

TEMPORARY RESOLUTION NO. 4-12

PERMANENT RESOLUTION NO. _____

A RESOLUTION TO ESTABLISH AN ENVIRONMENTAL COVENANT FOR
THE HOCKING RIVER STREAM RESTORATION PROJECT

WHEREAS, the Ohio Environmental Protection Agency provided a grant for the
Hocking River Stream Restoration Project; and

WHEREAS, the Ohio Environmental Protection Agency required that an
environmental covenant be established on the property for the project; and

WHEREAS, the covenant has been amended to allow the City bike trail to
traverse the wetland;

BE IT RESOLVED BY COUNCIL OF THE CITY OF LANCASTER, OHIO

SECTION 1. The amendment to the environmental covenant attached as
Attachment 1 be approved by the Council of the City of Lancaster and recorded for the Parcel
described in Exhibit A of the original covenant attached.

SECTION 2. That this resolution shall take effect and be in force from and after
the earliest period allowed by law.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Date Approved: _____

Clerk: _____

President of Council

Offered by: _____

Mayor

Second by: _____

Requested by Water/Water Pollution Committee

111025

To be recorded with Deed – R.C. §317.08

AMENDMENT TO ENVIRONMENTAL COVENANT
Ohio Water Pollution Control Loan Fund
American Recovery and Reinvestment Act of 2009
Hocking River Watershed
WPCLF CS390504-0012
Hocking River Restoration Project

Whereas an Environmental Covenant ("Covenant") has been entered into by the City of Lancaster ("Owner" and "Holder"), 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 therein by subjecting the property described in the Covenant to the activity and use limitations set forth therein.

Whereas the above referenced Covenant was recorded at the Fairfield County Recorder's Office, and stamped with the identifying number 201000003165 (Exhibit A).

Whereas the Covenant contains limitations against trails for uses other than foot trails for hiking, photography, or nature observation. Specifically, section 10.j. "Trails" states that, "the Owner shall construct no trail without submitting a plan for the proposed construction to Ohio EPA and receiving prior approval of Ohio EPA."

Whereas the City of Lancaster has proposed a multi-use (pedestrian and bike) trail through the Property for the purposes of connecting the proposed Phase IV trail with the existing northern end of the Phase III trail at Pierce Avenue and the proposed remainder of the trail network (Phases V – VII).

Whereas the City of Lancaster has proposed this request, and believes that the proposed multi-use trail can be constructed within a wetland and floodplain area adjacent to the Hocking River without jeopardizing the Conservation Values of the Property.

Whereas Ohio EPA has reviewed the City of Lancaster's request that section 10j be amended to allow a use other than a foot trail on the Property. After due consideration of the information submitted along with the request, the detail plans for the multi-use trail, and the scope of the proposed project, Ohio EPA agrees that this

amendment may be permitted in accordance with section 19 a-d of the signed Covenant and R.C. §5301.90.

Now therefore, the Owner, Holder, and Ohio EPA agree to the following:

1. Amendment to Environmental Covenant. This instrument (the "Amendment") is an amendment to the Environmental Covenant attached hereto as Exhibit A, developed and executed pursuant to R.C. §§5301.80 to 5301.92.
2. Property. The property that is the subject of the Covenant and this Amendment is an approximately 28 acre tract of real property (referred to in this Amendment, and defined in the Covenant, as the "Property"), is owned by the City of Lancaster, is located in the City of Lancaster, in Fairfield County, Ohio, and is more particularly described in Exhibit A of the Covenant.
3. Owner. The City of Lancaster, an Ohio municipality at 121 East Chestnut Street, Suite 100, Lancaster, Ohio 43130-3825, is the Owner. All references to "Owner" in the Covenant and this Amendment shall include all owners of the Property, 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 the Covenant and this Amendment, 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. The City of Lancaster, an Ohio municipality at 121 East Chestnut Street, Suite 100, Lancaster, Ohio 43130-3825, is the Holder of this Covenant. All references to "Holder" in the Covenant and this Amendment shall include 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 the section of the Covenant entitled "Amendment of the Covenant or the Plan."
6. Multi-Purpose Trail Corridor (Phase IV). A trail corridor alignment is illustrated and described in Exhibit B of this Amendment. The Owner, Holder, and the Ohio EPA have agreed to allow this multi-purpose trail to be constructed and maintained under the Covenant, and are hereby documenting their permission for the trail by this Amendment to the Environmental Covenant.

7. Preservation of Environmental Covenant. This Amendment is for the single purpose of acknowledging the addition of the proposed Phase IV Multi-Purpose Trail in Section 6. No other aspect of the Covenant shall be changed by this instrument, and the terms and conditions of the Covenant shall remain in full force.
8. Governing Law. This Amendment shall be governed by and interpreted in accordance with the laws of the State of Ohio.
9. Effective Date. The effective date of this Amendment shall be the date upon which the Owner, Holder and Ohio EPA have executed this Amendment.
10. Recordation. Not more than thirty (30) days after the Effective Date of this Amendment, Owner shall file the Amendment for recording, in the same manner as a deed to the Property, with the County Recorder's Office.
11. Distribution of the Amendment. Within thirty (30) days of recording, 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 and to each person holding a recorded interest in the Property.
12. Notice. Unless the Ohio EPA notifies the Owner or Holder in writing otherwise, any document or communication required by this Covenant to be submitted to Ohio EPA shall be submitted to:
- Chief, Division of Environmental and Financial Assistance
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049
13. Authorized Representative. The undersigned representatives of the Owner, the Holder, and Ohio EPA represent and certify that they are each authorized to execute this Amendment.

IT IS SO AGREED:

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OWNER
CITY OF LANCASTER



Signature

12-19-11

Date

David S. Smith

Mayor, City of Lancaster, Ohio

Name of Signatory and Title

State of Ohio)

ss:

County of Fairfield)

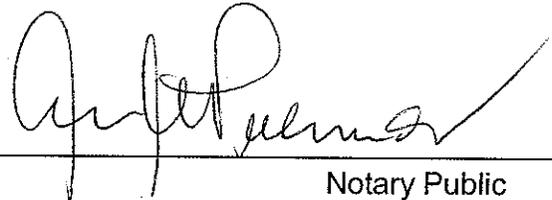
Before me, a notary public, in and for said county and state, personally appeared David S. Smith, a duly authorized representative of the City of Lancaster who acknowledged to me that he/she did execute the foregoing instrument on behalf of the City of Lancaster.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19 day of December, 2011.



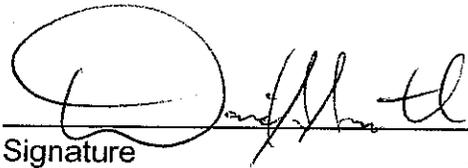
ANN W. PALMER
Notary Public, State of Ohio
My Commission Expires

2/13/12


Notary Public

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HOLDER
CITY OF LANCASTER



Signature

12-19-11

Date

David S. Smith
Mayor, City of Lancaster, Ohio

Name of Signatory and Title

State of Ohio)

ss:

County of Fairfield)

Before me, a notary public, in and for said county and state, personally appeared David S. Smith, a duly authorized representative of the City of Lancaster who acknowledged to me that he/she did execute the foregoing instrument on behalf of the City of Lancaster.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19 day of December, 2011.



ANN W. PALMER
Notary Public, State of Ohio
My Commission Expires
2/13/14



Notary Public

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OHIO ENVIRONMENTAL PROTECTION AGENCY

Scott J. Nally, Director

Date

State of Ohio)

ss:

County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared Scott J. Nally, the Director of the Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of the Ohio EPA, this _____ day of _____, 20____.

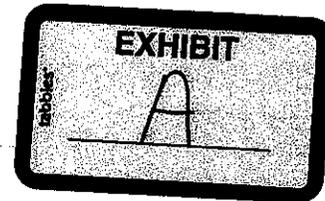
SEAL

Notary Public

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EXHIBIT A

ENVIRONMENTAL COVENANT



OR 1537 PAGE 0226

20100003165
Filed for Record in
FAIRFIELD COUNTY, OH
GENE WOOD, COUNTY RECORDER
03-03-2010 At 11:53 am.
DECLARATION 168.00
OR Book 1537 Page 226 - 244

~~TRANSFER~~
NOT NECESSARY

MAR 3 3 2010

090825

Barbara Custer
County Auditor, Fairfield County, Ohio

To be recorded with
Deed - ORC §317.08

ENVIRONMENTAL COVENANT
Ohio Water Pollution Control Loan Fund
American Recovery and Reinvestment Act of 2009
Water Resource Restoration / Protection Assistance
Hocking River Watershed
WPCLF CS390504-0012
Hocking River Restoration Project

This Environmental Covenant ("Covenant") is entered into by the City of Lancaster, an Ohio municipality ("Owner"), and the State of Ohio Environmental Protection Agency, including its successor agencies (the "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, and Ohio EPA shall be known collectively as the "Parties." This Covenant concerns the property described in Section 2. below.

The Ohio EPA offers financial assistance from the Water Pollution Control Loan Fund (the "Fund") pursuant to R.C. §6111.036 to improve and protect Ohio's aquatic ecosystem resources through the implementation of actions that restore and maintain the natural hydrology of riparian zones. The Ohio EPA has awarded financial assistance granted to the Ohio EPA by the American Recovery and Reinvestment Act of 2009 from the Fund to the City of Lancaster ("Recipient") for the implementation of the environmental response project (defined in Section 3. below 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 Recipient will cause the restoration and protection, 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 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 Recipient or any party acting on behalf of or at the behest of the Recipient violates this Covenant, the violation will be considered a default on the part of the 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 Recipient.

Now therefore, the Owner, the Holder(s), 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 28 acre tract of real property (the "Property"), owned by the City of Lancaster in Fairfield County, Ohio, and more particularly described in Exhibit A attached to this Covenant and incorporated by reference.
3. Project. The Project consists of the actions and assurances as defined in the Recipient's WPCLF Assistance Agreement CS390504-0012.
4. Owner. The City of Lancaster in Fairfield 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.
5. Ohio EPA. References to "Ohio EPA" include the Ohio Environmental Protection Agency and any successor agency.
6. Holder. The City of Lancaster in Fairfield 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.
7. 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 Hocking River 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.

8. 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.

9. 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.

10. 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.** Owner shall grant no rights for mining, drilling, exploring for or removal of, water, minerals, oil, gas, or other substances from the Property. 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.** Except as may be necessary to implement the Project, there shall be no ditching, draining, diking, filling, excavating, or removal or disturbance of topsoil, sand, gravel, rock, or other materials.
- h. **Drainage Alterations.** Except as may be necessary to implement the Project, 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 and government regulations.
- 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.

11. **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).

12. **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.

13. **Violation And Corrective Action.**

- a. **Notice and Cure.** If the Ohio EPA determines that a violation of the terms of this Covenant has occurred or is threatened, the Ohio EPA shall provide written notice of such violation to the Owner and Holder, and shall request corrective action sufficient to cure the violation. Where the violation involves injury to the Conservation Values of the Property resulting from use, activity, or neglect that is inconsistent with this Covenant, the Ohio EPA may request

that the Owner and Holder restore the portion of the Property so injured to its prior condition in accordance with a plan approved in writing by the Ohio EPA.

- b. **Injunctive Relief.** If the Owner or Holder fails to cure the violation within thirty (30) days after receipt of notice thereof from the Ohio EPA, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the Ohio EPA may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* if necessary, by temporary or permanent injunction, and to require the restoration of the Property in the condition that existed prior to any such injury.
- c. **Emergency Enforcement.** If the Ohio EPA determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Ohio EPA may pursue its remedies under this Section without prior notice to the Owner and Holder or without waiting for the period provided for cure to expire.
- d. **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.

14. **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 restoration and protection have been financed by Ohio EPA and the Program. Owner agrees to notify the Ohio EPA if a sign is damaged or removed.

15. **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 to 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

Environmental Covenant for WPCLF / ARRA Water Resource Restoration / Protection Page 8 of 17
Hocking River Restoration Project CS390504-0012

compliance report.

16. 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 2/3/0 RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE Franklin COUNTY RECORDER ON 12/23, 2000 IN [DOCUMENT 1506 or BOOK 1326 PAGE 1112]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: 68-22736

[At this point, the notice shall restate Section 10. 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.

17. 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
- c. that the Owner is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered.

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).
- 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, pursuant to R.C. §5301.90 and other applicable law.

The Owner shall file such instrument for recording with the Fairfield 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 Fairfield, and the City of Lancaster, 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.

In the event of a valid exercise of eminent domain, the Owner, Holder and Ohio EPA, may collectively agree to a settlement of terms that includes but is not limited to location of any easement, construction practices related thereto, or the fair market value of said interest in the Property. Such settlement shall be incorporated into the Covenant or the Plan upon the approval of the Ohio EPA.

21. Restitution.

- a. If as a result of the reduction of the burden of the Covenant, or as a result of the termination of the Covenant, or as a result of the termination of the Covenant and transfer of all or part of any interest in the Property, proceeds or compensation are received by the Owner or the Holder, then any such proceeds or compensation received by the Holder or the Owner in exchange for an interest in the Property or in exchange for use of the Property, including without limitation rent or other income, shall be divided between the Ohio EPA and the Owner or the Holder, in proportion to their respective individual investments in the Property.

That proportion shall be established by using the ratio of (a) the monetary contribution by the Ohio EPA for the Project to (b) the monetary contributions of the Owner or the Holder, for the acquisition of the Property, or for the restoration of the Property for the purposes of this Covenant, all as valued at the time the Project is completed.

- b. If the proceeds or compensation are not in the form of money (e.g., proceeds in the form of a grant of another parcel of land or easement on another parcel of land), the fair market value of the proceeds shall be determined by appraisal or other agreed method, and the Owner or the Holder 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.
- c. Ohio EPA hereby covenants to apply its share of 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.

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 held to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. In the event of such holding, the parties agree that the Covenant shall be amended to include a provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible and be legal, valid and enforceable.

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 latest of the dates of signature by the Owner, Holder, and Ohio EPA.

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 Fairfield 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 Lancaster, Fairfield County, 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

Where this address is no longer valid and the Ohio EPA has not notified otherwise, it shall be submitted to the Director of the Ohio EPA at its headquarters offices.

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

SR 1537 PAGE 0238

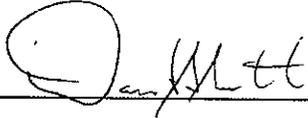
Environmental Covenant for WPCLF / ARRA Water Resource Restoration / Protection Page 13 of 17
Hocking River Restoration Project CS390504-0012

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IT IS SO AGREED:

OWNER

CITY OF LANCASTER



1-04-10

Date

David S. Smith, Mayor of Lancaster, OH

Name of Signatory and Title

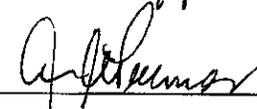
State of Ohio)

County of Fairfield)

ss:

Before me, a notary public, in and for said county and state, personally appeared Mayor David S. Smith, a duly authorized representative of The City of Lancaster who acknowledged to me that he did execute the foregoing instrument on behalf of the City of Lancaster.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of 4th day of Jan, 20 10.



Notary Public



ANN W. PALMER
Notary Public, State of Ohio
My Commission Expires
2-13-12

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HOLDER

CITY OF LANCASTER

David S. Smith

1-04-10

Date

David S. Smith Mayor of Lancaster

Name of Signatory and Title

State of Ohio)

County of Fairfield)

ss:

Before me, a notary public, in and for said county and state, personally appeared Mayor David S. Smith, a duly authorized representative of The City of Lancaster who acknowledged to me that he did execute the foregoing instrument on behalf of the City of Lancaster.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of 4th day of Jan, 2010

Ann W. Palmer
Notary Public



ANN W. PALMER
Notary Public, State of Ohio
My Commission Expires
2-12-12

Environmental Covenant for WPCLF / ARRA Water Resource Restoration / Protection Page 16 of 17
Hocking River Restoration Project CS390504-0012

OHIO ENVIRONMENTAL PROTECTION AGENCY

Chris Korleski
Chris Korleski, Director

2/3/10
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 the Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of the Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of FEBRUARY, 2010.

Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2014



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Environmental Covenant for WPCLF / ARRA Water Resource Restoration / Protection Page 17 of 17
Hocking River Restoration Project CS390504-0012

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

City of Lancaster

Situated in the State of Ohio, County of Fairfield, Greenfield Township, Section 35, Township 15, Range 19, being part of a 36.81 acre tract as conveyed to the City of Lancaster, Ohio by Deed Volume 1506, Page 1112 in the records of the Fairfield County Recorder's Office, and being more particularly described as follows:

Commencing for reference at the Northwest Corner of Section 35;

Thence, South 04 degrees 08 minutes 33 seconds West, 718.40 feet to a point;

Thence, South 04 degrees 07 minutes 26 seconds West, 1124.09 feet to a point;

Thence, South 03 degrees 59 minutes 58 seconds West, 506.09 feet to a point;

Thence, South 45 degrees 44 minutes 43 seconds East, 562.07 feet to a point;

Thence, South 45 degrees 44 minutes 43 seconds East, 1782.37 feet to a point;

Thence, North 57 degrees 25 minutes 31 seconds East, 55.87 feet to the **TRUE POINT OF BEGINNING** of the easement herein described:

Thence, North 07 degrees 13 minutes 58 seconds East, 375.76 feet to a point;

Thence, South 82 degrees 29 minutes 43 seconds East, 3875.83 feet to a point;

Thence, South 02 degrees 46 minutes 10 seconds West, 302.84 feet to a point;

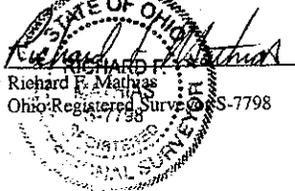
Thence, North 82 degrees 46 minutes 57 seconds West, 3834.05 feet to a point;

Thence, South 57 degrees 25 minutes 31 seconds West, 85.00 feet to the **POINT OF BEGINNING**, containing 27.851 acres.

This description was prepared from public documents and **NOT** an actual field survey by Lockwood, Lanier, Mathias & Noland, Inc. under the supervision of Richard F. Mathias, P.S. #7798, September, 2009.

An exhibit was prepared with and is considered an integral part of this description.

Bearings are based on true GPS North.

The seal is circular with the text "STATE OF OHIO" at the top and "REGISTERED SURVEYOR" at the bottom. In the center, it says "RICHARD F. MATHIAS" and "#7798". A signature is written across the seal.

Richard F. Mathias
Ohio Registered Surveyor #7798

1-20-10
Date

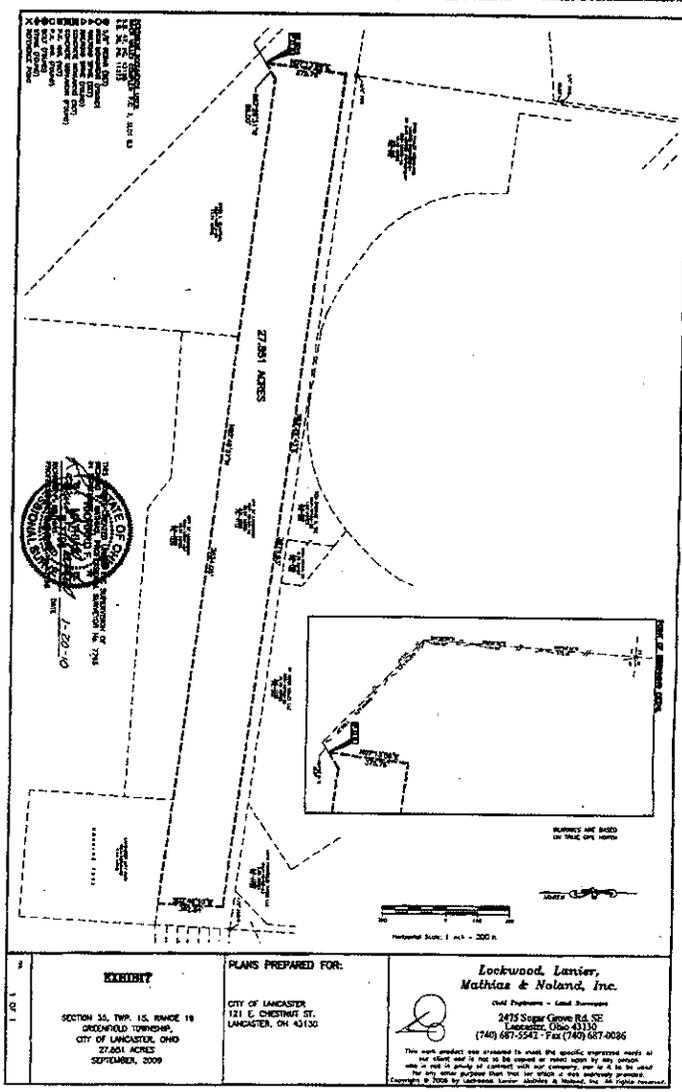


EXHIBIT
SECTION 35, TWP. 15, RANGE 18
GREENFOLD TOWNSHIP,
CITY OF LANCASTER, OHIO
27.861 ACRES
SEPTEMBER, 2009

PLANS PREPARED FOR:
CITY OF LANCASTER
121 E. CHESTNUT ST.
LANCASTER, OH 43130

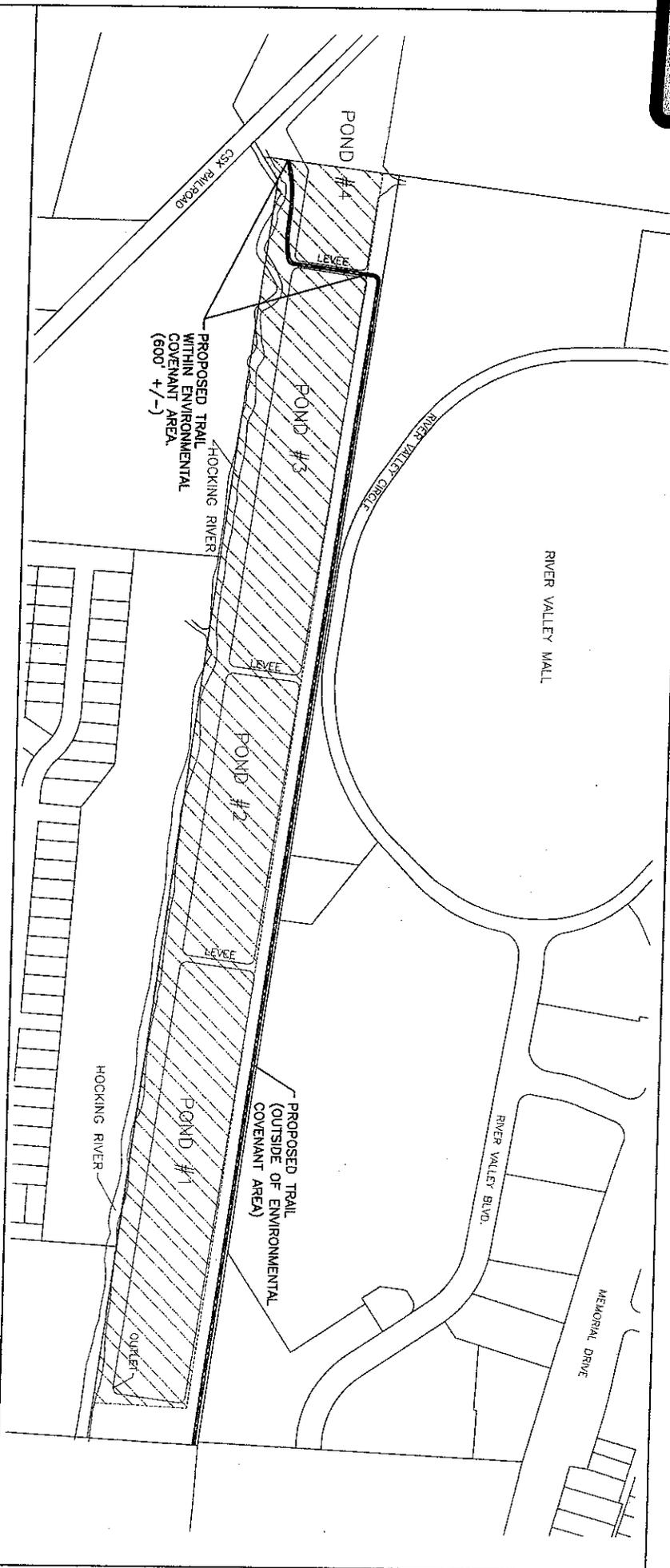
**Lockwood, Larrier,
Mathias & Noland, Inc.**
Civil Engineers - Land Surveyors
2475 Sugar Grove Rd. SE
Lancaster, Ohio 43110
(740) 687-5544 - Fax (740) 687-4026

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EXHIBIT B

MULTI-PURPOSE TRAIL PHASE IV MAP

ENVIRONMENTAL COVENANT AREA
CITY OF LANCASTER



EXHIBIT

CONSERVATION EASEMENT AREA