MEMORANDUM OF AGREEMENT
BETWEEN THE TOWN OF DUNKIRK AND
GROUNDSWELL CONSERVANCY, INC.

This Agreement is made this 12th day of July, 2021 by and between the Town of Dunkirk, a Wisconsin municipal corporation (hereinafter the "Town") and Groundswell Conservancy, Inc., a Wisconsin non-stock corporation (hereinafter the "Conservancy").

WHEREAS, the Town has established a Rural Preservation Program to protect and preserve agricultural lands, natural areas and the rural character of the Town pursuant to which the Town acquires holder's interests in conservation easements for the purpose of retaining agricultural and natural areas in the town; and

WHEREAS, the Conservancy conducts a land conservation program which includes the acceptance and holding of lands subject to conservation easements; and

WHEREAS, the Town and the Conservancy desire to work cooperatively in order to ensure that the conservation easements obtained by the Town are enforceable in perpetuity by having enforcement power over such easements simultaneously held by the Town and the Conservancy; and

WHEREAS, the parties desire and intend to set forth the more specific terms under which they propose to cooperatively acquire, hold, monitor, and enforce conservation easements acquired under the Town's Rural Preservation Program.

NOW THEREFORE, the Town and the Conservancy agree as follows:

GENERAL AGREEMENT

1. The Conservancy and the Town agree to cooperate in the acquisition of conservation easements pursuant to the Town's Purchase of Development Rights Program. The Town agrees to co-hold Conservation Easements only with the approval of the Town Board. The Conservancy agrees to co-hold conservation easements proposed to be acquired by the Town pursuant to the Program subject to the approval of each proposed conservation easement by the Conservancy's board of directors and the funding of the monitoring and enforcement endowment for each Conservation Easement.

2. The Town agrees to provide the Conservancy with a written request that the Conservancy accept a co-holder's interest in each conservation easement the Town proposes to acquire, including rationale for inclusion in the Program and a map of the subject property.

3. The Town agrees to make a one-time payment to the Conservancy's Easement Enforcement Fund for each conservation easement in the amount of $10,000. Payment shall be made at closing.

4. The Conservancy agrees to review each such request and to provide the Town with a written response within 60 days of receipt of the Town's request.

5. The Conservancy designates its Executive Director as its representative for purposes of this agreement. The Town designates its Town Chair or his or her designee as its representative for purposes of this agreement.

CONSERVATION EASEMENT ACQUISITIONS

6. The Conservancy shall be responsible for drafting each Conservation Easement, based on a template Conservation Easement jointly agreed to by the Town and Conservancy.

7. The Conservancy shall be responsible for preparing and submitting applications for grant funds for the purchase of each Conservation Easement.

8. The Conservancy shall be responsible for the preparation of a Baseline Documentation Report that accurately evidences the conditions of the affected property and to provide the Report to the Town for its review at least 10 days prior to the closing on the Conservation Easement.

9. The Town shall be responsible for transaction costs associated with the acquisition of each Conservation Easement when such costs are not recoverable by grant funds. These costs include but are not limited to the costs of appraisals, legal surveys, title commitment or insurance policy, and miscellaneous closing costs.

10. The Town and the Conservancy are separately responsible for costs associated with any legal review of the terms of the Conservation Easement, purchase agreements, or other documents that they may individually incur.

11. In the event that the Conservation Easement is fully or partially donated, the Conservancy shall be responsible for appropriately acknowledging the gift and meeting other IRS regulations regarding the receipt of noncash charitable donations.

12. The Conservancy shall be responsible for ordering and reviewing evidence of title for each Conservation Easement. The Conservancy will share its analysis of the condition of title with the Town.

13. In accordance with the Conservancy's Policy on Environmental Hazards Assessment and to understand if there are environmental hazards associated with the Conservation Easement property, the Conservancy agrees to conduct a site visit and contract for an environmental records search of the property at the Conservancy's expense. The Conservancy will share its analysis of the results of its site visit and review of the environmental records search with the Town.

14. The Conservancy agrees to enroll each Conservation Easement in its Terrafirma Easement Defense Insurance coverage and to pay for the annual insurance premium out of the distribution from the Conservancy's Easement Enforcement Fund.

15. The Conservancy and Town shall be responsible for the scheduling and conducting of the closing on each Conservation Easement acquisition.

MONITORING AND ENFORCEMENT

16. The Conservancy shall contact the owner of each parcel over which the Town and the Conservancy hold a Conservation Easement to schedule an annual monitoring inspection at a time convenient to the Conservancy, the Town, and the landowner prior to September 1st of each year. The Town will accompany the Conservancy on each annual monitoring inspection, which will occur in the fall of each year. The Conservancy shall prepare a report of each such inspection within 30 days and provide a copy of such report to the Town for approval. Upon approval, the Town shall keep the report on file. The Conservancy shall deliver a copy of the signed report to the owner of the subject property, the Town, and to other parties that may have interest in the Conservation Easement.

17. The Town and the Conservancy each agree to notify the other in the event that either receives information suggesting any actual or prospective change in the ownership or use of any site subject to a conservation easement or any actual or threatened violation of any such conservation easement. The Town and the Conservancy agree to cooperate in the investigation of any violation of a conservation easement under this agreement and to take appropriate steps to prevent or remedy such violation. The Town and Conservancy agree to make all best efforts to resolve any such violation without recourse to litigation. In the event that litigation is necessary to enforce any such conservation easement, the Town and Conservancy shall endeavor to act jointly in engaging counsel and pursuing enforcement. However, each party may act independently in such an enforcement action if the parties cannot agree on a common course of action. Neither party may compel the other to take any action in connection with the enforcement of any conservation easement, nor can either party compel the other to compensate them for the costs of enforcement.

18. The authority to approve certain activities by the property owner is granted to the Town and Conservancy in each Conservation Easement. Such approval shall be granted or denied in a letter to the property owner within a period of ninety (90) days from the receipt of request unless otherwise specified in the Conservation Easement. The Town and Conservancy shall notify each other, in writing, of any request for approval required by either Grantee within 14 days of its receipt. The decision to approve or deny a request shall be jointly agreed upon by both the Town and Conservancy, following consultation. Neither party shall approve or deny a request unilaterally. Each party will present its opinion, in writing, to the other. If either party fails to provide an opinion within the 90-day period, that party shall have effectively waived its right to approval, and the other party's decision will stand. If one party in writing, approves the request, while the other party, in writing, denies the request, the request shall be denied. Should the parties jointly fail to provide the property owner with a written response within the 90-day period, the request shall be deemed disapproved.

19. Any reimbursement of legal fees or award of damages to the Town and/or the Conservancy shall be returned proportionally to the Town or Conservancy.

20. Annually, the Conservancy shall provide the Town with a report of the Conservancy's Easement Enforcement Fund.

21. If a funder of a conservation easement awards a service fee to the grant recipient as part of a successful grant application, the service fee shall be awarded to the Conservancy if the Conservancy is the primary author of the grant application or the Town if the Town is the primary author of the grant application.

22. This Memorandum may be amended at any time by the agreement of both parties. No violation of this Memorandum shall affect any conservation easements restrictions. This Memorandum creates no third party rights.

Dated this 12 day of July, 2021.

TOWN OF DUNKIRK

By: Thomas E. Thorsen

Title: Town Chair

GROUNDSWELL CONSERVANCY

By: Jim Welsh

Title: Executive Director

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