

BARBARA L. NUSS, RECORDER  
HARDIN COUNTY IOWA

Prepared By: Mitch Baum \* Return To: 10640 County Highway D20, Alden, Iowa 50006

### MANURE APPLICATION EASEMENT

THIS MANURE APPLICATION EASEMENT ("Easement") is made this 16 day of September, 2013, between

DAVID & ANNETTE SWEENEY, HUSBAND AND WIFE

("Grantor") and

SUMMIT PORK I, LLP

("Grantee").

### RECITALS

- A. Grantor owns real property described on Exhibit "A" attached hereto ("Grantor's Property").
- B. Grantee owns a livestock facility ("Facility") located on certain real property described on Exhibit "B" attached hereto ("Grantee's Property").
- C. Grantee desires access to the Grantor's Property for the purpose of applying on said Grantor's Property manure generated by the Facility.
- D. Grantor believes that the application on the Grantor's Property of manure from the Facility will have a beneficial effect on crop production on the Grantor's Property.

### AGREEMENT

NOW, THEREFORE, in consideration of the application of manure from the Facility on the Grantor's Property and other valuable consideration, Grantor hereby grants to Grantee an easement for ingress and egress to, on, and over the Grantor's Property for the purpose of applying the manure produced by the Facility, subject to the following terms and conditions:

**Initial Term.** This Easement shall commence on the date set forth above and shall remain in effect for a term of twenty (20) years from such date. Grantee agrees that Grantee will terminate this Agreement at any time if Grantor identifies alternative land to substitute for the Grantor's Property; provided that Grantee shall have the discretion to determine whether the substitute property is comparable to



Grantor's Property, after considering the size of the replacement property and the cost to transport manure to such property and the owner of such substitute property executes an agreement identical in form and content to this Agreement.

**Renewal.** At the expiration of the initial term and each renewal term of this Easement, this Easement shall automatically renew under the existing terms hereof for a renewal term of twelve (12) months, unless either party provides written notice, no less than twelve (12) months prior to the expiration of the then-existing term, of such party's intention not to renew.

**Application.** Each year during the term of this Agreement, Grantor agrees to allow Grantee to apply the manure under the following conditions:

**Payment.** During the term of this Agreement, Grantor agrees to reimburse Grantee for the actual costs associated with applying manure on Grantor's Property within 30 days of invoicing.

**Pro Rata Share.** Grantee agrees that, provided that Grantor is not in default, Grantee will apply to Grantor's Property a quantity of manure that is equal to Grantor's percentage of the total acres under easement assigned to the Facility; provided that in all cases, the obligation of Grantee to apply manure to Grantor's Property shall be limited to the IDNR limitations on manure application or limited to the application rates specified in Grantee's manure management plan.

**Compliance.** Grantee shall apply the manure on Grantor's Property in compliance with all applicable governmental laws and regulations. Grantee agrees to indemnify and hold Grantor harmless from any damages arising from Grantee's application of manure on Grantor's Property in violation of any applicable governmental laws or regulations. Grantee shall be responsible for obtaining, at its expense, any and all necessary governmental permits for the transportation and application of manure on the Grantor's Property. If the signature of the Grantor is required on the application for any such permit, the Grantor shall sign said application at the request of Grantee. Grantee shall apply manure only after harvest in the fall or before planting in the spring. Grantee plans to apply manure only after harvest in the fall. In the event of an emergency or to prevent an environmental emergency, Grantee will apply manure before planting in the spring.

**Access.** Grantor shall provide Grantee with timely access to all field roads and other ways of access to and from the Grantor's Property. Grantor shall coordinate any and all nutrient applications, including commercial fertilizers, with Grantee's need to comply with its governmental permits and any other applicable governmental requirements. Grantor agrees to provide (or reimburse Grantee for providing) any soil sampling analysis as required by any local, state or federal regulatory agency. Grantor agrees that no commercial Nitrogen or Phosphorus fertilizers or organic fertilizers will be applied to Grantor's Property without written authorization from Grantee.

**Crop Rotation.** Grantor acknowledges that Grantor will maintain a CORN-CORN rotation throughout the term of this Easement. In the event Grantor desires to change the crop rotation, Grantor must notify Grantee by September 1st of the year preceding the proposed crop year. If Grantor for any reason decides to change crop rotation, the Grantor will assist in locating additional acres within 3 miles of the Facility to cover acreage difference created by crop rotation.

**Hold Harmless.** Grantor shall not be responsible for any injuries to Grantee's employees, agents or property occurring as a result of Grantee's conduct hereunder, and Grantee shall indemnify and hold Grantor harmless from all such injuries or damage. In addition to the foregoing, the Grantee agrees to

indemnify and hold harmless the Grantor and the Grantor's farm tenants harmless from all claims, liabilities or damages imposed by a governmental regulatory office or by a private person or entity, that are caused by: (i) the acts or omissions of Grantee or any person hired by Grantee who is engaged in manure removal, transportation or field application; or (ii) the breach of any provision of this Easement by Grantee or any person hired by Grantee.

**Air Quality Easement.** Grantor hereby grants to Grantee an odor and air quality easement over the Grantor's Property. For the term of this Easement, Grantor waives any claim it may have against Grantee based on odor from the Facility Site or based on exceedances of state air quality standards applicable to the operation and use of the Facility Site. Grantor expressly waives the application of any air quality separation distance under Iowa Code Section 459.201 *et seq.* and therefore waives application of requirements to "separated locations" under Iowa Code Section 459.202 *et seq.* Grantor further acknowledges and agrees that this air quality easement shall specifically include any health protection ordinance enacted, pursuant to Chapter 137 of the Iowa Code or pursuant to any health protection ordinance enacted by any Iowa County.

**No Warranty.** Grantor agrees that Grantee makes no warranty, representation, or guarantee, expressed or implied, oral or written, regarding the manure from the Facility including, without limitation, any warranty, representation, or guarantee regarding (a) merchantability or fitness for a particular purpose; (b) quality; or (c) pertaining to the benefits or detriments of the manure to the Grantor's Property or the crops to be grown on the Grantor's Property.

**Succession.** The Grantor acknowledges that the easement granted herein is granted with the expressed understanding that it may be used by Grantee and Grantee's agents, successors and assigns, as appurtenant to Grantee's Property and every part thereof, and in conjunction with the use of the Facility by Grantee and its agents, successors and assigns. This Agreement shall run with the land and shall inure to the benefit of and be binding upon the heirs, executors, personal representatives, successors and assigns of the parties to it.

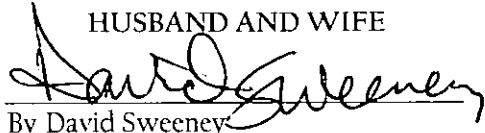
**Title.** Grantor warrants and covenants that Grantor has marketable fee simple title to Grantor's Property, that this Agreement will not violate any encumbrance, lien, restriction, or covenant on the Grantor's Property, and that no surface intakes for agricultural drainage wells or sinkholes are located on Grantor's Property or within two hundred (200) feet of Grantor's Property, except those surface intakes or sinkholes identified by location on Exhibit "C" attached hereto and incorporated herein by this reference.

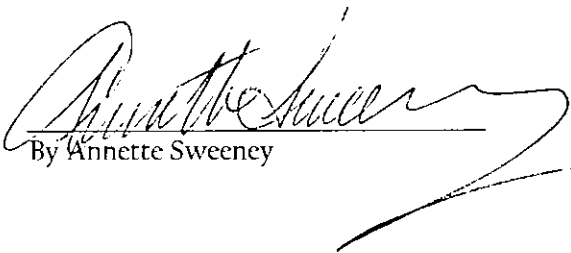
**Miscellaneous.** This Agreement constitutes the entire agreement and understanding between the Grantor and Grantee, superseding all earlier agreements or representations, written or oral. Any change or amendment to this Agreement shall be effective only if it is in writing and signed by both the Grantor and Grantee. Any waiver of the terms of this Agreement or breach of this Agreement will not be deemed to be a waiver of any subsequent failure to strictly comply with the terms of this Agreement. If any provision is held invalid, the remaining provisions of this Agreement shall remain in full force and effect as if that invalid provision had not been included in this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

**Spouse.** Grantor's spouse, if not a titleholder of Grantor's Property, joins in the execution of this Agreement for the sole purpose of waiving and relinquishing any rights of dower, homestead and distributive share.

GRANTOR:


DAVID & ANNETTE SWEENEY  
HUSBAND AND WIFE

  
By David Sweeney

  
By Annette Sweeney

GRANTEE:

SUMMIT PORK I, LLP

  
By Eric Peterson, Vice President of  
SPMP, LLP, Managing Partner

Notary for Summit Pork I, LLP

STATE OF IOWA, HARDIN COUNTY ) SS:

On this 16 day of September, 2013, before me, a Notary Public in and for the State of Iowa, personally appeared Eric Peterson, to me personally known, who being by me duly sworn or affirmed did say that that person is Vice President of SPMP, LLP, Managing Partner of said Summit Pork I, LLP and that said instrument was signed on behalf of said Summit Pork I, LLP by authority of its Managers and the said Eric Peterson acknowledged the execution of said instrument to be the voluntary act and deed of said Summit Pork I, LLP by it voluntarily executed.



Tanya L. Raske  
Notary Public in and for the State of Iowa

Notary for David and Annette Sweeney:

STATE OF Iowa, Hardin COUNTY ) SS:

On this 16 day of September, 2013, before me, a Notary Public in and for the State of IA, personally appeared David Sweeney and Annette Sweeney, husband and wife, to me known to be the people named in and who executed the foregoing instrument, and acknowledge that they executed the same as their voluntary act and deed.



Tanya L. Raske  
Notary Public in and for the State of IA

Exhibit "A"  
(Grantor's Property)

The North Half of the Southwest Quarter and the South Half of the Southeast Quarter in Section 22,  
Township 88 North, Range 22 West of the 5<sup>th</sup> P.M., Hardin County, Iowa;

AND

The North Half of the Southeast Quarter in Section 21, Township 88 North, Range 22 West of the 5<sup>th</sup>  
P.M., Hardin County, Iowa.

AND

The North Half of Section 30, Township 88 North, Range 22 West of the 5<sup>th</sup> P.M., Hardin County,  
Iowa.

Exhibit "B"  
(Grantee's Property)

PARCEL A:

**A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE1/4 NE1/4) OF SECTION 21, TOWNSHIP 88 NORTH, RANGE 22 WEST OF THE 5TH P.M., HARDIN COUNTY, IOWA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

Commencing at the Southeast (SE) corner of the Northeast Quarter (NE1/4) of said Section 21; thence along the East line of said Northeast Quarter (NE1/4), North 00°16'21" East a distance of 328.00 feet to the Point of Beginning; thence continuing along said East line, North 00°16'21" East a distance of 585.00 feet; thence North 89°43'39" West a distance of 424.50 feet; thence South 00°16'21" West a distance of 185.00 feet; thence North 89°43'39" West a distance of 235.00 feet; thence South 00°16'21" West a distance of 400.00 feet; thence South 89°43'39" East a distance of 659.50 feet to the Point of Beginning.

**NOTE:** Tract contains 7.86 Acres, and is subject to all easements of record.

Exhibit "C"  
(Sinkholes or Ag Drainage Well Intakes)