

## FEEDING CONTRACT

This Feeding Contract is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_, (hereafter "First Party",) and \_\_\_\_\_, (hereafter "Second Party",) based upon the following recitals:

WHEREAS, First Party is the owner of certain cattle and desires Second Party to feed, water and care for said cattle, until said cattle are ready to be sold;

WHEREAS, Second Party is the owner/tenant of certain real estate located at \_\_\_\_\_, and desires to provide feed, water and care for said cattle for the consideration as hereafter set forth;

NOW, WHEREFORE, based upon the foregoing mutual covenants and promises, the parties agree as follows:

1. DELIVERY OF CATTLE. First Party agrees to deliver to Second Party, between \_\_\_\_\_ and \_\_\_\_\_ head of \_\_\_\_\_ to be fed by Second Party in \_\_\_\_\_ County, \_\_\_\_\_. Said cattle will be placed with Second Party for feeding purposes only.

2. FEED AND CARE. Second Party agrees to receive said cattle at place and time of delivery, and furnish feed for the same in what is known as the \_\_\_\_\_ Feedyard in \_\_\_\_\_ County, \_\_\_\_ and return said cattle upon demand of First Party at \_\_\_\_\_. Second Party shall be responsible for all labor and costs associated with the care, feeding, and watering of said cattle. Second Party shall be responsible for and bear the cost of feed, veterinarian supplies and veterinarian bills. Second Party warrants and represents to First Party that he is owner or tenant of said feed facilities, that he is legally able to execute this agreement and care for the cattle at this location, and that the feeding of cattle at this location shall not violate any applicable local, state or federal laws, including zoning laws.

3. INSURANCE. First Party may at his discretion, provide, insurance for loss, death, or destruction of the cattle. Second Party shall provide a policy of general liability insurance insuring both parties from claims by third parties against Second Party and First Party, for personal injury or death arising from Second Party's maintenance, care, feeding, watering or control of the cattle. Second Party shall name First Party as an additional named insured on said policy, and at First Party's request, shall provide First Party with copies of said policies, or a certificate of insurance indicating that such insurance does exist.

4. RISK OF LOSS. Second Party shall bear the risk of loss, disease, death, destruction, or crippling of cattle ("Risk of Loss"), which makes said cattle unsuitable for sale. Any such losses may, at the option of First Party, be deducted from any amounts due Second Party under paragraph 5 herein, or collected directly from Second Party.

5. PAYMENT FOR CARE OF CATTLE. First Party shall pay to Second Party the difference between the Purchase Price and the Sale Price as those terms are defined in subparagraphs 5.1 and 5.2 herein, for watering, feeding and caring for said cattle, unless the Purchase Price exceeds the Sale Price, in which case Second Party shall be liable to First Party for such difference.

5.1 PURCHASE PRICE. Purchase Price as used herein is defined as the sum of \$ \_\_\_\_\_ plus:

- A. All of First Party's general and administrative expenses associated with the purchase of the livestock or the sale of the livestock as described in paragraph 1 herein, including but not limited to all interest, fees, bank charges (including late charges or penalties if incurred as a result of any default by buyer as described herein), reasonable accounting fees, market protection and legal expenses, insurance, taxes, health fees or licenses paid to any state, governmental agency, or ultimate buyer of livestock.
- B. Cost of feed, water, veterinarian supplies or bills, immunization costs, insurance, taxes or any other costs associated with cattle which are required to be borne and paid for by the Second Party herein, should the Second Party fail to pay for the same.
- C. The sum of one percent (1%) per annum of the aggregate of the sums listed in paragraph 5.1 herein.
- D. An additional charge of \$ \_\_\_\_\_ per head per month will be charged against the cattle, payable at time of delivery out of feedyard.
- E. Market Protection: As a condition to providing cattle, the First Party is requiring the Second Party to pay for the cost of a "put" or "call" option contract or contracts for the purpose of providing protection for the benefit of the First Party and its Bank against future market fluctuations in the price of the Cattle (the Market Protection"). The amount of the Market Protection may be established by the First Party in

E. (continued) its exclusive discretion solely for the purpose of providing protection for the cost of the cattle and not as protection for the actual value of, or the Second Party's investment in, the Cattle. The Market Protection may be obtained by the First Party in an account maintained by it in its own name with a licensed commodity broker. The Market Protection may stay in place throughout the period of time that the Cattle with respect to which the Market Protection was obtained remain in the care of the Second Party; provided however, that the First Party in its sole discretion, may sell the Market Protection while the Cattle are still with the Second Party if it determines that it is advisable to do so, taking market conditions into account. All proceeds derived from the sale or other disposition of the Market Protection shall be applied upon the balance owing upon the Invoice Cost including interest. Any balance remaining after payment in full of that amount shall be paid to the Second Party. In the event the full amount owing to the First Party with respect to the Cattle is paid in full, the Market Protection shall be considered to be beneficially owned by the Second Party and shall be assigned to the Second Party or his order by the First Party. The Second Party understands that the Market Protection is being provided for the purpose of protecting the First Party's interest in the Cattle and not for the protection of the Second Party the Second Party may, but is not required to, obtain additional price protection for the Cattle by the use of additional "put" or "call" options, hedges, future-contracts or other commodity transactions for the Second Party's own protection and in the Second Party's own name but that the cost of such transactions are not included in the expenses by the First Party pursuant to this Agreement.

F. It is further agreed that Second Party has the right to purchase the cattle from First Party by remitting negotiable funds for the total of paragraph 5.1 inclusive of all charges mentioned in the paragraph or subparagraph.

5.2 SALE PRICE. The Sale Price shall be such price that First Party in its absolute and sole discretion is able to obtain for the cattle on or about \_\_\_\_\_ First Party shall attempt to obtain the best price possible for the cattle, but First Party's decision to sell the cattle shall not be subject to review or questioned by the Second Party, and such decision shall be binding on the Second Party. The Sale Price, for purposes of computing the amount due the Parties hereto, shall include all commissions, fees, transportation and other normal handling charges common to the industry, paid by the First Party in connection with the sale of the cattle.

5.3 TIMING OF PAYMENTS. In the event that the Sale Price exceeds the Purchase Price, First Party shall pay Second Party the difference within thirty (30) days of the sale of the cattle. In the event that the Purchase Price exceeds the Sale Price, the Second Party shall pay First Party the difference within forty-five (45) days of the sale of the cattle.

6. INSPECTION OF CATTLE, DOCUMENTS AND RECORDS. Second Party hereby agrees to allow First Party to inspect all documents, accounting records, tax returns, invoices, receipts, bills or any other document any way connected with Second Party's purchase, maintenance, feeding, raising or sale of the cattle. Such records may be inspected upon First Party's oral or written request to the Second Party that the same be inspected by First Party, its agents, employees, attorneys or accountants, and Second Party shall make the same available whether at Second Party's place of business, or at any place directed by First Party within forty eight (48) hours following First Party's notice to Second Party of its intent to inspect the same.

6.1 INSPECTION OF CATTLE. Second Party further agrees to allow First Party to inspect the cattle, and any feed, veterinarian supplies, equipment, or any other thing used in connection with the maintenance, or rearing of said cattle. Said inspection may occur without notice and Second Party hereby agrees to allow First Party to enter Second Party's property, or any other place in which any of the foregoing is located, without Second Party's permission, and Second Party hereby waives any claim that such inspection shall be deemed to constitute trespassing, or other breach of the peace.

7. COMPLIANCE WITH LAWS AND REGULATIONS. Second Party warrants that it is in compliance with all federal, state and local laws concerning the business operations and assets of Second Party, and that Second Party shall not violate any such laws in connection with the caring for, feeding, rearing, maintenance or sale of the cattle.

8. EVENTS OF DEFAULT. Second Party's failure to perform any other act or condition required by this Agreement, or breach of any warranty contained in this Agreement, shall constitute a default, including but not limited to the following.

- A. Second Party's failure to allow First Party to inspect the cattle or to inspect Second Party's books and records as described in paragraphs 6 and 6.1 herein;
- B. Second Party's failure to properly care for, feed, water, and to maintain the cattle in good health;
- C. Second Party's failure to comply with any applicable local, state or federal laws or regulations as described herein;

- D. Second Party's failure to provide and maintain insurance;
- E. The filing of a petition in Bankruptcy for or by the Second Party, or the appointment for the Second Party of an assignment for the general benefit of creditors of the Second Party;
- F. The sale, dissolution or liquidation of Second Party's business, or the sale or lease of any property upon which cattle are to be kept and maintained;
- G. If a corporation, the sale, transfer, conveyance or assignment of the common stock of Second Party which would result in a person or entity other than \_\_\_\_\_ owning a controlling interest in Second Party;
- H. If a partnership, the sale, transfer, or conveyance of any general partnership interest in the Second Party which would result in a person other than \_\_\_\_\_ owning an interest in said partnership.

9. DEATH OF SECOND PARTY. If an individual or sole proprietorship, upon the death of the Second Party, First Party may at its option, terminate this Agreement and immediately take possession of the cattle in which case First Party shall be liable to Second Party's estate only for its reasonable out-of-pocket expenses associated with the caring for and maintaining of the cattle in good health.

10. FIRST PARTY'S RIGHTS UPON DEFAULT. In the event of Second Party's default under this Agreement, First Party may, in addition to any and all other remedies provided by law, immediately take possession of the cattle and offset any sums due Second Party from damages caused by Second Party's default.

11. TITLE OF CATTLE TO REMAIN WITH FIRST PARTY; SECOND PARTY'S RIGHTS UPON DEFAULT. Second Party agrees and acknowledges that title to the cattle shall remain with the First Party, and that Second Party's control and care of the cattle under this agreement shall in no way give rise to or create any property or ownership rights in the cattle, nor any lien existing by either common law or statute, and that Second Party's sole and exclusive remedy for First Party's breach of this agreement shall be to recover sums due Second Party for the care of the cattle as described herein.

12. **SECOND PARTY TO KEEP CATTLE FREE OF LIENS AND ENCUMBRANCES.** Second Party hereby warrants that there are no liens, security interests, or encumbrances affecting the Second Party that would pertain to the cattle or any of the other collateral described herein, and further warrants and promises not to cause any lien, security interest, or encumbrances to be placed on the aforesaid cattle.

13. **NOTICE.** Written notice, if required by this Agreement, shall be deemed to have been given by the First Party to the Second Party. First Party's mailing of such notice to the Second Party by a nationally recognized overnight mail service, or sending such notice to the Second Party by telecopy, electronic facsimile, or any other electronic means, including telegram, shall be conclusive evidence that such notice was given by the First Party and received by the Second Party. Any written notices required by this Agreement shall be given to the parties at the addresses below:

If to First Party:

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With a copy to:

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If to Second Party:

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With a copy to:

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14. NATURE OF AGREEMENT. Second Party and First Party hereby acknowledge and agree that this Agreement is a Feeding Contract, and is not a partnership or joint venture agreement, nor shall it in any way give rise to any agency, employment or master/servant relationship between the Second Party and First Party. Second Party shall independently provide and pay for all wages, commissions, supplies, or any other amount or obligation incurred by Second Party in furtherance of this Agreement, and shall not represent that First Party is in any way responsible for the payment of same. Second Party shall ensure that all of Second Party's employees and agents are paid in accordance with applicable laws and regulations, and shall keep and maintain workers compensation insurance covering injury to any of said agents or employees in accordance with applicable laws.

15. SUBMISSION TO JURISDICTION; CHOICE OF LAW. SECOND PARTY HEREBY CONSENTS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN JEFFERSON COUNTY, KENTUCKY, AND WAIVES ANY OBJECTIONS WHICH SECOND PARTY MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING IN ANY SUCH COURT AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON SECOND PARTY AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY MAIL OR MESSENGER DIRECTED TO SECOND PARTY AT THAT ADDRESS SET FORTH IN PARAGRAPH 13 HEREIN. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF KENTUCKY.

16. ATTORNEYS FEES AND COSTS. In the event that as a result of Second Party's breach of this Agreement First Party employs counsel to assist it in enforcement of any obligation hereunder by Second Party. Second Party hereby agrees to pay for any and all reasonable costs and attorneys fees associated with the same, including the employment of such counsel, and the clerks, staff, paralegal or other employees or agents of such counsel, along with all costs and expenses associated with the enforcement of Second Party's obligations or First Party's rights under this agreement, including but not limited to all court costs, filing fees, depositions, travel costs or any other costs incurred by First Party in the employment of said counsel.

17. CONTRACT BINDING ON HEIRS AND SUCCESSORS. This contract is binding upon the parties hereto, their agents, heirs, successors and assigns.

18. SECTION TITLES. The section titles contained in this contract are included simply for the convenience of the parties and shall be without substantive meaning or effect and are not a part of the agreement between the parties.

19. MAXIMUM INTEREST. No agreements, conditions, provisions or stipulations contained in this contract or in any other document required to be executed by this contract, or any event of default, or any exercise by First Party of First Party's right to accelerate the payment of the purchase price or to repurchase the livestock or to exercise any other option or remedy contained in this contract, shall entitle First Party to collect interest exceeding the maximum authorized by law, and in no event shall Second Party be obligated to pay interest exceeding such rate, and all contracts, if any, which may bind, obligate or compel Second Party to pay a rate of interest exceeding the maximum allowed by law shall be without binding force or effect. In the event any interest is charged in excess of the maximum allowed by law (excess), Second Party acknowledges and stipulates any such charges shall be the result of an accidental and bona fide error, and such excess shall be, first applied to reduce the amount of any liabilities due, and second, returned to Second Party, it being the intention of the parties hereto not to enter at any time into a usurious or otherwise illegal relationship, provided, however, that in the event such excess is charged, Second Party shall continue to be obligated to perform each and every promise and covenant contained in this contract, and all other promises, covenants and warranties contained in this contract shall continue in full force and effect.

20. NON-ASSIGNABLE. This contract may be assigned by First Party but is not assignable by the Second Party absent the express, written permission of First Party.

FIRST PARTY:

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SECOND PARTY:

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