

A RESOLUTION AUTHORIZING THE VILLAGE ADMINISTRATOR TO EXECUTE AN ENVIRONMENTAL COVENANT WITH THE OHIO ENVIRONMENTAL PROTECTION AGENCY FOR LAND OWNED BY THE VILLAGE NEAR THE STATE ROUTE 161 BRIDGE KNOWN AS MCKITRICK PARK.

*Approved as emergency*

WHEREAS, the Village of Plain City has submitted for approval certain construction and engineering design plans to the Ohio Environmental Protection Agency ("OEPA") related to the construction of a new municipal building ("project"); and,

WHEREAS, OEPA has reviewed the plans submitted and determined that certain additional actions, to be taken by the Village, are necessary to allow OEPA to issue all required permit approvals in accordance with applicable laws and regulations enforced by OEPA; and

WHEREAS, OEPA has preliminarily approved the Village's proposal to establish an environmental covenant over a portion of land owned by the Village that is depicted on Exhibit A attached hereto to mitigate the impact of the construction project; and

WHEREAS, OEPA has provided a template document for the Village to complete attached hereto as Exhibit B that will serve as the covenant document upon recordation; and

WHEREAS, the Village is making final preparations to publicly bid the project and desires to take all necessary steps to secure OEPA approvals so as to not further delay the project; and

**NOW THEREFORE BE IT RESOLVED** by the Council of the Village of Plain City, Ohio, as follows:

**Section 1.** Council hereby approves the establishment of the environmental covenant on a portion of the land owned by the Village further described as parcel ID 04-00776.002 on the Madison County Auditor's Parcel Map.

**Section 2.** Council hereby authorizes the Village Administrator to execute and record an environmental covenant on the subject property in general accordance with the language and terms described within Exhibit B attached hereto.

Passed: February 11, 2019.

Attest:

Renee Sonnett  
Village Fiscal Officer

Dorrian Lane  
Mayor

Vote: First reading: \_\_\_\_\_, 2019.      Vote: \_\_\_\_yea \_\_\_\_nay \_\_\_\_abstain

Second reading: \_\_\_\_\_, 2019.      Vote: \_\_\_\_yea \_\_\_\_nay \_\_\_\_abstain

*Waive three reading process*

Third reading: February 11, 2019. Vote: 6 yea \_\_\_ nay \_\_\_ abstain

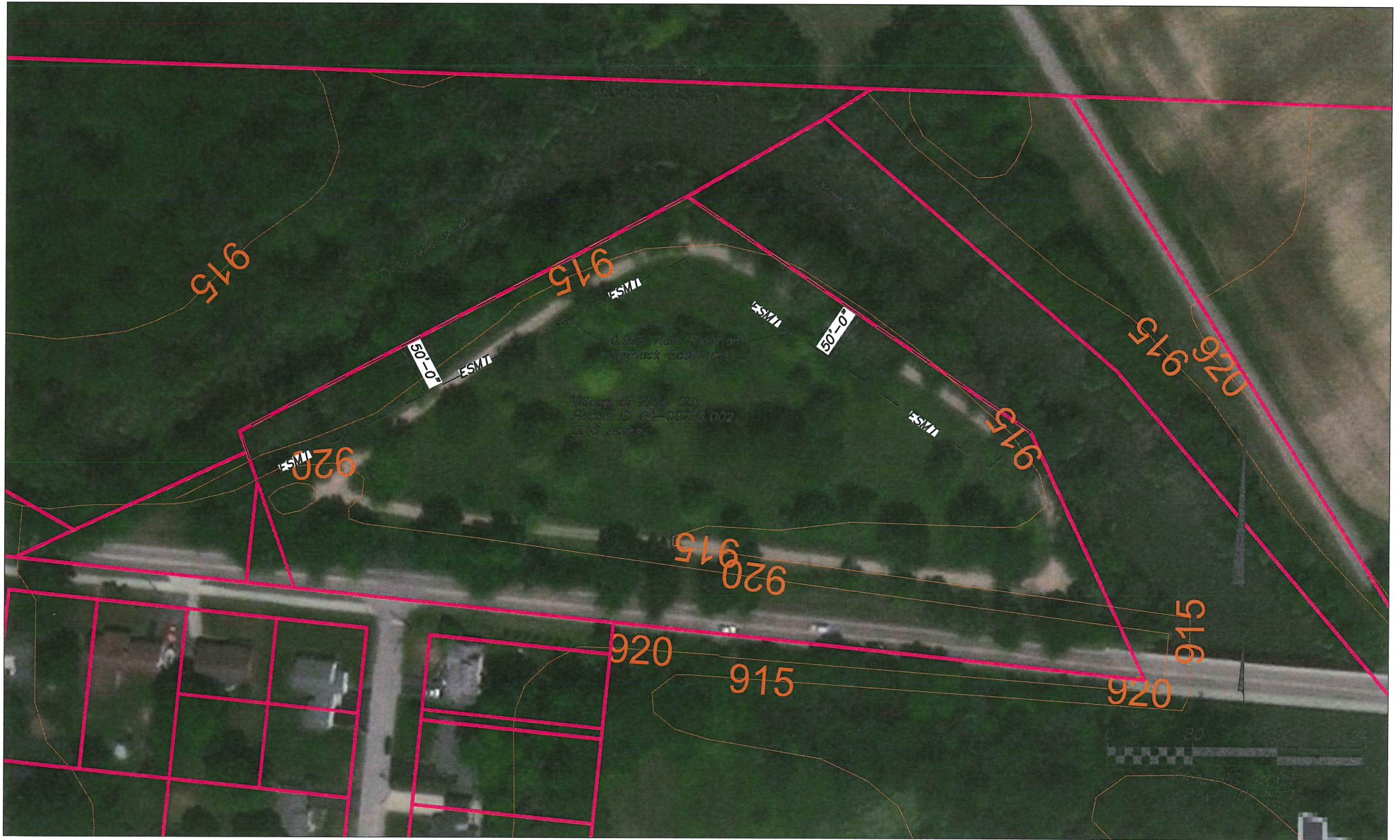
### **Certificate of Publication**

The undersigned, being Village Fiscal Officer of the Village of Plain City, hereby certifies that the foregoing was published by posting for 15 days as required by law and in accordance with Section 123.01 of the Codified Ordinances. The posting was done from 2.26.19, 2019 to 2.31.19, 2019 at the Office of the Fiscal Officer located at 213 South Chillicothe Street; the Plain City Public Library located at 305 W. Main Street; the Security National Bank located at 105 W. Main Street; the Richwood Banking Co. located at 601 W. Main Street; all being in the Village of Plain City, Ohio and the Village of Plain City Website at [www.plain-city.com](http://www.plain-city.com).

Date: February 26, 2019

Renee Snodgrass  
Village Fiscal Officer







*Note to drafter: Do not sign or notarize this document until it has been reviewed and approved by Ohio EPA. Ohio EPA will remove extraneous notes from final document.*

*To be recorded with Deed  
Records - R.C. ' 317.08*

## ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into pursuant to Ohio Revised Code (O.R.C.) " 5301.80 to 5301.92 by Enter Owner Name, a Enter Owner's Title (governmental agency, citizen, etc) (the "Owner"), having an address of Enter Owner's Address and Enter Holder Name, a Enter Holder's Title (the "Holder"), having an address of Enter Holder's Address, and the Ohio Environmental Protection Agency (Ohio EPA), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

**WHEREAS**, the Owner is the owner in fee of certain real property, which contains the Covenant Area and is situated in Enter County Name County, Ohio, in the Enter Watershed Name watershed;

**WHEREAS**, the Owner has proposed a project the approvals for which require the Owner to obtain coverage under the general permit for storm water discharges associated with construction activity located within Choose an item. [(the "Permit")];

**WHEREAS**, in order to mitigate for impacts associated with the Owner's proposed Choose an item. and as a condition of being granted coverage under the Permit, the Ohio EPA requires the Owner to obtain mitigation property and to protect this property in perpetuity with an environmental covenant;

**WHEREAS**, the Covenant Area possesses substantial value in conserving and protecting the physical, biological and chemical integrity of Stream Name and is important in the protection of the existing or designated use of the waters of the state pursuant to § 303 of the Clean Water Act, 33 U.S.C. § 1313 and § 6111.041 of the Ohio Water Pollution Control Act.

**WHEREAS**, Owner Name proposes to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant.

Now therefore, Owner and Holder 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. Covenant Area. The Covenant Area is an approximately Enter Acreage Amount acre tract of real property; located at Enter Covenant Address, in Enter County Name County, Ohio, and more particularly described in Exhibit A [narrative] and Exhibit B [map] attached hereto and hereby incorporated by reference herein ("the Covenant Area").

3. Owner's Name is the fee simple owner of the Covenant Area.

4. Holder's Name is the holder of this Environmental Covenant. [Note: There may be more than one holder. The Owner may also be a holder.]

5. Activity and Use Limitations. As part of the conditions set forth in the Permit Type issued to Entity Name and given the conservation values of the Covenant Area, the Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

Disturbance: Disturbance of the Covenant Area is prohibited, other than activities that promote natural and/or native vegetation in the Covenant Area or activities approved by the Ohio EPA associated with restoration or recovery of natural floodplain and channel form characteristics;

Cutting and Other Control of Vegetation: Any cutting of trees, ground cover, grasses or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species or other control activities that are approved by the Ohio EPA;

Fertilization: The use or disposal of fertilizers is prohibited in the Covenant Area;

Division: Any division or subdivision of the Covenant Area is prohibited;

Commercial Activities: Commercial development, and agricultural or industrial activity on the Covenant Area is prohibited;

Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited;

Dumping: Waste, yard waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and

Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are

authorized by the Permit and approved by the Ohio EPA.

6. 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 R.C. 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 Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to R.C. 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 provision of this Covenant. 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.

8. Rights of Access. The Owner hereby grants to Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or Enforcement of this Environmental Covenant.

9. Compliance Reporting. The Owner and any Transferee shall submit to Ohio EPA, upon request by the Ohio EPA, written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area 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, DATE \_\_\_\_\_ RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_ IN DOCUMENT \_\_\_\_\_, OR BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[In the notice, restate restrictions from Paragraph 5 of this Covenant]

The Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. 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 Area.

11. Representations and Warranties. The Owner hereby represents and warrants to the other signatories hereto:

a. that the Owner is the sole owner of the Covenant Area;

b. that the Owner *Choose an item.* *[Note to drafter – in many cases there will be a need to account for the fact that there are preexisting interests on the property. It will be important to identify if any will impact the Covenant area and if so, what can be done to account for their potential impact. Depending on the nature of the preexisting interest, it may mean that the covenant area is not suitable for mitigation. Other interests may be compatible so long as the covenant spells out remedial options that should apply. If the applicant selects that the Owner holds title subject to certain pre-existing interests, make sure all interests are listed out in this section. In some cases, additional exhibits may be required.];*

c. that the 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. that 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.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, the Holder[s], and the Ohio EPA, pursuant to R.C. §§ 5301.89 or 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 the Owner's obligations pursuant to the Construction Storm Water NPDES Permit.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA, the Holder[s], and the Owner[s] or Transferee[s] of the Covenant Area 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[s] or Transferee[s] shall file such instrument for recording with the *Enter County Name* County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA.

13. 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.

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

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

16. 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 Area with the Enter County Name County Recorder.

17. Distribution of Environmental Covenant. The Owner[s] shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the City, County, Township, Village of Name; any Holder, any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA; see ORC 5301.83.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Select Technical Reviewer  
Division of Surface Water  
Ohio EPA Select Office  
P.O. Box 1049  
Columbus, Ohio 43216-1049

19. Counterparts. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The undersigned representatives of the Owner[s] and Holder[s] represent and certify that they are authorized to execute this Environmental Covenant.

This instrument was prepared by: Preparer's Name *[Note: O.R.C. 317.111 requires that instruments encumbering land contain a "prepared by" statement before they may be properly recorded. All that the statute requires is the full name of the preparer, but you may include an address or additional information as you see fit.]*



The remainder of this page is intentionally left blank. Signature pages to follow.

IT IS SO AGREED:

OWNER:

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

*Enter the Name of Owner who is signing*

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of *Enter State Name* )

County of *Enter County Name* ) ss:

Before me, a notary public, in and for said county and state, personally appeared, \_\_\_\_\_, a duly authorized representative of \_\_\_\_\_, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public



**HOLDER:**

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

*Enter Name of Holder who is signing*

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of *Enter State Name* )  
 ) ss:

County of *Enter County Name* )

Before me, a notary public, in and for said county and state, personally appeared,  
\_\_\_\_\_, a duly authorized representative of \_\_\_\_\_,  
who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of  
\_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

OHIO ENVIRONMENTAL PROTECTION AGENCY

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

Craig W. Butler, Director

Date: \_\_\_\_\_

State of Ohio

)

County of Franklin

)

ss:

)

Before me, a notary public, in and for said county and state, personally appeared, Craig W. Butler, the Director of Ohio EPA, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public



**Exhibit A**  
**Legal Description of Property**

**Exhibit B**  
**Metes and Bounds Survey**

**Exhibit C**  
**Aerial Image of Covenant Area**