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KAREN FORD, RECORDER
FAYETTE COUNTY, IOWA

PREPARED BY/RETURN TO: Rod Marlatt, 18673 Lane Road, Fayette, IA 52142 (563) 422-5146

DEED OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT ("Easement") is made this 31st day of December 2007, by Joyce I. Oldfather, Trustee of the Joyce I. Oldfather Trust dated January 13, 2006 of 409 Hall Street, West Union, Fayette County, Iowa 52175 (hereinafter together with its successors in interest and assigns collectively referred to as "Grantor"), and the Fayette County Conservation Board of 18673 Lane Road, Fayette, Fayette County, Iowa 52142, (hereinafter together with its successors in interest and assigns collectively referred to as "Grantee").

RECITALS;

WHEREAS, Grantor is the owner of real property in Fayette County, Iowa more particularly described as follows to-wit:

The Northwest Quarter, and
The North One-Fourth of the Southwest Quarter of Section 25, Township 93 North,
Range 8 West of the Fifth P.M., Fayette County, Iowa

hereinafter referred to as "Property", and

WHEREAS, the property possesses significant conservation, natural, forestry, scenic, open space, agricultural, and recreational value appropriate for conservation and preservation under the standards of Section 457A of the Code of Iowa; and

WHEREAS, the specific Conservation, Natural, Forest, Scenic, Open Space, Agricultural and Recreation values of the Property are documented in an inventory of the Property dated the 31 day of December, 2007, on file in the office of the Grantee and attached hereto as "Exhibit A" and incorporated by the reference "Baseline Data", which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively an accurate representation of the Property at the time of this grant intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, Grantor intends that the Conservation, Natural, Forest, Scenic, Open Space, Agricultural, and Recreation Values of the Property be preserved and maintained by the continuation of land use patterns existing at the time of this grant, including, without limitation, those relating to conservation, natural, forest, scenic, open space, agriculture and recreation, etc. that do not significantly impair with those conservation, natural, forest, scenic, agricultural, and recreational values; and

WHEREAS, Grantor further intends to convey the right to preserve and protect the conservation, natural, forest, scenic, open space, agricultural, and recreational values of the Property in perpetuity; and

WHEREAS, Grantee is a County Conservation Board created under Chapter 350 of the Code of Iowa which authorizes counties to acquire, develop, maintain, and make available to the inhabitants of the county, public museums, parks, preserves, parkways, playgrounds, recreational centers, county forests, wildlife, and other conservation areas and to promote and preserve the health and general welfare of the people, to encourage the orderly development and conservation of natural resources, and to cultivate good citizenship by providing adequate programs of public recreation; and

WHEREAS, Grantee agrees by accepting this grant to honor the intention of the Grantor stated herein and to preserve and protect in perpetuity the conservation, natural, forest, scenic, open space, agricultural, and recreational values of the Property for the benefit of this generation and generations to come;

Now, THEREFORE, in consideration of mutual covenants and promises contained herein, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby convey 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 assure that the property will be preserved forever in its conservation, natural, forest, scenic, open space, agricultural, and recreational condition and to prevent any use of the Property that would significantly impair or interfere with these values. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Easement.
2. Rights of Grantee. To accomplish the purposes of this Easement, the following rights are conveyed to Grantee or its assigns:
 - (a) to preserve and protect the conservation, natural, forest, scenic, open space, agricultural and recreational values of the Property;
 - (b) to enter on the Property at reasonable times to monitor Grantor's compliance and otherwise enforce the terms of this Easement; provided that such entry shall be upon reasonable notice to Grantor, and that Grantee shall not unreasonably interfere with Grantor's use and enjoyment of the Property,
 - (c) to ensure and enforce that any tree harvesting or timber stand improvements be in conjunction with and in compliance with an approved forestry plan created by a certified forester,
 - (d) to ensure and enforce that agricultural activities engaged in upon the agricultural portions of the Property be in compliance with a Conservation Compliance Plan. Agricultural activities shall be conducted in such a manner as to utilize applicable conservation programs such as CRP, continuous CRP, contour stripping, etc.
 - (e) 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 of features of the Property that may be damaged by an inconsistent activity or use, pursuant to the provisions of Paragraph 6 hereof.

3. Permitted Uses. Grantor reserves to herself, as owner, and to her successors in interest and assigns all rights accruing from 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 and that are not inconsistent with the purpose of this Easement. Examples of such uses are, but not limited to, hunting, fishing, fruit, nut and mushroom harvesting. These rights shall remain those of the Grantor to use or assign to those the Grantor expressly grants permission.

In the event that the Grantor desires to undertake activities not specifically permitted by Paragraph 3 above and not prohibited by Paragraph 4 below, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake such activity. The notice 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 purposes of this Easement.

4. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality to the foregoing, the following activities and uses are expressly prohibited:
 - (a) Construction or erection of any building, whether agricultural, commercial, residential, or industrial
 - (b) Establishment of any agricultural or commercial feed lot;
 - (c) Dumping of ashes, trash, rubbish, garbage, or illegal materials;
 - (d) Placing billboards, outdoor advertising structures, towers, or advertisements of any kind on the Property; except entrance, boundary and rule signs mutually agreed upon by Grantor and Grantee;
 - (e) Any exploitation of mineral resources by either subsurface or surface means;
 - (f) Introduction of non-native plant or animal species, except as may be necessary, with prior approval of Grantee, for erosion control purposes;
 - (g) Pasturing of any portion of the Property;
 - (h) Construction or enlargement of any road, except for possible needed use of agricultural equipment or tree harvesting consistent with the terms of this Easement;

- (i) Alteration of the topography of the Property or its drainage system, except with prior approval of the Grantee, for purposes of erosion control, drainage tile repair, enhancement of wetland and pond values, public safety considerations, or for the purposes protective of the integrity of the Property;
 - (j) Establishment of any livestock confinement operation.
5. Notice of Intention to Undertake Certain Activities. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Paragraphs 3 or 4, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of the Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than sixty days prior to the date Grantor intends to undertake the activity in question. The notice 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 purposes of this Easement. Grantee shall grant or withhold its approval in writing within thirty days receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action proposed would be inconsistent with the purposes of this Easement. Should Grantee fail to respond to Grantor's notice within the said thirty-day response period, Grantee shall be deemed to have approved the proposed activity.
6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement, or that a violation is threatened, Grantee shall give written notice to the Grantor 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 purposes of this Easement, to restore the Property so injured. If Grantor fails to cure the violation within thirty-days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within the thirty-day period, or fail to continue to diligently proceed 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 which it may be entitled for violation of the terms of this Easement or any injury to any conservation, natural, forest, scenic, open space, agricultural, and recreational values

protected by this Easement, including damages for the loss of any of these values, and to require the restoration of the Property to the condition that existed prior to such injury. Without limiting Grantor's liability therefore, 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, natural, forest, scenic, open space, agricultural, and recreational values of the Property, Grantee may pursue its remedies as 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 the 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 providing 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 **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, reasonable 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 Grantor. If Grantor prevails in any action brought by Grantee to enforce the terms of this Easement, Grantor's costs of suit, including reasonable attorney's fees, shall be borne by Grantee.
- 6.2 **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and 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 or any subsequent breach of the same or any other term of this Easement or 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 a waiver.
- 6.3 **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

- 6.4 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring an action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from any such cause.
7. Access. Right of access by the General Public remains the right of the Grantor to allow or disallow. Grantee retains the right to access the Property at reasonable times in order to inspect and enforce the terms of this Easement.
8. Cost and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Property. The responsibilities of such shall apply to the portions and retained rights of the Property to the Grantor and shall include those individuals the Grantor assigns and expressly permits use as such. Grantor shall be responsible to maintain adequate comprehensive general liability insurance coverage, as may or may not be required by state code or statute. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligation incurred for Grantor.
- 8.1 Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and their heirs, personal representatives, successors, and assigns 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's fees, arising from or in anyway connected with:
- (i) injury to death of any person or physical damage to any Property, resulting to or occurring on or about the Property, regardless of cause, unless due solely to negligence of any of the Indemnified Parties;
 - (ii) the obligations specified in Paragraphs 8 and 8.1 and
 - (iii) the existence or administration of the Easement.

8.2 Taxes. Grantor shall pay before delinquency all applicable 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. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured by the authority, without inquiry into the validity of the taxes, or accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of the prime rate of interest rate allowed by law.

9. Extinguishment. If circumstances arise in the future such as to render the purposes of this Easement impossible 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 Property subsequent to such termination or extinguishment, shall be determined unless otherwise provided by law, at that time, in accordance with Paragraph 9.1.

9.1 Proceeds. This Easement constitutes a real Property interest immediately invested 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 (minus any increase in value after the date of this grant attributed to improvements) by the ratio of 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 contributions if any for federal income tax purposes allowable by reason of this grant, pursuant to section 170(h) of the Internal Revenue Code, as amended and applicable regulations. The value of this Easement, as thus calculated, is intended to be the amount of the allowable charitable contribution 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, contributions. For the purpose 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 this Easement is taken in whole or in part, by exercise of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

10. Assessment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to a County Conservation Board, another agency of the county, city, agency of a city, or a private, non-profit organization which is authorized to acquire and hold Conservation Easements under Section 457A of the Code of Iowa (or any successor provisions then applicable). As a condition of such transfer, Grantee shall require that the conservation purpose of the grant is intended to advance, and continue to be observed.

11. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which said owner divests himself 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. 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 days execute and deliver to Grantor any document, including a 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 served personally or sent by first class mail, postage prepaid, addresses as follows:

To Grantor:
Joyce Oldfather, Trustee
409 Hall Street
West Union, Iowa 52175

To Grantee:
Fayette County Conservation Board
18673 Lane Road
Fayette, Iowa 52142

or to other such addresses as either party from time to time shall designate by written notice to the other.

14. Recordation. Grantee shall record this instrument in timely fashion in the official records of Fayette County, Iowa and may re-record it 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 in favor of the grant to effect the purposes of this Easement and the policy and purposes of Chapter 45^A of the Code of Iowa. If any provisions in this instrument are 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 provisions 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 provisions to the 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 revision of Grantor's title in any respect.

- (f) Joint Obligation. The obligations imposed by this Easement 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 prior to transfer shall survive transfer.
- (i) Captions. The captions in this instrument have been inserted solely for the convenience of reference and are not part of this instrument and shall have no effect upon construction of interpretation.

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 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 Internal Revenue Code, and any amendment shall be consistent with the purposes of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Fayette, County, Iowa.

17. Trustee's Warranty. The Grantor warrants to the Grantee all of the following:

That the trust pursuant to which this conveyance of Conservation Easement is made is duly executed and in existence; that to the knowledge of the Grantor the persons creating the Easement were under no disability or infirmity at the time the Easement was created; that the conveyance of Conservation Easement by the owner to the Grantee is effective and rightful, and that the owner knows of no facts or legal claims which might impair the validity of the trust or the validity of the conveyance.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement on the day and year first above written.

Joyce I. Oldfather trustee
Joyce I. Oldfather Revocable Trust
Joyce I. Oldfather, Trustee

Fayette County Conservation Board

By: Rod Marlatt
Rod Marlatt, Executive Director

STATE OF IOWA)

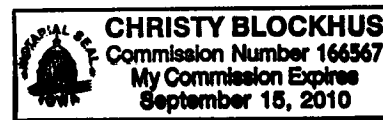
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FAYETTE COUNTY)

On this 31st day of December, 2007, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Joyce I. Oldfather, Trustee of the Joyce I. Oldfather Revocable Trust, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that they, as owner of the Property, executed the instrument as a voluntary act and deed of herself.

Christy Blockhus

Notary Public in and for the State of Iowa



My commission expires: September 15, 2010

STATE OF IOWA)

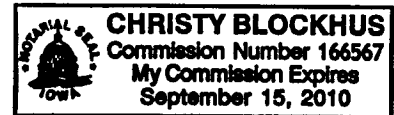
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FAYETTE COUNTY)

On this 31st day of December, 2007, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Rod Marlatt to me personally known, who being duly authorized, did say that he is the Executive Director Of the Fayette County Conservation Board; authorized and existing under Chapter 350 of the Code of Iowa, that the foregoing instrument was signed on behalf and by authority of said Board; and that as Executive Director acknowledges the execution of the foregoing instrument to be the voluntary act and deed of the said Fayette County Conservation Board, by it and them voluntarily executed.

Christy Blockhus

Notary Public in and for the State of Iowa



My commission expires: September 15, 2010

Exhibit A

OWNER ACKNOWLEDGEMENT OF CONDITION

Grantor and Grantee agree that the following Base Line Data Information is an accurate representation of the Property at the time of this Easement:

200 acres of property containing:

103.2 acres of timber under a Forest Management Plan
and

96.8 acres of open prairie and CRP ground

These acres are located as described and shown on page one of this Easement.

Joyce I. Oldfather trustee
Grantor

Reed Markel
Grantee (Fayette County Conservation Board)