

SETTLEMENT AGREEMENT

This Settlement Agreement, by and between THE STATE OF OHIO, on the relation of its Attorney General, Anthony J. Celebrezze, Jr., and GREEN COVE DEVELOPMENT CORPORATION, an Ohio corporation with its statutory agent having offices at 1000 Jackson Street, Toledo, Ohio, 43624, is made as of October 1<sup>st</sup>, 1986.

WHEREAS on August 13, 1986, the STATE OF OHIO, on the relation of its Attorney General, Anthony J. Celebrezze, Jr., and at the request of Joseph J. Sommer, in his official capacity as Director of the Department of Natural Resources (hereinafter "STATE OF OHIO"), commenced a civil action in the United States District Court for the Northern District of Ohio, Western Division entitled State of Ohio, ex rel. Anthony J. Celebrezze, Jr., Attorney General of Ohio v. Robert K. Dawson, Assistant Secretary of the Army for Civil Works, Colonel Daniel R. Clark, District Engineer U. S. Department of the Army, John O. Marsh, Jr. Secretary of the Army, and Green Cove Development Corporation and numbered C86-7615 on the docket of said court (hereinafter referred to as the "Litigation") seeking declaratory relief, injunctive relief, and civil penalties; and

WHEREAS GREEN COVE DEVELOPMENT CORPORATION ("GREEN COVE"), by and through its attorneys, entered a timely appearance in the Litigation and, inter alia, denied the substantive allegations asserted therein; and

WHEREAS the STATE OF OHIO and GREEN COVE desire to resolve the Litigation without trial or adjudication of, or finding on, any issues

of fact or law and without this Settlement Agreement constituting any evidence against or admission by either the STATE OF OHIO or GREEN COVE with respect to any such issues.

NOW, THEREFORE is is hereby agreed, by and between THE STATE OF OHIO and GREEN COVE, as follows:

1. GREEN COVE shall pay the STATE OF OHIO the sum of One Hundred Thousand Dollars (\$100,000.00) payable in four (4) consecutive annual installments of Twenty-Five Thousand Dollars (\$25,000.00) each commencing on December 31, 1986, with the final installment due on December 31, 1989. Said installments shall be made by check made payable to "State of Ohio, DNR, Division of Wildlife" and delivered by United States Mail, return receipt requested, at the following address: Ohio Department of Natural Resources, Attention: Chief of the Division of Wildlife, Fountain Square, Building D, Columbus, Ohio 43224 or at such other address as the State of Ohio, by written notice, may designate from time to time.

This money will be deposited in the "725-649 Wetlands Habitat Stamp Special Account," and used by the State of Ohio for the acquisition, creation, development, management, and/or preservation of wetland areas. Such money shall not be used for contribution by the Division of Wildlife to the organization(s) set forth in Ohio Revised Code Section 1533.112(B). In the event that this account is abolished or terminated, this money shall be deposited into an account

designated by the Director of the Department of Natural Resources and used for the same purposes.

2. The STATE OF OHIO and GREEN COVE agree that the United States District Court for the Northern District of Ohio, Western Division may enter the Consent Order attached hereto as Exhibit "A".

The STATE OF OHIO and GREEN COVE, by affixing their respective signatures hereto, represent and warrant that they have carefully read and fully understand the foregoing Settlement Agreement and that the individuals signing on behalf of each party is fully authorized in the premises and has voluntarily executed the same.

IN WITNESS WHEREOF, the undersigned have hereunto set their hand.

Witnesses as to Green Cove  
Development Corporation:

Denise K. Busch  
Gregory S. Shumaker

GREEN COVE DEVELOPMENT CORPORATION

By Francis M. Harris  
Francis M. Harris  
President

Witnesses as to the State  
of Ohio:

Suzanne Pearson  
Cathy Cincione

STATE OF OHIO

By Joseph J. Sommer  
Joseph J. Sommer  
Director, Ohio Department  
of Natural Resources

Approved as to form:  
Anthony J. Celebrezze, Jr.  
Attorney General of Ohio

By Jack A. Van Kley  
Jack A. Van Kley

By Joan C. Weiser  
Joan C. Weiser  
Assistant Attorneys General  
Environmental Enforcement Section  
Attorneys for the State of Ohio

SHUMAKER, LOOP & KENDRICK

By Kevin H. Graham  
Kevin H. Graham

By Harold A. Kelley  
Harold A. Kelley  
Attorneys for Green Cove  
Development Corporation

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

STATE OF OHIO, ex rel.	)	Case No. C86-7615
ANTHONY J. CELEBREZZE, JR.	)	
ATTORNEY GENERAL OF OHIO,	)	Judge John W. Potter
	)	
Plaintiff,	)	<u>CONSENT ORDER</u>
	)	
v.	)	
	)	
ROBERT K. DAWSON, et al.,	)	
	)	
Defendants.	)	

\* \* \*

WHEREAS, on August 13, 1986, the STATE OF OHIO filed a Complaint in the above-captioned case against GREEN COVE DEVELOPMENT CORPORATION ("GREEN COVE") seeking declaratory relief, injunctive relief, and civil penalties; and

WHEREAS, the allegations in the Complaint are related to a residential development by GREEN COVE named "Green Cove Condominium Resort," which will be located in the vicinity of the intersection of State Route 2 and Russell Road in Carroll Township, Ottawa County, Ohio and which will be located immediately east of the existing Green Cove Marina boat channels and immediately south of the existing Green Cove Marina boat basin; this residential development is to be located on approximately forty (40) acres of land formerly owned by James and Jacquelyn Green; this Consent Decree shall hereinafter refer to this forty (40) acres as the "North Forty";

WHEREAS, GREEN COVE, by and through its attorneys, has entered a timely appearance in this case and, inter alia, has denied the substantive allegations asserted therein; and

WHEREAS, the STATE OF OHIO and GREEN COVE desire to resolve this case without trial or adjudication of, or finding on, any issues of fact or law and without this Consent Order constituting any evidence against or admission by either the STATE OF OHIO or GREEN COVE with respect to any such issues;

NOW, THEREFORE it is hereby adjudged, ordered, and decreed as follows:

1. The Court has jurisdiction over the subject matter and the parties to this Consent Decree. This finding of jurisdiction shall not be admissible in any judicial proceeding with the exception of this proceeding and any proceeding expressly provided for in this Consent Decree.

2. The provisions of this Consent Decree shall apply to and be binding on the parties to this action.

3. GREEN COVE shall do all things necessary to plant and maintain a vegetative buffer zone at least thirty (30) feet in width along the eastern and northern perimeters of the North Forty, between the residential development and the adjoining marsh areas. On the eastern perimeter of the North Forty, this buffer zone shall extend without interruption from the "duck hole" set aside area to the north-east corner of the North Forty. On the northern perimeter of the North

Forty, this buffer zone shall extend from the northeast corner of the North Forty without interruption to the newly constructed road which provides access to the marina. The purpose of this buffer zone is to conceal human activity in the residential development from the wildlife in the marsh areas. In addition, the vegetation in this buffer zone will provide cover and food for wildlife.

GREEN COVE shall plant the buffer zone with a mixture of vegetation, with approximately sixty percent (60%) of the zone being covered with conifers and forty percent (40%) of the zone being covered with deciduous vegetation. The deciduous vegetation shall be interspersed among the conifers, and/or small plots of conifers shall be interspersed with small plots of deciduous vegetation. Where conifers are planted in plots, the conifers shall be spaced approximately ten (10) to twelve (12) feet apart at maturity. The deciduous vegetation shall include species of plants which provide both dense ground cover and food for wildlife.

The species of conifers in the buffer zone shall consist of black or bog spruce (Pinus mariana) (which is recommended as the primary coniferous species), white pine (Pinus strobus), and norway spruce (Picea abies). The species of deciduous vegetation shall include one or more of the following dogwood species: roughleaf (Cornus asperifolia); silky (Cornus amomum); and gray (Cornus racemosa). The deciduous vegetation shall also include one or more of the following shrubs: tatarian honeysuckle (Lonicera tatarica); high bush cranberry or related

shrubs (Vaccinium sp); and maple leaf viburnum (Viburnum acerifolium). GREEN COVE may at any time recommend species of conifers and/or deciduous vegetation to be planted in the buffer zone in addition to or in the alternative to the species specified in this paragraph. Upon written agreement to these recommendations by the Office of Outdoor Recreation Services of the Ohio Department of Natural Resources, GREEN COVE may plant these additional and/or alternative species.

4. GREEN COVE shall have the buffer zone planted by June 30, 1987. Thereafter, the buffer zone shall be maintained to serve the purposes hereinbefore set forth, including the replacement, within a reasonable time, of any trees or shrubs planted within the buffer zone which die or are destroyed. If GREEN COVE conveys title to the buffer zone, GREEN COVE shall include a covenant in the deed transferring title to the buffer zone, the effect of which requires the grantee and the grantee's successors to maintain the buffer zone as provided herein, in perpetuity, without limitation as to time or use of the North Forty in the future. At that time, GREEN COVE's obligation to maintain the buffer zone shall cease.

5. GREEN COVE may satisfy the requirements concerning the transfer of title described in the preceding paragraph by conveying the buffer zone to Green Cove Condominium Group, a non-profit Ohio corporation, under a Deed and Declaration of Covenants, Conditions, and Restrictions which establish certain covenants, restrictions, easements, charges, and liens for the benefit of the residential development



(hereinafter "Deed and Declaration"). Said Deed and Declaration shall include provisions in substantially the following form:

"Section 1. Unit Owners' Easement of Enjoyment.  
Every Unit Owner shall have a non-exclusive right and easement of enjoyment in and to the Corporate Property [includes buffer zone] which shall be appurtenant to and shall pass with the title to every Unit, subject to the following:

\* \* \*

(g) The obligation of the Corporation [Green Cove Condominium Group] to maintain the vegetative buffer zone located on that part of the Corporate Property described as Parcel \_\_\_ on Exhibit C attached hereto [the buffer zone], including the replacement, within a reasonable time, of any trees or shrubs planted within the buffer zone which die or are destroyed. The foregoing obligations may be directly enforced by the State of Ohio by the commencement of an action in a court of competent jurisdiction and said obligations may not be modified or eliminated without the express written consent of the Director of Natural Resources for the State of Ohio or his designee.

\* \* \*

The covenants and restrictions of this Declaration shall run with the title to and bind the Corporate Property."

\* \* \*

6. Compliance with this Consent Decree constitutes full satisfaction of all claims brought in this action against all Defendants. The Complaint and all claims contained therein are dismissed, with prejudice, provided, however, that the Court retains jurisdiction of this action for the limited purpose of making any Order or Decree

which it may deem at any time to be necessary to carry out the terms of this Consent Decree. Provided further, however, that the Court's continuing jurisdiction under this Consent Order shall terminate upon GREEN COVE (i) completing the planting of the vegetation in the buffer zone as required herein; and (ii) transferring title to the buffer zone subject to the requirement that the grantee and the grantee's successors maintain the buffer zone as provided herein. Upon the happening of these two events, GREEN COVE shall advise the Court by filing an appropriate Notice with the Clerk and serving a copy of same upon the counsel of record for the STATE OF OHIO. Unless the STATE OF OHIO, within ten (10) business days, objects and affirmatively states that GREEN COVE has not complied with this Consent Decree, the STATE OF OHIO will be deemed to have consented to the termination of the Court's jurisdiction over this matter and an appropriate Order shall be entered terminating the Court's jurisdiction.

7. Attorneys of record for the respective parties shall accept service of this Order and that by acceptance hereof, this Order shall be immediately binding upon the respective parties as if personally received by them.

8. Green Cove shall pay Court costs.

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE JOHN W. POTTER  
UNITED STATES DISTRICT JUDGE

Plaintiff, the State of Ohio hereby consents to the entry of this Order this \_\_\_\_ day of October, 1986.

Defendant, Green Cove Development Corporation hereby consents to the entry of this Order this \_\_\_\_ day of October, 1986.

STATE OF OHIO

GREEN COVE DEVELOPMENT CORPORATION

By \_\_\_\_\_  
Joseph J. Sommer  
Director, Ohio Department  
of Natural Resources

By \_\_\_\_\_  
Francis M. Harris  
President

APPROVED:

ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

SHUMAKER, LOOP & KENDRICK

By \_\_\_\_\_  
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By \_\_\_\_\_  
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By \_\_\_\_\_  
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State of Ohio

Attorneys for Defendant  
Green Cove Development  
Corporation