

Prepared by: Paul Morf, Simmons Perrine Moyer Bergman PLC, 115 3rd St. SE Suite 1200, Cedar Rapids, IA 52401-1266 Phone: (515) 288-1846

Return document to: Paul Morf, Simmons Perrine Moyer Bergman PLC, 115 3rd St. SE Suite 1200, Cedar Rapids, IA 52401-1266.

Tax statements to:

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 2021, by and between Garst Supply Company [or Bonneyland, Inc.], of Coon Rapids, Iowa (hereinafter together with its successors and assigns collectively referred to as "**Grantor**"), and the Whiterock Conservancy (hereinafter together with its successors and assigns collectively referred to as "**Grantee**").

RECITALS:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in [Carroll Greene Guthrie Audubon] County in the State of Iowa, constituting _____ acres, more or less, which property is more particularly described in Exhibit "A" (PAGE XX) attached hereto and made a part hereof ("the Property"); and

WHEREAS, the Property possesses scenic, agricultural, soil and water quality protective, and open-space values, (collectively, the "Conservation Values") that are worthy of permanent protection by conservation easement consistent with Chapter 457A of the Code of Iowa; and

WHEREAS, this Easement will protect and preserve such Conservation Values and thereby benefit the general public; and

WHEREAS, more specifically, the Property has been farmed with no-till methods for decades and with cover crops continuously since 2013 and has maintained continuously-vegetated waterways, headlands, contour buffers, terraces, tiled drainage along waterways, and other erosion control structures for decades, and whereas all of these conservation practices have greatly enhanced the health of the soil and reduced erosion and other factors deleterious to water quality, and the Easement will protect and preserve Iowa's natural resources by promoting and protecting the soil health and enhancing water quality, thereby advancing clearly delineated Federal, State, and county conservation policies and yielding a significant public benefit; and

WHEREAS, the specific Conservation Values of the Property on the effective date of this Conservation Easement (including without limitation erosion control structures, and historical data regarding cover crop and no-till practices) are documented in a baseline documentation report attached as **Exhibit B** ("Baseline Documentation Report"), dated _____, 2021; a copy of which is on file with both Grantor and Grantee. Grantor and

Commented [A1]: The baseline data for the Patrick (Guthrie County) Farm is theoretical and we will modify that easement to require that the delineated erosion control structures be constructed if and when it is converted to row crop agriculture

Grantee agree that the Baseline Documentation Report provide an accurate representation of the condition of the Property as of the effective date (hereinafter defined) of this Deed of Conservation Easement and is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, development of the Property or conversion of the Property from conservation-minded, sustainable, reduced-carbon-footprint agriculture to soil-mining non-conservation-conscious farming methods would degrade and destroy the sustainable agricultural values of the Property and diminish soil health and water quality, adversely impacting Iowa's natural resources and the interests of the general public; and

WHEREAS, Grantee herein warrants and represents that it has the commitment and the resources to carry out, and will carry out, all of the duties and responsibilities of Grantee as detailed herein; and

WHEREAS, Grantor and Grantee have mutually concluded that the grant of this Conservation Easement will not impair the qualification or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986 (the "Code"), as amended, and the regulations thereunder, and Chapter 457A of the State of Iowa Code, and will enhance the protection of the Property's significant Conservation Values; and

WHEREAS, Grantee is a private, non-profit, tax-exempt organization that exists to "balance[e] sustainable agriculture, natural resource protection, and public recreation on the landscape, and thereby support[] the Iowa Department of Natural Resources, the Leopold Center for Sustainable Agriculture, and the Iowa Natural Heritage Foundation [by] carrying out their purposes relating to land preservation, land restoration, conservation, sustainable agriculture, education, and recreation"; and

WHEREAS, Grantee is a tax-exempt organization under Section 501(c)(3) of the Code, an organization other than a private foundation under Section 509(a)(1) of said Code, (namely a Type I Supporting Organization that it is controlled by its supported organizations, namely the Iowa Natural Heritage Foundation, The Leopold Center for Sustainable Agriculture, and the Iowa Department of Natural Resources) and is therefore a "qualified organization" under both Section 170(h)(3) of the Internal Revenue Code and is also authorized to accept, hold, and administer interests in land, including conservation easements pursuant to Chapter 457A of the Iowa Code; and

WHEREAS, Grantee agrees by accepting this Deed to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come; and

WHEREAS, protection of the Property on the terms set forth herein will accomplish a number of the factors determining "significant public benefit" under Treas. Reg. Section 1.170A-14(d)(4)(iv), *see for example* Exhibits D and E; and

WHEREAS, accordingly, protection of the Property will protect and preserve open-space and scenic viewsapes and protect soil health and water quality, all pursuant to clearly delineated Federal, State and local governmental conservation policies and will yield a

significant public benefit, and will therefore meet the requirements of Subsections 170(h)(4)(A)(iii)(I) and 170(h)(4)(A)(iii)(II) of the Code; and

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby conveys to Grantee a Conservation Easement on the Property as more fully described in this agreement.

Summary of Easement Provisions

1. Purpose. It is the purpose of this Easement to preserve the Property as sustainable, scenic, open-space agricultural land by protecting it from soil erosion and by maintaining or enhancing soil health and by permitting the erection of buildings and other structures only within the delineated Building Envelopes. This Easement exists to prevent any use of the Property that would significantly impair or interfere with its Conservation Values. The primary Conservation Values intended to be preserved on these scenic, open space Iowa farms are healthy agricultural soils with healthy soil properties (particularly soil water aggregate stability and soil organic matter) and with minimal farming-induced and maintenance-induced soil erosion. Other metrics including water infiltration rates, soil bulk density, and soil microbial measurements may also be monitored. Existing erosion control structures delineated in the attached Baseline Data will be maintained or enhanced to protect water quality and prevent soil erosion enhancing the long-term sustainability of the land and protecting the Conservation Values for the longest possible period.

2. Rights of Grantee. To accomplish the purposes of this Easement, the following rights and duties are conveyed to Grantee, and Grantee has established an endowed monitoring fund to ensure it will always have the resources necessary to ensure it can comply with such duties:

- (a) to preserve and protect in perpetuity the Conservation Values of the Property; and
- (b) to enter upon the Property at reasonable times to collect data and measure factors related to soil health, erosion rates, and water quality, and to perform reasonable testing and measurement of factors such as soil water aggregate stability, soil organic matter, water infiltration rates, soil bulk density, and soil microbial levels and composition, and in general to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- (c) To require Grantor to share normal soil testing data and other relevant data as specified in more detail below, to lessen the burden of Grantee in monitoring and enforcing the Easement's requirements with respect to cover crops and other soil health and erosion control practices; and
- (d) to prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement, and to require the restoration (to the

condition immediately prior to the activity complained of) of such areas or features of the Property that may be damaged by any inconsistent activity or use, and otherwise enforce the terms of the easement, pursuant to the provisions of paragraph 6 hereof.

3. Permitted Uses. Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein, that are not inconsistent with the purposes of this Easement, and that do not have a significant adverse impact on the Conservation Values. Without limiting the generality of the foregoing, Grantor reserves the following rights, subject to any terms and conditions as may be stated herein, and subject further, to all requirements and restrictions under applicable laws, ordinances and regulations.

- (a) Agricultural practices (including row crop agriculture, forestry, permaculture, hay production, grazing, and aquaculture, and participation in CRP and other government programs) of any kind with the following limitations: (1) no tillage of any kind may occur except as expressly permitted in Section 4(d); (2) continuous living roots must be maintained in the ground consistent with the details set forth in Paragraph 4(e) below; (3) all existing or equivalent erosion control structures delineated and described in Exhibit B must be maintained, with modifications to existing erosion control structures made only to enhance soil and water conservation consistent with a Conservation Plan created by USDA Natural Resources Conservation Service and with the prior written approval of Grantee; (4) livestock density and facilities must not violate the limitations in Paragraph 4(b) below; (5) all structures (other than erosion control structures) shall be confined to the designated Building Envelopes in Exhibit C.
- (b) Construction of any buildings or structures desired by Grantor except as expressly prohibited below in Paragraph 4(b), but only within the designated Building Envelope(s) delineated in Exhibit C.
- (c) The Property may be divided or subdivided and different parcels sold to different owners, provided that the party effecting the division shall deliver to Grantee \$20,000 for each new property created as part of any such division or subdivision, such contribution reflecting the enhanced monitoring costs that such division may cause Grantee to incur.
- (d) Any and all other practices that do not interfere materially with the Conservation Values of the land. Farming practices that increase biological biodiversity are encouraged but not required. Farming practices that increase compaction are discouraged but not prohibited.

Commented [A2]: Add for East Howe: "The West boundary of the property runs through a terrace shared with the property to the west. Terrace repair or replacement costs for such terrace will be allocated 50/50 with the owner to the West, with access allowed to the adjoining property owner as necessary to allow for such repair and replacement. Vegetative maintenance will be born solely by the owner of the particular land being revegetated. Grantee will resolve all issues related to disputes as to the relative responsibility of the Property and the neighboring Property with respect to such terrace maintenance, repair, and replacement."

Add for West Howe: "West boundary of the property runs through a terrace shared with the property to the west. Terrace repair or replacement costs for such terrace will be allocated 50/50 with the owner to the West, with access allowed to the adjoining property owner as necessary to allow for such repair and replacement. Vegetative maintenance will be born solely by the owner of the particular land being revegetated. Grantee will resolve all issues related to disputes as to the relative responsibility of the Property and the neighboring Property with respect to such terrace maintenance, repair, and replacement."

Additionally, the East boundary of the property runs through a terrace shared with the property to the East. Terrace repair or replacement costs for such terrace will be allocated 50/50 with the owner to the East, with access allowed to the adjoining property owner as necessary to allow for such repair and replacement. Vegetative maintenance will be born solely by the owner of the particular land being revegetated. Grantee will resolve all issues related to disputes as to the relative responsibility of the Property and the neighboring Property with respect to such terrace maintenance, repair, and replacement."

Add for Herron:
The East boundary of the property runs through a terrace shared with the property to the East. Terrace repair or replacement costs for such terrace will be allocated 50/50 with the owner to the East, with access allowed to the adjoining property owner as necessary to allow for such repair and replacement. Vegetative maintenance will be born solely by the owner of the particular land being revegetated. Grantee will resolve all issues related to disputes as to the relative responsibility of the Property and the neighboring Property with respect to such terrace maintenance, repair, and replacement."

4. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Construction, erection or placement of any building or structure (other than erosion control structures) outside of the Building Envelopes delineated in Exhibit C.
- (b) Construction, erection, placement, or maintenance of any Confined Animal Feeding Operation or other Animal Feeding Operation or any facility, feedlot, or structure (even within the delineated Building Envelopes) that results in a density exceeding one Animal Unit per 1.5 acres per year. For example, the property could have 1 Animal unit per 1.5 acre for all twelve months of such twelve-month period or 12 Animal Units per 1.5 acres for one month during a twelve-month period. Subject to this limitation, livestock are permitted and encouraged on the property, and Animal Feeding Operations and related structures and facilities to house and feed such animals may be placed within the delineated Building Envelopes in Exhibit C, provided that the density of animals on the Property never exceeds 1.5 acres per animal unit per year. The term “Animal Unit” will be interpreted consistent with the Iowa DNR Manure Management Plan specifications, or if none exist at some time, then by other readily-available standard definitions used widely in livestock management.
- (c) Removal or material change of any erosion control structure delineated in the Erosion Control Structures Map included in Appendix B, without the prior written consent of Grantee, which consent will be given only if Grantee is satisfied that in the long run, the requested changes will result in the preservation or enhancement of soil health and water quality rather than in the reduction or dilution of such Conservation Values over the long term.

By way of additional explanation: (1) all erosion control structures must be maintained in current widths or such wider widths as required by applicable USDA or government program requirements; (2) all delineated Headlands must additionally be maintained in perennial cover and at a width sufficient to avoid the need for row crops to be planted parallel to them, *i.e.*, wide enough to eliminate turning rows. This width will depend on the type of farm machinery in use; (3) Critical Planting Areas will be covered with vegetation sufficient to prevent sheet erosion; (4) Notwithstanding the above, where erosion control structures are out of compliance with existing NRCS maps or any CRP or other government contract or program requirements, Grantor can move those structures to bring them into compliance, as long as such relocation is done in a manner that is responsible and promotes rather than degrades soil health and water quality over the long term; (5) Grantee agrees it will empower a

Commented [A3]: Important for 3 farms.; also not all have waterways do not all have terraces. Individualize for each farm.

designated staff member of Grantee immediately to approve urgent repairs necessitated by tile blow-outs or other emergent situations that require remediation on a time table that does not reasonably allow for Grantee to undertake a more deliberative process, and Grantor will have the cell phone number of such employee. Minor repairs may be approved in the same manner, but major planned changes to erosion control structures shall be approved by Grantee only after Grantee's board of directors has given approval, and Grantor will agree to allow time sufficient for this deliberative process to occur.

- (d) Tillage of any kind (including plowing, discing, vertical tillage, stirring, overturning the soil, or otherwise mechanically agitating the soil) without prior written consent of Grantee, which consent will be given only if Grantee is satisfied that such tillage is being done for the purpose of facilitating maintenance or repair of tile, fence, driveways and access lanes, and erosion control structures or other proposed changes in land management or, or to repair damages caused by extreme weather or other intervening acts of God, or to allow infrastructure to be buried as necessary to service wind turbines (erected within the Building Envelopes), and that in the long run, the proposed tillage will result in the preservation or enhancement of soil health and water quality and the sustainability of the Property's use (considering all externalities) rather than in the reduction or dilution of such Conservation Values. Tillage may be used in conjunction with the addition or expansion of field tile at Grantor's expense but only if Grantee states in writing that it has received a written plan which will restore soil quality as quickly as reasonably possible, after considering issues of compaction and vegetative cover, and only if a plan exists to minimize soil erosion and other deleterious consequences during the construction process and until vegetative cover is restored following construction.
- (e) Leaving row crop land uncovered and without living roots during late fall, winter, and early spring months.

Specifically:

(1) In furtherance of the requirement of continuous living roots in the ground, landowner will minimize the time between terminating the cover crop in the spring and planting the row crop. Additionally, for acres to be planted to corn or soybeans, then in no event will cover crops be terminated any sooner than 7 days before the initial crop insurance planting date for the crop being planted, and in no event more than 14 days before the actual crop planting date, (barring a flood, excessively wet conditions, or other intervening act of God making compliance impossible, impractical, or ecologically irresponsible).

(2) In furtherance of the requirement of continuous living roots in the ground, as soon as possible after crops are harvested, a cover crop will be planted, and in no event shall the planting date be later than the cover crop planting date specified by the NRCS (barring a flood, excessively wet conditions, or other intervening act of God making compliance impossible, impractical, or ecologically irresponsible); (3) Cover crops shall be applied using best practices as to methods and rates, and (except with prior written approval of Grantee). Unless Grantor and Grantee agree otherwise, a winter-hardy seed will be used at an application rate minimum as specified in NRCS cover crop standards. If due to the vagaries of nature, the Grantor misses the NRCS cover crop planting deadline, the Grantor shall make best efforts to establish a cover crop on a timetable and in a manner agreed to by Grantee.

(3) Until and unless best practices change and a deviation is agreed to by Grantor and Grantee in writing pursuant to (4) below, there shall be a preference for drilling all cover crops, but aerial application shall be permitted if and when moisture conditions indicate a likelihood of success.

(4) Deviations to these general requirements may be authorized in writing and in advance by Grantee when unusual circumstances warrant. Grantor and Grantee agree that best practices and available technologies related to cover plants and their planting will evolve from time to time, and that when appropriate in light of such changing best practices and technologies, they will work together to reach agreement where deviations should be made from the precise specifications in (1) through (3) above, provided that no deviations to (1) through (3) may be made that tend to reduce rather than enhance the goal of continuous living roots in the ground or that would tend to erode or diminish soil health or water quality or the Conservation Values of the Property.

(5) Grantee will be allowed on the property whenever Grantee deems it suitable to collect data relating to metrics that they wish to measure related to soil health and water quality, and Grantee shall conduct and pay for all data collection, measurement, and analysis that they wish to obtain at Grantee's cost, except the required metrics related to soil organic matter that Grantor is required to provide below in Paragraphs (7) and (8). Grantee shall take care not to interfere with or damage agricultural activities while on the property to monitor the easement or collect data or conduct measurements.

(6) Grantor promises, whenever requested, to provide Grantee with all relevant data in Grantor's possession relevant to cover plant use and efficacy (including without limitation spray records, records of planting dates and rates, yield data, and fertilization application data).

Spray records and yield data and planting date data will be provided contemporaneously and when requested by Grantee.

(7) Grantor promises that if and when Grantor or any tenant of Grantor conducts standard soil tests related to soil nutrients, soil organic matter, pH, etc., Grantor will immediately share all test results with Grantee, and will also provide Grantee, upon request, with all testing data in its possession (or its tenant's possession) related to fertility and soil health in its possession. Grantee is permitted to conduct its own tests in the event it wishes to supplement the data obtainable from Grantor regarding tests that Grantor (or its tenant) performs.

(8) If data collected by Grantor or Grantee indicates a decline in soil organic matter or aggregate water stability over time, then Grantor and Grantee shall work on a plan to address and if possible reverse such decline.

- (f) Any exploitation of mineral resources, by either subsurface or surface means, in a way that requires tillage or disturbing the soil or otherwise would be disadvantageous to soil health, water quality, and the Conservation Values of the land;

5. Approval; Discretionary Consent. In the event that Grantor desires to undertake activities not explicitly permitted by Paragraph 3, and not prohibited by the provisions of Paragraph 4, or activities with respect to which Grantee's approval is specifically required by the provisions of Paragraph 3 or Paragraph 4, Grantor shall request such approval from Grantee in writing prior to Grantor undertaking such activity. The request shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Under no circumstances may Grantor undertake the requested activity until approved in writing by Grantee. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

6. Grantee's Remedies. If Grantee believes that Grantor is in violation of the terms of this Easement, or that a violation is threatened, Grantee shall communicate with Grantor and they shall work together to devise a plan to avoid or remedy the breach in question, and such plan shall be implemented as soon as reasonably possible given the annual agricultural cycle. In the event of a genuine dispute as to whether certain management actions are consistent with the spirit and letter of the Easement, and in such cases, they will work together whenever possible to submit the dispute to the NRCS or a university expert to arbitrate the dispute and determine whether a violation has occurred, and on what should be done to cure a violation if one has occurred, thereby avoiding the need for litigation or dispute proceedings. *If and only if Grantor and Grantee fail after making reasonable efforts to agree upon a plan to avoid or remedy the breach in question, then the following formal dispute resolution mechanism shall commence:* Grantee shall in such event give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the

Commented [A4]: For Bonney East only: "(g) The existing Windbreak delineated in Exhibit B must be preserved for wildlife in a manner that makes it of continued succor and support to migrating monarch butterflies. This windbreak may be renovated or expanded by mutual written agreement, with a goal of preserving this copse of trees as wildlife habitat and as a valuable gathering point for migrating monarchs. The current trees will be retained as long as Grantee deems it viable for migrating monarchs. Whenever Grantee determines that the grove requires proactive management to protect migrating butterfly populations, Grantee will contact Grantor, and Grantor and Grantee will develop mutual plan to replace the Windbreak (or portions thereof) with replacement habitat suitable for migrating monarch butterflies. Whenever such modifications to the Windbreak are made, Grantee will assist Grantor with grant writing and other fundraising efforts for replacement of the habitat."

Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement, and/or to require the restoration of the Property to the condition that existed immediately prior to such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate, and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.1 Third Party Enforcement. Grantee shall have the right, but not the obligation, to pursue all legal and equitable remedies provided under paragraph 6 against any third party responsible for any violation of the terms of this Easement and Grantor shall, at Grantee's option, assign their right of action against such third party to Grantee, join Grantee in any suit or action against such third party, or appoint Grantee their attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

6.2 Costs of Enforcement. In connection with any act to enforce the terms of this Easement, Grantor and Grantee shall each be responsible for their respective costs of enforcement and other costs and expenses, including, without limitation, reasonable attorneys' fees, unless (i) either Grantor or Grantee admits fault, or (ii) a court of competent jurisdiction determines that one of the parties is at fault, in which case the party at fault agrees to reimburse the other party for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with the contested matter.

6.3 Forbearance is Not a Waiver. Any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term on any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

6.4 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

6.5 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, trespass, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from any such cause. However, Grantor shall be responsible for acts and omissions of Grantor's Tenants, and shall ensure through appropriate lease terms and enforcement that the terms of this Conservation Easement are always honored.

6.6 Arbitration. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purposes of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, that if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fifteen (15) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator, or both as the case may be, in accordance with (Iowa statutory authority) or any successor statute then in effect. The matter shall be settled in accordance with (Iowa statute or other appropriate procedural reference) then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators and attorneys' fees, which shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

8.2 Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal

representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter relating to or occurring on or about the Property, regardless of cause, unless due solely to negligence of any of the Indemnified Parties; (b) the obligations specified in paragraphs 8 and 8.1; and (c) the existence or administration of this Easement. Grantee agrees to hold harmless, indemnify, and defend Grantor from any and all liabilities, injuries, losses, damages, judgments, costs, expenses of every kind, and fees, including reasonable attorney's fees actually incurred. Grantor may suffer or incur as a result of or arising out of the negligent act or omission of Grantee or Grantee's representatives, or other actions by Grantee or Grantee's representatives other than as expressly permitted by this Easement.

8.3 Transfer Fee. Upon each successive title transfer of the Property (or any part thereof), a transfer fee equal \$2,000 shall be paid at time of closing to Grantee for the continuation of the easement monitoring fund. This transfer fee shall constitute a lien against the Property until paid.

9. Extinguishment. If circumstances arise in the future such as to render the purposes of this Easement impossible or impractical to accomplish, this Easement may only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which the Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Iowa law at that time, in accordance with paragraph 9.1.

9.1 Proceeds. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Paragraph 9, the Parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by this Easement by the ratio of the value of this Easement at the time of this grant to the value of the Property, without deduction for the value of this Easement, at the time of this Grant. The values at the time of this grant shall be those used to calculate the charitable contribution if any for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code, and applicable regulations. The value of this Easement, as thus calculated, is intended to be the amount determined under the "before and after" method of said regulations, without reduction for any amount that may not produce an income tax benefit to Grantor on account, for example, of the receipt of bargain sale proceeds or the applicable percentage limitations on charitable contributions. For the purposes of this paragraph, once calculated, the ratio of the value of this Easement to the value of the Property unencumbered by this Easement shall remain constant.

9.2 Condemnation. If all or any of the Property shall be taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the

taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as otherwise may be provided by applicable law, Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be an amount determined by multiplying the balance by the constant fraction, as determined under paragraph 9.1 above.

10. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Chapter 457A of the Code of Iowa (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance, continue to be observed.

10.1 Executory Limitation. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Code or to be authorized to acquire and hold conservation easements under Iowa law, and a prior assignment is not made pursuant to paragraph 10, then Grantee's rights and obligations under this Easement shall become immediately vested in The Nature Conservancy. If The Nature Conservancy is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if The Nature Conservancy is not qualified or authorized to hold conservation easements as provided with respect to assignments pursuant to paragraph 10, or if it shall refuse such rights and obligations, then the rights and obligations of this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable Iowa law and with due regard to the requirements for an assignment pursuant to paragraph 10. Should no qualified charitable organization desirable to the Grantor be in existence, this easement may be assigned or transferred to a unit of government.

11. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

12. Estoppel Certificates. Upon request by Grantor, Grantee shall, within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

13. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Garst Supply Company [or Bonneyland, Inc.], PO Box 57, Coon Rapids, IA 50058

To Grantee:

Whiterock Conservancy, 1436 Highway 141, Coon Rapids, IA 50058

Or to such other address as a party may designate by written notice to the other.

14. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Easement is recorded in the official records of [Audubon, Carroll, Guthrie, or Greene] County, Iowa, after all required signatures have been affixed hereto. This Easement shall be timely recorded. Grantee may re-record this instrument or record any other instrument at any time as may be required to preserve its rights in this Easement.

15. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Iowa.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the purposes of this Easement and the policy and purposes of Chapter 457A of the Code of Iowa. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render that provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 16.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

(g) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Easement shall terminate upon transfer of that party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

16. Amendments. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free jointly to amend this Easement; provided that no amendment shall be allowed that would affect the qualification of this Easement or the status of Grantee under any applicable laws, including Chapter 457A of the Code of Iowa and Section 170 (h) of the Code. Any amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration, nor shall any amendment be permitted that would, on balance, reduce or erode rather than maintain or enhance the Conservation Values of the Property, or reduce or erode rather than maintain or enhance soil health and water quality with respect to the Property. No amendment shall result in private inurement or confer impermissible private benefit. Any such amendment shall be signed by Grantor and Grantee and recorded in the official records of [Audubon, Carroll, Guthrie, or Greene] County, Iowa.

17. Environmental Compliance.

(a) Remediation. If, at any time, there occurs or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefore.

(b) Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an owner or operator with respect to the Property within the meaning of the Comprehensive Environmental Response Compensation, and Liability act of

1980, as amended (hereinafter referred to as “CERCLA”), and any corresponding state statutory laws.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement on this ____ day of _____ 2021.

GRANTOR

Garst Supply Company [or Bonneyland, Inc..].

Elizabeth Garst, President

GRANTEE

Whiterock Conservancy

Delbert Niebuhr, President, Board of Directors

GRANTOR ACKNOWLEDGMENT

STATE OF IOWA COUNTY OF _____

This instrument was acknowledged before me on _____, by Elizabeth Garst, President of Garst Supply Company [or Bonneyland, Inc..].

Notary Public

GRANTEE ACKNOWLEDGMENT

STATE OF IOWA COUNTY OF _____

This instrument was acknowledged before me on _____, by Delbert Niebuhr, as Chairman of the Board of Directors of the Whiterock Conservancy

Notary Public

EXHIBIT A

Legal Description

EASEMENT 1 GARST SUPPLY COMPANY

Carroll County, Section 9 Fox Farm

The SE $\frac{1}{4}$ of Section 9, Township 82 North, Range 33 West of the 5th P.M., Carroll County, Iowa.

EASEMENT 2 GARST SUPPLY COMPANY

Greene County, Section 32 Herron Farm

The South $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 32, Township 82 North, Range 32 West of the 5th P.M., Greene County, Iowa

EASEMENT 3 GARST SUPPLY COMPANY

Greene County, Howe Farm West

West $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 33, Township 82 North, Range 32 West of the 5th P.M., Greene County.

EASEMENT 4 GARST SUPPLY COMPANY

Greene County, Section 33 Howe Farm East

South $\frac{1}{2}$ of Section 33 except the West $\frac{1}{2}$ of the SW $\frac{1}{4}$, Township 82 North, Range 32 West of the 5th P.M, Greene County, Iowa

EASEMENT 5 GARST SUPPLY COMPANY

Guthrie County Patrick Farm

The East 53.33 rods of the NE Fr. $\frac{1}{4}$ of Section 4, Township 81 North, Range 33 West of the 5th P.M., Guthrie County, Iowa

EASEMENT 1 BONNEYLAND, INC.

Audubon County-Nicks/Reds Farm

Section 36 except parcel 'A' in the NE quarter of the NE quarter and except parcel 'B', all in Township 81 North, Range 34 West of the 5th PM, Audubon County, Iowa

EASEMENT 2 BONNEYLAND, INC.

Audubon County-Bonney/Kluver Farm West

- The east ½ of section 10, except Parcel ‘A’ in the SW Quarter of the SE Quarter of section 10, in Township 80 North, Range 34 West of the 5th PM in Audubon County, Iowa, and
- The following portion of the W½ of Section 11, in Township 80 North, Range 34 West of the 5th PM in Audubon County, Iowa: awaiting survey

Constituting 467 acres, more or less.

EASEMENT 2 BONNEYLAND, INC.

Audubon County-Bonney/Kluver Farm East

The E1/2 and the following portion of the W½ of Section 11, in Township 80 North, Range 34 West of the 5th PM in Audubon County, Iowa: : awaiting survey

Constituting 490 acres, more or less.

Exhibit B

_____ **Conservation Easement**
_____ **County, Iowa**

Baseline Documentation Report

Grantors:

Garst Supply Company [or Bonneyland, Inc.,]

Address

Grantee:

Whiterock Conservancy
1436 Highway 141
Coon Rapids, IA 50058

Conservation Easement Size:

XX Acres

Prepared and Reviewed by:

Name

Address

Date: This will be the date when Whiterock made the most recent updates to the baseline, this will also be the same date as the 5th WHEREAS clause on page 2.

Exhibit B

Table of Contents:

Signature PageXX

Map of XXX County showing the location of the PropertyXX

2017 aerial photographXX

USGS 1:24,000 topographic mapXX

LIDAR mapXX

Photo Point Map for Baseline PhotographsXX

Baseline Photographs.....XX

Erosion Control Structure Photos and Map with LegendXX

Soil Organic Matter Maps and Baseline Data Regarding Soil Health.....XX

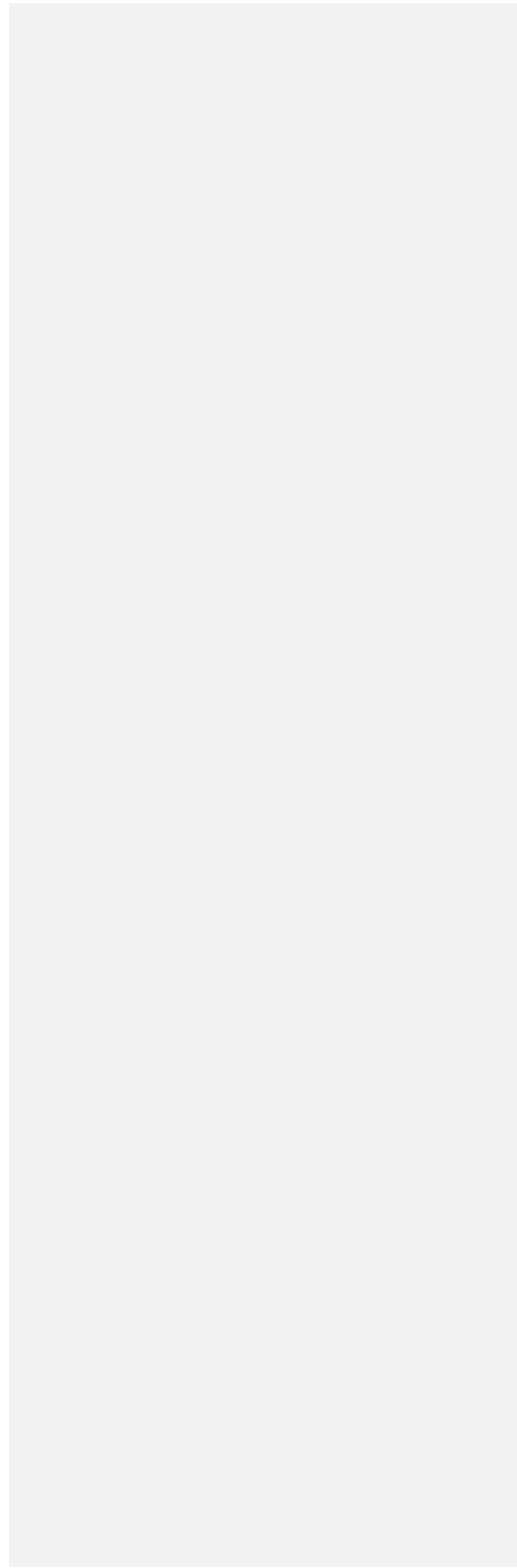


EXHIBIT B
OWNER ACKNOWLEDGEMENT OF CONDITION

Grantor and Grantee agree that the Baseline Documentation Report is an accurate representation of the protected Property at the time of the transfer.

GRANTOR

Garst Supply Company [or Bonneyland, Inc.,]

XXXX, President

GRANTEE

Whiterock Conservancy

Delbert Niebuhr, President, Board of Directors

GRANTOR ACKNOWLEDGMENT

STATE OF IOWA COUNTY OF _____

This instrument was acknowledged before me on _____, by
Garst Supply Company, by _____, its President.

Notary Public

GRANTEE ACKNOWLEDGMENT

STATE OF IOWA COUNTY OF _____

This instrument was acknowledged before me on _____, by
_____, the President of the Board of Directors of the Whiterock Conservancy.

Notary Public

EXHIBIT C

BUILDING ENVELOPE DELINEATION

Buyer will be allowed to designate the location of the Building Envelope within five days of signing the purchase contract. The Building Envelope may not exceed 15 acres and must be rectangular in shape.

Commented [A5]: One such Building Envelope for the Guthrie County, Carroll County, Howe West, Howe East, and Herron Farms.

West Bonney/Kluver and East Bonney/Kluver will each be able to designate 3 such Building Envelopes.

Nicks/Reds will be allowed 2 such building envelopes.

EXHIBIT D

PARTIAL LIST OF FEDERAL, STATE, AND LOCAL LAWS ESTABLISHING SOIL HEALTH AND SOIL AND WATER CONSERVATION AS IMPORTANT POLICIES BENEFICIAL TO THE GENERAL PUBLIC

FEDERAL LAW

16 U.S.C.A. § 590(a).

Purpose

“[T]he wastage of soil and moisture resources . . . resulting from soil erosion, is a menace to the national welfare and that it is declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion to preserve soil, water, and related resources”

STATE OF IOWA LAW

Iowa Code Ann. § 161F.1 Presumption of Benefit

“The conservation of the soil resources of the state of Iowa, the proper control of water resources of the state and the prevention of damage to the property and lands throughout the control of floods, the drainage of surface waters or the protection of lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare and essential to the economic well-being of the state.”

Iowa Code. Ann. § 161A.2 Declaration of policy

“It is hereby declared to be the policy of the legislature to integrate the conservation of soil and water resources into the production of agricultural commodities to insure the long-term protection of the soil and water resources of the state of Iowa, and to encourage the development of farm management and agricultural practices that are consistent with the capability of the land to sustain agriculture, and thereby to preserve natural resources . . . and promote the health, safety and public welfare of the people of this state.”

Iowa Code Ann. § 161A.4 Division of soil conservation and water quality.

161A.4(2)(g): “The plan shall be developed . . . to preserve and protect the public interest in the soil and water resources of this state for future generations and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control of and use of the soil and water resources of the state, by measures . . . all of which shall be presumed to be conducive to the public health, convenience, and welfare.”

Iowa Code Ann. § 161A.5 Soil and water conservation districts

“The one hundred soil and water conservation districts established in the manner which was prescribed by law prior to July 1, 1975 shall continue in existence with the boundaries and the names in effect on July 1, 1975.”

Iowa Code Ann. § 161A.54 State agency conservation plans - - exemptions

“Each state agency shall enter into an agreement with the soil and water conservation district . . . Application for exemption from this section . . . shall be granted for land upon which soil management research for the purposes of the study, evaluation, understanding and control of erosion, sedimentation and run of water is conducted by or in conjunction with institutions governed by the board of regents.”