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FILED NO. \_\_\_\_\_

BOOK 2002 PAGE 2913

2002 JUN 14 PM 3: 51

**EASEMENT TO APPLY AGRICULTURAL MANURE**

MICKI UTSLER  
RECORDER  
MADISON COUNTY, IOWA

This easement to Apply Agricultural Manure ("Agreement"), is entered into this 13 day of June '02, between Randy and JoAnn Berry husband and wife, their successors and assigns, whose principal place of business is 1983 305<sup>th</sup> Street, Winterset, Iowa ("Grantee"); and Charles and Helen Berry husband and wife, whose address is 3027 Carver Road, Winterset, Iowa 50273 ("Grantor"), and confirms the terms and conditions upon which Grantor is granting an easement to the Grantee (the "Easement").

REC \$ 20<sup>00</sup>  
AUD \$ \_\_\_\_\_  
R.M.F. \$ 1<sup>00</sup>

**WITNESSETH:**

WHEREAS, Grantee is the owner of the real property situated in Monroe, Madison County, Iowa, which is described in the attached Exhibit "A" (the Facility Parcel"); and

WHEREAS, Grantee is in the process of establishing a swine raising facility (the "Facility") on the above described property; and

WHEREAS, the Grantor is the owner of the real property situated in Monroe, Madison County, Iowa, which is described in the attached Exhibit "A" and is adjacent to the Facility parcel (the Grantor Parcel");

NOW THEREFORE, it is agreed as follows:

1. Grant of Easement: The Grantor hereby grants to Grantee an easement over that portion of the Grantor Parcel described in Exhibit "A" required for continuing access to and for the purpose of spreading manure generated by the livestock at the Facility. This Easement for manure spreading shall be exercisable to the extent reasonably required to have complete use of the Facility for the purpose intended.
2. Grant of Rights to Spread Manure: Grantee, their employees and independent contractors shall have the right to enter onto the Grantor Parcel for the purpose of spreading agricultural manure in a rate not in excess of those provided for by regulations promulgated by the State of Iowa.
3. Time of Application: Application shall be permitted after crops are harvested in any calendar year during the term of this Agreement and up until the time the soil is prepared for planting the following Spring.
4. Spring Application: It is anticipated that Spring applications will be permitted. Spring applications, however, will require the consent of the Grantor, which will not unreasonably be withheld. It is anticipated that Spring allocations will not be allowed during times which soil compaction will occur because of wet soil conditions or after preparation has begun for crop planting during the crop year.

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5. Term of Agreement: This agreement shall begin on June 14, 2002 and continue until December 31, 2009 at 11:59 p.m. This agreement shall automatically renew from year to year.
6. Form of Application: Any agricultural manure spread upon the Grantor Parcel shall be applied in a manner exercising good agricultural practices.
7. Covenant Running with the Land: The easement hereby granted, the restrictions hereby imposed, and the covenants herein contained shall be easements, restrictions, and covenants "running with the land" and shall inure to the benefit of, and be binding upon, the parties hereto, their respective heirs, successors and assigns.
8. Notices: All notices under this Agreement shall be in writing and delivered personally, by facsimile transmission or by mail, postage prepaid, addressed to the appropriate parties at their last known addresses. Any notice permitted or required under this Agreement shall be deemed "delivered" as follows: (1) if by hand delivery, on the date of actual delivery; (2) if by facsimile transmission, on the next business day following the date of transmission; and (3) if by mail, on the third business day following the date that the notice is deposited with the United States Postal Service.
9. Non-Waiver: Failure by either party to exercise any right under this Agreement and no partial single exercise of that right, shall not constitute a waiver of that or any other right, unless otherwise expressly provided herein.
10. Entire Agreement: This agreement represents the total and complete agreement of the parties. This easement replaces in entirety the original easement dated May 27, 1998.

IN WITNESS HEREOF, the parties have executed this Agreement as of the day and year first written above.

**Grantor**

By: Helen Berry  
Helen Berry

By: Charles C. Berry  
Charles C. Berry

**Grantee**

By: Randy Berry  
Randy Berry

By: JoAnn Berry  
JoAnn Berry

**ACKNOWLEDGEMENT - GRANTEE**

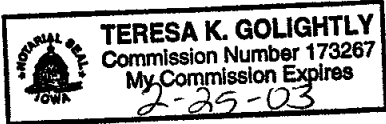
STATE OF Iowa )  
COUNTY OF Madison )

On this 13<sup>th</sup> day of June, 2002, before me, the undersigned, a Notary Public, personally appeared Randy Berry and Jann Berry to me known to be the individual or individuals described in and who executed the foregoing instrument and acknowledged the said instrument to be his/her free and voluntary act, for the uses and purposes therein mentioned.

{NOTARIAL SEAL}

Teresa K Golightly  
NOTARY PUBLIC in and for the State of Iowa  
residing at Winterset, Ia

My commission expires 2-25-03



**ACKNOWLEDGEMENT - GRANTOR**

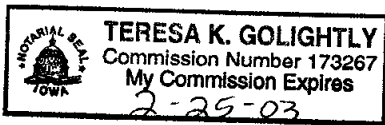
STATE OF Iowa )  
COUNTY OF Madison )

On this 13<sup>th</sup> day of June, 2002, before me, the undersigned, a Notary Public, personally appeared Charles Berry and Helen Berry to me known to be the individual or individuals described in and who executed the foregoing instrument and acknowledged the said instrument to be his/her free and voluntary act, for the uses and purposes therein mentioned.

{NOTARIAL SEAL}

Teresa K Golightly  
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**EXHIBIT "A"**  
**"Facility Parcel"**

The following described property located in Township Monroe, Madison County, Iowa.

The Southeast Quarter (SE $\frac{1}{4}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ) Section 15, Township 74, Range 28 west of the 5<sup>th</sup> P.M., Madison County, Iowa.

The swine barns located on this property were built in 1996 and are known as Barns 'A' and 'B'.

**ALSO:**

That part of the Northeast Quarter of Section 15, Township 74 North, Range 28 West of the Fifth Principal Meridian, Madison County, Iowa described as follows:

Commencing at the southwest corner of the Northeast Quarter of said Section 15; thence on an assumed bearing of North 90 degrees 00 minutes 00 seconds East along the south line of said Northeast Quarter a distance of 904.59 feet to the point of beginning;  
Thence North 03 degrees 49 minutes 33 seconds East 1303.75 feet;  
Thence North 90 degrees 00 minutes 00 seconds East 322.22 feet;  
Thence South 00 degrees 36 minutes 26 seconds East 970.10 feet;  
Thence South 89 degrees 23 minutes 34 seconds West 75.00 feet;  
Thence South 00 degrees 36 minutes 26 seconds East 330.02 feet to the south line of the Northeast Quarter (NE $\frac{1}{4}$ ) of said Section 15;  
thence North 90 degrees 00 minutes 00 seconds West along said south line a distance of 348.00 feet to the point of beginning.

This said tract contains 10.56 acres and is subject to at Madison County Highway Easement over the southerly 0.32 acres thereof. The swine barns located on this property were built in 1998 and are known as Barns 'C' and 'D'.

**"Grantor Parcel"**

The following described property located in Township Monroe, Madison County, Iowa.

The East Half (E $\frac{1}{2}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 15, and the West half (W $\frac{1}{2}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ) (except the 10.56 acres described above) in Section 15, Township 74 North, Range 28 West of the 5<sup>th</sup> P.M., Madison County, Iowa.

**Also:**

The East Half (E $\frac{1}{2}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 16, Township 74 North, Range 28 West of the 5<sup>th</sup> P.M. Madison County Iowa.

Randy Berry & Charles Berry