

Real Estate Donation Agreement

This Real Estate Donation Agreement (“**Agreement**”) is made by and between:

West Creek Conservancy	and	City of North Royalton
P.O. Box 347113		14600 State Road
Parma, Ohio 44134		North Royalton, Ohio 44133
(“ Donor ”)		(“ Donee ”)

Donor and Donee are sometimes referred to individually as “**Party**” or together as “**Parties**”.

RECITALS:

A. Donor is the owner in fee simple of certain real property situated in the City of North Royalton, County of Cuyahoga, State of Ohio, designated as of Permanent Parcel Nos. 485-03-010 and 485-05-008, legally described on Exhibit A attached hereto, and depicted on Exhibit B attached hereto (“**Donor’s Property**”)

B. Donor’s Property and certain property owned by Donee adjacent to Donor’s Property (to wit: Permanent Parcel Nos. 485-05-044 and 485-05-045) possess natural, scenic, wooded, wetland, riparian and open space values (collectively, “**Conservation Values**”) which the Parties desire to protect.

C. Donor shall donate Donor’s Property to Donee in order to preserve and protect the Conservation Values of both the Donor’s Property and the Donee’s Property in perpetuity pursuant to a Conservation Easement recorded thereon.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter set forth, Donor and Donee agree as follows:

1. Donation of Donor’s Property.

A. Donor’s Property. Donor shall donate to Donee and Donee shall accept from Donor, the Donor’s Property on the terms and conditions herein set forth.

B. As Is. Donee acknowledges that the Donor’s Property is being donated in its present “As Is” condition, subject to any encumbrances, conditions or matters or record approved by Donee in accordance with Paragraph 3 below, and that no warranties, representations or statements concerning the condition or value of the Donor’s Property have been relied upon by Donee.

2. Escrow Agent.

“**Escrow Agent**” shall be the Title Company (designated on the signature page of this Agreement). This Agreement shall serve as escrow instructions and shall be subject to the usual conditions of acceptance of Escrow Agent insofar as the same are not inconsistent with any of the terms hereof.

3. **Donee's Due Diligence.**

- A. **Title Commitment.** Donee shall have the right to order and obtain a current title commitment (“**Title Commitment**”) issued by the Title Company setting forth the state of the title of the Donor’s Property and all exceptions, including easements, restrictions, rights-of-way, covenants, reservations, and other conditions, if any, affecting the Donor’s Property which would appear in an Owner's Policy of Title Insurance (“**Title Policy**”), if issued by the Title Company for the Donor’s Property.
- B. **Inspections.** Donee or Donee's agents shall have the right and permission, at Donee's expense, to enter upon the Donor’s Property, or any part thereof, after the Effective Date, at all reasonable times and from time to time prior to termination of this Agreement for the purpose of making all inspections, tests, surveys and studies (collectively, “**Inspections**”) required to determine the suitability of the Donor’s Property for Donee's purposes as Donee shall solely determine (which shall include without limitation, physical inspections, environmental assessments, soil tests, etc.). Donor shall cooperate with Donee and/or Donee’s agents in providing information and access to the Donor’s Property necessary to complete the Inspections.
- C. **Indemnity.** Donee be responsible for any physical damage, physical injury to Donee's employees, agents or contractors and any mechanics, and materialmen liens, caused as a result or arising out of or in connection with any Inspections conducted by Donee or Donee's agents after the Effective Date.

4. **Title Commitment and Inspection.**

- A. Donee shall endeavor to give Donor notice of Donee's satisfaction with Title Commitment and Inspections promptly upon such determination.
- B. Donee shall notify Donor if Donee is not satisfied with any aspect of the Title Commitment and Inspections (each an “**Objectable Condition**”), and Donor, at its sole cost, shall have the right (but not the obligation) to remedy any such Objectable Condition to Donee’s satisfaction within 30 days of Donor’s receipt of such notice. In the event Donor declined (or is unable) to remedy any such Objectable Condition to Donee’s satisfaction within such 30 day period, this Agreement shall be deemed terminated thereupon. Upon termination of this Agreement pursuant to this Paragraph, this Agreement shall be null and void.

5. **Donation Arrangements.**

- A. **Closing Obligations.** Donor’s donation of the Donor’s Property shall be effected at the office of the Escrow Agent, not later than 10 days after date of Donee’s notice to Donor of Donee’s acceptance of the title and condition of the Donor’s Property (“**Donation Date**” or “**Closing**”) or on such other Donation Date as may be mutually agreed by the Parties.
- i. On or before the Donation Date, Donor shall execute, acknowledge and deliver such affidavits, resolutions and other documents which the Title Company shall reasonably require in order to issue the Title Policy and to omit from the Title Policy all exceptions

for judgments, mechanics liens and similar matters.

- ii. On or before the Donation Date, Donor shall deliver to Escrow Agent a Limited Warranty Deed (“**Deed**”), duly executed and in proper form for recording as approved by Donee’s counsel conveying to Donee fee simple, marketable and insurable title to the Donor’s Property, free and clear of all liens and encumbrances not accepted by Donee during Donee’s review of the Title Commitment.
- iii. At Closing, Title Company will issue to Donee the Title Policy in such amount as Donee may reasonably stipulate to be issued in accordance with the form of Title Commitment approved by Donee without any intervening liens, encumbrances or exceptions.

B. **Escrow Agent's Closing Obligations.** At the Donation Date, after causing the filing of the Deed, Escrow Agent shall close this transaction as follows:

- i. Charge Donor with and pay to the payee entitled thereto 50% of Escrow Agent’s fee and the cost of the title examination, Title Commitment, Title Policy and Deed.
- ii. Charge Donee with and pay to the payee entitled thereof 50% of Escrow Agent’s fee, the cost of the title examination, Title Commitment, Title Policy and Deed.
- iii. Immediately following the Donation Date, Escrow Agent shall deliver the funds and documents as follows:
 - a. to Donor (or Donor’s attorney if Donor is represented by legal counsel) the funds and documents due Donor together with duplicate copies of the escrow statement; and
 - b. to Donee (or Donee’s attorney, if Donee is represented by legal counsel), the funds and documents due Donee together with duplicate copies of the escrow statement.

6. **General Provisions**

A. **Notices.**

All notices, elections, consents, demands and communications shall be in writing and shall be (i) personally delivered; (ii) sent by overnight mail (FedEx or another commercially recognized overnight carrier that provides receipts for all deliveries); or (iii) sent and delivered by facsimile or e-mail, followed by a hard copy sent by overnight carrier (unless such secondary delivery requirement is affirmatively waived in writing in each instance by the noticed party); and each notice shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written notice in the manner detailed in this paragraph. Copies of notices shall be sent to the Attorneys for the respective Parties, if identified on the signature page. Either Party may, by written notice to the other, change the address to which notices are to be sent.

- B. **Entire Agreement.** This Agreement, together with the attached Exhibits, contains all of the terms and conditions of the Agreement between the Parties, and any and all prior and contemporaneous oral and written Agreements are merged herein. The Exhibits attached to this Agreement are hereby incorporated by reference in their entirety with the same force and effect as if they were set forth at length in this Agreement.
- C. **Counterparts.** This Agreement may be executed in multiple counterparts and shall be effective when such counterparts are executed by and delivered to all signatory Parties. Such counterparts shall be taken to be one and the same original document with the same effect as if all Parties hereto had signed the same document. Any executed signature page of this Agreement (together with any separate acknowledgment page) may be detached from any counterpart and attached to another counterpart containing the signature pages (and any acknowledgment pages) with the signatures (and acknowledgments) of all other signatory Parties to this Agreement.
- D. **Electronic Execution.** For purposes of executing this Agreement and any other document to be executed in connection herewith (other than documents to be recorded), a document signed and transmitted by facsimile machine or other electronic transmission shall be treated as an original document. The signature of any party thereon shall be considered an original signature and the document transmitted shall be considered to have the binding legal effect as if it were originally signed. At the request of any party, any signed document sent by facsimile or other electronic transmission shall be re-executed in original form. No party hereto may raise the use of a facsimile or other electronic transmission, or the fact that any signature was transmitted through the use of a facsimile machine or other electronic transmission as a defense to the enforcement of this Agreement.

IN WITNESS WHEREOF, Donor, Donee and Escrow Agent/Title Company have hereunto set their hands at the place and date set forth beneath their signatures, the later of such dates being referred to herein as the “**Effective Date**”.

Donor: West Creek Conservancy

Donee: City of North Royalton

By: _____
Derek Schafer, Executive Director

By: _____

By: _____
Jeffrey Lennartz, Board Chair

By: _____

(place)

(place)

(date)

(date)

Donor's attorney:

Donee's attorney:

Ziegler Metzger LLP
Christopher E. Soukup
1111 Superior Avenue, Suite 1000
Cleveland Ohio 44114
t: 216.781.5470
f: 216.781.0714
csoukup@zieglermetzger.com

Escrow Agent/Title Company:
Innovative Title and Escrow Services

By: _____

(place)

(date)
1440 Rockside Road, Suite 310
Parma, Ohio 44134
t: 216.635.0870
f: 216.635.0874
innovativetitle@aol.com

LEGAL DESCRIPTION

PARCEL NO. 1

Situated in the City of North Royalton, County of Cuyahoga and State of Ohio, and known as being part of Original Royalton Township Lot No. 7, also known as being the remainder of a parcel of land conveyed to Henry F. and Clare M. Clausen by deed recorded in Volume 6437, Page 268 of Cuyahoga County Deed Records, and more fully bounded and described as follows:

Beginning at the westerly most northwesterly corner of said land conveyed to H.F. and C.M. Clausen, at a point 0.17 feet south of a P.K. nail found, said point being the intersection of the centerline of York Road (60 feet wide) with the centerline of Bennett Road, (60 feet wide);

Thence North 54°50'55" East, along the centerline of Bennett Road, as aforesaid, 507.68 feet to a point and the northerly most northwesterly corner of said land conveyed to H.F. and C.M. Clausen;

Thence South 88°02'14" East, along the northerly line of said land conveyed to H.F. and C.M. Clausen, 49.72 feet to a 3/4 inch iron pin found in the southerly right-of-way of Bennett Road, as aforesaid;

Thence South 54°50'55" West, along the southerly right-of-way of Bennett Road, as aforesaid, 400.02 feet to a 5/8 inch iron pin found at the northwesterly corner of a parcel of land conveyed to George J. and Irene R. Sopko by deed recorded in Volume 85-1386, Page 21 of Cuyahoga County Deed Records;

Thence South 02°50'25" West, along the westerly line of said land conveyed to G.J. and I.R. Sopko, 225.11 feet to an point in the centerline of Edgerton Road (49.5 feet wide) passing through a 5/8 inch iron pin set in the northerly right-of-way thereof;

Thence North 87°09'35" West, along the centerline of Edgerton Road, as aforesaid, 126.71 feet to the southwestly corner of said land conveyed to H.F. and C.M. Clausen;

Thence Due North, along the extension of the centerline of York Road, as aforesaid, 158.27 feet to the Point of Beginning, passing through 5/8 inch iron pins set in the northerly right-of-way of Edgerton Road, as aforesaid, and the southerly right-of-way of Bennett Road, as aforesaid. Be the same more or less but subject to all legal highways and containing 0.8903 Gross Acres of land, of which 0.3706 Acres lie within the right-of-way of Bennett Road, and 0.0723 Acres lie within the right-of-way of Edgerton Road, leaving 0.4474 Net Acres. According to a survey performed by Louise A. Veverka, P.S. 7513 dated July 20, 2000. All 5/8 inch iron pins set are capped with yellow plastic caps, stamped with "Veverka, P.S. 7513" TM-00-65-S-001

PERMANENT PARCEL NO. 485-05-008

EXHIBIT A
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PARCEL NO. 2

Situated in the City of North Royalton, County of Cuyahoga and State of Ohio: And known as being part of the Original Royalton Township Section No. 7 and bounded and described as follows:

Beginning on the centerline of Edgerton Road at its point of intersection with the centerline of Bennett Road;

Thence Southeasterly along the centerline of Edgerton Road, 200.77 feet;

Thence North 02° 38' 50" East, 158.06 feet to an iron pin at the intersection of the centerline of York Road with the centerline of Bennett Road;

Thence South 57° 29' 30" West along the centerline of Bennett Road, 244.67 feet to the place of beginning and being further known as Sublot No. 1 in Martinyale Subdivision Nos. 1 and 2 proposed of part of Original Royalton Township Section Nos. 4 And 7, as appears by said plat be the same more or less but subject to all legal highways.

PERMANENT PARCEL NO. 485-03-010

DONOR'S PROPERTY



EXHIBIT B