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2008-1542

Palo Alto County, Iowa No. 1775
Filed for Record 9-6-2001 At 10:45
Book 28 Page 78 Fee 26.00
MARY CLASING, RECORDER
DEPUTY

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Lease No. 1412324.002
Exhibit F

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
(Facility Site)

This Declaration is made by Hawkeye Nine, Inc., an Iowa Corporation ("Facility Site Owner")

WHEREAS, Facility Site Owner is the owner of a tract of land as described on the attached Exhibit A ("Facility Site");

WHEREAS, Facility Site Owner desires that the Facility Site be available for use with a livestock facility during the next 20 years by a Facility Operator and that the Facility Site be subject to and burdened by the same easements, land use restrictions and controls, regardless of who in the future is the Facility Operator; and

WHEREAS, over time the Facility Operator may be the Facility Site Owner or a person or entity who may be appointed by ACA as a successor Facility Operator and whose identity is unknown at this time.

NOW, THEREFORE, in consideration of the premises, Facility Site Owner declares that the Facility Site is and hereafter will be subject to the following covenants, conditions, restrictions and easements.

1.0 DEFINITIONS

- a. **ACA.** AgStar Financial Services, ACA.
- b. **Lease.** Personal property lease for a livestock building and related equipment between ACA and Lessee along with all Lease Supplements, Acceptance Certificates and related exhibits attached to the Lease and included in the Lease.
- c. **Facility.** Livestock building and related equipment located on the Facility Site as more particularly described in the Lease.
- d. **Facility Operator.** That party identified as the Lessee in the Lease who has the right to operate and utilize the Facility Site and who has the rights in the Facility Site created in the easements or declarations or any substitute Facility Operator designated by the ACA pursuant to the Operating Agreement.
- e. **Facility Site.** The real estate on which the Facility is located as described on Exhibit A over which easements or declarations have been or will be placed.

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f. **Operating Agreement.** Operating Agreement dated 8-22-01 between Facility Site Owner, Facility Operator and ACA defining the rights granted to the Facility Operator in the Facility Site.

2.0 **EASEMENTS.** For a term of 20 years beginning on the date hereof, the Facility Site is subject to the following non-inclusive easements in, over, under and across the Facility Site:

- (1) *Ingress and Egress.* Ingress and egress to construct the Facility, to operate the Facility, and for any other purpose relating to the Facility.
- (2) *Access and Operation.* Full access to the Facility Site to construct the Facility, to operate the Facility, to maintain the Facility, and for any other purpose relating to the Facility.
- (3) *Odors.* Odors emanating from the Facility Site and from any manure and other livestock bio-solids that are applied on the property described on attached Exhibit B ("Property").
- (4) *Well and Water Pipes.* If a well or rural water pipes are located on the Facility Site, use of such well and water pipes by the Facility Site.
- (5) *Utility Lines.* Use of utility lines located on the Facility Site to provide electricity to the Facility Site.
- (6) *Drainage.* Drainage of runoff water and other necessary drainage management of the Facility Site, all according to applicable environmental law.
- (7) *Lagoon and Manure Storage.* Use of the lagoon and manure storage areas located on the Facility Site for the operation of the Facility.

The above-described easements specifically benefit any and all future Facility Operators who may be designated by ACA upon a default of the current Facility Operator under the Lease. Facility Site Owner is acting in a different capacity than Facility Operator in declaring the above-described easements to a subsequent Facility Operator. It is Facility Site Owner's intent that where Facility Site Owner and Facility Operator are the same party, the rights, interests and responsibilities of the Facility Operator do not merge with any greater interest held by Facility Site Owner.

The above-described uses are more fully described in the Operating Agreement.

- 3.0 **USE AND RESTRICTIONS.** The Facility Site and Facility must be used in accordance with any state or local laws, rules, regulations, ordinances or permits issued to the Facility Operator. The Facility Site must used in accordance with the terms of the Operating Agreement.
- 4.0 **TRANSFER OF RIGHTS.** At any time in the future, should a Facility Operator be named or appointed who is not the same as Facility Site Owner, Facility Site Owner expects such a transfer of rights to be reflected by a recorded document.
- 5.0 **OPERATING AGREEMENT INCORPORATED BY REFERENCE.** An essential element of this Declaration is the terms and conditions of the Operating Agreement, which are incorporated into this Declaration.
- 6.0 **MISCELLANEOUS.** This Declaration is binding on the Facility Operator, its heirs, personal representatives, successors and assigns. This declaration and all easements granted hereunder shall constitute covenants running with the land and are binding upon Facility Site Owner and its respective successors and assigns who become Facility Site Owner hereunder. This Declaration is not intended to supersede, modify, amend or change the provision of the Operating Agreement or any prior instrument affecting the Facility Site.

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Dated: 8-22-01

FACILITY SITE OWNER (as above):

Hawkeye Mine, Inc., an Iowa Corporation

John E. Kerber, Pres.
By: John Kerber, President

Scott Unke
By: Scott Unke, Secretary

Jill Kerber-Aldous
By: Jill Kerber-Aldous, Treasurer

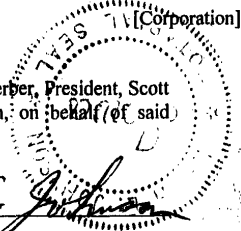
STATE OF IOWA

COUNTY OF Palo Alto

ss.

The foregoing instrument was acknowledged before me on August 22, 2001 by John Kerber, President, Scott Unke, Secretary, and Jill Kerber-Aldous, Treasurer, of Hawkeye Mine, Inc., a corporation, on behalf of said corporation.

Keith E. Johnson
Notary Public



DRAFTED BY:
AGSTAR FINANCIAL SERVICES, ACA
1921 Premier Dr, P.O. Box 4249
Mankato MN 56002-4249

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**EXHIBIT A
FACILITY SITE DESCRIPTION**

That part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T95N, R33W, Palo Alto County, Iowa, described as follows:

Beginning at the South Quarter corner of said Section 35; thence on an assumed bearing of North 90 degrees 00 minutes East, along the south line of said section, a distance of 880.00 feet to an iron monument; thence North 0 degrees 09 minutes 39 seconds West a distance of 811.00 feet to an iron monument; thence South 90 degrees 00 minutes West a distance of 880.00 feet to an iron monument located on the north-south quarter line of said section; thence South 0 degrees 09 minutes 39 seconds East, along said north-south quarter line, a distance of 811.00 feet to the point of beginning, containing 16.38 acres, subject to easements now of record in said county and state.

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EXHIBIT B
PROPERTY DESCRIPTION

N/A

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