

**MIDLAND COMMERCE GROUP**

ORDER NO: A 99118 ESCROW JEP-MAIN

**GRANT OF CONSERVATION EASEMENT**

This Grant of Conservation Easement ("Conservation Easement") is made this 9<sup>th</sup> day of July, 2001 by and between Deer Creek Homeowners' Association, Inc., an Ohio corporation, its successors and assigns (the "Grantor") having an address at 17 W. Streetsboro St., Hudson, Ohio 44236 and Ohio Stream Preservation, Inc. an Ohio not-for-profit corporation, its successors and assigns (the "Grantee") having an address at 24850 Aurora Rd., Unit C, Bedford Heights, Ohio 44146.

WHEREAS, Grantor is the owner in fee simple of certain real property by instrument recorded in Reception No. \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records of Summit County, and is situated in the Village of Richfield, County of Summit, State of Ohio, consisting of approximately 104.20 acres and more fully described in Exhibit A (Legal Description) and depicted in Exhibit B (Recorded Plat ("Plat")), both attached hereto and made a part hereof which real property is commonly known as Deer Creek Reserve Phase Three ("Subdivision"); and

WHEREAS, the Grantor is creating the Deer Creek Homeowners' Association, Inc., Inc., ("Association") and is adopting for the Association its Declaration of Easements, Covenants, Conditions and Restrictions, for Phase III Deer Creek Reserve Subdivision, ("Declaration of Covenants"); and

WHEREAS, the Grantor agrees to cause the Declaration of Covenants to commit the Association to being bound by the terms of this Easement and to acknowledge that compensation will be provided to the Grantee for services performed related to this Easement, on behalf of the Grantor; and

WHEREAS, in order to protect the quality of the undisturbed natural area located on the real property, the Village of Richfield has required that Grantor, as a condition of being issued plan approval, grant a Conservation Easement in and to a portion of the Grantor's real property, which is more specifically identified in Exhibit C (Legal Description) and depicted on Exhibit B as Open Space Blocks N, O, P, Q, R, S, T, U and V ("Open Space"); and

WHEREAS, Section 5301.69 of the Ohio Revised Code authorizes Grantee to acquire and hold conservation easements for the purposes set forth herein; and

WHEREAS, the Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to Open Space and protect the conservation values of the Open Space in perpetuity and to prevent or remedy subsequent activities or uses that are inconsistent with the terms of the Conservation Easement.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **Grant of Easement:** Grantor hereby grants and conveys to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Open Space of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Open Space, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Open Space by Grantor, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantor covenants on behalf of itself, its heirs, successors and assigns with the Grantee, its successors and assigns, to do and refrain from doing, severally and collectively, upon the Open Space, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from such acts, and each thereof, is and will be for the benefit of Grantee.
2. **Term of Easement:** The easement granted hereunder shall be perpetual and shall have no expiration date. Article 10 describes the process for termination of said easement.



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John A Donofrio, Summit Fiscal Officer

3. **Conservation Values:** Portions of the Open Space possess substantial value in conserving and protecting the physical, biological and chemical integrity of the natural areas including, but not limited to existing water courses, wetlands and/or riparian corridors and is important in the protection of the existing or designated use of the waters of the state pursuant to §303 of the Clean Water Act, 33 U. S. C. §1313 and §6111.041 of the Ohio Water Pollution Control Act..

A "Baseline Documentation Report" which will be prepared, and incorporated by reference herein as Exhibit D ("Baseline Report"), may consist of any and all maps, reports, photographs, descriptions of prominent vegetation, land use history and distinct natural features characterizing the Open Space at the time of the grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The parties acknowledge Exhibit D is an accurate representation of the Open Space at the time of this grant.

4. **Prohibited Actions:** Any activity on or use of the Open Space inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited:

a. **Division:** Any division or subdivision of the Open Space beyond that shown on Exhibit B;

b. **Commercial Activities:** Commercial development, commercial recreational use, or industrial activity;

c. **Construction:** The placement or construction of any man-made modifications including but not limited to buildings, structures, fences, mobile homes, advertising, billboards, camping accommodations, roads and parking lots excepting as follows:

- 1) The installation, maintenance, repair and replacement of utilities, including storm and sanitary sewers, water mains, gas, electric and telephone and cable lines, storm detention/retention basins and all appurtenances ("Utility Work") thereto within designated utility easements as shown on Exhibit B; and,
- 2) The installation, maintenance, repair and replacement of hiking trails and landscape mounding and islands as shown on the approved Site Plan; and,
- 3) The installation, maintenance, repair and replacement of decorative landscaping, signage and appurtenances within Open Space Blocks Q, R, S, T, U and V, as shown on the approved Site Plan; and
- 4) The following easements encumbering Open Space Block-P, 4.1399 acres ("Block-P") as depicted on Exhibit B, for the exclusive use and benefit of Lot No. 120 in Deer Creek Reserve Phase Three:
  - a. A Drive Access and Utilities Easement over, under, across and through said Block-P as shown on Exhibit B of Deer Creek Reserve Phase Three; and,
  - b. An easement over, under, across and through so much of said Block-P as is necessary for continued access to, and use, repair and

maintenance of, the domestic wastewater treatment system serving said Lot No. 120; and

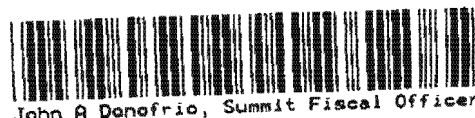
- c. An exclusive easement for open space occupancy and agricultural use, personal to the owner of said Lot No. 120, encumbering only said Block-P, provided that said Block-P shall not be used for structures (except fences) and the owner of Lot No. 120 may restrict access to anyone, including the general public and/or other Deer Creek Reserve owners and those claiming by, through, or under them; and,
- d. The owner of Lot 120, may, at their expense, install a driveway to Deer Path Trail to serve the residence on Lot No. 120; and,
- e. The owner of Lot 120, shall retain the right to approve (1) the placement of trails within Block-N in said Deer Creek Reserve Phase Three, and (2) landscaping and mounding installed by Grantee along Deer Path Trail within Lot No. 120, Block-N, Block-P, and Block-Q.

Where areas of the Open Space are affected by the Utility Work as provided in this section, Grantor shall reasonably restore all such affected Open Space areas to their condition immediately prior to any Utility Work.

**Destruction or Introduction of Vegetation:** The removal or destruction of native growth in the Open Space, including without limitation the use of fertilizers, the spraying of pesticides or biocides, the introduction of nonnative animals and vegetation, grazing of domestic animals, or disturbance or change in the natural habitat (except in the enhancement of wildlife habitats) and the cutting of trees, ground cover or vegetation, excepting Blocks P, Q, R, S, T, U and V and as approved in writing by the Grantee, and limited to the following purposes:

- (1) The control or prevention of imminent hazard, disease, or fire, and for the purpose of restoring natural habitat areas to promote native vegetation; and,
- (2) The removal of dead, diseased, damaged, destroyed, or fallen trees, shrubs, or other vegetation which can be cut and left laying in place except for blocking streams; and,
- (3) The elimination and removal of grapevines, poison ivy, and other toxic and undesirable growth which can be cut and left laying; and,
- (4) Any Utility Work, landscape mounding and islands and hiking trails that exist or will exist as shown on the approved Site Plan and as shown on Exhibit B.

- e. **Land Surface Alterations:** The removal, filling, or excavation, of soil, sand, gravel, rock minerals or other materials from the Open Space, or doing any act that would alter the topography of the Open Space, excepting Block-P, and except for Utility Work shown on Exhibit B and the installation and maintenance of hiking trails and landscape mounding and islands as shown on the approved Site Plan and with the prior written permission of the Grantee, such approval not unreasonably withheld or and that caused by the forces of nature;



- f. **Dumping:** The dumping of any substance of any kind, nature, and description including but not limited to grass clippings or other yard debris, soil, trash, ashes, garbage, waste, or other unsightly or offensive material or any placement of underground storage tanks, on or in the Open Space (see Article 5(e)(8)), excepting Block-P.
  - g. **Water Courses:** Subsequent to the completion of the Subdivision pursuant to the approved plans, alteration of the natural water courses, streams, wetlands, marshes, or other water bodies, and the use or activity detrimental to water purity on the Open Space, excepting Block-P, and except as may be necessary and agreed to, in writing, in advance of the alteration, by the Grantee to prevent or halt soil erosion, soil slippage, and damage from erosion;
  - h. **Motorized Vehicles:** The operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other motorized vehicle on the Open Space, excepting Block-P, and except as necessary for access by Village of Richfield emergency response vehicles and as necessary to fulfill the obligations herewith, with the prior written permission of the Grantee;
  - i. **Hunting:** The hunting or trapping on the Open Space, excepting Block-P, and except to the extent specifically approved in writing by the Grantee as necessary to keep the animal population within numbers consistent with the ecological balance to the area;
  - j. **Signage:** Advertising of any kind or nature to be located on or in the Open Space, excepting Block-P, and except for signs marking the boundaries as part of the Open Space in favor of the Grantee, and except as necessary to fulfill the obligations herewith and with the prior written permission of the Grantee, such approval not unreasonably withheld or delayed;
  - k. **Other Activities:** Each and every other activity or construction project which might endanger the natural, scenic, biological, ecological integrity of the Open Space shall be prohibited, excepting Block-P.
5. **Grantor's Rights and Responsibilities:** Excepting Block-P, Grantor reserves to itself, and its successors and assigns, all rights accruing from its ownership of the Open Space, including the right to engage in or permit or invite others to engage in all uses of the Open Space that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:
- a. **Right to Enter:** The Grantee has the right to enter the Open Space at reasonable times. The Grantor retains the right to sell, mortgage, bequeath, donate, or otherwise convey the Open Space. Any conveyance shall remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder shall be bound by the terms and conditions hereof;
  - b. **Right to Access:** Subject to the terms of this easement with respect to prohibited uses and permitted uses, the Grantor shall retain the right of unimpeded access to the Open Space. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon the Open Space or any portion thereof where no such right existed to the public immediately prior to the execution of this Conservation Easement.



- c. **Actions Against Grantee:** In the event of a breach of this Conservation Easement, the Grantor may bring action against the Grantee for failing to fulfil its obligations as contained herein. Prior to an action being brought, the Grantor shall provide written notice, as set forth herein to the Grantee, advising of the breach of duty and demanding that Grantee abide by the agreement;
- d. **Requirement of Notice.** If, after a twenty-eight (28) day period following the date of written notice as provided above ("Notice Period"), the Grantee continues in its breach of duties or if the Grantee does not take substantial corrective measures within the Notice period, or if Grantee should fail to continue diligently to provide said duties, the Grantor may bring an action in law or in equity to enforce the terms of the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder, including without limitation, attorney fees. The remedies available to Grantor include, without limitation, enjoining the violation through injunctive relief, seeking specific performance, and obtaining declaratory relief, restitution, reimbursement of expense including without limitation the expense of restoration of the Open Space, and/or an order compelling restoration of the Open Space;
- e. **Requirements for the Open Space:** The following minimum conditions shall apply to the Open Space, excepting Block-P:
- (1) The Grantor shall be responsible for boundary marking of the Open Space; and,
  - (2) The Grantor shall be responsible for ensuring that contractors and/or workers involved with construction and development of improvements in, adjacent to or abutting the Open Space Area, including but not limited to clearing and grubbing, excavation, construction, delivery and storage of any and all materials, paving and landscaping, have knowledge of the terms and conditions of these restrictions and that a copy of these restrictions is at the project site throughout the period the work is underway; and,
  - (3) Efforts shall be made to keep construction debris from entering the waterway, stream or buffer area, and shall be removed immediately should any such debris be present in said areas; and,
  - (4) That the mechanical equipment used to execute any and all work be operated in such a way as to minimize turbidity that could degrade water quality and adversely affect aquatic plant and animal life; and,
  - (5) Best Management Practices (BMP's) including silt controls, be installed downstream from all construction areas adjacent to or abutting the Open Space Area and shall remain in place during all excavation and restoration operations including landscaping. Said controls shall not be removed until stabilization of the project site is satisfactorily complete; and,
  - (6) That all installed landscaping and maintenance of said landscaping, including mowing and fertilization, be no closer to the waterway or stream than the designated buffer adjacent to said waterway or stream, or as approved in writing by the Grantee, such approval not unreasonably withheld or delayed, and limited to utilities or facilities, including stormwater basins and pedestrian/bicycle paths that exist or will exist as shown on Exhibit B; and,

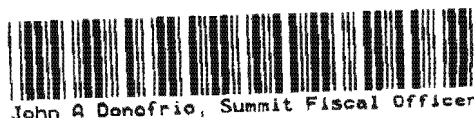
- (7) The Grantor shall be responsible for liability and maintenance of all improvements in and to the Open Space, to the satisfaction of the Grantee; and,
- (8) All trash or nonconforming material that is dumped or placed on the Open Space shall be removed or cause to be removed by the Grantor immediately. In the event that the nonconforming material is placed by an adjacent landowner or party unknown to the Grantor, the Grantee and Grantor shall work collectively to locate and notify the offender and cause the material to be removed immediately by the offender. If the offender is not identified or is uncooperative, the Grantor shall take all reasonable action for removal of the nonconforming material.

6. **Rights of Grantee:** The Grantor confers the following rights upon the Grantee to perpetually maintain the conservation values of the Open Space:

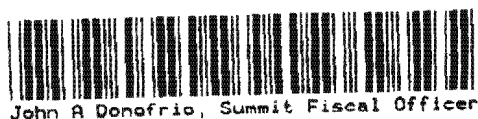
- a. **Right to Enter:** Excepting Block-P, the Grantee has the right to enter the Open Space at reasonable times to monitor or to enforce compliance with this Conservation Easement; provided that such entry shall be upon prior written reasonable notice to the Grantor. The Grantor may use the Open Space without interference provided that the Grantor restricts the use to those permitted under this Conservation Easement. The Grantee has no right to permit others to enter the Open Space. The general public is not granted access to the Open Space under this Conservation Easement;
- b. **Right to Open Space:** The Grantee has the right to prevent any activity on or use of the Open Space that is inconsistent with the terms or purposes of this Conservation Easement;
- c. **Right to Require Restoration:** The Grantee shall have the right to require the restoration of the areas or features of the Open Space which are damaged by any activity inconsistent with this Conservation Easement;
- d. **Right to Placement of Signs:** The Grantee shall have the right to place a reasonable number of small signs on the Open Space, upon written approval by Grantor, such approval not unreasonably withheld or delayed, which identify the land as being protected by this Conservation Easement;
- e. **Right to adopt Rules of Use.** The Grantee shall have the right to promulgate rules consistent with the prohibited uses set forth herein, which rules shall be followed by all users of the Open Space.

7. **Grantee's Remedies:** In the event of a breach of this Conservation Easement, the Grantee shall have the following remedies and shall be subject to the following limitations:

- a. **Actions Against Grantor.** Subject to Section 18, an action may be brought against the Grantor for violating the prohibitions on use which can be made of the Open Space or who is threatening to violate said prohibited use. If Grantee is unable to determine the party who has violated the prohibitions on use, the Grantee may bring action against the Grantor. Prior to an action being brought, the Grantee shall provide written notice, as set forth herein to the Grantor, advising of the violation and demanding that Grantor abate and cure the violation;



- b. **Requirement of Notice.** If, for a twenty-eight (28) day period after the date of written notice as provided above ("Notice Period"), the Grantor continues in its prohibited use or in its threatened prohibited use of the Open Space, or if the Grantor does not abate the violation during the Notice Period, or if the Grantor does not take substantial corrective measures within the Notice period, or if Grantor should fail to continue diligently to cure such violation until finally cured, the Grantee may bring an action in law or in equity to enforce the terms of the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder, including without limitation, attorney fees. The remedies available to Grantee include, without limitation, enjoining the violation through injunctive relief, seeking specific performance, and obtaining declaratory relief, restitution, reimbursement of expense including without limitation the expense of restoration of the Open Space, and/or an order compelling restoration of the Open Space;
  - c. **Emergency Action:** If the Grantee determines that the use permitted by this Conservation Easement is, or is expected to be violated so to cause significant or irreparable damage to the physical, biological and/or chemical integrity of the water course, the Grantee will provide written notice to the Grantor. If, through reasonable efforts, the Grantor cannot be notified, or if the Grantee determines, in its sole discretion, that the circumstances justify prompt action to mitigate or prevent injury to Open Space, then the Grantee may pursue its lawful remedies without awaiting the Grantor's opportunity to cure;
  - d. **Actual or Threatened Non-Compliance:** Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Grantor acknowledges that Grantee's remedies at law for any violation of the terms hereof are inadequate and Grantee is entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or inadequacy of otherwise available legal remedies;
  - e. **Cumulative Remedies:** The preceding remedies of the Grantee are cumulative. Any or all of the remedies may be invoked by the Grantee if there is an actual or threatened violation of this Conservation Easement;
  - f. **Delay in Enforcement:** Notwithstanding the foregoing, any delay in enforcement shall not be construed as a waiver of the Grantee's rights to enforce the terms of this Conservation Easement.
  - g. **Additional Beneficiary:** It is hereby the intent of all parties to make the Village of Richfield an additional intended third party beneficiary for this Conservation Easement, who shall have the authority to enforce a breach of agreement should Grantee determine not to enforce its rights under this Conservation Easement. Notwithstanding the foregoing, the Grantee shall not be liable to the Village of Richfield in the event that it determines not to enforce rights under this Conservation Easement.
8. **Ownership Costs and Liabilities:** In accepting this Conservation Easement, the Grantee shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Open Space. The Grantee and its trustees, officers, employees, agents and members have no liability arising from injury or death to any person or from physical damage to any other property located on the Open Space or otherwise. The Grantor agrees to defend the Grantee against such



claims and to indemnify the Grantee against all costs and liabilities relating to such claims. Notwithstanding the foregoing, Article 8 does not apply to losses caused by the negligence, actions, or inaction of employees, agents and invitees of Grantee. Grantee will obtain liability insurance and name Grantor, its successor and assigns as an additional insured. Grantee will deliver to Grantor a Certificate of Insurance evidencing such coverage.

9. **Cessation of Existence:** If the Grantee shall cease to be authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law.
10. **Termination:** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain:
  - a. **Unexpected Change in Conditions:** If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. 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 Open Space, pursuant to such proceedings, subsequent to such termination or extinguishment, shall be established, unless otherwise provided by Ohio law at the time, as provided in (b) 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;
  - b. **Eminent Domain:** If all or part of the Open Space is taken in the 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 Open Space (or portion thereof) taken and all incidental or direct damages that result from such taking. Any reasonable 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 paid to the Grantor. In the event that there is a dispute between the parties as to the reasonableness of an expense, the court having jurisdiction over the eminent domain matter shall determine the reasonableness of any expense.
11. **Recordation:** The Grantor and its successors and assigns shall record this instrument in a timely fashion in the official record of Summit County, Ohio and shall re-record it at any time as may be required to preserve the Grantee's rights in this Conservation Easement.
12. **Assignment:** This Conservation Easement is transferable, but Grantee may assign its rights and obligations hereunder only to an organization or entity that is qualified to hold conservation easements under Ohio law, and any applicable federal tax law, at the time of transfer, provided that such transfer is approved by Grantor, such approval not unreasonably withheld or delayed. As a condition of such transfer, the Grantee and Grantor shall require that the conservation purposes that this grant is intended to advance continue to be carried out.
12. **Liberal Construction:** This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the Open Space. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.





13. **Notices:** For purposes of this Conservation Easement, notices may be provided to all parties, by personal delivery or by mailing a written notice to that party by first class mail, postage prepaid. Delivery will be complete upon depositing the properly addressed notice with the U. S. Postal Service.

The notice shall be served to the Grantor at:  
Deer Creek Homeowners' Association, Inc.  
17 W. Streetsboro Street  
Hudson, Ohio 44236

with a copy to its attorney at:  
Attn. Mr. Nicholas T. George, Esq.  
Buckingham, Doolittle & Burroughs, LLP  
50 S. Main Street  
Akron, Ohio 44308

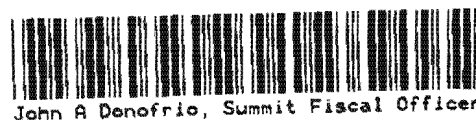
The notice shall be served to the Grantee at:  
Ohio Stream Preservation, Inc.  
24850 Aurora Road, Unit C  
Bedford Heights, Ohio 44146

with a copy to its attorney at:  
Reddy, Grau and Meek  
Attn. Mr. David Meek  
5306 Transportation Blvd.  
Garfield Heights, Ohio 44125

The notice shall be served to the Village of Richfield at:  
Village of Richfield  
Attn. Mayor  
24850 Aurora Road, Unit C  
Bedford Heights, Ohio 44146


with a copy to its attorney at:  
Walter & Halverfield LLP  
Attn. Mr. Charles T. Riehl  
1300 Terminal Tower  
50 Public Square  
Cleveland, Ohio 44113

16. **Severability:** If any portion of this Conservation Easement is determined to be invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect.
17. **Subsequent Transfers:** This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Open Space and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of the Open Space shall be bound to all provisions of this Conservation Easement to the same extent as the current parties. Grantor shall incorporate the terms of this Conservation Easement, by reference, in any deed or other legal



instrument by which they divest themselves of any interest in all or a portion of the Open Space, including, without limitation, a leasehold interest.

18. **Termination of Rights and Obligations:** A party's future rights and obligations under this Conservation Easement shall terminate upon transfer of that party's interest in the Open Space. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.
19. **Applicable Law:** This agreement shall be governed by, and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflicts of laws rules.
20. **Entire Agreement:** This Conservation Easement sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

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John A Donofrio, Summit Fiscal Officer

IN WITNESS WHEREOF, the Grantor and Grantee have set their hands on the day and year first above written.

**WITNESSES:**

Chris W. Brown

Elaine M Brunner

**GRANTOR**

**DEER CREEK HOMEOWNERS' ASSOCIATION, INC.**

Perry E. Bourn  
Authorized Signature

Perry E. Bourn  
Printed Name

7/9/01  
Date:

STATE OF OHIO )

) ss.

COUNTY OF SUMMIT )

BEFORE ME, a Notary Public, in and for said County, personally appeared Perry E. Bourn, officer of Deer Creek Homeowners' Association, Inc., who said he is duly authorized in these presents, and that he acknowledges his signature to be his free act and deed, individually, and as such officer.

IN TESTIMONY WHEREOF, I have set my hand and official seal at Hudson, Ohio,  
this 9th day of June, 2001.  
July

Elaine M Brunner

Notary Public ELAINE M. BRUNNER, Notary Public  
STATE OF OHIO  
My Commission Expires Sept. 22, 2002

**WITNESSES:**

[Signature]  
[Signature]

STATE OF OHIO )

) ss.

COUNTY OF CUYAHOGA )

**GRANTEE**

**OHIO STREAM PRESERVATION, INC.**

By: [Signature]  
Jeffrey S. Markley, Executive Director

7/3/2001  
Date:

By: [Signature]  
Jeffrey Filarski, Secretary

7/3/2001  
Date:

BEFORE ME, a Notary Public, in and for said County, personally appeared JEFFREY S. MARKLEY, Executive Director, Ohio Stream Preservation, Inc., and JEFFREY FILARSKI, Secretary, Ohio Stream Preservation, Inc. who said they are duly authorized in these presents, and that they acknowledge their signatures to be his free act and deed, individually, and as such Executive Director and Secretary.

IN TESTIMONY WHEREOF, I have set my hand and official seal at Bedford Heights, Ohio,  
this 3rd day of June, 2001.  
July

[Signature]  
Notary Public

Judith A. Cence

My Commission Expires August 4, 2004



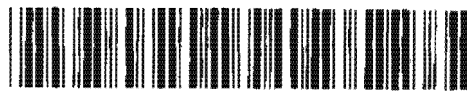
**Exhibit A & Exhibit B**

Known as being located in the Village of Richfield, being part of Richfield Township original Lots 11 and 12, in Tract 1, Township 4 North, Range 12 (West) in Summit County, Ohio, and as recorded in O.R. + Page        of the official records of Summit County.

RECEIPTION No 54688827

Description approved by Tax Maps  
Approval good for 30 days from

TWN 11-27-02 PMS R1/2



John A Donofrio, Summit Fiscal Officer

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**Exhibit C**

Blocks N through V represent open space which are to be maintained by Ohio Stream Preservation, Inc. and are as shown on the Deer Creek Reserve Phase Three Subdivision Plat and recorded in O.R. ~~\*~~, Page \_\_\_\_\_ of the official records of Summit County.

\* RECEPTION NO. 54688827

**DEER CREEK RESERVE-PHASE THREE - OPEN SPACE CALCULATIONS  
SUMMARY of UNDERSTANDING**

Prepared by Ohio Stream Preservation, Inc. March 2001

<u>BLOCK</u>	<u>ACREAGE</u>	<u>DESCRIPTION</u>	<u>REQUIREMENTS</u>
N	18.9820	Perimeter - West of Deer Path Trail	Retain in natural state except for utility, slope and stormwater management easement(s) as described on plat, and Hiking Trails as indicated on approved site plan.
O	23.9747	Perimeter - East of Deer Path Trail	Retain in natural state except for utility, slope and stormwater management easement(s) as described on plat, and Hiking Trails as indicated on approved site plan.
P	4.1399	M.A. Tallal property (w/restrictions)	No access permitted; no structures allowed except for drive to residence, fences and sanitary requirements; agriculture and landscaping permitted; restricted to occupancy by Tallal and successors.
Q	0.1619	M.A. Tallal property (w/o restrictions)	Maintenance of landscaping
R	0.0451	Cul-de-sac - Cascade Oaks Trail	Maintenance of landscaping
S	0.1254	Cul-de-sac - Forest Edge Trail N.W.	Maintenance of landscaping
T	0.1254	Cul-de-sac - Forest Edge Trail S.E.	Maintenance of landscaping
U	0.0451	Cul-de-sac - Seven Oaks Trail	Maintenance of landscaping
V	0.0451	Cul-de-sac - Regency Woods Trail	Maintenance of landscaping
<b>TOTAL</b>	<b>47.6446</b>		


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11/27/2002 10:14A  
EA 74.00  
John A Donofrio, Summit Fiscal Officer



Block N	PM 50-02551;	PPN RI-00007-A2-044.000
Block O	PM 50-02552;	PPN RI-00007-A2-045.000
Block P	PM 50-02553;	PPN RI-00007-A2-046.000
Block Q	PM 50-02554;	PPN RI-00007-A2-047.000
Block R	PM 50-02555;	PPN RI-00007-A2-048.000
Block S	PM 50-02556;	PPN RI-00007-A2-049.000
Block T	PM 50-02557;	PPN RI-00007-A2-050.000
Block U	PM 50-02558;	PPN RI-00007-A2-051.000
Block V	PM 50-02559;	PPN RI-00007-A2-052.000

11/27/02  
TRANSFER NOT NECESSARY  
John A. Donofrio, Fiscal Officer

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JOHN A. DONOFRIO By UB  
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EA 74.00  
John A Donofrio, Summit Fiscal Officer

## GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Conservation Easement") is made this \_\_\_\_ day of July, 2001 by and between Deer Creek Homeowners' Association, Inc., an Ohio corporation, its successors and assigns (the "Grantor") having an address at 17 W. Streetsboro St., Hudson, Ohio 44236 and Ohio Stream Preservation, Inc. an Ohio not-for-profit corporation, its successors and assigns (the "Grantee") having an address at 24850 Aurora Rd., Unit C, Bedford Heights, Ohio 44146.

**WHEREAS**, Grantor is the owner in fee simple of certain real property by instrument recorded in Reception No. \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records of Summit County, and is situated in the Village of Richfield, County of Summit, State of Ohio, consisting of approximately 104.20 acres and more fully described in Exhibit A (Legal Description) and depicted in Exhibit B (Recorded Plat ("Plat")), both attached hereto and made a part hereof which real property is commonly known as Deer Creek Reserve Phase Three ("Subdivision"); and

**WHEREAS**, the Grantor is creating the Deer Creek Homeowners' Association, Inc., Inc., ("Association") and is adopting for the Association its Declaration of Easements, Covenants, Conditions and Restrictions, for Phase III Deer Creek Reserve Subdivision, ("Declaration of Covenants"); and

**WHEREAS**, the Grantor agrees to cause the Declaration of Covenants to commit the Association to being bound by the terms of this Easement and to acknowledge that compensation will be provided to the Grantee for services performed related to this Easement, on behalf of the Grantor; and

**WHEREAS**, in order to protect the quality of the undisturbed natural area located on the real property, the Village of Richfield has required that Grantor, as a condition of being issued plan approval, grant a Conservation Easement in and to a portion of the Grantor's real property, which is more specifically identified in Exhibit C (Legal Description) and depicted on Exhibit B as Open Space Blocks N, O, P, Q, R, S, T, U and V ("Open Space"); and

**WHEREAS**, Section 5301.69 of the Ohio Revised Code authorizes Grantee to acquire and hold conservation easements for the purposes set forth herein; and

**WHEREAS**, the Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to Open Space and protect the conservation values of the Open Space in perpetuity and to prevent or remedy subsequent activities or uses that are inconsistent with the terms of the Conservation Easement.

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **Grant of Easement:** Grantor hereby grants and conveys to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Open Space of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Open Space, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Open Space by Grantor, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantor covenants on behalf of itself, its heirs, successors and assigns with the Grantee, its successors and assigns, to do and refrain from doing, severally and collectively, upon the Open Space, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from such acts, and each thereof, is and will be for the benefit of Grantee.
2. **Term of Easement:** The easement granted hereunder shall be perpetual and shall have no expiration date. Article 10 describes the process for termination of said easement.

3. **Conservation Values:** Portions of the Open Space possess substantial value in conserving and protecting the physical, biological and chemical integrity of the natural areas including, but not limited to existing water courses, wetlands and/or riparian corridors and is important in the protection of the existing or designated use of the waters of the state pursuant to §303 of the Clean Water Act, 33 U. S. C. §1313 and §6111.041 of the Ohio Water Pollution Control Act..

A "Baseline Documentation Report" which will be prepared, and incorporated by reference herein as Exhibit D ("Baseline Report"), may consist of any and all maps, reports, photographs, descriptions of prominent vegetation, land use history and distinct natural features characterizing the Open Space at the time of the grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The parties acknowledge Exhibit D is an accurate representation of the Open Space at the time of this grant.

4. **Prohibited Actions:** Any activity on or use of the Open Space inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited:

- a. **Division:** Any division or subdivision of the Open Space beyond that shown on Exhibit B;
- b. **Commercial Activities:** Commercial development, commercial recreational use, or industrial activity;
- c. **Construction:** The placement or construction of any man-made modifications including but not limited to buildings, structures, fences, mobile homes, advertising, billboards, camping accommodations, roads and parking lots excepting as follows:
  - 1) The installation, maintenance, repair and replacement of utilities, including storm and sanitary sewers, water mains, gas, electric and telephone and cable lines, storm detention/retention basins and all appurtenances ("Utility Work") thereto within designated utility easements as shown on Exhibit B; and,
  - 2) The installation, maintenance, repair and replacement of hiking trails and landscape mounding and islands as shown on the approved Site Plan; and,
  - 3) The installation, maintenance, repair and replacement of decorative landscaping, signage and appurtenances within Open Space Blocks Q, R, S, T, U and V, as shown on the approved Site Plan; and
  - 4) The following easements encumbering Open Space Block-P, 4.1399 acres ("Block-P") as depicted on Exhibit B, for the exclusive use and benefit of Lot No. 120 in Deer Creek Reserve Phase Three:
    - a. A Drive Access and Utilities Easement over, under, across and through said Block-P as shown on Exhibit B of Deer Creek Reserve Phase Three; and,
    - b. An easement over, under, across and through so much of said Block-P as is necessary for continued access to, and use, repair and

maintenance of, the domestic wastewater treatment system serving said Lot No. 120; and

- c. An exclusive easement for open space occupancy and agricultural use, personal to the owner of said Lot No. 120, encumbering only said Block-P, provided that said Block-P shall not be used for structures (except fences) and the owner of Lot No. 120 may restrict access to anyone, including the general public and/or other Deer Creek Reserve owners and those claiming by, through, or under them; and,
- d. The owner of Lot 120, may, at their expense, install a driveway to Deer Path Trail to serve the residence on Lot No. 120; and,
- e. The owner of Lot 120, shall retain the right to approve (1) the placement of trails within Block-N in said Deer Creek Reserve Phase Three, and (2) landscaping and mounding installed by Grantee along Deer Path Trail within Lot No. 120, Block-N, Block-P, and Block-Q.

Where areas of the Open Space are affected by the Utility Work as provided in this section, Grantor shall reasonably restore all such affected Open Space areas to their condition immediately prior to any Utility Work.

**Destruction or Introduction of Vegetation:** The removal or destruction of native growth in the Open Space, including without limitation the use of fertilizers, the spraying of pesticides or biocides, the introduction of nonnative animals and vegetation, grazing of domestic animals, or disturbance or change in the natural habitat (except in the enhancement of wildlife habitats) and the cutting of trees, ground cover or vegetation, excepting Blocks P, Q, R, S, T, U and V and as approved in writing by the Grantee, and limited to the following purposes:

- (1) The control or prevention of imminent hazard, disease, or fire, and for the purpose of restoring natural habitat areas to promote native vegetation; and,
  - (2) The removal of dead, diseased, damaged, destroyed, or fallen trees, shrubs, or other vegetation which can be cut and left laying in place except for blocking streams; and,
  - (3) The elimination and removal of grapevines, poison ivy, and other toxic and undesirable growth which can be cut and left laying; and,
  - (4) Any Utility Work, landscape mounding and islands and hiking trails that exist or will exist as shown on the approved Site Plan and as shown on Exhibit B.
- e. **Land Surface Alterations:** The removal, filling, or excavation, of soil, sand, gravel, rock minerals or other materials from the Open Space, or doing any act that would alter the topography of the Open Space, excepting Block-P, and except for Utility Work shown on Exhibit B and the installation and maintenance of hiking trails and landscape mounding and islands as shown on the approved Site Plan and with the prior written permission of the Grantee, such approval not unreasonably withheld or and that caused by the forces of nature;

- f. **Dumping**: The dumping of any substance of any kind, nature, and description including but not limited to grass clippings or other yard debris, soil, trash, ashes, garbage, waste, or other unsightly or offensive material or any placement of underground storage tanks, on or in the Open Space (see Article 5(e)(8)), excepting Block-P.
  - g. **Water Courses**: Subsequent to the completion of the Subdivision pursuant to the approved plans, alteration of the natural water courses, streams, wetlands, marshes, or other water bodies, and the use or activity detrimental to water purity on the Open Space, excepting Block-P, and except as may be necessary and agreed to, in writing, in advance of the alteration, by the Grantee to prevent or halt soil erosion, soil slippage, and damage from erosion;
  - h. **Motorized Vehicles**: The operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other motorized vehicle on the Open Space, excepting Block-P, and except as necessary for access by Village of Richfield emergency response vehicles and as necessary to fulfill the obligations herewith, with the prior written permission of the Grantee;
  - i. **Hunting**: The hunting or trapping on the Open Space, excepting Block-P, and except to the extent specifically approved in writing by the Grantee as necessary to keep the animal population within numbers consistent with the ecological balance to the area;
  - j. **Signage**: Advertising of any kind or nature to be located on or in the Open Space, excepting Block-P, and except for signs marking the boundaries as part of the Open Space in favor of the Grantee, and except as necessary to fulfill the obligations herewith and with the prior written permission of the Grantee, such approval not unreasonably withheld or delayed;
  - k. **Other Activities**: Each and every other activity or construction project which might endanger the natural, scenic, biological, ecological integrity of the Open Space shall be prohibited, excepting Block-P.
5. **Grantor's Rights and Responsibilities**: Excepting Block-P, Grantor reserves to itself, and its successors and assigns, all rights accruing from its ownership of the Open Space, including the right to engage in or permit or invite others to engage in all uses of the Open Space that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:
- a. **Right to Enter**: The Grantee has the right to enter the Open Space at reasonable times. The Grantor retains the right to sell, mortgage, bequeath, donate, or otherwise convey the Open Space. Any conveyance shall remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder shall be bound by the terms and conditions hereof;
  - b. **Right to Access**: Subject to the terms of this easement with respect to prohibited uses and permitted uses, the Grantor shall retain the right of unimpeded access to the Open Space. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon the Open Space or any portion thereof where no such right existed to the public immediately prior to the execution of this Conservation Easement.

- c. **Actions Against Grantee:** In the event of a breach of this Conservation Easement, the Grantor may bring action against the Grantee for failing to fulfil its obligations as contained herein. Prior to an action being brought, the Grantor shall provide written notice, as set forth herein to the Grantee, advising of the breach of duty and demanding that Grantee abide by the agreement;
- d. **Requirement of Notice.** If, after a twenty-eight (28) day period following the date of written notice as provided above ("Notice Period"), the Grantee continues in its breach of duties or if the Grantee does not take substantial corrective measures within the Notice period, or if Grantee should fail to continue diligently to provide said duties, the Grantor may bring an action in law or in equity to enforce the terms of the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder, including without limitation, attorney fees. The remedies available to Grantor include, without limitation, enjoining the violation through injunctive relief, seeking specific performance, and obtaining declaratory relief, restitution, reimbursement of expense including without limitation the expense of restoration of the Open Space, and/or an order compelling restoration of the Open Space;
- e. **Requirements for the Open Space:** The following minimum conditions shall apply to the Open Space, excepting Block-P:
- (1) The Grantor shall be responsible for boundary marking of the Open Space; and,
  - (2) The Grantor shall be responsible for ensuring that contractors and/or workers involved with construction and development of improvements in, adjacent to or abutting the Open Space Area, including but not limited to clearing and grubbing, excavation, construction, delivery and storage of any and all materials, paving and landscaping, have knowledge of the terms and conditions of these restrictions and that a copy of these restrictions is at the project site throughout the period the work is underway; and,
  - (3) Efforts shall be made to keep construction debris from entering the waterway, stream or buffer area, and shall be removed immediately should any such debris be present in said areas; and,
  - (4) That the mechanical equipment used to execute any and all work be operated in such a way as to minimize turbidity that could degrade water quality and adversely affect aquatic plant and animal life; and,
  - (5) Best Management Practices (BMP's) including silt controls, be installed downstream from all construction areas adjacent to or abutting the Open Space Area and shall remain in place during all excavation and restoration operations including landscaping. Said controls shall not be removed until stabilization of the project site is satisfactorily complete; and,
  - (6) That all installed landscaping and maintenance of said landscaping, including mowing and fertilization, be no closer to the waterway or stream than the designated buffer adjacent to said waterway or stream, or as approved in writing by the Grantee, such approval not unreasonably withheld or delayed, and limited to utilities or facilities, including stormwater basins and pedestrian/bicycle paths that exist or will exist as shown on Exhibit B; and,

- (7) The Grantor shall be responsible for liability and maintenance of all improvements in and to the Open Space, to the satisfaction of the Grantee; and,
- (8) All trash or nonconforming material that is dumped or placed on the Open Space shall be removed or cause to be removed by the Grantor immediately. In the event that the nonconforming material is placed by an adjacent landowner or party unknown to the Grantor, the Grantee and Grantor shall work collectively to locate and notify the offender and cause the material to be removed immediately by the offender. If the offender is not identified or is uncooperative, the Grantor shall take all reasonable action for removal of the nonconforming material.

6. **Rights of Grantee:** The Grantor confers the following rights upon the Grantee to perpetually maintain the conservation values of the Open Space:

- a. **Right to Enter:** Excepting Block-P, the Grantee has the right to enter the Open Space at reasonable times to monitor or to enforce compliance with this Conservation Easement; provided that such entry shall be upon prior written reasonable notice to the Grantor. The Grantor may use the Open Space without interference provided that the Grantor restricts the use to those permitted under this Conservation Easement. The Grantee has no right to permit others to enter the Open Space. The general public is not granted access to the Open Space under this Conservation Easement;
- b. **Right to Open Space:** The Grantee has the right to prevent any activity on or use of the Open Space that is inconsistent with the terms or purposes of this Conservation Easement;
- c. **Right to Require Restoration:** The Grantee shall have the right to require the restoration of the areas or features of the Open Space which are damaged by any activity inconsistent with this Conservation Easement;
- d. **Right to Placement of Signs:** The Grantee shall have the right to place a reasonable number of small signs on the Open Space, upon written approval by Grantor, such approval not unreasonably withheld or delayed, which identify the land as being protected by this Conservation Easement;
- e. **Right to adopt Rules of Use.** The Grantee shall have the right to promulgate rules consistent with the prohibited uses set forth herein, which rules shall be followed by all users of the Open Space.

7. **Grantee's Remedies:** In the event of a breach of this Conservation Easement, the Grantee shall have the following remedies and shall be subject to the following limitations:

- a. **Actions Against Grantor.** Subject to Section 18, an action may be brought against the Grantor for violating the prohibitions on use which can be made of the Open Space or who is threatening to violate said prohibited use. If Grantee is unable to determine the party who has violated the prohibitions on use, the Grantee may bring action against the Grantor. Prior to an action being brought, the Grantee shall provide written notice, as set forth herein to the Grantor, advising of the violation and demanding that Grantor abate and cure the violation;

- b. **Requirement of Notice.** If, for a twenty-eight (28) day period after the date of written notice as provided above ("Notice Period"), the Grantor continues in its prohibited use or in its threatened prohibited use of the Open Space, or if the Grantor does not abate the violation during the Notice Period, or if the Grantor does not take substantial corrective measures within the Notice period, or if Grantor should fail to continue diligently to cure such violation until finally cured, the Grantee may bring an action in law or in equity to enforce the terms of the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder, including without limitation, attorney fees. The remedies available to Grantee include, without limitation, enjoining the violation through injunctive relief, seeking specific performance, and obtaining declaratory relief, restitution, reimbursement of expense including without limitation the expense of restoration of the Open Space, and/or an order compelling restoration of the Open Space;
  - c. **Emergency Action:** If the Grantee determines that the use permitted by this Conservation Easement is, or is expected to be violated so to cause significant or irreparable damage to the physical, biological and/or chemical integrity of the water course, the Grantee will provide written notice to the Grantor. If, through reasonable efforts, the Grantor cannot be notified, or if the Grantee determines, in its sole discretion, that the circumstances justify prompt action to mitigate or prevent injury to Open Space, then the Grantee may pursue its lawful remedies without awaiting the Grantor's opportunity to cure;
  - d. **Actual or Threatened Non-Compliance:** Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Grantor acknowledges that Grantee's remedies at law for any violation of the terms hereof are inadequate and Grantee is entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or inadequacy of otherwise available legal remedies;
  - e. **Cumulative Remedies:** The preceding remedies of the Grantee are cumulative. Any or all of the remedies may be invoked by the Grantee if there is an actual or threatened violation of this Conservation Easement;
  - f. **Delay in Enforcement:** Notwithstanding the foregoing, any delay in enforcement shall not be construed as a waiver of the Grantee's rights to enforce the terms of this Conservation Easement.
  - g. **Additional Beneficiary:** It is hereby the intent of all parties to make the Village of Richfield an additional intended third party beneficiary for this Conservation Easement, who shall have the authority to enforce a breach of agreement should Grantee determine not to enforce its rights under this Conservation Easement. Notwithstanding the foregoing, the Grantee shall not be liable to the Village of Richfield in the event that it determines not to enforce rights under this Conservation Easement.
8. **Ownership Costs and Liabilities:** In accepting this Conservation Easement, the Grantee shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Open Space. The Grantee and its trustees, officers, employees, agents and members have no liability arising from injury or death to any person or from physical damage to any other property located on the Open Space or otherwise. The Grantor agrees to defend the Grantee against such



claims and to indemnify the Grantee against all costs and liabilities relating to such claims. Notwithstanding the foregoing, Article 8 does not apply to losses caused by the negligence, actions, or inaction of employees, agents and invitees of Grantee. Grantee will obtain liability insurance and name Grantor, its successor and assigns as an additional insured. Grantee will deliver to Grantor a Certificate of Insurance evidencing such coverage.

9. **Cessation of Existence:** If the Grantee shall cease to be authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law.
10. **Termination:** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain:
  - a. **Unexpected Change in Conditions:** If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. 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 Open Space, pursuant to such proceedings, subsequent to such termination or extinguishment, shall be established, unless otherwise provided by Ohio law at the time, as provided in (b) 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;
  - b. **Eminent Domain:** If all or part of the Open Space is taken in the 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 Open Space (or portion thereof) taken and all incidental or direct damages that result from such taking. Any reasonable 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 paid to the Grantor. In the event that there is a dispute between the parties as to the reasonableness of an expense, the court having jurisdiction over the eminent domain matter shall determine the reasonableness of any expense.
11. **Recordation:** The Grantor and its successors and assigns shall record this instrument in a timely fashion in the official record of Summit County, Ohio and shall re-record it at any time as may be required to preserve the Grantee's rights in this Conservation Easement.
12. **Assignment:** This Conservation Easement is transferable, but Grantee may assign its rights and obligations hereunder only to an organization or entity that is qualified to hold conservation easements under Ohio law, and any applicable federal tax law, at the time of transfer, provided that such transfer is approved by Grantor, such approval not unreasonably withheld or delayed. As a condition of such transfer, the Grantee and Grantor shall require that the conservation purposes that this grant is intended to advance continue to be carried out.
12. **Liberal Construction:** This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the Open Space. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

13. **Notices:** For purposes of this Conservation Easement, notices may be provided to all parties, by personal delivery or by mailing a written notice to that party by first class mail, postage prepaid. Delivery will be complete upon depositing the properly addressed notice with the U. S. Postal Service.

The notice shall be served to the Grantor at:  
Deer Creek Homeowners' Association, Inc.  
17 W. Streetsboro Street  
Hudson, Ohio 44236

with a copy to its attorney at:  
Attn. Mr. Nicholas T. George, Esq.  
Buckingham, Doolittle & Burroughs, LLP  
50 S. Main Street  
Akron, Ohio 44308

The notice shall be served to the Grantee at:  
Ohio Stream Preservation, Inc.  
24850 Aurora Road, Unit C  
Bedford Heights, Ohio 44146

with a copy to its attorney at:  
Reddy, Grau and Meek  
Attn. Mr. David Meek  
5306 Transportation Blvd.  
Garfield Heights, Ohio 44125

The notice shall be served to the Village of Richfield at:  
Village of Richfield  
Attn. Mayor  
24850 Aurora Road, Unit C  
Bedford Heights, Ohio 44146

with a copy to its attorney at:  
Walter & Halverfield LLP  
Attn. Mr. Charles T. Riehl  
1300 Terminal Tower  
50 Public Square  
Cleveland, Ohio 44113

16. **Severability:** If any portion of this Conservation Easement is determined to be invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect.
17. **Subsequent Transfers:** This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Open Space and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of the Open Space shall be bound to all provisions of this Conservation Easement to the same extent as the current parties. Grantor shall incorporate the terms of this Conservation Easement, by reference, in any deed or other legal

instrument by which they divest themselves of any interest in all or a portion of the Open Space, including, without limitation, a leasehold interest.

18. **Termination of Rights and Obligations:** A party's future rights and obligations under this Conservation Easement shall terminate upon transfer of that party's interest in the Open Space. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.
19. **Applicable Law:** This agreement shall be governed by, and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflicts of laws rules.
20. **Entire Agreement:** This Conservation Easement sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

IN WITNESS WHEREOF, the Grantor and Grantee have set their hands on the day and year first above written.

**WITNESSES:**

Chris W. Brown  
Elaine M Brunner

**GRANTOR**

**DEER CREEK HOMEOWNERS' ASSOCIATION, INC.**

Perry E. Bourn  
Authorized Signature  
Perry E. Bourn  
Printed Name  
7/9/01  
Date:

STATE OF OHIO )  
COUNTY OF SUMMIT ) ss.

**BEFORE ME**, a Notary Public, in and for said County, personally appeared Perry E. Bourn, officer of Deer Creek Homeowners' Association, Inc., who said he is duly authorized in these presents, and that he acknowledges his signature to be his free act and deed, individually, and as such officer.

**IN TESTIMONY WHEREOF**, I have set my hand and official seal at Hudson, Ohio,  
this 9th day of June, 2001.  
July

Elaine M Brunner  
Notary Public  
ELAINE M. BRUNNER, Notary Public  
STATE OF OHIO  
My Commission Expires Sept. 22, 2002

**WITNESSES:**

**GRANTEE**

**OHIO STREAM PRESERVATION, INC.**

By: Jeffrey S. Markley 7/3/2001  
Jeffrey S. Markley, Executive Director Date:  
By: Jeffrey Filarski 7/3/2001  
Jeffrey Filarski, Secretary Date:

STATE OF OHIO )  
COUNTY OF CUYAHOGA ) ss.

**BEFORE ME**, a Notary Public, in and for said County, personally appeared **JEFFREY S. MARKLEY**, Executive Director, Ohio Stream Preservation, Inc., and **JEFFREY FILARSKI**, Secretary, Ohio Stream Preservation, Inc. who said they are duly authorized in these presents, and that they acknowledge their signatures to be his free act and deed, individually, and as such Executive Director and Secretary.

**IN TESTIMONY WHEREOF**, I have set my hand and official seal at Bedford Heights, Ohio,  
this 3rd day of June, 2001.  
July

Judith A. Cence  
Notary Public

Judith A. Cence  
My Commission Expires August 4, 2004