

**RESOLUTION NO.:** 2007-R51 (Amended August 28, 2007)  
**SPONSOR:** MAYOR CROGHAN  
**INTRODUCED:** AUGUST 14, 2007 **ASSIGNED TO:** \_\_\_\_\_

**A RESOLUTION ACCEPTING THE FINAL PLAT AND PERFORMANCE BOND FOR THE VILLAGES AT MEADOW WOOD, PHASE 6, ACCEPTING A CONSERVATION EASEMENT AND DECLARING AN EMERGENCY.**

WHEREAS, at its regularly scheduled meeting on March 21, 2007, the City of Green Planning and Zoning Commission approved the final plat for the Villages at Meadow Wood, Phase 6 by a vote of 5-0; and

WHEREAS, the final plat includes the vacation of a 30' wide drainage easement recorded in Volume 722, Page 892 of the official Summit County records; and

WHEREAS, Floyd Browne Group, the City's consulting engineer, has reviewed and recommended that a minimum performance bond be posted in the amount of Six Hundred Eighteen Thousand One Hundred Ninety-Two Dollars (\$618,192.00) to be held pending the satisfactory completion of the public improvements within The Villages at Meadow Wood, Phase 6 Subdivision; and

**WHEREAS, THE FINAL PLAT INCLUDES THE GRANT OF A CONSERVATION EASEMENT BY THE OWNER, WAGLER DEVELOPMENT, TO THE CITY OF GREEN TOTALING 4.3515 ACRES; AND**

WHEREAS, Green's Codified Ordinances require City Council to confirm the final plat.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO THAT:**

**SECTION ONE:**

Green City Council, pursuant to §1244.05 of the Codified Ordinances of Green, confirms the final plat for the Villages at Meadow Wood, Phase 6 and authorizes the vacation of the drainage easement previously granted to the City.

**SECTION TWO:**

**GREEN CITY COUNCIL ACCEPTS THE CONSERVATION EASEMENT FROM WAGLER DEVELOPMENT.**

**SECTION TWO THREE:**

Green City Council accepts a performance bond in the amount of Six Hundred Eighteen Thousand One Hundred Ninety-Two Dollars (\$618,192.00) submitted by Wagler Development Corp. ("Developer") and directs the Finance Director to retain the bond until such time as all obligations have been met and the bond is released in accordance with City regulations.

**SECTION THREE FOUR:**

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

**SECTION FOUR FIVE:**

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: Sept 25, 2007

Molly Stevens  
Molly Kapeluck, Clerk  
Stevens

Bruce Manwaring  
Bruce Manwaring  
Council President

APPROVED: Sept 25, 2007

Daniel L. Croghan  
Daniel L. Croghan, Mayor

COPIED \_\_\_\_\_  
SVCE ZONE PARK ROAD ENG  
LAW ~~FIN~~ MAY PLAN FIRE

ENACTED EFFECTIVE: Sept 25, 2007

ON ROLL CALL: Colopy <sup>absent</sup> Croce <sup>yea</sup> France <sup>yea</sup> Manwaring <sup>yea</sup>  
Padrutt <sup>yea</sup> Ridgeway <sup>yea</sup> Smole <sup>yea</sup> Adopted 4-0

Suburbanite publication on Oct 1 and Oct 8, 2007

Molly Stevens  
Molly Kapeluck, Clerk  
Stevens

8/22/2007 9:58 AM Approved as to form and content by Stephen J. Pruneski, Law Director 8/22/07  
(as amended)

## GRANT OF CONSERVATION EASEMENT

This grant of a Conservation Easement is made by Wagler Development, of Uniontown, Summit County, Ohio (collectively, "Grantor") to the City of Green, a charter Municipality under the laws of the State of Ohio whose address is: 5383 Massillon Road, P.O. Box 278, Green Ohio 44232-0278 ("Grantee")

### RECITALS

WHEREAS, Grantor is the owner in fee simple of certain real property situated in The City of Green, Summit County, Ohio, consisting Block A, B, and C and totaling 4.3515 acres and legally described in Exhibit A (the "Protected Property").

WHEREAS, the Protected Property has substantial value as a scenic, natural, aesthetic and educational resource in its present state, constituting a natural habitat for plants and wildlife. The protected property includes trees and designated wetlands.

WHEREAS, Grantor and Grantee recognize the scenic, natural, aesthetic, and educational values of the Protected Property in its present state, and have, by the conveyance and acceptance of a Conservation Easement, respectively, the common purpose of conserving the values of the Protected Property, and preventing the use of development of the Protected Property for any purpose or in any manner that would conflict with the maintenance of the Protected Property in its natural, scenic, open and wooded condition, as suitable habitat for wild flora and fauna of all types.

WHEREAS, Grantor and the Grantee have the common purpose of conserving and protecting the Protected Property in perpetuity as "a relatively natural habitat of fish, wildlife or plants, or similar ecosystem," as that phrase is used in section 170(h) (4) (A) (ii) of the Code. The terms "ecological, scientific, educational and aesthetic value," "natural, science and open condition" and "natural values" as used in this Easement shall, without limiting the generality of the terms, mean a condition that is no less natural than the condition of the Protected Property at the time of this Grant, "natural" meaning the native plants and wildlife are permitted to carry out their lifecycles without human interference.

NOW, THEREFORE, for good and valuable consideration, and mutual purposes, covenants, terms, conditions and restrictions set forth, with the intention of making an absolute and unconditional gift, the Grantor does grant, give and convey unto the Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent set forth in this Easement, in, upon, and over the Protected Property, for the purposes of preserving, protecting and maintaining the Protected Property as a scenic, natural and wooded area, as habitat for plants, wildlife and together with the right of visual access to and view of the Protected Property in its natural, scenic and open condition.

THE TERMS, CONDITIONS AND RESTRICTIONS OF THE CONSERVATION EASEMENT ARE AS SET FORTH:

1. To protect threatened flora or natural communities from over-abundance of fauna, no building or other structures, including, but not limited to, billboards or advertising of any kind, camping accommodations, mobile homes, and fences, shall be erected or placed on the Protected Property
2. Except to improve an amphibian breeding habitat, there shall be no dumping of soil, trash, ashes, garbage, waste or other unsightly or offensive material, nor any placement of underground storage tanks on or in the Protected Property, and no changing of its topography through the placing of soil or other substance or material such as land fill or dredging spoils
3. There shall be no fillings, excavations, mining, drilling, construction of new roads or other changes in the general topography of the land on the Protected Property in any manner excepting the maintenance of existing foot trails, if any, and that caused by the force of nature. There shall be no drilling for oil or gas or similar substances, nor shall the Protected Property be used as part of any drilling unit for oil and gas production. Nor shall there be any extraction or removal of any minerals by any surface mining methods as proscribed in Reg. 1.180A-14 (g) (4) of the IRS regulations.
4. Except for restoration of native communities or removal of invasive, non-native species, there shall be no removal or destruction of native growth in the open and wooded areas, use of fertilizers, spraying with biocides, introduction of non-native animals or disturbance or change in the natural habitat except in accordance with good forestry and husbandry practices, including the control of non-indigenous species and enhancement of wildlife habitat.
5. No power transmission lines shall be erected, nor shall interests in the Protected Property be granted for this purpose. It is the intent of this Grant to convey to the Grantee, its successors and assigns such an interest in the Protected Property as is sufficient to prohibit the exercise of the power of eminent domain by public utility and any other body or person.
6. There shall be no activities, actions or uses detrimental or adverse to water conservation, erosion control, soil conservations, and fish and wildlife or habitat preservation on the Protected Property. However, Grantor and Grantee agree that a stormwater retention pond will be created within Block A as described in Exhibit "A".
7. Except to restore or enlarge vernal ponds to accommodate the breeding needs of amphibians, there shall be no manipulation or alteration of natural water courses, shores, marshes, or other water bodies or activities or uses detrimental to water

purity providing that any existing dams and ponds on the Protected Property, if any, may be maintained and repaired.

8. There shall be no operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles or any recreational motorized vehicles on the Protected Property except in accordance with good practices, including use in connections with the control of non-indigenous species and enhancement of wildlife habitat.
9. There shall be no hunting, trapping or fishing on the Protected Property.
10. This Conservation Easement prohibits the use of the Premises for any commercial purposes except to the extent permitted under Section 2031 (c) (5) of the IRC, and prohibits any commercial recreation activities except as permitted under Section 2031 (c) (8) (b) of the IRC.
11. Except as otherwise provided in this Easement, the Protected Property shall be managed in a manner consistent with its preservation as a natural, scenic, open and wooded area. Each and every other activity or construction that might endanger or scenic state of the property is forbidden.
12. The Grantee, or its duly authorized representative, may enter the Protected Property at all reasonable times for the purposes of inspecting the Protected Property in order to further the objectives and determine compliance with the terms of this Conservation Easement. The Grantee also has the right to remove non-native, invasive plants from the property after informing the Grantor.
13. In the event a violation of these terms, conditions or restrictions is found to exist, the Grantee, or its successors or assigns, may, after notice to the Grantor, or the Grantor's personal representatives, heirs, successors or assigns, institute an action to enjoy by ex parte, temporary and/or permanent injunction such violation, to require the restoration of the Protected Property to its prior conditions, and/or for damages for breach of covenants. Nothing in this Easement shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantors control, such as changes caused by floods, storm or unauthorized wrongful acts of third persons. All proceedings shall be instituted against the person or persons violating the terms, conditions or restrictions of this Conservation Easement. The Grantee, or its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the terms, conditions and purposes of the Conservation Easement by prior failure to act.
14. The Grantor and the Grantor's personal representatives, heirs, successors and assigns shall pay all taxes validly assessed and levied against the Protected Property, including any such taxes validly levied and assessed against the Conservation Easement by competent authorities.

15. The Grantor expressly reserves for itself, its personal representatives heirs, successor and assigns, the right to continue the use of the property for all purposes consistent with this Conservation Easement. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement.
16. The Grantor agrees that it will insert the terms, conditions, restrictions and purposes of this Conservation Easement in any subsequent deed, or other legal instrument, by which it may divest itself of either the fee simple title to, or of its possessory interest in, the Protected Property.
17. This Easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the purposes of this Grant and shall comply with Section 170(h) of the Code. Any such amendment shall also be consistent with Section 5301.67 through 5301.70 of the Ohio Revised Code or any regulations promulgated pursuant to the law.
18. The Grantee may transfer or assign its rights in the Conservation Easement if in the Grantee's opinion the purpose of the Conservation Easement are better served by the Conservation Easement being held in the name of another charitable organization which is exempt from federal taxation under subsection 501(a), is described in subsection 501 (c)(3) of the Code, is organized and operated primarily for one of the conservation purpose specified in Section 170(h)(4) of the Code, and is acceptable to the Grantee. The selection of the Transferee shall be made by the Board of Trustees of the Grantee or, if the Grantee has ceased to exist, the survivor(s) of the last members of the Board of Trustees of the Grantee.
19. This Conservation Easement constitutes a real property interest immediately vested in the Grantee.
20. If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which the Grantee shall be entitled from any sale, exchange or involuntary conversion of all or any portion of the Protected Property, pursuant to such proceedings, subsequent to such termination or extinguished, shall be established, unless otherwise provided by Ohio law at the time, as provided in Paragraph 21 below with respect to the division of condemnation proceeds. The Grantee shall use any such proceeds in a manner consistent with the purposes of this Conservation Easement.

21. Without limiting any other provision of this Conservation Easement, Grantor and Grantee agree and intend that the Easement granted and accepted hereby constitute a "conservation easement" as that term is used Section 5301.67 through 5301.70 of the Ohio Revised Code and that the Conservation Easement granted hereby shall be entitled to all the benefits of such sections.

TO HAVE AND TO HOLD, this Conservation Easement, unto the use of the Grantee, its successors and assigns, forever. The covenant agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding not only upon the Grantor and Grantee, but also their respective agents, personal representatives, heirs and assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Protected Property.

IN WITNESS WHEREOF, the Grantor has executed this Easement at \_\_\_\_\_, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2007

WITNESS:

WAGLER DEVELOPMENT:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
By Greg Wagler,  
Its President

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

WITNESS:

CITY OF GREEN:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
By Daniel L. Croghan  
Its Mayor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

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

Before me, a Notary Public in and for said County and State, personally appeared the above named GREG WAGLER who acknowledged that he did execute the foregoing instrument and that the same is his own free act and deed. In testimony whereof, I have hereunto set my hand and affixed my official seal at \_\_\_\_\_, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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