

RESOLUTION NO. 99-2006

Offered by All of Council

A RESOLUTION ACCEPTING AN ENVIRONMENTAL EASEMENT FOR PROTECTION OF THE RIPARIAN AREA IN THE TIMBERLAKE SUBDIVISION

WHEREAS, the developer of the Timberlake Subdivision has proposed donating an environmental easement for riparian protection to the Village; and

WHEREAS, the Mayor has recommended acceptance of this easement in order to enhance the environmental characteristics of the Subdivision.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the environmental easement for protection of the riparian area in the Timberlake Subdivision, a copy of which is attached hereto as Exhibit "A" and incorporated herein fully as if by reference, be, and the same hereby is, accepted.

SECTION 2. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 12/4/07

[Signature]  
President of Council

[Signature]  
Mayor

Dated: 12/4/07

ATTEST:

[Signature]  
Clerk of Council

## GRANT OF CONSERVATION EASEMENT

This grant of a Conservation Easement ("Conservation Easement"), made by BEACON TIMBERLAKE, LLC, an Ohio limited liability company ("Grantor") to THE VILLAGE OF RICHFIELD, OHIO, whose address is 4410 West Streetsboro Road, Richfield Ohio 44286 ("Grantee") as of the \_\_\_\_ day of December 2006.

### WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property situated in the Village of Richfield, County of Summit, consisting of approximately 6.86 acres of land (the "Protected Property") more particularly described in Exhibits A and depicted on Exhibit B, each of which is attached hereto and made a part hereof;

WHEREAS, the Protected Property has substantial value as a scenic, natural, aesthetic, and educational resource in its present state as a natural, scenic, wooded and riparian area, constituting *a natural habitat for plants and wildlife*;

WHEREAS, Grantor and Grantee recognize the aforesaid 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 aforesaid values of the Protected Property, and preventing the use or 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, "ecological, scientific, educational, and aesthetic value," "natural, scenic and open condition" and "natural values" as used herein 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 that native plants and wildlife are permitted to carry out their life cycles without human interference;

WHEREAS, Section 5301.69 of the Ohio Revised Code (O.R.C.) authorizes Grantee to acquire and hold conservation easements for the purposes set forth herein;

WHEREAS, Grantor intends to and does convey to Grantee the right to preserve and protect the conservation values of the Protected Property in perpetuity and to prevent or remedy subsequent activities or uses that are inconsistent with the terms of this Conservation Easement;

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Protected Property according to the terms of this Conservation Easement;

3. No buildings or other structures, including, but not limited to, billboards or advertising of any kind, camping accommodations, mobile homes, and fences, shall be hereafter erected or placed on the Protected Property; provided, however, the foregoing shall not preclude the construction by Grantee of walking trails on the Protected Property or the use of portions of the Protected Property for the purpose of meeting "green space" and set back requirements for property on which the Protected Property is located.
4. There shall be no dumping of trash, ashes, garbage, waste, or other unsightly or offensive material, nor any placement of underground storage tanks, on or in the Protected Property. All trash or nonconforming material that is dumped or placed on the Protected Property shall be removed by Grantor or the then owner of the property on which the affected portion of the Protected Property is located within thirty (30) days of first being found.
5. There shall be no fillings, excavations, mining, or drilling on the Protected Property in any manner except for such excavations as are necessary for the construction of any retention basins approved by Grantee. Without limiting the foregoing, 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. There shall be no dredging, mining, drilling or removal of soil, clay, sand, gravel, rock, minerals or other inorganic and natural organic materials except in connection with any detention basins approved by the Village.
6. There shall be no building of roads, buildings, fences or other structures on the Protected Property except that walking trails shall be permitted. No ponds other than detention basins, dams, or any other changes in the general topography shall be made to the Conservation Easement without the prior written permission of Grantee. These changes shall be permitted only if they are intended to enhance the riparian zone or wetland areas.
7. There shall be no activities, actions, or uses detrimental or adverse to water conservation, erosion control, soil slippage, and fish and wildlife or habitat preservation on the Protected Property.
8. There shall be no manipulation or alteration of natural water courses, lake shores, marshes, or other water bodies or activities or uses detrimental to water purity, providing that existing small dams and ponds, if any, may be maintained and repaired.

Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement. Grantor further reserves the right to use portions of the Protected Property to satisfy the requirements for green space and set backs in connection with the property on which portions of the Protected Property may be located.

## II. Present Conveyance of Real Property Interest

This Conservation Easement constitutes a real property interest immediately vested in Grantee.

## III. Future Conveyances by Grantor

Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement will be incorporated by reference in each and every deed, or other legal instrument, by which Grantor divests itself of either the fee simple title to, or of its possessory interest in, the Protected Property.

## IV. Amendments of This Conservation Easement

This Conservation 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 Internal Revenue Code and with Section 2031(c) of the Internal Revenue Code, or any regulations promulgated in accordance with such Sections. 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 such code.

## V. Extinguishment in Case of Impossibility

If the circumstances arise in the future that render the purposes 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 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 extinguishment, shall be established, unless otherwise provided by Ohio law at the time, as provided in Section XII below with respect to the division of condemnation proceeds. Grantee shall use any such proceeds in a manner consistent with the purposes of this Conservation Easement.

### VIII. Hold Harmless

Grantor, or in the event of a conveyance of the Protected Property, the then owner of the portion of the Protected Property in question, hereby releases and agrees to hold harmless, indemnify and defend Grantee and its successors and assigns from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorney fees, arising from or in any way connected with:

- (a) Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the portion of the Protected Property located on the property owned by Grantor or any subsequent owner of such property, as the case may be, except that neither Grantor nor any subsequent owner shall have any obligation to hold harmless or indemnify Grantee for its negligence or willful misconduct of Grantee or the negligence or willful misconduct of its employees, agents or contractors.
- (b) The violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person, in any way affecting, involving, or relating to the portion of the Protected Property located on the property owned by Grantor or any subsequent owner of such property, as the case may be.
- (c) The presence or release in, on, from, or about the portion of the Protected Property located on the property owned by Grantor or any subsequent owner of such property, as the case may, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating the air water, soil, flora, or fauna or in any way harmful or threatening to human health or the environment; and
- (d) The failure to perform the obligations or covenants contained herein by Grantor or the then owner, from time to time, of the portion of the Protected Property located on the property owned by Grantor or such owner, as the case may be, unless such is caused by Grantee or any employee, agent or contractor of Grantee.

### IX. Right of Inspection

Grantee, or its successors and assigns, by a duly authorized representative, may enter the Protected Property at any time on any day. The public shall not have right of access to the Protected Property without the permission of Grantor except as contained herein.

- (e) Scope of Relief: Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee may be entitled to the injunctive relief described in this section, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy or otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- (f) Cost of Enforcement: All costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor or any owner of the Protected property, as the case may be, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's or the then owner's violation of the terms of this Conservation Easement shall be borne by Grantor.
- (g) Forbearance: Forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any of its terms shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same. No delay or omission by Grantee in the exercise of any right or remedy shall be construed as a waiver.
- (h) Waiver of Certain Defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
- (i) Right to Post Signs: Grantee shall have the right to post one or more signs on the Protected Property which indicate that it is burdened by a conservation easement in favor of Grantee.

#### XI. Payment of Taxes and Special Assessments:

Grantor or Grantor's successors and assigns shall pay all taxes and special assessments validly assessed and levied against the Protected Property, including any such taxes validly levied and assessed against the Conservation Easement by competent authorities, and shall bear all costs of maintenance, insurance and any liabilities related to the Protected Property, and does hereby indemnify and hold Grantee harmless therefrom.

#### XII. Eminent Domain

If all or part of the Protected Property is taken in the exercise of eminent domain by public, corporate, or other authorities so as to abrogate the restriction imposed by this Conservation Easement, Grantor and Grantee shall join in appropriate actions to recover the full value of the

one or more counterparts that shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument with respect to the party who signed it. In the event of any disparity between counterparts, the recorded counterpart shall be controlling.

ACCEPTANCE

The VILLAGE OF RICHFIELD does hereby consent to and accept the within Conservation Easement and all the rights and all of obligations granted and imposed thereby.

THE VILLAGE OF RICHFIELD

By: \_\_\_\_\_

STATE OF OHIO )

)SS

COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named THE VILLAGE OF RICHFIELD, OHIO, by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed and the free act and deed of The Village of Richfield, Ohio.

IN TESTIMONY WHEREOF, I have hereto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2006.

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

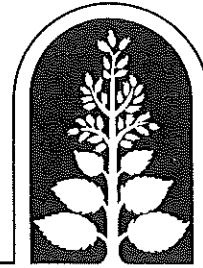
This instrument prepared by:

Russell B. Turell, Esq.  
529 Treetop Ct.  
Aurora, Ohio 44202  
(330) 995-8663



EXHIBIT B  
DEPICTION OF PROTECTED PROPERTY

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## Memo

To: Council Members  
From: Roger Davis Swan  
Date: November 29, 2007  
Re: Timberlake Conservation Easement

At the Planning and Zoning Commission meeting on November 27, 2007, the Commission took action to approve the conservancy easement on the above property. I will attach a drawing that depicts the easement in blue for your information.

If you have any questions, please contact me.