



Book 2023 Page 1940

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Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

GRANT OF CONSERVATION EASEMENT

(Recorder's Cover Sheet)

Preparer information: (name, address & phone number)

KURT BOEVERS (319) 939-5787
BTANIK LLC
3004 RAINBOW DR.
CEDAR FALLS, IA 50613

Taxpayer information: (name & complete address)

N/A

Return Document to: (name & complete address)

KURT BOEVERS
BTANIK LLC
3004 RAINBOW DR
CEDAR FALLS, IA 50613

Grantors:

BTANIK LLC
3004 RAINBOW DR
CEDAR FALLS IA 50613
ELK HOLLOW MORTGAGE BANK

Grantees:

DELAWARE COUNTY CONSERVATION

Legal Description is located on page:

Document or instrument number of previously recorded documents:

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement is made this 16th day of August, 2023 by BJAWK LLC ("Grantors") in favor of the Delaware County Conservation Board, ("Grantee").

WHEREAS, Grantors are owners in fee simple of certain real property in Delaware County, Iowa, including approximately 48.55 acres, more or less, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property possesses natural and scenic values (collectively "conservation values") of great importance to Grantee, Delaware County Conservation and the people of the State of Iowa; and

WHEREAS, the Property contains Waters of the United States under the regulatory jurisdiction of the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344); and

WHEREAS, THE Grantors will develop, operate, and manage a stream and wetland mitigation bank known as the Elk Hollow Mitigation Bank whose Instrument is attached hereto as Exhibit B (Section 404 permit number CEMVR-OD-P-2021-01429), and

WHEREAS, in consideration for the Grantors to develop, operate, and manage the stream and wetland mitigation bank, the Grantors will restore or create or restore stream as described in Exhibit B including stream and wetland improvements, to mitigate the adverse environmental effects resulting from regulated impacts on other streams and wetlands and establishing a buffer around said stream, which when completed will be what is described as the Property and dedicate the Property for the perpetual use as a conservancy area in accordance with the terms and conditions of this document, and

WHEREAS, a Banking Instrument authorizing the Elk Hollow Mitigation Bank would not have been granted but for the dedication of the Property for conservation purposes, and the Grantors specifically acknowledge as fact that said Banking Instrument is issued in consideration for the execution and recording of this document and compliance with the covenants and deed restrictions herein;

WHEREAS, the Grantors acknowledges that these land use restrictions and other terms of this conservation easement ("Easement") may not be changed, modified, amended or revoked without express written approval for the change, modification, amendment or revocation of this Easement from the U.S. Army Corps of Engineers that is witnessed, authenticated, and recorded pursuant to the law of the State of Iowa with such amendment, modification, or revocation instrument;

WHEREAS, the specific conservation values of the Property are documented in the materials attached hereto as Exhibit B and incorporated by this reference, which consists of reports, maps, photographs, and other documentation that the parties agree collectively provide an accurate representation of the Property to be established and which are intended to serve as an objective baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantors intend to achieve certain purposes (the "conservation purposes"), including the preservation of the conservation values of the Property by changing the land use patterns to restore hydrology and natural plant and animal communities, and, in general, preserve the restored hydrology, natural plant and animal communities, and scenic areas on the Property, the plans for which are attached as Exhibit B; and

WHEREAS, Grantors further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to endeavor to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and generations to come.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Iowa, Grantors hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth, and to have and to hold unto Grantee and its successors and assigns forever.

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its natural scenic, or restored, and open space condition and that any natural plant animal communities located on the Property, which are indigenous to Delaware County, Iowa, will be preserved to the extent feasible.

2. Rights of the Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to the Grantee by this Easement.

(a) To preserve and protect the native flora, fauna, soils, water table and drainage patterns, and other conservation values of the Property;

(b) To view the Property in its scenic and open condition at ground level from adjacent publicly-accessible land; and;

(c) To enter upon the Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is

necessary to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior notice to Grantors and Grantee shall not unreasonably interfere with Grantor's use. Acceptable notice may be in the form of a notice delivered by regular U. S. mail;

(d) To enforce the terms of this Easement by appropriate legal proceedings so as to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use; and

(e) In the event that Grantors fails to comply with the terms of this Easement, to enter upon the Property at reasonable times upon prior notice to and with the approval of Grantors to repair the crossings and/or water control structures, plant native trees, shrubs, grasses and forbs, or to remove non-native vegetation, and/or to mow, or burn, vegetation to encourage its proper growth and maintenance, to the extent necessary to comply with the terms of this Easement. The reasonable cost of such restoration activity permitted under this paragraph shall be paid by Grantors. Grantor's approval for entry upon the Property shall not be unreasonably withheld.

3. Acts beyond the Control of Grantee. Neither Grantors nor Grantee shall be held responsible for injury to or change in the Property resulting from causes beyond their control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors or Grantee or any governmental agency under emergency conditions to prevent, abate, or mitigate significant injury to the Property or resulting from such causes or arising out of the criminal act or malicious mischief of trespassers or the visiting public or arising out of any taking of the Property or any part thereof by any government or governmental agency or utility under powers of eminent domain.

4. Obligations of the Grantee/Grantors, The Grantee shall comply with all terms and conditions of this easement, including the following:

(a) Prohibited Actions and Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, unless expressly permitted in paragraph 5, the following activities on and uses of the Property are prohibited:

(i) The Placement or construction of any buildings, whatsoever, other structures or improvements of any kind, (including, without limitation,

above ground utility lines and related facilities, lighting fixtures of any kind, sheds, fences intersecting the property, road, antennae, tennis courts, lawns, flag poles, decks, patios, swimming pools, driveways, playground equipment such as swing sets or jungle gyms, signs, billboards, and parking lots and other man-made impervious surfaces); provided, however, that nothing contained herein shall prohibit Grantors from installing a viewing site, outdoor seating facility along with a plaque or other historical signage, or above ground temporary waterfowl hunting blinds if they do not impact stream or buffer negatively;

(ii) Any alteration of the surface topography and hydrology of the land (including, without limitation, grading or the excavation, removal or moving of soil, sand, gravel, peat, or vegetation, except as may be necessary or appropriate in the course of any activity expressly permitted hereunder);

(iii) Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant siltation or pollution of any surface or subsurface waters (including, without limitation, any use of applications of any non-appropriate or non-approved pesticide or herbicide, except in accordance with the management plan attached hereto as Exhibit B);

(iv) The draining, filling, diking, or dredging of any wetlands, ponds, water course, flood plains, or other areas located on the Property, or the redirection of any ground surface water which is necessary to sustain the native plant and animal life inhabiting Easement.

(v) The legal or *de facto* division, subdivision, or partition of the Property or the use of the Property for increasing the density of development of any real estate not covered by this Easement;

(vi) The destruction or removal of the native plant communities located on the Property including rhizomes and tubular;

(vii) The dumping, placing or storing of ashes, trash, garbage, landscape waste, or other such waste material;

(viii) The operation of motorcycles or automobiles is prohibited unless utilized in connection with permitted maintenance, monitoring, and inspection activities.

(ix) The use, exercise, or transfer of development rights on or to the Property, or any portion thereof, including, without limitation, any and all rights,

however designated, now or hereafter associated with the Property or any other property that may be used, pursuant to applicable zoning laws or other governmental laws, ordinances, or regulations, to compute permitted size, height, bulk, or number of structures, development density, lot yield, or any similar development variable on or pertaining to the Property or any other property.

(x) The lighting of the Property by means of any lighting fixture located on the Property or by means of any flood or spotlight located off the Property but focused on the Property; and

(xi) The grazing of any horses or other agricultural and barnyard animals. Goats may be used to manage vegetation on the property with written permission from the IRT.

5. Development Rights. To the extent that Grantors *owns* or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to a use more intensive (in terms of height, bulk, or other objective criteria regulated by such ordinances) than the Property is devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the preservation and conservation purposes of this Easement.

6. Reserved Rights. Grantors reserve to itself and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement, including the right to use the Property for recreational purposes not prohibited under the foregoing provisions and which do not interfere with the preservation of the plant and animal communities currently on, or restored to, the Property, as part of a restoration plan undertaken pursuant to this Easement and the right to harvest native plant seeds.

7. Remedies.

(a) If at any time and from time to time, Grantee determines that the Grantors, or its agents, are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to the Grantors of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantors 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 thirty (30) day period, fails to commence 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, 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 values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting the Grantor's liability therefore, prior to any such injury. Without limiting the Grantor's liability therefore, Grantee, upon written approval from the U.S. Corps of Engineers Rock Island District who shall obtain written approval from the IRT (defined hereafter), may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, upon written approval from the U. S. Corps of Engineers Rock Island District who shall obtain written approval from the IRT, 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 Grantors or without waiting for the period provided to 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 Grantors agree 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 other such 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. Grantors waive any bond requirements which may be applicable to injunctive relief.

(b) Grantor's sole remedy in the event of a failure by Grantee to perform any of its covenants herein contained shall be, if such failure shall continue for thirty (30) days after written notice thereof to Grantee, to institute a suit for injunctive relief or specific performance. Grantors hereby waives any claim for damages resulting from such failure, and expressly acknowledges that any such failure by Grantee shall in no way affect the validity of this Easement or any of the other covenants contained herein.

(c) The Inter Agency Review Team, or any of their members which consists of the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the USDA, Natural Resources Conservation Service, and the Iowa Department of Natural Resources (these agencies herein referred to collectively as the "IRT"), will have the right to enforce by proceedings in law or equity the

covenants, obligations and restrictions set out herein and this right shall not be waived by one or more incidents of failure enforce said right.

8. **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantors.

9. **Endowment.** The Grantor will fund long-term management fund account. The U.S. Army Corps of Engineers will have the authority to enforce the Instrument. This account is for the Grantor or Grantee (subject to the provisions below) to maintain or repair the Property if the Grantor fails to maintain the restored Property. Every effort must be made by the Grantee to contact the Grantor if the Grantor of the Property is out of compliance with the Instrument. Authorization to access and utilize the long-term management fund account must be obtained from the U.S. Army Corps of Engineers if Grantor fails to maintain the Property. This fund will be funded by Grantor depositing with the Grantor, 5% of the wetland credit sales from the mitigation bank, starting with the first sale, until the long term maintenance fund is equal to \$392,700.00. The fund will at all times remain in the sole name and property of the Grantor, although the fund may be used as set out under the terms of the Mitigation Banking Instrument.

10. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this, Easement shall not be deemed or construed to be a waiver by Grantee of such terms or of 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 Grantors shall impair such right or remedy or be construed as a waiver.

11. **Waiver of Certain Defenses.** Grantors hereby waives any defense of laches, estoppel, or prescription.

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

13. **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 day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property with the meaning of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

14. **Mechanic's Liens.** Grantors shall keep the Property free from any mechanic's liens. If any such liens are placed against the Property, Grantors shall promptly cause them to be released or, in the alternative, shall provide Grantee with title insurance reasonably acceptable to Grantee insuring over said liens. Grantee shall have the right to pay any lien if Grantors fail to provide Grantee with title insurance over the lien.

Grantee shall have a lien on the Property in the amount of any funds paid by Grantee to discharge such mechanic's lien until such amount has been repaid by Grantors.

15. Taxes. Grantors shall pay before delinquency all real estate taxes, assessments, fees, and charges of whatever description validly assessed and levied against the property, including any such tax validly assessed and levied against the Property by competent authorities, for their respective periods of ownership (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.

16. Indemnity. Grantors, and its successors in interest, including but not limited to Grantors, 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, cost, losses, damages, expenses, causes of action, claims, demands, or judgments.

Including, without limitation, reasonable attorneys' fees, arising from or in any way connected with any unintentional acts of the Grantee in the reasonable performance of their duties pursuant to this easement and management agreement. Grantee holds Grantors, and its successors and assigns, harmless from any liability due to Grantee's unintentional actions relative to the property.

17. Qualified Appraisal. In the event Grantors claim a federal income tax deduction for donation of a "qualified real property interest as that term is defined in Section 170 (h) of the Internal Revenue Code, Grantors shall provide Grantee with a copy of all appraisals (hereinafter, the "Qualified Appraisal" as that term is defined in Section 170 (a) (I) of the Internal Revenue Code) of the fair market value of this Easement. Upon receipt of the Qualified Appraisal, this fully executed Easement and any endowment requested hereunder by Grantee, Grantee shall sign any appraisal summary form required by the Internal Revenue Service and submitted to the Grantee by Grantors.

18. Extinguishment. If circumstances arise in the future which render the purpose of the Easement impossible or impractical to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. 33 CFR 332.7 (a) (3) requires 60-day advance notice to the Corps via the District Engineer for any changes, modifications, amendments or revocations. Upon such extinguishment, Grantee shall be entitled, after the satisfaction of prior claims, to its share of the proceeds from any sale, exchange, financing, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, equal to the value of the Easement unless state law then provides that the Grantors is entitled to the full proceeds from such conversion without regard to the terms of this Easement. The value of the Easement

shall be determined in accordance with paragraph 19 hereof. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant, provided, however, that such use shall not be limited to the Property. Amendments, modifications, or boundary line adjustments not resulting in any net loss of land protected by this easement shall not be deemed to constitute extinguishments but shall require the express written approval of the U.S. Army Corps of Engineers witnessed, authenticated, and recorded.

19. Proceeds. 33 CFR 332.7 (a) (3) requires 60-day advance notice to the Corps via the District Engineer for any changes, modifications, amendments or revocations. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 18, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements permitted under this Easement, if any) by a fraction of which the numerator shall be the value of the Easement at the time of this grant and the denominator shall be the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of the grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170 (h) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the value of the Easement shall be equal to the difference in value between the Property as encumbered by this Easement. If Grantors do not claim a charitable gift deduction for purposes of calculating federal income taxes and submit a Qualified Appraisal value of the Easement shall be deemed to be 20% of the value of the Property unencumbered by this Easement. At the election of either party, the parties agree to execute an amendment to this Easement in recordable form establishing the fraction determined pursuant to this paragraph.

20. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law and paragraph 19.

21. Assignment. 33 CFR 332.7 (a) (3) requires 60-day advance notice to the Corps via the District Engineer for any changes, modifications, amendments or revocations. This Easement is transferable with 30 days written notice to Grantors, but Grantee may assign its rights and obligations under this Easement only to an organization or agency that is a qualified organization at the time of transfer under Section 170 (h) of the Internal Revenue Code as amended (or any successor provision then applicable), as a condition of such transfer, Grantee shall require that the conservation purposes that this Easement is intended to advance shall continue to be carried out and that its

terms and provisions shall be binding upon the assignee and each subsequent assignee. The Grantee shall work with the Grantors to the extent practicable to inform said Grantors of the available assignees. Any such assignments shall require the express written approval of the U.S. Army Corps of Engineers and be recorded in the appropriate county of Iowa.

22. Subsequent Transfers. 33 CFR 332.7 (a) (3) requires 60-day advance notice to the Corps via the District Engineer for any changes, modifications, amendments or revocations. Grantors shall incorporate this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors shall 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 Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way or result in any liability on the part of the Grantors.

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

24. Insurance Certificates. Upon the request of Grantee, Grantors shall provide a valid certificate of liability Insurance or policy of liability insurance naming Grantee as an additional insured.

25. 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 (including delivery by commercial overnight delivery service) or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: BJAWK LLC
5955 Rancho Road
Cedar Falls, Iowa 50613

To Grantee: Delaware County Conservation
2379 Jefferson Road
Manchester, Iowa 52057

or to such other address as either party from time to time shall designate by written notice to the other. Notice shall be deemed given when received.

26. Amendment. 33 CFR 332.7 (a) (3) requires 60 day advance notice to the Corps via the District Engineer for any changes, modifications, amendments or revocations. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Grantee may amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws or Section 170 (h) of the Internal Revenue Code of 1993, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be in writing and recorded in Delaware County, Iowa and shall require the express written approval of the U.S. Army Corps of Engineers as part of such recording.

27. Executory Limitation. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, and a prior assignment is not made pursuant to paragraph 20 of this Easement, then this Easement and any associated endowment funds, granted for the monitoring of this easement, shall be assigned and transferred to another qualifying organization under Section 501(c)(3) of the Internal Revenue Code, as an 1 ended (or the corresponding provisions of any future United States Internal Revenue Law), as

determined by the Grantee. Should the Grantee fail to make such determination this Easement and the endowment shall be assigned to a qualifying organization by the District Court of Iowa in and for Delaware County, exclusively for such purposes as described in this Easement to such organization, as said court shall determine which is organized and operated to fulfill these purposes.

28. Recordation. Grantee shall record this instrument in timely fashion in the appropriate Office of the Recorder of Deeds of Delaware County, Iowa. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Easement without the written approval of the U.S. Army Corps of Engineers so long as the instrument does not contain any amendment. 33 CFR 332.7 (a) (3) requires 60-day advance notice to the Corps via the District Engineer for any changes, modifications, amendments or revocations.

29. 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 in favor of the grant to effect the purpose of this Easement. Any interpretation consistent with the purpose of this Easement that would render the provision valid shall prevail 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 the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) No Forfeiture. No violation or default in the obligation of this Easement will result in the forfeiture or reversion of Grantor's title in any respect.

(f) Successors. The covenants, terms, conditions, and restriction 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, including but

not limited to a homeowner's association, and shall continue as a servitude running in perpetuity with the Property.

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

(h) 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.

(i) 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.

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

(k) Inspection. Employees of the U. S. Army Corps of Engineers will have the right to view the Property and the right to enter Property at all reasonable times for the purpose of inspecting the Property to determine compliance with the covenants and restrictions contained herein.

30. Costs and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

31. Management. Grantors shall manage the Property in accordance with the Banking Instrument attached hereto as Exhibit B. Grantee may, from time to time, amend or modify the management plan at its sole discretion, provided that any and all such amendments or modifications shall be consistent with preservation of the Property's conservation values.

32. Restoration. Grantors shall undertake restoration of the Property prior to Grantee beginning management, under the Banking Instrument hereto attached hereto as Exhibit B.

33. Sale or Transfer of Property. Should the owner(s) of the parcel that includes the property subject to the Easement described herein (a.k.a. Elk Hollow Stream & Wetland Mitigation Project) ever decide to sell said parcel, Delaware County, Iowa or it's Conservation Department shall be granted a right of first refusal.

IN WITNESS WHERE OF, Grantors and Grantee have set their hands on the day and year first above.

GRANTOR:



BY:
Kurt Boevers
Manager, BJA WK LLC
Elk Hollow Mitigation Bank

GRANTEE:



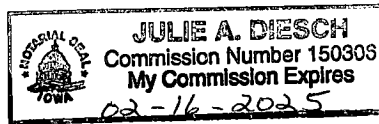
BY: Garlyn Glanz
Executive Director, Delaware County Conservation
Board

STATE OF IOWA)
) ss:
)

On this 16th day of August, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed in his capacity as the Director of the Delaware County Conservation Board.



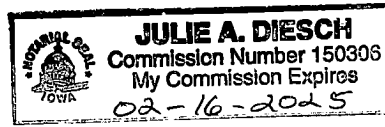
Notary Public - State of Iowa

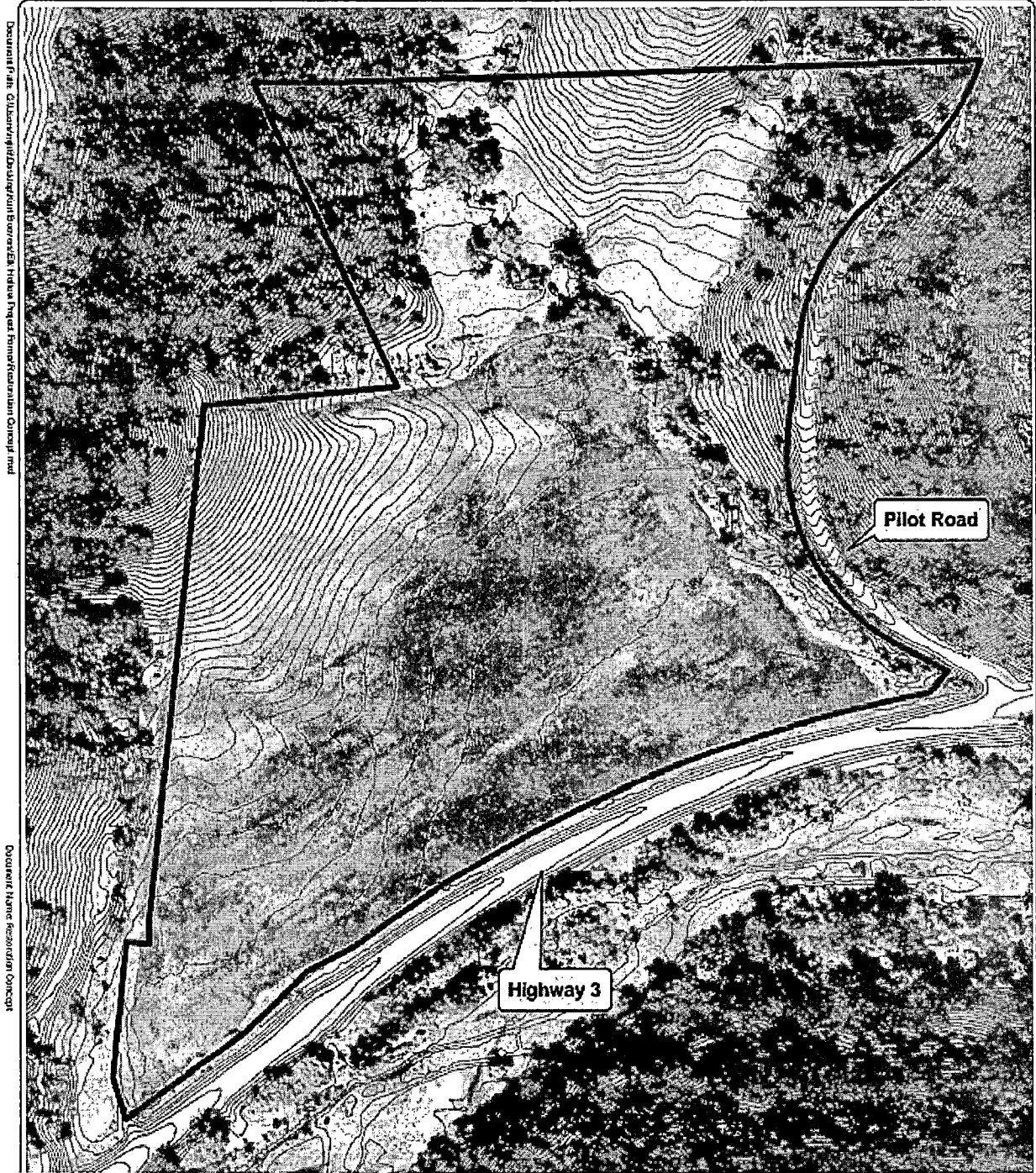


STATE OF IOWA)
) ss
)

On this 16th day of August, 2023, before me, the undersigned, Notary Public in and for said State, personally appeared to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed as Owner of the Elk Hollow Mitigation Bank.

Julie A. Diesch
Notary Public- State of Iowa





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Document Name: Korundum Concept

Exhibit A

