

## GRANT OF CONSERVATION EASEMENT

This grant of a Conservation Easement, made by RUSSELL TOWNSHIP PARK COMMISSION of Russell Township, Geauga County, Ohio (hereinafter referred to as the "Grantor") to CHAGRIN RIVER LAND CONSERVANCY, a charitable corporation, organized under the laws of the State of Ohio, whose address is PO Box 148, Chagrin Falls, Ohio 44022 (hereinafter referred to as the "Grantee").

### WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property situated on Dines Road in Russell Township, Geauga County, Ohio consisting of approximately 52.58 acres and legally described in Exhibit A and depicted in Exhibit B, both attached hereto and made a part hereof (which real property is hereinafter referred to as the "Protected Property"); and

WHEREAS, the Protected Property is located within the Chagrin River Watershed and has substantial value as a scenic, natural, aesthetic, and educational resource in its present state as a natural, scenic, open and wooded area, constituting a natural habitat for plants and wildlife; and

WHEREAS, Grantee is a charitable organization as referred to in Section 5301.69 of the Ohio Revised Code and Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, the Grantor and Grantee recognize the aforesaid scenic, natural, aesthetic, and educational values of the Protected Property in its present state, and have, by the conveyance and acceptance of a Conservation Easement, respectively, the common purpose of conserving the aforesaid values of the Protected Property, and preventing the use or development of the Protected Property for any purpose or in any manner that would conflict with the maintenance of the Protected Property in its natural, scenic, open, and wooded condition, as suitable habitat for wild flora and fauna of all types; and

WHEREAS, the Grantor and the Grantee have the common purpose of conserving and protecting the Protected Property in perpetuity as "a relatively natural habitat of fish,

wildlife or plants, or similar ecosystem”, as that phrase is used in the P.L. 96-541, 26 U.S.C. 170 (h) (4) (A) (ii), as amended and in regulations promulgated thereunder; and

WHEREAS, “ecological, scientific, educational, and aesthetic value”, “natural, scenic and open condition” and “natural values” as used herein shall, without limiting the generality of the terms, mean a condition that is no less natural than the condition of the Protected Property at the time of this Grant, “natural” meaning that native plants and wildlife are permitted to carry out their lifecycles without human interference; and

WHEREAS, Grantor and Grantee intend that this Conservation Easement shall be a “conservation easement” as defined in Section 5301.67 of the Ohio Revised Code; and

WHEREAS, Grantee is willing to accept this Conservation Easement, subject, nevertheless, to the reservations and to the terms and conditions and obligations set out herein and imposed hereby;

NOW, THEREFORE, for and in consideration of the premises and the foregoing recitations, and other good and valuable consideration in hand paid, and in further consideration of the mutual purposes, covenants, terms, conditions, and restrictions hereinafter set forth, with the intention of making an absolute and unconditional gift, the Grantor does hereby grant, give, and convey unto the Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, in, upon, and over the Protected Property, for the purposes of preserving, protecting, and maintaining the Protected Property as a scenic, natural, and wooded area, as habitat for plants, wildlife, and together with the right of visual access to and view of the Protected Property in its natural, scenic and open condition.

THE TERMS, CONDITIONS, AND RESTRICTIONS OF THE CONSERVATION EASEMENT ARE AS HEREINAFTER SET FORTH:

1. No buildings or other structures, including, but not limited to, billboards or advertising of any kind, camping accommodations, mobile homes, and fences, shall be hereafter erected or placed on the Protected Property.
2. There shall be no dumping of soil, trash, ashes, garbage, waste, or other unsightly or offensive material, nor any placement of underground storage tanks, on or in

the Protected Property, and no changing of its topography through the placing of soil or other substance or material such as land fill or dredging spoils.

3. There shall be no fillings, excavations, mining, drilling, construction of roads or other changes in the general topography of the land on the Protected Property in any manner excepting the maintenance of existing foot trails, if any, and that caused by the forces of nature. Without limiting the foregoing, there shall be no drilling for oil or gas or similar substances, nor shall the Protected Property be used as part of any drilling unit for oil and gas production.
4. There shall be no removal or destruction of native growth in the open and wooded areas, use of fertilizers, spraying with biocides, introduction of non-native animals, grazing of domestic animals or disturbance or change in the natural habitat except in accordance with good husbandry practices and enhancement of wildlife habitat.
5. No power transmission lines shall be erected, nor shall interests in the Protected Property be granted for this purpose. It is the intent of this Grant to convey to the Grantee, its successors and assigns such an interest in the Protected Property as is sufficient to prohibit the exercise of the power of eminent domain by public utility and any other body or person.
6. There shall be no activities, actions, or uses detrimental or adverse to water conservation, erosion control, soil conservation, and fish and wildlife or habitat preservation on the Protected Property.
7. There shall be no manipulation or alteration of natural water courses, lake shores, marshes, or other water bodies or activities or uses detrimental to water purity, providing that existing small dams and ponds on the Protected Property, if any, may be maintained and repaired.
8. There shall be no operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any recreational motorized vehicles on the Protected Property.

9. There shall be no hunting or trapping on the Protected Property, except to the extent specifically approved in advance by Grantee as necessary to keep the animal population within the numbers consistent with the ecological balance of the area.
10. The acreage constituting the Protected Property shall not be taken into consideration when calculating the number of single-family residences that may be constructed on the portion of the Grantor's property that is not encumbered by this Conservation Easement.
11. Except as otherwise herein provided, the Protected Property shall be managed in a manner consistent with its preservation as a natural, scenic, open, and wooded area. Each and every other activity or construction that might endanger the natural or scenic state of the Protected Property is forbidden. Without limiting the generality of the foregoing, it is Grantor's intent that this Conservation Easement prohibit commercial recreational use of the Protected Property within the meaning of Section 2031(c) of the Internal Revenue Code and regulations promulgated thereunder.
12. The Grantee, or its duly authorized representative, may enter the Protected Property at all reasonable times for the purposes of inspecting the Protected Property in order to further the objectives and determine compliance with the terms of this Conservation Easement.
13. In the event a violation of these terms, conditions, or restrictions is found to exist, the Grantee, or its successors or assigns, may, after notice to the Grantor, or the Grantor's personal representatives, heirs, successors or assigns, institute an action to enjoin by ex parte, temporary, and/or permanent injunction such violation, to require the restoration of the Protected Property to its prior conditions, and/or for damages for breach of covenants. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, floods, storm, or unauthorized wrongful acts of third persons. All proceedings shall be instituted against the person or persons

violating the terms, conditions or restrictions of this Conservation Easement. The Grantee, or its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the terms, conditions, and purposes of the Conservation Easement by prior failure to act.

14. The Grantor and the Grantor's personal representatives, heirs, successors and assigns shall pay all taxes validly assessed and levied against the Protected Property, including any such taxes validly levied and assessed against the Conservation Easement by competent authorities.
15. The Grantor expressly reserves for himself, his personal representatives, heirs, successors, and assigns, the right to continue the use of the Protected Property for all purposes consistent with this Conservation Easement. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement.
16. The Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement will be inserted by him in any subsequent deed, or other legal instrument, by which he divests himself of either the fee simple title to, or of his possessory interest in, the Protected Property.
17. This Grant may be amended only with the written consent of Grantee and Grantors. Any such amendment shall be consistent with the purposes of this Grant and shall comply with Section 170(h) of the Internal Revenue Code and with Section 2031(c) of the Internal Revenue Code, or any regulations promulgated in accordance with such Sections. Any such amendment shall also be consistent with Section 5301.67 through 5301.70 of the Ohio Revised Code or any regulations promulgated pursuant to such code.
18. The Grantee may transfer or assign its rights in the Conservation Easement if in the Grantee's opinion the purposes of the Conservation Easement are better served by the Conservation Easement being held in the name of The Nature Conservancy, a charitable organization, or another charitable organization which is exempt from federal taxation under subsection 501(a), is described in

subsection 501(c) of the "Internal Revenue Code of 1986", 68 Stat. 3, 26 U.S.C. 1, as now or hereafter amended ("IRC"), is organized and operated primarily for one of the conservation purposes specified in Section 170(h) (4) of the IRC, as now or hereafter amended, and is acceptable to the Grantee. The selection of the transferee shall be made by the Board of Trustees of the Grantee or, if the Grantee has ceased to exist, the survivor(s) of the last Board of Trustees of the Grantee.

19. This Conservation Easement constitutes a real property interest immediately vested in the Grantee.
20. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can 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 compensation to which the Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property, pursuant to such proceedings, subsequent to such termination or extinguishment, shall be established, unless otherwise provided by Ohio law at the time, as provided on Paragraph 21 below with respect to the division of condemnation proceeds. The Grantee shall use any such proceeds in a manner consistent with the purposes of this Conservation Easement.
21. It is the intent of this Grant to convey to the Grantee, its successors and assigns such an interest in the Protected Property as is sufficient to prohibit the exercise of the power of eminent domain by public utility and any other body or person. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authorities so as to abrogate the restriction imposed by this conservation easement, the Grantor and the Grantee shall join in appropriate actions to recover the full value of the Protected Property (or portion thereof) taken and all incidental or direct damages that result from such taking. Any expense incurred by the Grantor or the Grantee in any such action shall be first reimbursed out of the recovered proceeds. The remainder of such proceeds shall be divided between the Grantor and the Grantee in proportion to their

interest in the Protected Property, such proportion to be established by using the relationship at the time of this Grant, of the fair market value of the Protected Property unencumbered by this Conservation Easement as compared to the fair market value of the Protected Property as encumbered by this Conservation Easement.

22. Without limiting any other provision of this Conservation Easement, Grantor and Grantee agree and intend that the Easement granted and accepted hereby constitute a "conservation easement" as that term is used Section 5301.67 through 5301.70 of the Ohio Revised Code and that the Conservation Easement granted hereby shall be entitled to all the benefits of such sections.

TO HAVE AND TO HOLD, unto CHAGRIN RIVER LAND CONSERVANCY to the use of the Grantee, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions, and purposes imposed as aforesaid shall be binding not only upon the Grantor and Grantee, but also their respective agents, personal representatives, heirs and assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Protected Property.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand this 15<sup>th</sup> day of September 1999.

Signed in the presence of:

GRANTOR:

William L. Hudson

Sanford Sieglar

Print Name: William L. Hudson

SANFORD SIEGLER

Edwin L. Dengg

Margaret Hetrick

Print Name: Edwin L. Dengg

MARGARET HETRICK

(As to all parties)

State of Ohio )

) SS:

County of Geauga )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named RUSSELL TOWNSHIP PARK COMMISSION represented by SANFORD SIEGLER, its Chairman, and MARGARET HETRICK, its Secretary, who acknowledged that they did execute the foregoing instrument and that the same is their own free act and deed as such representatives and the free act and deed of such Entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 15 day of Sep 1999.

Connie R. Luoma

Notary Public

Connie R. Luoma, Notary Public

My Commission Expires: State of Ohio

Commission Expires Aug. 17, 2003

Instrument prepared by:

Patrick J. Sweeney  
THOMPSON HINE & FLORY LLP  
216-566-5793

VOL 1262 PAGE 692



ACCEPTANCE

The undersigned does hereby consent to and accept the within Conservation Easement and all obligations imposed thereby.

IN WITNESS WHEREOF, the undersigned has executed and delivered this ACCEPTANCE this 15<sup>th</sup> day of September, 1999.

Signed in the presence of:

GRANTEE:

William L. Hudson

CHAGRIN RIVER LAND CONSERVANCY

Mary A. Weber

Print Name: William L. Hudson

MARY A. WEBER

Edwin L. Dengg

Richard D. Cochran

Print Name: Edwin L. Dengg  
(As to both parties)

RICHARD D. COCHRAN

State of Ohio )

) SS:

County of Franklin )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named CHAGRIN RIVER LAND CONSERVANCY represented by MARY A. WEBER, its President, and RICHARD D. COCHRAN, its executive director, who acknowledged that they did execute the foregoing instrument and that the same is their own free act and deed as such representatives and the free act and deed of such Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 15 day of Sept. 1999.

Connie R. Luoma

Notary Public

Connie R. Luoma, Notary Public  
State of Ohio

My Commission Expires:

Commission Expires Aug. 17, 2003

VOL 1262 PAGE 693

EXHIBIT A

LEGAL DESCRIPTION OF PROTECTED PROPERTY

Permanent Parcel Numbers: 26-707005 and 26-707006

Prior Deed Reference: Volume 780, Page 1172

Property Address: Dines Road

VOL 1262 PAGE 0594

Beginning in the centerline of Pekin Road at a point which is 248.8 feet easterly along said centerline from a stone monument at the southwesterly corner of said Lot No. 3; thence North one degree 10'00" East along the Easterly line of lands conveyed to Florence Kral by deed recorded in Volume 239, Page 132, of Geauga County Records of Deeds, and through an iron pipe 25.0 feet from said place of beginning, a total distance of 1462.0 feet to an iron pipe at the Northeasterly corner of said Kral lands; thence South 88°43'00" East along the Northerly line of said Lot No. 3, 1674.4 feet to an iron pipe at the Northwesterly corner of lands conveyed to John and Mollie Janoch by deed recorded in Volume 232, Page 160, of Geauga County Records of Deeds; thence South 01°10'15" West along the Westerly line of said Janoch lands 368.5 feet to an iron pipe at the Southwesterly corner thereof; thence South 88°52'00" East along the Southerly line of said Janoch lands 327.4 feet to the Northwesterly corner of lands conveyed to Geraldine A. and Theodore J. Sindelar by deed recorded in Volume 270, Page 378 of Geauga County Records of Deeds; thence along the Westerly boundary of said Sindelar lands and within the Chagrin River South 28°00' West, 255.8 feet, North 40°15' West, 114.0 feet, and South 56°15' West, 385.0 feet to the Southwesterly corner of said Sindelar lands; thence South 88°51'45" East along the Southerly line of said Sindelar lands 28.4 feet to the Northwesterly corner of lands conveyed to G.W. and Ruth D. Beck by deed recorded in Volume 247, Page 278 of Geauga County Records of Deeds; thence South 01°10'00" West along the Westerly line of said Beck lands 344.5 feet to an iron pipe in the Northerly line of lands conveyed to Robert C. and Norma W. Mulhauser by deed recorded in Volume 268, Page 46 of Geauga County Records of Deeds; thence South 89°17'10" West along said Northerly line 344.4 feet to the Northwesterly corner of said Mulhauser lands, and through an iron pipe 30.1 feet therefrom; thence along the Westerly boundary of said Mulhauser lands and within the Chagrin River South 04°41' East, 118.4 feet, South 13°47' East 84.5 feet and South 30°11'20" West 195.6 feet to the centerline of Pekin Road; thence North 88°52'00" West along said road centerline 1118.3 feet to the place of beginning,\*be the same more or less, but subject to all legal highways.  
\*containing 52.58 acres



EXHIBIT B  
MAP OF PROTECTED PROPERTY

VOL 1262 PAGE 0695

