

OR BK 681 PG 742

Transfer Not Necessary  
Kenneth R. Wilson, Auditor  
Hocking County, Ohio  
DATE 12/09/2020

202000004681  
Filed for Record in  
HOCKING COUNTY, OHIO  
SANDRA K LEACH-HUNT  
12-09-2020 At 01:39 pm.  
CONSERV/EAS 394.00  
OR Book 681 Page 742 - 788

Return to:  
Name: TechneTitle Agency, Inc.  
Address: 400 TechneCenter Drive, Suite 400, Milford, OH 45150

Auditor Tax Parcel: #19-0000048.0000. That part of said Auditor Tax Parcel that is south of Strawn Road, with a total acreage of 78.89 acres (Property address: 30574 Strawn Road, Washington Township, Hocking County, Logan Ohio 43138)

#### DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Grant") dated as of the 28 day of May, 2020 (the "Easement Date") is by and between Edwin George Charle, Jr. a/k/a Edwin G. Charle, Jr., a married person, in his individual capacity (the "Grantor"), with a tax mailing address of 345 Oak Ave., Waverly, Ohio 45690, and the Athens Conservancy, an Ohio non-profit corporation and I.R.C. 501(c)(3) organization (the "Grantee"), with a mailing address of P.O. Box 2281, Athens, OH 45701.

#### RECITALS

WHEREAS, the Property has significant open space, natural, habitat, scenic, and forested values (the "Conservation Values") of great importance to Grantor, to Grantee, and to the people of Hocking County, State of Ohio, also referred to herein as the Conservation Objectives; and

WHEREAS, with this conservation easement (the "Conservation Easement"), it is the Grantor's goal and desire to protect the Property in perpetuity for conservation purposes, pursuant to O.R.C. 5301.67-70; and

**WHEREAS**, the Property includes a variety of native trees, forested hillsides, and flora and fauna, which collectively are a significant natural habitat, as described in the Baseline Documentation Report ("BDR"); and

**WHEREAS**, the Property has scenic and open space that can be viewed from a public roadway, to wit: Strawn Road, in Washington Township, Hocking County, Ohio and is located in one of the most scenic areas of Ohio, the Hocking Hills area, which is a highly visited area for outdoor recreation and tourism; and

**WHEREAS**, natural areas preservation is a policy priority for the State of Ohio, as shown by the overwhelming support of the voters and the state legislature in approving Clean Ohio funding for natural areas preservation by an amendment to the State Constitution at Art. XIII (2.q.) in 2000 and, in 2008, by a renewal of the Clean Ohio bond levy (by majority of voters in all 88 Ohio counties who approved a Clean Ohio bond levy (for, *inter alia*, greenspace and farmland preservation), and subsequently reauthorized through successive capital budgets passed by the State Legislature in 2016-2017, and 2018-2019, and most recently in 2019-2020 through H.B. 529 which included \$100 million for Clean Ohio projects, signed by Gov. Kasich on March 30, 2018; and

**WHEREAS**, effective July 26, 2001, Ohio Rev. Code 5301.67-70, the Ohio law provided for the state's first conservation easement enabling statute, allowing charitable organizations, such as the Athens Conservancy, to hold conservation easements for protecting land with natural resources and open space; and

**WHEREAS**, Grantee is an eligible holder of conservation easements pursuant to O.R.C. 5301.69(B); and

**WHEREAS**, according to the Hocking County Comprehensive Land Use Plan (2009) where the Property is located, tourism and preservation of natural areas and resources are priorities, including scenic open space preservation and tourism/outdoor recreation;

**WHEREAS**, this Easement and the protection of the Property are also consistent with the specific goals and objectives of the County's Comprehensive Land Use Plan which are to:

- Retain the rural character of Hocking County by protecting, for example, visible field, meadow, and wooded lands;
- Preserve visual and scenic character, including the viewsheds along public thoroughfares, scenic roadways, and from neighborhoods;
- Preserve and enhance animal and plant habitats on the property;

- Protect ecologically significant/sensitive lands such as prime soils, drainage and riparian areas, steep slopes and wetlands, and, as further illustrated in the Baseline Documentation Report.

**WHEREAS**, accordingly, this Conservation Easement protects open space, including mostly forested land and natural habitat, and therefore this Easement meets the requirements of Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"); and

**WHEREAS**, protection of the Property will accomplish a number of the factors determining "significant public benefit" under Treas. Reg. Section 1.170A-14(d)(4)(iv) and therefore this Easement meets the requirements of Section 170(h)(4)(A)(iii)(I) of the Code; and

**WHEREAS**, accordingly, protection of the Property is pursuant to clearly delineated federal, state, and local governmental conservation policies, and therefore this Easement meets the requirements of Section 170(h)(4)(a)(iii)(II) of the Code; and

**WHEREAS**, Grantor and Grantee desire to preserve the Conservation Values as evidenced by the Baseline Documentation Report (the "Baseline Documentation" or "BDR"), which is attached hereto and incorporated herein by reference as Exhibit B, and Grantor and Grantee have therein acknowledged and hereby acknowledge said Baseline Documentation memorializes the condition of the Property as of the effective date of this grant; and

**WHEREAS**, Grantor hereby conveys to Grantee the right to preserve and protect the Conservation Values in perpetuity and represents that the Property is free and clear of all encumbrances except for rights-of-way, easements and reservations of record as of the effective date of this grant, with any dower rights of Grantor's spouse, Jean B. Charle, being released as set forth herein; and

**WHEREAS**, Grantor warrants and represents that Grantor has the authority to enter into this Easement and that Grantor freely and voluntarily conveys this Easement to Grantee; and

**WHEREAS**, Grantee has received and there remains in full force and effect a determination from the Internal Revenue Service (the "Service"), dated in May 9, 2008, a copy of which has been provided to the Grantor, to the effect that the Grantee is a "publicly-supported" organization described in Section 509(a)(1) and Section 170(b)(1)(A)(vi) of the Code, and is not a private foundation within the meaning of Section 509(a) of the Code; and

**WHEREAS**, Grantee warrants and represents that Grantee is an organization described in Section 501(c)(3) of the Code, whose primary purposes include conserving, preserving, and enhancing natural habitats, forest, and open space resources of Athens, Ohio, and the environs

in southeast Ohio, including Hocking County, and to acquire by gift, purchase, or otherwise for appropriate retention, maintenance, and disposition in pursuance of the foregoing purposes, interest in land of all kinds, including conservation easements, and is authorized by the laws of the State of Ohio, including in particular, Ohio Rev. Code 5301.67-70, inclusive, the conservation easement enabling statute, to accept, hold and administer interests in land including conservation easements; and

**WHEREAS**, Grantee warrants and represents that Grantee is a "qualified conservation organization," as that term is defined in Section 170(h)(3) of the Code; and

**WHEREAS**, Grantee warrants and represents that Grantee has the commitment and resources to enforce, and will enforce, the terms of this Easement; and

**WHEREAS**, Grantor and Grantee recognize the open, natural, habitat, scenic, forested, undeveloped, and special character of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property through the use of a perpetual conservation easement on the Property and with the transfer from Grantor to Grantee of affirmative rights for the protection of the Property, intending the grant of this Easement and those accompanying rights to qualify as a "qualified conservation contribution" under Section 170(h) of the Code.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the State of Ohio, Grantor and Grantee hereby agree as follows:

#### **Article I. Background**

##### **1.01 Property**

The undersigned Grantor is the sole owner in fee simple of two adjacent tracts (the First and Second Tracts identified on the legal description) totaling 118.89 acres. The property to be protected by this Easement is that part of the legal description attached to the Prior Deed Reference at Book 546, Pages 356-359 in the Official Records of Hocking County, Ohio, consisting of the Second Parcel of the First Tract and all of the Second Tract (Book 546, pages 358-359) and as set forth and described in Exhibit A (the "Property"), attached hereto and incorporated herein by reference. The Property is also described as:

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Street Address: 30574 Strawn Road

County: Hocking

Township: Washington

State: Ohio

Parcel Identifier: That part of the Parcel #19-000048.0000 in the Auditor's Records of the Hocking County, Ohio, that is south of Strawn Road.

**TOTAL ACREAGE PROTECTED: 78.89 acres**

**1.02 Protected Areas Description**

The entire Property is designated as a **Highest Protection Area** and the boundaries of the Highest Protection Area are co-terminus with the Property boundary. Any reference to Standard or Minimum Protection areas are not applicable to this Easement.

**1.03 Easement; Covenants**

- (a) **Easement.** By this Deed of Conservation Easement, the undersigned Grantor grants and conveys to Grantee an easement in perpetuity upon the Property (the "Conservation Easement") empowering Grantee to block uses of the Property inconsistent with the below described Conservation Objectives. Grantee accepts the Conservation Easement and commits to use it as and when needed to advance the Conservation Objectives.
- (b) **Grantor Covenants.** By this Grant, the undersigned Grantor, in furtherance of the Conservation Objectives, establishes covenants binding upon Grantor's interest in the Property, which are set forth in Article II, III, IV and V. Article VII addresses potential violation of these covenants and remedies.
- (c) **Grantee Covenants.** By this Grant, Grantee, in furtherance of the Conservation Objectives, establishes covenants binding upon Grantee's easement interest in the Property, which are set forth in Article VI.

**1.04 Conservation Objectives**

The resource protection and area-specific objectives (collectively, the "Conservation Objectives") are as follows:

- (a) **Resource Protection Objectives**

- (1) **Water Resources.** To maintain and improve the quality of water resources, both surface and groundwater, within, around and downstream of the Property.
- (2) **Biological Resources.** To protect and improve the quality of natural habitat for animals, plants, fungi and other organisms, particularly Native Species.
- (3) **Soil Resources.** To prevent the loss and depletion of soil on the Property.
- (4) **Scenic Resources.** To protect scenic views of the Property visible from public rights-of-ways and other public access points outside the Property.
- (5) **Ecosystem Services.** To preserve the eco-system services provided by a mature forest, including but not limited to, absorption within the Property rainwater that otherwise might cause erosion and flooding downstream of the Property; sequestration of carbon; and support for other healthy eco-system processes and biodiversity.

**(b) Area-Specific Objectives.**

- (1) **Highest Protection Area.** To protect and enhance the richness of biodiversity and natural habitat for fish, wildlife or plants both on this property and downstream, especially by promoting Best Management Practices to protect water quality and natural habitat.
- (2) **Standard Protection Area.** [Not applicable].
- (3) **Minimal Protection Area.** [Not applicable].

**1.05 Baseline Documentation**

As of the Easement Date, the undersigned Grantor and Grantee have signed for identification purposes the Present Condition Report (the "Baseline Documentation"), attached hereto as Exhibit B and made a part hereof by reference, and also to be kept on file at the principal office of Grantee, that contains an original version of the Protected Property Map and other information sufficient to identify on the ground the protection areas identified in this Article; that describes Existing Improvements; that identifies the conservation resources of the Property described in Conservation Objectives; and that includes, among other information, photographs depicting existing conditions of the Property as of the Easement Date.

**1.06 Defined Terms**

Initially capitalized terms not defined in this Article I are defined in Article IX.

**1.07 Federal Tax Items**

The terms of this section supplement and, to the extent of any inconsistency, supersede provisions set forth elsewhere in this Grant.

- (a) **Qualified Conservation Contribution.** The Conservation Easement has been donated in whole or in part by the undersigned Grantor. The donation of the Conservation Easement by this Grant is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code) to a qualified organization (a "Qualified Organization") as defined in § 1.170A-14(c)(1) of the Regulations. If the Conservation Easement is transferred to any Person, that Person must commit to hold the Conservation Easement exclusively for conservation purposes as defined in the Regulations.
- (b) **Public Benefit.** The undersigned Grantor has granted the Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(4) of the Regulations). In addition to the public benefits described in the Conservation Objectives, the Baseline Documentation identifies public policy statements and other factual information supporting the significant public benefit of the Conservation Easement.
- (c) **Mineral Interest.** No Person has retained a qualified mineral interest in the Property of a nature that would disqualify the Conservation Easement for Purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of any such interest is prohibited and Grantee has the right to prohibit the exercise of any such right or interest if granted in violation of this provisions.
- (d) **Notice Required under Regulations.** To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, Grantor agrees to notify Grantee before exercising any reserved right that may have an adverse impact on the Conservation Objectives associated with the Property.

- (e) **Compensation Right.** In accordance with §1.170a-14(g)(6) of the Regulations, the undersigned Grantor agrees that the grant of the Conservation Easement gives rise to a property right, immediately vested in Grantee that entitles Grantee to compensation upon extinguishment of the easement. The fair market value of the right to be determined in accordance with the Regulations; i.e., It is at least equal to the proportionate value that the Conservation Easement as of the Easement Date bears to the value of the Property as a whole as of the Easement Date (the "Easement Percentage Interest"). The Easement Percentage Interest remains constant, established as of the time of the gift, equal to the fair market value of the easement at the time of the gift (numerator), over the fair market value of the property as a whole at the time of the gift (denominator) as set forth in Treas. Reg. §1.170A-14(g)(6)(ii) or any successor regulation. In the event of extinguishment of the Conservation Easement, or a part thereof, Grantee is entitled to its share of the proceeds of any subsequent sale, exchange or involuntary conversion of the property formerly subject to this Conservation Easement, according to Grantee's easement percentage interest in the property as a whole, as determined and as required under Treas. Reg. §1.170-A-14(g)(6)(ii), unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the perpetual Conservation Easement.

When Grantor pays such proceeds to the Grantee, the payment shall not be later than the subsequent sale, exchange or involuntary conversion of the property, whichever occurs first. The Grantee must use the proceeds of the Easement Percentage Interest in a manner consistent with the conservation purposes as set forth in IRC §170(h)(4)(A).

- (f) **Qualification under §2031(c) of the Code.** To the extent required to qualify for exemption from federal estate tax under §2031(c) of the Code, Grantor agrees that commercial recreational uses are not permitted within the Property.
- (g) **Acknowledgement of Donation.** Except for such monetary consideration (if any) as is set forth in this Article, Grantee acknowledges that no goods or services were received in consideration of this Grant.
- (h) **No Representation of Tax Benefits.** The undersigned Grantor represents, warrants and covenants to Grantee that:

(1) The undersigned Grantor has not relied upon any information or analyses furnished by Grantee with respect to either the availability, amount or effect of any deduction, credit or other benefit to Grantor under Applicable Law; or the value of the Conservation Easement or the Property.

(2) The undersigned Grantor has relied solely upon their own judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by the undersigned Grantor. If any person providing services in connection with this Grant or the Property was recommended by Grantee, the undersigned Grantor acknowledges that Grantee is not responsible in any way for the performance of services by these Persons.

(3) This Grant is not conditioned upon the availability or amount of any deduction, credit or other benefit under Applicable Law.

**1.08 Consideration**

The undersigned Grantor acknowledges receipt, as of the Easement Date, of the sum of \$1.00 in consideration of this Grant.

**1.09 Superior to all Liens, Licenses, Leases, Easements.**

- (a) **Warrants.** The undersigned Grantor warrants to Grantee that the Property is, as of the Easement Date, free and clear of all Liens or, if it is not, that Grantor has obtained and recorded in the Public Records the legally binding subordination of any Liens affecting the Property as of the Easement Date. Any further Liens must also be subordinated in writing to the Conservation Easement and Grantor must provide Notice to the Grantee of its intent to place a lien on the Property.
- (b) **Leases, Licenses, Easements.** Grantor will not grant a lease, license, or easement otherwise permitted by this grant without Notice and Review by the Grantee. All Leases, Licenses and Easements must be subordinate to the Conservation Easement.

**Article II. Transfer; Subdivision**

**2.01 Prohibitions**

All of the following are prohibited except as set forth in §2.02:

- (a) **Land and Ownership Division.** The following are expressly prohibited: the legal or "de facto" division or subdivision of the Property, which shall include, but shall not be limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division or other process by which the Property is divided in ownership or in which legal or equitable title to different portions of the Property is divided in ownership or in which legal or equitable title to different portions of the Property are held by different owners. Grantor may not indirectly divide any of the Property through the allocation of property rights among partners, shareholders or members of any legal entity, creation of a horizontal property regime, condominium, common interest community, interval or time-share ownership, partitioning among tenants-in-common, judicial partition or other means. EXCEPTION: One division is permitted and only for the purpose of dividing the Protected Property (See Exhibit A) from the remaining 40 acres north of Strawn Road, Hocking County (Ohio), for the sole purpose of a sale or other transfer to a government entity, non-profit accredited institution of higher learning, or a Qualified Conservation Organization for park, nature preserve, public trail or other conservation purposes.
- (b) **Transfer of portion of Property.** Transfer of ownership, possession or use of part of the Property independent of the remainder of the Property;
- (c) **Lease of sub-surface rights.** Lease or other grant of the right to use or possess sub-surface portions of the Property;
- (d) **Density of calculation.** Use of the Property or the Grant in calculations under Applicable Law to increase density or intensity of land use outside the Property;
- (e) **Transfer of rights.** Transfer to any other property pursuant to a transferable development rights plan, cluster development arrangement, or otherwise, those development rights which are encumbered and extinguished by this Conservation Easement. Grantor and Grantee intend by this Conservation Easement permanently and irrevocably to terminate and extinguish all development rights (except such rights as are specifically reserved to Grantor by this Conservation Easement) that are now, or hereafter may be, allocated to, appurtenant to, implied, reserved, or inherent in or to the Property.

The following changes are permitted:

- (a) **Transfer of the entire Property in Fee Simple.** The entire Property described in Exhibit A may be granted, sold, exchanged, devised, gifted, transferred or otherwise conveyed in unified title.
- (b) **Merger of Parcels; Parcel Boundary Changes within Property.** If the Property contains more than one Parcel, to merge two or more Parcels into one.
- (c) **Transfer to Government Entity, Non-profit Accredited Institution of Higher Learning, or Qualified Organizations.** Subject to Review, transfer or lease to a government entity, non-profit accredited institution of learning, or a Qualified Conservation Organization for park, nature preserve, public trail or other conservation purposes approved by Grantee after Review.
- (d) **Transfer of Rights of Possession or Use.** Subject to Review, transfer of possession or use (but not ownership) of one or more portions of the Property for purposes permitted under, and subject to compliance with, the terms of this Grant, particularly 1.09 (b) and 8.03(c).
- (e) **Any change pursuant to this Section 2.02 is not to be construed as an Amendment to the Conservation Easement.**

### **Article III. Highest Protection Area**

#### **3.01 Improvements**

Improvements within the Highest Protection Area, including but not limited to, buildings and structures, are prohibited except as permitted below in this Article.

- (a) **Existing Improvements.** Any Existing Improvement may be maintained, repaired and replaced in its existing location. Existing Improvements are described in the Baseline Documentation Report (Exhibit B). Existing Improvements may not be expanded beyond their existing location and must otherwise comply with requirements applicable to Additional Improvements of the same type.
- (b) **Existing Servitudes.** Improvements that Grantor is required to allow because of an Existing Servitude are permitted.
- (c) **Additional Improvements.** The following Additional Improvements may be permitted if approved by Grantee after Review:

- (1) Fences, walls and gates not to exceed four (4) feet in Height or such greater Height as is approved by Grantee after Review.
- (2) Regulatory Signs.
- (3) Habitat enhancement devices such as birdhouses and bat houses.
- (4) Trails designed for pedestrian traffic only and covered (if at all) by wood chips or other highly porous surface.
- (5) Footbridges, stream-crossing structures, stream access structures, unenclosed tree stands, and hunting blinds.

### **3.02 Activities and Uses**

Activities and uses within the Highest Protection Area are prohibited, including the harvesting of timber (whether for commercial or private use or purpose) except as permitted below in this Article and provided in any case that the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.

- (a) **Existing Servitudes.** Activities and uses that Grantor is required to allow because of Existing Servitudes are permitted.
- (b) **Resource Management and Disturbance.** The following activities and uses are permitted:
  - (1) Cutting trees to the extent reasonably prudent to remove, mitigate or warn against an unreasonable risk of harm to Persons. After Review and Approval by Grantee, the cutting of invasive species to improve the health of Native Species on or about the Property. Grantor must take such steps as are reasonable under the circumstances to consult with Grantee prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review. Trees that are dead or down due to forces of nature may be harvested for firewood or other personal use by Grantor.
  - (2) Planting and maintaining Native Species of trees, shrubs and herbaceous plant materials or, subject to Review, planting and maintaining other vegetation (excluding Invasive Species).

- (3) Subject to Review, removal of non-native or invasive vegetation to accommodate replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials.
  - (4) Vehicular use in the case of emergency and, subject to applicable limitations (if any), in connection with activities or uses permitted within the Highest Protection Area. No new road or trail will be built to accommodate vehicular use.
- (c) **Release and Disposal.** The following activities and uses are permitted:  
Piling of brush and other vegetation to the extent reasonably necessary to accommodate activities or uses permitted within the Highest Protection Area.
- (d) **Other Activities.** Activities are permitted that do not require Improvements and do not materially and adversely affect maintenance or attainment of Conservation Objectives such as the following: (1) walking, horseback riding on existing natural surface trails, cross-country skiing, bird watching, nature study, fishing and hunting; and (2) educational or scientific activities consistent with and in furtherance of the Conservation Objectives. Vehicular use is not permitted in connection with the activities permitted under this subsection, unless Grantee, without any obligation to do so, approves the use after Review.

**Article IV. Standard Protection Area**

[This Article deleted as inapplicable to this Conservation Easement]

**Article V. Minimal Protection Area**

[This Article deleted as inapplicable to this Conservation Easement]

**Article VI. Rights and Duties of Grantee and Beneficiaries**

**6.01 Grantee Covenants**

In support of the Conservation Objectives, Grantee declares the following covenants binding upon its easement interest in the Property:

- (a) **Exercise of Powers.** Grantee must exercise the powers given to it by this Grant to protect the Property from uses inconsistent with the Conservation Objectives to the full extent permitted to do so under the terms of the Grant.

- (b) **Must be Qualified Organization.** Grantee must be and remain at all times a Qualified Organization and must not transfer the Conservation Easement or otherwise assign its rights or responsibilities under this Grant to any Person other than a Qualified Organization committed to upholding the Conservation Objectives.
- (c) **Proceeds Used for Conservation Purposes.** Grantee will use any funds received on account of the release, termination, extinguishment or involuntary conversion of the Conservation Easement, in whole or in part, in a manner consistent with Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in regulations promulgated thereunder.
- (d) **Forfeiture Remedy.** If Grantee fails to abide by the covenants of this section, only the Attorney General of the State of Ohio may petition a court of competent jurisdiction to order the Conservation Easement transferred to a Qualified Organization ready, willing and able to abide by such covenants.

#### **6.02 Rights and Duties of Grantee**

The items set forth below are both rights and duties vested in Grantee by this Grant:

- (a) **Enforcement.** To enter the Property to investigate a suspected, alleged or threatened violation of the covenants and, if found, to enforce the terms of this Grant by exercising Grantee's remedies in this Grant.
- (b) **Inspection.** To enter and inspect the Property for compliance with the requirements of this Grant upon reasonable notice, in a reasonable manner and at reasonable times, unless, the Grantee reasonably believes that there is imminent threat of harm to the Conservation Values of the property, in which case the Grantee may enter at any time without notice to Grantor.
- (c) **Review.** To exercise rights of Review in accordance with the requirements of this Article.
- (d) **Interpretation.** To interpret the terms of this Grant and, at the request of Grantor, furnish Grantee's explanation of the application of such terms to then-existing, proposed or reasonably foreseeable conditions within the Property.

#### **6.03 Other Rights of Grantee**

The items set forth below are also rights vested in Grantee by this Grant. However, Grantee, in its discretion, may or may not exercise them.

**(a) Amendment(s)**

(i) Grantor and Grantee recognize that circumstances could arise that might justify modification of certain of the terms, covenants, or restrictions contained in this Conservation Easement. To this end, Grantor and Grantee, have the right, but no obligation, to agree to an amendment to this Easement, provided that, in the sole and exclusive judgment of Grantee, such amendment furthers and is not inconsistent with the Conservation Objectives, Purposes or Values of this Conservation Easement, and that the Grantee and Grantor have no right or power to agree to any amendment that would limit the term or result in termination of this Conservation Easement, or that would impair the qualification of this Conservation Easement for the status of the Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code. Any such amendment shall be notarized in writing executed by Grantee and Grantor and recorded in the Official Records of the county where the Property is located.

(ii) As to all of the following, any amendment entered into will not: (1) affect the Conservation Easement's perpetual duration, (2) permit development, improvements, or uses prohibited by this Easement on its effective date, (3) conflict with or be contrary to or inconsistent with the conservation purposes of this Easement, (4) reduce protection of the Conservation Values, (5) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land," (6) affect the status of Grantee as a "qualified conservation organization" or "eligible donee" and (7) result in a private benefit or private inurement in violation of federal tax law.

(iii) In addition, any amendment must be (1) consistent with Grantee's mission and all of Grantee's policies, including its policy with respect to Amendment as of the applicable date or reference, (2) consistent with donor's intent and/or purposes of any funding source for the easement, (3) compliant with all federal, state and local law, (4) beneficial or neutral in its net effect on the relevant Conservation Values of the Protected Property. Furthermore, there must be no feasible alternatives available to achieve the purpose of the amendments and the amendment must not impair Grantee's ability to steward, defend or enforce the conservation easement. Finally, any amendment must not undermine the public's confidence in the Conservation Easement or work of Grantee or result in residential construction on the Property.

(iv) Grantor is responsible for any and all costs related to providing documentation to the Grantee that, in Grantee's sole judgment and discretion, is necessary to establish facts supporting the requirements of this paragraph or Grantee's Amendment Policy. If

Grantee determines that the amendment will increase the administrative burden upon Grantee of monitoring and enforcement, Grantee shall notify Grantor of the additional Stewardship Endowment required and Grantor shall pay such amount upon the approval of the amendment.

(v) Grantee will consider such an amendment only in the following circumstances:

(1) Correction of an Error or Ambiguity. Grantor may amend an easement to correct a drafting error or oversight made at the time the easement was granted. This may include correction of a legal description, de minimis adjustment of a Property boundary, inclusion of standard language that was unintentionally omitted or clarification of an ambiguity in the terms of the restrictions in order to avoid litigation over the interpretation of the document in the future

(2) Prior Agreement. The amendment must be consistent with the terms and conservation intent of the original agreement.

(3) Settlement of Condemnation Proceedings that do not result in the Extinguishment of the Conservation Easement. In the event of a lawful condemnation proceeding, Grantee shall attempt to preserve the intent of the original conservation agreement to the greatest extent possible.

(4) Substantial Alteration or Destruction of a Conservation Value. Alteration or destruction caused by a cataclysmic event, such as a volcanic eruption, earthquake, fire, rising sea levels, destruction of habitat caused by climate change or species extinction, are examples of actions or circumstances that could greatly alter conservation values an easement is intended to protect. In this situation, Grantee may amend the easement to protect and preserve the remaining conservation values, provided that the amendment meets the requirements listed in section 6.03 (5), below. If there are no conservation values remaining, Grantee may petition a court of competent jurisdiction to terminate the easement.

(5) Minor Modifications Consistent with Conservation Purpose. Grantee may authorize other minor modifications of the conservation restrictions.

**(b) Signs.** To install one or more signs on the Property identifying the interest of Grantee in the Conservation Easement. Any signs installed by Grantee do not reduce the number or size of signs permitted to Grantor under this Grant. Signs are to be of the customary size installed by a right-of-way.

**(c) Proceedings.** To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that (1) seeks to restrain a violation of this Conservation Easement; (2) pertains to a violation, potential violation of the Conservation Easement or impairment of Conservation Objectives of this Conservation Easement; or (3) may result in a transfer, improvement or use that violates the terms of this Conservation Easement

#### **6.04 Review**

The following provisions are incorporated into any provision of this Grant that is subject to Review:

- (a) Notice to Grantee.** At least thirty (30) days before Grantor begins or allows any improvement, activity or use that is subject to Review, Grantor must notify Grantee of their proposed change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the proposal and its potential impact on the Conservation Objectives.
- (b) Notice to Grantor.** Within thirty (30) days after receipt of Grantor's notice, Grantee must notify Grantor of Grantee's determination to (1) accept Grantor's proposal in whole or in part; (2) reject Grantor's proposal in whole or in part; (3) accept Grantor's proposal conditioned upon compliance with conditions imposed by Grantee; or (4) reject Grantor's proposal for insufficiency of information on which to base a determination. If Grantee gives conditional acceptance under clause (3), commencement of the proposed improvement, activity or use constitutes acceptance by Grantor of all conditions set forth in Grantee's notice.

If Grantee fails to respond to a Notice for Review within 30 days, the request or notice is deemed to be denied ("deemed denial"). A deemed denial shall be treated by all parties as procedural rather than substantive, and Grantor may re-submit the request for approval without prejudice.

- (c) Failure to Notify.** If Grantee fails to notify Grantor as required in the preceding subsection, the proposal set forth in Grantor's notice is deemed constructively rejected in whole, and Grantor may seek relief from the courts.

**(d) Standard of Review**

**(1) The phrase "unless Grantee, without any obligation to do so," in relation to an approval of determination by Grantee, means that, in that particular case, Grantee's approval is wholly discretionary and may be given or withheld for any reason or no reason.**

**(2) In all other cases, Grantee's approval is not to be unreasonably withheld. It is not unreasonable for Grantee to disapprove a proposal that may adversely affect resources described in the Conservation Objectives or that is otherwise inconsistent with maintenance or attainment of Conservation Objectives.**

**6.05 Requirement**

**Grantor must pay in advance or reimburse Grantee, as required by Grantee, for the costs and expenses of Grantee reasonably incurred in the course of performing its duties with respect to this Grant other than monitoring in the ordinary course. These costs and expenses include the allocated costs of employees, consultants, volunteers, or other agents of Grantee.**

**Article VII. Violation; Remedies**

**7.01 Violation**

**If Grantee determines that the terms of this Grant are being or have been violated or that a violation is threatened or imminent then the provisions of this section will apply:**

- (a) Notice.** Grantee must notify Grantor of the violation. Notice under this subsection may be given in person, by telephone or email or by other means reasonably calculated to inform the Grantor of the violation, followed by written notice per paragraph 8.01. Grantee's notice may include its recommendations of measures to be taken by Grantor to cure the violation and restore features of the Property damaged or altered as a result of the violation.
- (b) Opportunity to Cure.** Grantor's cure period expires thirty (30) days after the date of Grantee's notice to Grantor subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:

- (1) Grantor ceases the activity constituting the violation promptly upon receipt of Grantee's notice;
  - (2) Grantor and Grantee agree, within the initial thirty (30) days period, upon the measures Grantor will take to cure the violation;
  - (3) Grantor commences to cure within the initial thirty (30) day period; and
  - (4) Grantor continues thereafter to use best efforts and due diligence to complete the agreed upon cure.
- (c) **Imminent Harm.** No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to any natural resource or other feature of the Property described in the Conservation Objectives.

## **7.02 Remedies**

Upon expiration of the cure period (if any) described in the preceding section, Grantee may do any one or more of the following:

- (a) **Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this Grant; to restrain present or future violations of the terms of this Grant; and/or to compel restoration of resources destroyed or altered as a result of the violation.
- (b) **Civil Action.** Recover from Grantor or other Persons responsible for the violation all sums owing to Grantee under applicable provisions of this Grant together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.
- (c) **Self-Help.** Enter the Property to prevent or mitigate further damage to or alteration of natural resources of the Property Identified in the Conservation Objectives. Self-help would include removing gates or other barriers impeding Grantee's rights of access to this Grant.

## **7.03 Modification or Termination.**

If the Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Grantee the following provisions apply:

- (a) **Compensatory Damages.** Grantee is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred. In the event of an extinguishment of the Conservation Easement, Grantee is entitled to the greater of the compensation provided under this section or the compensation provided under any other provision of this Grant.
- (b) **Restitution.** Grantee is entitled to recover from the Person seeking the modification or termination: (1) restitution of amounts paid for this Grant (if any) and any other sums invested in the Property for the benefit of the public as a result of rights vested by this Grant, plus (2) reimbursement of Litigation Expenses as if a violation had occurred.

#### **7.04 Remedies Cumulative**

The description of Grantee's remedies in this Article does not preclude Grantee from exercising any other right or remedy that may at any time be available to Grantee under this Article or Applicable Law. If Grantee chooses to exercise one remedy, Grantee may nevertheless choose to exercise any one or more of the other rights or remedies available to Grantee at the same time or at any other time.

#### **7.05 Waivers**

- (a) **No Waiver.** The failure or delay of the Grantee, for any reason whatsoever, to take any action required or contemplated hereunder, or to discover a violation or initiate an action to enforce this Conservation Easement or any other action, shall not constitute a waiver, laches or estoppel of its rights to do so later.
- (b) **No Material Effect.** Grantee in its discretion may provide a Waiver if Grantee determines that the accommodation is for a limited time and limited purpose and will have no material effect on the Conservation Objectives.

**7.06 No Fault of Grantor**

Grantee may, without obligation to do so, waive its right to reimbursement under this Article as to Grantor (but not other Persons who may be responsible for the violation) if Grantee is reasonably satisfied that the violation was not the fault of Grantor, could not have been anticipated or prevented by Grantor by reasonable means and is not the result of Grantor's negligence or failure to abide by the terms of this Grant.

**7.07 Multiple Grantors**

If more than one Grantor owns or retains an interest in the Protected Property and there is (or may be) a violation of the terms of this Grant, all Grantors are jointly and severally liable for the violation regardless of the form of ownership.

**Article VIII. Miscellaneous**

**8.01 Notices**

(a) **Requirements.** Each Person giving any notice pursuant to this Grant must give the notice in writing and must use one of the following methods of delivery; (1) personal delivery; (2) certified mail, return receipt requested and postage prepaid; or (3) nationally recognized overnight courier, with all fees prepaid.

(i) **Address for Notices.** Each person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

**If to Grantor:**

Edwin G. Charle, Jr. (or Current Owner)  
345 Oak Avenue  
Waverly, Ohio 45690

**If to Grantee:**

President  
Athens Conservancy  
P.O. Box 2281  
Athens, OH 45701-5281

**8.02 Controlling Law and Interpretation.**

Interpretation and performance of this Easement shall be governed by the laws of the State of Ohio. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be broadly construed in favor of the Conservation Easement to effect the Conservation Objectives of this Conservation Easement and the policy and purpose of the Ohio Conservation Easement Enabling Act at Ohio Revised Code 5301.67-70, inclusive, as amended. If any court finds that any provision in this Conservation Easement might conflict with another, an interpretation consistent with the Conservation Objectives of this Conservation Easement shall govern. If any court interprets that the Conservation Easement is silent, ambiguous, inconsistent or otherwise deficient on any point in dispute, an interpretation consistent with the Conservation Objectives of this Conservation Easement shall govern.

**8.03 Transfer**

- (a) **Notice Required.** Not less than thirty (30) days prior to transfer of the Property, Grantor must notify Grantee of the name(s) and address for notices of the Persons who will become the Grantor following the transfer.
- (b) **Prior to Transfer.** Grantor authorizes Grantee to (1) contact the Persons to whom the Property will be transferred, and other Persons representing Grantor or the prospective transferees, to discuss with them this Grant and, if applicable, other pertinent documents; and (2) enter the Property to assess compliance with this Grant.
- (c) **Incorporation by Reference.** Grantor must incorporate by reference the terms of this Grant in any deed or other legal instrument by which Grantor transfers or divests itself of any interest, including, without limitation, a leasehold interest in all or a portion of the Property.
- (d) **Ending Continuing Liability.** If Grantee is not notified per this section's requirement, it is not the obligation of the Grantee to determine whether a violation first occurred before or after the date of the transfer. The pre-transfer Grantor continues to be liable on a joint and several basis with the post-transfer Grantor for the correction of violations under this Grant until such time as Grantee

is given the opportunity to inspect and all violations noted in Grantee's resulting inspection report are cured.

#### **8.04 Burdens; Benefits**

This Grant binds and benefits Grantor and Grantee and their respective personal representatives, successors and assigns.

- (a) **Binding on All Grantors.** This Grant vests a servitude running with the land binding upon the undersigned Grantor and upon recordation in the Public Records, all subsequent Grantors of the Property or any portion of the Property are bound by its terms whether or not Grantor or Grantors had actual notice of this Grant and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Grant.
- (b) **Economic Hardship.** In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Grantor and Grantee that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.
- (c) **Rights Exclusive to Grantee.** Grantee has the right to enforce the terms of this Grant and exercise other rights of Grantee.

#### **8.05 Documentation Requirements**

- (a) **Between Grantee and Grantor.** No decision by Grantee, including discretionary approvals, or interpretation letters, is valid or effective unless it is in writing and signed by an authorized signatory for Grantee. This requirement may not be changed by oral agreement. The issuance of a discretionary letter, interpretive

letter, or other decision in any instance does not imply that the same will be granted in any other instance.

- (b) **Between Grantee and Assignee.** Any assignment of Grantee's rights under this Grant, if otherwise permitted under this Grant, must be in a writing signed by the Grantee (unless otherwise required by Ohio law). The assignment document must include a covenant by which the assignee Grantee assumes the covenants and other obligations of Grantee under the Grant. The assigning Grantee must deliver the Baseline Documentation and such other documents in Grantee's possession reasonably needed to uphold the Conservation Objectives. The assignment becomes effective upon recordation in the Public Records or, if applicable, entry of an order by a Court of competent jurisdiction.

#### **8.06 Severability**

If any provision of this Grant is determined to be invalid, illegal or unenforceable, the remaining provisions of this Grant remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive application of any provisions of Applicable Law that renders any provision of this Grant invalid, illegal or unenforceable in any respect.

#### **8.07 Counterparts**

This Grant may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one document.

#### **8.08 Indemnity**

Grantor must indemnify and defend the Grantee and any other Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to: (a) any breach, threatened violation, attempted violation or actual violation of this Grant or Applicable Law; and (b) personal injury (including death) and damage to personal belongings occurring on or about the Property if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

**8.09 Guides to Interpretation**

- (a) **Captions.** Except for the identification of defined terms in the Glossary, the descriptive heading of the articles, sections and subsections of this Grant are for convenience only and do not constitute a part of this Grant.
- (b) **Glossary.** If any term defined in the Glossary is not used in this Grant, the defined term is to be disregarded as surplus material.
- (c) **Other Terms.**
  - (1) The word "including" means "including but not limited to."
  - (2) The word "must" obligates; the word "may" is permissive and does not imply any obligation.
- (d) **Conservation Easement Enabling Statute.**

This Grant is intended to be liberally interpreted so as to favor conservation and so as to convey to Grantee all of the rights and privileges of a holder of a conservation easement under O.R.C. 5301.67-70 and any other applicable law.

- (e) **Restatement (Third) of the Law of Property: Servitudes.** This Grant is intended to be interpreted so as to convey to Grantee all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of the Law of Property: Servitudes.

**8.10 Entire Agreement**

This is the entire agreement of Grantor and Grantee pertaining to the subject matter of this Grant. The terms of this Grant supersede in full all statements and writing between Grantor and Grantee pertaining to the transaction set forth in this Grant.

**8.11 Incorporation by Reference**

The Baseline Documentation Report and any other exhibit attached to this Grant are incorporated into this Grant by this reference.

#### 8.12 Jurisdiction; Venue

Grantee and Grantor submit to the exclusive jurisdiction of the courts of the State of Ohio located in the county in which the Property is located and agree that any legal action or proceeding relating to this Grant of the Conservation Easement may only be brought in those courts located in that county.

#### Article IX. Glossary

NOTE: Not all defined terms may be included in this Conservation Easement. If any term becomes relevant in future for purposes of interpretation or enforcement of this easement, the parties agree that such terms will have the meaning contained herein.

**"Access Drive"** means a road, drive or lane providing vehicular access.

**"Additional Improvement"** means a building, structure, facility or other improvement, whether temporary or permanent, other than an Existing Improvement.

**"Applicable Law"** means any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Property, the Conservation Easement or this Grant as amended through the applicable date of reference. If this Grant is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

**"Best Management Practices"** mean a series of guidelines or minimum standards (sometimes referred to as BMP's) recommended by federal, state and/or county resource management agencies, for proper application of farming and forestry operations, non-point pollution of water resources and other disturbances of soil, water and vegetative resources and to protect wildlife habitats. Examples of agencies issuing pertinent BMP's as of the Easement Date are: the Natural Resource Conservation Service of the U.S. Department of Agriculture (with respect to soil resources) and the Ohio Department of Environmental Protection (with respect to soil erosion, sedimentation and water resources). Examples of organizations issuing standards promoted by agencies for woodland management include: the Forest Stewardship Council, the Sustainable Forestry Initiative, the Ohio State College of Agricultural Sciences and the American Tree Farm System.

**"Code"** means the Internal Revenue Code of 1986, as amended through the applicable date of reference.

**"Conservation Plan"** means a plan for conservation of natural resources and/or soil sedimentation and erosion control that meets professional standards for maximizing beneficial conditions for establishing, restoring or maintaining native flora and fauna.

**"Construction"** means any demolition, construction, reconstruction, maintenance, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

**"Default Rate"** means an annual rate of interest equal at all times to two percent (2%) above the "prime rate" announced from time to time in *The Wall Street Journal*.

**"Dwelling Unit"** means the use or intended use of an Improvement or portion of an Improvement for human habitation by one or more Persons (whether or not related). Existence of a separate kitchen accompanied by sleeping quarters is considered to constitute a separate Dwelling Unit.

**"Existing Servitude"** means an easement or other matter affecting title to the Property (other than a Lien) accorded priority to the Conservation Easement by notice in the Public Records.

**"Existing Improvement"** means a building, structure, facility or other improvement, whether temporary or permanent, located on, above or under the Property as of the Easement Date as identified in the Baseline Documentation Report.

**"Forestry"** means planting, growing, nurturing, managing and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat if consistent with the terms of this Easement and Conservation Objectives.

**"Grantor"** means the undersigned identified above as the Grantor (whether an individual or more than one person collectively referred to as Grantor), or Grantors, and all Persons after them who hold an interest in the Property.

**"Height"** means the vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

**"Impervious Coverage"** means surfaces that are not capable of supporting vegetation within the applicable area of reference. Included in Impervious Coverage are the footprints (including roofs, decks, stairs and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel concrete and asphalt; impounded water (such as a man-made pond); and compacted earth (such as an unpaved roadbed). Excluded from Impervious Coverage are running or non-impounded standing water (such as a naturally occurring lake); bedrock and naturally occurring stone and gravel; and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

**"Improvement"** means any Existing Improvement or Additional Improvement.

**"Indemnified Parties"** means Grantee, and its respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

**"Invasive Species"** means a plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications of the National Park Service and the U.S. Fish and Wildlife Service are to be used to identify Invasive Species.

**"Lien"** means any mortgage, lien or other encumbrance securing the payment of money.

**"Litigation Expense"** means any court filing fee, court cost, arbitration or mediation fee or cost, witness fee and any other fee and cost of investigating and defending or asserting any claim of violation of this Deed of Easement or for indemnification under this Grant including in each case, attorneys' fees, other professionals' fees, and any disbursements.

**"Losses"** mean any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, cost of restoration or debris removal, fines, fees and penalties or other charge other than a Litigation Expense. Losses include the costs and expenses of Grantee reasonably incurred in the course of performing its duties with respect to this Grant, including enforcement of provisions of the Grant and restoration of the property to preserve the Conservation Values Identified by Grantee in its Baseline Documents or other reports. These costs and expenses include the allocated costs of employees, consultants, volunteers or other agents of Grantee.

**"Lot"** means a unit, lot or parcel of real estate separated or transferable for separate ownership or lease under Applicable Law.

**"Market Value"** means the fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable a qualified appraisal in conformity with §1.170A-13 of the Regulations.

**"Native Species"** means a plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly *The Vascular Flora of Ohio: Annotated Checklist and Atlas* by Rhoads and Klein and *Atlas of United States Trees*, vols. 1 & 4 by Little are to be used to establish whether or not a species is native.

**"Person"** means an individual, organization, trust, government or other entity.

**"Public Records"** mean the public records of the office for the recording of deeds in and for the county in which the Property is located.

**"Qualified Organization"** means a governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a qualified conservation organization under Section 170 of the I.R.C. and the Regulations; and (d) is duly authorized to acquire and hold conservation easements under Applicable Law.

**"Regulations"** means the provisions of 26 C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

**"Regulatory Signs"** mean signs (not exceeding one square foot each) to control access to the Property or for informational, directional or interpretive purposes.

**"Renewable Energy"** means energy that can be used without depleting its source such as solar, wind, geothermal and movement of water (hydroelectric and tidal) of such a scale as to normally be used on the Protected Property.

**"Residential Improvements"** mean Dwellings and Improvements accessory to residential uses such as garage, storage shed, outdoor kitchens, patios, decks, gazebos, swimming pool, pool house, tennis court, basketball court and children's play facilities.

**"Resource Management Plan"** means a record of the decisions and intentions of Grantor prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Objectives during certain operations potentially affecting natural resources protected by this Grant. The Resource Management Plan (sometimes referred to as the "RMP") includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

**"Review"** means review and approval of Grantee under the procedure described in Article VI.

**"Review Requirements"** mean collectively, any plans, specifications or information required for approval of the Subdivision, activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements Incorporated into this Grant either as an exhibit or as part of the Baseline Documentation Report or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Grantee as of the applicable date of reference.

**"Site Improvement"** means an unenclosed improvement such as an Access Drive, Utility Improvement, walkway, boardwalk, retention/detention basin or other storm water management facility, well, septic system, bridge, parking area or other pavement, lighting fixture, sign, fence, wall, gate, man-made pond, berm and landscaping treatment.

**"Steep Slope Areas"** mean areas greater than one acre having a slope greater than 15% or any land designated as highly erodible land by NRCS.

**"Subdivision"** means any division of the Property or any Lot within the Property; and any creation of a unit, lot or parcel of real estate, including subsurface portions of the Property, for separate use or ownership by any means including by lease or by implementing the condominium form of ownership.

**"Sustainable"** means land management practices that provide goods and services from an ecosystem without degrading soil or water resources and without a decline in the yield of those goods and services over time.

**"Utility Improvement"** means an improvement for the reception, storage or transmission of potable water, storm water, sewage, electricity, gas or other sources of power, and telecommunications to serve improvements permitted on the Property.

**"Waiver"** means a written commitment by which Grantee, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances.

**"Wet Areas"** mean watercourses, intermittent or perennial streams, springs, wetlands, seasonal wetlands and non-impounded standing water and any areas adjacent to the foregoing to within 100 feet of their edge.

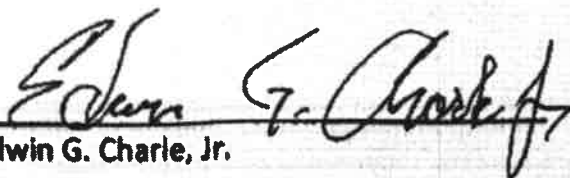
**"Woodland Areas"** mean areas within the Property described as "wooded" or "forested" in the Baseline Documentation Report or identified as such on any Conservation Plan, or if not wooded or forested as of the Easement Date, are designated as successional woodland areas on a Conservation Plan.

INTENDING TO BE LEGALLY BOUND, the undersigned Grantor and Grantee, by their respective duly authorized representatives, have signed and delivered this Grant as of the Easement Date.

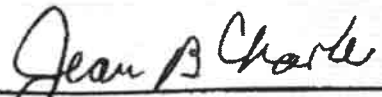
OR BK 681 PG 773

Hereunto we set our hands in agreement on this \_\_\_\_\_ day of May, 2020.

GRANTOR:

  
Edwin G. Charle, Jr.

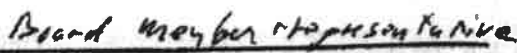
Hereunto by my hand I, Jean B. Charle, spouse of Edwin G. Charle, Jr., states that her dower rights are subordinate to the vesting of title to this Conservation Easement in the Grantee, Athens Conservancy.

By   
Jean B. Charle

GRANTEE:

ATHENS CONSERVANCY

By: 

Its: 

STATE OF OHIO :  
COUNTY OF Pike :

ON THIS 26<sup>th</sup> day of May, 2020, before me, the undersigned officer, personally appeared Edwin G. Charle, Jr. and Jean B. Charle, both known to me (or satisfactorily proven) to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained. No oath or affirmation was administered to the signer.

OR BK 681 PG 774

*Seal*

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Kathy Snodgrass, Notary Public

Print Name:

MY COMMISSION EXPIRES: 02-23-22

STATE OF OHIO

COUNTY OF Hocking

ON THIS 28 day of May, 2020, before me, the undersigned officer, personally appeared Brian Blair, who acknowledged himself to be the Board Member Rep of the ATHENS CONSERVANCY, and executed the foregoing instrument for the purposes therein contained by signing in the name of the corporation as such officer. No oath or affirmation was administered to the signer.

IN WITNESS WHEREOF, I hereunto set my hand and official

Nicolle M. Diamond, Notary Public

Print Name: Nicolle M. Diamond

MY COMMISSION EXPIRES: 03-12-2023



NICOLLE M. DIAMOND  
Notary Public, State of Ohio  
My Commission Expires  
03-12-2023

Attachments:

Exhibit A – Legal Description of Protected Property

Exhibit B – Baseline Documentation

This document prepared by:

Laura A. Curliss (#0062927)

Attorney at Law

P.O. Box 421

Yellow Springs, OH 45387

Tel: 513-600-7171

curlisslegal@gmail.com

**EXHIBIT A**

**LEGAL DESCRIPTION**

**FIRST TRACT:**

Situated in the Township of Washington, County of Hocking, and State of Ohio, and in the Chillicothe Land District, and known and described as being the Southwest Quarter of the Southeast Quarter of Section No. Four (4), Township No. Thirteen (13), Range No. Seventeen (17), containing 40 acres more or less.

**SECOND TRACT:**

Being a part of the Southwest Quarter of Section No. 4, Township No. 13, Range No. 17, beginning at the Southeast corner of the above described lot; thence North 18.49 chains to the center of the road; thence by said road South 84° west 45/100 chains; thence North 84° West 7.14 chains; thence South 82° west 5.92 chains; thence North 78° West 8.10 chains; thence North 85° West 2.91 chains; thence South 89° West 4.07 chains; thence South 8.46 chains; thence East 5.04 chains; thence South 11.04 chains; thence East 21.19 chains to beginning, containing 43 and 17/100 acres, more or less.

**EXCEPTING THEREFROM THE FOLLOWING:**

Situated in Washington Township, Hocking County, Ohio; being part of the Southwest quarter of Section 4, Township 13, Range 17; and being more particularly described as follows:

Commencing for reference at a stone found at the Southeast corner of the West part of Fractional Lot 6 of Section 4; thence leaving the South line of Section 4 North 0 degrees 00 minutes 00 seconds East a distance of 728.64 feet to a 5/8" iron pin set and being the point of Beginning of the tract of land to be described;

Thence North 0 degrees 37 minutes 38 seconds West a distance of 565.68 feet to a MAG nail set in the center of Township Road 295, Strawn Road, passing a 5/8" iron pin set a distance of 547.00 feet and from which a 1-1/2" OD iron pipe found bears North 0 degrees 37 minutes 38 seconds West at a distance of 20.00 feet;

Thence with the center of said Township Road 295 South 89 degrees 37 minutes 24 seconds East a distance of 334.91 feet to a MAG nail set;

Thence leaving the center of said Township Road 295 South 0 degrees 00 minutes 00 seconds West a distance of 558.19 feet to the point of beginning, passing 5/8" iron pins set at distances of 20.00 feet and 237.78 feet, containing 4.280 acres more or less, and subject to the public easement of said Township Road 295 and any other public or private easements of record.

The above 4.280 acre survey is intended to describe part of the 43.17 acre tract as deeded to Edwin George Charlie, Jr. Trustee, deed reference Volume 135, Page 1, Hocking County Recorder's Office. This survey was based upon information obtained from tax maps, deed descriptions, previous surveys, existing monumentation, and an existing public road. The reference bearing for this survey is the South line of Section 4 as North 90 degrees 00 minutes 00 seconds West. Bearings are based upon an assumed meridian and are to denote angles only. All iron pins set by this survey are 5/8" and are capped by 1-1/4" plastic identification cap stamped LPG-6344. The above described property was surveyed by Larry P. Gerstner, Ohio Registered Surveyor No. 6344, on April 19, 2000.

OR BK 681 PG 776

## Exhibit B

### ATHENS CONSERVANCY- EDWIN G. CHARLE JR. PROPERTY CONSERVATION EASEMENT BASELINE DOCUMENT

**Property owner:** Edwin G. Charle Jr.

**County & Township:** Hocking County, Washington Township.

**Address:** 30574 Strawn Rd. Logan, Ohio 43138



**Purpose:** The purpose of this Baseline Documentation Report (hereinafter referred to as the "Baseline Document") is to describe the physical condition and current land use of the subject Protected Property, as described in Exhibit A, immediately prior to the granting of a Conservation Easement to the Athens Conservancy.

**Description of Parcel:** Subject Conservation Easement Property ("Protected Property") consists of 78.89 acres of forested land specifically described in Exhibit A. Described property subject to this conservation easement and associated restrictions is a portion of a larger parcel of 118.89 acres deeded to Edwin G. Charle Jr. The use restrictions imposed upon the protected property only apply to the 78.89 acres described in Exhibit A. The adjoining 40-acre parcel to the North is a contiguous family-owned property ("CFOP").

**Date of evaluation:** January 31, 2020 and February 27, 2020. Description of present condition was written after February 27 visit date).

**Property evaluated by:** Brian Blair, Athens Conservancy.

**Conservation Values:** The Protected Property includes significant Scenic and Conservation Values which provide significant public benefit. Conservation Values include a mature, closed-canopy mixed native deciduous forest, a ridge top early successional mixed-pine forest, and a high quality perennial stream running the length of the property. The property provides forest and riparian wildlife habitat and aquatic habitat as well as scenic values including vistas of the forest and stream when viewed from Strawn Road. The mature hardwood forest area contains diverse flora including an understory community beneath forest canopy. This Conservation Easement protects a significant area of hardwood and early-successional forest in a region where development is occurring and subdivision is a threat as well as over-harvesting of timber. It is common in this area for developers to purchase properties such as this, harvest the timber, and then subdivide into small parcels for resale and development. Protecting this property will reduce the risk of forest fragmentation, timber harvesting, subdivision development, and loss of forest and waterway conservation values. Protection will benefit the public in providing closed-canopy forest and ridge top early succession habitats which are important to migratory birds and other wildlife. Conserving this parcel will also protect scenic vistas of forest and stream that can be seen from Strawn Road.

The Protected Property is located within the scenic Hocking Hills region, and contributes to the scenic quality within the Hocking Hills Region which has been identified as being of importance by the Hocking County Regional Planning Commission in the Hocking County Comprehensive Plan published in 2009. The wildlife habitat, rural character and scenic views from Strawn Road are enjoyed by many area residents and visitors, and would be lost if the Protected Property were not protected. This region is under intense pressure for residential development as evidenced by the number of subdivisions, vacation cabins, and home sites being developed in the Hocking Hills area. Conserving this property for the purposes stated is sound land-use planning, encourages stewardship of the land and water resources and contributes to economic and aesthetic values that will benefit the public in perpetuity. The Protected Property will preserve forested lands for scenic enjoyment of the general public

consistent with the Hocking County Comprehensive Plan.

**Surrounding Land Uses:** Protected property is surrounded by forested areas to the West, East, and South, including forests of varying age due to timber harvesting and/or prior agricultural use (old fields). The Ohio Operating Engineers Apprentice facility is located Northwest of the Protected Property, with significant ongoing soil disturbance observed as shown in the map on page 1 of this document. The 40 acre (CFOP) parcel also owned by Grantor, containing the cabin, pond, and outbuildings is located to the Northeast. Cabins and recreational development is common and ongoing in the region and surrounding unprotected lands.

**General appearance & condition of property:** The valley and North-facing hillside contains a mature hardwood forest with native understory and a minor amount of invasive species such as multiflora rose. Area has not been logged in well over 50 years. A major tributary of Scott Creeks runs from West to East along the Northern edge of the property, paralleling Strawn Road. The flat ridgetop areas contain early successional pine and mixed hardwood forest indicative of former farm fields or pasture that is reverting to forest. Former farm roads are used for hiking paths but are vegetated with little to no bare soil or erosion noted. Evidence of existing trails can also be seen on satellite imagery maps and are depicted in maps shown below. An active electrical line right-of-way occurs along the North edge of the Protected Property, paralleling Strawn Road and including crossings of the stream. Active soil disturbance was observed within this right-of-way due to recent conversion of overhead lines to buried, underground lines.

**Ecological description of property:** The property consists of a mature hardwood forest ecosystem with a diverse understory in the valley and North slope extending to the ridgetop. The closed-canopy forest provides high quality habitat for mature forest dependant fauna. Lack of major disturbance of the creek results in clear-water flow with little siltation observed during site visits. The tree-shaded riparian zone along the tributary of Scott Creek helps to maintain water quality and lower summer stream temperatures which supports higher dissolved oxygen in the water and benefits pollution-intolerant aquatic species. Large older hickory trees and other hollow or loose-bark species of trees within the stream riparian zone also provide habitat for wintering bat species.

The ridge top supports an early-successional ecosystem of native pine and emergent hardwoods with occasional multiflora rose and other invasive species observed. This ecosystem is indicative of an old field ecosystem reverting to forest, and provides habitat to early-succession wildlife species. As this area continues to mature, succession from native pine to hardwood forest is anticipated. Control of non-native invasive species such as multiflora rose, bush honeysuckle and autumn olive is encouraged to promote native flora.

**Current Land Use of Property:** Protected Property is currently used for recreational purposes, including hiking trails and hunting. The 40-acre CFOP parcel to the North of the Protected Property is also owned by grantor, and includes a historic log cabin and other buildings, with the Protected Property that is the subject of this Conservation Easement being used for recreational purposes. An active, maintained electrical right-of-way extends across the Protected Property on its Northern Edge along Strawn Road. The approximate location of existing trails and a small clearing (associated with electric service box) is shown in figure 1. This small clearing could be used as a parking spot off of Strawn road.

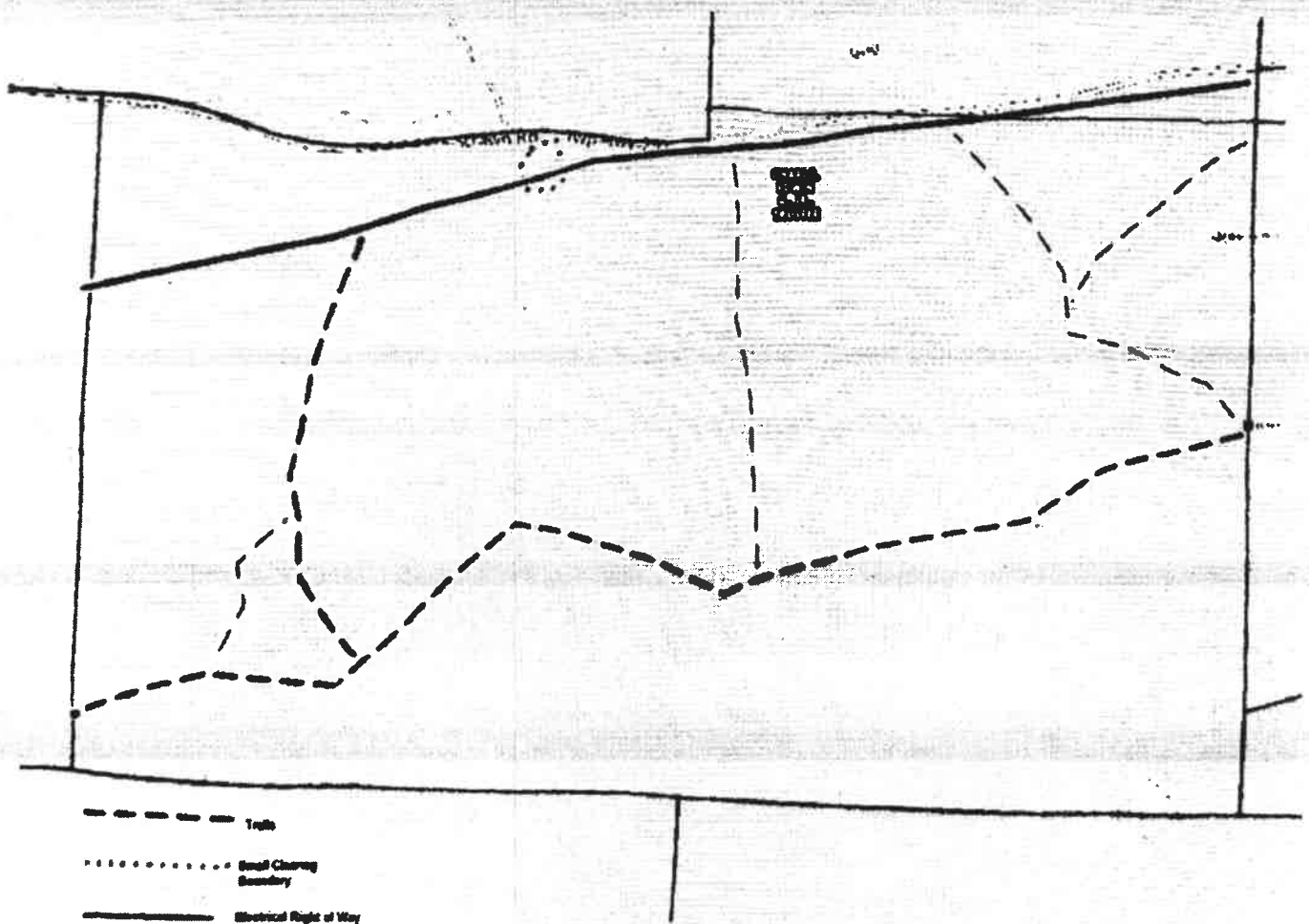


Figure 1: Location of Electrical Right-of-way, small clearing, and existing trails.

**Photographs of Protected Property:** Photos of the property are shown below. Photos were taken with an I-Phone 7 with GPS recording of each photo point. Photos were taken on January 31 and February 27, 2020. The GPS locations are shown on the photo point map, figure 2, below. The direction the photographer was facing, along with a description of each photo is described below each photo. Digital versions of photographs are stored with the records of the Athens Conservancy. Latitude and Longitude of each numbered photo is shown in Table 1, below.

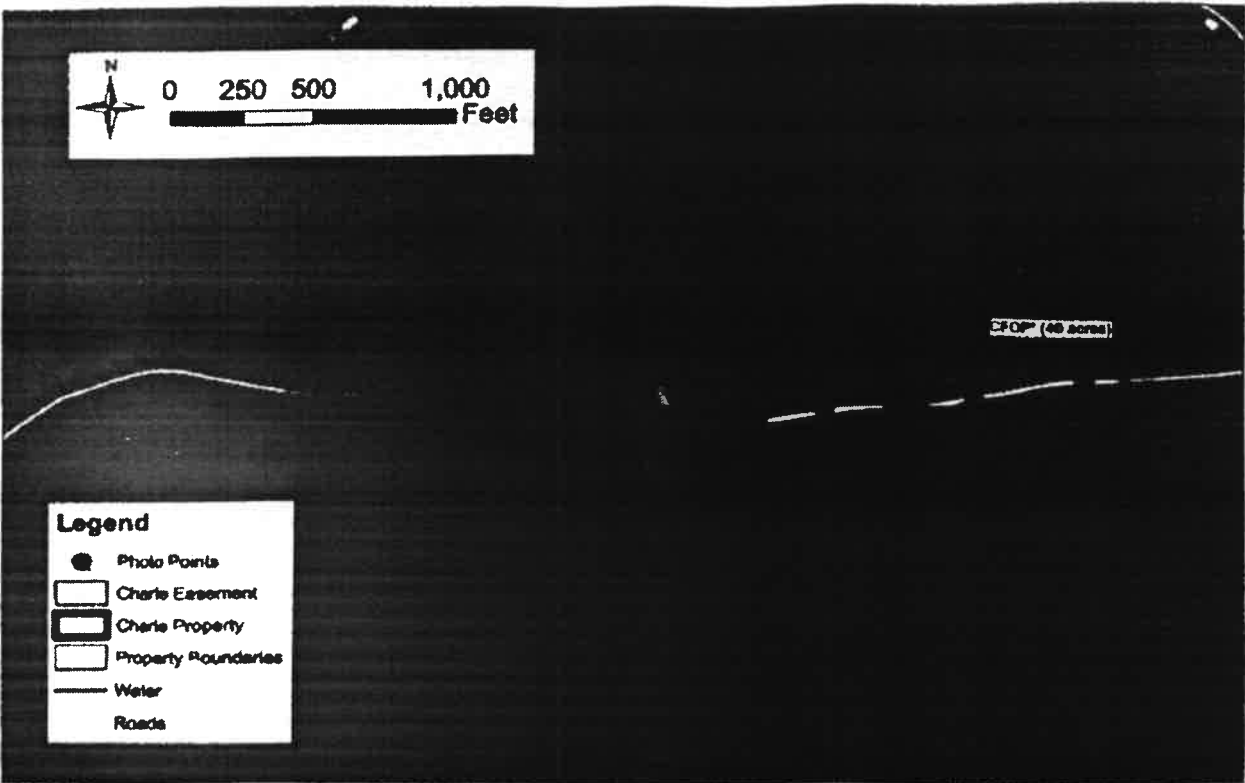


Figure 2: Photo point map for Protected Property \*CFOP- Contiguous Family Owned Property

OR BK 681 PG 781

| Photo Number | latitude    | longitude   |
|--------------|-------------|-------------|
| 1            | 39.47069    | -82.46555   |
| 2            | 39.4703056  | -82.4636111 |
| 3            | 39.470444   | -82.461944  |
| 4            | 39.47022    | -82.461944  |
| 5            | 39.47015    | -82.4625    |
| 6            | 39.4699028  | -82.462222  |
| 7            | 39.47027    | -82.461111  |
| 8            | 39.47046    | -82.45972   |
| 9            | 39.4704167  | -82.458611  |
| 10           | 39.470783   | -82.456389  |
| 11           | 39.4706278  | -82.457778  |
| 12           | 39.4694167  | -82.4580556 |
| 13           | 39.4692694  | -82.458056  |
| 14           | 39.468625   | -82.457222  |
| 15           | 39.4683889  | -82.458333  |
| 16           | 39.46705    | -82.459722  |
| 17           | 39.46819167 | -82.461111  |
| 18           | 39.4683639  | -82.462222  |
| 19           | 39.46835    | -82.4625    |
| 20           | 39.46860833 | -82.4627778 |
| 21           | 39.46910833 | -82.4619444 |
| 22           | 39.4696722  | -82.4616667 |

Table 1: Latitude and Longitude of numbered photos, Protected Property

OR BK 681 PG 782



Photo 1: Property corner, from Rd. facing S



Photo 2: Road frontage facing SE



Photo 3: From Rd., new UG electric,  
small clearing off of road, facing S



Photo 4: Electric Right of Way, facing W

OR BK 681 PG 783

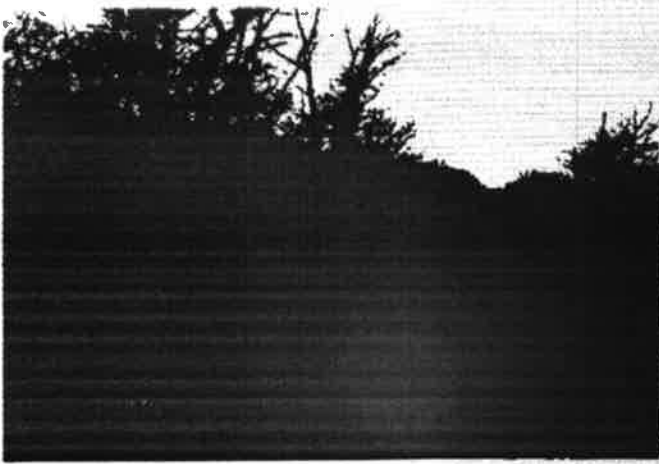


Photo 5: Electric line creek crossing, facing W



Photo 6: View uphill from Creek, mature timber, facing S

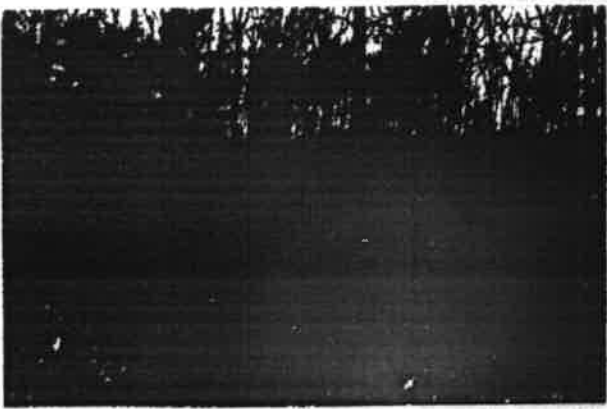


Photo 7: From creek facing hill, facing S



Photo 8: Old out-building site, from Rd. facing SW

OR BK 481 PG 784

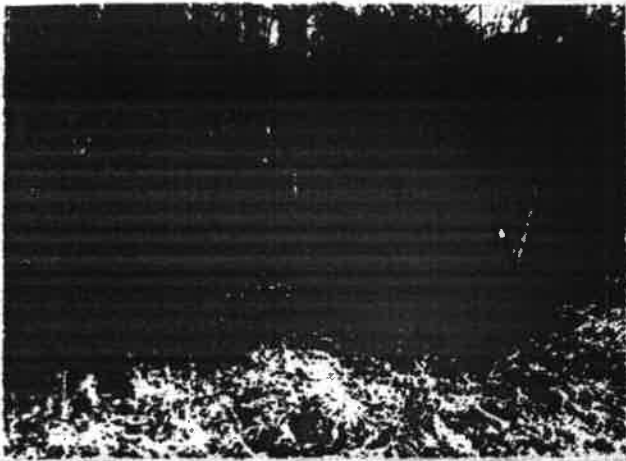


Photo 9: Old road/trail across from cabin driveway, facing S



Photo 10: Facing property corner across creek, facing SE



Photo 11: Creek and woods, facing S



Photo 12: Old path to ridge, facing SE

OR BK 681 PG 785

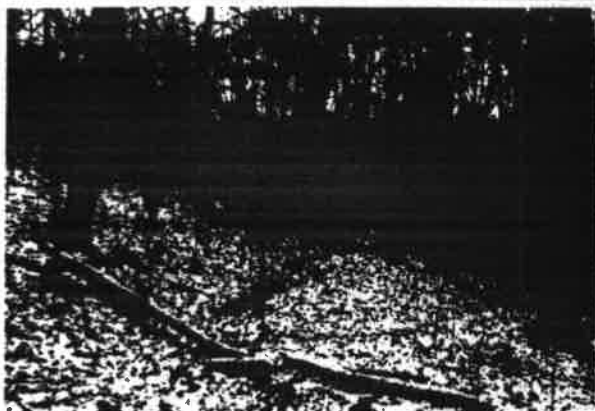


Photo 13: Old log road, facing W



Photo 14: Ridge trail thru  
young pines, facing E



Photo 15: Ridge Trail, facing S



Photo 16: Overlook to cave, near S  
Boundary, facing SW

OR BK 681 PG 786



Photo 17: Ridgetop trail, facing W



Photo 18: Ridge top trail, facing W



Photo 19: Ridge top trail, facing W



Photo 20: Old road down hill, facing N



Photo 21: Old road, lower down hill facing N



Photo 22: Valley facing N, facing Ohio Op Engineers property across Strawn road.

**Note tract/parcel tax number(s).** Does this property require separate parcel descriptions? See Exhibit A. Tax parcel number of entire 118.89 acre tract is 19-0000048.0000 including subject property and CFOP. This Conservation Easement applies to the parcels fully described in Exhibit A totaling 78.89 acres.

**Value of Conservation Easement:** The Athens Conservancy has in its files an appraisal from the landowner for IRS purposes to substantiate the Easement Percentage interest as defined in the Conservation Easement, Art. I, paragraph 1.07(e).

**State all special conditions that exist on this property:** Conservation Easement applies to the 78.89 acre Protected Property described in Exhibit A, but not to the adjacent 40 acre CFOP parcel North of Strawn Road owned by Grantor. The entire 78.89 acre area as described per Exhibit A shall be protected as a "Highest Protection Area" per the terms of the Conservation Easement, with no buildings, structures, commercial timber harvesting or other future improvements permitted.

**Reserved Rights:** Grantor reserves the right to maintain existing trail network and construct new trails if approved by Grantee per the terms of the Conservation Easement. Grantor reserves the right to legally hunt in compliance with Ohio rules and regulations. Grantor reserves the right to collect wood from trees that are killed or down due to forces of nature. Reserved rights will not impair conservation values described above in this Baseline Report.

**Title search Results:** A title search was completed as part of preparing this Baseline Document. Property is titled to Edwin G. Charle Jr. Property was purchased by Edwin G. Charle Jr. in his personal capacity in 1972. There are no known outstanding liens or judgements on the Property. There are no outstanding mineral rights or reservation of record. There is no existing mortgage on the property.

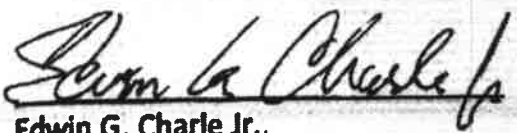
**Is it recommended that Athens Conservancy enter into an agreement with the owner(s) for the purpose of crafting a conservation easement?**

A Conservation Easement is recommended for protection of Conservation Values observed. Conservation Values would be threatened without permanent protection. Reserved rights would not be an impediment to Conservation Values.

**Baseline document preparer qualifications:**

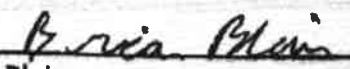
Brian Blair earned a Bachelor of Science degree from Ohio State University School of Natural Resources in 1980. He has 30 years of professional experience in the environmental field primarily with Ohio EPA, with a 1-year internship with the US Fish and Wildlife Service. Experience includes environmental regulatory compliance and monitoring. He is past president of Appalachia Ohio Alliance, an Ohio Land Trust, and currently serves on the Board of the Athens Conservancy. He has over 15 years experience in the preparation of conservation easements and baseline documentation.

The owner(s) acknowledge that the above description of this subject property is a true and accurate representation of the existing conditions, to the best of their knowledge, as of the date set forth below.

 DATE: 5/26/20 2020  
Edwin G. Charle Jr.,

The Athens Conservancy, by and through its Board Representative and drafter of this Baseline Documentation, hereby acknowledges that the above description of this subject property is a true and accurate representation of existing conditions, to the best of its knowledge, as of the date set forth below.

Athens Conservancy

BY:  DATE: 5-28-2020 2020  
Brian Blair

Its: Drafter of this report and Board Representative for Athens Conservancy