipe fence corner post for the NW corner of this tract;

THENCE along a cross fence crossing said 256.48 acre tract as follows, N 65 deg. 40' 44" E, 686.40' to an iron rod set, S 75 deg. 47' 19" E, 277.44' to an iron pipe fence corner post and N 57 deg. 14' 09" E, 660.16' to an iron rod set at an iron pipe fence corner post in the East line of said 256.48 acre tract, for the NE corner of this tract, from which a capped iron rod (No. 1579) at a fence corner post at the NW corner of the Jones 138.018 acre tract bears N 38 deg. 57' 32" W, 651.72';

THENCE S 39 deg. 14' 36" E along a fence line along the West line of said 138.018 acre tract, 1003.88' to the place of beginning and containing 37.33 acres of land.

TRACT FOUR:

A Tract of land situated in the G.B. Innis Survey, Abstract No. 420, Erath County, Texas, being a portion of that same tract of land described in a deed to Robert D. Hamilton, recorded in Volume 730, Page 326, Deed Records, Erath County, Texas, being more particularly described by metes and bounds as follows:

Beginning at a 6" Cedar Fence Post, for the south corner of said Hamilton Tract, being the west corner of a tract of land described in a deed to Anastasia Talsma, recorded in Document No. 2014-00096, Deed Records, Erath County, Texas, (hereinafter known as the Talsma Tract 1), and in the northeast line of a tract of land described in a deed to Anastasia Talsma, recorded in Document No. 2014-03122, Deed Records, Erath County, Texas, (hereinafter known as the Takata Tract 2);

Thence the following calls along occupied common lines between the Hamilton Tract, and said Talsma Tract 2:

N. 39° 41' 34" W., 862.88 feet, to a Steel Fence Post;

N. 39° 48' 13" W., 979.76 feet, to a 3/8" Rebar Rod found (Control Monument), for the west corner of the Hamilton Tract;

N. 59° 33' 19" E. (Base Bearing per GPS Observation), 1670.83 feet, to a Tree;

N. 64° 58' 21" E., 132.59 feet, to a 2" Pipe Fence Post;

N. 60° 28' 34" E., 439.35 feet, to a 2" Pipe Fence Post;

N. 58° 48' 19" E., 170.15 feet, to a 1/2" capped "1983" Rebar Rod set (Control Monument);

Thence S. 39° 49' 06" E., 1814.89 feet, through the Hamilton Tract, to a 1/2" capped "1983" Rebar Rod set, a common line between the Hamilton Tract, and said Talsma Tract 1;

Thence the following calls along occupied common lines between the Hamilton Tract, and the Talsma Tract 1:

S. 59° 17' 45" W., 406.98 feet, to a Point in Fence;

S. 59° 23' 44" W. 807.13 feet, to a Point in Fence;

S. 59° 18' 30" W., 1193.81 feet, to the point of beginning and containing 100.00 acres of land.

All that certain 227.98 acre tract of land, being part of the N. P. Browning Survey, Abstract No. 53, in Erath County, Texas, being part of that certain 760 acre tract of land described in deed from Catherine Cook to David Cook, dated August 3, 1989 and recorded in Volume 773, Page 420 of the Deed Records of Erath County, Texas and described as follows:

BEGINNING at a railroad spike found in place in a paved County Road, being in the west line of the N. P. Browning Survey, the SW corner of the David Cook 760 acre tract and the NW corner of a 189.04 acre tract of land described in deed from Glenda Noland, et vir to Kلاس Takma, dated January 29, 1992 and recorded in Volume 821, Page 728 of the Deed Records of Erath County, Texas, for the SW corner of this tract, from which a railroad spike found in place at the SW corner of the N. P. Browning Survey, being at a tree intersection of County Roads bears S 30 deg. 02' 35" E, 1709.5';

THENCE N 30 deg. 02' 35" W along said County Road and the west line of said 760 acre tract, 3009.17' to a railroad spike set in paving, for the NW corner of this tract;

THENCE N 63 deg. 28' 19" E, at 26.32, pass an iron rod set in the east line of said road, at 1545.47' pass an iron rod set at a field fence corner, at 2692.17' pass an iron rod set at a fence corner, continuing in all 2857.70' to an iron rod set for the NE corner of this tract;

THENCE S 52 deg. 16' 28" E, 3037.97' to an iron rod set in the south line of said 760 acre tract and in the north line of said 189.04 acre tract, for the SE corner of this tract;

THENCE S 59 deg. 38' 40" W along or near a fence line, at 3985.39, pass an iron rod found in the east line of said County Road, continuing in all 4001.79' to the place of beginning and containing 227.98 acres of land and including 1.47 acres within the right of way of said County Road.

SAVE AND EXCEPT:

All that certain 11.644 acre tract of land, more or less, being part of the N.P. Browning Survey, Abstract No. 53, in Erath County, Texas, being part of that certain 227.98 acre tract of land described in deed from David Cook and wife, Joyce Cook, to Kلاس Takma and wife, Wilma Takma, dated January 12, 1994, and recorded in Volume 859, Page 388 of the Deed Records of Erath County, Texas, and described as follows:

BEGINNING at a railroad spike found in place in a paved County Road, being in the west line of the N.P. Browning Survey, the SW corner of the Kلاس Takma 227.98 acre tract and the NW corner of a 189.04 acre tract of land described in deed from Glenda Noland, et vir, to Kلاس Takma, dated January 29, 1992, and recorded in Volume 821, Page 728 of the Deed Records of Erath County, Texas, for the SW corner of this tract, from which a railroad spike found in place at the SW corner of the N.P. Browning Survey, being at a tree intersection of County Roads, bears S 30 deg. 02' 35" E, 1709.5';

THENCE N 30 deg. 02' 35" W along said County Road and the west line of said 227.98 acre tract, 126.95' for corner;

THENCE N 59 deg. 49' 04" E, 3952.5' to a point in east line of said 227.98 acre tract, for corner of this;

THENCE S 52 deg. 16' 28" E, 124' to a point in south line of 227.98 acre tract and north line of 189.04 acre tract mentioned above for corner;

THENCE S 59 deg. 38' 40" W along or near a fence line, being the south line of 227.98 acre tract, 4001.79' to the place of beginning.



TPDES Permit No. WQ0003190000
This Permit supersedes and replaces
Permit No. WQ0003190000 issued on September 19, 2017
[For TCEQ use only EPA ID No. TX0123030]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

TPDES PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

under provisions of
Section 402 of the Clean Water Act
Chapter 26 of the Texas Water Code and
Section 382.051 of the Texas Clean Air Act

I. Permittee:

- A. Owners: Klaas Talsma, Anastasia Talsma and Two Sisters Dairy, LLC
- B. Business Name: Dancing Crane Dairy
- C. Owner Address: 7469 County Road 209
Hico, Texas 76457

II. Type of Permit: Major Amendment / Air & Water Quality

III. Nature of Business Producing Waste: Concentrated Animal Feeding Operation (CAFO): Dairy Cattle; SIC No. 0241

IV. General Description and Location of Waste Disposal System:

Maximum Capacity: 9,150 total head, of which 5,500 head are milking

Site Plan: See Attachment A

Retention Control Structures (RCSs) total required capacities without freeboard (Acre-Feet): RCS TS1 - 46.61, RCS TS2 - 7.30, RCS TH2 - 41.82, RCS TD1 - 27.86, RCS TH1 - 0, RCS TD Treatment Pond - 0

Land Management Units (LMUs) (Acres): LMU TD1 - 144, LMU TD2 - 56, LMU TD3 - 40, LMU TD4 - 86, LMU TD6 - 131, LMU TD7 - 14, LMU TH1 - 39, LMU TH2 - 45, LMU TH3 - 45, LMU TH4E - 22, LMU TH4W - 14, LMU TH5 - 94, LMU TH6 - 81, LMU TH7 - 13, and LMU TH8 - 58, LMU TS1 - 28, LMU TS2 - 92, LMU TS4 - 62, LMU TS5 - 44; See Attachment B for locations

Terms of the Nutrient Management Plan (NMP): See Attachments E and F

Location: The facility is located at 3502 County Road 209, Hico, Erath County, Texas.
Latitude: 32° 07' 00.97" N & Longitude: 98° 02' 58.21" W. See Attachment C

Drainage Basin: The facility is located in the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin

This permit contained herein shall expire at midnight, five years after the date of Commission approval.

ISSUED DATE: October 26, 2018

For the Commission

V. Rule and Statute Applicability

- A. Definitions.** All definitions in Chapter 26 of the Texas Water Code, 30 Texas Administrative Code (TAC) Chapters 305 and 321, Subchapter B shall apply to this permit and are incorporated by reference.
- B. Amendments, renewals, transfers, corrections, revocation, and suspension of permit.** The requirements in 30 TAC Chapter 305, Subchapter D apply to this permit.

VI. Permit Applicability and Coverage

- A. Discharge Authorization.** No discharge is authorized by this permit except as allowed by the provisions in this permit and 40 Code of Federal Regulations Chapter 412, which is adopted by reference in 30 TAC Chapter 305.541.
- B. Application Applicability.** The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.
- C. Air Quality Authorization.** The permittee shall comply with the requirements listed in Section VII.D. of this permit and shall:
1. maintain a minimum treatment capacity of 22.04 acre-feet in RCS TS1;
 2. identify the maximum sludge volume and the minimum treatment volume on the permanent pond marker in RCS TS1;
 3. maintain a copy of the odor control plan in the Pollution Prevention Plan; and
 4. include a stage storage table for the treatment pond in the RCS Management Plan.

VII. Pollution Prevention Plan (PPP) Requirements

A. Technical Requirements

1. PPP General Requirements.
 - (a) The permittee shall update and implement a PPP for this facility upon issuance of this permit. The PPP shall:
 - (1) be prepared in accordance with good engineering practices;
 - (2) include measures necessary to limit the discharge of pollutants to surface water in the state;
 - (3) describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this permit;
 - (4) include all information listed in Section VII.A.;
 - (5) identify specific individual(s) who is/are responsible for development, implementation, operation, maintenance, inspections, recordkeeping, and revision of the PPP. The activities and responsibilities of the pollution prevention personnel shall address all aspects of the facility's PPP;
 - (6) be signed by the permittee or other signatory authority in accordance with 30 TAC §305.44 (relating to Signatories to Applications); and
 - (7) be retained on-site.
 - (b) The permittee shall amend the PPP:
 - (1) before any change in the number or configuration of LMUs;
 - (2) before any increase in the maximum number of animals and/or the maximum number of milking cows;
 - (3) before operation of any new control facilities;

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- (4) before any change that has a significant effect on the potential for the discharge of pollutants to water in the state;
 - (5) if the PPP is not effective in achieving the general objectives of controlling discharges of pollutants from the production area or LMUs; or
 - (6) within 90 days following written notification from the Executive Director that the plan does not meet one or more of the minimum requirements of this permit.
- (c) Maps. The permittee shall maintain the following maps as part of the PPP.
- (1) Site Map. The permittee shall update the site map as needed to reflect the layout of the facility. The map shall include, at a minimum, the following information: facility boundaries; pens; barns; berms; open lots; manure storage areas; areas used for composting; dead animal burial sites; RCSs or other control facilities; LMUs; water wells, abandoned and in use, which are on-site or within 500 feet of the facility boundary; and all springs, lakes, or ponds located on-site or within one mile of the facility boundary.
 - (2) Land Application Map. Natural Resource Conservation Service (NRCS) soil survey maps of all LMUs shall depict:
 - (i) the boundary of each LMU and acreage;
 - (ii) all buffer zones required by this permit; and
 - (iii) the unit name and symbol of all soils in the LMU(s).
- (d) Potential Pollutant Sources/Site Evaluation.
- (1) Potential Pollutant Sources. The PPP shall include a description of potential pollutant sources and indicate all measures that will be used to prevent contamination from the pollutant sources. Potential pollutant sources include any activity or material that may reasonably be expected to add pollutants to surface water in the state from the facility.
 - (2) Soil Erosion. The PPP shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion. If these areas have the potential to contribute pollutants to surface water in the state, the PPP shall identify measures used to limit erosion and pollutant runoff.
 - (3) Control Facilities. The PPP shall include the location and a description of control facilities. The control facilities shall be appropriate for the identified sources of pollutants at the CAFO.
 - (4) Recharge Feature Certification. The recharge feature certification submitted in the permit application shall be implemented, updated by the permittee as often as necessary, and maintained in the PPP.
 - (5) 100-year Floodplain. All control facilities, including holding pens and RCSs, shall be located outside of the 100-year floodplain or protected from inundation and damage that may occur during the flood.
- (e) Spill Prevention and Recovery. The permittee shall take appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutant. Where potential spills can occur, materials, handling procedures and storage shall be specified. The permittee shall identify the procedures for cleaning up spills and shall make available the necessary equipment to personnel to implement a clean up. The permittee shall store, use, and dispose of all pesticides in accordance with label instructions. There shall be no disposal of pesticides, solvents or heavy metals, or of spills or residues from storage or application equipment or containers, into RCSs. Incidental amounts of such substances entering a RCS as a

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result of stormwater transport of properly applied chemicals is not a violation of this permit.

2. Discharge Restrictions and Monitoring Requirements.

- (a) Discharge Restrictions. Wastewater may be discharged to water in the state from a properly designed (25-year frequency 10-day duration (25 year/10 day)), constructed, operated and maintained RCS whenever chronic or catastrophic rainfall, or catastrophic conditions cause an overflow. There shall be no effluent limitations on discharges from RCSs which meet the above criteria.
- (b) Monitoring Requirements. The permittee shall sample all discharges from the RCS(s) and LMU(s). The effluent shall be analyzed by a National Environmental Laboratory Accreditation Conference (NELAC) accredited lab for the parameters shown in Table 1.

Table 1: Monitoring Requirements

Parameter	Sample Type	Sample Frequency
BOD ₅	Grab	1/day ¹
<i>Escherichia coli</i>	Grab	1/day ¹
Total Dissolved Solids (TDS)	Grab	1/day ¹
Total Suspended Solids (TSS)	Grab	1/day ¹
Nitrate (N)	Grab	1/day ¹
Total Phosphorus	Grab	1/day ¹
Ammonia Nitrogen	Grab	1/day ¹
Pesticides ²	Grab	1/day ¹

¹Sample shall be taken within the first thirty (30) minutes following the initial discharge and then once per day while discharging.

²Any pesticide which the permittee has reason to believe could be present in the wastewater.

- (c) If the permittee is unable to collect samples due to climatic conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.), the permittee shall document why discharge samples could not be collected. Once dangerous conditions have passed, the permittee shall conduct the required sampling.
3. RCS Design and Construction.
- (a) RCS Certifications
- (1) The permittee shall ensure that the design and completed construction of the RCS(s) is certified by a licensed Texas Professional Engineer prior to use. The certification shall be signed and sealed in accordance with the Texas Board of Professional Engineers requirements.
- (2) Documentation of liner and capacity certifications must be completed for each RCS prior to use and kept on-site in the PPP. Table 2 below shows the current RCS liner and capacity certifications.

Table 2: Current Liner and Capacity Certifications

RCS Name	Liner Certification Date	Capacity Certification Date	Certified Capacity (Acre-Feet)
TD1	09/12/2008 & 12/21/2010	04/30/2010	74.95

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RCS Name	Liner Certification Date	Capacity Certification Date	Certified Capacity (Acre-Feet)
TD Treatment Pond	09/12/2008	04/30/2010	12.22
TS1	08/16/2010	08/16/2010	49.97
*TS2	06/07/2016	08/16/2010	24.69
*TS2 (Former RCS 3)	01/02/1997		
TH1	05/09/1990	Survey performed on 11/05/2010	15.83
TH2	12/01/2010	12/01/2010	65.13
TH Settling Basin	02/02/1990	Not Applicable	
TD Settling Pond #1	09/12/2008		
TD Settling Pond #2	09/12/2008		
Slurry Pond	09/12/2008		

Note: * RCSs #2 and #3 were combined to form RCS #2 under TPDES Permit # WQ0004866000. A spillway was cut in the barrier between the two RCSs to combine the capacity into one RCS #2 (proposed RCS TS2).

- (b) **Design and Construction Standards.** The permittee shall ensure that each RCS is designed and constructed in accordance with the technical standards developed by the NRCS, American Society of Agricultural and Biological Engineers, American Society of Civil Engineers, or American Society of Testing Materials that are in effect at the time of construction. Where site-specific variations are warranted, a licensed Texas Professional Engineer must document these variations and their appropriateness to the design.
- (c) **RCS Drainage Area.**
 - (1) The permittee shall describe in the PPP and implement measures that will be used to minimize entry of uncontaminated stormwater into the RCS(s).
 - (2) Stormwater must be diverted, as indicated in Attachment A - Site Map from contact with feedlots and holding pens, and manure and/or process wastewater storage systems. In cases where it is not feasible to divert stormwater from the production area, the retention structures shall include adequate storage capacity for the additional stormwater. Stormwater includes rain falling on the roofs of facilities, runoff from adjacent land, or other sources.
 - (3) The permittee shall maintain the drainage area to minimize ponding or puddling of water outside the RCS(s).
- (d) **RCS Sizing**
 - (1) The design plan must include documentation describing the sources of information, assumptions and calculations used in determining the appropriate volume capacity and structural features of each RCS, including embankment and liners.
 - (2) **Design Rainfall Event.** Each RCS authorized under this permit shall be designed and constructed to meet or exceed the margin of safety, equivalent to the volume of runoff and direct precipitation from the 25 year/10 day rainfall event. The design rainfall event for this CAFO is 12.2 inches.

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- (3) Any RCS capacity that is greater than the minimum capacity required by this permit may be allocated to additional sludge storage volume, which will increase the design sludge cleanout interval for the RCS. The new sludge cleanout interval will be identified in the RCS management plan maintained in the PPP, the stage storage tables will accurately reflect the new volumes, and the pond markers will visually identify the new volume levels.
- (e) Irrigation Equipment Design. The permittee shall ensure that the irrigation system design is capable of removing wastewater from the RCS(s) on a regular schedule. Equipment capable of dewatering the RCS(s) shall be available and operational whenever needed to restore the operating capacity required by the RCS management plan.
- (f) Embankment Design and Construction. The RCS(s) have a depth of water impounded against the embankment at the spillway elevation of three feet or more, therefore the RCS(s) are considered to be designed with an embankment. The PPP shall include a description of the design specifications for the RCS embankments. The following design specifications are required for all new construction and/or the modified portions of existing RCSs.
 - (1) Soil Requirements. Soils used in the embankment shall be free of foreign material such as rocks larger than four (4) inches, trash, brush, and fallen trees.
 - (2) Embankment Lifts. The embankment shall be constructed in lifts or layers no more than eight (8) inches compacted to six (6) inches thick at a minimum compaction effort of 95 per cent (%) Standard Proctor Density (ASTM D698) at -1% to +3% of optimum moisture content.
 - (3) Stabilize Embankment Walls. All embankment walls shall be stabilized to prevent erosion or deterioration.
 - (4) Compaction Testing. Embankment construction must be accompanied by certified compaction tests including in place density and moisture in accordance with the American Society of Testing Materials (ASTM) D1556, D2167 or D2937 for density and D2216, D4643, D4944 or D4959 for moisture, or D6938 for moisture and density or equivalent testing standards. Compaction tests will provide support for the liner certification performed by a licensed Texas Professional Engineer as meeting a permeability no greater than 1×10^{-7} centimeters per second (cm/sec) over a thickness of 18 inches or its equivalency in other materials, and not to exceed a specific discharge through the liner of 1.1×10^{-6} cm/sec with a water level at spillway depth.
 - (5) Spillway or Equivalent Protection. The new or modified RCS(s), which are constructed with embankments, shall be constructed with a spillway or other outflow device properly sized according to NRCS design and specifications to protect the integrity of the embankment.
 - (6) Embankment Protection. The new or modified RCS(s) must have a minimum of two (2) vertical feet of materials equivalent to those used at the time of design and construction between the top of the embankment and the structure's spillway. RCS(s) without spillways must have a minimum of two (2) vertical feet between the top of the embankment and the required storage capacity.

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- (g) **RCS Liner Requirements.** For all new construction and for all structural modifications of existing RCS(s), the RCS must have a liner consistent with one of the following:
- (1) **In-situ Material.** In-situ material is undisturbed, in-place, native soil material. In-situ materials must at least meet the minimum criteria for hydraulic conductivity and thickness and specific discharge as described in Section VII.A.3(g)(2) of this permit. Samples shall be collected and analyzed in accordance with Section VII.A.3(g)(3) of this permit. This documentation must be certified by a licensed Texas Professional Engineer or licensed Texas Professional Geoscientist.
 - (2) **Constructed or Installed Liner.**
 - (i) Constructed or installed liners must be designed by a licensed Texas Professional Engineer. The liner must be constructed in accordance with the design and certified as such by a licensed Texas Professional Engineer. Compaction tests and post construction sampling and analyses, conducted in accordance with Sections VII.A.3(f)(4) and VII.A.3(g)(3) of this permit, will provide support for the liner certification.
 - (ii) Liners shall be designed and constructed to have hydraulic conductivities no greater than 1×10^{-7} centimeters per second (cm/sec), with a thickness of 18 inches or its equivalency in other materials, and not to exceed a specific discharge through the liner of 1.1×10^{-6} cm/sec with a water level at spillway depth.
 - (iii) Constructed or installed liners must be designed and constructed to meet the soil requirements, lift requirements, and compaction testing requirements as listed in Section VII.A.3(f)(1), (2) and (4) of this permit.
 - (3) **Liner Sampling and Analyses**
 - (i) The licensed Texas Professional Engineer or licensed Texas Professional Geoscientist shall use best professional practices to ensure that corings or other liner samples will be appropriately plugged with material that also meets liner requirements of this subsection.
 - (ii) Samples shall be collected in accordance with ASTM D1587 or other method approved by the Executive Director. For each RCS, a minimum of two core samples collected from the bottom of the RCS and a minimum of at least one core sample from each sidewall shall be collected. Additional samples may be necessary based on the best professional judgment of the licensed Professional Engineer. Distribution of the samples shall be representative of liner characteristics, and proportional to the surface area of the sidewalls and floor. Documentation shall be provided identifying the sample locations with respect to the RCS liner.
 - (iii) Undisturbed samples shall be analyzed for hydraulic conductivity in accordance with ASTM D5084 or other method approved by the Executive Director.
 - (4) **Leak Detection System.** If notified by the Executive Director that significant potential exists for the adverse impact of water in the state or drinking water from leakage of a RCS, the permittee shall install a leak detection

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system or monitoring well(s) in accordance with that notice.

Documentation of compliance with the notification must be kept with the PPP, as well as copies of all sampling data.

4. **Special Considerations for Existing RCS(s).** An existing RCS that has been properly maintained without any modifications and has no apparent structural problems or leakage is considered to be properly designed with respect to the embankment design and construction and liner requirements of this permit, provided that any required documentation was completed in accordance with the requirements at the time of construction. If no documentation exists, the RCS must be certified by a licensed Texas Professional Engineer as providing protection equivalent to the requirements of this permit.
5. **Operation and Maintenance of RCSs.**
 - (a) The permittee must operate and maintain a margin of safety in the RCS(s) to contain the volume of runoff and direct precipitation from the 25 year/10 day rainfall event.
 - (b) The permittee shall implement a RCS management plan incorporating the margin of safety developed by a licensed Texas Professional Engineer. The management plan shall become a component of the PPP, shall be developed for each RCS, and must describe or include:
 - (1) RCS management controls appropriate for the CAFO and the methods and procedures for implementing such controls;
 - (2) the methods and procedures for proper operation and maintenance of each RCS consistent with the system design;
 - (3) the appropriateness and priorities of any controls reflecting the identified sources of pollutants at the facility;
 - (4) a stage/storage table for each RCS with minimum depth increments of one-foot, including the storage volume provided at each depth;
 - (5) a second table or sketch that includes increments of water level ranges for volumes of total design storage, including the storage volume provided at each specified depth (or water level) and the type of storage designated by that depth; and
 - (6) the planned end of month storage volume anticipated for each RCS for each month of the year and the corresponding operating depth expected at the end of each month of the year, based on the design assumptions.
 - (c) The wastewater level in the RCS shall be maintained at or below the maximum operating level expected during that month, according to the design of the RCS. When rainfall volumes exceed average rainfall data used in design calculations planned end of month storage volumes may encroach into the design storm event storage provided that documentation is available to support that the design parameters have been exceeded and that the RCS is otherwise being managed according to the RCS management plan criteria. In circumstances where the RCS has a water level exceeding the expected end of the month depth, the permittee shall document in the PPP why the level of water in the structure is not at or below the expected depth. Also, if the water level in the RCS encroaches into the storage volume reserved for the design rainfall event, the permittee must document, in the PPP, the conditions that resulted in this occurrence. As soon as irrigation is feasible and not prohibited by Section VII.A.8(f) and (g), the permittee shall irrigate until the RCS water level is at or below the maximum operating level expected during that month.

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- (d) **Imminent Overflow.** If a RCS is in danger of imminent overflow from chronic or catastrophic rainfall or catastrophic conditions, the permittee shall take reasonable steps to irrigate wastewater to the LMU(s) only to the extent necessary to prevent overflow from the RCS. If irrigation results in a discharge from a LMU, the permittee shall collect samples from the drainage pathway at the point of the discharge from the edge of the LMU where the discharge occurs, analyze the samples for the parameters listed in Section VII.A.2.(b), and provide the appropriate notifications as required by Section VIII.B of this permit and 30 TAC §321.44.
- (e) **Permanent Pond Marker.** The permittee shall install and maintain a permanent pond marker (measuring device) in the RCS(s), visible from the top of the levee to show the following:
 - (1) the volume for the design rainfall event;
 - (2) one-foot increments beginning from the predetermined minimum treatment volume of the RCS, or the bottom of the RCS for those without treatment volume, to the top of the embankment or spillway; and
 - (3) design volume levels for maximum sludge accumulation and operating volume (calculated process generated wastewater plus rainfall runoff minus evaporation) must be identifiable on the marker.
- (f) **Rain Gauge.** A rain gauge capable of measuring the design rainfall event shall be kept on-site and properly maintained.
- (g) **Sludge Removal.** The permittee shall monitor sludge accumulation and depth, based upon the design sludge storage volume in the RCS. (See Special Provision X.E for additional requirements related to sludge monitoring.) Sludge shall be removed from the RCS(s) in accordance with the design schedule for cleanout in the RCS Management Plan to prevent the accumulation of sludge from exceeding the designed sludge volume of the structure. Removal of sludge shall be conducted during favorable wind conditions that carry odors away from nearby receptors. Sludge may only be beneficially utilized by land application to a LMU if in accordance with a nutrient management plan or disposed of in accordance with Section VII.A.8(e) of this permit. A sludge sample must be collected and analyzed in accordance with Section VII.A.9(a) prior to each clean out.
- (h) **Liner Protection and Maintenance.** The permittee shall maintain the liner to inhibit infiltration of wastewater. Liners must be protected from animals by fences or other protective devices. No tree shall be allowed to grow such that the root zone would intrude or compromise the structure of the liner or embankment. Any mechanical or structural damage to the liner shall be evaluated by a licensed Texas Professional Engineer within thirty (30) days of the damage.
- (i) **Closure Requirements.** A closure plan must be developed when a RCS will no longer be used and/or when the CAFO ceases or plans to cease operation. The closure plan shall be submitted to the appropriate regional office and the CAFO Permits Team of the Water Quality Division in Austin (MC-150) within ninety (90) days of when operation of the CAFO or the RCS terminates. The closure plan for the RCS must, at a minimum, be developed using standards contained in the NRCS Practice Standard Code 360 (Closures of Waste Impoundments), as amended, and using the guidelines contained in the Texas AgriLife Extension/ NRCS publication #B-6122 (Closure of Lagoons and Earthen Manure Storage Structures), as amended. The permittee shall maintain or renew its existing

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authorization and maintain compliance with the requirements of this permit until the facility has been closed.

6. General Operating Requirements.

- (a) Flush/Scrape Systems. Flush/scrape systems shall be flushed/scraped in accordance with design criteria in the application.
- (b) Pen Maintenance. The permittee shall maintain earthen pens to ensure good drainage, minimize ponding, and minimize the entrance of uncontaminated storm water to the RCSs.
- (c) Carcass Disposal. Carcasses shall be collected within twenty four (24) hours of death and properly disposed of within three days of death in accordance with Texas Water Code, Chapter 26; Texas Health and Safety Code, Chapter 361; and 30 TAC Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste) unless otherwise provided for by the commission. Animals must not be disposed of in any liquid manure or process wastewater system. Disposal of diseased animals shall also be conducted in a manner that prevents a public health hazard in accordance with Texas Agriculture Code, §161.004, and 4 TAC §31.3, §58.31(b), and §59.12. The collection area for carcasses shall be addressed in the potential pollutant sources section of the PPP with the management practices to prevent contamination of surface or groundwater, control access, and minimize odor.
- (d) Manure and Sludge Storage
 - (1) Manure and sludge storage capacity requirements shall be based on manure and sludge production, land availability, and the NRCS Field Office Technical Guide (Part 651, Chapter 10) or equivalent standards. (See Special Provision X.I for the storage requirements applicable to slurry collected from freestall and cross ventilated barns.)
 - (2) When manure is stockpiled, it shall be stored in a well-drained area, and the top and sides of stockpiles shall be adequately sloped to ensure proper drainage and prevent ponding of water. Runoff from manure or sludge storage piles must be retained on-site. If the manure or sludge areas are not roofed or covered with impermeable material, protected from external rainfall, or bermed to protect from runoff during the design rainfall event, the manure or sludge areas must be located within the drainage area of a RCS and accounted for in the design calculations of the RCS.
 - (3) Manure or sludge stored for more than thirty (30) days must be stored within the drainage area of a RCS or stored in a manner (i.e. storage shed, bermed area, tarp covered area, etc.) that otherwise prevents contaminated storm water runoff from leaving the storage area. All storage sites and structures located outside the drainage area shall be designated on the site map. Storage for more than thirty (30) days is prohibited in the 100-year floodplain.
 - (4) Temporary storage of manure or sludge shall not exceed thirty (30) days and is allowed only in a LMU or a RCS drainage area. Temporary storage of manure and sludge in the 100-year floodplain, near water courses or near recharge features may be allowed if protected by berms or other structures to prevent inundation or damage that may occur.
- (e) Composting. Composting on-site shall be performed in accordance with 30 TAC Chapter 332 (relating to Composting). The permittee may compost waste generated on-site, including manure, sludge, bedding, feed and dead animals.

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The permittee may add agricultural products to provide an additional carbon source or bulking agent to aid in the composting process. If the compost areas are not roofed or covered with impermeable material, protected from external rainfall, or bermed to protect from runoff in the case of the design rainfall event, the compost areas must be located within the drainage of an RCS and must be shown on the site plan and accounted for in the design calculations of the RCS.

7. Site Specific Conservation Practice.

(a) Well Protection Requirements

- (1) The permittee shall not locate or operate a new RCS, holding pen, or LMU within the following buffer zones:
 - (i) public water supply wells 500 feet;
 - (ii) wells used exclusively for private water supply 150 feet; or
 - (iii) wells used exclusively for agriculture irrigation 100 feet.
- (2) Irrigation of wastewater directly over a well head will require a structure protective of the wellhead that will prevent contact from irrigated wastewater.
- (3) Construction of any new water wells must be done by a licensed water well driller.
- (4) All abandoned and unuseable wells shall be plugged according to 16 TAC §76.104.
- (5) The permittee may continue the operation and use of any existing holding pens and RCSs located within the required well buffer zones provided they are in accordance with the facility's approved recharge feature evaluation and certification. Buffer zone variance documentation must be kept on-site and made available to TCEQ personnel upon request. A Well Buffer Exception request for Wells TD1, TD2, TD3, TD4, TD11, TH1, TH3, TH4, TS1, TS2, TS9 and TS10 was submitted to and approved by the TCEQ Water Quality Assessment Team. Permittee shall implement the requirements of the Well Buffer Exception approval by TCEQ. Table 3 below shows the status of all wells on the facility and the best management practices (BMPs) used to protect them.

Table 3: Well Status and Best Management Practices

Well Number*	Status	BMPs
TD1	Producing	Situated away from the drainage area of the confinement pens and a concrete surface slab
TD2	Producing	Situated away from the drainage area of the confinement pens, a concrete surface slab, and steel sleeve
TD3	Producing	Situated away from the drainage area of the confinement pens and a concrete surface slab
TD4	Producing	Situated away from the drainage area of the confinement pens and a concrete surface slab
TD5	Producing	Maintain 150-foot buffer
TD6	Non-producing	Plugged
TD7	Producing	Maintain 150-foot buffer
TD8	Producing	Maintain 150-foot buffer
TD9	Producing	Maintain 150-foot buffer
TD10	Producing	Maintain 150-foot buffer

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Well Number*	Status	BMPs
TD11	Producing	Situated away from the drainage area of the confinement pens, a concrete surface slab, and surface sleeve cemented to ground level
TD12	Producing	Maintain 150-foot buffer
TD13	Producing	Maintain 150-foot buffer
TF1	Producing	Maintain 150-foot buffer
TH1	Producing	No contact of waste with wellhead, concrete slab sealed to steel sleeve
TH2	Producing	Maintain 150-foot buffer
TH3	Producing	Granted a well buffer exemption to the pen areas. No contact of waste from the pen area with the wellhead, and concrete surface slab sealed to steel sleeve Maintain a 150-foot buffer between well and LMUs
TH4	Non-Producing	Granted a well buffer exemption to the pen areas. No contact of waste from the pen area with the wellhead, and concrete surface slab sealed to steel sleeve, and capped. Maintain a 150-foot buffer between well and LMUs
TH5	Producing	Maintain 150-foot buffer
TH6	Non-producing	Plugged
TH7	Producing	Maintain 150-foot buffer
TH8	Non-producing	No evidence of well: due diligence on well status maintained in the PPP
TH9	Producing	Maintain 150-foot buffer
TS1	Producing	Concrete surface slab around the wellhead and located up-gradient from the pollution source
TS2	Producing	Concrete surface slab around the wellhead and located up-gradient from the pollution source
TS3	Non-producing	Plugged
TS4	Producing	Maintain 150-foot buffer
TS5	Producing	Maintain 150-foot buffer
TS6	Producing	Maintain 150-foot buffer
TS7	Non-producing	Plugged
TS8	Non-producing	Plugged
TS9	Producing	Concrete surface slab around the wellhead, well is isolated from runoff by concrete retaining wall
TS10	Producing	Concrete surface slab around the wellhead, well is isolated from runoff by concrete retaining wall and an existing facility road diverts storm water from the wellhead

*Well Numbers correspond with Attachment D

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- (b) Soil Limitations. The permittee shall implement the BMPs on Table 4 for the specified soil series.

Table 4: Soil Limitations and Best Management Practices

Soil Series and Map ID	Potential Limitations	BMPs*
Maloterre: Ma	Depth to Bedrock; Droughty; Bedrock	Land application not to exceed agronomic and soil infiltration rates (refer to the nutrient management plan (NMP)) Maintain soil moisture to promote crop growth. Maintain cover crops in LMUs.
Nimrod: NdC	Filtering capacity Seepage	
Frio: Fr; Bunyan: Bu	Flooding	
Hassee: WaB & WkA	Percs slowly; Slow water movement; Depth to Saturated Zone	Land application not to exceed agronomic and soil infiltration rates (refer to the NMP) No land application to inundated soils
Bolar-Denton: BdC	Percs slowly; Slow water movement; Depth to Hard Bedrock	
Slidell: HoB	Slow water movement	
Purves-Dugout: Pd	Percs slowly	
Duffau & Keeter: DuD3	Depth to soft Bedrock	
Windthorst: WnC	Filtering Capacity	
Purves: PcB, PcC	Droughty; Depth to Bedrock; Slow Water Movement; Percs Slowly Bedrock	

*or an equivalent protective measure identified in an NRCS Practice Standard.

- (c) Pollutant Sources and Management. The permittee shall implement the BMPs on Table 5 for handling dead animals and pesticides.

Table 5: Pollutant Sources and Best Management Practices

Potential Pollutant Source	BMPs*
Dead Animals	Collect within 24 hours of death and remove within three days of death by a third-party rendering service, or compost in accordance with Section VII.A.6(e) of this permit.
Pesticides/Parlor Chemicals	Store under roof Handle and dispose according to label directions

*or an alternative BMP as allowed by 30 TAC 321 Subchapter B or an equivalent protective measure identified in an NRCS Practice Standard.

8. Land Application.

- (a) Nutrient Management Plan (NMP) Required. The certified NMP submitted in the permit application shall be implemented upon issuance of this permit. The plan shall be updated as appropriate or at a minimum of annually according to

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NRCS Practice Standard Code 590. The permittee shall make available to the Executive Director, upon request, a copy of the site specific NMP and documentation of the implementation.

- (1) For Terms of the NMP see Attachments E and F.
- (2) The following changes to the terms of the NMP are substantial:
 - (i) Increase in animal headcount;
 - (ii) Increase in LMU acreage or a change in LMU location;
 - (iii) Change in crop and yield goal (not listed in Attachment F);
- (3) Substantial and Non-Substantial Change to the terms of the NMP
 - (i) Any changes (substantial or non-substantial) to the NMP, other than the Annual Recalculation of Application Rates outlined in Attachment E, must be submitted to the Executive Director for review, and may be subject to public comment;
 - (ii) If the Executive Director determines that the changes to the NMP are not substantial, the revised NMP will be made publicly available and included in the permit record; and
 - (iii) If the Executive Director determines that the changes to the NMP are substantial, the information provided by the permittee will be subject to a major amendment process as set in 30 TAC §§305.61-305.72.
- (b) Comprehensive Nutrient Management Plan (CNMP) required. The permittee must continue to operate under a CNMP certified by the Texas State Soil and Water Conservation Board.
- (c) Critical Phosphorus Level
 - (1) When results of the annual soil analysis show a phosphorus level in the soil of more than 200 ppm but not more than 500 ppm in Zone 1 depth (0-6 inch incorporated; 0-2 or 2-6 inch if not incorporated) for a particular LMU or if ordered by the commission to do so in order to protect the quality of water in the state, then the permittee shall:
 - (i) file with the Executive Director a new or amended nutrient utilization plan (NUP) with a phosphorus reduction component based on crop removal that is certified as acceptable by a person described in (3) below; or
 - (ii) show that the level is supported by a NUP that is certified as acceptable by a person described in (3) below.
 - (2) The permittee shall cease land application of compost, manure, sludge, slurry and wastewater to the affected area until the NUP has been approved by the TCEQ. After a NUP is approved, the permittee shall land apply in accordance with the NUP until soil phosphorus is reduced below the critical phosphorus level of 200 ppm extractable phosphorus. Thereafter, the permittee shall implement the requirements of the nutrient management plan.
 - (3) NUP. A NUP is a NMP, based on NRCS Practice Standard Code 590, which utilizes a crop removal application rate. The NUP, based on crop removal, must be developed and certified by one of the following individuals or entities:
 - (i) an employee of the NRCS;
 - (ii) a nutrient management specialist certified by the NRCS;
 - (iii) the Texas State Soil and Water Conservation Board;
 - (iv) the Texas AgriLife Extension;

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- (v) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas; or
 - (vi) a Certified Professional Agronomist certified by the American Society of Agronomy, a Certified Professional Soil Scientist certified by the Soil Science Society of America, or a licensed Texas Professional Geoscientist-soil scientist after approval by the Executive Director based on a determination by the Executive Director that another person or entity identified in this paragraph cannot develop the plan in a timely manner.
- (4) When results of the annual soil analysis for extractable phosphorus indicate a level greater than 500 ppm in Zone 1 depth (0-6 inch incorporated; 0-2 or 2-6 inch if not incorporated), the permittee shall file with the Executive Director a new or amended NUP with a phosphorus reduction component, based on crop removal, that is certified as acceptable by a person described in (3) above. After the new or amended NUP is approved, the permittee shall land apply in accordance with the NUP until soil phosphorus is reduced below 500 ppm extractable phosphorus.
- (5) If the permittee is required to have a NUP with a phosphorus reduction component based on crop removal, and if the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus concentration in Zone 1 depth (0-6 inch incorporated; 0-2 or 2-6 inch if not incorporated), then the permittee is subject to enforcement action at the discretion of the Executive Director.
- (d) Buffer Requirements. The permittee shall meet the following buffer requirements for each LMU:
- (1) Water in the State. The permittee shall not apply compost, manure, sludge, slurry and wastewater within the buffer distances as noted on Attachment B and Special Provision X.D. Vegetative buffers shall be maintained in accordance with NRCS Field Office Technical Guidance. The permittee shall maintain the filter strip (according to NRCS Code 393) between the vegetative buffer and the land application area. If the land application area is cropland, the permittee shall install and maintain contour buffer strips (according to NRCS Code 332) within the land application area in addition to the buffer distances required by this permit.
 - (2) Water Wells. The permittee shall comply with the well protection requirements listed in Section VII.A.7.(a).
- (e) Exported wastewater, sludge, and/or manure. Wastewater, sludge, and/or manure removed from the operation shall be disposed of by:
- (1) delivery to a composting facility authorized by the Executive Director;
 - (2) delivery to a permitted landfill located outside of the major sole source impairment zone;
 - (3) beneficial use by land application to land located outside of the major sole source impairment zone;
 - (4) put to another beneficial use approved by the Executive Director; or
 - (5) providing wastewater, sludge, and/or manure to operators of third-party fields, i.e. areas of land in the major sole source impairment zone not owned, operated, controlled, rented, or leased by the CAFO owner or operator, that have been identified in the PPP.

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- (i) There must be a written contract between the permittee and the recipient that includes, but is not limited to, the following provisions:
 - (A) All transferred wastewater, sludge, and/or manure shall be beneficially applied to third-party fields identified in the PPP in accordance with the applicable requirements in 30 TAC §321.36 and §321.40 at an agronomic rate based on soil test phosphorus. The requirements for development or implementation of a nutrient management plan or nutrient utilization plan, under 30 TAC §321.40, do not apply to third-party fields.
 - (B) Manure and sludge must be incorporated on cultivated fields within forty-eight (48) hours after land application.
 - (C) Land application rates shall not exceed the crop nitrogen requirement when the soil phosphorus concentration in Zone 1 depth (0-6 inch if incorporated; 0-2 or 2-6 inch if not incorporated) is less than or equal to 50 ppm phosphorus.
 - (D) Land application rates shall not exceed two times the phosphorus crop removal rate, and not to exceed the crop nitrogen requirement, when soil phosphorus concentration in Zone 1 depth (0-6 inch if incorporated; 0-2 or 2-6 inch if not incorporated) is greater than 50 ppm phosphorus and less than or equal to 150 ppm phosphorus.
 - (E) Land application rates shall not exceed one times the phosphorus crop removal rate, and not to exceed the crop nitrogen requirement, when soil phosphorus concentration in Zone 1 depth (0-6 inch if incorporated; 0-2 or 2-6 inch if not incorporated) is greater than 150 ppm phosphorus and less than 200 ppm phosphorus.
 - (F) Before commencing manure, wastewater, compost, and/or sludge application to third-party fields, at least one representative soil sample from each third-party field must be collected by a certified nutrient management specialist and analyzed in accordance with 30 TAC §321.36. Third-party fields which have had wastewater, sludge, compost, and/or manure applied during the preceding year must be sampled annually by a certified nutrient management specialist and the samples analyzed in accordance with 30 TAC §321.36. For third-party fields that have not received wastewater, sludge, compost, and/or manure during the preceding year, initial sampling must be completed before re-starting land application to the third-party field.
 - (G) A copy of the annual soil analyses shall be provided to the permittee within sixty (60) days of the date the samples were taken.
 - (H) Temporary storage of wastewater, sludge, and/or manure is prohibited on third-party fields.
- (ii) The permittee is prohibited from delivering wastewater, sludge, and/or manure to an operator of a third-party field once the soil test phosphorus analysis shows a level equal to or greater than 200 ppm or after becoming aware that the third-party operator is not following

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- appropriate provisions of 30 TAC §321.36, §321.40 and/or the contract.
- (iii) The permittee will be subject to enforcement action for violations of the land application requirements on any third-party field under contract.
 - (iv) The permittee shall submit records to the appropriate regional office quarterly that contain the name, locations, and amounts of wastewater, sludge, and/or manure transferred to operators of third-party fields.
- (f) **Irrigation Operating Requirements**
- (1) **Minimize Ponding.** Irrigation practices shall be managed so as to minimize ponding or puddling of wastewater on the site, prevent tailwater discharges to water in the state, and prevent the occurrence of nuisance conditions.
 - (2) **Discharge Prohibited**
 - (i) The drainage of compost, manure, sludge, slurry and wastewater is prohibited from the LMU(s), unless authorized under Section VII.A.5(d).
 - (ii) Where compost, manure, sludge, slurry and wastewater is applied in accordance with the nutrient management plan and/or NUP, precipitation-related runoff from the LMU(s) under the control of the permittee is authorized.
 - (iii) If a discharge from the irrigation system is documented as a violation, the permittee may be required by the Executive Director to install an automatic emergency shut-down or alarm system to notify the permittee of system problems.
 - (3) **Backflow Prevention.** If the permittee introduces wastewater or chemicals to water well heads for the purpose of irrigation, then backflow prevention devices shall be installed according to 16 TAC Chapter 76 (related to Water Well Drillers and Water Well Pump Installers).
- (g) **Nighttime Application**
- (1) Land application at night shall only be allowed if there is no occupied residence(s) within one quarter (0.25) of a mile from the outer boundary of the actual area receiving compost, manure, sludge, slurry and wastewater application. In areas with an occupied residence within one quarter (0.25) of a mile from the outer boundary of the actual area receiving compost, manure, sludge, slurry and wastewater application, application shall only be allowed from one (1) hour after sunrise until one (1) hour before sunset, unless the current occupant of such residences have, in writing, agreed to specified nighttime applications.
 - (2) Land application of compost, manure, sludge, slurry and wastewater is prohibited between 12 a.m. and 4 a.m. during normal operating conditions.
9. **Sampling and Testing.**
- (a) **Manure and Wastewater.** The permittee shall collect and analyze at least one representative sample of wastewater and one representative sample of manure each year for total nitrogen, total phosphorus, and total potassium. The results of these analyses shall be used in determining application rates.
 - (b) **Soils**
 - (1) **Initial Sampling.** Before commencing compost, manure, sludge, slurry and wastewater application to the LMU(s), the permittee shall have at least one

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representative soil sample from each LMU, collected and analyzed according to the following procedures.

- (2) Annual Sampling. The TCEQ or its designee shall have soil samples collected annually for each current and historical LMU.
- (3) Sampling Procedures. Sampling procedures shall employ accepted techniques of soil science for obtaining representative samples and analytical results, and be consistent with approved methods described in the Executive Director's guidance entitled "Soil Sampling for Concentrated Animal Feeding Operations (CAFOs) (RG-408)."
 - (i) Soil samples must be collected by one of the following persons:
 - (A) the NRCS;
 - (B) a certified nutrient management specialist;
 - (C) the Texas State Soil and Water Conservation Board;
 - (D) the Texas AgriLife Extension; or
 - (E) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas.
 - (ii) Samples shall be collected and analyzed within the same forty-five (45) day time frame each year, except when crop rotations or inclement weather require a change in the sampling time. The reason for a change in sampling timeframe shall be documented in the PPP.
 - (iii) Obtain one composite sample for each soil depth zone per uniform soil type (soils with the same characteristics and texture) within each LMU.
 - (iv) Composite samples shall be comprised of 10 - 15 randomly sampled cores obtained from each of the following soil depth zones:
 - (A) Zone 1: 0-6 inches (where the manure, sludge, slurry, or compost is physically incorporated or injected directly into the soil) or 0-2 inches (where the manure, sludge or slurry is not incorporated into the soil). Wastewater is considered to be incorporated upon land application if it is less than two percent (2%) solids. Slurry from freestall barns is treated like manure for this sampling requirement. If a 0-2 inch sample is required, then an additional sample from the 2-6 inch soil depth zone shall be obtained in accordance with the provisions of this section; and
 - (B) Zone 2: 6-24 inches.
- (4) Laboratory Analysis. Samples shall be analyzed by a soil testing laboratory. Physical and chemical parameters and analytical procedures for laboratory analysis of soil samples shall include the following:
 - (i) nitrate reported as nitrogen in ppm;
 - (ii) phosphorus (extractable, ppm) using Mehlich III with Inductively Coupled Plasma (ICP);
 - (iii) potassium (extractable, ppm);
 - (iv) sodium (extractable, ppm);
 - (v) magnesium (extractable, ppm);
 - (vi) calcium (extractable, ppm);
 - (vii) soluble salts (ppm) or electrical conductivity (dS/m) – determined from extract of 2:1 (v/v) water/soil mixture; and
 - (viii) soil water pH (soil:water, 1:2 ratio).

10. Preventative Maintenance Program.
 - (a) Facility Inspections

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- (1) General Requirements
 - (i) Inspections shall include visual inspections and equipment testing to determine conditions that could cause breakdowns or failures resulting in discharge of pollutants to water in the state or the creation of a nuisance condition.
 - (ii) The permittee shall draft a report, to be maintained in the PPP, to document the date of inspections, observations and actions taken in response to deficiencies identified during the inspection. The permittee shall correct all the deficiencies within thirty (30) days or shall document the factors preventing immediate correction.
 - (2) Daily Inspections. The permittee shall conduct daily inspections on all water lines, including drinking water and cooling water lines, which are located within the drainage area of a RCS.
 - (3) Weekly Inspections. The permittee shall conduct weekly inspections on:
 - (i) all control facilities, including RCSs, storm water diversion devices, runoff diversion structures, control devices for management of potential pollutant sources, and devices channeling contaminated storm water to RCSs; and
 - (ii) equipment used for land application of compost, manure, sludge, slurry and wastewater.
 - (4) Monthly Inspections. The permittee shall conduct monthly inspections on:
 - (i) mortality management systems, including collection areas; and
 - (ii) disposal and storage of toxic pollutants, including pesticide containers.
 - (5) Annual Site Inspection.
 - (i) The permittee shall annually conduct a complete site inspection of the production area and the LMU(s).
 - (ii) The inspection shall verify that:
 - (A) the description of potential pollutant sources is accurate;
 - (B) the site plan/map has been updated or otherwise modified to reflect current conditions; and
 - (C) the controls outlined in the PPP to reduce pollutants and avoid nuisance conditions are being implemented and are adequate.
 - (b) Five Year Evaluation. Once every five years the permittee shall have a licensed Texas Professional Engineer review the existing engineering documentation, complete a site evaluation of the structural controls, review existing liner and RCS capacity documentation, and complete and certify a report of their findings. The report must be kept in the PPP.
11. Management Documentation. The permittee shall maintain the following records in the PPP:
- (a) a copy of the administratively complete and technically complete individual water quality permit application and the written authorization issued by the commission or Executive Director;
 - (b) a copy of the approved recharge feature certification and appropriate updates;
 - (c) a copy of the comprehensive nutrient management plan, nutrient management plan, nutrient utilization plan and appropriate updates to these plans, if required;
 - (d) the RCS liner certification(s);
 - (e) any written agreement with a landowner which documents the allowance of nighttime application of compost, manure, sludge, slurry and wastewater;