Mailtox



620550/ 21

## **GRANT OF CONSERVATION EASEMENT**

This Grant of Conservation Easement ("Conservation Easement") is made this 3rd day of March, 2004 by and between PULTE HOMES OF OHIO, LLC, a Michigan limited liability company, its successors and assigns, having an address at 30575 Bainbridge Road, Suite 150, Solon, Ohio 44139, ("Pulte"), WILLIAM D. HALL AND VIRGINIA L. HALL, their heirs, successors and assigns, having an address at 8071 Ravenna Road, Twinsburg, Ohio 44087, (the "Halls") and OLD MILL ROAD LIMITED PARTNERSHIP, an Ohio Limited Partnership, its successors and assigns, having an address at 8031 Ravenna Road, Twinsburg, Ohio 44087, ("Old Mill") (Pulte, the Halls, and Old Mill collectively known as the "Grantors"), 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 44023-0835.

WHEREAS, Pulte is the owner in fee simple of certain real property by instrument recorded as Instrument No. 54937948, Summit County records, situated in Twinsburg Township, County of Summit, State of Ohio, consisting of approximately 20.2905 acres (the "Pulte Property") as depicted on <a href="Exhibit A">Exhibit A</a> (Overall Development Plan), attached hereto and made a part hereof; and

WHEREAS, the Halls are the owners in fee simple of certain real property by instrument recorded as Volume No. 1785, Page No. 1078, Summit County records, situated in Twinsburg Township, County of Summit, State of Ohio, consisting of approximately 62.2439 acres (the "Hall Property") as depicted on Exhibit A (Overall Development Plan), attached hereto and made a part hereof; and

WHEREAS, Old Mill is the owner in fee simple of certain real property by instrument recorded as Instrument No. 54411316, Summit County records, situated in Twinsburg Township, County of Summit, State of Ohio, consisting of approximately 93.9791 acres (the "Old Mill Property") as depicted on Exhibit A (Overall Development Plan), attached hereto and made a part hereof (the Pulte Property, the Hall Property, and the Old Mill Property collectively referred to herein as the "Stonewater Property"; and

WHEREAS, Pulte has proposed to construct a certain residential community on the Stonewater Property, which project may have environmental impacts to certain surface water bodies located within the Stonewater Property, and which construction will require Pulte to obtain a 401 water quality certification from the Ohio Environmental Protection Agency ("OEPA") and a 404 Individual Permit from the Army Corps of Engineers ("ACOE"); and

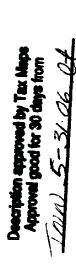
WHEREAS, in order to protect the quality of the surface waters located within the Stonewater Property, the OEPA has required that Grantors, as a condition of Pulte being issued a 401 water quality certification, grant a Conservation Easement in and to a portion of the Stonewater Property, which area is identified on Exhibit A as Preserve Areas ("Preserve"), and which area is more fully described in the legal descriptions attached hereto as Exhibit B (Legal Descriptions of the Preserve); and

WHEREAS, Pulte, for itself, and its successors and assigns, has declared that the Pulte Property is held and hereafter shall be conveyed, subject to the covenants, rights, reservations, limitations and restrictions, set forth in the "Declaration of Covenants, Conditions, Restrictions, and Easements" for Stonewater, Twinsburg Township, Ohio, recorded as Instrument No. \_\_\_\_\_\_\_\_\_, Summit County Records (the "Declaration"), and has created the Stonewater Homeowners' Association, Inc., an Ohio non-profit corporation (the "Association") to administer and enforce the provisions of the Declaration, and to take title to the real property within the Pulte Property which is defined as the "Common Area" in the Declaration, and Pulte agrees the Declaration commits the Association to be bound by the terms of this Conservation Easement; and

6205496 : 6205497

(CONSERVATION EASEMENT - STONEWATER, TWINSBURG TOWNSHIP, OHIO - December 29, 2003

Page 1 of 15



WHEREAS, Pulte, Old Mill, and the Halls intend that Pulte will purchase certain portions of the Hall Property and the Old Mill Property, and on such properties construct additional phases of Pulte's Stonewater residential community; and

WHEREAS, Pulte and the Association intend that the portion of the Pulte Property which is hereby encumbered by this Grant of Conservation Easement, and that those portions of the Hall Property and the Old Mill Property which are hereby encumbered by this Grant of Conservation Easement but which will subsequently be purchased by Pulte will be defined as "Common Area" under the Declaration and title thereto will be conveyed to the Association; and

WHEREAS, Pulte has agreed to provide compensation to the Grantee for services performed related to this Conservation Easement, on behalf of the Grantors, and the Grantee agrees by accepting this grant of Conservation Easement to honor the intentions of the Grantors stated herein, to protect the conservation values stated in this Conservation Easement in perpetuity, and to prevent or remedy subsequent activities or uses that are inconsistent with the terms of this Conservation Easement; 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: Each Grantor does hereby grant and convey to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the respective portions of the Preserve (as described in Exhibit B hereto) to which each such Grantor holds title, of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Preserve, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Preserve by Grantors, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantors covenant, on behalf of themselves, their heirs, 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 Tinkers Creek and the Cuyahoga 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. The specific conservation values of the Preserve may be further documented in an application for Section 404 Permit to the U. S. Army Corps of Engineers and in any Grant of Section 401 Certification received from the Ohio EPA with respect to the Preserve.

A "Baseline Documentation Report" will be prepared by Grantee and recorded in the future as <a href="Exhibit C">Exhibit C</a> hereto, and, upon recordation by the parties of such amendment hereto, which <a href="Exhibit C">Exhibit C</a> will be 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 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. By signing and recording the Baseline Documentation Report as Exhibit C hereto, the parties will acknowledge that the Baseline Documentation Report is an accurate representation of the Preserve at the time of recording such Exhibit C.

- **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 beyond that shown on <u>Exhibit A</u>, unless expressly permitted in writing by the Grantee, however the Grantors shall be permitted to consolidate individual parcels comprising the Reserve at the time of this grant into a fewer number of parcels without the permission of the Grantee;
  - b. Commercial Activities: Commercial development, commercial recreational use, or industrial activity, however, Grantee acknowledges that Moore Well Service, Inc. ("Moore") has been granted the right to maintain oil and gas wells, pipelines, and other associated equipment within the Preserve pursuant to the following leases and easements, and that this grant of Conservation Easement is subject and subordinate to the rights of Moore, its successors and assigns, as provided in the following leases and easements: (1) Pipeline Easement and Oil and Gas Lease Agreement between Pulte and Moore recorded \_\_\_\_\_\_\_\_, 2003 as Instrument No. \_\_\_\_\_\_\_, Summit County Records, (2) Pipeline Easement and Oil and Gas Lease Agreement between the Halls and Moore recorded \_\_\_\_\_\_\_\_, 2003 as Instrument No. \_\_\_\_\_\_\_, Summit County Records, and (3) Pipeline Easement and Oil and Gas Lease Agreement between Old Mill and Moore recorded \_\_\_\_\_\_\_\_, 2003 as Instrument No. \_\_\_\_\_\_\_, Summit County Records;
  - c. Construction: 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. Grantors shall be permitted to complete the installation, maintenance, repair and replacement of utilities to be located within the portion of the Preserve described in Exhibit B, which improvements shall be limited to storm and sanitary sewers, and stormwater detention/retention basins and all appurtenances thereto ("Utility Work") within the designated utility easements as shown on Exhibit A; and Grantors shall be permitted to complete the installation, maintenance, repair and replacement of asphalt pedestrian and bicycle trails as shown on Exhibit A pursuant to a grant of Recreation Path Easement from the Halls and Old Mill, as grantors therein, to the Association, as grantee therein, which Recreation Path Easement has been recorded as Instrument No. \_\_\_\_\_\_\_, Summit County Records. Where areas of the Preserve are affected by the Utility Work, construction of pedestrian/bicycle trails as provided in this section, or the exercise of the rights granted to Moore as acknowledged in section 4(b) above, each Grantor (except Grantee, should Grantee succeed any Grantor as owner of any portion of the Preserve) shall restore all such affected portions of the Preserve which is within their respective properties to their condition immediately prior to such work. Where the pedestrian/bicycle trails cross wetlands or streams, raised boardwalks must be used.

nofrio, Summit Fiscal Officer

55328037 Pg: 3 of 24 f15 05/31/2006 01:11P EA 204.00

- 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, which approval will not 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, or pedestrian and bicycle trails; and,
  - (3) The elimination and removal of grapevines, poison ivy, and other toxic and undesirable growth which can be cut and left laying;
  - (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 pedestrian/bicycle trails as shown on Exhibit A.
- 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 the activities permitted under Article 4(c), and that caused by the forces of nature;
- 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 (see Article 5(e)(8));
- g. <u>Water Courses</u>: 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);
- h. <u>Motorized Vehicles</u>: The operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other motorized vehicle on the Preserve, except as necessary to exercise the rights granted in Article 4(c);
- i. <u>Signage</u>: Advertising 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 and with the prior written permission of the Grantee;



55328037 Pg: 4 of 24 05/31/2006 01:11P EA 204.00

- j. Other Activities: Each and every other activity or construction project which might endanger the natural, scenic, biological, or ecological integrity of the Preserve.
- 5. Grantors' Rights and Responsibilities: Grantors reserve to themselves, and their heirs, successors and assigns, all rights accruing from their 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 Grantors each retain the right to sell, mortgage, bequeath, donate, or otherwise convey their respective portions of the Preserve. 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 Grantors each shall retain the right of unimpeded access to their respective portions of 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. Actions Against Grantee: In the event of a breach of this Conservation Easement, the Grantors may, individually or in any combination, bring action against the Grantee for failing to fulfil its obligations as contained herein. Prior to an action being brought, the claiming Grantor(s) shall provide written notice, as set forth herein to the Grantee, advising Grantee 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 Grantce does not take substantial corrective measures within the Notice period, or if Grantee should fail to continue diligently to provide said duties, the claiming Grantor(s) 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, including without limitation, attorney fees. The remedies available to Grantors 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, and/or an order compelling restoration of the Preserve;
  - e. Requirements for the Preserve: The following minimum conditions shall apply to the Preserve:
    - (1) Each Grantor shall be responsible for installation and maintenance of permanent physical boundary markers indicating the perimeter of the Preserve within the respective property of each such Grantor, the form of such markers to be wood posts with signs identifying the Preserve, or other such markers as are approved

- by the Grantee, which approval will not be unreasonably withheld or delayed; and
- (2) Each Grantor shall be responsible for ensuring that contractors and/or workers involved in activities permitted by Article 4(c) within each such Grantor's respective 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; and
- (3) Each Grantor shall be responsible for ensuring that construction debris resulting from any activities within each such Grantor's respective 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; and
- (4) Each Grantor shall be responsible for ensuring that the mechanical equipment used to execute any and all work within each such Grantor's respective 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; and
- (5) Each Grantor shall be responsible for ensuring that, during construction activities within such Grantor's respective property Best Management Practices ("BMP's"), including silt controls, be installed downstream from all construction areas adjacent to or abutting the Preserve Area 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
- (6) Each Grantor, when carrying out the repair, maintenance, or replacement of the Utility Work, as permitted by Section 4(c) herein, shall be responsible for ensuring that, during such repair, maintenance, or replacement activities within such Grantor's respective property (including mowing and fertilization), all installed landscaping, including landscaping of the Utility Work area and along the edges of stormwater retention basins, shall be no closer to a wetland, waterway or stream than may be restricted by any designated buffer surrounding such wetland, waterway or stream, or no closer than the Easement Area boundary, (or as a reasonable closer distance may be approved in writing by the Grantee, )which approval shall not be unreasonably withheld, conditioned or delayed), whichever distance is further; and
- (7) Until the dedication and acceptance of the utilities by government authorities, or utility companies having jurisdiction, each Grantor (except Grantee, should Grantee succeed any Grantor as owner of any portion of the Preserve) shall be responsible for the repair, replacement, liability and maintenance of all Utility Work and pedestrian/bicycle paths within each such Grantor's respectively owned portion of the Preserve, to the reasonable satisfaction of the Grantee. Should a Grantor fail to maintain the Utility Work and/or pedestrian/bicycle paths within their respective property to Grantee's reasonable satisfaction, Grantee may undertake all necessary work and assess the costs against the defaulting Grantor; and,

553 Pg: 6 05/31

(CONSERVATION EASEMENT - STONEWATER, TWINSBL

- (8) All trash or nonconforming material that is dumped or placed on the Preserve shall be immediately removed or caused to be removed by the Grantor owning such portion of the Preserve. In the event that the nonconforming material is placed by an adjacent landowner or party unknown to the Grantors, the Grantee and Grantors 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 Grantors shall be responsible for removal of the nonconforming material within the portion of the Preserve owned by such Grantor.
- 6. Rights of Grantee: The Grantors confer the following rights upon the Grantee to perpetually maintain the conservation values of the Preserve, which rights shall only be exercised by the Grantee against the individual Grantor owing the portion of the Preserve to which such rights are being exercised:
  - a. <u>Right to Enter</u>: The Grantee has the right to enter the Preserve at reasonable times to monitor or to enforce compliance with this Conservation Easement; provided that such entry shall be upon prior written reasonable notice to the Grantor(s) owning such portion(s) of the Preserve. The Grantors may use the Preserve without interference provided that the Grantors restrict their 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 inconsistent with 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 which are damaged by any action prohibited by this Conservation Easement;
  - d. <u>Right to Placement of Signs</u>: The Grantee shall have the right to place a reasonable number of small 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 individual Grantor owing the portion of the Preserve to which such remedies are being sought) and shall be subject to the following limitations:
  - a. Actions Against Grantors: In the event of a breach of this Conservation Easement, the Grantee may bring action against the breaching Grantor(s) for failing to fulfil its/their obligations as contained herein. Prior to an action being brought, the Grantee shall provide written notice, as set forth herein, to all the Grantors, advising Grantors of the breach of duty by one or more Grantors, and demanding that the breaching Grantor(s) 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 breaching Grantor(s) continue(s) in its/their breach of duties, or if the breaching Grantor(s) do not take

John A Donofrio, Summit Fiscal Office

55328037 Pg: 7 of 24 05/31/2006 01:11P EA 204.00 substantial corrective measures within the Notice period, or if the breaching Grantor(s) should fail to continue diligently fulfill said duties, the Grantee may bring an action in law or in equity against the breaching Grantor(s) to enforce the terms of the Conservation Easement and recover any damages from such breaching Grantor(s) 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 from the breaching Grantor(s), and obtaining from the breaching Grantor(s) 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;

- 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 Grantors. If, through reasonable efforts, the Grantors 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 breaching Grantors' opportunity to cure, however the Grantors 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: Grantors acknowledge that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Grantors acknowledge that Grantee's remedies at law against any breaching Grantor for any violation of the terms hereof are inadequate and Grantee is entitled to obtain injunctive relief against any breaching Grantor, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled to receive from such against any breaching Grantor(s), 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 any 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 Grantors agree to defend the Grantee against such claims and to

John A Donofrio, Summit Fiscal Officer

55328037 Pg: 8 of 24 05/31/2006 01:11P EA 204.00

(CONSERVATION EASEMENT - STONEWATER, TV

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. Cessation of Existence: 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 Summit 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 Grantors and Ohio EPA.
- 10. <u>Termination</u>: 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 Grantors or their heirs, successors and assigns shall record this instrument in a timely fashion in the official record of Summit County, Ohio and shall rerecord it at any time as may be required to preserve the Grantee's rights in this Conservation Easement.
- 12. <u>Assignment</u>: 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 all Grantors, 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 Summit County, Ohio. As a condition of such transfer, the Grantee and Grantors 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.



55328037 Pg: 9 of 24 05/31/2006 01:11P 14. <u>Notices</u>: 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 Pulte at:
Pulte Homes of Ohio, LLC
30575 Bainbridge Road, Suite 150
Solon, Ohio 44139

with a copy to its attorney:

Richard A. Rosner, Attorney at Law Kahn, Kleinman, a Legal Professional Association 2600 Erieview Tower 1301 East Ninth Street Cleveland, Ohio 44114-1824

The notice shall be served to the Halls at:

William D. Hall and Virginia L. Hall
8031 Ravenna Road
Twinsburg, Ohio 44087

The notice shall be served to Old Mill at:
Old Mill Road Limited Partnership
8031 Ravenna Road
Twinsburg, Ohio 44087

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

- 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 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. Grantors 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. Grantors further agree to provide written notice to the Grantee of the transfer of any such interest in any portion of the Preserve at least thirty (30) days 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



05/31/2006 01 EA 204 Preserve. 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. <u>Entire Agreement</u>: This Conservation Easement sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.
- 20. Obligations of and Rights Against Grantors Remain Several: Grantors join in this single grant of Conservation Easement as a matter of convenience only, given the similarity of the obligations, duties and rights of the Grantors, however the duties, obligations and responsibilities of each such Grantor hereunder relate solely to the portion of the Preserve owned by each such Grantor, and the rights of Grantee for any breach by a Grantor hereunder, or violation hereof occurring within the Preserve, shall be exercised only against the breaching Grantor or Grantors, and no Grantor hereunder shall be responsible for any breach of this Conservation Easement by any other Grantor, or by violations occurring on any portion of the Preserve not owned by such Grantor, unless such violation arises by the action of said Grantor, its officers, members, employees, or agents.

(The rest of this page intentionally left blank.)



John A Donofrio, Summit Fiscal Office

Pg: 11 of 24 05/31/2006 01:11P EA 204.00 IN WITNESS WHEREOF, the Grantors and Grantee have set their hands on the day and year first above written.

PULTE HOME	S OF OHIO	, LLC
a Michigan limit	ed liability co	mpany
By:	Del	il
Greamit	At- 1+	- Doesiel

STATE OF OHIO COUNTY OF (Wahos

BEFORE ME, a Notary Public, in and for said County, personally appeared breggy Schmidt, officer of Pulte Homes of Ohio, LLC, who said he is duly authorized in these presents, and that he acknowledges his signature to be his free act and deed, individually, and as such officer, and the free act and deed of said partnership and corporation.

Ohio, this 13th day of French 2004.

(The rest of this page intentionally left blank.)

Notary Public, STATE OF OHIO

My commission expires December 9, 2008 Recorded in Cuyahoga County

Page 12 of 15

WILLIAM D. HALL
Allunckion
William D. Hall
Date: 2/6/64
<b>V</b> / · / /
VIRGINTA L. HALL
Virginia L. Hall
Virginia L/Hall
Date: 2/6/04

STATE OF OHIO ) ss COUNTY OF COYA HOCA)

**BEFORE ME**, a Notary Public, in and for said County, personally appeared William D. Hall and Virginia L. Hall, who said they are duly authorized in these presents, and that they acknowledge their signature to be their free act and deed, individually.

IN TESTIMONY WHEREOF, I have set my hand and official seal at CLEVELTHO, Ohio, this day of FEBRUARY, 2004.

Notary Rublic Exp Nov 16, 2007

(The rest of this page intentionally left blank.)

OLD MILL ROAD LIMITED

PARTNERSHIP, an Ohio Limited Partnership

Print Name and Title

STATE OF OHIO

COUNTY OF WYPHOG

BEFORE ME, a Notary Public, in and for said County, personally appeared WILLIAM D. HALL officer of Old Mill Road Limited Partnership, who said he is duly authorized in these presents, and that he acknowledges his signature to be his free act and deed, individually, and as such officer, and the free act and deed of said partnership and corporation.

IN TESTIMONY WHEREOF, I have set my hand and official seal at CLEVELBRY, Ohio, this 62 day of FEBRARY, 2004.

Notary Public Earl Lavison Eyp Nov 16,2007

(The rest of this page intentionally left blank.)

## **GRANTEE**

Date:

STATE OF OHIO

COUNTY OF CUYAHOGA

BEFORE ME, a Notary Public, in and for said County, personally appeared JEFFREY S. MARKLEY, Executive Director, Ohio Stream Preservation, Inc., and JEFFREY J. FILARSKI, Secretary, Ohio Stream Preservation, Inc. who said they are duly authorized in these presents, and that they acknowledge their signatures to be his free act and deed, individually, and as such Executive Director and Secretary, and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have set my hand and official seal at Oakwood, Ohio, this \_\_\_\_\_\_\_\_\_, 2004.

Judith A. Cence

Wy Commission Expires Admiss

This Grant of Conservation Easement was prepared by Ohio Stream Preservation, Inc. December 2003

Page 15 of 15

GBC DESIGN, INC.

3378 West Market Street Phone 330-836-0228 Akron, OH 44333-3386

Fax 330-836-5782

E-mail gbc@gbcdesign.com

Sy Cymerman, A.I.A. Michael A. Gardina, P.E. Gary R. Rouse, P.E., P.S.

Gary R. Rouse, P.E., P.S. John E. Walsh, P.E., P.S.

August 20, 2003

## LEGAL DESCRIPTION

Pulte Homes of Ohio, LLC a Michigan Limited Liability Company Stonewater Phase I - 20.2905 Acres

Situated in the Township of Twinsburg, County of Summit, State of Ohio and known as being part of Lot 25, part of Lot 26 Tract 3, and part of the Mill Tract of Original Twinsburg Township and also known as being all of lands now or formerly owned by Old Mill Road Limited Partnership as recorded in Reception #54073319 of the Summit County records, and more fully described as follows:

Beginning at a stone with "X" found at the southeasterly corner of said Twinsburg Township, also being the southeasterly corner of said Lot 25;

Thence N 00° 00' 56" E, along the easterly line of said Summit County, also being the easterly line of said Twinsburg Township, also being the westerly line of Portage County, a distance of 1262.06 feet to a 1/2" iron pipe found;

Thence N 00° 13' 13" W, along the easterly line of said Summit County, also being the easterly line of said Twinsburg Township, also being the westerly line of Portage County, a distance of 1616.70 feet to a point (witnessed by said capped rebar (D.G. Bohning & Assoc.) found N 31° 10' 56" W, 0.15 feet);

Thence N 31° 10' 56" W, along the southwesterly line of lands now or formerly owned by Norfolk & Western Railway as recorded in Official Record 613, Page 17 of the Summit County records, a distance of 81.36 feet to a point (witnessed by a PK Nail found N 31° 11' 56" W, 0.34 feet):

Thence S 68° 51' 08" W, along the centerline tangent of said Old Mill Road, a distance of 133.63 feet to a 5/8" rebar found;

Thence N 47° 54' 26" W, along the centerline tangent of said Old Mill Road, a distance of 23.60 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the right, having a central angle of 27° 19' 53", a radius of 268.73 feet, a tangent of 65.34 feet, a chord of 126.98 feet, a chord bearing of N 61° 34' 23" W, and an arc length of 128.19 feet to a 1" rebar to be set;

Thence N 47° 54' 26" W, a distance of 93.82 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the left, having a central angle of 26° 25' 51", a radius of 256.49 feet, a tangent of 60.23 feet, a chord of 117.27 feet, a chord bearing of N 61° 07' 22" W, and an arc length of 118.32 feet to a 1" rebar to be set;

Thence N 74° 20' 17" W, a distance of 189.03 feet to a 1" rebar to be set, which is the True Place of Beginning for the parcel of land herein described;

Thence S 06° 30' 37" W, a distance of 606.70 feet to a 1" rebar to be set;

Thence S 29° 20' 27" E, a distance of 250.19 feet to a 1" rebar to be set;

Thence S 31° 34' 34" E, a distance of 104.02 feet to a 1" rebar to be set;

Thence S 10° 56' 33" E, a distance of 52.24 feet to a 1" rebar to be set;

Thence S 52° 45' 30" W, a distance of 109.62 feet to a 1" rebar to be set;



ohn A Donofrio, Summit Fiscal Officer

Aug-20-03 10:29A

Legal Description Stonewater Phase I - 20.2905 Acres August 20, 2003 Page 2 of 3



Thence S 64° 21' 29" W, a distance of 48.53 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the left, having a central angle of 4° 53' 56", a radius of 263.00 feet, a tangent of 11.25 feet, a chord of 22.48 feet, a chord bearing of S 28° 05' 29" E, and an arc length of 22.49 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the right, having a central angle of 12° 29' 48", a radius of 287.00 feet, a tangent of 31.42 feet, a chord of 62.47 feet, a chord bearing of S 24° 17' 33" E, and an arc length of 62.60 feet to a 1" rebar to be set;

Thence N 70° 09° 06" E, a distance of 3.00 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the right, having a central angle of 19° 13' 33", a radius of 290.00 feet, a tangent of 49.12 feet, a chord of 96.85 feet, a chord bearing of S 08° 26' 59" E, and an arc length of 97.31 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the left, having a central angle of 82° 50' 37", a radius of 10.00 feet, a tangent of 8.82 feet, a chord of 13.23 feet, a chord bearing of S 40° 15' 31" E, and an arc length of 14.46 feet to a 1" rebar to be set;

Thence S 81° 40' 50" E, a distance of 7.24 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the left, having a central angle of 56° 15' 04", a radius of 10.00 feet, a tangent of 5.35 feet, a chord of 9.43 feet, a chord bearing of N 70° 11' 38" E, and an arc length of 9.82 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the right, having a central angle of 292° 30' 07", a radius of 80.00 feet, a chord of 88.89 feet, a chord bearing of S 08° 19' 10" W, and an arc length of 408.41 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the left, having a central angle of 56° 15' 04", a radius of 10.00 feet, a tangent of 5.35 feet, a chord of 9.43 feet, a chord bearing of N 53° 33' 18" W, and an arc length of 9.82 feet to a 1" rebar to be set;

Thence N 81° 40' 50" W, a distance of 11.51 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the left, having a central angle of 77° 57' 02", a radius of 10.00 feet, a tangent of 8.09 feet, a chord of 12.58 feet, a chord bearing of \$ 59° 20' 39" W, and an arc length of 13.60 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the right, having a central angle of 2° 17' 31", a radius of 290.00 feet, a tangent of 5.80 feet, a chord of 11.60 feet, a chord bearing of S 21° 30' 54" W, and an arc length of 11.60 feet to a 1" rebar to be set;

Thence N 67° 20' 21" W, a distance of 80.00 feet to a 1" rebar to be set;

Thence along the arc of a circle curving to the left, having a central angle of 30° 56' 06", a radius of 210.00 feet, a tangent of 58.11 feet, a chord of 112.01 feet, a chord bearing of N 7° 11' 36" E, and an arc length of 113.38 feet to a 1" rebar to be set;

Thence S 87° 11' 27" W, a distance of 165.49 feet to a 1" rebar to be set;

Thence N 06° 00' 09" W, a distance of 147.58 feet to a 1" rebar to be set;

Thence N 35° 42' 37" W, a distance of 352.55 feet to a 1" rebar to be set;

Thence N 04° 40' 22" W, a distance of 169.94 feet to a 1" rebar to be set;

Thence S 85° 19' 38" W, a distance of 59.49 feet to a 1" rebar to be set;

Thence N 04° 40' 22" W, a distance of 159.00 feet to a 1" rebar to be set;

Thence N 42° 50' 01" W, a distance of 37.93 feet to a 1" rebar to be set;

Thence S 82° 27' 17" W, a distance of 95.57 feet to a 1" rebar to be set;

Thence S 52° 47' 30" W, a distance of 128.24 feet to a 1" rebar to be set;

Thence S 32° 37' 18" W, a distance of 207.56 feet to a 1" rebar to be set;



(Page 5 of 5)

Aug-20-03 10:30A

Legal Description
Stonewater Phase I – 20.2905 Acres
August 20, 2003
Page 3 of 3

Thence N 54° 44' 09" W, a distance of 26.62 feet to a 1" rebar to be set; Thence N 86° 48' 39" W, a distance of 90.13 feet to a 1" rebar to be set; Thence S 72° 45' 29" W, a distance of 54.11 feet to a 1" rebar to be set; Thence N 00° 01' 58" E, a distance of 532.99 feet to a 1" rebar to be set;

Thence S 80° 25' 40" E, along the southerly line of lands now or formerly owned by Scott William Jones as recorded in Reception #54775457 of the Summit County records, a distance of 208.05 feet to a 3/4" iron pipe found;

Thence N 05° 04' 05" E, along the easterly line of said Jones lands, passing over a 1/2" iron pipe found at 389.97 feet, a distance of 420.00 feet to a PK nail found;

Thence S 78° 10' 57" E, along the centerline tangent of said Old Mill Road, a distance of 175.91 feet to a 1" iron bar found;

Thence S 74° 01' 13" E, along the centerline tangent of said Old Mill Road, a distance of 415.38 feet to a 3/4" iron bar found;

Thence S 71° 11' 11" E, along the centerline tangent of said Old Mill Road, a distance of 197.05 feet to a 3/4" rebar found;

Thence S 74° 20' 17" E, along the centerline tangent of said Old Mill Road, a distance of 20.44 feet to a PK Nail set;

Thence S 15° 39' 43" W a distance of 30.00 feet to a 1" rebar to be set; and the True Place of Beginning and containing 20.2905 Acres of land, more or less, as surveyed in August, 2003 by Gary R. Rouse, Registered Surveyor No. 6867 with GBC Design, Inc., but subject to all legal highways and any restrictions, reservations or easements of record.

\*\*Basis of Bearing for this survey is the Ohio State Plane Coordinate System NAD 83.

Gary R. Rouse - Reg. No. 6867

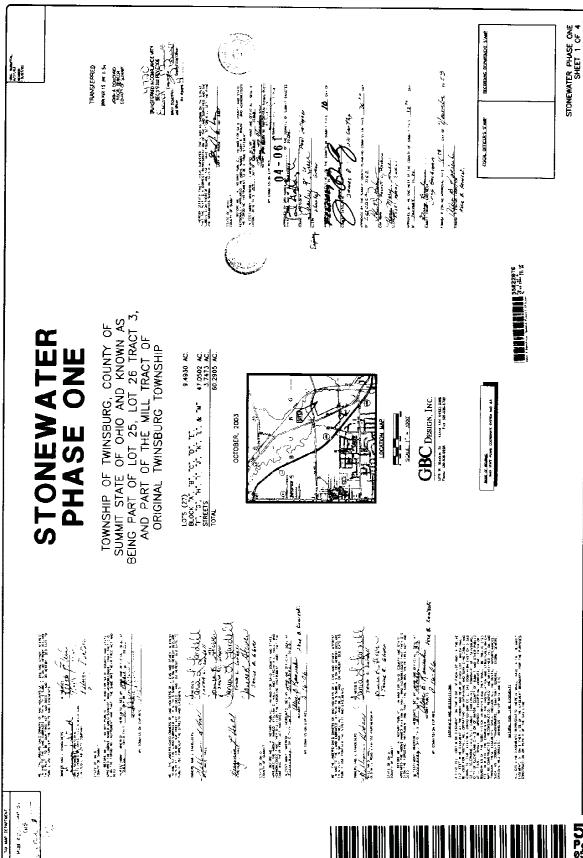
- 62-05444 TW.00035-A3.001.000



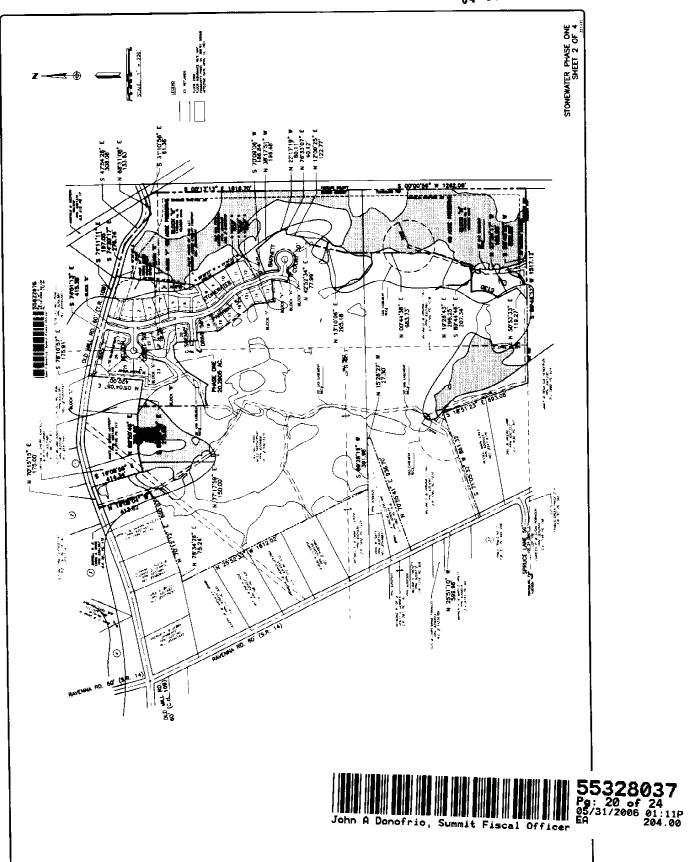


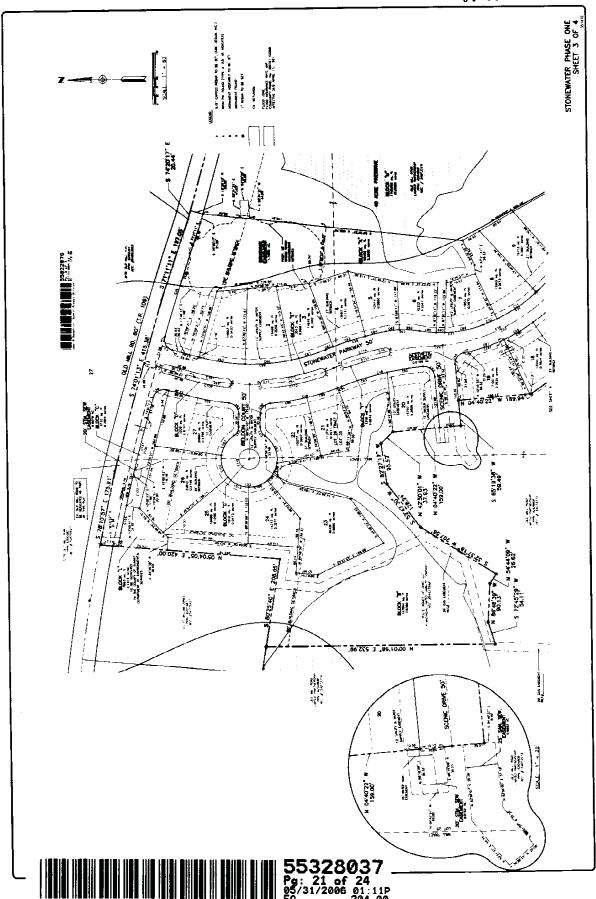
•

04-061

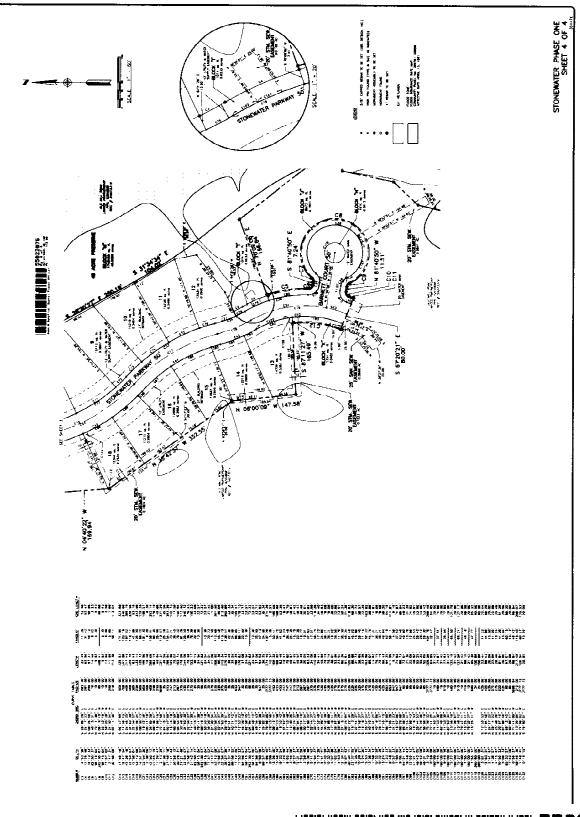


55328037 Pg: 19 of 24 05/31/2006 01:11P EA 204.00



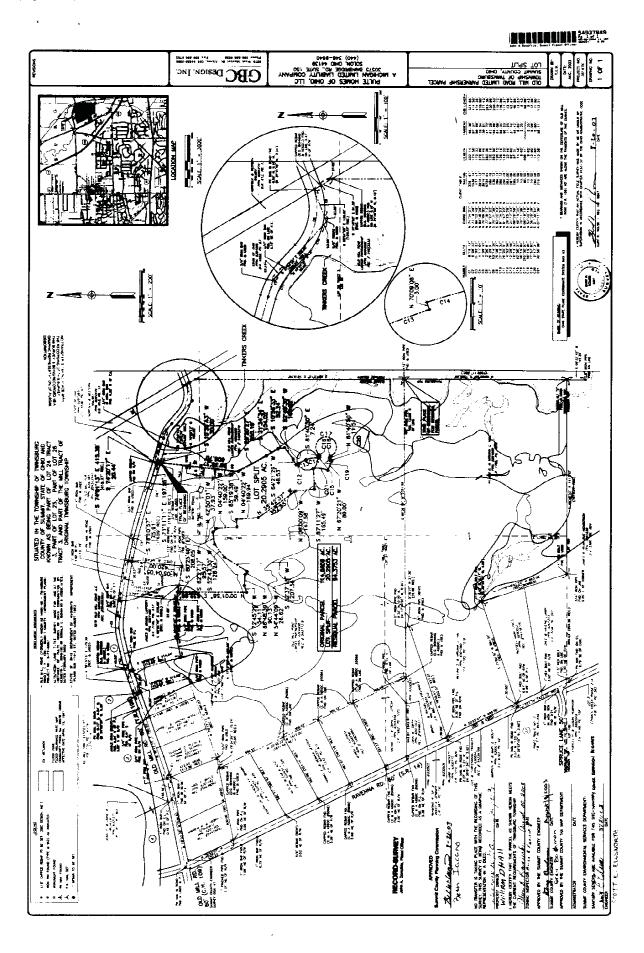


3

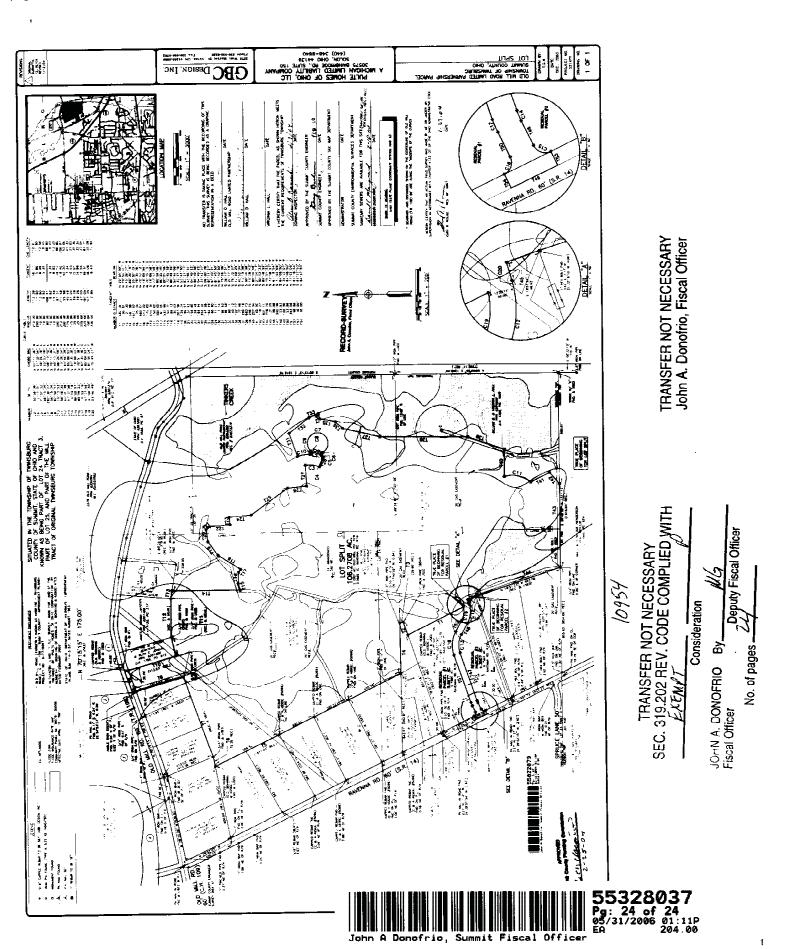




55328037 Pg: 22 of 24 05/31/2006 01:11P EA 204.00



'



4