

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Conservation Easement") is made this 8th day of August, 2003 by and between Frostwood Farms, LLC, an Ohio limited liability corporation, its successors and assigns (the "Grantor") having an address at 3787 South Green Road, Beechwood, Ohio 44122 and Ohio Stream Preservation, Inc. an Ohio not-for-profit corporation, its successors and assigns (the "Grantee") having an address at P.O. Box 23835, Chagrin Falls, Ohio 44023.

WHEREAS, the Grantor is the owner in fee of certain real property situated in Geauga County, Ohio, which is more particularly identified and depicted on the Subdivision Plat ("Exhibit A"), attached hereto and made a part hereof which real property is commonly known as Frostwood Farms ("Development"); and

WHEREAS, the Grantor has proposed to construct a certain project on the real property depicted on Exhibit A, and in order to protect the quality of the existing wetland and other surface water bodies located on the real property, the Grantor has agreed to grant a perpetual Conservation Easement in and to a portion of the real property, which is more specifically identified on Exhibit A as Conservation Easements 1,2,3 and 4 ("Easement Areas"); and

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

WHEREAS, the Grantor, as owner of the premises, for itself, and its successors and assigns, declares that the premises are held and hereafter shall be conveyed, subject to the covenants, rights, reservations, limitations and restrictions, which is more specifically identified in Exhibit B as Declaration of Restrictions for Frostwood Farms; and

WHEREAS, Grantor agrees to provide compensation to the Grantee, as described in Exhibit B, for services performed related to this Conservation Easement, on behalf of the Grantor, and the Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to Easement Areas and protect the conservation values of the Easement Areas in perpetuity and to prevent or remedy subsequent activities or uses that are inconsistent with the terms of the Conservation Easement.

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 hereby grants and conveys to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Easement Areas of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Easement Areas, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Easement Areas by 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 heirs, successors and assigns with the Grantee, its successors and assigns, to do and refrain from doing, severally and collectively, upon the Easement Areas, 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.

LAWYERS TITLE INS. CORP.
CH-1 88776

2. **Term of Easement:** The easement granted hereunder shall be perpetual and shall have no expiration date.

3. **Conservation Values:** The Easement Areas possesses substantial value in conserving and protecting the physical, biological and chemical integrity of LaDue Reservoir 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" attached hereto as Exhibit C and incorporated by reference herein, may consist of any and all maps, reports, photographs, descriptions of prominent vegetation, land use history and distinct natural features characterizing the Easement Areas 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. The parties acknowledge that the Baseline Documentation Report is an accurate representation of the Easement Areas at the time of this grant.

4. **Prohibited Actions:** Any activity on or use of the Easement Areas 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. **Division:** Any division or subdivision of the Easement Areas beyond that shown on Exhibit A;

b. **Commercial Activities:** Commercial development, commercial recreational use, or industrial activity;

c. **Construction:** 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;

d. **Destruction or Introduction of Vegetation and Animals:** The removal or destruction of native growth in the Easement Areas, 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, 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 or 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 according to the legal statutes pertaining to hunting or trapping.
- e. **Land Surface Alterations:** The removal, filling, or excavation, of soil, sand, gravel, rock minerals or other materials from the Easement Areas, or doing any act that would alter the topography of the Easement Areas, except for that caused by the forces of nature;
 - f. **Dumping:** 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 Easement Areas (see Article 5(e)(8));
 - g. **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 Easement Areas;
 - h. **Motorized Vehicles:** The operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other motorized vehicle on the Easement Areas;
 - i. **Signage:** Advertising of any kind or nature to be located on or in the Easement Areas except for signs marking the boundaries as part of the Easement Areas in favor of the Grantee, and except as necessary to fulfill the obligations herewith and with the prior written permission of the Grantee;
 - j. **Other Activities:** Each and every other activity or construction project which might endanger the natural, scenic, biological, or ecological integrity of the Easement Areas.
5. **Grantor's Rights and Responsibilities:** Grantor reserves to itself, and its successors and assigns, all rights accruing from its ownership of the Easement Areas, including the right to engage in or permit or invite others to engage in all uses of the Easement Areas 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, mortgage, bequeath, donate, or otherwise convey the Easement Areas. 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;
 - b. **Right to Access:** 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 Easement Areas. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon the Easement Areas or any

portion thereof where no such right existed to the public immediately prior to the execution of this Conservation Easement.

- c. **Actions Against Grantee:** In the event of a breach of this Conservation Easement, the Grantor may bring action against the Grantee for failing to fulfil its obligations as contained herein. Prior to an action being brought, the Grantor shall provide written notice, as set forth herein to the Grantee, advising of the breach of duty and demanding that 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 the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder, including without limitation, attorney fees. The remedies available to 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 Easement Areas, and/or an order compelling restoration of the Easement Areas;
- e. **Requirements for the Easement Areas:** The following minimum conditions shall apply to the Easement Areas:
 - (1) The Grantor, its successors and assigns, shall be responsible for ensuring that contractors and/or workers involved in construction activities adjacent to Easement Areas 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; and
 - (2) Construction debris shall be prevented from entering the wetland, stormwater ditch or swale, stream or buffer area, and shall be removed immediately should any such debris be present in said areas; and,
 - (3) That mechanical equipment used to execute any and all work 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; and,
 - (4) Best Management Practices (BMP's) including silt controls be installed downstream from all construction areas adjacent to or abutting the Easement Areas 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; and,
 - (5) That all installed landscaping and maintenance of said landscaping, including mowing and fertilization, be no closer to the wetland or water body than the

Easement Area boundary adjacent to said wetland or water body, or as approved in writing by the Grantee; and,

- (6) All trash or nonconforming material that is dumped or placed in the Easement Areas shall be removed or cause to be removed by the Grantor, its successors and assigns, immediately. 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.

6. **Rights of Grantee:** The Grantor confers the following rights upon the Grantee to perpetually maintain the conservation values of the Easement Areas:

- a. **Right to Enter:** The Grantee has the right to enter the Easement Areas at reasonable times to monitor or to enforce compliance with this Conservation Easement. The Grantor may use the Easement Areas without interference if the Grantor restricts his/her use to those permitted under this Conservation Easement. The Grantee has no right to permit others to enter the Easement Areas. The public is not granted access to the Easement Areas under this Conservation Easement;
- b. **Right to Easement Areas:** The Grantee has the right to prevent any activity on or use of the Easement Areas that is inconsistent with the terms or purposes of this Conservation Easement;
- c. **Right to Require Restoration:** The Grantee shall have the right to require the restoration of the areas or features of the Easement Areas which are damaged by any action prohibited by this Conservation Easement;
- d. **Right to Placement of Signs:** The Grantee shall have the right to place a reasonable number of small signs on the Easement Areas which identify 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 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 for failing to fulfil its obligations as contained herein. Prior to an action being brought, the Grantee shall provide written notice, as set forth herein to the Grantor, advising of the breach of duty and demanding that 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"), the Grantor continues in its breach of duties or if the Grantor does not take substantial corrective measures within the Notice period, or if Grantor should fail to continue diligently provide said duties, the Grantee may bring an action in law or in equity to enforce the terms of

the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder, including without limitation, attorney fees. The remedies available to Grantee 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 Easement Areas, and/or an order compelling restoration of the Easement Areas;

- c. **Emergency Action:** 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 discretion, that the circumstances justify prompt action to mitigate or prevent injury to the Easement Areas, then the Grantee may pursue its lawful remedies without awaiting the Grantor's opportunity to cure. 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. **Injunctive Relief for Actual or Threatened Non-Compliance:** Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Grantor acknowledges that Grantee's remedies at law for any violation of the terms hereof are inadequate and Grantee is entitled to injunctive relief, both prohibitive and mandatory, 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 inadequacy of otherwise available legal remedies;
- e. **Cumulative Remedies:** 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;
- f. **Delay in Enforcement:** 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 Easement Areas. 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 Easement Areas or otherwise. The Grantor 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 or actions of employees, agents and invitees of Grantee.

9. **Cessation of Existence:** If the Grantee shall cease to be authorized to acquire and hold conservation easements, then this Conservation Easement shall 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.

10. **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. **Unexpected Change in Conditions:** 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 Easement Areas, 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. **Eminent Domain:** If the Easement Areas 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 Easement Areas at the effective date of this Conservation Easement.

11. **Recordation:** The Grantor, its successors and assigns shall record this instrument, Exhibits A, B and C, any plat or plats that reference current or future phases of development, and any other documents that may be required, in a timely fashion in the official record of Geauga County, Ohio and shall re-record it at any time as may be required to preserve the Grantee's rights in this Conservation Easement. A copy of the recorded documents shall be provided to Grantee.

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. 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.

13. **Liberal Construction and Section Headings:** This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the Easement Areas. 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 either party, 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 the Grantor at:
H. David Howe, Jr.
3787 South Green Road
Beechwood, Ohio 44122

with a copy to its attorney at:

The notice shall be served to the Grantee at:
Ohio Stream Preservation, Inc.
P.O. Box 23835
Chagrin Falls, OH 44023-0835

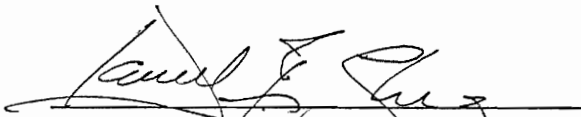
15. **Severability**: If any portion of this Conservation Easement is determined to be invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect.
16. **Subsequent Transfers**: This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Easement Areas and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of the Easement Areas 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 Easement Areas, including, without limitation, a leasehold interest. Grantor further agrees to provide written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the effective date of such transfer.
17. **Termination of Rights and Obligations**: A party's future rights and obligations under this Conservation Easement shall terminate upon transfer of that party's interest in the Easement Areas. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.
18. **Applicable Law**: 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. **Entire Agreement**: This Conservation Easement sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

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The undersigned Grantor, Frostwood Farms, LLC, of the land shown herein, hereby certifies that this Grant of Conservation Easement correctly represents "Frostwood Farms Subdivision Phase 1", a subdivision containing Sublots 1 through 6 and does hereby accept this Grant of Conservation Easement.

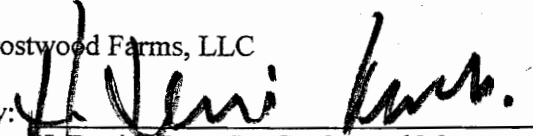
IN WITNESS WHEREOF, the Grantor and Grantee have set their hands on the day and year written.

WITNESSES:


Date: AUGUST 8, 2003

GRANTOR

Frostwood Farms, LLC

By: 
H. David Howe Jr., Co-General Manager

Date: 8 AUGUST 2003

STATE OF OHIO)
) ss.
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public, in and for said county and state, personally appeared the above-named H. David Howe, Jr., Co-General Manager, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, individually, and the free act and deed of Frostwood Farms, LLC for the purpose therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at OAKWOOD, Ohio, this 8th day of August, 2003.


Notary Public

Judith A. Conner
My Commission Expires August 2008

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Prepared by: Ohio Stream Preservation

WITNESSES:

Timothy H. Miller

James J. [Signature]

Date: August 8, 2003

GRANTEE

OHIO STREAM PRESERVATION, INC.

By: [Signature]
Jeffrey S. Markley, Executive Director

By: [Signature]
Jeffrey J. Filarski, Secretary/Treasurer

Date: 8-8-03

STATE OF OHIO)
) ss.
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public, in and for said county and state, personally appeared **JEFFREY S. MARKLEY**, Executive Director, Ohio Stream Preservation, Inc., and **JEFFREY J. FILARSKI**, Secretary/Treasurer, Ohio Stream Preservation, Inc., who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed, individually, and the free act and deed as Executive Director and Secretary/Treasurer.

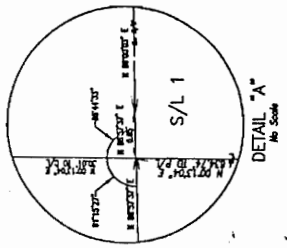
IN TESTIMONY WHEREOF, I have set my hand and official seal at Oakwood, Ohio, this 8th day of August, 2003, 2003.

[Signature]
Notary Public

Judith A. Cence
My Commission Expires August

Instrument
200300670487 OR Book Page
1666 493

PREPARED BY
CHAGRIN VALLEY ENGINEERING, LTD.
 2200 POWERS ROAD, SUITE B P.O. BOX 1020
 CLEVELAND, OHIO 44116
 OVE Project No. 02259
 July 18, 2003
 Revised August 5, 2003



FINAL OF FROSTWOOD FARMS SUBDIVISION PHASE 1

LOCATED IN THE TOWNSHIP OF AUBURN, COUNTY OF COLUMBIA, AND STATE OF OHIO AND BEING PART OF ORIGINAL AUBURN TOWNSHIP LOT NO. 43.

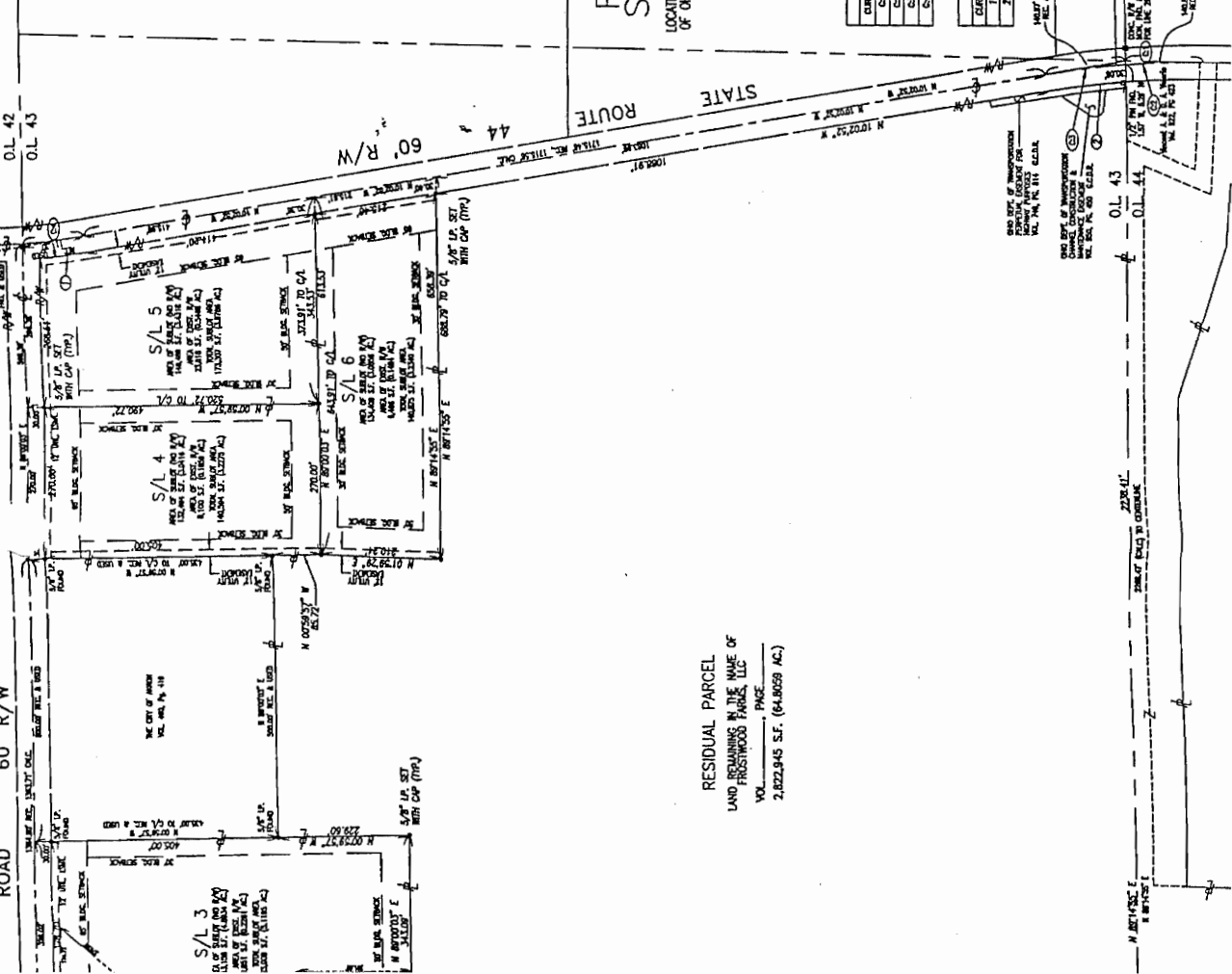
SURVEY LEGEND

- MARK PIN FOUND
- MARK BOX FOUND
- 5/8" IRON PIN SET

CURVE	POINTS	DELTA	ARC	CHORD	BEARING
C1	1431.24'	11° 14' 33"	260.24'	140.87'	S 87°25'0" W
C2	1431.24'	8° 33' 50"	138.86'	86.35'	S 87°25'0" W
C3	1431.24'	8° 40' 44"	141.86'	70.86'	S 87°25'0" W
C4	1145.87'	8° 31' 32"	110.82'	55.35'	S 87°25'0" W

CURVE	POINTS	DELTA	ARC	CHORD	BEARING
1	1178.87'	42°07'14"	42.46'	85.25'	N 07°38'11" W
2	1401.84'	5°38'04"	136.96'	68.53'	N 07°11'49" W

STEVENSON TOLLBOOTH - PHASE 1:
 TOTAL AREA IN SUBLOTS: 6
 TOTAL AREA IN SUBLOTS: 21,724 AC.
 TOTAL AREA IN SUBDIVISION: 21,724 AC.



RESIDUAL PARCEL
 LAND REMAINING IN THE NAME OF
 FROSTWOOD FARMS, LLC
 VOL. _____ PAGE _____
 2,822,945 SF (64,808 AC.)

