

RESOLUTION NO. 2020-02

RESOLUTION AUTHORIZING EXECUTION OF REAL ESTATE SALES AGREEMENT

WHEREAS, the Board of Trustees (the "Board") has heretofore determined that it advisable and necessary for the health, safety, and welfare of the customers and residents of the Mill Creek Water Reclamation District (the "District") to purchase certain real property commonly known as Schingoethe and Wennlund farm land (the Property) which is legally described at Exhibit "A"; and

WHEREAS, the District has filed complaints in the Circuit Court for the 16th Judicial Circuit pursuant to its right to exercise powers of eminent domain for stated public purposes regarding the Property which are captioned Mill Creek Water Reclamation District, vs. Darlene K. Schingoethe and David J. Schingoethe, as Trustees of the Darlene K. Schingoethe Living Trust dated June 25, 2014, Shirley K. Wennlund, Unknown Owners and Non-record Claimants, 18 ED 0007 and Mill Creek Water Reclamation District vs. Ben H. Wennlund, as Trustee under a Trust Agreement dated March 2, 1979 and known as the Number 101 Trust, Shirley K. Wennlund and Darlene K. Schingoethe, as Successor Trustees to Ben H. Wennlund as Trustee under a Trust Agreement dated March 2, 1979 and known as Trust No. 101, Unknown Owners and Non-record Claimants, 18 ED 0006; and

WHEREAS, the parties in the aforesaid pending litigation have entered into negotiations to amicably settle the issues prayed for in the lawsuits; and

WHEREAS, the Board finds and determines that it is in the best interests of the District and its customers and residents will be served by entering into and consummating the Real Estate Sales Agreement (the "Agreement") to purchase the Property, a copy of which is attached hereto at Exhibit "B" and to authorize such members of the Board of Trustees and its legal counsel to take all necessary actions to fulfill the Agreement; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustee of the Mill Creek Water Reclamation District, Kane County and State of Illinois, as follows:

Section One: The foregoing recitals are incorporated herein as findings of the Board of Trustees.

Section Two: The Board hereby determine that it is advisable, necessary, and in the interests of the public health, safety, and welfare that the District purchase the Property and for the purpose of paying the purchase price thereof to enter into an agreement with the Sellers providing for the purchase of the Property at a total cost of \$2,703,750.

Section Three: From and after the effective date of this Resolution, the President is hereby authorized and directed to sign and the Secretary/ Clerk is hereby authorized and directed to attest to the Agreement for the sale and purchase of the Property, in substantially the form and substance attached hereto as Exhibit "B" and to do all things necessary and essential, including the execution of any documents and certificates, to carry out the provisions of the Agreement.

Section Four: This Resolution shall be in full force and effect from and after its passage, as provided by law.

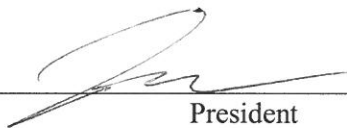
PASSED THIS 28th DAY OF JANUARY, 2020

AYES: 3

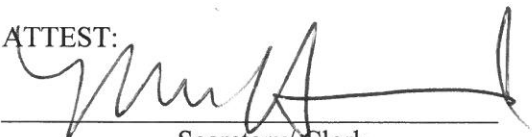
NAYS: 0

ABSENT: 0

ABSTAIN: 0



President

ATTEST:


Secretary/Clerk

Exhibit "A" Legal Description

That portion of the following described Real Estate lying north of the centerline of Hughes Road, in Burlington Township, Kane County, Illinois:

PARCEL ONE:

THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION ELEVEN, AND PART OF THE NORTHEAST QUARTER OF SECTION FOURTEEN, TOWNSHIP THIRTY-NINE NORTH, RANGE SEVEN EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION ELEVEN; THENCE NORTH ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER 742.50 FEET (11.25 CHAINS); THENCE EASTERLY PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER 1320.03 FEET TO THE EAST LINE OF THE WEST HALF OF SAID SOUTHEAST QUARTER; THENCE SOUTHERLY ALONG SAID EAST LINE 742.66 FEET TO THE SOUTHEAST CORNER OF SAID WEST HALF; THENCE EAST ALONG THE SECTION LINE 241.56 FEET (3.66 CHAINS); THENCE SOUTHERLY PARALLEL WITH THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION FOURTEEN, A DISTANCE OF 2226.76 FEET TO A POINT IN THE CENTER LINE OF HUGHES ROAD; THENCE WESTERLY ALONG SAID CENTER LINE 1558.12 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION FOURTEEN; THENCE NORTHERLY ALONG SAID WEST LINE OF SAID NORTHEAST QUARTER 2095.06 FEET TO THE POINT OF BEGINNING IN BLACKBERRY TOWNSHIP, KANE COUNTY, ILLINOIS, EXCEPTING THEREFROM THAT PART OF THE NORTHEAST QUARTER OF SECTION FOURTEEN, TOWNSHIP THIRTY-NINE NORTH, RANGE SEVEN EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE EASTERLY ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER 1316.29 FEET TO THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION ELEVEN, TOWNSHIP AND RANGE AFORESAID; THENCE EASTERLY ALONG SAID NORTH LINE 241.56 FEET (3.66 CHAINS); THENCE SOUTHERLY PARALLEL WITH THE WEST LINE OF SAID NORTHEAST QUARTER 1303.68 FEET FOR A POINT OF BEGINNING; THENCE SOUTHERLY PARALLEL WITH SAID WEST LINE 515.0 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 130.72 FEET; THENCE SOUTHERLY ALONG A LINE WHICH FORMS AN ANGLE OF 97 DEGREES 27 MINUTES 07 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED CLOCKWISE THEREFROM., 403.74 FEET TO THE CENTER LINE OF HUGHES ROAD; THENCE WESTERLY ALONG SAID CENTER LINE, WHICH FORMS AN ANGLE OF 94 DEGREES 54 MINUTES 36 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED COUNTERCLOCKWISE THEREFROM 25.09 FEET; THENCE NORTHERLY, PARALLEL WITH THE PENULTIMATE COURSE, FORMING AN ANGLE OF 85 DEGREES 05 MINUTES 24 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED COUNTERCLOCKWISE 402.62, THENCE WESTERLY PERPENDICULAR TO THE WEST LINE OF SAID NORTHEAST QUARTER 168.07 FEET; THENCE NORTHERLY PARALLEL WITH SAID WEST LINE 515.0 FEET; THENCE EASTERLY, PERPENDICULAR TO SAID WEST LINE 340.0 FEET TO THE POINT OF BEGINNING IN BLACKBERRY TOWNSHIP, KANE COUNTY, ILLINOIS.

PARCEL TWO:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11; THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 14, (EXCEPT THE WEST 3.66 CHAINS OF THAT PART OF SAID EAST HALF LYING NORTH OF THE CENTER OF THE HIGHWAY) ALL IN TOWNSHIP 39 NORTH RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF BLACKBERRY (ALSO EXCEPT LAND CONVEYED TO ANNE MARIE MCCONNAUGHEY BY DEED DOCUMENTS 2006K118039 AND 2003K105237 AND ALSO EXCEPT LAND CONVEYED TO JOHN JOYNER BY DEED RECORDED AS DOCUMENT 2005K046821) COUNTY OF KANE AND STATE OF ILLINOIS

Exhibit "B"

1-24-2020

REAL ESTATE SALE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2020 (referred to as the Effective Date), by and between Darlene K. Schingoethe, as Successor Trustee under Trust Agreement dated March 2, 1979 and known as Trust Number 101 as amended on December 19, 1989 (referred to as "Wennlund") and Darlene K. Schingoethe and David J. Schingoethe, as Trustee of the Darlene K. Schingoethe Living Trust dated June 25, 2014, (referred to as "Schingoethe") (Wennlund and Schingoethe, collectively referred to herein as "Seller"), and the MILL CREEK WATER RECLAMATION DISTRICT, an Illinois sanitary district (herein referred to as "Purchaser").

Seller currently holds title to approximately 175 vacant acres (mol) of real estate located north of Hughes Road and east of Bunker Road, in Blackberry Township, Kane County, Illinois, legally described as shown on Exhibit 'A' as Parcel One and Parcel Two, which is attached hereto (said real estate, together with all hereditaments, easements, appurtenances and benefits pertaining thereto being hereinafter referred to as the "Real Estate").

Purchaser is a sanitary district of Illinois and under the laws of the State of Illinois may exercise the power of eminent domain. The governing Board of the District adopted ordinances authorizing the District to take such steps as might be necessary to acquire the Real Estate for the public purposes of the District, which steps included the prosecution of eminent domain proceedings as instituted in the following captioned lawsuits (referred to as "Eminent Domain Proceedings"):

Mill Creek Water Reclamation District v. Darlene K. Schingoethe, as trustee of the Darlene K. Schingoethe Living Trust dated June 25, 2014, et. al, 18 ED 0007 (16th Judicial Circuit, Kane County, Illinois) and

Mill Creek Water Reclamation District v. Darlene K. Schingoethe, as Successor Trustee of the Ben H. Wennlund Trust under Trust Agreement dated March 2, 1979 and known as Trust No. 101, et. al. 18 ED 0006 (16th Judicial Circuit, Kane County, Illinois).

The Seller has negotiated all details of this Agreement with the authorized representatives of the District, and now desires to sell the Real Estate to the Purchaser on the terms and conditions herein agreed upon.

Seller and Purchaser hereby covenant and agree as follows:

1. Sale and Purchase. Seller agrees to sell and Purchaser agrees to purchase the Real Estate on the terms and conditions herein set forth at a price of Two Million Seven Hundred Three Thousand Seven Hundred Fifty (\$2,703,750) Dollars for 123 gross surveyed acres ("Gross Surveyed Purchased Acres" means acres included in the prescriptive right of way to the centerline

of for Hughes Road (the "Purchase Price"), plus or minus prorations and credits. Seller shall contemporaneously convey, by gift, to the Purchaser a parcel of approximately 52 acres ("Gift Acres"), being the _____ of PIN No. _____ and this Agreement is expressly conditioned upon that gift being made by Seller. The parties acknowledge and agree that (i) the Purchase Price for the Gross Surveyed Purchased Acres and (ii) the configuration of the Gift Acres shall be arrived at pursuant to a plat of survey to be prepared under Paragraph 4 below. The plat of survey shall include the land lying north of the centerline of Hughes Road within Property Index Numbers (P.I.N.s) 11-14-200-016, 11-11-400-002, 11-14-200-014 and 11-11-400-004; a GIS depiction of the anticipated Gross Surveyed Purchased and Gift Acres is set out at Exhibit "B", attached hereto.

2. Conveyance. Seller agrees to convey, or cause to be conveyed, to Purchaser, or Purchaser's nominee, title to the Real Estate (including the Gift Acres) by a recordable, stamped Trustee's Deed, subject only to: (a) public and utility easements of record and roads and highways, if any; (b) general real estate taxes not yet due and payable as of the Closing (as hereinafter defined); (c) rights of adjoining owners to the uninterrupted flow of any stream which may cross the land; (d) rights of way for drainage tiles, ditches, feeders and laterals, if any; and (e) acts of Purchaser (the "Permitted Exceptions").

3. Earnest Money. Purchaser shall not be required to pay any earnest money hereunder.

4. Survey. Purchaser, at Purchaser's sole cost and expense, will provide a staked and bounded survey of the Real Estate including the Gift Acres.

5. Evidence of Title. Seller shall pay for, not less than fifteen (15) days prior to the Closing, to cost to updated title commitment to Commitment No. 17012724WT (Joliet office) for an owner's title insurance policy issued by Chicago Title Insurance Company (the "Title Company"), in the amount of the Purchase Price, covering title to the Real Estate (including the Gift Acres) on or after the date hereof, showing title in the intended grantor, and subject only to: (a) the so-called standard or general exceptions contained in the policy (i.e., without so-called "extended coverage"); (b) the Permitted Exceptions set forth in Paragraph 2 hereof; (c) contiguity endorsements covering Parcels One and Two and the District's sanitary facility adjacent to Parcel Two; and (d) title exceptions pertaining to the liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the Closing and which Seller shall so remove at that time. The title policy shall be conclusive evidence of good title as therein shown as to all matters insured by the policy subject only to the exceptions therein stated. All costs of obtaining the aforesaid commitment and title policy shall be paid by Seller.

6. Correction of Defects. If the title commitment or the survey herein required discloses unpermitted exceptions, Seller shall have thirty (30) days from the date of delivery thereof to have the exceptions removed from the commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions. If Seller fails to have

the exceptions removed, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions within the specified time, Purchaser may terminate this Agreement or may elect, upon notice to Seller within ten (10) days after the expiration of the 30-day period, to take title as it then is with the right to deduct from the Purchase Price liens or encumbrances or a definite or ascertainable amount. If Purchaser does not so elect, the Agreement shall become null and void without further action of the parties.

7. Closing.

A. The consummation of the transaction herein described (the "Closing") shall be on _____ 2020, unless otherwise mutually agreed, or unless under paragraph 6 hereof, Seller has undertaken to correct defects of title, in which case, the terms of paragraph 6 shall govern and closing shall be held as soon as practicable thereafter at the office of the Title Company (1795 West State Street, Geneva, Illinois).

B. The sale shall be closed through an escrow with the Title Company, in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement in use by the Title Company, with such special provisions inserted in the escrow agreement as may be required to conform with this Agreement. The cost of said escrow shall be shared equally by the parties hereto.

8. Delivery of Possession. Except as provided for under Paragraph 16 below, Seller shall deliver and Purchaser agrees to accept possession of the Real Estate (including the Gift Acres) on the day of Closing.

9. Closing Adjustments. Seller will provide evidence satisfactory to Purchaser at the Closing that general real estate taxes (or so much thereof as shall have come due) have been paid in full. Purchaser shall receive a credit at Closing for general real estate taxes levied against the Real Estate (including the Gift Acres) not yet due or payable or due but not yet paid. Taxes shall be prorated on the basis of the latest tax bill issued.

10. Seller's Warranties. As an inducement to Purchaser to enter into this Agreement, Seller covenants, represents and warrants with Purchaser, as of the date hereof and as of the date of Closing, that Seller has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Seller pursuant hereto and all required actions and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto. Seller warrants as of the date hereof and continuing for a period of one (1) year from the date of closing that to the best of Seller's actual knowledge and belief, and without having made any independent investigation with respect to the condition of the real estate, that the property has no

“hazardous substances” on it as that term is defined under the Comprehensive Environmental Response Compensation and Liability Act.

The continued validity in all respects of the foregoing covenants, representations and warranties shall be a condition precedent to Purchaser's obligations to close the transaction contemplated hereby. Seller shall defend, indemnify and hold Purchaser harmless from and against any and all damage (including reasonable attorney's fees) resulting from, arising out of or in connection with any breach of the covenants, representations and warranties contained in this Agreement.

11. Purchaser's Warranties. As an inducement to Seller to enter into this Agreement, Purchaser covenants, represents and warrants to Seller as of the date hereof, and as of the date of Closing:

- A. Purchaser has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Purchaser pursuant hereto, and all the required actions and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Purchaser are and shall be duly authorized to sign the same on Purchaser's behalf and to bind Purchaser thereto.
- B. Purchaser is acquiring the Real Estate (including the Gift Acres) for a “public purpose” as contemplated in the Plat Act exception specifically set forth as 765 ILCS 205/1(b)6.

The continued validity in all respects of the foregoing covenants, representations and warranties shall be a condition pursuant to Seller's obligations to close the transaction contemplated hereby. As to all claims made within a period of one (1) year from and after closing, Purchaser shall defend, indemnify and hold Seller harmless from and against any and all damage (including reasonable attorney's fees) resulting from, arising out of or in connection with any breach of the covenants, representations and warranties contained in this Agreement.

12. Provisions with Respect to Closing. At the Closing, Seller shall deliver to Purchaser or the Title Company, as the case may be, the following, all in form and substance reasonably satisfactory to the Purchaser:

- A. A Trustees' Deed(s) duly executed and acknowledged by Seller, conveying to Purchaser title to the Real Estate (including the Gift Acres) in proper form for recording and subject only to the Permitted Exceptions.
- B. Information required to comply with 1099 reporting requirements.

- C. A non-foreign affidavit in accordance with Sec. 1445 of the Internal Revenue Code.
- D. Affidavit of Title in customary form.
- E. ALTA Statement, in duplicate.
- F. Completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the forms required pursuant to such laws and ordinances with exempt status for a conveyance to a government body.
- G. Any other affidavit or document required by the applicable Title Company or the Recorder of Deeds in connection herewith and any and all other documents which are customary or are necessary to comply with the terms of this Agreement.

13. Notices. All notices herein required shall be in writing and shall be served on the parties at the following addresses:

To Purchaser: MILL CREEK WATER RECLAMATION DISTRICT
 P.O. Box 229
 Geneva, Illinois 60134

With a copy to: Charles A. Radovich
 Radovich Law Office, P.C.
 312 West State Street
 Geneva, IL 60134
 p-630/232-4511
 f-630/232-0189

To Seller: Darlene Schingoethe
 1606 Calumet Road
 Brookings, SD 57006

With a copy to: James Stoddard
 Klein, Stoddard, Buck & Lewis, LLC
 2045 Aberdeen Ct., Suite A
 Sycamore, IL 60178
 p-815-748-0380

The mailing of a notice by registered or certified mail, return receipt requested, by personal delivery, express over-night delivery or by telecopier transmittal (fax) to the party or its attorney shall be sufficient service. Notices shall be deemed served when received if delivered by hand or telecopier or express over-night delivery, and ten (10) days after the date mailed, if mailed as described above.

14. Broker. The parties represent each to the other that no broker was involved in this transaction.

15. Tenant to Farm Real Estate. Seller represents and warrants to Purchaser that there is not tenant or other person or entity entitled to possession of the Real Estate (including the Gift Acres) as of the date of closing and Seller has terminated any and all ~~the~~ farmland leases.

16. Seller's 1031 Deferred Exchange. Intentionally deleted.

17. Environmental, Survey and Real Estate Inspection Contingency. For a period of forty-five (45) days after the Effective Date, this Agreement is expressly subject to (i) a right of inspection of the Real Estate (including the Gift Acres) and improvements by the District and the determination by the District in its sole discretion that the condition of the Real Estate (including the Gift Acres) and improvements are acceptable to it, (ii) environmental audit/testing and (iii) the preparation of a plat of survey under Paragraph 4 above, acceptable to the District. This contingency shall include any and all environmental audits, soil tests and/or other testing or inspections that the District deems reasonable or necessary. Such inspections or testing shall be undertaken prior to Closing and the District shall promptly notify Seller of any objectionable conditions discovered. Within five (5) days of the execution of this Agreement, Seller shall provide the District with complete copies of all environmental tests or reports, soil tests, building inspections, well and septic reports related to the Real Estate in the possession of Seller on the date hereof. Seller hereby grants the District and its agents access to the Real Estate (including the Gift Acres) for such purposes and the District shall hold Seller harmless from and against any damage or injury to persons or property, damages to the Real Estate (including the Gift Acres) and any growing crops thereon during the course of any inspection undertaken pursuant to the terms hereof and shall return the Real Estate (including the Gift Acres) to the reasonably same condition as existed prior to such inspection.

18. Disposition of Pending Litigation,

A. Within 30 days from the Seller conveying the Real Estate to the Purchaser, the Purchaser will dismiss the following eminent domain cases pending in the Circuit Court of Kane County: Case No. 18 ED 6 – Mill Creek Water Reclamation District v.

Schingoethe; AND Case No. 18 ED 7 – Mill Creek Water Reclamation District v. Wennlund.

- B. The Sellers waive, relinquish, and release any rights, if any, associated with the filing, prosecution, and dismissal of these actions, including, but not limited to, those available under Section 10-5-62, 10-5-70, and 10-5-105 of the Eminent Domain Act (735 ILCS 30/1-1-1 *et. seq.*) and Section 2805-10 of the “Sanitary District Act of 1936” 70 ILCS 2805/0.1

19. Miscellaneous.

- A. This Agreement contains the entire agreement between the parties hereto relative to the sale of the Real Estate (including the Gift Acres) and all prior and contemporaneous understandings and agreements heretofore entered into relating to such sale are merged in this Agreement. No amendments, modifications or changes shall be binding upon a party unless set forth in a duly executed document.
- B. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- C. The captions of this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.
- D. Time is of the essence of this Agreement.
- E. The representations, warranties, agreements and indemnities of Purchaser and Seller set forth herein or made pursuant to this Agreement shall remain in full force and effect and shall survive the Closing and delivery of the Deed pursuant to this Agreement and shall apply to all claims made within a period of one (1) year from the date of closing. No liability of Seller shall attach to any claim made thereafter.
- F. No failure by the parties hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of any such covenant, agreement, term or conditions unless such waiver is in writing.
- G. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original, all of which shall be deemed to be one and the same instrument. Facsimile transmission signatures shall be deemed original signature.

H. **Default by Seller.** If any of Seller's representations and warranties contained **herein are not true and correct on the Effective Date and continuing thereafter through and** including the Closing, or if Seller fails to perform any of the covenants and agreements contained herein to be performed by Seller within the time for performance as specified herein (including Seller's obligation to close), and (A) in the event that the Closing has not occurred, Purchaser may elect either to (1) terminate Purchaser's obligations under this Contract by written notice to Seller; or (2) file an action for specific performance or (3) proceed with the pending Eminent Domain Proceedings; or (B) in the event that the Closing has occurred, Purchaser may file an action against Seller for any and all losses, costs, damages, and expenses (including, but not limited to, court costs and attorneys' reasonable fees) actually suffered or incurred by Purchaser as a result of such breach or failure by Seller. If the Closing has not occurred and Purchaser elects (A)(2) or (3) above, then Seller agrees that Purchaser shall not be required to post a bond or any other collateral with the court or any other party as a condition to Purchaser's pursuit of an action. Seller hereby covenants and agrees that in the event that (a) the Closing has not occurred and Purchaser elects option (A)(1) above and (b) as a result of, due to, or because of any willful or intentional act or omission of Seller any or all of (i) Seller's representations and warranties contained herein are not true and correct on the Effective Date and continuing thereafter through and including the Closing Date; (ii) the covenants and agreements are not performed by Seller within the time for performance as specified herein (including Seller's obligation to close); and (iii) the Conditions Precedent shall not have been satisfied, Purchaser may (in addition to any and all other remedies of Purchaser hereunder) file an action for damages actually suffered by Purchaser by reason of Seller's defaults hereunder (including, but not limited to, attorneys' fees, engineering fees, fees of environmental consultants, appraisers' fees, and accountants' fees incurred by Purchaser in connection with this Agreement and any action hereunder). The provisions of the immediately preceding sentence shall survive any termination of this Contract. Nothing in this Subparagraph H shall be deemed to in any way limit or prevent Purchaser from exercising any right of termination provided to Purchaser elsewhere in this Contract.

Default by Purchaser. In the event Purchaser defaults in its obligations to close the purchase of the Real Estate, then Seller's sole and exclusive remedy shall be to seek such damages available to Seller under the applicable eminent domain statutes. Seller shall have no other remedy for any default by Purchaser, provided that, notwithstanding the foregoing, in the event Purchaser defaults with respect to its repair obligations in connection with the Environmental, Survey and Real Estate Inspection Contingency, Seller shall have all of its remedies at law or in equity on account of such default.

- I. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois, without giving effect to principles of conflicts of law or choice of law and venue of any judicial action shall be Kane County, Illinois.

IN WITNESS WHEREOF, the parties hereto have executed this Real Estate Purchase Agreement as of the day and year first above written.

SELLER:

Darlene K. Schingoethe, as Trustee aforesaid

David J. Schingoethe, as Trustee aforesaid

PURCHASER:

MILL CREEK WATER RECLAMATION
DISTRICT

By: _____
James R. Dougherty, President

EXHIBITS INTENTIONALLY OMITTED