Book 2010 Page 1349
Document 2010 1349 Type 03 006 Pages 9
Date 5/06/2010 Time 3:45:10PM
Rec Amt $49.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

EASEMENT AGREEMENT
(Recorder's Cover Sheet)

Preparer Information:
Jonathan C. Wilson, 215 10th Street, Suite 1300, Des Moines, IA 50309 (515) 288-2500

Return Document to:
Jonathan C. Wilson, 215 10th Street, Suite 1300, Des Moines, IA 50309 (515) 288-2500

Name of Grantor:
BRUE Properties, LLC, 3294 Vine Road, Dyersville, IA 52040-8714

Name of Grantee
Big River United Energy, LLC

Legal Description:
See Exhibits A and B attached to Easement Agreement
See Page 8 for Exhibit A
See Page 9 for Exhibit B

EASEMENT AGREEMENT

THIS Easement Agreement ("**Agreement**") is made as of May 3, 2010, by BRUE Properties, LLC (the "**Grantor**"), in favor of Big River United Energy, LLC (the "**Grantee**").

RECITALS

A. Grantor owns the real estate legally described on Exhibit A attached hereto and incorporated herein by this reference (the "**Burdened Property**").

B. Grantee owns the real estate legally described on Exhibit B attached hereto and incorporated herein by this reference (the "**Benefitted Property**").

C. Grantee is currently using and will continue to use the Benefitted Property for the lawful operation of Permitted Activities and other activities associated with or incident to said operation and other energy production and industrial activities.

D. Grantee is acquiring this Easement so that it may continue its lawful operations without the threat of potential lawsuits, known or unknown and whether or not there otherwise may be a valid legal basis for any potential claims against Grantee, arising out of its operations on the Benefitted Property.

NOW, THEREFORE, in consideration of the forgoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Grantee and its successors and assigns a perpetual easement (the **"Easement"**) on, over, above, under, through and across the Burdened Property, including all air space and subsurface thereof, upon all of the terms and conditions hereinafter set forth, which Easement shall be for the purposes and uses set forth in Paragraph 1 and shall be of the nature described in Paragraph 2.

This Easement shall be subject to the following terms and conditions:

1. PURPOSES OF THE EASEMENT. The Easement shall be for the following uses and purposes:

1.1. Operation of Permitted Activities and any other activities associated with or incident to said operation, energy fuel, and livestock feed production, or other industrial activity on the Benefitted Property ("Permitted Activities").

1.2. To operate the Permitted Activities at any time and for any duration in a manner that is or may be of a character or nature historically used to define or otherwise constitute a nuisance of any kind, including without limitation activities that are or are alleged to be offensive to any of the senses, or an obstruction to the otherwise free use of the Burdened Property, so as to permit interference with the comfortable enjoyment of life or property by Grantor and its successors and

assigns that, absent this Easement, would be considered unreasonable and/or actionable.

1.3. To erect, continue, or use any building or other place on the Benefitted Property at any time and for any duration for the exercise of any trade, employment, or manufacture associated with operation of the Permitted Activities which becomes objectionable to the health, comfort, or property of Grantor and its successors and assigns.

1.4. To operate the Permitted Activities at any time and for any duration in such a manner as to render impure the water of any stream, pond, or underground water source, or unlawfully divert the same from its natural course or state on, over, between, or under the Burdened Property and the Benefitted Property, to the disadvantage of Grantor and its successors and assigns.

1.5. To operate the Permitted Activities at any time and for any duration in such a manner as to emit, generate, or distribute gas, steam, smoke, noxious fumes, offensive odors, soot, fly ash, cinders, dust, ashes, and other noxious and deleterious substances into the air, or discharge the same upon the Burdened Property.

1.6. To operate the Permitted Activities at any time and for any duration in such a manner as to interrupt the free passage of light and/or air to and from the Burdened Property, whether by the discharge of any substances, or combination of substances, into the air, or to cast unreasonably intense or otherwise offensive light or shadows onto the Burdened Property.

1.7. To operate the Permitted Activities at any time and for any duration in such a manner as to permit vibrations, blasting, excessive noises, destruction of crops, flooding, or pollution, or to otherwise disturb the comfort of Grantor and its successors and assigns by undesirable odors, substances, noises, or activities.

1.8. To operate the Permitted Activities at any time and for any duration in such a manner as to denigrate or deplete the water supply, the potability of the water supply, or the palatability of the water supply, of or on the Burdened Property or cause pollution via leakage, seepage, or otherwise into the soil or water supplies on, over, between, or under the Burdened Property and the Benefitted Property.

1.9. To conduct operation of the Permitted Activities in any other manner that undesirably interferes with the use and enjoyment of the Burdened Property by Grantor and its successors and assigns so as to rise otherwise to the level of a nuisance under Iowa Code Chapter 657, other provision of law, or at common law.

1.10 To generate traffic of any volume or nature upon, to, and from the Benefitted Property without inhibition, limitation, or restriction.

2. NATURE OF THE EASEMENT. This Easement shall be deemed to run with the land and shall inure to the benefit of, and be binding upon, the parties hereto, their tenants and their respective heirs, personal representatives, successors, assigns, mortgagees, invitees, and guests. References herein to Grantor and to Grantee shall mean and refer also to their respective tenants and their respective heirs, personal representatives, successors, assigns, mortgagees, invitees, and guests. Further, (i) no act or failure to act on the part of Grantee or its successors and assigns shall be deemed to constitute an abandonment, surrender, or termination of the Easement, except upon recordation of a quitclaim deed specifically conveying the Easement back to Grantor or its successors or assigns; (ii) nonuse of the Easement shall not prevent the future use of the entire scope thereof; and (iii) no use of or improvement to the Benefitted Property, and no assignment hereof or subgrant hereunder in whole or part shall, separately or in the aggregate, constitute an overburdening of the Easement or any part thereof.

3. EFFECTIVE DATE. Subject to the provisions hereof relating to past Permitted Activities, the Effective Date hereof is the date of its recording in Delaware County.

4. COVENANT NOT TO SUE. Grantor hereby waives all claims for damages, injunctive relief, or any other remedy Grantor and its successors and assigns may have against, and any liability of, Grantee and its successors and assigns, in the nature of a nuisance or similar suit arising out of or relating to any past or future Permitted Activities permitted under the Easement or otherwise associated with the operation of the Permitted Activities on the Benefitted Property.

5. NO INTERFERENCE. Grantor's activities shall not, currently or prospectively, interfere with, impair, delay, or materially increase the cost of Grantee's operation of the Permitted Activities on the Benefitted Property or the free enjoyment or exercise of any other rights or benefits given to or permitted Grantee hereunder.

6. GRANTOR'S RESERVED RIGHTS. Subject to Paragraph 4 and Paragraph 5 above and the other rights of Grantee under this Agreement, Grantor or its successors or assigns hereby reserves the right to use the Burdened Property for any purpose, and to lease the Burdened Property and grant easements on, over, under, and across the Burdened Property to other persons and entities for any purpose; provided, however, that (a) such uses, leases, and easements shall be for purposes and activities that are not and will not be inconsistent with any of the operations on the Benefited Property, or Grantee's enjoyment of the rights granted to it under this Easement Agreement, and (b) any such uses, leases, and easements entered into after the Effective Date shall expressly provide that they are subject and subordinate in all respects to this Easement Agreement and to the rights of Grantee hereunder. They shall be so subject and subordinate even if not expressly so stated therein.

7. ADDITIONAL PROPERTY. If Grantor or its successors and assigns acquires additional real estate adjoining or in the vicinity of either the Burdened Property or the Benefitted Property, such additional real estate shall be subject to all of the terms and conditions of this Easement Agreement as if fully described on Exhibit A attached hereto. Grantor shall execute all documentation necessary to bind subsequent purchasers of such additional real estate

to the terms and conditions of this Easement Agreement. If Grantee or its successors and assigns acquires additional real estate adjoining or in the vicinity of either the Burdened Property or the Benefitted Property for use in connection with the operation of the Permitted Activities, such additional real estate shall be subject to all of the terms and conditions of this Easement Agreement as if fully described on Exhibit B attached hereto and deemed to be a part of the Benefitted Property in all respects. Grantor shall execute all documentation necessary to bind subsequent purchasers of the Benefitted Property to the terms and conditions of this Easement Agreement.

8. SCOPE AND BREADTH. It is intended that the scope and breadth of this Easement Agreement, and the provisions thereof, will be as permissive in favor of the Grantee in scope and breadth as allowed by law. Accordingly, if any provision hereof is deemed to be illegal or unenforceable because of its purported scope or breadth, the remaining provisions of this Easement Agreement shall be unaffected thereby, and a court of competent jurisdiction is in that case and that case alone authorized to reform the subject provision(s) so that the same shall be legal and enforceable to the fullest extent in scope and breadth as permitted by law.

9. PURCHASE OPTION. In the event of any contemplated reformation or actual reformation as provided in Paragraph 8 above, the Grantee and its successors-in-interest and/or assigns reserve the unqualified right to purchase the Burdened Property for the price paid by the then-owner(s) of the Burden Property in a good faith, arms-length sale/purchase transaction, less the costs and attorney fees for which provision is made in Paragraph 10 below. In the event of the exercise of the purchase option, the owner(s) of the Burdened Property will pay for necessary abstracting to demonstrate good and marketable title in accordance with Title Standards of the Iowa State Bar Association, will pay customary real estate tax prorations and the entirety of any special assessments then a lien on the Burdened Property, and will convey the Burdened Property by stamped General Warranty Deed. Funds of the purchase price may be used to fulfill the obligations of the owner(s) of the Burdened Property. In the event of the exercise of the purchase option, written notice shall be served upon the owner(s) of the Burden Property as shown in the Delaware County Recorder's Office, and service upon any one such owner shall be deemed service upon all. Closing and delivery of possession shall be on a date certain specified in the notice that is at least sixty 60) days after such notice is served.

10. ATTORNEY FEES. In the event of litigation to enforce or interpret the terms of this Agreement, or to seek a reformation as provided in Paragraph 8 above, Grantee shall be entitled to recover its costs of litigation, including, without limitation, reasonable attorney fees.

11. ENTIRE AGREEMENT. This Agreement constitutes and embodies the entire Agreement between the parties with respect to the Easement, and supersedes all prior agreements, understandings and representations between the parties, whether oral or written.

12. TIME OF THE ESSENCE. Time is of the essence of this Easement Agreement, but no delay in the enforcement thereof shall be deemed a diminution or waiver of the rights herein granted.

13. AMENDMENT. This Agreement may not be amended, except by a written instrument that has been signed by the parties against whom enforcement of such amendment is sought.

14. HEADINGS. The headings used in this Agreement are for convenience only and shall not be used to construe or interpret the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the date first above written.

GRANTOR(S): BRUE PROPERTIES, LLC

By: BIG RIVER UNITED ENERGY, LLC
Its: Manager

By: _____
Name: Jim Leiting
Title: General Manager

GRANTEE: BIG RIVER UNITED ENERGY, LLC

By: _____
Name: Jim Leiting
Title: General Manager

STATE OF Iowa)
)ss
COUNTY OF Des Moines)

This instrument was acknowledged before me on the 5 day of May, 2010, by Jim Leiting as General Manager of Big River United Energy, LLC, a Wisconsin limited liability company, as Manager of BRUE Properties, LLC, an Iowa limited liability company.

Tina R McCulloch, Notary Public

Tina R. McCulloch
Commission Number 755684
My Commission Expires
November 6, 2011

STATE OF Iowa)
)ss
COUNTY OF Des Moines)

This instrument was acknowledged before me on the 5 day of May, 2010, by Jim Leiting as General Manager of Big River United Energy, LLC, a Wisconsin limited liability company.

Tina R McCulloch, Notary Public

Tina R. McCulloch
Commission Number 755684
My Commission Expires
November 6, 2011

EXHIBIT A

LEGAL DESCRIPTION OF BURDENED PROPERTY

Parcel C Part Of The East 1/4 Of The Southeast Quarter (SE1/4) Section Twenty-Six (26), Township Eighty-Nine North (T89N), Range Three West Of The Fifth Principal Meridian, Delaware County, Iowa, according to plat recorded in Book 7 Plats, Page 144; also Parcel E Part Of Parcel B Of The Southeast Quarter (SE1/4), Section 26, Township Eighty-Nine North (T89N), Range Three West (R3W) Of The Fifth Principal Meridian Delaware County, Iowa, according to plat recorded in Book 2001, Page 54.

EXHIBIT B

LEGAL DESCRIPTION OF BENEFITTED PROPERTY

Parcel "R" in Section 26, Township 89 North, Range 3 West of the 5th Principal Meridian, Delaware County, Iowa, comprised of the South 250' of SW ¼ of the SW ¼; SE ¼ of SW ¼; NW ¼ of SW ¼; NE ¼ of SW ¼, So. of the former Railroad R.O.W.; SW ¼ of NW ¼, So. of the former Railroad R.O.W.; SE ¼ of NW ¼, So. of the former Railroad R.O.W.; NW ¼ of SE ¼, So. of the centerline of Vine Road; NE ¼ of SE ¼, So. of the centerline of Vine Road & S ½ of SE ¼ of Section 26, Township 89 North, Range 3 West of the 5th Principal Meridian, Delaware County, Iowa, according to the Plat of Survey recorded in Book 2006, Page 3366.