MCHENRY COUNTY CONSERVATION DISTRICT
ORDINANCE #20-991

AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A LAND PRESERVATION PROJECT AND GIFT AGREEMENT AND MEMORANDUM OF UNDERSTANDING WITH MCHENRY COUNTY CONSERVATION FOUNDATION, MCHENRY COUNTY CONSERVATION DISTRICT, AND JAMES AND BONNIE LEAHY

WHEREAS, the Board of Trustees of the McHenry County Conservation District (hereinafter referred to as the “District”) wishes to adopt an ordinance approving the execution of a Land Preservation Project and Gift Agreement and Memorandum of Understanding on a 2 acre Parcel in accordance with the terms set forth in the Land Preservation Project and Gift Agreement documents, a copy of which is attached to and made a part hereof of this ordinance;

NOW, THEREFORE, BE IT ORDAINED, by the Board of Trustees of the District that it is necessary, required, desirable, and in the best interest of the District that the Land Preservation Project and Gift Agreement, as legally described in the Addendum to the documentation, which is attached hereto and incorporated herein, which real estate lies wholly within the boundaries of the District, be accepted as and for the conservation purposes set forth in the Conservation District Act (70 ILCS 410/1 et seq.);

BE IT FURTHER ORDAINED, that the Land Preservation Project and Gift Agreement and Memorandum of Understanding be approved in accordance with the terms and conditions set forth in the documents and the President and Secretary of the Board of Trustees are hereby authorized to execute said Agreement and Memorandum of Understanding or other documents and, together with the Executive Director of the District or her designee, undertake any and all acts necessary to close the transactions contemplated thereby.

IN WITNESS WHEREOF, the District has caused this Ordinance to be executed by the President of the Board of Trustees, and attested by the Secretary of its Board of Trustees, as of its passage this 25th day of August 2020.

Ayes: 6
Nays: 0
Absent: 0
Abstain: 0
Vacant: 1

Approved: [Signature]
JOHN HENNING, PRESIDENT
BOARD OF TRUSTEES

Attest: [Signature]
CAROLYN CAMPBELL, SECRETARY
BOARD OF TRUSTEES
LAND PRESERVATION PROJECT AND GIFT AGREEMENT

LAND PRESERVATION PROJECT AND GIFT AGREEMENT (hereinafter referred to as the “Gift Agreement”) entered into this 25th day of August, 2020, by and between JAMES P. LEAHY and BONNIE H. LEAHY, husband and wife, residing in Marengo, Illinois (hereinafter referred to collectively as “Leahy”), the MCHENRY COUNTY CONSERVATION DISTRICT, a conservation district organized and existing under the laws of the State of Illinois and having its principal administrative office in Woodstock, Illinois (hereinafter referred to as the “District”), and the MCHENRY COUNTY CONSERVATION FOUNDATION, an Illinois not-for-profit corporation having its principal office in Richmond, Illinois (hereinafter referred to as the “Foundation”):

WITNESSETH:

WHEREAS, the District is a conservation district organized and existing under the Illinois Conservation District Act (70 ILCS 410/2 et seq.) for the purpose of preserving and conserving natural areas and open space for aesthetic, educational, historic, ecological, and recreational purposes; and

WHEREAS, the Foundation is an Illinois not-for-profit corporation dedicated to supporting, sustaining, and advancing the public conservation, education, and recreation programs of the District and its partners with the capacity to assist with and facilitate the protection of real estate for such purposes; and

WHEREAS, the District is engaged in a transaction to acquire legal title to certain real estate consisting of nineteen and 41/100ths (19.41) acres, more or less, in area, situated in unincorporated Coral Township in McHenry County, Illinois, which is legally described in
Exhibit A, attached to and made a part hereof (hereinafter referred to as the “Dollman Trust Parcel”); and

WHEREAS, Leahy legally and equitably owns certain real estate that possesses conservation values that is contiguous to the Dollman Trust Parcel consisting of two (2) acres, more or less, in area, situated in unincorporated Coral Township in McHenry County, Illinois, which is legally described in Exhibit B, attached to and made a part hereof (hereinafter referred to as the “Leahy Parcel”); and

WHEREAS, for the convenience of the parties in their contemplation of this Gift Agreement, the approximate boundaries of the Dollman Trust Parcel, the Leahy Parcel, and land owned in fee simple by the District are displayed as the Project Depiction in Exhibit C, attached and made a part hereof; and

WHEREAS, to ensure that the conservation values of the Leahy Parcel are preserved in perpetuity, Leahy wishes to gift a conservation easement in the Leahy Parcel (hereinafter referred to as the “Grant of Conservation Easement”) to the District, subject to the terms and conditions hereinafter set forth; and

WHEREAS, the District is prepared to accept the donation of the Grant of Conservation Easement from Leahy on the Leahy Parcel, at such time as the District acquires fee simple title to the Dollman Trust Parcel, subject to the conditions set forth herein; and

WHEREAS, to support the restoration of the natural communities upon the Leahy Parcel and the Dollman Trust Parcel, Leahy desires to donate the sum of FIFTEEN THOUSAND AND NO/100THS ($15,000.00) DOLLARS for restoration (hereinafter referred to as the “Restoration Funding Gift”) to the Foundation for distribution to the District provided that the District first
acquire title to the Dollman Trust Parcel and accept the Grant of Conservation Easement on the Leahy Parcel; and

WHEREAS, the Foundation is prepared to accept the Restoration Funding Gift and distribute it to the District as set forth herein to support the restoration of the Leahy Parcel and the Dollman Trust Parcel; and

WHEREAS, it is the mutual intent of the parties hereto that the transactions contemplated herein be consummated as soon as reasonably practical; and

WHEREAS, the parties hereto agree that they will rely upon the mutual assurances set forth herein in proceeding to implement the land preservation project and gifts as described in this Gift Agreement and in undertaking the various transfers and grants contemplated herein;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

1. **RECITALS:** The recitals are hereby incorporated by this reference.

2. **GRANT OF CONSERVATION EASEMENT:** Leahy hereby affirms their intent to gift to the District the Grant of Conservation Easement on the Leahy Parcel as described herein and the District hereby affirms its intent to accept said gift pursuant to the terms and conditions contained herein. It is agreed that said Grant of Conservation Easement to be gifted to and accepted by the District shall be in the form and substance set forth in Exhibit D, attached to and made a part hereof. The intentions of Leahy and the District set forth herein are contingent and conditional upon the acquisition of fee simple title of the Dollman Trust Parcel by the District. The District agrees to provide notice to Leahy upon completion of the acquisition of the Dollman Trust Parcel as soon as reasonably practical after said acquisition. Leahy shall execute the Grant of
Conservation Easement and deliver it to the District for acceptance by its Board of Trustees. Prior to the delivery to and acceptance by the District of the Grant of Conservation Easement, Leahy agrees that they will not construct any improvements on, encumber, or significantly alter the natural resource values of the Leahy Parcel.

3. **RESTORATION FUNDING GIFT, ELIGIBLE EXPENSES AND DISTRIBUTION**: Leahy hereby affirms their intent to gift to the Foundation the Restoration Funding Gift as described herein and the Foundation hereby affirms its intent to accept said gift pursuant to the terms and conditions contained herein. It is mutually agreed by the parties hereto that said Restoration Funding Gift shall be made in a single installment as soon as practical following the acceptance of the Grant of Conservation Easement by the District. It is further agreed that the proceeds from the Restoration Funding Gift shall be used exclusively to reimburse the District for out-of-pocket expenses (hereinafter referred to as "Eligible Expenses"), as defined herein, for the restoration work upon the Leahy Parcel and the Dollman Trust Parcel.

It is hereby mutually agreed that the term, "Eligible Expenses," as used herein, shall mean expenses incurred and paid by the District for third-party labor and/or materials up to the amount of FIFTEEN THOUSAND AND NO/100THS ($15,000.00) DOLLARS, or the entire amount of the Restoration Funding Gift, if less, pertaining to the following restoration activities on the Leahy Parcel and/or Dollman Trust Parcel: selective brush clearing and reforestation including cover crop, trees, shrubs, and protective caging. Only expenses for which no other reimbursement shall be sought or received from any other sources by the District shall be considered as Eligible Expenses. Also, it is expressly understood and agreed that Eligible Expenses shall not include any amounts for District staff time or labor, volunteer time or labor, or any in-house supplies, materials, or equipment of the District. It is further understood and agreed that any restoration activities upon the
Leahy Parcel specifically shall be consistent with the Grant of Conservation Easement and mutually agreed in writing between Leahy and the District prior to the activity pursuant to the Land Management Plan provisions contained in the Grant of Conservation Easement. It is anticipated that the Restoration Funding Gift shall be fully utilized on initial restoration activities and the District shall use its best efforts to engage in sufficient restoration activities prior to the end of calendar year 2021 to produce the maximum amount of Eligible Expenses described herein.

It is mutually understood and agreed that the District shall carefully document Eligible Expenses and provide the parties hereto with a single Report of Eligible Expenses if and to the extent the maximum amount of Eligible Expenses, as provided herein, has been realized. Accordingly, the Foundation agrees to reimburse the District for all Eligible Expenses within sixty (60) days of its receipt by it of the Report for Eligible Expenses documenting and substantiating the completion of and payment for appropriate restoration activities. Notwithstanding the foregoing, it is also mutually agreed that in no event shall the Foundation’s total liability for reimbursement to the District exceed the lesser of the following: the total amount of the Restoration Funding Gift received by the Foundation or the total amount submitted by the District in the Report of Eligible Expenses. Furthermore, it is understood and agreed by the parties hereto that the Restoration Funding Gift and mechanism for reimbursement shall in no way obligate the District to provide any particular management, oversight, or other resources to complete the restoration activities contemplated herein within any particular period of time. It is the intention of the parties that management, oversight or other resources necessary to accomplish the desired restoration activities shall be provided by the District as capacity exists, within a reasonable amount of time, as determined solely by the District.
4. **PUBLICITY:** Leahy hereby acknowledges that it may be advisable, upon and/or after the receipt of the Restoration Funding Gift and the Grant of Conservation Easement contemplated herein, for the District and/or the Foundation to issue a press release(s) or otherwise advise the media as to the donation of the Grant of Conservation Easement and/or the Restoration Funding Gift to be made by Leahy.

5. **APPLICABLE LAW:** This Gift Agreement shall be construed in accordance with the laws of the state of Illinois.

6. **ENTIRE AGREEMENT:** This Gift Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and shall supersede any and all prior agreements or understandings between the parties with respect to the subject matter hereof and may not be amended or modified in any way except by or pursuant to a written agreement between the parties. Any and all prior agreements on this specific subject matter among the Foundation, Leahy, and the District are hereby declared to be null and void. Except as may be expressly otherwise provided herein, nothing contained in this Gift Agreement shall be contractually binding on Leahy and, with respect to nonbinding provisions herein, Leahy has executed this instrument solely as an expression of their intention and understanding.

7. **GENDER:** Whenever used herein, the masculine shall include the feminine and the feminine shall include the masculine, the plural shall include the singular, and the singular shall include the plural, as the case may be.

8. **MISCELLANEOUS:**

   (a) **Time of Essence:** Time is of the essence of this Gift Agreement.
(b) **Written Demands:** Any and all notices, demands, and requests required or permitted under this Gift Agreement shall be in writing and shall be served on the parties hereto in conformance with the requirements of subparagraph (c) hereof;

(c) **Notices:** All notices, demands, and requests required or permitted hereunder shall be deemed to have been sufficiently given if mailed by Certified Mail, Return Receipt Requested, or forwarded by email with a delivery receipt requested, or delivered by courier as follows:

- **If to Leahy:**
  JAMES P. LEAHY and BONNIE H. LEAHY  
  7318 South Grant Highway  
  Marengo, Illinois 60152  
  Email: bh.leahy@att.net

- **If to the District:**
  MCHENRY COUNTY CONSERVATION DISTRICT  
  18410 U.S. Highway 14  
  Woodstock, Illinois 60098  
  Attn: Elizabeth S. Kessler, Executive Director  
  Email: ekessler@mccdistrict.org

  And a copy to:  
  MELTZER, PURTILL & STELLE, LLC  
  1515 East Woodfield Road, Second Floor  
  Schaumburg, Illinois 60173  
  Attn: Roger T. Stelle  
  Email: rstelle@mpslaw.com

- **If to the Foundation:**
  THE MCHENRY COUNTY CONSERVATION FOUNDATION  
  7210 Keystone Road  
  Richmond, Illinois 60071  
  Attn: Shawna Flavell, Executive Director  
  Email: SFlavell@mccdistrict.org

  And a copy to:  
  MELTZER, PURTILL & STELLE, LLC  
  1515 East Woodfield Road, Second Floor  
  Schaumburg, Illinois 60173  
  Attn: Roger T. Stelle  
  Email: rstelle@mpslaw.com
Any notice given by Certified Mail/Return Receipt Requested, shall be deemed received on the third day following its posting and any notice given by email shall be deemed received as of its confirmation of delivery, and any notice delivered by courier shall be deemed received as of its actual receipt.

(d) **Tax Advice and Counsel:** The parties hereto acknowledge that each party has relied upon the advice of its own professionals with respect to the transactions contemplated herein including, without limitation, any issues relative to the tax treatment applicable to the donations to be made by Leahy pursuant hereto and no party hereto has relied upon any assurances or representations with respect to tax issues from any other party hereto or its employees or agents in entering into this Gift Agreement and in consummating the transactions contemplated herein. If the donation of the Grant of Conservation Easement shall be made by Leahy pursuant hereto, the District shall issue a gift acknowledgment letter pursuant to Section 170(f) of the Internal Revenue Code and shall execute Internal Revenue Service ("IRS") Form 8283 upon the request of Leahy. Similarly, the Foundation shall cooperate with Leahy in the completion of any reasonable requests for documentation to appropriately substantiate the Restoration Funding Gift for tax purposes.

(e) **Captions:** The captions used herein have been utilized for convenience only and are not intended to modify or limit in any way the provisions hereof.

(f) **Counterpart, Facsimile, or .pdf signatures.** This Gift Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original hereof and all said counterparts together shall be deemed to be a single instrument. Facsimile or .pdf
signatures of any signatory hereto shall be sufficient and shall be as fully binding and enforceable as an original for all intents and purposes.

(g) **Successors and Assigns:** Any contractual obligations in this Gift Agreement shall be binding upon the parties hereto and their respective heirs, devisees, successors, and assigns, as the case may be, provided, however, that no party hereto shall assign any interest herein without the prior written consent of the other parties first had and any such assignment, without said prior written consents, shall be null and void and of no force or effect whatsoever.
IN WITNESS WHEREOF, the parties hereto have caused this Gift Agreement to be executed on the day and year first above written at Woodstock, Illinois.

MCHENRY COUNTY CONSERVATION DISTRICT

By: Elizabeth S. Kessler
Executive Director

THE MCHENRY COUNTY CONSERVATION FOUNDATION, an Illinois not-for-profit corporation:

By: Shawna Flavell
Executive Director

(05700: 685: 02905475.DOCX: 5)
EXHIBIT A

LEGAL DESCRIPTION - DOLLMAN TRUST PARCEL

Part of Lot 2 of the Plat of the West Half of Section 8, Township 43 North, Range 6 East of the Third Principal Meridian, according to the Plat thereof recorded December 18, 1883 as Document No. 15178 in Book 1 of Plats, page 8; being described as follows: Commencing at the Northwest corner of said Lot 2; thence North 89 degrees 29 minutes 17 seconds East along the North line thereof, 1,125.45 feet to the Northeast corner of the lands described in Document No. 2018R0000683 and for the Place of Beginning; thence continuing North 89 degrees 29 minutes 17 seconds East along said North line of Lot 2, a distance of 628.50 feet to the East line of said West Half of Section 8; thence South 60 degrees 12 minutes 06 seconds East along said East line, 215.68 feet to the centerline of Dunham Road; thence Southwesterly 78.98 feet along said centerline being a non-tangent curve to the right, having a radius of 600.00 feet, the chord of which bears South 17 degrees 12 minutes 18 seconds West, 78.92 feet; thence South 20 degrees 08 minutes 33 seconds West along said centerline, 574.69 feet; thence Southwesterly 34.61 feet along said centerline, being a curve to the right, having a radius of 2,259.46 feet, the chord of which bears South 21 degrees 24 minutes 53 seconds West, 34.61 feet; thence North 74 degrees 29 minutes 22 seconds West, 673.00 feet; thence South 61 degrees 21 minutes 56 seconds West, 493.00 feet to an angle point in the Southerly line of said Lot 2; thence South 89 degrees 50 minutes 55 seconds West along said Southerly line of said Lot 2, a distance of 429.42 feet to the Southwest corner thereof; thence North 00 degrees 08 minutes 49 seconds West along the West line of said Lot 2, a distance of 403.00 feet to the Southwest corner of the lands described in Document No. 2018R0000683; thence the following four calls are along the South and East lines of said lands; thence North 89 degrees 29 minutes 17 seconds East, 638.42 feet; thence North 00 degrees 08 minutes 49 seconds West, 150.00 feet; thence North 89 degrees 29 minutes 17 seconds East, 486.80 feet; thence North 00 degrees 06 minutes 38 seconds West, 348.65 feet to the Place of Beginning, in McHenry County, Illinois.

PROPOSED INGRESS & EGRESS EASEMENT:

A 30 foot wide easement over that part of Lot 2 of the Plat of the West Half of Section 8, Township 43 North, Range 6 East of the Third Principal Meridian, according to the Plat thereof recorded December 18, 1883 as Document No. 15178 in Book 1 of Plats, page 8; being described as follows: Commencing at the Northwest corner of said Lot 2; thence North 89 degrees 29 minutes 17 seconds East along the North line thereof 1,753.95 feet to the East line of said West Half of Section 8; thence South 00 degrees 12 minutes 06 seconds East along said East line, 215.68 feet to the centerline of Dunham Road; thence Southwesterly 78.98 feet along said centerline being a non-tangent curve to the right, having a radius of 600.00 feet, the chord of which bears South 17 degrees 12 minutes 18 seconds West, 78.92 feet; thence South 20 degrees 08 minutes 33 seconds West along said centerline, 574.69 feet; thence Southwesterly 34.61 feet along said centerline, being a curve to the right, having a radius of 2,259.46 feet, the chord of which bears South 21 degrees 24 minutes 53 seconds West, 34.61 feet to the Place of Beginning; thence continuing Southwesterly 30.21 feet along said centerline, being a curve to the right having a radius of 2,259.46 feet, the chord of which bears South 22 degrees 14 minutes 11 seconds West, 30.21 feet; thence North 74 degrees 29 minutes 22 seconds West, 171.46 feet; thence North 15 degrees 30 minutes 38 seconds East, 30.00 feet; thence South 74 degrees 29 minutes 22 seconds East, 175.00 feet to the Place of Beginning, in McHenry County, Illinois.
EXHIBIT B

LEGAL DESCRIPTION - LEAHY PARCEL

Part of Lot 2 of the Plat of the West Half of Section 8, Township 43 North, Range 6 East of the Third Principal Meridian, according to the plat thereof recorded December 18, 1883 as Document No. 15178 in Book I of Plats, page 8: Commencing at the Northwest corner of said Lot 2; thence North 89 degrees 29 minutes 17 seconds East, 1,125.45 feet to the Northeast corner of the Lands described in Document No. 2018R0000683; thence South 00 degrees 06 minutes 38 seconds East along the East line of said lands, 348.65 feet to the Southeast corner thereof; thence South 89 degrees 29 minutes 17 seconds West along the South line of said lands, 486.80 feet to the Place of Beginning; thence South 00 degrees 08 minutes 49 seconds East, 150.00 feet; thence South 89 degrees 29 minutes 17 seconds West parallel with the said North line of Lot 2, a distance of 638.42 feet to the West line of said Lot 2; thence North 00 degrees 08 minutes 49 seconds West along said West line, 150.00 feet to the Southwest corner of the Lands described in Document No. 2002R0012242; thence North 89 degrees 29 minutes 17 seconds East along the South line thereof, 638.42 feet to the Place of Beginning, in McHenry County Illinois.
GRANT OF CONSERVATION EASEMENT

GRANT OF CONSERVATION EASEMENT (hereinafter referred to as the "Conservation Easement") made and entered into this day of , 2020, by and between JAMES P. LEAHY AND BONNIE H. LEAHY, husband and wife, residing in Marengo, Illinois (hereinafter referred to collectively as the "Grantors"), to the MCHENRY COUNTY CONSERVATION DISTRICT, a conservation district organized and existing under the laws of the state of Illinois and having its principal administrative offices in Woodstock, Illinois (hereinafter referred to as the "Grantee"):

WITNESSETH:

WHEREAS, Grantors wish to grant a conservation easement (hereinafter referred to as the "Conservation Easement"), in accordance with the Illinois Real Property Conservation Rights Act (765 ILCS 120/0.01 et seq.), over certain real estate legally described in Exhibit A, attached to and made a part hereof (hereinafter referred to as the "Protected Property"); and
WHEREAS, the Protected Property is depicted in a certain American Land Title Association ("ALTA") Survey certified as of ________________, by Vanderstappen Land Surveying, Inc. ("VLSI"), as Job No. __________, a copy of which Survey is appended hereto and incorporated by this reference as Exhibit B, consisting of two (2) acres, more or less; and

WHEREAS, Grantee recognizes that the Protected Property has a high quality oak woodland, including an intermittent stream with associated wetlands, has potentially important archeological significance, and, further, contains unique natural heritage elements and said qualities (hereinafter referred to as "Conservation Values") which should be preserved; and

WHEREAS, the grant of this Conservation Easement will yield a significant public benefit by the preservation of the Protected Property consistent with public programs for conservation in the region and specifically complements the more or less simultaneous acquisition of an adjacent nineteen and forty-one hundredths (19.41) acres, more or less, parcel by Grantee as part of the protection and preservation of Coral Woods Conservation Area; and

WHEREAS, Grantee is a conservation district organized and existing under the Illinois Conservation District Act (70 ILCS 410/2 et seq.) dedicated to the preservation of natural conditions and open land and the conservation of natural and scenic resources; and

WHEREAS, the Conservation Values which the Grantors and the Grantee wish to preserve on the Protected Property include the protection of the Protected Property in its predominately natural state including, without limitation the management of fish, wildlife, and plants or similar ecosystems which may be indigenous thereto in a responsible and sustainable manner and the preservation of the Protected Property as open space for the scenic enjoyment of the general public.
which, pursuant to Grantee’s delineated conservation policies, will yield significant public benefit and such other Conservation Values as may be gained from maintaining the Protected Property in its present state; and

WHEREAS, Grantors and Grantee hereby mutually acknowledge the scenic character and natural heritage elements of the Protected Property and share the common purpose of preserving the Conservation Values of the Protected Property by the conveyance to Grantee of this Conservation Easement on, over, and across the Protected Property for the purpose of conserving and protecting the Conservation Values thereon and preventing the use and development of the Protected Property for any purpose or in any manner which would conflict or be inconsistent with the maintenance of the Protected Property in a predominantly natural, scenic, and open space condition in perpetuity; and

WHEREAS, because of the uniqueness of the Protected Property, Grantee is willing to accept this Grant of Conservation Easement subject to the reservations and to the terms, conditions, and obligations hereinafter provided;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Grantors hereby absolutely and unconditionally grant said gift onto Grantee and its successors and assigns forever a conservation easement in perpetuity in, upon, and over the Protected Property for the purposes of preserving, protecting, and maintaining the Protected Property in a predominantly natural, scenic, and open space condition and to prevent any use of the Protected Property that will adversely impact or interfere with its Conservation Values subject, however, to the following terms and conditions, to wit:
(1) **RECITALS:** The recitals are hereby incorporated by this reference.

(2) **DEFINITIONS:** Whenever used herein, the terms, "predominantly natural, scenic, and open space condition," shall mean, without limiting the generality thereof, the condition of the Protected Property as of the date hereof based upon documentation possessed, either currently or in the future, by Grantors and Grantee which the parties shall make available, upon reasonable request, to one another and the Baseline Documentation, as defined herein.

(3) **GRANT OF CONSERVATION EASEMENT:** Grantors hereby grant to Grantee a conservation easement in, to, and over the Protected Property, and to Grantee's permitted successors and assigns, in perpetuity, including, without limitation, the following rights:

   (a) The right to view the Protected Property in its predominantly natural, scenic and open space condition; and

   (b) The right to enforce by proceedings at law or in equity the covenants herein set forth including, without limitation, the right to enforce, through legal process, the restoration of the Protected Property to the condition thereof as of the date hereof by any trespasser or trespassers or any other party or parties violating the terms hereof; and

   (d) The right of Grantee to enter the Protected Property upon reasonable notice to Grantors at all reasonable times so as to insure compliance with the covenants and purposes of this Conservation Easement.

The aforesaid rights shall all be permitted activities for Grantee, and its successors and assigns, in perpetuity hereunder.
(4) LIMITATIONS ON CONSERVATION EASEMENT: The Conservation Easement hereby granted by Grantors to Grantee shall, notwithstanding the foregoing, be subject to the following reservations, terms, conditions, and obligations, to wit:

(a) Neither Grantors nor Grantee shall allow any excavating, filling, dredging, mining, drilling, removal of topsoil, sand, gravel, rock, minerals, or other materials, or any building of roads, or any change of the topography of the Protected Property except to the extent necessary for the conduct of permitted activities hereunder, including, without limitation, the rights and privileges reserved by Grantors in Paragraph 5 hereof;

(b) Except for the possible removal of any subsurface drain tile to restore the original groundwater hydrology of the Protected Property or the restoration of any channelized portions of stream channels to a more natural course, as may be mutually agreed pursuant to the Land Management Plan described in Paragraph 8 hereof, neither Grantors nor Grantee shall allow any manipulation or alteration of natural water courses, lake shores, marshes, or other water bodies or activities or uses detrimental to water purity on the Protected Property;

(c) Neither Grantors nor Grantee shall allow the operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other type of motorized vehicles or transport on the Protected Property except for emergency and maintenance vehicles and to the extent necessary for the conduct of permitted activities hereunder, provided, however, nothing
contained herein shall prohibit Grantee from utilizing vehicles (to the extent possible) to gain access to the Protected Property for the purpose of inspecting the Protected Property or enjoying the rights granted to Grantee pursuant to Paragraph 3 hereof and provided further that nothing contained herein shall prevent or otherwise prohibit Grantors from operating vehicles on the Protected Property in conjunction with the rights and privileges reserved by Grantors in Paragraph 5 hereof;

(d) Neither Grantors nor Grantee shall permit the construction and maintenance of animal feeding operations (AFOs) or concentrated animal feeding operations (CAFOs) as defined by the Environmental Protection Agency, golf courses, cemeteries, billboards, mobile homes, RV parks, or cellular towers on the Protected Property;

(e) Neither Grantors nor Grantee shall permit the construction of any permanent building or above-ground structure of any kind on the Protected Property unless mutually agreed;

(f) Except to the extent applicable to the reserved rights of Grantor related to hunting and wildlife management activities described and established in Paragraph 5 hereof, neither Grantors nor Grantee shall allow any recreational use of firearms on the Protected Property;

(g) Neither Grantors nor Grantee shall allow any dumping or storage on or under the Protected Property of any trash, garbage, construction materials, sewage, ashes, manure, trees, brush, hazardous materials, soil, sawdust,
gravel, sand, discarded or salvageable materials such as junk cars, or other unsightly or offensive material. This is not intended to prohibit composting or burning of brush or other plant material generated on the Protected Property by permitted activities hereunder, including, without limitation, the rights and privileges reserved by Grantors in Paragraph 5 hereof:

(h) Neither Grantors nor Grantee shall allow the destruction or removal of native plant communities on the Protected Property or the application or use of any pesticide or herbicide on the Protected Property unless expressly permitted pursuant to the Land Management Plan described in Paragraph 8 hereof; and

(i) The Protected Property may not be used to increase the development of any other real estate owned by Grantors or any other party.

Notwithstanding the foregoing, neither Grantors nor Grantee shall be liable to the other for any violation of the foregoing reservations by any third party provided that said violations have not occurred as a result of any intentional act or omission of either Grantors or Grantee.

(5) RESERVED RIGHTS OF GRANTORS: Except and to the extent rights are granted to Grantee or others by this Conservation Easement, Grantors hereby reserve unto themselves any and all rights which may inure to them, as owners and holders of fee simple title to the Protected Property including, without limitation, the right to use the Protected Property for any and all purposes not inconsistent with the purpose of this Conservation Easement and that do not interfere with the rights granted to Grantee. It is the mutual understanding of Grantors and Grantee that nothing contained in this Conservation Easement shall prohibit or limit in any way
the use of the Protected Property by Grantors and/or their successors and assigns as well as
Grantor’s family and/or personal invitees of same from the following reserved rights to wit: the
right to hike, the right to tent camp and the right to hunt and/or manage, for non-commercial
purposes, wild game and/or nuisance wildlife utilizing archery, crossbow and/or firearms. In the
exercise of all reserved rights of Grantors as described herein, Grantors agree to consider utilizing
environmental best management practices in order to benefit or enhance the natural resources of
the Protected Property and the surrounding area.

(6) **AFFIRMATIVE DUTIES OF GRANTEE:** For and in consideration of the mutual
covenants herein contained, Grantee further agrees to be solely responsible for any filing,
reporting, or monitoring requirements as required by applicable laws or regulations concerning
this Conservation Easement. Notwithstanding the foregoing, nothing contained herein shall
require Grantee to acknowledge the value of the Conservation Easement hereby granted by
Grantors or to file any document with the Internal Revenue Service or any instrumentality thereof.
Without limiting the foregoing, it is expressly understood and agreed by and between the parties
hereto that, provided Grantors shall provide Grantee with any and all documentation required of it
pursuant hereto, Grantee shall execute an Internal Revenue Service Form 8283 relative to this
Conservation Easement and, in addition, Grantee shall provide the Contemporaneous
Substantiation Letter (hereinafter referred to as the “Substantiation Letter”) contemplated herein
upon the Closing of the transactions provided for herein including, without limitation, the
execution and delivery of this Conservation Easement. Without limiting the foregoing, it is
understood and agreed by and between the parties hereto that Grantors shall provide Grantee with
a copy of any appraisal or appraisals obtained by it for the purpose of documenting the value of
this Conservation Easement and, in addition thereto, Grantee shall provide Grantors with a Substantiation Letter acknowledging the gift of this Conservation Easement and confirming that no goods or services were rendered to Grantors in return for the Conservation Easement. Copies of the Substantiation Letter shall be retained by both Grantors and Grantee, as required by the relevant Treasury Regulations including, without limitation, Treasury Regulation § 1.170A-13.

(7) **BASELINE DOCUMENTATION:** Grantors and Grantee shall cooperate in the development of baseline documentation including, without limitation, the following, to wit:

(a) A Plat of Survey showing the boundary of the Conservation Easement and the location of any and all existing manmade improvements or incursions;

(b) Aerial photography of the Protected Property at an appropriate scale and taken as closely as possible to the date of the execution and delivery of this Conservation Easement;

(c) On-site photography taken at appropriate locations on the Protected Property, especially with respect to any natural resources situated on the Protected Property to be protected pursuant hereto;

(d) Map showing any rare species, locations, animal breeding grounds, roosting areas, and/or rare element occurrences;

(e) Inventories of identified flora and fauna; and

(f) Land use history, including present uses and recent past disturbances (hereinafter collectively referred to as the “Baseline Documentation”).

Once the Baseline Documentation is compiled, the parties hereto agree that they shall mutually execute the Affirmation and Agreement of Baseline Documentation (hereinafter referred to as the...
“Baseline Agreement,” attached to and made a part hereof as Exhibit C, which document may, at the option of either Grantors or grantee, be recorded in McHenry County, Illinois, contemporaneously with this Grant of Conservation Easement. The Baseline Agreement shall document the conservation values protected by the Conservation Easement hereby granted and the condition of the protected Property as of the date hereof and affirm Grantee’s duty hereunder to monitor and enforce this Conservation Easement. If and to the extent seasonal conditions or other factors prevent the completion of the Baseline Documentation, including, without limitation, the Baseline Agreement, at the time this Conservation Easement is executed and delivered by Grantors to Grantee, the parties hereto mutually agree that they shall cooperate in the development and compilation of the Baseline Documentation and the Baseline Agreement as soon as reasonably practical thereafter in conformance with the requirements of the United States Treasury Regulations including, without limitation, Section 1.170(a)-14g(5)(i) thereof.

(8) LAND MANAGEMENT PLAN: The Land Management Plan for the Protected Property is set forth in Exhibit D, attached to and made a part hereof (hereinafter referred to as the “Land Management Plan”). The parties hereby acknowledge that the Land Management Plan has been mutually agreed between Grantors and Grantee and has been approved by the Land Preservation and Natural Resources Division of Grantee. Grantors’ management of and activities on the Conservation Easement shall be consistent with the Land Management Plan and Grantee represents that it will provide assistance with the implementation to the extent resources and capacity may allow as determined in Grantee’s sole discretion. It is understood and agreed that the Grantee hereunder shall not be responsible for any physical management of the Protected Property or costs received thereto unless such responsibilities are specifically identified in the Land
Management Plan as undertakings of the Grantee. Grantors further represent that upon conveyance of fee simple title to the Protected Property to a third party, they shall advise the transferee thereof of the existence of the Land Management Plan and shall otherwise put said transferee on notice as to the existence of this Conservation Easement and the Land Management Plan. In addition to the foregoing, the parties hereto mutually acknowledge and agree that the Land Management Plan shall be reviewed from time-to-time and, as needed, modified to address environmental or other issues which may be impacting the Protected Property. Any such modifications shall be mutually agreed and in writing.

(9) **RIGHT OF FIRST REFUSAL:** Grantors hereby grant to Grantee a right of first refusal to purchase the Protected Property on the same terms and subject to the same conditions as set forth in any bona fide third party offer to purchase the Protected Property, or any portion thereof, received by Grantors provided, however, that if and in the event a bona fide third party offer to purchase the Protected Property is received by Grantors, a copy of said bona fide third party offer, disclosing all of the terms and conditions of said purchase, other than the name of the subject bona fide third party offeror, shall be submitted to Grantee and Grantee shall thereupon have thirty (30) days within which to agree to purchase the Protected Property on the same terms and subject to the same conditions set forth in said bona fide third party offer. If and in the event Grantee shall elect not to proceed with the purchase of the Protected Property, on the same terms and subject to the same conditions set forth in said bona fide third party offer, and Grantors shall thereafter proceed with the sale of all or a portion of the Protected Property to said bona fide offeror, this right of first refusal shall cease and determine and be of no further force or effect. If and in the event, however, Grantee shall elect not to purchase the Protected Property on the same
terms and subject to the same conditions as set forth in said bona fide offer, and said bona fide offeror shall fail to purchase the Protected Property for any reason whatsoever, the right of first refusal hereby granted shall remain in full force and effect. Any notice given pursuant hereto shall be submitted in conformance with the requirements set forth in Paragraph 17(b) and (c) hereof. For the purposes hereof, the term, “bona fide third party,” shall not include any member of Grantors’ immediate family including, without limitation, the children of Grantors; Amanda Leahy, James M. Leahy, and Brett Leahy and Grantors’ grandchildren

(10) REAL ESTATE TAXES: Grantors and their successors and/or assigns shall pay any and all real estate taxes validly assessed and levied against the Protected Property including, without limitation, any taxes validly assessed and levied against the Conservation Easement hereby granted to Grantee by any competent taxing authority. If and in the event Grantors shall fail, for any reason, to pay any real estate taxes assessed and levied against the Protected Property when and as due, Grantee may satisfy said real estate taxes whereupon it shall be entitled to full reimbursement thereof by Grantors, together with interest on the sums paid by Grantee, at the highest rate permitted by law.

(11) RECORDATION AND FILING: Upon the execution of this Conservation Easement, Grantee shall cause this Conservation Easement to be recorded with the Recorder of Deeds of McHenry County, Illinois, and a certified copy of this Conservation Easement, as recorded, to be filed with the State of Illinois Department of Natural Resources pursuant to Section 5 of the State of Illinois Real Property Conservation Rights Act (765 ILCS 120/0.01 et seq).
(12) **MUTUAL INDEMNIFICATIONS:**

(a) For and in consideration of the mutual covenants herein contained, Grantors hereby agree to indemnify and hold Grantee harmless for any and all claims which may be asserted against Grantee by Grantors' employees, invitees, agents, or representatives for or as a result, either directly or indirectly, of its use and enjoyment of the Protected Property and, relative thereto, Grantors shall, from and after the date hereof, carry general liability insurance in reasonable amounts and with responsible carriers and shall, in addition thereto, provide Grantee, from time to time as requested by Grantee, with evidence of said insurance naming Grantee and its officers and employees as additional insureds.

(b) For and in consideration of the mutual covenants herein contained, Grantee hereby agrees to indemnify and hold Grantors harmless for any and all claims which may be asserted against Grantors by Grantee's employees, invitees, agents, or representatives for or as a result, either directly or indirectly, of its use and enjoyment of the Protected Property and, relative thereto, Grantee shall, from and after the date hereof, carry general liability insurance in reasonable amounts and with responsible carriers and shall, in addition thereto, provide Grantors, from time to time as requested by Grantors, with evidence of said insurance.

(13) **EXTINGUISHMENT.** This Conservation Easement may only be terminated or extinguished if circumstances arise in the future that render the purposes of this Conservation
Easement impossible or impractical to accomplish and, under such circumstances, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings had in a court of competent jurisdiction. Upon such extinguishment, Grantee shall be entitled, after the satisfaction of all prior claims, to its share of the proceeds from any sale, exchange, financing, or involuntary conversion, unless the involuntary conversion is for the use or benefit of Grantee, of all or any portion of the Protected Property subsequent to such termination or extinguishment, equal to the value of the Conservation Easement. The value of the Conservation Easement at the time of such extinguishment shall be determined in accordance with the provisions of Paragraph 14. Grantee shall use all such proceeds in a manner consistent with the Conservation Values of this Conservation Easement, provided, however, that such use shall not be limited to the Protected Property.

(14) PROCEEDS. This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Paragraph 13 hereof, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Conservation Easement (minus any increase in value after the date hereof attributable to improvements permitted under this Conservation Easement, if any) by a fraction of which the numerator shall be the value of the Conservation Easement as of the date hereof and the denominator shall be the value of the Protected Property, without deduction for the value of the Conservation Easement, as of the date hereof. The values as of the date of the granting of the Conservation Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason hereof, pursuant to Section 170(h) of the Internal Revenue Code, as amended. For the purposes of this Paragraph, the ratio of the value of the Conservation Easement to
the value of the Protected Property unencumbered by this Conservation Easement shall remain constant, and the value of this Conservation Easement shall be equal to the difference in value between the Protected Property, without diminution attributable to this Conservation Easement, and the value of the Protected Property as encumbered by this Conservation Easement.

(15) **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, as amended, Grantors shall provide Grantee with a copy of all appraisals, including the "Qualified Appraisal," as that term is defined in Section 170(a) (1) of the Internal Revenue Code (hereinafter the "Appraisal"), of the fair market value of this Conservation Easement.

(16) **CONDEMNATION.** If the Conservation 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 735 ILCS 30/10-5-5 and Paragraph 14 (Proceeds) above.

(17) **MISCELLANEOUS:**

(a) **Time of Essence:** Time is of the essence of this Grant of Conservation Easement.

(b) **Written Demands:** Any and all notices, demands, and requests required or permitted under this Grant of Conservation Easement shall be in writing and shall be served on the parties hereto in conformance with the requirements of subparagraph (c) hereof;
(c) **Notices:** All notices, demands, and requests required or permitted hereunder shall be deemed to have been sufficiently given if mailed by certified mail, return receipt requested, or delivered by courier as follows:

If to Grantors:  
**JAMES P. LEAHY AND BONNIE H. LEAHY**  
7318 South Grant Highway  
Marengo, Illinois 60152

If to the District:  
**MCHenry COUNTY CONSERVATION DISTRICT**  
18410 U.S. Highway 14  
Woodstock, Illinois 60098  
Attn: Elizabeth S. Kessler, Executive Director  
Email: ekessler@mddistrict.org

And a copy to:  
**Roger T. Stelle**  
**MELTZER, PURTILL & STELLE**  
1515 East Woodfield Road, 2nd Floor  
Schaumburg, Illinois 60173

Any notice given by certified mail shall be deemed received on the third day following its posting and any notice delivered by courier shall be deemed received as of its actual receipt.

(d) **Captions:** The captions used herein have been utilized for convenience only and are not intended to modify or limit in any way the provisions hereof.

(e) **Prior Agreements:** This Grant of Conservation Easement shall supersede any and all prior agreements, whether written or oral, between the parties hereto and may only be amended by a written instrument executed by both Grantors and Grantee or their authorized agents and recorded in McHenry County, Illinois.
(f) **Governing Law: Jurisdiction.** This Conservation Easement shall be governed by the internal laws, and not the laws of conflicts, of the state of Illinois. The parties agree that, in the event that either party alleges a breach of this Conservation Easement, both parties shall subject themselves to the jurisdiction of the Circuit Court in McHenry County, Illinois, and, by executing this Conservation Easement, both parties agree that the Circuit Court of McHenry County, Illinois, shall be the appropriate place of jurisdiction for the adjudication of any dispute arising from the terms and conditions of this Conservation Easement.

(g) **Recovery of Costs and Expenses.** In the event Grantors or Grantee or any successor or assigns thereof shall default under any obligation herein contained and the other party hereto or its successors and assigns shall seek enforcement in any court having jurisdiction over the parties, the prevailing party in said action shall be entitled to recovery of its court costs and reasonable attorneys’ fees.

(h) **No Merger.** The parties agree that the doctrine of merger shall not apply to this Conservation Easement.

(i) **Successors and Assigns:** The terms and conditions herein contained shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and/or assigns, as the case may be.
IN WITNESS WHEREOF, Grantors and Grantee have caused this Conservation Easement to be executed on the day and year first above written at Woodstock, Illinois.

JAMES P. LEAHY

BONNIE H. LEAHY

MCHENRY COUNTY CONSERVATION DISTRICT

By: __________________________

Elizabeth S. Kessler
Executive Director
STATE OF ILLINOIS  )
COUNTY OF MCHENRY  )

I, ______________________, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James P. Leahy and Bonnie H. Leahy, who are personally known to me to be the same persons whose name is subscribed to the foregoing instrument appeared before me this day and acknowledged that they/he/she signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ___ day of _______________, 2020.

________________________________________
Notary Public

(SEAL)

STATE OF ILLINOIS  )
COUNTY OF MCHENRY  )

I, ______________________, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Elizabeth S. Kessler, the Executive Director, of the McHenry County Conservation District, a conservation district organized and existing under the laws of the state of Illinois ("District"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Executive Director, appeared before me this day and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of the District, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ___ day of _______________, 2020.

________________________________________
Notary Public

(SEAL)
EXHIBIT A

LEGAL DESCRIPTION OF PROTECTED PROPERTY
(to be inserted)
EXHIBIT C

BASELINE AGREEMENT
(to be attached)
## EXHIBIT D
### LAND MANAGEMENT PLAN

<table>
<thead>
<tr>
<th>GOAL</th>
<th>ACTIVITY</th>
<th>SCHEDULE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Eliminate invasive brush</td>
<td>Remove invasive brush and treat stumps with herbicide</td>
<td>Long term</td>
</tr>
<tr>
<td>2. Utilize prescribed burning to maintain natural structure</td>
<td>Conduct prescribed burns when practical</td>
<td>Long term</td>
</tr>
<tr>
<td>3. Restore native plants</td>
<td>Plant and seed with native woodland species</td>
<td>Long term</td>
</tr>
<tr>
<td>4. Control invasive non-woody plants</td>
<td>Eliminate invasive non-woody plants as necessary</td>
<td>Long term</td>
</tr>
</tbody>
</table>

### GRANTORS:

JAMES P. LEAHY

BONNIE H. LEAHY

### GRANTEE:

MCCHENRY COUNTY CONSERVATION DISTRICT

By: Elizabeth S. Kessler
Executive Director