## GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Conservation Easement") is made this <u>htth</u> day of November, 2007 by and between **THE HIRAM HOUSE** aka**7**he Hiram House, an Ohio not-for-profit corporation, its successors and assigns, having an address at 33775 Hiram Trail, Moreland Hills, OH 44022-1399, (the "Grantor"), and OHIO STREAM PRESERVATION, INC., an Ohio not-for-profit conservation organization, its successors and assigns, (the "Grantee"), having an address at P.O. Box 23835, Chagrin Falls, Ohio 44023-0835.

WHEREAS, Grantor is the owner of certain real property recorded by Instrument No.\_\_\_\_\_\_, Cuyahoga County records, situated in the Village of Moreland Hills, County of Cuyahoga, State of Ohio which is more particularly identified and described in Exhibit A, attached hereto, (the "Grantor Property"); and

WHEREAS, the Grantor has proposed to provide a conservation easement on said real property conducive to stream and wetland preservation and restoration, hereby referred to as The Hiram House Stream Preservation Area, for the purposes of restoring and enhancing various aquatic and other natural resource areas on the property, preserving critical habitat, and providing compensatory mitigation credits; and

WHEREAS, in order to protect the quality of the surface waters located on the real property, and as a condition for using all or portions of the Preserve (defined below) as a mitigation package for given development projects, the Ohio Environmental Protection Agency ("OEPA") has required that Grantor grant a conservation easement in and to a portion of the Grantor Property, which is more specifically identified on Exhibit B (the "Preserve"), attached hereto; and

WHEREAS, the OEPA will determine the appropriateness, on a case-by-case basis, of using all or portions of the Preserve as a mitigation package for given development projects; and

WHEREAS, in order to protect the quality of the surface waters located within the Preserve, the Grantor shall grant a Conservation Easement over the Preserve, to be protected, in perpetuity, by a recorded Grant of Conservation Easement; and

WHEREAS, the Grantor, its successors and assigns, has agreed to provide compensation to the Grantee for services performed related to this Conservation Easement as more specifically set forth in that certain Stewardship Agreement dated as of September 2007, by and between Grantor and Grantee; and

WHEREAS, Grantee agrees by accepting this Grant of Conservation Easement to honor the intentions of Grantor stated herein, and to preserve and protect the conservation values of the Preserve in perpetuity, for the benefit of this generation and generations to come; and

**WHEREAS**, Section 5301.69 of the Ohio Revised Code authorizes Grantee to acquire and hold conservation easements for the purposes set forth herein.

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. Grant of Easement: Grantor does hereby grant and convey to Grantee, its successors and assigns, an interest, easement and servitude in and to the Preserve, which interest, easement and servitude will result from the covenants and restrictions set forth herein and

hereby imposed upon the use of the Preserve by the Grantor, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantor covenants, on behalf of itself, its successors and assigns, with the Grantee, its successors and assigns, to do and refrain from doing, severally and collectively, upon the Preserve, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from such acts, and each thereof, is and will be for the benefit of Grantee.

- 2. <u>Term of Easement</u>: The easement granted hereunder shall be perpetual and shall have no expiration date. Article 10 describes the process for termination of said easement.
- 2. Conservation Values: The Preserve possesses substantial value in conserving and protecting the physical, biological and chemical integrity of Wiley Creek and the Chagrin River 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.

A "Baseline Documentation Report" will be prepared by Grantee and, after approval by Grantor (such approval not to be unreasonably withheld), will be incorporated by reference herein and may be filed of record as an amendment to this Conservation Easement. The Baseline Documentation Report may consist of any and all maps, reports, photographs, descriptions of prominent vegetation, land use history and distinct natural features characterizing the Preserve at the time of the grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

- 4. Prohibited Actions: Any activity on or use of the Preserve inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited:
  - **a.** <u>Division</u>: Any division or subdivision of the Preserve that may render the Conservation Easement null and void.
  - **b.** <u>Commercial Activities</u>: Commercial development, commercial recreational use, or industrial activity.
  - c. <u>Construction</u>: Except as otherwise permitted herein, the placement or construction of any man-made modifications including but not limited to buildings, structures, fences, mobile homes, advertising, billboards, camping accommodations, roads and parking lots. Existing structures, ponds and lakes within the Preserve shall be maintained in good repair and utilized in accordance with this Article. Structures other than those specifically identified are explicitly prohibited.

Grantor shall be permitted to complete the installation, maintenance, repair and replacement of utilities to be located within the portion of the Preserve, which improvements shall be limited to those utilities specific to the project including storm and sanitary systems, electric, natural gas, telephone and cable, and all appurtenances thereto ("Utility Work") within designated utility easements, to the extent necessary. Where the Preserve is affected by the Utility Work, as provided in this section, Grantor shall restore all such affected portions of the Preserve as nearly as practicable to their condition immediately prior to such work.

- d. <u>Destruction or Introduction of Vegetation and Animals</u>: The removal or destruction of native growth in the Preserve, including without limitation the use of fertilizers, the spraying of herbicides, pesticides or biocides, the introduction of nonnative wild animals and vegetation, grazing of domestic animals, or disturbance or change in the natural habitat (except in the enhancement of wildlife habitats) and the cutting of trees, ground cover or vegetation, except as approved in writing by the Grantee, such consent not to be unreasonably withheld or delayed, and limited to the following purposes:
  - (1) The control or prevention of imminent hazard, disease, or fire, and for the purpose of restoring natural habitat areas to promote native vegetation; and
  - (2) The removal of those portions of dead, diseased, damaged, destroyed, or fallen trees, shrubs, or other vegetation that physically block streams, Utility Work; and
  - (3) The elimination and removal of grapevines, poison ivy, and other toxic and undesirable growth which can be cut and left laying; and
  - (4) Hunting or trapping as necessary to keep the animal population within numbers consistent with the ecological balance of the area; and
  - (5) The installation, maintenance, repair and replacement of Utility Work; and
  - (6) Repairs and replacements of existing buildings and other facilities as permitted under Article 4(c).
  - e. <u>Land Surface Alterations</u>: The removal, filling, or excavation, of soil, sand, gravel, rock minerals or other materials from the Preserve, or doing any act that would alter the topography of the Preserve, except for (i) the activities permitted under Article 4(c), (ii) repair of damage caused by the forces of nature, and (iii) changes approved in writing by the Grantee, such approval not to be unreasonably withheld or delayed.
  - **f. <u>Dumping</u>**: The dumping or accumulation of any substance of any kind, nature, and description including but not limited to grass clippings or other yard debris, soil, trash, ashes, garbage, waste, or other unsightly or offensive material or any placement of underground storage tanks, on or in the Preserve.
  - **Water Courses**: Alteration of the natural water courses, streams, wetlands, marshes, or other water bodies, and their adjacent riparian buffer areas, and any use or activity detrimental to water purity on the Preserve, except for those activities permitted under Article 4(c) or as approved in writing by the Grantee, such approval not to be unreasonably withheld or delayed.
  - h. <u>Motorized Vehicles</u>: The operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other motorized vehicle within the Preserve, except for utility carts to be used only on existing pathways as necessary to exercise the rights granted in Article 4(c), (d), and (e), as approved in writing by the Grantee.

- i. <u>Signage</u>: Advertising or signage of any kind or nature to be located on or in the Preserve except for signs marking the boundaries as part of the Preserve in favor of the Grantee, and except as necessary to fulfill the obligations herewith, as approved in writing by the Grantee, such approval not to be unreasonably withheld.
- **j.** Other Activities: Each and every other activity or construction project which materially and unreasonably endangers the natural, scenic, biological, or ecological integrity of the Preserve.
- 5. Grantor's Rights and Responsibilities: Grantor reserves to itself, and its successors and assigns, all rights accruing from its ownership of the Preserve, including the right to engage in or permit or invite others to engage in all uses of the Preserve that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:
  - a. Right to Convey: The Grantor retains the right to sell, lease, mortgage, bequeath, donate, or otherwise convey the Preserve. Any conveyance shall remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder shall be bound by the terms and conditions hereof. In addition, Grantor reserves the exclusive right to sell wetland credits and approximately 6,380 total linear feet of stream preservation and/or restoration credits relating to the Preserve.
  - b. <u>Right to Access</u>: Subject to the terms of this Conservation Easement with respect to prohibited uses and permitted uses, the Grantor shall retain the right of unimpeded access to the Preserve. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon the Preserve or any portion thereof where no such right existed to the public immediately prior to the execution of this Conservation Easement.
  - c. <u>Actions Against Grantee</u>: In the event of a breach of this Conservation Easement, the Grantor may bring action against the Grantee, as set forth in Section 5(d) herein, for failing to fulfill its obligations as contained herein. Prior to an action being brought, the Grantor shall provide written notice to the Grantee advising the Grantee of the breach of duty by the Grantee and demanding that the Grantee abide by the provisions of this Conservation Easement.
  - d. Requirement of Notice: If, after a twenty-eight (28) day period following the date of written notice as provided above ("Notice Period"), the Grantee continues in its breach of duties, or if the Grantee does not take substantial corrective measures within the Notice Period, or if Grantee should fail to continue diligently to provide said duties, the Grantor may bring an action in law or in equity to enforce the terms of this Conservation Easement and recover any damages for the loss of the conservation values protected hereunder, not to exceed \$90,000, including without limitation, reasonable attorney fees. The remedies available to the Grantor include, without limitation, enjoining the violation through injunctive relief, seeking specific performance, and obtaining declaratory relief, restitution, reimbursement of expense including without limitation the expense of restoration of the Preserve, not to exceed \$90,000, and/or an order compelling restoration of the Preserve.

- e. Requirements for the Preserve: The following minimum conditions shall apply to the Preserve:
  - (1) Grantee shall be responsible, at Grantor's expense, for installation of permanent physical boundary pins and temporary surveyor stakes indicating the boundary of the Preserve for the purpose of providing Grantee with legitimate boundary sign locations.
  - (2) Grantor shall use commercially reasonable efforts to ensure that owners, contractors and/or workers performing work on behalf of Grantor involved in activities permitted by Article 4(c) and (e) within the Grantor Property have knowledge of the terms and conditions of these restrictions and that a copy of these restrictions is at the project site throughout the period the work is underway.
  - (3) Grantor shall be responsible for ensuring that construction debris resulting from any and all work performed by or on behalf of Grantor within the Grantor's property shall be prevented from entering the waterway, stream or buffer area, and shall be removed immediately should any such debris be present in said areas.
  - (4) Grantor shall be responsible for ensuring that the mechanical equipment used to execute any and all work by or on behalf of Grantor within the Grantor's property shall be operated in such a way as to minimize turbidity (i.e., stirring up sediment into the water) that could degrade water quality and adversely affect aquatic plant and animal life.
  - (5) Grantor shall be responsible during any construction, performed by or on behalf of Grantor, for ensuring that Best Management Practices ("BMP's"), including silt controls, be installed downstream from all construction areas adjacent to or abutting the Preserve and shall remain in place during all excavation and restoration operations including landscaping. Said controls shall not be removed until stabilization of the project site is satisfactorily complete.
  - (6) Until the dedication and acceptance of the utilities by government authorities, or utility companies having jurisdiction, as applicable, Grantor shall be responsible for the repair, replacement, liability and maintenance of all Utility Work within the Preserve, to the reasonable satisfaction of the Grantee. Should Grantor fail to maintain the Utility Work to Grantee's reasonable satisfaction, Grantee may, after written notice to Grantor and an opportunity to cure as provided in Article 5(d) above, undertake all necessary work and assess the costs against the Grantor.
  - (7) All trash or nonconforming material that is dumped or placed on the Preserve by or on behalf of Grantor shall be immediately removed or cause to be removed by the Grantor. In the event that the nonconforming material is placed by an adjacent landowner or party unknown to the Grantor, the Grantee and Grantor shall work collectively to locate and notify the offender and cause the material to be removed immediately by the offender. If the offender is not identified or is uncooperative, the Grantor shall be responsible for removal of the

nonconforming material within the portion of the Preserve owned by such Grantor.

- 6. Rights of Grantee: Grantor shall confer the following rights upon the Grantee to perpetually maintain the conservation values of the Preserve:
  - a. Right to Enter: The Grantee has the right to enter the Preserve at reasonable times and upon reasonable prior notice to Grantor to monitor or to enforce compliance with this Conservation Easement. The Grantor may use the Preserve without interference provided that the Grantor restricts its use to those uses permitted under this Conservation Easement. The Grantee has no right to permit others to enter the Preserve. The general public is not granted access to the Preserve under this Conservation Easement.
  - **b.** <u>Right to Preserve</u>: The Grantee has the right to prevent any activity on or use of the Preserve that is prohibited by the terms or purposes of this Conservation Easement.
  - c. <u>Right to Require Restoration</u>: The Grantee shall have the right to require the restoration of the areas or features of the Preserve that are damaged by any action of Grantor prohibited by this Conservation Easement.
  - **d.** Right to Placement of Signs: The Grantee shall have the right to place signs on the Preserve which identify the Grantee and which identifies the land as being protected by this Conservation Easement.
- 7. Grantee's Remedies: In the event of a breach of this Conservation Easement, the Grantee shall have the following remedies (which remedies may only be exercised by the Grantee against the Grantor and shall be subject to the following limitations):
  - a. Actions Against Grantor: In the event of a breach of this Conservation Easement, the Grantee may bring action against the Grantor, as set forth in Section 7(b) herein, for failing to fulfill its obligations as contained herein. Prior to an action being brought, the Grantee shall provide written notice to the Grantor advising the Grantor of the breach of duty by the Grantor and demanding that the Grantor abide by the provisions of this Conservation Easement.
  - b. Requirement of Notice: If, after a twenty-eight (28) day period following the date of written notice as provided above ("Notice Period"), Grantor continues in its breach of duties, or if Grantor does not take substantial corrective measures within the Notice period, or if Grantor should fail to continue diligently fulfill said duties, the Grantee may bring an action in law or in equity against Grantor to enforce the terms of the Conservation Easement and recover any damages from Grantor for the loss of the conservation values protected hereunder, including without limitation, reasonable attorney fees. The remedies available to Grantee include, without limitation, enjoining the violation through injunctive relief, seeking specific performance from the Grantor, and obtaining from the Grantor declaratory relief, restitution, reimbursement of expense including without limitation the expense of restoration of the Preserve, and/or an order compelling restoration of the Preserve. Notwithstanding anything to the contrary contained in this Conservation Easement,

Grantor shall not be liable for monetary damages, restitution or reimbursement of expense in excess of \$90,000.

- c. <u>Emergency Action</u>: If the Grantee determines that the use permitted by this Conservation Easement is, or is expected to be violated so to cause significant or irreparable damage to the physical, biological and/or chemical integrity of the water course, the Grantee will provide written notice to the Grantor. If, through reasonable efforts, the Grantor cannot be notified, or if the Grantee determines, in its sole reasonable discretion, that the circumstances justify prompt action to mitigate or prevent injury to the Preserve, then the Grantee may pursue its lawful remedies without awaiting the Grantor's opportunity to cure, however the Grantor shall not be liable for any costs arising from Grantee's failure to provide advance notice as set forth in Section 7(b) above.
- d. <u>Injunctive Relief for Actual or Threatened Non-Compliance</u>: Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. Grantor acknowledges that Grantee's remedies at law against the Grantor for any violation of the terms hereof are inadequate and Grantee is entitled to obtain injunctive relief against the Grantor, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled to receive from such against the Grantor, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or inadequacy of otherwise available legal remedies.
- e. <u>Cumulative Remedies</u>: The preceding remedies of the Grantee are cumulative. Any or all of the remedies may be invoked by the Grantee if there is an actual or threatened violation of this Conservation Easement. Grantee may not, however, receive more than one remedy (including without limitation, damages and injunctive relief) for the same injury or violation, nor may Grantee receive any remedy from the Grantor not in breach of the terms of this Conservation Easement.
- f. <u>Delay in Enforcement:</u> Notwithstanding the foregoing, any delay in enforcement shall not (by itself) be construed as a waiver of the Grantee's rights to enforce the terms of this Conservation Easement.
- 8. Ownership Costs and Liabilities: In accepting this Conservation Easement, the Grantee shall have no liability or other obligation for costs, liabilities, taxes or property insurance of any kind related to ownership of the Preserve. The Grantee and its trustees, officers, employees, agents and members have no liability arising from injury or death to any person or from physical damage to any other property located on the Preserve or otherwise. The Granter agrees to defend the Grantee against such claims and to indemnify the Grantee against all costs and liabilities relating to such claims. Notwithstanding the foregoing, Article 8 does not apply to losses caused by the negligence, actions or inaction of Grantee, its trustees, officers, employees, agents and/or members.
- 9. <u>Cessation of Existence</u>: If the Grantee shall cease to be authorized to acquire and hold conservation easements, then this Conservation Easement may, by written assignment to be recorded in the records of Cuyahoga County, become vested in another qualified entity

that is eligible to acquire and hold a conservation easement under Ohio law, upon the mutual consent of Grantor and Grantee.

- **Termination**: This Conservation Easement may be extinguished only by an unexpected change in condition, which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain:
  - a. <u>Unexpected Change in Conditions</u>: If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. 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 Preserve, 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 (b) 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.
  - b. <u>Eminent Domain</u>: If the Preserve is taken, in whole or in part, by power of eminent domain, then the Grantee will be entitled to compensation in accordance with applicable laws and in proportion to the Grantee's interest in the Preserve at the effective date of this Conservation Easement.
- 11. Recordation: The Grantor or its successors and assigns shall record this instrument in a timely fashion in the official record of Cuyahoga County, Ohio and shall re-record it at any time as may be required to preserve the Grantee's rights in this Conservation Easement.
- 12. Assignment: This Conservation Easement is transferable, but Grantee may assign its rights and obligations hereunder only to an organization or entity that is qualified to hold conservation easements under Ohio law, and any applicable federal tax law, at the time of transfer, provided that such transfer is approved by Grantor, which approval will not be unreasonably withheld or delayed. Such assignment shall be evidenced by a written assignment of this Conservation Easement recorded by Grantee or its assignee in the records of Cuyahoga County, Ohio. As a condition of such transfer, the Grantee and Grantor shall require that the conservation purposes that this grant is intended to advance, continue to be carried out by the assignee.
- 13. <u>Liberal Construction and Section Headings</u>: This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the Preserve. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.
- 14. Notices: For purposes of this Conservation Easement, notices may be provided to any party as required hereunder, by personal delivery or by mailing a written notice to that party by first class mail, postage prepaid. Delivery will be complete upon depositing the properly addressed notice with the U. S. Postal Service.

The notice shall be served to Grantor at:
The Hiram House

33775 Hiram Trail Moreland Hills, Ohio 44022-1399

The notice shall be served to the Grantee at its current address, currently:
Ohio Stream Preservation, Inc.
P.O. Box 23835
Chagrin Falls, Ohio 44023

- 15. <u>Severability</u>: If any portion of this Conservation Easement is determined to be invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect.
- 16. <u>Subsequent Transfers</u>: This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Preserve and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of any portion of the Preserve shall be bound to all provisions of this Conservation Easement to the same extent as the current parties. Grantor shall incorporate the terms of this Conservation Easement, by reference, in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Preserve, including, without limitation, a leasehold interest. Successor Grantor further agrees to endeavor to provide written notice to the Grantee of the transfer of any such interest in any portion of the Preserve prior to the effective date of such transfer.
- 17. <u>Termination of Rights and Obligations</u>: A party's future rights and obligations under this Conservation Easement shall terminate upon transfer of that party's interest in the Preserve. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.
- 18. <u>Applicable Law</u>: This agreement shall be governed by, and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflicts of laws rules.
- 19. <u>Entire Agreement</u>: This Conservation Easement sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.
- **20.** Cap on Grantor's Liability. Notwithstanding anything to the contrary set forth in this Conservation Easement, in no event shall Grantor's liability to Grantee for costs and expenses, or otherwise, exceed \$90,000 in the aggregate.

(Signatures on following page)

**IN WITNESS WHEREOF**, the Grantor and Grantee have set their hands on the day and year first above written.

## **GRANTOR**

THE HIRAM HOUSE,
an Ohio not-for-profit Corporation

By: D. Bariett

On D. BARRETT

Print Name and Title PRESIDENT

Date: Nov. 14, 7007

STATE OF OHIO	)	
COUNTY OF CUYAHOGA	,	SS

PREFORE ME, a Notary Public, in and for said County, personally appeared John D. BARRETT PRESIDENT of The Hiram House, an Ohio not-for-profit corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the corporation.

IN TESTIMONY WHEREOF, I have set my hand and official seal at Closely, Ohio, this / 4th day of 2007.

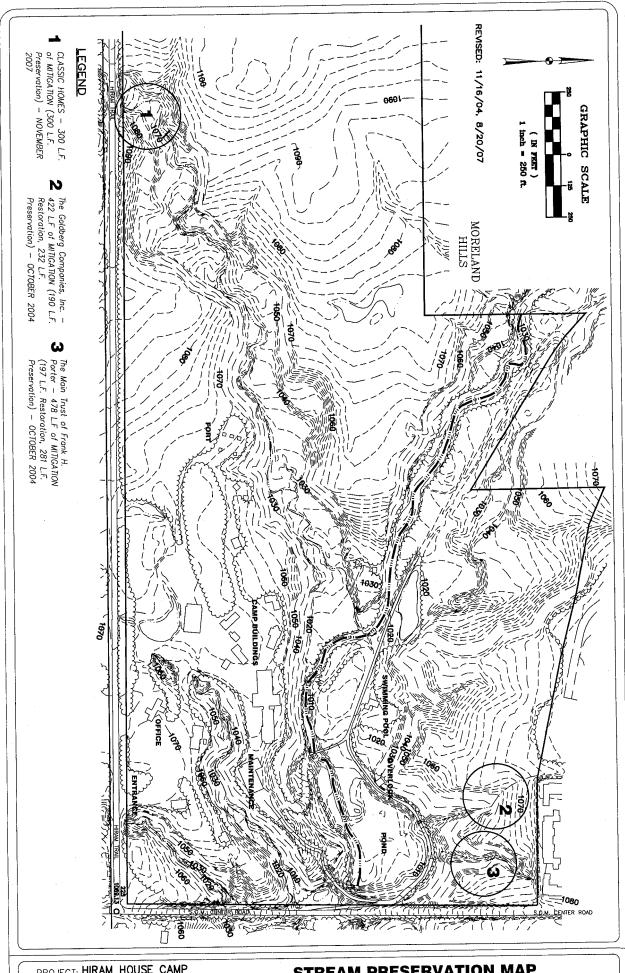
Notary Public
KEVIN D. BARNES, Attorney At Law.
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 R. C.

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## **GRANTEE**

	By:  Jeffrey J. Filarski, Secretary  Date:  OHIO STREAM PRESERVATION, INC.  By:  Jeffrey S. Markley, Executive Director  By:  Jeffrey J. Filarski, Secretary
STATE OF OHIO ) ss. COUNTY OF CUYAHOGA )	
<b>BEFORE ME</b> , a Notary Public, in and for <b>MARKLEY</b> , Executive Director, Ohio Stream Preservation, Inc. who said the they acknowledge their signatures to be his free act Director and Secretary, and the free act and deed of said	ey are duly authorized in these presents, and that t and deed, individually, and as such Executive
this day of, 2007.	hand and official seal at OAKWOOD, Ohio,
	Notary Public  8/9/2009  Notary Public  8/9/2009  NOTARY
This Instrument Prepared by:  Edward J. Leader, Esq.  KAHN KLEINMAN, LPA  1301 East 9th Street, Suite 2600	AUBLIO OTARY OF OF OFFICE OF OFFICE OF OFFICE OF OFFICE OF OTARISMENT OF OTATE OF OFFICE OF OTARISMENT OF OTATE OF OTARISMENT OF

Cleveland, OH 44114



PROJECT: HIRAM HOUSE CAMP LOCATION: MORELAND HILLS, OHIO STREAM PRESERVATION MAP
Prepared by Ohlo Stream Preservation, Inc.