

**GRANT OF CONSERVATION EASEMENT  
AND  
COVENANT FOR STEWARDSHIP FEES**

This Grant of Conservation Easement and Covenant for Stewardship Fees (this "Grant" or this "Conservation Easement") is made by Russell Township Park Commission of Geauga County, Ohio ("Grantor"), a political subdivision of the State of Ohio, to Natural Areas Land Conservancy ("Grantee"), an Ohio non-profit corporation.

200600754613  
Filed for Record in  
GEAUGA COUNTY, OHIO  
MARY MARGARET MCBRIDE  
12-28-2006 At 11:11 am.  
ESMT                      356.00  
OR Book 1812 Page 467 - 509

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of four contiguous parcels of real property located in Russell Township, Geauga County, Ohio approximating seven acres in the aggregate (the "Protected Property"), known as permanent parcel numbers 26-083600, 26-083700, 26-083800 and 26-083900 and legally described in Exhibit A and further described and depicted in a Baseline Documentation Report designated Exhibit B, with the Property Identification Map of Exhibit B depicting the Protected Property in crosshatch, both of which exhibits are attached hereto and made a part hereof; and

WHEREAS, Grantee is exempt from federal taxation under Subsection 501(a) and is described in Subsection 501(c) of the Internal Revenue Code of 1954, as amended, and is organized for the purpose of preservation of land areas for public outdoor recreation and education, scenic enjoyment, the preservation of historically important land areas or structures, and the protection of natural environmental systems, and is therefore a charitable organization which, under Section 5301.69(B) of the Ohio Revised Code (the "ORC"), may acquire and hold conservation easements; and

WHEREAS, the Protected Property possesses significant scenic, natural, aesthetic and open space values, which values (collectively "Conservation Values") are of great importance to Grantor, Grantee, the residents of Russell Township, Geauga County, and the State of Ohio; and

WHEREAS, Grantor and Grantee agree that the Baseline Documentation Report provides an accurate representation of the Protected Property and its Conservation Values as of the effective date of this Grant and that it is intended to serve as an objective information baseline for monitoring compliance with the terms of this Grant; and

WHEREAS, the Protected Property is located within Grantee's service area and has substantial value as a scenic, natural, aesthetic, and educational resource in its present state as a natural, scenic, open and wooded area, constituting a natural habitat for plants and wildlife; and

WHEREAS, the Protected Property is in part open fields and in part woodlands, wetlands, and stream corridors, all of which are described and depicted in Exhibit B; and

WHEREAS, Grantor and Grantee recognize the aforesaid scenic, natural, aesthetic, and educational values of the Protected Property in its present state, and have, by the conveyance and acceptance of this Conservation Easement, respectively, the common purpose of (a) conserving the aforesaid values of the Protected Property in perpetuity as "a relatively natural habitat of fish, wildlife or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 U.S.C. 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder, and (b) preventing the use or development of the Protected Property for any purpose or in any manner that would conflict with the maintenance of the Protected Property in its natural, scenic, open, and wooded condition, as suitable habitat for wild flora and fauna of all types, all as stated above; and

WHEREAS, "ecological, scientific, educational, and aesthetic value," "natural, scenic and open condition" and "natural values" as used herein shall, without limiting the generality of the terms, mean a condition that is no less natural than the condition of the Protected Property at the time of this Grant, "natural" meaning that native plants and wildlife are permitted to carry out their lifecycles without human interference; and

WHEREAS, Grantor and Grantee intend that this Conservation Easement shall be a "conservation easement" as defined in ORC Section 5301.67; and

WHEREAS, Grantor and Grantee intend that the Protected Property shall be used as a passive use public park as herein defined and described; and

WHEREAS, Grantee is willing to accept this Conservation Easement subject to the reservations and to the terms, conditions and obligations set out herein; and

WHEREAS, Grantee's obligation entails a pledge to defend the ecological, scientific, educational, and aesthetic values, the natural, scenic and open condition, and natural values of the property, and significant costs are necessary to carry out this commitment;

NOW, THEREFORE, for and in consideration of the premises and the foregoing recitations, and other good and valuable consideration in hand paid, and in further consideration of the mutual promises, covenants, terms, conditions, and restrictions hereinafter set forth, with the intention of making an absolute and unconditional gift, Grantor does hereby grant, give, and convey unto Grantee, its successors and assigns, in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Protected Property, for the purposes of preserving, protecting, and maintaining the Protected Property as a scenic, natural, and wooded area, as habitat for plants, wildlife, and together with the right of visual access to and view of the Protected Property in its natural, scenic and open condition.

A. PURPOSES FOR WHICH THIS CONSERVATION EASEMENT IS GRANTED.

This Conservation Easement is granted for the following purposes (collectively, the "Conservation Purposes"):

1. Retaining land, water and/or wetland areas predominately in their natural, scenic, open and/or wooded condition as suitable habitat for fish, plants and/or wildlife; and
2. Use of the Protected Property as a passive use public park as described in paragraph 16 below.

B. TERMS, CONDITIONS AND RESTRICTIONS

1. **Representation as to Authority.** Grantor hereby represents and warrants to Grantee that Grantor has the power and authority to make this Grant and to carry out its obligations hereunder.
2. **Reserved Rights.**
  - a. **General.** Grantor reserves all ordinary rights and privileges of ownership, including the right to sell the Protected Property, as well as the right to continue the use of the Protected Property for all purposes consistent with the purposes described in paragraph A not destructive of Conservation Values, and not expressly prohibited or conditioned hereunder; provided that nothing in this Grant shall relieve Grantor of any obligation with respect to the Protected Property or restrictions on the use of the Protected Property imposed by law. Grantor reserves the right to engage in all

non-commercial acts or uses on the Protected Property that are not prohibited by governmental statute or regulation, are not expressly prohibited or conditioned herein, and are not inconsistent with the Conservation Purposes.

- b. Planting of Native Vegetation. Grantor reserves the right to plant anywhere on the Protected Property a diversity of native, non-invasive species of trees, shrubs and herbaceous plant materials in a manner that does not have an adverse impact on the Conservation Values of the Protected Property and is otherwise consistent with the Conservation Purposes.
- c. Dead, Diseased or Damaged Trees. Grantor reserves the right to cut and remove dead, diseased and materially damaged trees anywhere on the Protected Property; provided such removal shall be carried out in a manner which minimizes impacts to the Conservation Values (including other trees) of the Protected Property.
- d. Notice. Grantor shall notify Grantee, in writing, before exercising any right reserved by Grantor in this Conservation Easement that may have an adverse impact on the Conservation Values.

3. No Structures; No Signs.

- a. Structures. No residential, commercial, governmental or industrial structures, including, but not limited to, buildings, outbuildings, camping accommodations, mobile homes, and fences, shall be hereafter erected or placed on the Protected Property.
- b. Signs. No signs, billboards or advertising of any kind, except signs, which are not commercial, are reasonably consistent with the use and operation of the Protected Property as a public park and whose placement, number and design do not significantly diminish the scenic character of the Protected Property, including signs that (i) state the name and address of the Protected Property, (ii) the fact that it is protected by this Conservation

Easement; (iii) facilitate directions, (iv) promote educational activities, and (v) post the Protected Property to control unauthorized entry or use, shall be erected or placed on the Protected Property.

4. **No Dumping.** There shall be no dumping of soil, trash, ashes, garbage, waste, or other unsightly or offensive material, nor any placement of underground storage tanks, on or in the Protected Property, and no changing of its topography through the placing of soil or other substance or material such as land fill or dredging spoils. The land application, storage and placement of municipal, commercial or industrial sewage sludge or liquid generated from such sources may not be undertaken on the Protected Property.
5. **No Filling or Excavating.** Except as otherwise provided herein, there shall be no fillings, excavations, construction of roads or other changes in the general topography of the Protected Property in any manner except the maintenance of existing and permitted foot trails (including bridges over streams) and that caused by the forces of nature; provided, however, that (a) existing trails (including bridges over streams) for walking may be widened and new trails (including bridges over streams) may be created anywhere on the Protected Property so long as (i) they do not exceed five feet in width, and (ii) they are not covered with impervious materials; and (b) such widening or creation is not detrimental to water quality, significant natural habitats, or the scenic qualities of the Protected Property and is otherwise consistent with the Conservation Purposes and the Conservation Values.
6. **No Mining or Drilling.** There shall be no mining or drilling for minerals, oil, gas or similar substances, nor shall the Protected Property be used as part of any drilling unit for oil and gas production.
7. **No Habitat Disturbance.** Except for the removal of non-native invasive growth and of dead, diseased or materially damaged trees, there shall be no cutting down, removal or destruction of native trees or growth, or introduction of animals to the Protected Property other than walking of dogs as permitted under paragraph 16

and horses that are used for transient recreational activities but which may not be kept or maintained on the Protected Property.

8. **No Powerlines or Communications Towers.** No power transmission lines or communication towers shall be erected, other than utility lines for structures, uses and activities permitted on the Protected Property, nor shall interests in the Protected Property be granted for such purpose.
9. **No Detrimental Use.** There shall be no activities, actions, or uses detrimental or adverse to water conservation, erosion control, soil conservation or fish and wildlife or habitat preservation on the Protected Property.
10. **No Manipulation of Water Courses.** There shall be no manipulation or alteration of natural water courses, lake shores, marshes, or other water bodies or activities or uses detrimental to water purity, provided that existing ponds on the Protected Property may be maintained, dredged and restored in a manner that promotes the enhancement of native wildlife and plant habitat. The Protected Property includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Protected Property (collectively, the "Water Rights"). Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Protected Property or change the historic use of the Water Rights without the consent of Grantee. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without the consent of Grantee.
11. **Limitation on Motor Vehicles.** There shall be no operation of motorized vehicles on the Protected Property, including, but not limited to, automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or recreational motorized vehicles except that trucks, tractors and non-recreational all-terrain vehicles may be used anywhere on the Protected Property in connection with management and maintenance activities; provided that such management and



maintenance activities are carried out in a manner which causes the least possible adverse impact on the Conservation Values of the Protected Property.

12. **No Density Yield; No Transfer of Development Rights.** The acreage constituting the Protected Property shall not be taken into consideration and may not be used when calculating the lot area or permitted development density for any land not subject to this Conservation Easement. Grantor may not transfer (whether or not for compensation) any development rights allocated to the Protected Property.
13. **No Subdivision.** The four parcels presently constituting the Protected Property shall not be divided, subdivided or partitioned and shall only be conveyed in their entirety in any single transaction.
14. **Management as a Natural Area.** Except as otherwise herein provided, the Protected Property shall be managed as a passive use public park, and in a manner consistent with its preservation as a natural, scenic, open, and wooded area. Every other activity or construction that might endanger the natural or scenic state of the Protected Property is forbidden. All maintenance of the Protected Property shall be performed so as to minimize impacts to native wildlife and plant habitats, and to preserve the quality and quantity of surface and ground water resources.
15. **Definition of Passive Use.** Passive use of the Protected Property means use that subordinates recreation and public access to the maintenance and enhancement of environmental quality and solitude. Accordingly, the Protected Property shall be maintained as a sanctuary for native plants and animals. As such, any physical alteration of the Protected Property shall be limited to maintaining trails and designed so as to cause no significant degradation of soils, wildlife, and plant habitats, or water quality, by maintaining ample vegetative buffers and other management practices which are deemed by Grantee adequate to protect and preserve streams and wetlands (excluding non-native plants and animals), minimizing the area dedicated to trails, and avoiding the fragmentation or disturbance of significant plant and animal habitats.

16. **Permitted Uses Within the Protected Property.** Consistent with the above description of passive use, the following activities are permitted within the Protected Property:
- Quiet, contemplative, aesthetic and scientific pursuits, such as non-intrusive nature study, bird watching, art and photography.
  - Recreational trails for hiking, cross-country skiing, snow shoeing, walking of dogs, bicycle riding and similar recreational purposes so long as compatible with the Conservation Purposes and approved by Grantee.
  - Nature observation.
17. **Other Incompatible Uses Within the Protected Property.** In addition to the prohibited uses described elsewhere in this Conservation Easement and consistent with the description of passive use above, any activity or use which will cause damage to the Conservation Values is prohibited. Such incompatible uses and activities include, by way of example, the following:
- Industrial, commercial, or agricultural construction or uses.
  - Paintball games.
  - Bicycle motocross and similar sport or hobby activities which damage grassland areas.
  - Frequent large gatherings which interfere with the public's passive enjoyment of the natural qualities of the Protected Property.
  - Construction or use of fields for any type of active recreation, including but not limited to, fields for sports activities such as baseball, football, soccer, and field hockey.
  - Construction or use of golf or similar courses.
  - Construction or use of courts for any type of active recreation, including but not limited to, courts for tennis or basketball.
18. **No Commercial Recreational Use.** There shall be no commercial recreational use of the Protected Property except those uses considered "de minimus" according to the provisions of Section 2031(c)(8)(B) of the IRC.
19. **Real Property Interest.** This Conservation Easement constitutes a real property interest immediately vested in Grantee.
20. **Right to Enter and Inspect.** Grantee, or its duly authorized representatives, may enter the Protected Property at all reasonable times for the purpose of inspecting the Protected Property in order to further the objectives and determine compliance with the terms of this Conservation Easement.



21. **Permission of Grantee.** Where Grantor is required to obtain Grantee's permission, approval or consent for a proposed action hereunder, such permission, approval or consent shall (a) be sought and given in writing, (b) in all cases be obtained by Grantor prior to Grantor taking the proposed action, and (c) not be unreasonably conditioned, delayed or withheld, and shall be based on Grantee's evaluation of the impact of the request on the Conservation Values of the Protected Property. Grantee shall grant or withhold its approval in writing within 30 days after receipt of Grantor's written request therefor. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given.
22. **Grantee's Remedies.** If Grantor is in violation of the terms of this Conservation Easement, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, if the violation involves damage to the Protected Property resulting from any use or activity inconsistent with the Conservation Purposes, to restore the portion of the Protected Property so damaged. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or if the violation cannot reasonably be cured within a 30-day period, Grantor fails to begin curing such violation within the 30-day period or, once having commenced a cure, fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation *ex parte* if necessary, by temporary or permanent injunction, to recover from Grantor any damages to which it may be entitled for violation of the terms of this Conservation Easement or damage to any of the Conservation Values arising from such violation, including damages for diminished environmental values, and to require the restoration of the Protected Property to the condition that existed prior to any such damage, without limiting Grantor's liability therefor. Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. If Grantee, in its reasonable

discretion, determines that circumstances require its immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this paragraph upon giving notice to Grantor of such circumstances but without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violation of the terms of this Conservation Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both temporary and permanent, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms, conditions and purposes of this Conservation Easement by prior failure to act. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement shall be borne by Grantor.

23. **Upkeep and Maintenance.** Grantor shall be solely responsible for the upkeep and maintenance of the Protected Property to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Protected Property; provided that Grantee, at its option, may, but shall not be obligated to, pay for the maintenance and preservation of the Protected Property should Grantor fail to do so. Before doing so, Grantee shall give Grantor notice of its intention to pay any such maintenance or preservation costs and Grantee shall not proceed unless Grantor has failed to maintain and preserve the Protected Property to the extent required by law within 30 days after the giving of such notice. Grantor shall reimburse Grantee on demand for any payment so made.

24. **Liability and Indemnification.** To the extent permitted by law, Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Protected Property. Grantor shall keep the Protected Property insured with comprehensive general liability insurance against claims for personal injury, death and property damage with limits deemed commercially reasonable by Grantee, cause Grantee to be named as an additional insured on all such insurance policies, and provide evidence of such insurance to Grantee as of the effective date of this Conservation Easement and periodically thereafter as such insurance coverage is renewed or replaced. Such evidence shall be in the form of a certificate of insurance which (a) indicates that Grantee is an additional insured, and (b) requires written notice from the insurer to Grantee not less than 30 days before making a material change in or canceling such coverage.
25. **Taxes.** Grantor shall pay all taxes validly assessed and levied against the Protected Property, including any such taxes validly levied and assessed against this Conservation Easement by competent authorities, it being understood that no taxes are presently levied against conservation easements generally in the state of Ohio, or, to the knowledge of Grantor and Grantee, are such taxes contemplated by any taxing authority with jurisdiction over the Protected Property. At its option, Grantee may, but shall not be obligated to, discharge any tax lien (or other encumbrance) at any time levied or placed on the Protected Property should Grantor fail to do so. Before doing so, Grantee shall give Grantor notice of its intention to discharge any such tax lien or other encumbrance and Grantee shall not proceed unless Grantor has failed to discharge such tax lien or other encumbrance within 30 days after the giving of such notice. Grantor shall reimburse Grantee on demand for any payment so made.
26. **Incorporation in Subsequent Instruments.** Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement shall be incorporated by reference in any subsequent deed, or other legal instrument, by which it divests itself of either the fee simple title to, or its possessory interest in, the Protected Property.

27. **Amendment.** This Grant may be amended only with the written consent of Grantee and Grantor. Grantee shall not consent to any amendment of this Conservation Easement (a) unless the effect of such amendment is neutral with respect to or enhances the Conservation Purposes and such amendment otherwise qualifies under Grantee's policy then in effect respecting conservation easement amendments, or (b) if such amendment would adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the IRC and the laws of the State of Ohio. Any such amendment shall be consistent with the purposes of this Grant and shall comply with Section 170(h) and Section 2031(c) of the IRC. Any such amendment shall also be consistent with ORC Sections 5301.67 through 5301.70 and any regulations promulgated pursuant to such code. Any such amendment shall be recorded in the Official Records of Geauga County, Ohio. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment. Grantor and Grantee may amend this Conservation Easement to be more restrictive to comply with the provisions of Section 2031(c) of the IRC.
28. **Assignment.** Grantee may transfer or assign its rights in this Conservation Easement if in Grantee's opinion the purposes of this Conservation Easement are better served by this Conservation Easement being held in the name of another organization which is a qualified organization at the time of transfer under Section 170(h) (3) of the IRC and the laws of the state of Ohio (especially ORC Section 5301.69), and is acceptable to Grantee. The selection of the transferee shall be made by the Board of Trustees of Grantee or, if Grantee has ceased to exist, the statutory or court appointed successors of the last Board of Trustees of Grantee. As a condition of such transfer, Grantee shall require that the Conservation Purposes that this Conservation Easement is intended to advance continue to be carried out.
29. **Real Property Interest.** This Conservation Easement constitutes a real property interest immediately vested in Grantee.

30. **Extinguishment.** If future circumstances render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a local court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale one-half to Grantor and one-half to Grantee. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with the Conservation Purposes of this Conservation Easement.
31. **Eminent Domain.** It is the intent of this Grant to convey to Grantee, its successors and assigns, such an interest in the Protected Property as is sufficient to prohibit the exercise of the power of eminent domain by public utility and any other body or person. If all or any part of the Protected Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Protected Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraph 30 (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this paragraph 31 shall be in addition to, and not in limitation of, any rights they may have at common law.
32. **Ohio Revised Code.** Without limiting any other provision of this Conservation Easement, Grantor and Grantee agree and intend that the conservation easement granted and accepted hereby constitutes a “conservation easement” as that term is

used in Section 5301.67 through 5301.70 of the Ohio Revised Code and that this Conservation Easement shall be entitled to all the benefits of such sections.

33. **Notice of Proposed Transfer.** Grantor shall give Grantee notice of the proposed transfer of any interest in the Protected Property at least 20 days prior to such transfer; provided that failure to so notify Grantee shall not in any way affect the validity of this Conservation Easement or limit its enforceability.
34. **Stewardship Fee.** Grantor hereby covenants, promises, and agrees to pay, or to cause the closing agent in connection with the future transfer for value of all or less than all of the Protected Property to pay, to Grantee, or any successor having stewardship obligations pertaining to the Protected Property, at closing, a Stewardship Fee (“the Fee”) in an amount equal to 10% of the full consideration paid, including that portion of such consideration attributable to improvements, other contiguous land, whether or not subject to easement, and any fixtures permanently attached to the Protected Property and such contiguous land. In the event the Fee is not paid as provided herein, Grantee shall have the right to file a lien against the Protected Property to secure the continuing obligation of Grantor and its successors in title to pay the Fee; provided that the Fee shall be subordinate to this Conservation Easement and to the lien of any first mortgage on the Protected Property. Such lien may be enforced and/or foreclosed in accordance with the laws of the State of Ohio.
35. **Rules of Convenience.** For convenience, masculine pronouns used in this document include the feminine and neuter pronouns, and the singular tense includes the plural tense. Additionally, all references to either Grantor or Grantee include their successors, assigns and transferees unless otherwise noted. The captions in this Conservation Easement are for convenience only and are not intended by the parties to affect the meaning or interpretation of the terms thereof.
36. **Counterparts.** This Conservation Easement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.



37. **Applicable Law; Severability.** This Conservation Easement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and regulations of the State of Ohio. If any provision of this Conservation Easement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Conservation Easement or application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby but rather shall be enforced to the fullest extent permitted by law.
38. **Reasonableness Standard.** Grantor and Grantee shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Conservation Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.
39. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Conservation Easement, all of which are merged herein.
40. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:                      Russell Township Park Commission of  
   Geauga County, Ohio  
   8501 Kinsman Road  
   Novelty, Ohio 44072  
   Attention: \_\_\_\_\_

To Grantee:                        Natural Areas Land Conservancy  
   P.O. Box 314  
   Novelty, Ohio 44072  
   Attention: President or General Counsel

or to such other address as any of the above parties from time to time shall designate by written notice to the others.

41. **Effective Date.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Easement is recorded in the Official Records of Geauga County, Ohio, after all required signatures have been affixed hereto. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Conservation Easement.
  
42. **No Extinguishment Through Merger.** Grantor and Grantee herein agree that (a) this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (b) should all or a portion of the fee interest subject to this Conservation Easement and the Conservation Easement, itself, come to be owned by the same owner, such owner as promptly as practicable shall assign this Conservation Easement of record to another holder in conformity with the requirements of paragraphs 28 and 33. The instrument of assignment shall refer to the provisions of this paragraph, and shall contain confirmatory language suitable to reimpose this Conservation Easement to the extent, if any, necessary to continue it in force.
  
43. **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in this Conservation Easement or in the Protected Property, except that liability for acts of omissions occurring prior to such transfer shall survive transfer.

TO HAVE AND TO HOLD, unto NATURAL AREAS LAND CONSERVANCY to the use of Grantee, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions, and purposes imposed as aforesaid shall be binding not only upon Grantor and Grantee, but also their respective agents, personal representatives, heirs and assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Protected Property.

IN WITNESS WHEREOF, Grantor has executed this instrument this 22<sup>nd</sup> day of December, 2006.

GRANTOR:

RUSSELL TOWNSHIP PARK COMMISSION OF  
GEAUGA COUNTY, OHIO

By: *Roy E. Padijil*

Its: *Chairman R.T.P.C*

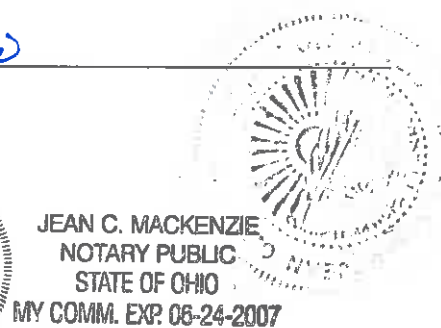
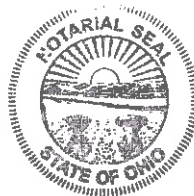
STATE OF OHIO            )  
                                  )  
COUNTY OF GEAUGA    )        SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Russell Township Park Commission of Geauga County, Ohio by *Roy E. Padijil*, its *Chairman*, who acknowledged that he did execute the foregoing instrument and that the same is his own free act and deed as such representative and the free act and deed of such political subdivision.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this *22<sup>nd</sup>* day of *December*, 2006.

*Jean Mackenzie*  
Notary Public

Instrument prepared by:  
Western Reserve Land Conservancy  
P.O. Box 314  
Novelty, Ohio 44072  
(440) 729-9621



ACCEPTANCE

The undersigned does hereby consent to and accept the within Conservation Easement and all obligations imposed thereby.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Acceptance this 2nd day of December, 2006.

GRANTEE:

NATURAL AREAS LAND CONSERVANCY

By: \_\_\_\_\_

Richard D. Cochran  
Its President

And

By: \_\_\_\_\_

Edward F. Meyers  
Its Assistant Secretary

R:\Stewardship\Protected Properties\Hillbrook Lots\  
Conservation Easement [FINAL].doc

REAL PROPERTY TRANSFER TAX  
NO TRANSFER AND PAID  
NECESSARY  
DEC 28 2006  
Fee \$ 1500.00  
Tracy A. Jemison, County Auditor  
By: Robert A. Kaleu

EXHIBIT A

Instrument    Book    Page  
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Situate in the Township of Russell, County of Geauga and State of Ohio and known as being Sublot 26 in Paul R. Johnston's Hillbrook Estate Subdivision No. 1 of a part of Original Russell Township Lots Nos. 1, 2 and 3 in the West Division Tract No. 2, and part of Lot Nos. 5 and 6 in Section 11, Tract 1 of Geauga County, and part of Orange Township, Tract No. 2, Lot No. 2 of Cuyahoga County, as shown by the recorded plat in Volume 8 of Maps, Pages 93, 94, 95, 96 and 97 of Geauga County Records.

Situate in the Township of Russell, County of Geauga and State of Ohio and known as being Sublot 27 in Paul R. Johnston's Hillbrook Estate Subdivision No. 1 of a part of Original Russell Township Lots Nos. 1, 2 and 3 in the West Division Tract No. 2, and part of Lot Nos. 5 and 6 in Section 11, Tract 1 of Geauga County, and part of Orange Township, Tract No. 2, Lot No. 2 of Cuyahoga County, as shown by the recorded plat in Volume 8 of Maps, Pages 93, 94, 95, 96 and 97 of Geauga County Records.

Situate in the Township of Russell, County of Geauga and State of Ohio and known as being Sublot 28 in Paul R. Johnston's Hillbrook Estate Subdivision No. 1 of a part of Original Russell Township Lots Nos. 1, 2 and 3 in the West Division Tract No. 2, and part of Lot Nos. 5 and 6 in Section 11, Tract 1 of Geauga County, and part of Orange Township, Tract No. 2, Lot No. 2 of Cuyahoga County, as shown by the recorded plat in Volume 8 of Maps, Pages 93, 94, 95, 96 and 97 of Geauga County Records.

Situate in the Township of Russell, County of Geauga and State of Ohio and known as being Sublot 29 in Paul R. Johnston's Hillbrook Estate Subdivision No. 1 of a part of Original Russell Township Lots Nos. 1, 2 and 3 in the West Division Tract No. 2, and part of Lot Nos. 5 and 6 in Section 11, Tract 1 of Geauga County, and part of Orange Township, Tract No. 2, Lot No. 2 of Cuyahoga County, as shown by the recorded plat in Volume 8 of Maps, Pages 93, 94, 95, 96 and 97 of Geauga County Records.