

## CONSERVATION EASEMENT

This Conservation Easement (the “Easement”), dated [date], 20\_\_, is made and entered into by and between [Grantor], (“Grantor”), [Grantee], (“Grantee”, being the Applicant for Clean Ohio Conservation Funds), acting pursuant to Ohio Revised Code (“R.C.”) Sections 5301.67 through 5301.70. The parties agree that the Ohio Public Works Commission, (“OPWC”), has the right to enforce this Conservation Easement as if it were a party to this Easement, as its interest may appear herein. This Easement is entered into for the purpose of preserving the property described herein as open space in perpetuity.

**If conservation easement is purchased:** This is an agreement for the sale and purchase of a conservation easement and the monitoring and enforcement of that easement. Specifically, the Grantor agrees to convey and the Grantee agrees to purchase the Easement for [spell out dollar amount] (\$\_\_\_\_\_) and be the holder of the Easement. The Grantee, its successors and assigns, agree to monitor the property described herein in perpetuity and assist with the enforcement of the terms of this Easement.

**OR**

**If conservation easement is contributed:** This is an agreement for the contribution of a conservation easement and the monitoring and enforcement of that easement. Specifically, the Grantor agrees to donate and convey, and the Grantee agrees to assume, receive, and be the holder of, the Easement. The Grantee, its successors and assigns, agree to monitor the property described herein in perpetuity and assist with the enforcement of the terms of this Easement.

### Recitals

- A. Grantor is the owner in fee simple of real property located in [county name] County, Ohio, as more specifically described in Exhibit A which is attached hereto and made a part hereof (“Protected Property”), pursuant to instruments recorded at [county name] County Official Records Volume \_\_, Page \_\_\_\_.
- B. Pursuant to the Ohio Public Works Commission Project Grant Agreement dated [date], 20\_\_ (the “Agreement”), Grantee received a grant from the State of Ohio, acting by and through the Director of the OPWC, pursuant to R.C. 164.20 et seq. (the “Grant”). As a condition of receiving the Grant, Grantee must use the Grant funds to purchase an easement on and restrict the use of the Protected Property to [choose one: open space OR protect and enhance riparian corridors or watersheds], as further set forth herein.
- C. In order to fulfill Grantee’s obligations under the Agreement, Grantee must record a conservation easement in order to [choose one: maintain the Protected Property as open space OR protect and enhance riparian corridors or watersheds] in perpetuity.
- D. Grantee is an entity authorized to receive conservation easements under R.C. 5301.69.

NOW THEREFORE, the parties hereto, for themselves and their successors and assigns, hereby agree to the following:

1. Granting Clause. Grantor, for the consideration set forth above and the mutual promises, conditions and restrictions set forth herein, conveys to Grantee and its successors and assigns a perpetual conservation easement, as defined by R.C. 5301.67(A), on the Protected Property. The Grantor warrants that Grantor has full authority to grant this Easement, has good and indefeasible fee simple

title to the Protected Property described in Exhibit A, that the legal description in Exhibit A is complete and accurate to the best of Grantor's knowledge, and that the Protected Property is free and clear of all liens and encumbrances that are inconsistent with the purpose of this Easement set forth herein. Grantor agrees to defend title to the Protected Property against all lawful claims of all persons.

2. Purpose. It is the purpose of this Easement ("Purpose") to assure that the Protected Property will be maintained [choose one: as open space, as defined by R.C. 164.22(A) OR for the protection and enhancement of riparian corridors or watersheds, as defined by R.C. 164.22(B)] by preserving and protecting the land through a perpetual restriction on the use of the Protected Property. [Include statement of Conservation Values and the Conservation Purpose.]
3. Responsibilities of the Grantor. The Grantor shall be responsible and perform all of the following obligations:
  - a. Grantor shall be responsible for payment of all taxes and assessments levied against the Protected Property.
  - b. Grantor shall be responsible for the upkeep and maintenance of the Protected Property consistent with the terms, restrictions and conditions of this Easement.
4. Responsibilities of the Grantee.
  - a. Grantee shall take all reasonable and necessary steps for the diligent enforcement of the terms of this Easement.
  - b. Grantee shall conduct annual monitoring of the Protected Property to ensure compliance with the terms of this Easement. Grantee shall provide notice to the Grantor of its intent to enter the Protected Property for purposes of the required annual monitoring.
  - c. Grantee shall conduct investigations of any violation or potential violation of this Easement and take appropriate enforcement action. Grantee shall notify the OPWC of any violation or alleged violation. Grantor and Grantee hereby grant and authorize OPWC the right to conduct inspections of the Protected Property and to enforce the terms of this Easement as set forth in Paragraph 8 below.
5. Restrictions. The parties hereby agree, for themselves and their successors and assigns as future owners of the Protected Property that the Protected Property and interested parties therein shall be subject to the following restrictions:
  - a. The Protected Property shall be maintained [choose one: as open space OR for the protection and enhancement of riparian corridors or watersheds including the protection and enhancement of streams, rivers, lakes, and other waters of the state].
  - b. [insert for open space option: Use and development of the Protected Property must emphasize the following:
    - i. The support of comprehensive open space planning and incorporation of aesthetically pleasing and ecologically informed design;
    - ii. The protection of habitat for rare, threatened, and endangered species or the preservation of high quality, viable habitat for plant and animal species;

- iii. The preservation of existing high quality wetlands or other scarce natural resources within the geographical jurisdiction of a council;
- iv. The enhancement of educational opportunities and provision of physical links to schools and after-school centers;
- v. The preservation or restoration of water quality, natural stream channels, functioning floodplains, wetlands, streamside forests, and other natural features that contribute to the quality of life in Ohio and to the state's natural heritage;
- vi. The reduction or elimination of nonnative, invasive species of plants or animals; and
- vii. The proper management of areas where safe fishing, hunting, and trapping may take place in a manner that will preserve a balanced natural ecosystem.]

OR

- b. [insert for protect water option: Use and enhancement of the Protected Property shall emphasize the following:
    - i. The increase of habitat protection;
    - ii. Inclusion as part of a stream corridor-wide or watershed-wide plan;
    - iii. The provision of multiple recreational, economic, and aesthetic preservation benefits;
    - iv. The preservation or restoration of floodplain and streamside forest functions;
    - v. The preservation of headwater streams;
    - vi. The restoration and preservation of aquatic biological communities.]
  - c. As specifically set forth in the Agreement, Grantee shall use the Grant funds to [insert Agreement language here.]”
6. Prohibited Uses. Activities on or use of the Protected Property inconsistent with the Purpose of this Easement are prohibited. For purposes of illustration and without limiting the foregoing prohibitions and restrictions, the following activities and uses are expressly prohibited on the Protected Property, except as otherwise set forth herein:
- a. Construction/Development. There shall be no construction of new buildings or structures or placing of any dwelling, residence, building, athletic or recreational structure, landing strip, helicopter pad, fence or sign, asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit line, or any other temporary or permanent structure, improvement or facility on the Protected Property without the express, prior written consent of OPWC, which consent may be withheld in OPWC's sole and absolute discretion.
  - b. Commercial and Industrial Activity. There shall be no commercial or industrial activity undertaken or allowed on, across or beneath the surface of the Protected Property. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.

- c. Mining and Mining Operations. Mining or extraction of soil, sand, gravel, oil, natural gas, minerals or other material, from or beneath the surface of the Protected Property, is prohibited. Any activities associated with mining operations, including drilling, excavating, and transportation of any mined material by vehicle, pipeline, or other means, are also prohibited on, across or beneath the surface of the Protected Property.
  - d. Hydromodification. Hydromodification projects such as dams, dredging, channelization, sedimentation, and bank clearing are prohibited on the Protected Property.
  - e. Water. There shall be no disturbance of streams or other bodies of water on the Protected Property. Grantor and Grantee shall not transfer, encumber, lease, sell, or otherwise separate water rights from title to the Protected Property itself.
  - f. Waste and Dumping. Dumping, accumulation, or storage of contaminated soil, non-compostable garbage, abandoned vehicles or parts, appliances, machinery, hazardous substances, or toxic or hazardous waste are prohibited.
  - g. Roads. There shall be no building of new roads, parking lots, or other paved surfaces, or the widening of such existing surfaces on the Protected Property without the express, prior written consent of OPWC.
  - h. Utility Services and Septic Systems. Activities described in the existing utility easements or rights-of-way on the Protected Property recorded in the Official Land Records in [county name] County as of the date this Easement is recorded are permitted. Otherwise, the granting of easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunication towers, wind farms, or other similar types of utilities is prohibited.
  - i. Motorized Vehicle Use. There shall be no use of motor vehicles on the Protected Property or grant of permission for such use except as necessary for [excepted reason (i.e. official grantee business)], law enforcement and public safety purposes, or as deemed necessary by the [entity name].
  - j. Surface Alterations. There shall be no removal, filling, or other disturbances of soil surface, and no changes in topography, surface or subsurface water systems, wetlands, or natural habitat.
  - k. [Insert additional restrictions as agreed.]
7. Grantor's Reserved Rights. Grantor reserves for itself, its successors and assigns, all rights and privileges as owner of the Protected Property to use the Protected Property for all purposes that are not expressly prohibited by this Easement and are not inconsistent with the Purpose of this Easement. The following rights are expressly reserved by the Grantor [insert as needed]:
- a. Conveyance. Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is made subject to this Easement and written notice is provided to Grantee and the OPWC in accordance with Paragraph 14 below.
  - b. Signage. Grantor may place interpretive signs, such as signs identifying that the Protected Property is protected by this Easement, or signs identifying prairie habitat improvements, as well as “no hunting,” “no trespassing” or similar signs on the Protected Property.

8. Rights and Remedies of Grantee and the OPWC. In order to comply with and enforce the terms of this Easement, the Grantee and the OPWC shall have the following rights and remedies:
- a. Right of Entry. Grantee shall have the right to enter the Protected Property in a reasonable manner and at a reasonable time, with advance notice to the Grantor, for the purposes of: (i) inspecting the Protected Property to determine if Grantor is complying with the provisions of this Easement; and (ii) obtaining evidence for the purpose of seeking judicial enforcement of this Easement. OPWC shall have the right to enter the Protected Property after notifying Grantor as needed to exercise its rights pursuant to this Paragraph 8 of this Easement. All notices to the Grantor under this Paragraph may be made either in writing or verbally, at the discretion of the party providing the notice.
  - b. Right of Enforcement. If Grantee or OPWC, in its discretion, determines that a material and potentially irreversible violation of this Easement has occurred or is imminent, Grantee and/or the OPWC may take legal action, without prior notice to Grantor, to enforce the terms of this Easement, to enjoin the violation, and/or to require Grantor to restore the Protected Property to its condition prior to the violation. If Grantee determines that a minor, or reversible, violation has occurred or is threatened, and that such violation should be remedied or prevented, Grantee shall first inform Grantor in writing of the nature of the violation, and request Grantor to take corrective action to cure or avoid the violation and/or to restore any damage to the Protected Property that has occurred as a result of the violation. If Grantor fails to correct any such violation within a reasonable period of time (not to exceed 30 days), Grantee and/or the OPWC may take appropriate legal action to enjoin the violation and/or to require Grantor to restore the Protected Property to its condition prior to the violation.
  - c. Right of Enforcement of the Ohio Public Works Commission. The restrictions set forth in this Easement shall be perpetual for the benefit of, and shall be enforceable by, the OPWC. The OPWC shall have the right to enforce all restrictions, conditions, and covenants of both Grantor and Grantee set forth herein by any proceedings at law or in equity. The OPWC may exercise this right of enforcement under any authority available under state or federal law if Grantee fails or is unable to enforce any of the terms of the Easement, as determined in the sole discretion of the OPWC Director. No delay or omission by Grantee or the OPWC in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver thereof.
  - d. Right to Recovery of Costs. The Grantee and/or the OPWC shall have the right to recover from Grantor reasonable costs incurred in enforcing this Easement, including reasonable attorneys' fees and reasonable costs of restoration of the Protected Property. Grantor shall have no liability to restore the Protected Property with respect to damage caused by natural acts or other occurrences beyond Grantor's control.
  - e. Remedies. In the event that Grantee becomes aware of a violation of the terms of this Easement, Grantee shall give notice to Grantor at Grantor's last known post office address of such violation via certified mail, return receipt requested, with a copy to the OPWC, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition. Failure by Grantor to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to enforce, by proceedings at law or in equity, the provisions of this Easement, including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of the recording of this Easement. Grantee shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of the Easement by any prior failure to act. If Grantee, in its

sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the intended use of the Protected Property, Grantee may pursue its remedies under this Paragraph 8(e) without prior notice to the Grantor or without waiting for the period for cure to expire. Nothing herein shall be construed to entitle Grantee to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to acts or other occurrences beyond the Grantor's control, such as changes caused by fire, flood, or storm. Grantor shall notify Grantee of any occurrence which would adversely affect or interfere with the Purpose of this Easement, whether caused by the acts or omissions of Grantor or third parties.

- f. Other Remedies. Grantee shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Protected Property, and Grantor waives any bond requirement otherwise applicable to any petition for such relief. Grantee shall have the right to report to regulatory authorities any environmental conditions or any potential or actual violations of environmental laws, including noxious weed laws, with respect to the Protected Property. In the event Grantor or Grantee becomes involved in legal proceedings against the other to enforce such party's respective rights or interests under this Easement, the prevailing party shall be entitled to receive from the non-prevailing party reasonable attorneys' fees incurred in connection with any such proceedings. However, the immediately preceding sentence shall not apply to the OPWC if the OPWC exercises its rights under this Easement.
9. Perpetual Burden and Modification of Easement. This Easement shall run with and burden the Protected Property in perpetuity and shall bind the Grantor and the Grantee, their heirs, successors, agents, and assigns. This Easement shall not be amended, released, extinguished or otherwise modified without the prior written consent of the OPWC, which consent may be withheld in its sole and absolute discretion.
10. Enforcement. If Grantor, or its successors or assigns as owner of the Property, as described in Exhibit A, should fail to observe the covenants and restrictions, the Grantor or its successors or assigns, as applicable, shall pay to the OPWC upon demand from the Director the following: (i) all Grant funds disbursed to the Declarant under the OPWC Project Agreement; and (ii) liquidated damages equal to 100% of the funds disbursed by the OPWC for the Project. Grantor acknowledges and agrees that (a) it is extremely difficult and impractical to ascertain the extent of the damages caused by a breach of the covenants and restrictions set forth in this Easement; (b) the provisions of this Easement are unique and money damages would not provide an adequate remedy for any breach thereof; and (c) the remedies set forth in this Paragraph 10 are reasonable and appropriate and are a specifically-bargained-for material inducement for and condition to, without limitation, the OPWC making the Grant. Notwithstanding anything in this Easement or any other document, agreement or application executed or delivered in connection with the Grant to the contrary, the covenants and restrictions set forth in this Easement shall continue in full force and effect notwithstanding Grantor's payment of the liquidated damages contemplated in this Paragraph 10, and the OPWC's receipt of any such liquidated damages payment shall not be construed as a release or waiver of the covenants and restrictions set forth in this Easement. The OPWC shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions and covenants set forth herein. Failure by the OPWC to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce later the original violation or a subsequent violation.
11. Transfer of the Easement. Grantor and Grantee acknowledge that the Grant for this Easement is specific to Grantee and that the OPWC's approval of Grantee's application for the Grant was made in reliance on Grantee's continued ownership and control of the easement through its successors and assigns. Accordingly, Grantee shall not voluntarily or involuntarily sell, assign, transfer, lease, exchange,

convey or otherwise encumber the easement including, without limitation, surface rights or interests or rights or interests in soil, sand, gravel, oil, natural gas minerals or other materials, or interests in or control of Grantee, without the prior written consent of the OPWC, which consent may be withheld by either in their sole and absolute discretion, and with notice to the Grantor. If Grantee fails to observe this condition, Grantee shall pay to the OPWC, upon demand, as liquidated damages, the amount set forth in Paragraph 10 above.

12. Severability. Each provision of this Easement is independent of and severable from the remainder of this Easement. If any provision contained herein shall be held to be invalid or unenforceable, or not to run with the land, such holding shall not affect the validity or enforceability of the remaining provisions of this Easement.
13. Grantee Representation. Grantee is a duly organized and validly existing political subdivision of the State of Ohio or a non-profit corporation in good standing under the laws of the State of Ohio and is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
14. Notices. Notices or any communication relating to this Easement shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company. Notices or communications may also be personally delivered. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party hereto shall notify the other parties of a change of address according to the provisions of this paragraph. The notice addresses of the parties are as follows:

Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grantee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OPWC: Ohio Public Works Commission  
P.O. Box 224  
Pataskala, OH 43062  
Attn: Director

*(remainder of page intentionally left blank)*

To have and to hold unto Grantee and the OPWC for perpetuity, the covenants agreed to and restrictions imposed, as aforesaid, shall be binding upon the Grantor, its heirs, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Conservation Easement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR:

[grantor name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for \_\_\_\_\_ County, Ohio personally appeared [signatory name], the [title] of the [grantor name], who acknowledged that he/she is fully authorized to sign this Conservation Easement; that this instrument is the voluntary act and deed of [signatory name] and the [grantor name], and that his/her signature appears hereon as his/her voluntary act and deed for the purposes herein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name at [location], Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public



Acceptance by Grantee

GRANTEE:

[grantee name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for \_\_\_\_\_ County, Ohio personally appeared [signatory name], the [title] of the [grantee name], who acknowledged that he/she is fully authorized to sign this Conservation Easement; that this instrument is the voluntary act and deed of [signatory name] and the [grantee name], and that his/her signature appears hereon as his/her voluntary act and deed for the purposes herein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name at [location], Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

Attachment: Description of Property

**EXHIBIT A**  
**Description of Real Property**