

ENVIRONMENTAL COVENANT
Ohio Water Pollution Control Loan Fund

Water Resource Restoration Sponsor Program
XXXXXXXXXXXXX Watershed
WPCLF CS39xxxx-xxA
XXXXXXXXXXXXX Project

This Environmental Covenant ("Covenant") is entered into by **XXXXXXXXXX**, an Ohio body politic and corporate ("Owner"), and the State of Ohio Environmental Protection Agency, including its successor agencies ("Ohio EPA"), a non-holding party, pursuant to Ohio Revised Code ("R.C.") §5301.80 to §5301.92, for the purpose of restoring, maintaining and protecting, in perpetuity, the Conservation Values identified herein by subjecting the property described below to the activity and use limitations set forth herein. For the purposes of this Covenant, the Owner, the Holder, if any, and Ohio EPA shall be known collectively as the "Parties." This Covenant concerns the Property described in paragraph 2 below.

Ohio EPA, through its Water Pollution Control Loan Fund ("Fund") and the Fund's Water Resource Restoration Sponsor Program ("Program"), offers financial assistance pursuant to R.C. §6111.036 for the restoration or protection, or both, and maintenance of Ohio's aquatic ecosystem resources. The Ohio EPA has awarded financial assistance to **XXXXXXXXXXXXXXXXXX** ("Loan Recipient") for the implementation of the environmental response project (referred to herein as the "Project") that is the basis for this Covenant as set forth in R.C. §5301.80(E)(3). As part of the Project, the Loan Recipient will cause the restoration or protection or both, and the maintenance, of the aquatic ecosystem resources associated with the Property.

As a condition of Ohio EPA's award of financial assistance from the Fund for the Project, Ohio EPA, the Loan Recipient, and the Owner have agreed to legally restrict the activities that will be conducted upon, and uses that will be made of, the Property in order to prevent direct and indirect adverse impacts to surface and ground waters, and to the Conservation Values associated with the Property.

All persons shall take notice that if the Loan Recipient or any party acting on behalf of or at the behest of the Loan Recipient violates this Covenant, the violation will be considered a default on the part of the Loan Recipient under the terms of the Fund's agreement for financial assistance for the implementation of the Project, entered into by Ohio EPA and the Loan Recipient.

Now therefore, the Owner and the Holder(s), if any, and Ohio EPA agree to the

following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. §5301.80 to §5301.92.
2. Property. This Covenant concerns an approximately 64.733 acre tract of real property (the "Property"), owned by Five Rivers MetroParks in Montgomery County, Ohio, and more particularly described in Exhibit A attached to this Covenant and incorporated by reference.
3. Owner. XXXXXXXXXXXXXXXX in XXXXXXXXXXXXXXXX County, Ohio is the Owner of the Property. All references to "Owner" in this Covenant shall include a reference to all owners of the Property executing this Covenant, jointly and severally, if there is more than one owner, and all assigns and successors in interest of the present owner(s), including any Transferee. The term "Transferee," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
4. Ohio EPA. References to "Ohio EPA" include the Ohio Environmental Protection Agency and any successor agency.
5. Holder. XXXXXXXXXXXXXXXX in XXXXXXXXXXXXXXXX County, Ohio is a Holder of this Covenant ("Holder"). All references to "Holder" in this Covenant shall include a reference to all present and future holders under this Covenant, jointly and severally, if there is more than one holder. Holders may be added in accordance with Section 19 of this Covenant.
6. Conservation Values. The Parties recognize the value of the Property as an aquatic ecosystem resource, as well as a scenic, natural, and aesthetic resource. The Property in its current state contributes to the physical, biological, and chemical integrity of water resources in the XXXXXXXXXXXXXXXX watershed. The restoration, preservation, and maintenance of the Property as an aquatic ecosystem resource is a part of the attainment and maintenance of the aquatic life uses of the waters of the State of Ohio pursuant to §303 of the Clean Water Act, 33 U.S.C. §1313 and §6111.041 of the Ohio Revised Code. The Parties hereby agree that effective perpetual protection and maintenance of the Property and of any environmental improvements to the Property made as part of the Project are necessary in order to preserve these Conservation Values of the Property. The Owner and Holder further agree to use their best efforts to prevent reasonably foreseeable actions from occurring that may be detrimental to the accomplishment of the purposes of this Covenant and the Plan.

7. Natural Condition. As used herein, “aquatic ecosystem resource,” and “scenic, natural, and aesthetic values” shall, without limiting the generality of the terms, mean a condition that is no less natural than the condition of the Property at the time of the execution of this Covenant, and no less natural than any improved environmental conditions that may be attained subsequently. For the purposes of this Covenant, “natural” means that native plants and animals are permitted to carry out their life cycles without adverse direct or indirect human interference or neglect of the purposes of this Covenant.

8. Restoration and Protection Plan. The above Conservation Values and other conservation values of the Property have been identified and included in the Property’s final Restoration and Protection Plan as approved by Ohio EPA (“Plan”). The Plan is hereby incorporated by reference into this Covenant, and without limitation is intended to serve as a supplement to the purposes of this Covenant, and further defines the commitments of the Owner for future management of the Property. The Owner represents that this Plan accurately describes the Property at the time of the execution of this Covenant.

No provision of the Plan shall supersede the purposes or terms of the Covenant. If there is a conflict between the language in the Plan and the language in the Covenant, the language of the Covenant shall govern.

Copies of the Plan may be viewed at the headquarters offices of the Ohio EPA’s Division of Environmental and Financial Assistance, currently at 50 West Town Street, Columbus, Franklin County, Ohio, or its successor division.

9. Activity and Use Limitations. The Owner covenants on behalf of the Owner and the Owner’s heirs, successors and assigns, with the Holder, its successors and assigns, and with the Ohio EPA, to refrain from, severally and collectively, any activity on, or use of, the Property which is inconsistent with the purposes of this Covenant or detrimental to the Conservation Values expressed herein. Such activity or use is expressly prohibited. By way of example and without limitation, the Owner hereby imposes upon the Property and agrees to comply with the following activity and use limitations:

- a. **Conservation**. Restoration, maintenance, and protection of the Conservation Values of the Property shall be carried out and maintained in accordance with the conservation activities as defined in the Plan and this Covenant.
- b. **Natural Area**. The Property shall be maintained in perpetuity as a natural area. The Property shall be managed to accomplish the purposes of this Covenant, and shall not be managed for the purpose of benefiting any other human activity. In order to maintain the ecological balance of the Property or to protect human health and safety, hunting and trapping may be permitted by

the Owner in consultation with the Ohio Department of Natural Resources, Division of Wildlife.

- c. **Division.** The Property may not be divided, partitioned, subdivided, or conveyed except in its current configuration; i.e., the Property must be conveyed in its entirety.
- d. **Uses of Land.** There shall be no agricultural, industrial, commercial, or residential activity on the Property.
- e. **Structures.** No buildings, or other structures including, but not limited to, billboards or advertising of any kind, camping accommodations, and mobile homes shall be erected or placed on the Property.
- f. **Resource Extraction.** There shall be no mining, drilling, exploring for or removal of, water, minerals, oil, or gas, or other resources from the Property.
- g. **Earth Moving and Land Surface Alteration.** There shall be no ditching, draining, diking, filling, excavating, or removal or disturbance of topsoil, sand, gravel, rock, or other materials.
- h. **Drainage Alterations.** There shall be no manipulation or alteration of wetlands, creeks, streams, surface or subsurface springs or other bodies of water, or any activities on, or uses of, the Property that may be detrimental to the aquatic or terrestrial ecosystems of the Property. There shall be no activity that disturbs water bodies, riparian zones, or drainage ways without prior approval of Ohio EPA, consistent with the purposes of this Covenant.
- i. **Roads.** Except as may be necessary for environmental preservation, management, or restoration purposes, or as otherwise provided in Section 17 of this Covenant, there shall be no building of roads or other rights of way. Existing roads may be maintained, but shall not be widened or improved. The Owner shall construct no road without submitting a plan for the proposed construction to Ohio EPA and receiving prior approval of Ohio EPA.
- j. **Trails.** Limited development of foot trails for hiking, photography, or nature observation may be permitted upon the condition that their construction and use will produce minimum levels of disturbance to the environment, and that they shall not be detrimental to the Conservation Values of this Covenant. The Owner shall construct no trail without submitting a plan for the proposed construction to Ohio EPA and receiving prior approval of Ohio EPA.

- k. **Vehicles.** There shall be no operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any recreational motorized vehicles on the Property, except (i) law enforcement vehicles, (ii) emergency vehicles, (iii) equipment of Owner used by Owner, or of an agent or contractor of Owner, used for the purpose of maintaining the Property or in connection with activities conforming to the terms of the Covenant that are permitted by the Plan, and (iv) as otherwise provided in Section 17 of this Covenant.
 - l. **Dumping.** There shall be no dumping of trash, garbage, or hazardous or toxic substances on the Property. All trash or nonconforming material that is dumped or placed on the Property shall be removed by the Owner from the Property within thirty (30) days of its discovery.
 - m. **Plants and Animals.** The Owner shall allow no purposeful introduction of domestic livestock or non-native plants or animals. There shall be no feedlots permitted on the Property. No plants or animals shall be removed from the Property except as permitted by the Owner, this Covenant, and State law.
 - n. **Vegetation Controls.** Except as may be necessary for reasonable environmental preservation, management or restoration purposes, for the protection of human health and safety, or for the maintenance of a diversity of naturally occurring habitat types and control of exotic species of plants, there shall be no removal, destruction, cutting, trimming, or mowing of any trees or other vegetation.
 - o. **Chemical Control of Invasive Species.** Except as may be necessary for environmental preservation, management, or restoration purposes, for the protection of human health and safety, or for the prevention of the spread of a nonnative species, there shall be no use of fertilizers, insecticides, fungicides, or rodenticides. Herbicides may be used for the control of state-designated noxious weeds and for the control of other invasive exotic plant species consistent with best ecosystem management practices.
 - p. **Other Interests in Property.** No new power lines, transmission lines, utility lines, nor communications towers may be constructed on the Property, nor shall any easements or other interests in the Property be granted for this purpose.
10. Running with the Land. This Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the

land, pursuant to R.C. §5301.85(A).

11. Compliance Enforcement. Compliance with this Covenant may be enforced pursuant to R.C. §5301.91. Failure to timely enforce compliance with this Covenant or the use limitations contained herein by any person to whom relief for violation of the Covenant is available shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict the Director of Ohio EPA from exercising any other authority or remedy under applicable law.

All costs incurred by the Ohio EPA and/or any Holder other than the Owner in enforcing the terms of this Covenant against the Owner, including, without limitation, costs and expenses of suit and attorney's fees, and any costs of environmental restoration necessitated by the Owner's violation of the terms of this Covenant shall be borne by the Owner.

12. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees, and any Holder other than the Owner, the right of access to the Property for implementation or enforcement of this Covenant, including inspection of the Property or the Project.

13. Right to Post Signs. Ohio EPA shall have the right to post one or more signs on the Property which indicate that the Property's acquisition has been financed by Ohio EPA and the Program. Owner agrees to notify the Ohio EPA if a sign is damaged or removed.

14. Compliance Reporting. Beginning with a submittal one year and 30 days after execution of this Covenant, the Owner shall annually submit to Ohio EPA and any Holders other than the Owner, written documentation describing the status of the Conservation Values which are the subject of this Covenant or the Plan, and verifying the extent to which the activity and use limitations remain in place and are being complied with in accordance with this Covenant and the Plan. The first of these reports shall cover the time period beginning with the date the Owner acquires title to the property and ending with the first anniversary of the execution of this Covenant. The documentation shall include a complete enumeration and description of any alterations or disturbances made to the Property or the Project that have occurred within or beyond the terms of the Covenant and the Plan that have not been identified in a previous compliance report.

15. Conveyance of the Property and Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recorded location of this Covenant. The notice shall be substantially in the following form:

“THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 200_, IN [DOCUMENT _____, or BOOK____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[At this point, the notice shall restate Section 9 of this Covenant.]”

The Owner shall notify Ohio EPA, and any Holder other than the Owner, of any intended conveyance not less than thirty (30) days in advance of conveyance of any interest in the Property. The notice shall include the name, address, and telephone number of the proposed transferee, a copy of the proposed deed or other documentation which will evidence the conveyance, and a survey map that shows the boundaries of the Property as it is being transferred.

16. Representations and Warranties. The Owner hereby represents and warrants to the other signatories hereto:

- a. that the Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- b. that this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the Owner is a party of or by which the Owner may be bound or affected; and
EITHER
 - c1. that the Owner has identified all persons that hold any interest in, or right to, the Property (“Encumbrance”) in Exhibit B attached to this Covenant. **OR**
 - c2. that the Owner is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered.

IF C1. APPLIES, USE SECTION 17 BELOW. IF C2. APPLIES, OMIT SECTION 17 AND RENUMBER ACCORDINGLY.

17. Encumbrances. The Parties agree that a holder of an effective Encumbrance shall be permitted to conduct the activities on, and make uses of, the Property for the limited purposes provided in the Encumbrance, subject to the provisions of the following paragraph.

When a holder of an Encumbrance performs any activity on the Property, the Owner shall, or shall cause the holder to, restore the Property in a manner that returns it to its pre-existing state.

Such restoration shall be designed and implemented with prior consultation with the Ohio EPA and shall be incorporated into the Plan.

18. Termination of the Covenant. This Covenant may be terminated only (1) as a result of the exercise of the power of eminent domain, or (2) (a) when the Ohio EPA and all persons consent in accordance with the requirements of §5301.90(A) of the Revised Code and (b) when it becomes impossible to secure, to a substantial degree, the benefits sought through the Covenant.

Certain changes in the character of land use in and around the Property are inevitable, and are considered to be within the contemplation of the Parties. Only where the changes which have occurred are of such importance as to amount to a defeat of the purposes of the Covenant may the Parties initiate termination. Changes which merely reduce the benefits derived from the enforcement of the Covenant are not sufficient grounds for the Parties to seek to terminate the Covenant.

Termination means the elimination of all activity and use limitations set forth herein and all other obligations under this Covenant.

19. Amendment of the Covenant or the Plan.

- a. This Covenant may be amended to accommodate an assignment of the Covenant to a new Holder pursuant to RC §5301.90(C). *See footnote this page.*
- b. Otherwise, the Covenant or the Plan may be amended only upon agreement by all the persons identified in R.C. §5301.90(A) that a proposed amendment is consistent with the purposes of the restoration or preservation of the Property, and is without adverse direct or indirect impact to the Property's Conservation Values. Each person shall document in writing that they have reviewed the proposed amendment, found it to be consistent and without such adverse direct or indirect impact, and shall state the basis for those findings. The documentation shall be submitted to Ohio EPA.
- c. Any amendment shall be made only by a written instrument duly executed by the Director of Ohio EPA, the Owner, and Holder, if any, pursuant to R.C. §5301.90 and other applicable law.

The Owner shall file such instrument for recording with the Montgomery County Recorder's Office within thirty (30) days of signature by all requisite

- parties. Within ten (10) days of recordation, the Owner shall distribute a file- and date-stamped copy of the amended recorded Covenant to: Ohio EPA's Division of Environmental and Financial Assistance, the County of Montgomery, the City of Clayton and Butler Township, any Holder, any lessee, each person who signed the Covenant (unless the person waived in a signed record the right to consent or unless a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence), each person holding a recorded interest in the Property, and any other person designated by Ohio EPA.
- d. Amendment means any changes to this Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining.

20. Exercise of eminent domain. The Owner and Holder shall oppose, and defend against, any attempt to exercise the power of eminent domain or other involuntary attempt to extinguish, limit, or impair this Covenant.

21. Restitution. If as a result of the reduction of the burden of this Covenant to the Property, or of the termination of this Covenant or, additionally, the termination of the Covenant and transfer of all or part of the Property, proceeds are received by the Owner, the proceeds received shall be divided between the Owner and the Ohio EPA in proportion to their individual investments in the Property. That proportion shall be established by using the ratio of the (A) monetary contribution by the Ohio EPA for the acquisition or restoration of the Property to (B) the monetary contributions of the Owner for the acquisition or restoration of the Property, all as valued at the time the Project is completed. If proceeds are not in the form of money (e.g. proceeds in the form of a grant of another parcel of land), the fair market value of the proceeds shall be determined (by appraisal or other agreed method) and the Owner shall pay to the Ohio EPA a sum equivalent to that portion of the fair market value equal to the proportional share of the Ohio EPA's investment in the Property.

The Owner hereby covenants to apply its share of any such proceeds to a project at any location in Ohio that accomplishes the same water resource restoration and protection purposes as this Covenant. Ohio EPA hereby covenants to apply its share of any such proceeds to a project of the Fund or, if the Fund no longer exists, to a project at any location in Ohio that accomplishes the same water resource restoration and protection purposes as this Covenant. The Owner shall provide written notice to the Ohio EPA not less than sixty (60) days prior to the initiation of any judicial proceedings pursuant to this section.

22. Ohio EPA's Rights and Remedies. Notwithstanding other rights and remedies available to the Ohio EPA under this Covenant and pursuant to R.C. §5301.80 to

§5301.92, in order to accomplish the purposes of this Covenant the following rights and remedies are conveyed to the Ohio EPA so that it may: (1) preserve and protect the Conservation Values of the Property, (2) prevent any activity on or use of the Property which is inconsistent with the purposes of this Covenant, and (3) require the restoration of any areas of the Property that may be damaged by any unauthorized activity or use.

- a. **Scope of Relief.** The Owner agrees that the Ohio EPA may be entitled to the injunctive relief described in this section in addition to such other relief to which the Ohio EPA may be entitled, including specific performance of the terms of this Covenant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Ohio EPA's remedies described in this Covenant shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- b. **Damages.** Where injunctive relief or specific performance does not sufficiently repair or restore Conservation Values damaged or diminished by a violation of this Covenant, the Ohio EPA shall be entitled to recover damages for violation of the terms of this Covenant or for injury to any Conservation Values protected by this Covenant, including, without limitation, damages for adverse impacts to water quality or aquatic ecosystems. Without limiting the Owner's liability therefore, Ohio EPA, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- c. **Cost of Enforcement.** All costs incurred by the Ohio EPA in enforcing the terms of this Covenant against the Owner, including, without limitations, costs and expenses of suit and attorney's fees, and any costs of restoration necessitated by the Owner's violation of the terms of this Covenant shall be borne by the Owner.
- d. **Forbearance.** Forbearance by the Ohio EPA to exercise its rights under this Covenant in the event of any breach of any of its terms shall not be deemed or construed to be a waiver by the Ohio EPA of such term or of any subsequent breach of the same. No delay or omission by the Ohio EPA in the exercise of any right or remedy shall be construed as a waiver.
- e. **Waiver of Certain Defenses.** The Owner or any Transferee hereby waives any defenses of laches, estoppel, adverse possession, or prescription.

23. **Severability.** If any provision of this Covenant is found to be unenforceable in

any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

24. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

25. Effective Date. The effective date of this Covenant shall be the later of: (a) the date upon which both the Owner and Holder, if any, and Ohio EPA have signed the Covenant, or (b) the date the Owner has acquired title to the Property, in which latter case representations made by the Owner in this Covenant as to the Property will take effect on the date of title acquisition.

26. Recordation. Not more than thirty (30) days after the Effective Date of this Covenant, the Owner shall file the Covenant for recording, in the same manner as a deed to the Property, with the Montgomery County Recorder's Office.

27. Distribution of Environmental Covenant. Within ten (10) days of recordation, the Owner shall distribute a file- and date-stamped copy of the recorded Covenant to: Ohio EPA, the City of Clayton, Montgomery County, and Butler Township, any Holder, any lessee, each person who signed the Covenant, each person holding a recorded interest in the Property, and any other person designated by Ohio EPA.

28. Notice. Unless the Ohio EPA notifies the Owner in writing otherwise, any document or communication required by this Covenant to be submitted to Ohio EPA shall be submitted to:

Chief
Ohio EPA, Division of Environmental and Financial Assistance
P.O. Box 1049
Columbus, Ohio 43216-1049

Or, where this address is no longer valid and the Ohio EPA has not notified otherwise, to the Director of Ohio EPA at his headquarters offices.

29. Authorized Representative. The undersigned representatives of the Owner and the Holder, if any, represent and certify that they are each authorized to execute this Covenant.

IT IS SO AGREED:

OWNER

State of Ohio)

ss:

County of _____)

Before me, a notary public, in and for said county and state, personally appeared Name of Signatory, Title, Name of Holder, Holder's legal status, who acknowledged to me that (s)he did execute the foregoing instrument on behalf of Name of Holder.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of _____, 20__.

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OHIO ENVIRONMENTAL PROTECTION AGENCY

Chris Korleski, Director

Date

State of Ohio)

ss:

County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared Chris Korleski, the Director of Ohio EPA, who acknowledged to me that he did execute

the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of _____, 20__.

Notary Public

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

EASEMENTS (IF ANY: SEE SECTION 16.)

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