

## GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Conservation Easement") is made this \_\_\_\_ day of May, 2002, by and between Dennis Balante, Sr., his successors and assigns, having an address at 1756 Mentor Avenue, Painesville, Ohio 44077; Dennis Jr. and Tracey Balante, their successors and assigns, having an address at 1756 Mentor Avenue, Painesville, Ohio 44077; and Cesare and Kathleen Noce, their successors and assigns, having an address at 12274 Taylor Wells Road, Chardon, Ohio 44024, (the "Grantor"), and Ohio Stream Preservation, Inc., an Ohio not-for-profit corporation, its successors and assigns (the "Grantee"), having an address at P.O. Box 23835, Chagrin Falls, Ohio 44023-0835.

**WHEREAS**, the Grantor is the owner in fee of certain real property situated in Geauga County, Ohio which is more particularly identified and described in Exhibit A attached hereto; and

**WHEREAS**, the Grantor has proposed to provide a conservation easement on said real property conducive to stream and wetland preservation at the Claridon Township Project in Geauga County, known as the Taylor Wells Preserve ("Preserve"), for the purposes of providing compensatory mitigation credits and preserving critical habitat; and

**WHEREAS**, in order to protect the quality of the surface waters located on the real property, and as a condition for using all or portions of the Preserve as a mitigation package for given development projects, the Ohio EPA has required that Grantor grant a conservation easement in and to a portion of the Grantor's real property, which is more specifically identified on Exhibit B attached hereto (the "Preserve"), consisting of eight (8) acres of wetland and 3,400 linear feet of stream channel, comprising a total of twelve (12) acres of Preserve; and

**WHEREAS**, the Ohio EPA will determine the appropriateness, on a case-by-case basis, of using all or portions of the Preserve as a mitigation package for given development projects. Grantee and Grantor will maintain an accounting of stream and wetland credits, until such time that all eight (8) acres of wetland and 3,400 linear feet of stream channel have been used as compensatory mitigation.

**WHEREAS**, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect the conservation values of the Preserve for the benefit of this generation and generations to come.

**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 Preserve of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Preserve, which estate, interest, easement and servitude will result from the covenants

and restrictions set forth herein and hereby imposed upon the use of the Preserve by Grantor, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantor covenants on behalf of himself, his heirs, successors and assigns with the Grantee its successors and assigns to do and refrain from doing, severally and collectively, upon the Preserve, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from said 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.

3. **Conservation Values:** The Preserve possesses substantial value in conserving and protecting the physical, biological and chemical integrity of the Cuyahoga River 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. The specific conservation values of the Preserve have been documented in a natural resource inventory signed by the Grantor and the Grantee. This "Baseline Documentation Report," attached hereto as Exhibit C and incorporated by reference herein, may consist of any and all maps, reports, photographs, descriptions of prominent vegetation, land use history and distinct natural features characterizing the Preserve 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 that this Baseline Documentation Report is an accurate representation of the Preserve at the time of this grant.

4. **Prohibited Actions:** Any activity on or use of the Preserve 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 Preserve is prohibited;
- b) **Commercial Activities:** Commercial development or industrial activity is prohibited;
- c) **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots is prohibited;
- d) **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides is prohibited;
- e) **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials from the Preserve, or doing any act that would alter the topography of the Preserve shall be prohibited.
- f) **Dumping:** Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Preserve;
- g) **Water Courses:** Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered;

- h) **Other Activities:** Each and every other activity or construction project which might endanger the natural, scenic, biological, or ecological integrity of the Preserve shall be prohibited.

5. **Rights of Grantee:** The Grantor confers the following rights upon the Grantee to perpetually maintain the conservation values of the Preserve:

- a) **Right to Enter:** The Grantee has the right to enter the Preserve at reasonable times to monitor or to enforce compliance with this Conservation Easement; provided that such entry shall be upon prior reasonable notice to Grantor. The Grantee may not, however, unreasonably interfere with the Grantor's use and quiet enjoyment of the Preserve. The Grantee has no right to permit others to enter the Preserve. The general public is not granted access to the Preserve under this Conservation Easement.
- b) **Right to Preserve:** The Grantee has the right to prevent any activity on or use of the Preserve 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 Preserve which are damaged by any activity inconsistent with this Conservation Easement.
- d) **Signs:** The Grantee shall have the right to place signs on the Preserve which identify the land as being protected by this Conservation Easement. The number and content of any such signs are subject to the Grantor's prior approval.

6. **Permitted Uses:** Grantor reserves to himself, and to his personal representatives, heirs, successors and assigns, all rights accruing from his ownership of the Preserve, including the right to engage in or permit or invite others to engage in all uses of the Preserve 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 Convey:** The Grantor retains the right to sell, mortgage, bequeath, donate or otherwise convey the Preserve. 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 Maintain:** The Grantor retains the right to maintain, renovate and replace any existing structure(s), if any, on the Preserve as noted in the Baseline Documentation Report, in substantially the same location and size. Any expansion or replacement may not substantially alter the character or function of the structure, and requires the Grantee's prior written approval.
- c) **Right to Access:** The Grantor shall retain the right of unimpeded access to the Preserve.

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) **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of the Grantee's right to enforce the terms of this Conservation Easement.
- b) **Acts Beyond Grantor's Control:** The Grantee may not bring an action against the Grantor for modifications occurring to the Preserve which result from causes beyond the Grantor's control. Examples include, without limitation: unintentional fires, storms, natural earth movement, trespassers or the Grantor's well-intentioned actions in response to an emergency which result in changes to the Preserve. The Grantor has no responsibility under this Conservation Easement for such unintended modifications. The Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Conservation Easement.
- c) **Notice and Demand:** If the Grantee determines that the Grantor is in violation of this Conservation Easement, or that a violation is threatened, the Grantee shall provide written notice to the Grantor unless the violation constitutes immediate and irreparable harm. The written notice shall identify the violation and request corrective action to cure the violation or restore the Preserve.
- d) **Failure to Act:** If, for a twenty-eight (28) day period after the date of written notice provided pursuant to subparagraph c., above, the Grantor continues violating this Conservation Easement, or if the Grantor does not abate the violation and begin to implement corrective measures within the foregoing twenty-eight (28) day period requested by the Grantee, or 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. The Grantee is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Preserve. If a court determines that the Grantor has failed to comply with this Conservation Easement, then the Grantor also agrees to reimburse all reasonable costs and attorneys fees incurred by the Grantee in compelling such compliance.
- e) **Unreasonable Litigation:** If the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and attorneys fees incurred in defending the action.
- f) **Grantor's Absence:** If the Grantee determines that this Conservation Easement is, or is expected to be, violated, the Grantee will make a good faith effort to notify the Grantor. If, through reasonable efforts, the Grantor cannot be notified, and if the Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Easement, then the Grantee may pursue its lawful remedies without prior notice and without awaiting the Grantor's opportunity to cure.
- g) **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.

- h) **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.

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 Preserve. 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 Preserve 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 during the tenure of the Grantor's ownership of the Preserve. The Grantor is responsible for posting the Preserve's boundaries and for discouraging any form of trespass that may occur.

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, upon the mutual consent of Grantor and Ohio EPA.

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 Grantee will then be entitled to compensation in accordance with applicable laws and in proportion to the Grantee's interest in the Preserve at the effective date of this Conservation Easement.
- b) **Eminent Domain**: If the Preserve is taken, in whole or in part, by power of eminent domain, then the Grantee will be entitled to compensation in accordance with applicable laws and in proportion to the Grantee's interest in the Preserve at the effective date of this Conservation Easement.

11. **Recordation**: Grantee shall record this instrument in a timely fashion in the official records of Geauga County, Ohio and may re-record it at any time as may be required to preserve its rights in this 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. As a condition of such transfer, the Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

13. **Liberal Construction:** This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the Preserve. 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.

14. **Notices:** For purposes of this Conservation Easement, notices may be provided to either party, by personal delivery or by mailing a written notice to that party at the address shown at the outset of this agreement, or at the last known address of a party, by first class mail, postage prepaid. Delivery will be complete upon depositing the properly addressed notice with the U.S. Postal Service.

15. **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.

16. **Subsequent Transfers:** This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Preserve and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of the Preserve 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 in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Preserve, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer.

17. **Termination of Rights and Obligations:** A party's future rights and obligations under this Conservation Easement shall terminate upon the transfer of that party's interest in the Preserve. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

18. **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.

19. **Entire Agreement:** This Conservation Easement, together with the Baseline Documentation Report, sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

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

WITNESSES:

Clifford A Reed  
Signature

Print Name: CLIFFORD A. REED

Clifford A Reed  
Signature

Print Name: CLIFFORD A. REED

Clifford A Reed  
Signature

Print Name: CLIFFORD A. REED

Michael A Semik  
Signature

Print Name: MICHAEL A SEMIK

Michael A Semik  
Signature

Print Name: MICHAEL A SEMIK

GRANTOR:

By: Dennis Balante Sr  
Dennis Balante, Sr.

Date: 5-28-02

By: Dennis Balante Jr  
Dennis Balante, Jr.

Date: 5-28-02

By: Tracey Balante  
Tracey Balante

Date: 5-28-02

By: Cesare Noce  
Cesare Noce

Date: 5-30-02

By: Kathleen Noce  
Kathleen Noce

Date: 5-28-02

WITNESSES:

Timothy P. Miller  
Signature

Print Name: Timothy P. Miller

Timothy P. Miller  
Signature

Print Name: Timothy P. Miller

GRANTEE:

Ohio Stream Preservation, Inc.

By: Jeffrey S. Markley  
Jeffrey S. Markley, Executive Director

Date: 6/18/02

By: Jeffrey Flaska  
Jeffrey Flaska, Secretary

Date: 6/18/02

STATE OF OHIO )  
COUNTY OF Lake ) ss.

BEFORE ME, a Notary Public, in and for said County, personally appeared

Dennis Balante Sr, Dennis Balante Jr & Tracey Balante  
who said they are duly authorized in these presents, and that they acknowledge their signature to be their free act and deed, individually and collectively.

IN TESTIMONY WHEREOF, I have set my hand and official seal at Painesville, Ohio,  
this 28 day of March, 2002.

Clifford A Reed  
Notary Public

CLIFFORD A. REED  
Notary Public, State of Ohio  
My Commission Expires March 12, 2007  
(Recorded in Lake County)

STATE OF OHIO )  
COUNTY OF \_\_\_\_\_ ) ss.

BEFORE ME, a Notary Public, in and for said County, personally appeared

KATHLEEN & CESARE NOCE  
who said they are duly authorized in these presents, and that they acknowledge their signature to be their free act and deed, individually and collectively.

IN TESTIMONY WHEREOF, I have set my hand and official seal at CASTLAKE, Ohio,  
this 30 day of March, 2002.

Gyroland H. Smith  
Notary Public

Com Exp 6 DEC 2003  
RECORDED LAKE COUNTY

STATE OF OHIO )  
COUNTY OF CUYAHOGA )

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, and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have set my hand and official seal at Bedford Heights, Ohio,  
this 18<sup>th</sup> day of March, 2002.  
JUNE

Judith A. Cence  
Notary Public

Judith A. Cence  
My Commission Expires August 4, 2004



TOTAL FINAL  
CONSERVATION EASEMENT  
AREA = 12 ACRES

AVERAGE BUFFER WIDTH  
ON THE CUYAHOGA RIVER  
= 200 FEET

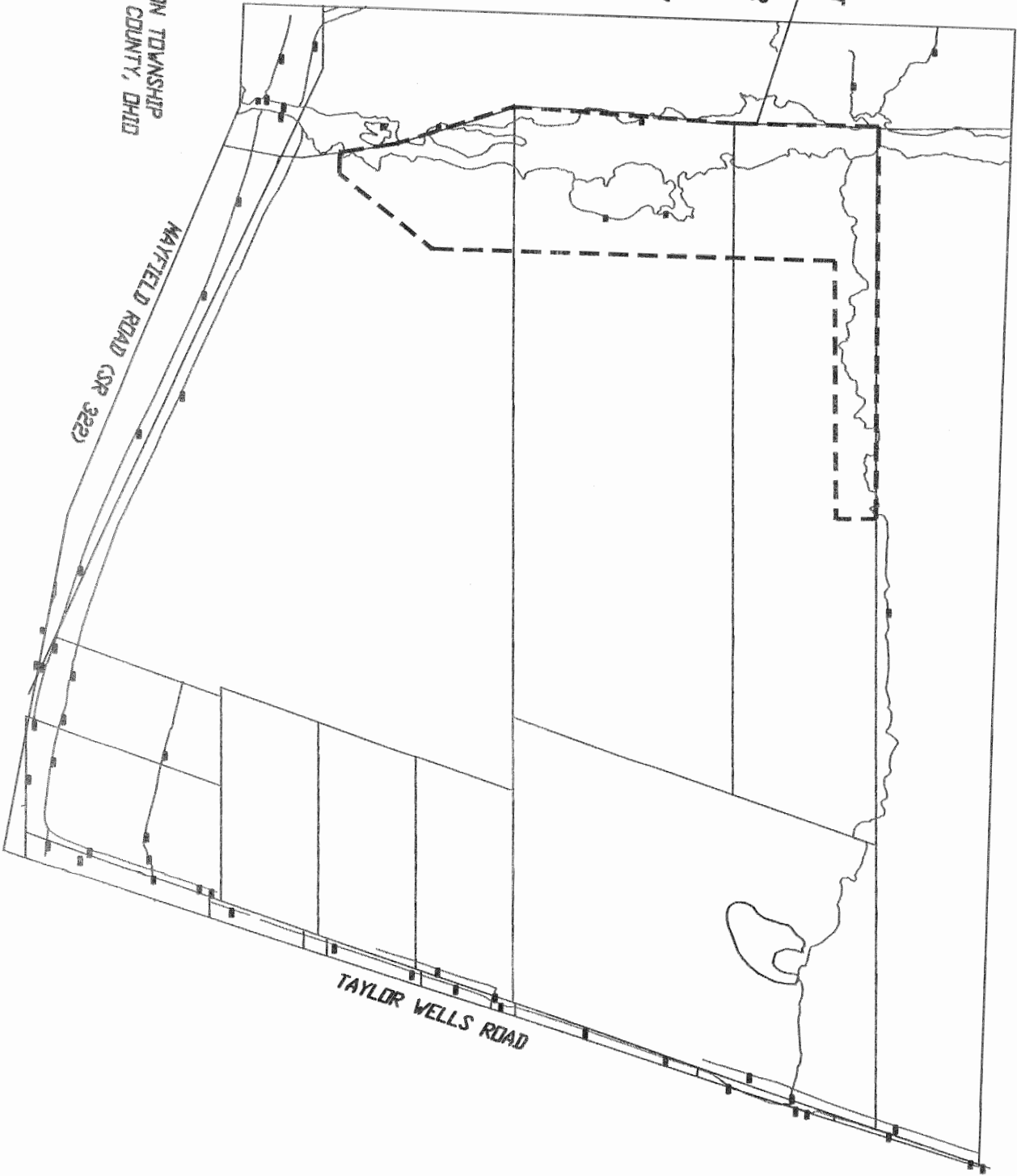
STREAM LENGTH IN  
EASEMENT AREA,  
CUYAHOGA RIVER = 2200'  
E-W TRIBUTARY = 1200'

SCALE 1" = 250'

CLARIDON TOWNSHIP  
GEauga COUNTY, OHIO

MAYFIELD ROAD (SR 322)

TAYLOR WELLS ROAD



TOTAL FINAL  
CONSERVATION EASEMENT  
AREA = 12 ACRES

AVERAGE BUFFER WIDTH  
IN THE CUYAHOGA RIVER  
= 200 FEET

STREAM LENGTH IN  
EASEMENT AREA:  
CUYAHOGA RIVER = 2200'  
E-W TRIBUTARY = 1200'

SCALE 1" = 250'

STREAM CREDITS TO BE  
PURCHASED BY DUKE  
= 1088 FEET  
CONSERVATION EASEMENT  
AREA = 6 ACRES

CLARIDON TOWNSHIP  
GEAUGA COUNTY, OHIO

MAYFIELD ROAD (SR 322)

TAYLOR WELLS ROAD

