

GRANT OF CONSERVATION EASEMENT
AND
COVENANT FOR STEWARDSHIP FEES

This grant of a Conservation Easement (this "Grant") is made by Russell Township Park Commission of Geauga County, Ohio, a political subdivision of the State of Ohio ("Grantor") to Chagrin River Land Conservancy, a charitable corporation, organized under the laws of the State of Ohio, whose address is P.O. Box 314, Novelty, Ohio 44072 ("Grantee").

RECITALS:

WHEREAS, Grantor is the owner in fee simple of certain real property situated in Russell Township, Geauga County, Ohio consisting of 122.8966 acres, including acreage in rights-of-way, (the "Protected Property"), legally described in Exhibit A and further described and depicted in a Baseline Documentation Report designated Exhibit B, with the Property Identification Map of Exhibit B depicting the Protected Property in crosshatch, both of which Exhibits are attached hereto and made a part hereof; and

WHEREAS, Grantor applied for and has received grant funds from the State of Ohio, acting by and through the Director of the Ohio Public Works Commission (the "Director") pursuant to Ohio Revised Code Section 164.20 et. seq. (the "Funds"); and Grantor has used the Funds in its acquisition of the Protected Property; and

WHEREAS, in connection with Grantor's application for the Funds, Grantor proposed to use the Funds either for open space acquisition and related development or to protect and enhance riparian corridors, as set forth more specifically in its application; and

WHEREAS, as a condition to Grantor's receipt of the Funds, Grantor agreed to restrict the use of the Protected Property as set forth in this Conservation Easement, with the intent that such restrictions run with the land; and

WHEREAS, the Protected Property possesses significant scenic, natural, aesthetic and open space values and in its current state contributes significantly to the physical, biological and chemical integrity of Griswold Creek and the Chagrin River, *which values (collectively*

CRESI# 1578792

200500720556
Filed for Record in
GEAUGA COUNTY, OHIO
MARY MARGARET MCBRIDE
06-24-2005 At 03:38 pm.
ESMT 340.00
DR Book 1766 Page 93 - 133A-W

“Conservation Values”) are of great importance to Grantor, Grantee, the residents of Russell Township and Geauga County and the State of Ohio; and

WHEREAS, Grantor and Grantee agree that the Baseline Documentation Report provides an accurate representation of the Protected Property and its Conservation Values as of the effective date of this Grant and that it is intended to serve as an objective information baseline for monitoring compliance with the terms of this Grant; and

WHEREAS, the Protected Property is located within Grantee’s service area 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, the Protected Property contains high quality habitat, ephemeral and perennial streams, high quality wetlands and streamside forests; and

WHEREAS, there are situated on the Protected Property existing improvements including, but not limited to, a detached storage building, a driveway and a parking area (all hereinafter referred to as the “Existing Improvements”) as described in Exhibit B; 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 (the “IRC”) and has received a final determination letter from the Internal Revenue Service, dated August, 1996 to the effect that Grantee is a “publicly-supported” organization described in Section 509(a)(1) and Section 170(b)(1)(A)(vi) of the IRC; and

WHEREAS, Grantee is a “qualified conservation organization,” as that term is defined in Section 170 (h) of the IRC; and

WHEREAS, 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 this Conservation Easement, respectively, the common purpose of (a) conserving the aforesaid values of 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 (b) 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, all as stated above; 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; and

WHEREAS, Grantor and Grantee intend that the Protected Property shall be used as a passive use public park as herein defined and described; and

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

WHEREAS, Grantee’s obligation entails a pledge to defend the ecological, scientific, educational, and aesthetic value, the natural, scenic and open condition, and natural values of the property, and significant costs are necessary to carry out this commitment;

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, Grantor does hereby grant, give, and convey unto Grantee, its successors and assigns, and Grantee voluntarily accepts, in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Protected Property, for the purposes set forth in paragraph A.1. below. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is materially inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described in this Grant.

A. PURPOSES FOR WHICH THIS CONSERVATION EASEMENT IS GRANTED.

1. This Conservation Easement is granted for the public purpose of retaining land, water, or wetland areas predominantly in their natural, scenic, open, or wooded condition, or in forest use, or as suitable habitat for fish, plants, or wildlife; and to

impose limitations on the use or development of the Protected Property to achieve one or more of such purposes.

B. TERMS, CONDITIONS AND RESTRICTIONS

1. **Representation as to Authority.** Grantor hereby represents and warrants to Grantee that Grantor has the power and authority to make this Grant and to carry out its obligations hereunder.

2. **Reserved Rights.**
 - (a) **General.** Grantor reserves all ordinary rights and privileges of ownership, including the right to sell the Protected Property (subject to the written approval of the Director), as well as the right to continue the use of the Protected Property for all purposes consistent with the purposes described in paragraph A above (the “Conservation Purposes”) not destructive of Conservation Values, and not expressly prohibited or conditioned hereunder; provided that nothing in this Grant shall relieve Grantor of any obligation with respect to the Protected Property or restrictions on the use of the Protected Property imposed by law.

 - (b) **Existing and Future Improvements.** Notwithstanding the terms, conditions and restrictions expressed below, Grantor and Grantee agree that the Existing Improvements, all of which are depicted in the Existing Improvements Area map of the Baseline Documentation Report, shall be permitted to remain on the Protected Property. In addition, non-residential structures and associated improvements typically used in parks, such as a pavilion, nature center and restroom facilities, may be constructed and such additional improvements and the Existing Improvements may be maintained, remodeled or expanded; provided that the Existing Improvements and such additional improvements shall at all times be contained wholly within the three (3) acre Existing Improvements Area as depicted in the Existing Improvements Area map of Exhibit B.

- (c) Dead, Diseased or Damaged Trees. Grantor reserves the right to cut and remove dead, diseased and damaged trees anywhere on the Protected Property; provided such removal shall be carried out in a manner which minimizes impacts to the Conservation Values (including other trees) of the Protected Property.
- (d) Notice. Grantor shall notify Grantee, in writing, before exercising any right reserved by Grantor in this Conservation Easement that may have an adverse impact on the Conservation Values.
3. No Building. Except as otherwise provided in this Conservation Easement, no buildings or other structures, including, but not limited to, residences, outbuildings, billboards or advertising of any kind, camping accommodations, mobile homes, and fences, shall be hereafter erected or placed on the Protected Property.
4. No Dumping. Except for the right to compost in a manner that is not detrimental to water quality, significant natural habitats and the scenic qualities of the Protected Property, there shall be no dumping of soil, trash, ashes, garbage, waste, or other unsightly or offensive material, nor any placement of underground storage tanks (other than tanks within the Existing Building Area, related to septic systems), on or in the Protected Property. The land application, storage and placement of municipal, commercial or industrial sewage sludge or liquid generated from such sources may not be undertaken on the Protected Property.
5. No Filling or Excavating. Except as otherwise provided herein, there shall be no fillings, excavations, construction of roads or other changes in the general topography of the Protected Property in any manner except the maintenance of existing and permitted foot trails (including bridges over streams) and that caused by the forces of nature; provided, however, that (a) existing trails (including bridges over streams) for walking or horseback riding may be widened and new trails (including bridges over streams) may be created anywhere on the Protected Property so long as (i) they do not exceed eight (8) feet in width, (ii) they are not

covered with impervious materials; and (b) such widening or creation is not detrimental to water quality, significant natural habitats, or the scenic qualities of the Protected Property and are otherwise consistent with the Conservation Purposes and the Conservation Values.

6. **No Mining or Drilling.** There shall be no mining or drilling for minerals, oil, gas or similar substances, nor shall the Protected Property be used as part of any drilling unit for oil and gas production.
7. **No Habitat Disturbance.** Except as otherwise permitted herein, there shall be no cutting down, removal or destruction of native trees or growth, or introduction of animals other than domestic pets that reside within permitted residences and horses and livestock that are used for permitted recreational activities and are maintained in pens, corrals and/or barns.
8. **No Power Lines or Communications Towers.** No power transmission lines or communication towers shall be erected, other than utility lines for structures, uses and activities permitted on the Protected Property, nor shall interests in the Protected Property be granted for such purpose.
9. **No Detrimental Use.** There shall be no activities, actions, or uses detrimental or adverse to water conservation, erosion control, soil conservation or fish and wildlife or habitat preservation on the Protected Property.
10. **No Manipulation of Water Courses.** There shall be no manipulation or alteration of natural water courses, marshes, or other water bodies or activities or uses detrimental to water purity, provided that existing dams and ponds on the Protected Property may be maintained, repaired or replaced. The Protected Property includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Protected Property (collectively, the "Water Rights"). Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the

Protected Property or change the historic use of the Water Rights without the consent of Grantee. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without the consent of Grantee.

11. **Limitation of Motor Vehicles.** There shall be no operation of motorized vehicles on the Protected Property, including but not limited to, automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or recreational motorized vehicles except that (a) pickup trucks, tractor and non-recreational all-terrain vehicles may be used anywhere on the Protected Property in connection with maintenance and (b) motorized vehicles of all types may be operated within the confines of the driveways described in paragraph B.2.
12. **No Density Yield.** The acreage constituting the Protected Property shall not be taken into consideration and may not be used when calculating the lot area or permitted development density for any land not subject to this Conservation Easement.
13. **No Subdivision.** The Protected Property shall not be subdivided. Grantor shall maintain the Protected Property, and all interests therein, under common ownership in the existing single legal parcel, i.e. the parcel comprising the Protected Property may be conveyed only in its entirety to one person or entity. Subdivision of the Protected Property, recording of a subdivision plan, partition of the Protected Property, or any other attempt to divide the Protected Property into more than the single existing legal parcel without the consent of Grantee is prohibited.
14. **Management as a Natural Area.** The Protected Property may be managed as a passive use public park, and in a manner consistent with its preservation as a natural, scenic, open, and wooded area. Every other activity or construction that might endanger the natural or scenic state of the Protected Property is forbidden. All maintenance of the Protected Property shall be performed so as to minimize impacts to native wildlife and plant habitats, and to preserve the quality and quantity of surface and ground water resources. The areas which have historically

been mowed, as depicted in the Baseline Documentation report, may continue to be mowed.

15. **Definition of Passive Use.** Passive use of the Protected Property means use that subordinates recreation and public access to the maintenance and enhancement of environmental quality and solitude. Accordingly, the Protected Property shall be maintained as a sanctuary for native plants and animals. As such, any physical alteration of the Protected Property shall be limited as described in this Grant and designed so as to cause no significant degradation of soils, wildlife, and plant habitats, or water quality, by maintaining ample vegetative buffers and other management practices which are deemed by Grantee adequate to protect and preserve streams and wetlands (excluding non-native plants and animals), minimizing the area dedicated to trails, and avoiding the fragmentation or disturbance of significant plant and animal habitats.

16. **Permitted Uses Within the Protected Property.** Consistent with the above description of passive use, the following activities are permitted within the Protected Property:
 - Quiet, contemplative, aesthetic and scientific pursuits, such as non-intrusive nature study, bird watching, art and photography.
 - Unpaved recreational trails for hiking, cross-country skiing, snow shoeing, and similar recreational purposes so long as compatible with the Conservation Purposes of this Grant and approved by Grantee.
 - Nature observation.

17. **Other Incompatible Uses Within the Protected Property.** In addition to the above described prohibited uses and consistent with the description of passive use below, any activity or use which will cause damage to the Conservation Values is prohibited. Such incompatible uses and activities include, by way of example, the following:
 - Industrial, commercial, or agricultural construction or uses.
 - Overnight camping or similar extended high intensity activity.
 - Paintball games.
 - Bicycle motocross and similar sport or hobby activities which damage grassland areas.

- Frequent large gatherings which interfere with the public's passive enjoyment of the natural qualities of the Protected Property.
 - Construction or use of fields for any type of active recreation, including but not limited to, fields for sports activities such as baseball, football, soccer, field hockey, etc....
 - Construction or use of golf or similar courses.
 - Construction or use of courts for any type of active recreation, including but not limited to, courts for tennis, basketball, etc....
18. **No Commercial Recreational Use.** There shall be no commercial recreational use of the Protected Property except those uses considered "de minimus" according to the provisions of Section 2031(c)(8)(B) of the IRC.
19. **Real Property Interest.** This Conservation Easement constitutes a real property interest immediately vested in Grantee.
20. **Right to Enter and Inspect.** Grantee, or its duly authorized representatives, may enter the Protected Property at all reasonable times for the purpose of inspecting the Protected Property in order to further the objectives and determine compliance with the terms of this Conservation Easement.
21. **Permission of Grantee.** Where Grantor is required to obtain Grantee's permission, approval or consent for a proposed action hereunder, such permission, approval or consent shall (a) be sought and given in writing, (b) in all cases be obtained by Grantor prior to Grantor taking the proposed action and (c) not be unreasonably conditioned, delayed or withheld, and shall be based on Grantee's evaluation of the impact of the request on the Conservation Values of the Protected Property. Grantee shall grant or withhold its approval in writing within thirty (30) days after receipt of Grantor's written request therefor. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given.
22. **Violations.** In the event a violation of these terms, conditions, or restrictions is found to exist, Grantee may, after notice to Grantor, 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 condition at the time of this Grant, and/or for damages for breach of covenants. Nothing herein shall be construed to entitle Grantee to institute any enforcement proceedings against Grantor for any changes to the Protected Property due to causes beyond Grantor's control, such as changes caused by fire, floods, storm, or unauthorized wrongful acts of third persons. Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms, conditions, and purposes of this Conservation Easement by prior failure to act.

23. **Upkeep and Maintenance.** Grantor shall be solely responsible for the upkeep and maintenance of the Protected Property to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Protected Property; provided that Grantee, at its option, may, but shall not be obligated to, pay for the maintenance and preservation of the Protected Property should Grantor fail to do so. Before doing so, Grantee shall give Grantor notice of its intention to pay any such maintenance or preservation costs and Grantee shall not proceed unless Grantor has failed to maintain and preserve the Protected Property to the extent required by law within thirty (30) days after the giving of such notice. Grantor shall reimburse Grantee on demand for any payment so made.

24. **Liability and Indemnification.** Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Protected Property, unless due to the gross negligence or willful misconduct of Grantee. Grantor shall keep the Protected Property insured with comprehensive general liability insurance against claims for personal injury, death and property damage, cause Grantee to be named as an additional insured on all such insurance policies, and provide evidence of such insurance to Grantee promptly upon request.

25. **Taxes.** Grantor shall pay all taxes validly assessed and levied against the Protected Property, including any such taxes validly levied and assessed against this Conservation Easement by competent authorities, it being understood that no

taxes are presently levied against conservation easements generally in the state of Ohio, nor, to the knowledge of the parties, are such taxes contemplated by any taxing authority with jurisdiction over the Protected Property. At its option, Grantee may, but shall not be obligated to, discharge any tax lien (or other encumbrance) at any time levied or placed on the Protected Property should Grantor fail to do so. Before doing so, Grantee shall give Grantor notice of its intention to discharge any such tax lien or other encumbrance and Grantee shall not proceed unless Grantor has failed to discharge such tax lien or other encumbrance within thirty (30) days after the giving of such notice. Grantor shall reimburse Grantee on demand for any payment so made.

26. **Incorporation in Subsequent Instruments.** Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement shall be incorporated by reference in any subsequent deed, or other legal instrument, by which Grantor divests itself of either the fee simple title to, or its possessory interest in, the Protected Property.

27. **Amendment.** This Grant may be amended only with the written consent of Grantee, Grantor and the Director. Grantee shall not consent to any amendment of this Conservation Easement if such amendment would result in a lesser level of resource protection, less stringent protection of the Conservation Values of the Protected Property, or adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the IRC and the laws of the state of Ohio. Any such amendment shall be consistent with the purposes of this Grant and shall be consistent with Section 5301.67 through 5301.70 of the Ohio Revised Code and any regulations promulgated pursuant to such code. Any such amendment shall be recorded in the Official Records of Geauga County, Ohio. Nothing in this paragraph shall require Grantor, Grantee or the Director to agree to any amendment or to consult or negotiate regarding any amendment. With the consent of the Director, Grantor and Grantee may amend this Conservation

Easement to be more restrictive to comply with the provisions of Section 2031(c) of the IRC.

28. **Assignment.** Grantee may transfer or assign all or less than all of its rights and obligations under this Conservation Easement if in Grantee's opinion the purposes of this Conservation Easement are better served by this Conservation Easement being held in the name of another organization or in the name of more than one organization which is a qualified organization at the time of transfer under Section 170(h)(3) of the IRC and the laws of the state of Ohio (especially Section 5301.69 of the Ohio Revised Code), and is acceptable to Grantee. The selection of the transferee shall be made by the Board of Trustees of Grantee or, if Grantee has ceased to exist, the statutory or court appointed successors of the last Board of Trustees of Grantee. As a condition of such transfer, Grantee shall require that the Conservation Purposes that this Conservation Easement is intended to advance continue to be carried out.

29. **Extinguishment.**

(a) **Limitation.** If future circumstances render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a local court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale in accordance with their respective percentage interests in the fair market value of the Protected Property, as such percentage interests are determined under the provisions of subparagraph 29(b), adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with the Conservation Purposes of this Conservation Easement.

(b) **Percentage Interests.** For purposes of this paragraph 29, Grantor and Grantee stipulate that as of the effective date of this Grant the Conservation Easement and the restricted fee interest in the Protected Property each represent a percentage interest in the fair market value of the Protected Property. Such percentage interests shall be determined by the ratio of (i) the value of this Conservation Easement on the effective date of this Grant to (ii) the value of the Protected Property, without deduction for the value of the Conservation Easement, on the effective date of this Grant. The values on the effective date of this Grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Grant, pursuant to Section 170(h) of the IRC. For purposes of this paragraph, the ratio of the value of this Conservation Easement to the value of the Protected Property unencumbered by this Conservation Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Protected Property thereby determinable shall remain constant.

30. **Eminent Domain.** It is the intent of this Grant to convey to 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. If all or any part of the Protected Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Protected Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 29(a) and (b) (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this paragraph 30 shall be in addition to, and not in limitation of, any rights they may have at common law.

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

32. **Notice of Proposed Transfer.** Grantor shall give Grantee notice of the proposed transfer of any interest in the Protected Property at least 20 days prior to such transfer; provided that failure to so notify Grantee shall not in any way affect the validity of this Conservation Easement or limit its enforceability.

33. **Stewardship Fee.** Grantor hereby covenants, promises, and agrees to pay, or to cause the closing agent in connection with the future transfer for value of all or less than all of the Protected Property to pay, to Grantee, or any successor having stewardship obligations pertaining to the Protected Property, at closing, a Stewardship Fee (“the Fee”) in an amount equal to 10% of the full consideration paid, including that portion of such consideration attributable to improvements, other contiguous land, whether or not subject to easement, and any fixtures permanently attached to the Protected Property and such contiguous land. In the event the Fee is not paid as provided herein, Grantee shall have the right to file a lien against the Protected Property to secure the continuing obligation of Grantor and its successors in title to pay the Fee; provided that the Fee shall be subordinate to this Conservation Easement and to the lien of any first mortgage on the Protected Property. Such lien may be enforced and/or foreclosed in accordance with the laws of the State of Ohio.

34. **Rules of Convenience.** For convenience, masculine pronouns used in this document include the feminine and neuter pronouns, and the singular tense includes the plural tense. Additionally, all references to either Grantor or Grantee include their successors, assigns and transferees unless otherwise noted. The captions in this Conservation Easement are for convenience only and are not intended by the parties to affect the meaning or interpretation of the terms thereof.

35. **Counterparts.** This Conservation Easement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
36. **Applicable Law; Severability.** This Conservation Easement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations of the State of Ohio. If any provision of this Conservation Easement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Conservation Easement or application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby but rather shall be enforced to the fullest extent permitted by law.
37. **Reasonableness Standard.** Grantor and Grantee shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Conservation Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.
38. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Conservation Easement, all of which are merged herein.
39. **Notices.** Any notice, demand, request consent approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Russell Township Park Commission of
 Geauga County, Ohio
 c/o Terry Ries
 8501 Kinsman Road
 Novelty, Ohio 44072

With a copy to: Mark Hoffman

Attorney at Law
Ohio Savings Building
20133 Farnsleigh Road
Shaker Heights, Ohio 44122

To Grantee: Chagrin River Land Conservancy
 P.O. Box 314
 Novelty, Ohio 44072
 Attention: Executive Director

With a copy to: Chagrin River Land Conservancy
 P.O. Box 314
 Novelty, Ohio 44072
 Attention: General Counsel

or to such other address as any of the above parties from time to time shall designate by written notice to the others.

40. **Effective Date.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Easement is recorded in the Official Records of Geauga County, Ohio, after all required signatures have been affixed hereto. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Conservation Easement.
41. **No Extinguishment Through Merger.** Grantor and Grantee herein agree that (a) this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (b) should all or a portion of the fee interest subject to this Conservation Easement and the Conservation Easement, itself, come to be owned by the same owner, such owner as promptly as practicable shall assign this Conservation Easement of record to another holder in conformity with the requirements of paragraphs 28 and 32. The instrument of assignment shall refer to the provisions of this paragraph, and shall contain confirmatory language suitable to reimpose this Conservation Easement to the extent, if any, necessary to continue it in force.

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 21 day of June, 2005.

CHAGRIN RIVER LAND CONSERVANCY

By: Kathy Leavenworth
Kathy Leavenworth, Its President

And by: Richard D. Cochran
Richard D. Cochran, Its Executive Director

Prepared 6/21/2005

Instrument prepared by:
Chagrin River Land Conservancy
P.O. Box 314
Novelty, Ohio 44072
(440) 729-9621

LEGAL DESCRIPTION
OF A
122.8966 ACRE PARCEL
FOR
THE CHAGRIN RIVER LAND CONSERVANCY

Situated in the Township of Russell, County of Geauga and State of Ohio and known as being a part of Original Lots Nos. 8, 9, 10 and 11, West Division, Tract No. 2 and further being known as a parcel of land conveyed to Chagrin River Land Conservancy by deed recorded in Volume 1586, Page 687 of Geauga County Deed Records, further bounded and described as follows;

Beginning at a mag nail set in the centerline of Kinsman Road (S.R. 87) (width varies)- at its intersection with the centerline of Russell Road, 60 feet wide;

- COURSE I Thence South 47° 23' 35" West along said centerline of Russell Road passing through a monument box with a 1 inch iron pin found at 108.55 feet a total distance of 1661.09 feet to the most Easterly corner of land conveyed to Mary Karen O'Neill Trustee by deed recorded in Volume 1595, Page 1161 of Geauga County Deed Records;
- COURSE II Thence North 42° 34' 06" West along the Northeasterly line of land so conveyed to Mary Karen O'Neill Trustee passing through a 1 inch iron pipe found at 28.91 feet, a total distance of 429.77 feet to a 1 inch iron pipe found at the most Northerly corner thereof;
- COURSE III Thence South 52° 35' 24" West along the Northwesterly line of land so conveyed to Mary Karen O'Neill Trustee a distance of 506.54 feet to a 1 inch iron pipe found at the most Westerly corner thereof in the Northeasterly line of land conveyed to John N. and Kelly S. Janoch by deed recorded in Volume 909, Page 1186 of Geauga County Deed Records;
- COURSE IV Thence North 42° 33' 42" West along said Northeasterly line of land so conveyed to John N. and Kelly S. Janoch a distance of 100.14 feet to a 5/8 inch iron pin set at the most Northerly corner thereof;
- COURSE V Thence South 63° 08' 22" West along the Northerly line of land so conveyed to John N. and Kelly S. Janoch, passing through a 5/8 inch iron pin set at 415.00 feet, a total distance of 440.00 feet to a point in a lake at the Northwesterly corner thereof;
- COURSE VI Thence South 26° 34' 17" East along the Westerly line of land so conveyed to John N. and Kelly S. Janoch a distance of 79.04 feet to a 5/8 inch iron pin set;

LEGAL DESCRIPTION

122.8966 Acre Parcel

Chagrin River Land Conservancy

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- COURSE VII Thence South 62° 30' 28" East along a Southwesterly line of land so conveyed to John N. and Kelly S. Janoch a distance of 334.38 feet to a 5/8 inch iron pin set at an angle point therein;
- COURSE VIII Thence South 48° 56' 50" East continuing along said Southwesterly line of land so conveyed to John N. and Kelly S. Janoch, passing through a 5/8 inch iron pin set at 281.49 feet a total distance of 311.65 feet to a point in said centerline of Russell Road;
- COURSE IX Thence South 46° 57' 00" West along said centerline of Russell Road a distance of 382.42 feet to the Northeasterly corner of land conveyed to Nancy N. Janoch, Trustee by deed recorded in Volume 1270, Page 1097 of Geauga County Deed Records;
- COURSE X Thence North 65° 27' 30" West along the Northerly line of land so conveyed to Nancy N. Janoch, Trustee passing through the Northwestern right-of-way line of Russell Road at 32.45 feet (witness a 5/8 inch iron pin found 0.20 feet South and 0.25 feet West) a total distance of 360.05 feet to the Northwestern corner thereof (witness a 5/8 inch iron pin found 0.10 feet South and 0.28 feet West);
- COURSE XI Thence South 24° 32' 39" West along the Westerly line of land so conveyed to Nancy N. Janoch, Trustee a distance of 277.35 feet to the Southwesterly corner thereof (witness a 5/8 inch iron pin found 0.07 feet South and 0.08 feet West) in the Northerly line of land conveyed to Edward A. and Laura F. Leopold by deed recorded in Volume 1715, Page 345 of Geauga County Deed Records;
- COURSE XII Thence South 84° 54' 42" West along said Northerly line of land so conveyed to Edmund A. Laura F. Leopold, a distance of 994.21 feet to a stone found at an angle point therein at the Southeasterly corner of said Original Lot No. 11;
- COURSE XIII Thence North 88° 09' 05" West along the Northerly line of land conveyed to Edmund A. and Laura F. Leopold by deed recorded in Volume 1037, Page 710 of Geauga County Deed Records and along the Northerly line of land conveyed to Joel T. Hutt, Trustee by deed recorded in Volume 1299, Page 650 of Geauga County Deed Records and along the Northerly line of lands conveyed to

LEGAL DESCRIPTION

122.896 Acre Parcel
Chagrin River Land Conservancy
Page Three

Kathryn S. Neidhardt by deed recorded in Volume 946, Page 1263 of Geauga County Deed Records a distance of 1146.26 feet to a ½ inch iron pipe in concrete found at the Southeasterly corner of Deep Wood Colony Subdivision as shown by Plat recorded in Volume 8, Page 3 of Geauga County Plat Records;

COURSE XIV Thence North 02° 10' 44" West along the Easterly line of said Deep Wood Colony Subdivision a distance of 1295.77 feet to a 1 inch iron pipe found at a Northeasterly corner thereof;

COURSE XV Thence North 74° 47' 57" West along a Northerly line of Deep Wood Colony Subdivision a distance of 146.07 feet to a 5/8 inch iron pin found (I.D. Schwartz 7193) in the Easterly right-of-way line of Deep Wood Drive (width varies);

COURSE XVI Thence North 01° 13' 05" East along said Easterly right-of-way line of Deep Wood Drive a distance of 30.92 feet to a 5/8 inch iron pin set;

COURSE XVII Thence South 74° 47' 57" East a distance of 419.97 feet to a 5/8 inch iron pin set;

COURSE XVIII Thence North 1° 13' 05" East passing through a 5/8 inch iron pin set a 522.12 feet, a total distance of 563.01 feet to a point in the curved centerline of said Kinsman Road;

Course XIX through Course XXIV are along said centerline of Kinsman Road.

COURSE XIX Thence Southeasterly along the arc of a curve deflecting to the left 202.97 feet, said curve having a radius of 1432.69 feet and a chord which bears South 80° 40' 46" East 202.80 feet to a mag nail set at a point of tangency;

COURSE XX Thence South 84° 44' 17" East a distance of 229.76 feet to a mag nail set at a point of curvature;

COURSE XXI Thence Southeasterly along the arc of a curve deflecting to the left 184.67 feet, said curve having a radius of 2292.01 feet and a chord which bears South 87° 02' 47" East 184.63 feet to a mag nail set at a point of tangency;

LEGAL DESCRIPTION

1.228966 Acre Parcel
Chagrin River Land Conservancy
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COURSE XXII Thence South 89° 21' 17" East a distance of 2725.68 feet to a mag nail set at a point of curvature;

COURSE XXIII Thence Northeasterly along the arc of a curve deflecting to the left 207.24 feet, said curve having a radius of 572.96 feet and a chord which bears North 80° 17' 01" East 206.12 feet to a mag nail set at a point of tangency;

COURSE XXIV Thence North 69° 55' 18" East a distance of 955.51 feet to the Place of Beginning and containing 122.8966 acres of land as surveyed, calculated and described on February 26, 2003 and February 13, 2004 by Rudy E. Schwartz, P.S. 7193 be the same more or less but subject to all legal highways and easements of record. Bearings used herein refer to an assumed meridian and are intended to indicate angles only. All 5/8 inch iron pins set are I.D. Schwartz 7193.

FEB. 23, 2004
DATE

Rudy E. Schwartz
RUDY E. SCHWARTZ, P.S. 7193

SURVEY PLAT & LEGAL DESCRIPTION
APPROVED PER R.C. 315.251

PAK 2/24/04
OFFICE OF THE
GEAUGA COUNTY ENGINEER

26-179000
REAL PROPERTY TRANSFER TAX
NO TRANSFERRED AND PAID
NECESSARY
JUN 24 2005
Fee \$ 5,000.00
Tracy A. Jemison, County Auditor
By: *Robert A. Klemm*

