

PARTITION FENCE AGREEMENT

THIS PARTITION FENCE AGREEMENT (hereinafter referred to as "Agreement ") is made and entered into by and between the Stark County Park District, a political subdivision, with its principal office at 5300 Tyner Street NW, Canton, Ohio 44708, hereinafter referred to as "SCPD" and Judith A. Knickerbocker, whose address is 6168 Millhaven Avenue NW, Canal Fulton, Ohio 44614, hereinafter referred to as "Landowner".

Background

- A. SCPD owns a parcel of property situated in the Township of Lawrence, County of Stark, State of Ohio, known as parcel number 2680053 and further described in the attached Exhibit A.
- B. Landowner owns a parcel of property adjacent to SCPD's parcel situated in the Township of Lawrence, County of Stark, State of Ohio, known as parcel number 2614040 and further described in the attached Exhibit A.
- C. The parties desire to participate in the fencing of a section of shared property line for purposes of holding livestock and clarifying the boundary line in compliance with the Ohio Revised Code for which Landowner will be in charge of handling all work associated with the initial fence construction.
- D. The shared fence is approximately 3,529 feet in length and located on the Eastern edge of SCPD's property and the Western edge of the Landowner's property and further depicted in the attached Exhibit A.

Terms

NOW, THEREFORE, in consideration of the covenants contained herein, the parties agree to apportion the responsibility for construction and maintenance of a partition fence on their common boundary lines as follows:

- A. **Initial Construction.** SCPD agrees to pay 100% of the material costs, which shall not exceed \$4,800.00 based upon the currently approved estimate obtained by the parties. Landowner will be

responsible to have the area cleared, have the fence constructed, and will have the fence completed within one year from the date of this Agreement.

B. Survey of Property Line. The parties agree that a survey of the relevant property line will be completed prior to construction of the fence. SCPD agrees to be solely responsible for engaging a surveyor and for the cost of the survey. SCPD will set lath along the property line if deemed necessary. Landowner will not begin any work contemplated in this Agreement prior to completion of the survey.

C. Fence Material. The fence constructed and maintained pursuant to this Agreement will be a 42" Woven wire fence with a single strand of barb, 5 X 7 post 12' on center with 6' x 8' end posts.

D. Maintenance. Landowner will be responsible for all cost of materials and labor to maintain the fence until it needs replaced. This obligation will not apply to repairs resulting from the actions of SCPD or its agents or invitees, and in the event such repairs are necessary, SCPD shall bear such expenses. All repairs to the fence shall be made using the same or similar materials and conforming to the original height and specifications as the original fence. Neither party shall alter the location of the fence in making repairs.

Landowner may mow and remove debris up to ten feet (10') onto SCPD property in order to facilitate fence maintenance. Landowner shall receive approval from SCPD prior to performing any mowing or debris removal.

Herbicides may be applied to the fence, in order to control vegetation, provided that the following conditions are met:

1. Herbicides must be approved by SCPD in writing prior to application.
2. Herbicides shall not be sprayed more than two feet (2') onto SCPD property.
3. All herbicide applications must be performed in accordance with the product label, industry standards, and all federal, state, and local laws, statutes, resolutions, regulations, etc.

E. Disputes. Disputes arising under this Agreement will be submitted to the Stark County Court of Common Pleas. Appeals from this decision will be as otherwise permitted by law.

F. Construction Standards and Prohibitions. Landowner agrees to comply with the following specifications in performing any work contemplated in this Agreement:

1. Under no circumstances will fencing contact any boundary monuments, such as stones, pins, or posts. Any boundary monuments are not to be disturbed. If any boundary monument is disturbed or damaged, Landowner shall pay to SCPD as liquidated damages, \$500, for each said monument.
2. Old fence posts and fencing shall be removed and may be discarded on Landowner's property, who shall take title upon such discarding. Any ground disturbed during removal shall be restored to level.
3. Landowner may clear the property line of brush and trees up to ten feet (10') onto SCPD property.

4. SCPD must be notified prior to any clearing work. SCPD must also be notified after any clearing work is completed. SCPD will approve all final grading before any equipment is to be removed from the site, such approval not to be unreasonably withheld. Erosion prone areas must contain water bars and are to be seeded and mulched as required by an SCPD inspector.

5. The new fence may not be attached to any trees. If the wire is to come into contact with a tree a board must be placed between the tree and fence with no screws entering the tree.

6. If any boundary monuments are encountered, fence placement shall be adjusted at that point toward Landowner's property to avoid disturbance of the monument, then returning the fence to the property line, if the fence continues.

7. Trees shall not be used for anchors.

8. Unless otherwise agreed to in this Agreement, Landowner shall adhere to the results of the survey completed pursuant to Paragraph B of these Terms.

G. Covenant. This Agreement will be considered a covenant running with the land and permanently binding and benefiting the property of both parties.

H. Right of Entry. Landowner, or their respective contractors, agents, or employees, may enter on the adjoining SCPD property, but will stay within ten feet of the fence or boundary line to build and/or maintain the fence.

I. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute the same instrument.

J. Recording. This Agreement will be recorded in the official records of the Stark County Recorder.

K. Abandonment. Should Landowner desire to abandon the fence, Landowner shall notify SCPD of Landowner's intent to abandon, and upon delivery of such notice, SCPD may opt to prevent abandonment by providing notice in writing to Landowner within 30 days. If SCPD opts to prevent abandonment, then SCPD will be responsible for any and all maintenance obligations under this Agreement from the date of Landowner's notice of intent to abandon. However, if SCPD does not opt to prevent abandonment as provided herein, then the fence will be deemed abandoned, and Landowner and SCPD will have no further obligation to maintain or repair the fence from the date of Landowner notice of intent to abandon, which shall be binding upon each parties' heirs, successors and assigns. Abandonment by both parties shall be deemed an agreement pursuant to R.C. § 971.04 that no fence is needed between the properties and neither party shall have any future obligation to share in the cost or maintenance of the fence. Notwithstanding anything to the contrary, this Paragraph K shall survive the expiration or termination of this Agreement, subject to any subsequent written agreements entered into between the parties.

L. Term. Subject to Paragraph K of these Terms, this Agreement shall remain in full force and effect until terminated. This Agreement shall terminate when the fence is substantially destroyed

through no fault of either party, when agreed to in writing by the parties, or when the fence no longer has any useful life.

M. Waiver of Statutory or Common Law Rights. By entering into this Agreement authorized by R.C. § 971.04, the parties agree to be bound by the terms and conditions of this Agreement with regard to the construction, maintenance, and repair of the fence on the boundary line, and waive any right under any statute or common law of Ohio, which governs the rights of adjoining owners to maintain or establish common fence lines, including any rights under Ohio Revised Code Chapter 971.

N. Indemnity. As part of the consideration for entering into this Agreement, Landowner agrees to indemnify and hold harmless SCPD and all commissioners, directors, officers, officials, employees, representatives, volunteers, independent contractors, and agents of SCPD, from and against any and all claims, damages, liabilities, losses, and expenses, including attorney's fees and any other costs for defending any action, arising out of Landowner's activities under this Agreement, which are caused in whole or in part by the negligent (or any higher degree of fault) act or omission of Landowner or any employee, representative, volunteer, independent contractor, or agent of Landowner.

IN WITNESS WHEREOF, the parties have signed their names on the day and year below written.

[AUTHORIZED SIGNATURES ON FOLLOWING PAGES]

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STARK COUNTY PARK DISTRICT

Daniel J. Moeglin, Executive Director

Date

ACKNOWLEDGEMENT CERTIFICATE

No oath or affirmation was administered to the signer with regard to the notarial act.

State of Ohio

County of _____

The foregoing instrument was acknowledged before me this _____ (date)
by Daniel J. Moeglin, Executive Director of the Stark County Park District.

(Affix Seal Here)

Signature of Person Taking Acknowledgement

Title or Rank

Commission Expiration Date

[AUTHORIZED SIGNATURES CONTINUE ON FOLLOWING PAGE]

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JUDTITH A. KNICKERBOCKER

Signature

Date

ACKNOWLEDGEMENT CERTIFICATE

No oath or affirmation was administered to the signer with regard to the notarial act.

State of Ohio

County of _____

The foregoing instrument was acknowledged before me this _____ (date)
by Judith A. Knickerbocker.

(Affix Seal Here)

Signature of Person Taking Acknowledgement

Title or Rank

Commission Expiration Date

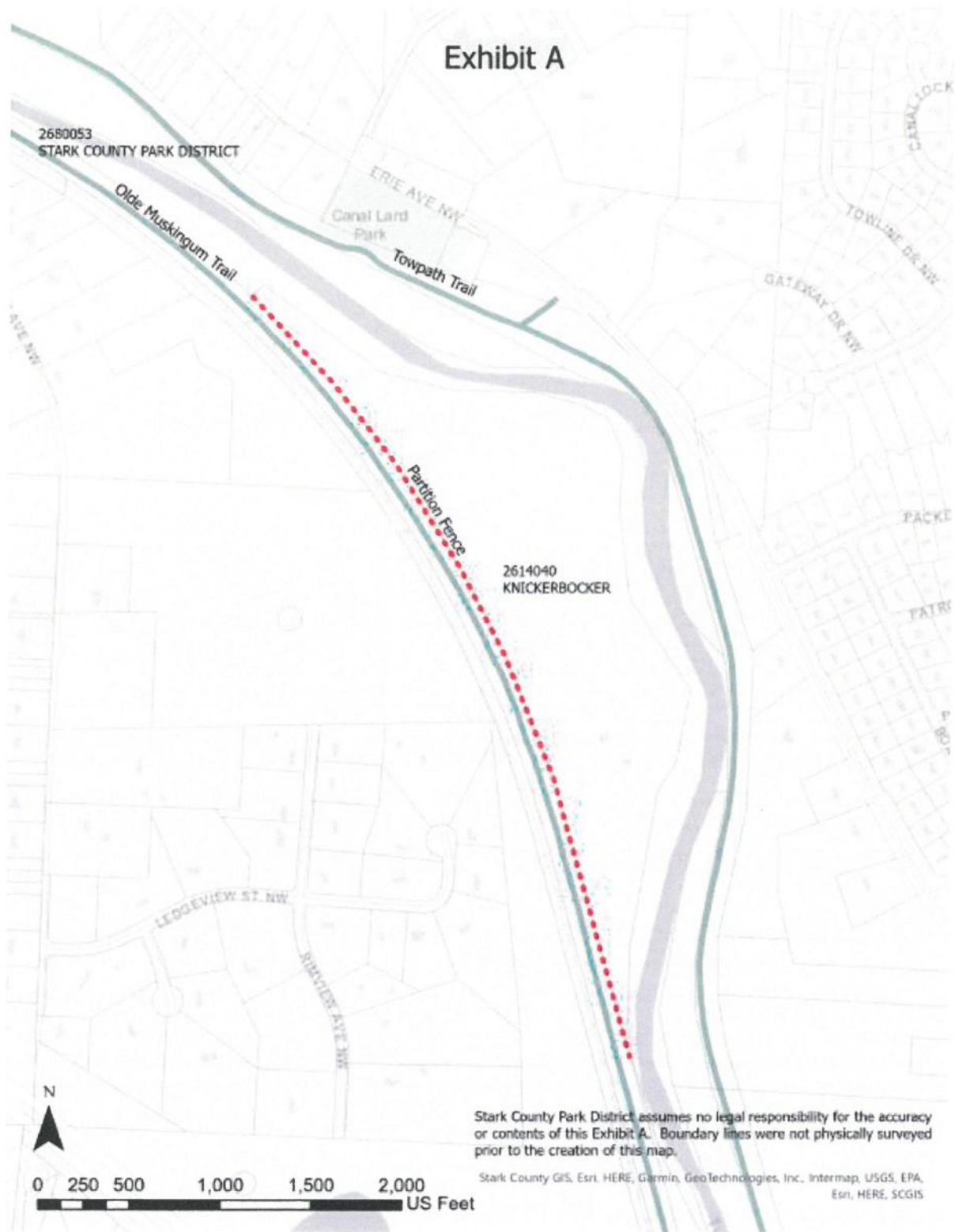
This instrument prepared by:

William L. Bartos, Staff Attorney
Stark County Park District
5300 Tyner Street NW
Canton, Ohio 44708

Approved at to legal form and sufficiency:

WILLIAM L. BARTOS
Counsel for the Stark County Park District

Exhibit A



2680053
STARK COUNTY PARK DISTRICT

ERIE AVE NW
Canal Land
Park

Olde Muskingum Trail

Towpath Trail

Partition Fence

2614040
KNICKERBOCKER

LEDGEVIEW ST NW

RIMMERS AVE NW

GATEWAY DR NW

TOWLINE DR NW

CARROLL LOCK

PACKE

PATR



0 250 500 1,000 1,500 2,000
US Feet

Stark County Park District assumes no legal responsibility for the accuracy or contents of this Exhibit A. Boundary lines were not physically surveyed prior to the creation of this map.

Stark County GIS, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, EPA, Esri, HERE, SCGIS