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2010R011041

LAKE COUNTY OHIO
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FRANK A SUPONCIC, CPA, CFE
LAKE COUNTY RECORDER
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To be recorded with Deed
Records -- ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Lake Erie Shores Homeowners Association, Inc., an Ohio non-profit corporation (the "Owner") located at 32100 Solon Road, Solon, Ohio 44139, The Land Conservancy of Ohio, an Ohio non-profit corporation (the "Holder") located at 85 E. Gay Street, Suite 702, Columbus, Ohio 43215, and the Ohio Environmental Protection Agency ("Ohio EPA"), a non-holding party, pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92, for the purpose of subjecting the Covenant Areas (as defined herein) to the activity and use limitations set forth herein.

WHEREAS, the Owner is the owner in fee of certain real property comprising approximately 2.1249 acres and situated in Lake County, Ohio, and being part of the subdivision known as Lake Erie Shores Phase 4A, and as more fully described in Exhibit A attached hereto (the "Property");

WHEREAS, Owner's predecessor in title received Section 401 Water Quality Certifications Ohio EPA ID No. 062970 and Ohio EPA ID No. 083362 (the "401 Certification Ohio EPA ID Nos. 062970 and 083362") from the Ohio EPA and Section 404 Permit No. 2004-01211 from the U.S. Army Corps of Engineers (the "404 Permit No. 2004-01211");

WHEREAS, Owner has agreed to protect in perpetuity with an environmental covenant specific areas of the Property which are more particularly described as Environmental Covenant Nos. 10A, 10B, 10C, 10D and 10E in Exhibit B (hereinafter collectively referred to as the "Covenant Areas");

WHEREAS, the Covenant Areas possess substantial ecological and conservation values. The specific ecological and conservation values (hereinafter "Conservation Values") of the Covenant Areas have been documented in the administrative record for 401 Certification Ohio EPA ID Nos. 062970 and 083362, which is on file at the offices of the Ohio EPA;

WHEREAS, Owner proposes to ensure the Covenant Areas and their Conservation Values are protected in perpetuity by this Environmental Covenant. Ohio EPA agrees by entering into this

Environmental Covenant to ensure the preservation and protection of the Conservation Values of the Covenant Areas for the benefit of this generation and generations to come via enforcement of this Environmental Covenant; and

WHEREAS, Holder is a charitable organization organized for the purpose of, among other things, the protection of natural environmental systems and is exempt from federal taxation under Subsection 501(a) and is described in Subsection 501(c) of the Internal Revenue Code of 1954, as amended, and is thus qualified to acquire a conservation easement pursuant to R.C. Section 5301.69(B).

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

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns the Covenant Areas as described in Exhibit B, of which Owner is the owner in fee simple.
3. Conveyance of Environmental Covenant. Owner hereby conveys to Holder this Environmental Covenant for the purpose of protecting, in perpetuity, the Covenant Areas in their natural habitat condition and to prevent any use of the same that will significantly impair or interfere with the Conservation Value of the Covenant Areas.
4. Activity and Use Limitations. As part of the conditions set forth in the 401 Certification Ohio EPA ID Nos. 062970 and 083362 and the 404 Permit No. 2004-01211 and given the Conservation Values of the Covenant Areas, Owner hereby imposes and agrees to comply with the following activity and use limitations:
 - a. Division: Any division or subdivision of the Covenant Areas are prohibited;
 - b. Commercial Activities: Commercial development or industrial activity on the Covenant Areas are prohibited;
 - c. Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Areas are prohibited, other than: construction, maintenance, or repair of storm water structures; construction activities that are authorized by the Mitigation Plans approved by Ohio EPA for 401 Certification Ohio EPA ID Nos. 062970 and 083362; and construction activities authorized by Ohio EPA and/or the U.S. Army Corps of engineers in the future;
 - d. Cutting Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Areas are

prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the Mitigation Plans approved by Ohio EPA for 401 Certification Ohio EPA ID Nos. 062970 and 083362 or that are authorized by the Ohio EPA and/or the U.S. Army Corps of Engineers in the future. As used herein, the terms "noxious plants" and "invasive species" shall refer to those plants and species so identified by the Ohio Department of Natural Resources or other appropriate state agency or department;

- e. **Dumping**: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Areas; and
- f. **Water Courses**: Natural water courses and streams and their adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Areas, other than as part of activities that are authorized by the Mitigation Plans approved by Ohio EPA for 401 Certification Ohio EPA ID Nos. 062970 and 083362 or that are authorized by the Ohio EPA and/or the U.S. Army Corps of Engineers in the future.

Except as expressly limited herein, Owner reserves for itself, its heirs, successors and assigns all rights as owner of the Covenant Areas, including the right to use the Covenant Areas for all purposes not inconsistent with this Environmental Covenant. Notwithstanding the foregoing, this Environmental Covenant does not prohibit wetland and/or stream mitigation, monitoring, and maintenance activities, authorized to occur within the Covenant Areas by the 401 Certification Ohio EPA ID Nos. 062970 and 083362, the 404 Permit No. 2004-01211, or any future wetland and/or stream mitigation, monitoring, and maintenance activities authorized by Ohio EPA and/or the U.S. Army Corps of Engineers in accordance with state or federal law.

5. **Running with the Land**. This Environmental 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 ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Covenant Areas or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees. Holder may not assign its rights and obligations under this Environmental Covenant unless such assignment is approved in writing by Owner or Transferee (if applicable) and Ohio EPA.

6. **Compliance Enforcement**. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the

Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

7. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees, the U.S. Army Corps of Engineers, and Holder or its agents the right of access to the Covenant Areas on the Property in connection with the implementation or enforcement of this Environmental Covenant.

8. Compliance Reporting. Owner and any Transferee, or someone acting on its behalf, shall submit to Ohio EPA, upon written request by Ohio EPA, a written report verifying that the activity and use limitations specified herein remain in place and are being complied with.

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

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 201__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 201__, IN [DOCUMENT _____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[Restate restrictions from Paragraph 4 of this Covenant]

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Areas. Owner's notice shall include the name, address and telephone number of the Transferee, and a copy of the original document that imposed restrictions on the Covenant Areas.

10. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto, that:

- a. Owner is the sole owner of the Covenant Areas;
- b. Owner holds fee simple title to the Covenant Areas which is subject to the interests or encumbrances identified in Exhibit C attached hereto and incorporated by reference herein;
- c. Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and

- d. This Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

11. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, Holder, and the Ohio EPA, pursuant to ORC § 5301.89 and § 5301.90 and other applicable law. "Amendment" means any changes to the Environmental 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. "Termination" means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Amendment or termination shall not affect Owner's obligations pursuant to the 401 Certification and 404 Permit No. 2004-01211.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA, Holder, and the Owner or a Transferee of the Covenant Areas or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Lake County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA.

12. Severability. If any provision of this Environmental 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.

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

14. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the Lake County Recorder's Office.

15. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Covenant Areas with the Lake County Recorder.

16. Distribution of Environmental Covenant. The Owner shall distribute copies of the recorded Environmental Covenant to: Ohio EPA, Holder, and any other person designated by Ohio EPA; see ORC § 5301.83.

17. Notice. Unless otherwise notified in writing by Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Manager, Wetland/401 Unit
Division of Surface Water
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049.

The undersigned Owner represents and certifies that he is authorized to execute this Environmental Covenant.

[Remainder of Page Left Blank/Signature Pages Follow]

IT IS SO AGREED:

OWNER:

Lake Erie Shores Homeowners Association, Inc.
an Ohio non-profit corporation

By: Michael DiSanto
Michael DiSanto

Title: President

Date: 3-18-10

By: Charles Hillier
Charles Hillier

Title: Treasurer/Secretary

Date: 3-18-10

State of Ohio)
County of LAKE)

ss:

Before me, a notary public, in and for said county and state, personally appeared Michael DiSanto, the President of Lake Erie Shores Homeowners Association, Inc., an Ohio non-profit corporation, who acknowledged to me that he did execute the foregoing instrument on behalf of the corporation.

18th IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of MARCH, 2010.

James A. Grasso
Notary Public
JAMES A. GRASSO, Esq.
Notary Public, State of Ohio
My comm. has no expir. date
Section 147.03 R.C.

State of Ohio)
County of LAKE)

ss:

Before me, a notary public, in and for said county and state, personally appeared Charles Hillier, the Treasurer/Secretary of Lake Erie Shores Homeowners Association, Inc., an Ohio non-profit corporation, who acknowledged to me that he did execute the foregoing instrument on behalf of the corporation.

18th IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of March, 2010.

James A. Grasso
Notary Public
JAMES A. GRASSO, Esq.
Notary Public, State of Ohio
My comm. has no expir. date
Section 147.03 R.C.

OHIO ENVIRONMENTAL PROTECTION AGENCY

Chris Korleski

By: Chris Korleski
Its: Director

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.

14th IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this
day of *May*, 2010.



Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

[Exhibits Follow]

May 10, 2014

This instrument prepared by:

J. Gregory Smith (0061728)
ULMER & BERNE LLP
88 East Broad Street, Suite 1600
Columbus, OH 43215
Phone: (614) 229-0000
Fax: (614) 229-0001
gsmith@ulmer.com

Exhibit A

Legal Description for the Property

Lake Erie Shores -- Phase 4A Subdivision

Situated in the Township of Painesville, County of Lake and State of Ohio and known as being Open Space B -- 2.1249 acres in Lake Erie Shores -- Phase 4A Subdivision of a part of Original Painesville Township Lot No. 3 and 4, Tract No. 2, as shown by the recorded plat of said Subdivision in Volume 50 of Maps, Page 33 of Lake County Records, as appears by said plat, be the same more or less, but subject to all legal highways.

Permanent Parcel No.: 11B-043F-00-317-0

Instrument Reference No. 2006R010179

- End of Exhibit A -

Exhibit B

**Legal Descriptions and Drawing for Environmental Covenant
Nos. 10A, 10B, 10C, 10D and 10E**

**LEGAL DESCRIPTION
ENVIRONMENTAL COVENANTS 10A THROUGH 10E**

Situated in Prinesville Township, Lake County, State of Ohio and known as being a part of Open Space B in Lake Erie Shores, Phase 4A as recorded in Volume 50, Page 33, Lake County Records.

Environmental Covenant 10A:

Beginning at a point along the westerly boundary of Lake Erie Shores Subdivision, Phase 3, as recorded in Volume 48, Page 4, Lake County Records. Said point being the southeasterly corner of land conveyed to Eric and Linda Miller as recorded in Volume 345, Page 1010, Lake County Records; Thence along Miller's southerly line South $89^{\circ} 53' 35''$ West, 20.00; Thence South $00^{\circ} 03' 29''$ West, 110.00 feet to the principle place of beginning of the premises herein described;

Thence South $00^{\circ} 03' 29''$ West, 20.69 feet;

Thence South $51^{\circ} 39' 29''$ West, 106.05 feet;

Thence North $43^{\circ} 53' 30''$ East, 120.00 feet to the principle place of beginning and containing 0.0197 acres subject to all easements of record;

Environmental Covenant 10B:

Beginning at a point along the westerly boundary of Lake Erie Shores Subdivision, Phase 3, as recorded in Volume 48, Page 4, Lake County Records. Said point being the southeasterly corner of land conveyed to Eric and Linda Miller as recorded in Volume 345, Page 1010, Lake County Records; Thence along Miller's southerly line South $89^{\circ} 53' 35''$ West, 20.00; Thence South $00^{\circ} 03' 29''$ West, 110.00 feet; Thence North $43^{\circ} 53' 30''$ East, 120.00 feet to the principle place of beginning of the premises herein described;

Thence South $47^{\circ} 24' 21''$ West, 32.74 feet;

Thence South $53^{\circ} 30' 43''$ West, 126.20 feet;

Thence North $60^{\circ} 12' 53''$ East, 157.91 feet to the principle place of beginning and containing 0.0132 acres subject to all easements of record;

Environmental Covenant 10C:

Beginning at a point along the westerly boundary of Lake Erie Shores Subdivision, Phase 3, as recorded in Volume 48, Page 4, Lake County Records. Said point being the southeasterly corner of land conveyed to Eric and Linda Miller as recorded in Volume 345, Page 1010, Lake County Records; Thence along Miller's southerly line South $89^{\circ} 53' 35''$ West, 20.00; Thence South $00^{\circ} 03' 29''$ West, 110.00 feet; Thence North $43^{\circ} 53' 30''$ East, 120.00 feet; Thence South $60^{\circ} 12' 53''$ West, 157.91 feet to the principle place of beginning of the premises herein described;

Thence South $14^{\circ} 32' 47''$ West, 16.86 feet;

Thence South $59^{\circ} 12' 23''$ West, 29.46 feet;

Thence South $00^{\circ} 04' 13''$ West, 62.83 feet;

Thence South $55^{\circ} 51' 51''$ East, 69.96 feet;

Thence North $59^{\circ} 55' 47''$ West, 75.00 feet;

Thence North $00^{\circ} 04' 13''$ East, 75.00 feet;

Thence North $60^{\circ} 12' 53''$ East, 42.09 feet to the principle place of beginning and containing 0.0254 acres subject to all easements of record;

Environmental Covenant 10D:

Beginning at a point along the westerly boundary of Lake Erie Shores Subdivision, Phase 3, as recorded in Volume 48, Page 4, Lake County Records. Said point being the southeasterly corner of land conveyed to Eric and Linda Miller as recorded in Volume 345, Page 1010, Lake County Records; Thence along Miller's southerly line South $89^{\circ} 53' 35''$ West, 20.00; Thence South $00^{\circ} 03' 29''$ West, 110.00 feet; Thence North $43^{\circ} 53' 30''$ East, 120.00 feet; Thence South $60^{\circ} 12' 53''$ West, 200.00 feet; Thence South $00^{\circ} 04' 13''$ West, 75.00 feet; Thence South $59^{\circ} 55' 47''$ East, 75.00 feet to the principle place of beginning of the premises herein described;

Thence South $85^{\circ} 15' 52''$ East, 132.16 feet;

Thence South $00^{\circ} 00' 00''$ West, 3.55 feet;

Thence North $90^{\circ} 00' 00''$ West, 16.75 feet;

Thence South $00^{\circ} 03' 29''$ West, 3.60 feet;

Thence North $81^{\circ} 04' 15''$ West, 116.36 feet to the principle place of beginning and containing 0.0129 acres subject to all easements of record;

Environmental Covenant 10E:

Beginning at a point along the westerly boundary of Lake Erie Shores Subdivision, Phase 3, as recorded in Volume 48, Page 4, Lake County Records. Said point being the southeasterly corner of land conveyed to Eric and Linda Miller as recorded in Volume 345, Page 1010, Lake County Records; Thence along Miller's southerly line South $89^{\circ} 53' 35''$ West, 20.00; Thence South $00^{\circ} 03' 29''$ West, 110.00 feet; Thence North $43^{\circ} 53' 30''$ East, 120.00 feet; Thence South $60^{\circ} 12' 53''$ West, 200.00 feet; Thence South $00^{\circ} 04' 13''$ West, 75.00 feet; Thence South $59^{\circ} 55' 47''$ East, 75.00 feet; Thence South $81^{\circ} 04' 15''$ East, 116.36 feet; Thence South $00^{\circ} 03' 29''$ East, 80.95 feet to the principle place of beginning of the premises herein described;

Thence North $89^{\circ} 46' 28''$ East, 31.08 feet;

Thence South $11^{\circ} 52' 05''$ East, 13.72 feet;

Thence South $89^{\circ} 41' 20''$ West, 33.92 feet;

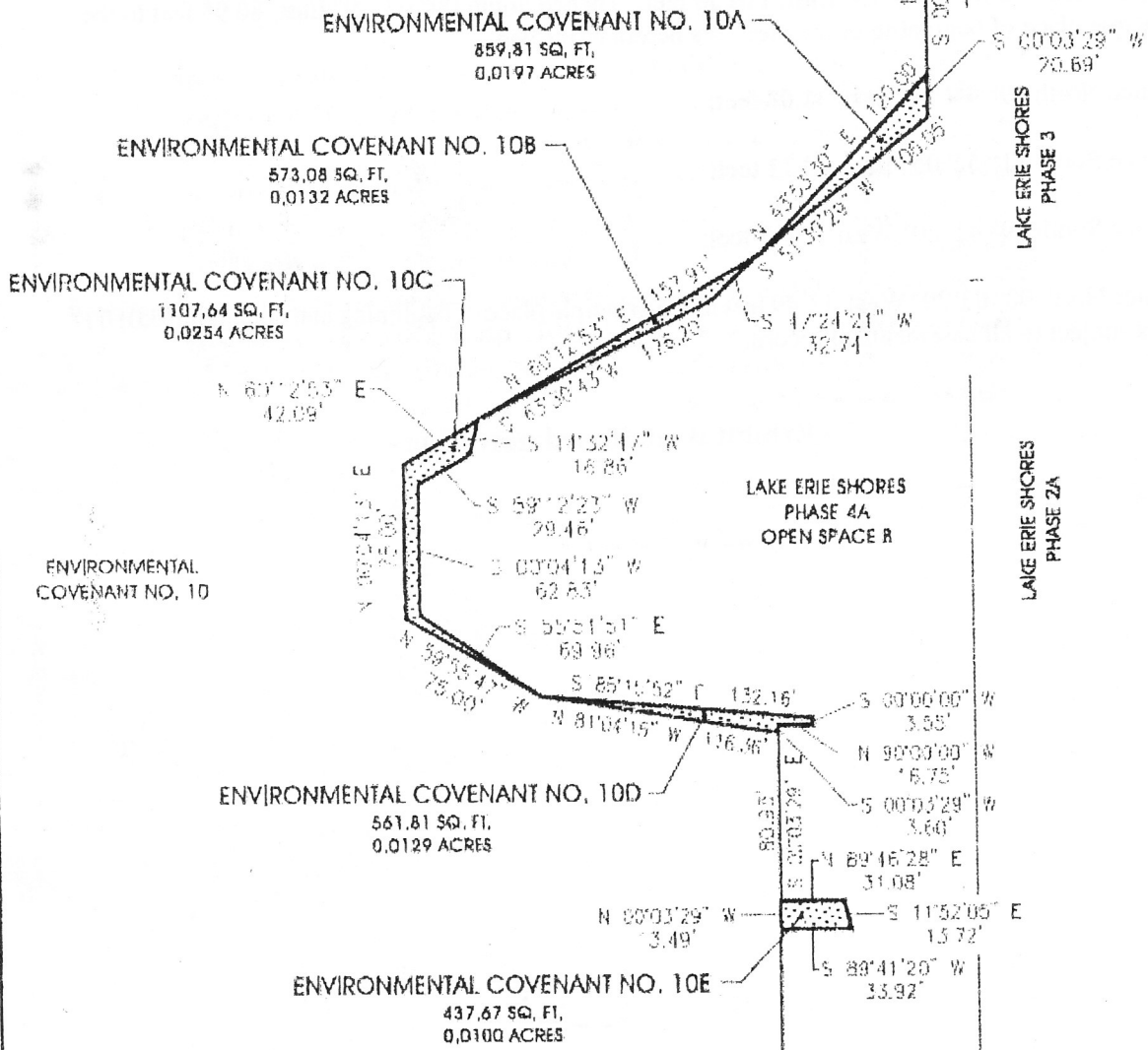
Thence North $00^{\circ} 03' 29''$ West, 13.49 feet to the principle place of beginning and containing 0.0100 acres subject to all easements of record;

- Exhibit B continued next page -

Eric & Urda Miller
V. 345 - 1^g. 1010



= 80'



Job No. X03026 3-06-10



ENVIRONMENTAL COVENANT
PAINESVILLE TOWNSHIP - LAKE COUNTY - OHIO

Exhibit C

1. The recorded plat of Lake Erie Shores Phase 4A Subdivision, recorded in Volume 50 of Maps, Page 33 of Lake County Map Records, as to Covenant Areas and more land, shows the Open Space Areas.

2. Declaration of Covenants, Conditions, Easements and Restriction ("Declaration") as contained in the document dated April 30, 2002 and recorded May 9, 2002 in Lake County Recorders Document No. 2002R023781, as amended by documents recorded in Lake County Recorders Document Nos. 2003R024450, 2004R050271, 2005R012444, 2005R043348, 2006R024098, 2006R051045, 2007R042501, and 2008R003558 covering Covenant Areas and more land. No releases from third parties are necessary under the Declaration in order for Owner to execute the Environmental Covenant.

- End of Exhibit C -