

PURCHASE AND SALE AGREEMENT

This Agreement of Purchase and Sale (this "Agreement") is entered into by Western Reserve Land Conservancy ("WRLC"), an Ohio nonprofit corporation, and the Board of Park Commissioners of the Russell Township Park District (the "Park District"), a park district formed and existing under Section 1545 of the Ohio Revised Code, effective as of the date when the later of WRLC and the Park District sign this Agreement (the "Execution Date").

RECITALS

1. WRLC is party to purchase and sale agreements with the current owner of certain real property located in Russell Township, Geauga County, Ohio (the "Acquisition Agreements"), by the terms and subject to the conditions of which said owner will transfer title to real property aggregating approximately 52 acres and formerly being a part of Permanent Parcel Number 26-119100, legally described in Exhibit A and further depicted in Exhibit B, both attached hereto (the "Property"), together with all appurtenant rights, easements and privileges of any nature whatsoever, including without limitation, all riparian, littoral and timber rights located on or associated with the Property.
2. Immediately following the transfer of the Property to WRLC, WRLC desires to sell and the Park District desires to buy the Property, subject only to the Permitted Exceptions defined in this Agreement.
3. Upon transfer of the Property to the Park District, the Park District intends to grant a conservation easement to WRLC in form and substance substantially similar to that attached hereto as Exhibit C (the "Conservation Easement").
4. The purchase by the Park District is to be funded entirely by the Park District with funds approved and issued for the specific purpose of acquiring park properties such as the subject Property.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WRLC and the Park District agree as follows:

1. Purchase and Sale of Property. Upon and subject to the terms and conditions of this Agreement, on and as of the Closing Date (as defined in paragraph 4 below), WRLC shall sell to the Park District and the Park District shall purchase from WRLC the Property.
2. Condition Relating to Acquisition by WRLC. The obligation of WRLC to sell the Property to the Park District and to otherwise comply with the terms and

conditions of this Agreement is contingent on the consummation of the purchase of the Property by WRLC pursuant to the Acquisition Agreements, it being understood that WRLC must raise at least One Million Five Hundred Fifty Thousand Dollars (\$1,550,000.00) in order to acquire the Property under the Acquisition Agreements (the "Acquisition Contingency"), with such amount including a commitment from the Park District to contribute, at Closing with WRLC One Million Two Hundred Thousand Dollars (\$1,200,000.00) toward WRLC's acquisition (the "Park District Commitment"). WRLC and the Park District agree that WRLC's sale of the Property to the Park District for the Purchase Price relies on WRLC being able to successfully raise, through various public and private sources, including but not limited to local, state and federal grants, and charitable contributions, sufficient funds, above and beyond the Park District Commitment, to meet WRLC's acquisition obligations under the Acquisition Agreements. It being further understood and agreed by the parties that since the Park District Commitment funds are vital to WRLC's acquisition of the Property, it will be a necessary condition to the closing under this Agreement that WRLC's acquisition of the Property and the immediate resale to the Park District occur as part of a simultaneous (or back-to-back) closing process, such that the Park District Commitment funds will be available at the time of WRLC's closing of the Acquisition Agreements, and paid to WRLC at Closing. In the event the Acquisition Contingency is not satisfied by December 15, 2016, as a result of WRLC being unable to raise sufficient funds to acquire the Property or such other date as the parties shall agree, WRLC and/or the Park District have the option to terminate this Agreement by giving written notice to the other party, after which neither party shall have any further obligation to the other hereunder, except for provisions which expressly survive termination of this Agreement.

3. WRLC's Financial Commitment for Park Improvements. On or before the first anniversary after Closing, but if after a good faith effort WRLC is unable to obtain grants, donations or other funding to comply with the WRLC Commitment, then no later than the second anniversary of the Closing Date, WRLC shall invest Fifty Thousand Dollars (\$50,000.00) into the creation of park improvements, including and specifically limited to, entrance signage and landscaping, walking trails and/or parking facilities (the "WRLC Commitment"). WRLC shall consult with the Park District with respect to the design, siting and materials for such park improvements, but the Park District shall determine which of the permitted improvements shall have priority for installation. The provisions of this paragraph shall survive the Closing Date.
4. Recognition and Naming Rights: WRLC and the Park District each recognize that both parties are instrumental in the acquisition, protection and perpetual preservation of the Property and therefore mutually agree that each shall recognize the other by name, including all funding sources, in any and all interviews, press releases, articles, brochures, advertisements or other printed materials pertaining to the acquisition, protection and perpetual preservation of

the Property. In the event the Park District decides to erect a sign or monument on the Property identifying it and its ownership by the Park District, such sign or monument shall recognize WRLC for its role in the protection of the Property. Additionally, the Park District acknowledges that WRLC, in the course of fundraising for the acquisition of the Property may sell naming rights for certain areas and/or improvements on the Property, as shown on Exhibit D attached hereto, and the Park District therefore agrees, at WRLC's expense, to erect, subject to zoning and similar laws, within a reasonable period of time but in no event more than 12 months after the Closing Date, small signs or memorials recognizing and appropriately reflecting the names of those that have purchased such naming rights. Nothing contained in the Agreement shall limit or prohibit the Park District from granting naming rights, so long as they do not conflict with those sold by WRLC, and in the event of a potential conflict, the parties shall resolve the possible duplication of naming rights, by giving priority first to the naming rights granted to WRLC in Exhibit D, and then secondly to the earlier donation commitment received by a party to this Agreement. Finally, the Park District agrees to allow WRLC the option and right to place signage, the size and nature of which must meet with the Park District's prior approval, such approval shall not be unreasonably withheld or conditioned, on the Property naming same and identifying it in honor of the Modroo Family of Russell Township. WRLC shall be responsible for the cost and maintenance of any such signage, unless otherwise agreed to by the Park District. This paragraph shall survive Closing.

5. Purchase Price. The total purchase price to be paid by the Park District for the Property (the "Purchase Price") shall be One Million Two Hundred Thousand and No/ Dollars (\$1,200,000.00).
6. Payment of Purchase Price. The Purchase Price shall be deposited by the Park District into escrow with the Escrow Agent (identified below) not less than two business (2) days prior to the Closing Date (as defined below) in cash or by wire transfer of immediately available funds and paid to WRLC on the Closing Date.
7. Due Diligence. The Park District shall have forty-five (45) days after the Execution Date (the "Due Diligence Period") within which to perform any and all desired evaluations of the Property, including but not limited to, reviewing the condition of title and inspection of the Property for environmental and other physical defects. During the Due Diligence Period and with sufficient notice, WRLC will arrange for the Park District and its contractors or consultants to have reasonable access to the Property for purposes of performing any and all non-invasive evaluations and assessments of the Property. At the Park District's request and expense, WRLC will also assist the Park District in obtaining a Phase I Environmental Site Assessment (the "Phase I Assessment") of the Property. Within five days of the Execution Date, WRLC will provide the Park District with an updated title commitment from the Title Company reflecting the Property's current title condition (the "Title Commitment") for the Park District's review, together with any recorded documents referenced in Schedule B-II of the Title

Commitment. Park District shall, within fifteen (15) days after receipt of the Title Commitment either (i) approve the form and substance thereof; or (ii) notify WRLC in writing of any exception or exceptions shown thereon which are not acceptable to Park District. If within fifteen (15) days after the receipt of notice from Park District to WRLC of any unacceptable exception or exceptions to the title, such exceptions or objections are not removed or satisfied or WRLC is unable to satisfy Park District such objections will be cured by Closing, then at the expiration of fifteen (15) days, Park District may, at Park District's option, either (i) accept such title as WRLC is able to furnish, or (ii) terminate this Agreement and receive all funds and documents previously paid or deposited by Park District. Upon such termination, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder, and WRLC shall pay any and all Title Company and escrow fees and/or charges incurred.

If, as a result of its evaluation and assessment of the Property, the Park District determines that it is not satisfied with the condition of the Property, the Park District shall have the right to terminate this Agreement by giving notice to WRLC on or before the last day of the Due Diligence Period, after which the Park District and WRLC shall have no further obligations to each other hereunder. In the event the Park District elects not to terminate this Agreement in accordance with this right, and no other termination right afforded to either party hereunder is exercised, this Agreement shall remain in full force and effect and the purchase and sale of the Property shall proceed to closing.

8. Closing Date. All documents and funds necessary to the completion of this transaction shall be placed in escrow with Ohio Real Title Agency, Inc. (the "Title Company"), as the title agent for purposes of the transaction contemplated hereby and as escrow agent (in such capacity the Title Company is sometimes referred to as the "Escrow Agent"), in sufficient time to permit transfer of title to the Property and the grant of the Conservation Easement on the Closing Date, which shall occur on or before December 15, 2016, or such other date to be mutually agreed upon by the parties, subject to WRLC's full and complete satisfaction of the Acquisition Contingency (the "Closing Date").
9. Deed; Conservation Easement. On or before the Closing Date, WRLC shall deposit with the Escrow Agent for recording on the Closing Date WRLC's limited warranty deed (the "Deed"), conveying good and marketable title to the Property to the Park District in fee simple free and clear of all liens and encumbrances whatsoever, subject to and except for the following: (a) zoning ordinances, (b) taxes and assessments, both general and special, which are a lien but not then due and payable, and (c) restrictions, reservations, limitation, easements and conditions of record and reflected as exceptions on Schedule II, Section B of the Title Commitment that have been approved by the Park District; it being expressly understood by the Park District that WRLC is acquiring the mineral rights to the Property under the Acquisition Agreements subject to a reservation by the seller of the Property to WRLC (Modroo") of fifty percent (50%) of the

royalties that may be recovered by the owner of the Property from the production of oil and gas, but Modroo is not reserving any surface rights, or the right to enter into leases or consent to unitizing or pooling the Property with other lands, (the "Permitted Exceptions"). On or before the Closing Date, the Park District shall deposit with the Escrow Agent for recording on the Closing Date, the Conservation Easement in the form substantially similar to that attached hereto as Exhibit C.

10. Policy of Title Insurance. On the Closing Date, the Escrow Agent shall furnish to the Park District an Owner's Policy of Title Insurance (Form ALTA 2006) in the face amount of the Purchase Price insuring fee simple title to the Property in the Park District subject only to the Permitted Exceptions (the "Title Policy").
11. Possession; Property Taken "AS IS". WRLC shall deliver possession of the Property to the Park District on the Closing Date. The Park District acknowledges that WRLC is not, and has never been, in physical possession of the Property and, as a result, WRLC has no first-hand experience or knowledge of the condition of the Property. Additionally, the Park District has had, or will have had prior to closing, sufficient opportunity to examine and inspect the Property and, based on the Park District's own examination and inspection of the Property, the Park District hereby (a) agrees to accept the Property on the Closing Date in its "as is" condition with all faults; (b) waives any and all claims and causes of action against WRLC only with respect to the condition of the Property (including structural and environmental conditions), whether arising in contract, or tort, or of common law or statutory derivation; and (c) forever discharges and releases WRLC of, from and against, any and all demands, claims, actions and causes of action of any kind or description, whether arising out of contract, tort, or of common law or statutory derivation, in any way connected with the condition of the Property. This acceptance, waiver, discharge and release shall survive the Closing Date.
12. Escrow. An executed copy of this Agreement shall be deposited with the Escrow Agent within three calendar days after the date this Agreement is fully executed, and this Agreement shall serve as the escrow instructions. The Escrow Agent may attach its standard conditions of acceptance thereto; provided, however, that in the event such standard conditions of acceptance are inconsistent with or in conflict with the terms and provisions hereof or with any written instructions of either party hereto not inconsistent with this Agreement, then the terms and provision of this Agreement and such written instructions shall control.
13. Prorations. Tenant rents, if any, and all taxes and assessments, both general and special not then due and payable, shall be prorated in escrow as of the date of filing the Deed for record, and any CAUV recoupage shall be paid by Modroo before the Closing. In prorating taxes and assessments, the amount shown on the last available tax duplicate shall be used; provided, however, in the event the amount of taxes actually payable for the prorated period changes, the parties shall

adjust the amount of the proration and the party due additional funds shall be paid them by the other outside of escrow.

14. Costs and Expenses. The Park District shall pay, when due, all costs of closing this transaction, including but not by way of limitation, (a) the cost of appraisals; (b) the fees of the Escrow Agent for acting as such; (c) the premium for the Title Policy and title examination and Commitment costs; and (d) recording fees.
15. Filing. On the Closing Date, the Escrow Agent shall file for record the Deed, the Conservation Easement, and such other instruments, if any, as are required and shall thereupon deliver to each of the parties the funds and documents to which they shall be respectively entitled, together with its escrow statement, provided that it shall then have on hand all funds and documents necessary to complete the within transaction and shall be in a position to and will issue and deliver the Title Policy upon the filing of the Deed for record.
16. Broker's Commissions. WRLC and the Park District each represent and warrant to the other that such party has had no dealing with any real estate agent or broker so as to entitle such agent or broker to any commission in connection with the sale of the Property to the Park District. If any commission is claimed to be due, the party alleged to have dealt with the agent or broker making such claim shall contest or pay such claimed commission and shall agree not to sue the other party regarding such claim and any attorneys' fees and litigation or other expenses relating to such claim. The provisions of this paragraph shall survive the Closing Date.
17. Authority. Each of the parties hereto represents and warrants to the other that the representing party has all requisite authority to enter into and perform this Agreement and to legally bind such party to the terms of this Agreement. Notwithstanding the preceding sentence, WRLC's governing board shall have the right to withdraw such authority through the Closing Date if, and only if, WRLC, for any reason whatsoever, is unable to raise sufficient funding to satisfy the Acquisition Contingency described in paragraph 2 herein, regardless of whether the Park District stands ready, willing and able to perform hereunder. The withdrawal of such authority shall not be deemed a default by WRLC.
18. WRLC Not Park District's Agent. WRLC is not in any manner an agent or representative of the Park District and does not have and shall not have any authority whatsoever to bind the Park District to any agreement, representation, warranty, expense, obligation or liability of any kind. WRLC shall not represent or hold itself out as having any such authority or as being an agent or representative of the Park District. Notwithstanding the preceding, the Park District shall support WRLC's efforts to raise funds for both the acquisition of the Property under the Acquisition Agreements and in furtherance of fulfilling WRLC's Commitment as described in paragraph 3, and to such end authorizes WRLC to fundraise on the Park District's behalf, including, if necessary, the

submission of funding applications for such purpose, after receiving the approval of the Park District as to the application language, which approval shall not be unreasonably withheld.

19. Defaults and Remedies.

- (a) Default by WRLC. If WRLC shall fail to proceed to Closing for any reason, except the Park District's default or the exercise of WRLC's right to terminate this Agreement in accordance with its terms, the Park District may pursue such legal and equitable remedies as to which the Park District may be entitled, including specific performance.
- (b) Default by the Park District. If the Park District shall fail to proceed to Closing for any reason, except the WRLC's default or the exercise of the Park District's right to terminate this Agreement in accordance with its terms, WRLC may pursue such legal and equitable remedies as to which WRLC may be entitled, including specific performance.
- (c) Attorney fees. WRLC and Park District agree that if any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party, which fees may be set by the Court in the trial of such action or may be enforced in a separate action brought for that purpose, and such fees shall be in addition to any other relief which may be awarded.

20. Termination. If either party elects to terminate this Agreement in accordance with its terms, the Park District and WRLC shall have no further obligations to each other hereunder, and WRLC shall pay the Title Company and Title Commitment fees and charges.

21. Notices and Deadline Dates. Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally or sent by (a) United States registered or certified mail, return receipt requested, postage prepaid, (b) electronic transmission, including electronic mail or facsimile, to the address(es) provided by each party, or (c) prepaid overnight express courier, and addressed as follows:

If to WRLC:	Western Reserve Land Conservancy 3850 Chagrin River Road Moreland Hills, OH 44022 Attention: President or General Counsel 440-440-528-4150
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If to Park District: The Board of Commissioners of the
Russell Township Park District
P.O. Box 28
Novelty, OH 44072
Attention: Linda J. O'Brien, Chairperson
440-725-2064

With a copy to: Dale H. Markowitz
Thrasher, Dinsmore & Dolan
100 7th Avenue, Suite 150
Chardon, Ohio 44024
440-285-2242

and the same shall be effective upon receipt, if delivered personally or by overnight courier, or three business days after deposit in the mails if mailed. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith. If any deadline under this Agreement falls on a Saturday, Sunday or legal holiday (which for purposes of this Agreement shall not be considered a "business day"), the deadline shall be extended to the next business day.

22. Entire Agreement. This Agreement and the associated Conservation Easement supersede all prior agreements of the parties, whether oral or written, with respect to the subject matter hereof and are the binding agreements for the purchase and sale of the Property, accruing to the benefit of WRLC and the Park District and their respective successors and assigns, and contain all the terms and conditions agreed upon, it being agreed that there are no other outside conditions, warranties, or agreements.
23. General. This Agreement shall be construed in accordance with and governed by the laws of the State of Ohio. If any term or provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the terms of this Agreement and the application thereof to persons or circumstances shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law. Unless the context otherwise requires, any reference to the masculine gender herein shall be deemed to include the feminine and neuter genders (and vice versa) and any reference to the singular shall be deemed to include the plural (and vice versa). No modification or subsequent agreement relative to the subject matter hereof shall be binding on either party unless in writing signed by the parties. Neither party may assign or transfer their interest in this Agreement without the express written consent of the other party. The failure of either party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions, or conditions of this Agreement or to exercise any election or option herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision,

condition, election or option, but the same shall continue and remain in full force and effect. No waiver by either party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of each party hereto. Time is of the essence of this Agreement.

24. Counterparts. This Agreement may be executed in multiple counterparts by WRLC and the Park District, each acting at different times and at separate locations, whether or not in the presence of each other, and any copy of this Agreement to which the signatures of both WRLC and the Park District have been appended shall constitute an original hereof for all purposes, all such copies constituting one and the same original, and one of which shall constitute proof of the terms of this Agreement without the necessity of producing any other original copy.
25. Construction. The parties acknowledge that each party and their respective counsel have reviewed and revised this Agreement and that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement and any amendment or exhibit hereto.
26. Amendments. This Agreement is the complete agreement between the parties with respect to the purchase and sale of the Property, the grant of the Conservation Easement and the other matters contained in this Agreement. It may not be modified except by a written instrument signed by WRLC and the Park District.
27. Agreement for Further Execution. Prior to, at and after the Closing Date, WRLC and/or Park District shall also execute and deliver to Park District or WRLC such other or further instruments of conveyance, sale, assignment or transfer, and shall take or cause to be taken such other or further action as Park District or WRLC shall reasonably request at any time or from time to time in order to (a) vest, confirm or evidence in Park District title and possession to all or part of the Property, or (b) effectuate, in any other manner, the terms and conditions of this Agreement. WRLC shall, within the seven (7) day period prior to Closing, submit the Limited Warranty Deed to be recorded to the Park District's attorney for approval, which approval shall not be unreasonably withheld.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

WESTERN RESERVE LAND CONSERVANCY

Dated: October 11, 2016

By: 

Robert B. Owen

Its: Assistant Secretary

**THE BOARD COMMISSIONERS OF THE RUSSELL
TOWNSHIP PARK DISTRICT**

Dated: October 11, 2016

By: 

Linda J. O'Brien

Its: Commissioner and Chairperson

EXHIBIT A

Legal Description of the Property

(Legal Description of approximately 52 acres being prepared by Rudy Schwartz of Schwartz Surveying as depicted on Exhibit B to be attached upon completion)

EXHIBIT B

Depiction of the Property

(see attached)

Aerial View



Modroo Focus
(~52.7 Acres)



Parcels -
Gauga Co.



Roads -
Gauga Co.

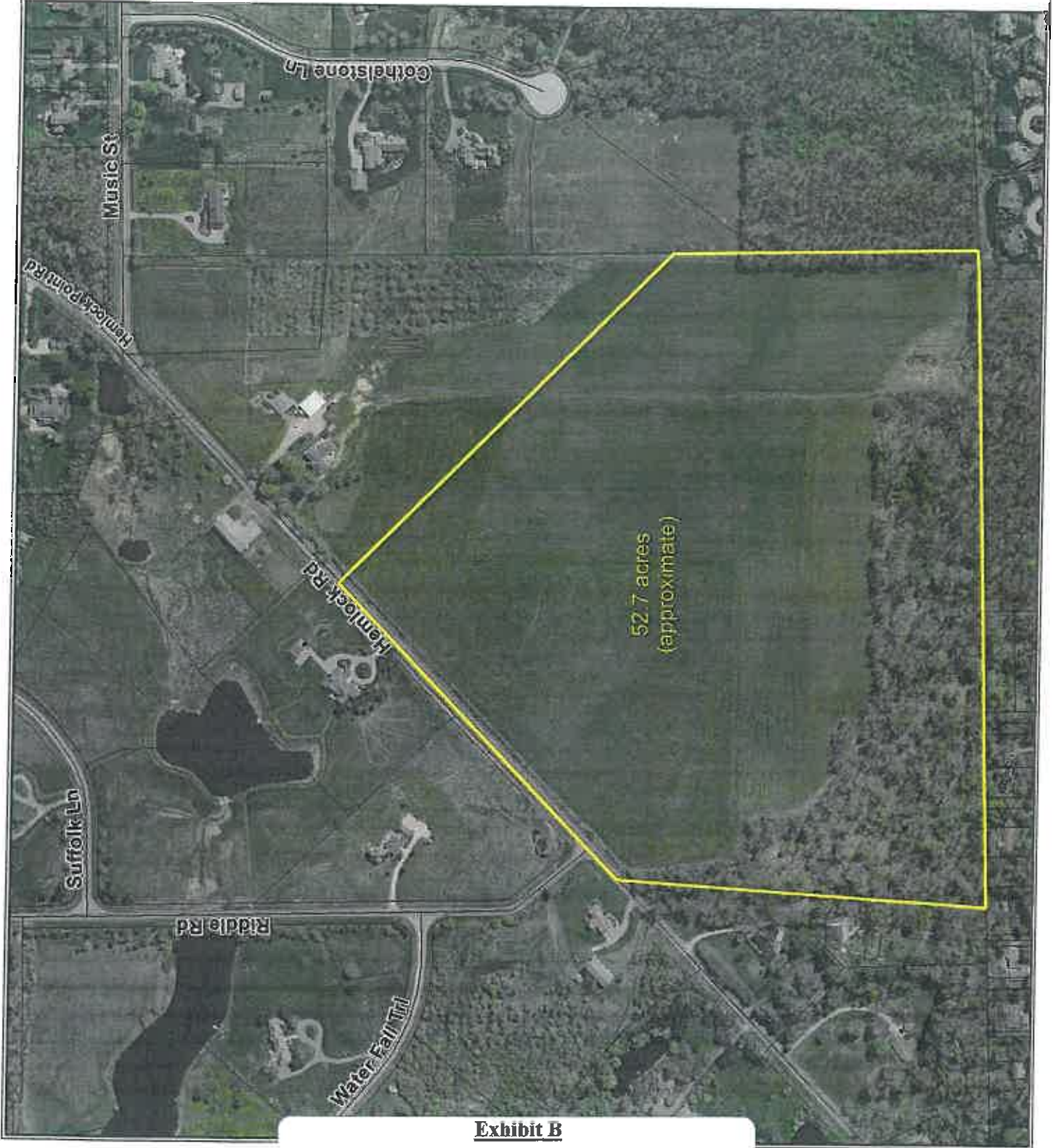


Exhibit B

EXHIBIT C

Conservation Easement

(see attached)

EXHIBIT C

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 District ("**Grantor**"), a park district formed under the authority of Chapter 1545 of the Ohio Revised Code, to Western Reserve Land Conservancy ("**Grantee**"), an Ohio nonprofit corporation.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of one parcel of real property measuring approximately 52 acres in area, located on Hemlock Road in Russell Township, Geauga County, Ohio (the "**Protected Property**"), known as being a portion of permanent parcel number 26-119100 and legally described in Exhibit A and further described and depicted in a Baseline Documentation Report designated Exhibit B, both attached hereto and made a part hereof; and

WHEREAS, Grantor desires to grant a "conservation easement", as that term is defined in ORC Section 5301.67, to Grantee over the Protected Property; and

WHEREAS, Grantee is a charitable organization referred to in Section 5301.69 of the Ohio Revised Code ("**ORC**") and Section 501(c)(3) of the Internal Revenue Code of 1986 ("**IRC**"), as amended, and the regulations promulgated thereunder, and is authorized to acquire conservation easements in accordance with the provisions of ORC Section 5301.69(B); and

WHEREAS, Grantor is a park district formed under Chapter 1545 of the ORC and was established May 10, 1984 with the full authority given to such park districts under law; and

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

WHEREAS, Grantor and Grantee agree that the Baseline Documentation Report provides an accurate representation of the Protected Property and the 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, and educational resource in its present state as a natural, scenic, and open area, constituting a natural habitat for plants and wildlife; and

WHEREAS, the Protected Property is located immediately adjacent to two properties that are permanently protected by Grantee totaling _____ acres and within one mile of ten other such properties totaling _____ acres thereby creating a significant opportunity to connect those properties and the Protected Property to establish a corridor of preserved properties in this area of recent moderate to high development pressure; and

WHEREAS, Grantor and Grantee recognize the aforesaid Conservation 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 and protecting the Protected Property in perpetuity as natural habitat for plants and wildlife, (b) providing long-term benefits to the citizens of Russell Township, Ohio and Geauga County by operating the Protected Property as a Passive and Limited Active Use Public Park (as hereinafter defined), and (c) preventing the use or development of the Protected Property contrary to the mission of Grantor's park commission to preserve, conserve and protect the natural features of Russell Township, Ohio (the "**Park District Mission**"); and

WHEREAS, "**Passive and Limited Active Use Public Park**" means a park that is operated for both (a) Passive Park Uses, including uses and management practices which (i) maintain and enhance environmental quality, (ii) provide sanctuary for native plants and animals, (iii) avoid significant degradation of soils, wildlife, plant habitats and water quality by use of vegetative buffers along streams and wetlands, and (iv) limit physical alteration of the Protected Property to the creation and maintenance of trails and the Future Improvements, and (b) Limited Active Park Uses, including (i) organized and recreational field sports (i.e. soccer, lacrosse, field hockey, cricket, bocce and tether ball, etc.) that do not require the construction of specialized fields, courts or other artificial surfaces, (ii) playgrounds and play areas with children's play structures and equipment common in local community parks, (iii) meeting and gathering spaces (i.e. pavilions, gazebos, and other small enclosures without foundations), and (iv) bicycling and horseback riding paths and trails, as well as those activities not otherwise restricted by Section 4 hereof; 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, meaning that native plants and wildlife are permitted to exist in a relatively natural state; 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, consistent with IRC regulations requiring Grantee to have a commitment to protect the Conservation Purposes (as defined below) and the resources to enforce the restrictions contained in this Grant, (a) Grantee’s obligation under this Conservation Easement entails a commitment to defend the ecological, scientific, educational and aesthetic value, the natural, scenic and open condition, and natural values of the Protected Property; (b) significant costs are necessary to carry out this commitment; and (c) accordingly, Grantor and Grantee have reached agreement on the payment by Grantor of a stewardship fee as described in Section 18 below.

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 pursuant to the Park District Mission as scenic, natural, and open areas, and as habitat for plants and wildlife and as a Passive and Limited Active Use Public Park, and together with the right of visual access to and views of the Protected Property in its scenic, natural and predominately undeveloped wooded and open condition. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described in this Grant.

PURPOSES FOR WHICH THIS CONSERVATION EASEMENT IS GRANTED:

This Conservation Easement is granted for the purposes (the “**Conservation Purposes**”) of the (a) protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystems, (b) preservation of open space and forest land, together with the right of visual access to and a view of the Protected Property by the general public in its scenic, relatively natural and predominantly undeveloped, wooded and open condition, which will yield a significant public benefit, and (c) use

of the Protected Property as a Passive and Limited Active Use Public Park in order to preserve and foster outdoor recreation and education of the general public.

TERMS, CONDITIONS, AND RESTRICTIONS OF THIS CONSERVATION EASEMENT:

1. General Reserved Rights.

- (a) Ordinary Rights and Privileges of Ownership. Grantor reserves all ordinary rights and privileges of ownership, including the right to sell and lease the Protected Property, as well as the right to continue the use of the Protected Property for all purposes consistent with the Conservation Purposes not destructive of Conservation Values, and not expressly prohibited or conditioned hereunder; provided that nothing contained in this Conservation Easement 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 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) Use of Fertilizers and Herbicides. Grantor reserves the right to use natural and chemical fertilizers and herbicide controls on the Protected Property; provided such use is in compliance with all applicable federal, state and local statutes and regulations, but only to the extent such use does not have an adverse impact on the Conservation Values of the Protected Property and is otherwise consistent with the Conservation Purposes.
- (c) Tree Planting. Grantor reserves the right to plant anywhere on the Protected Property a diversity of native or 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. Provided, also, the Grantor will not introduce into the Protected Property any plant species as defined or listed as noxious or detrimental to wildlife by local, state, or federal land or wildlife agencies. The Grantor may reseed disturbed areas with high quality, certified weed-free seed that is commonly used and that is acceptable to the natural resource agencies in the State of Ohio.
- (d) Tree Removal. Grantor reserves the right to remove (i) from anywhere on the Protected Property dead, diseased or materially damaged trees and trees that pose a

danger to human life or neighboring properties, and (ii) trees from areas within which existing trails are being widened or new trails created (as provided in subsection 4(c); provided, however, that any such removal does not impair significant conservation interests as described in the IRC.

2. **Major Reserved Rights.**

- (a) **Future Improvements.** Notwithstanding anything to the contrary contained in this Grant, Grantor and Grantee agree that Grantor shall be permitted to construct non-residential structures and associated improvements typically used in parks, such as, but not limited to, pavilions, gazebos, parking areas, roads for access to parking areas and for management and maintenance activities, restroom facilities, informational and educational kiosks, benches, walking trails (paved or unpaved), fencing, landscaping and lawns (collectively, the “**Future Improvements**”). The Future Improvements may be constructed and thereafter maintained (including mowing of the lawns), remodeled or expanded anywhere on the Protected Property; provided that at no time shall the aggregate of all Future Improvements, other than the drives, roads and parking area, exceed Five (5%) per cent of the total lot area of the Protected Property, and the siting of the Future Improvements is such that the removal of trees is only necessary with respect to the construction or maintenance of roads, fences, trails or paths. Additionally, the structures and improvements allowed as Future Improvements shall not include those structures and improvements that involve the installation of infrastructure and facilities to accommodate active sports or organized events (such as baseball diamonds, tennis and basketball courts and ice rinks) which would impede upon and restrict general passive uses of the Protected Property.
- (b) **Agricultural Uses.** Notwithstanding anything to the contrary contained in this Grant, Grantor reserves the right to conduct all lawfully permitted manner of non-commercial agricultural use of the Protected Property in furtherance of educational and other Park District Mission purposes, including, but not limited to:
 - (i) the construction, maintenance, repair and restoration of paths and fences;
 - (ii) the installation, maintenance and repair of drainage tiles and swales, including grass waterways, and the right to repair, maintain and install drainage systems including catch basins, drainage fields, and the like within the Protected Property;

- (iii) the right to spread manure, to remove trees, grass or other vegetation for agricultural uses;
- (iv) the right to place soil or fill or to excavate or change the general topography of portions of the Protected Property as reasonably necessary or desirable for agricultural uses, including the creation of new ponds, so long as such excavation and topography manipulation does not interrupt the flow of existing natural water courses;
- (v) the right to perform routine haying, maintenance, landscaping, horticultural activities and upkeep;
- (vi) the right to construct fences and temporary agricultural structures, such as run-in sheds and hoop houses, and once constructed, such temporary agricultural structures may be maintained, repaired and restored; and
- (vii) the right to keep horses and livestock for agricultural and educational activities.

Provided, however, in exercising the rights described above, Grantor shall take reasonable measures to limit the impact on the Conservation Values of the Protected Property and conduct such uses and activities in a manner that will remain consistent with the Conservation Purposes of this Grant and the Park District Mission.

- (c) Limited Active Park Uses. Notwithstanding the other provisions of this Grant to the contrary, in addition to the Passive Park Uses described herein, the Protected Property may be used for limited active uses that are consistent with the purpose and intent of this Grant and that do not adversely affect the Conservation Values or impede the public's enjoyment of the passive natural resources contained thereon. Specifically, the Protected Property may be used for limited active uses such as field sports (i.e. soccer, lacrosse, field hockey, cricket, bocce, etc.), bicycling, cross-country skiing, lawn tennis, Frisbee golf, tether ball and horseback riding (the "Limited Active Park Uses").

3. Notice of Exercise of Reserved Rights. Grantor agrees to notify Grantee, in writing, before exercising any Major Reserved Right reserved by Grantor in Section 2 of this Grant, specifically the construction or expansion of new structures and the conversion of use to agricultural, which shall be subject to Grantee's approval or withholding of approval pursuant to Section 7, below.
4. Use Restrictions.

- (a) Structures; Signs.
- (i) Structures. Except for the Future Improvements, and except as may otherwise be provided in this Grant, no residential, commercial, governmental or industrial structures, except those owned and operated by Grantor and generally associated with park district activities and related to the Park District Mission.
 - (ii) Signs. Except as may otherwise be provided in this Grant, no signs, billboards or advertising of any kind shall be erected or placed on the Protected Property, except signs which are reasonably consistent with the use and operation of the Protected Property as a passive and limited active use public park and whose placement, number and design do not significantly diminish the scenic character of the Protected Property, including signs that (A) state the name and address of the Protected Property; (B) state the fact that the Protected Property is protected by this Conservation Easement; (C) facilitate directions; (D) promote educational activities; (E) post the Protected Property to control unauthorized entry or use; and (F) identify sources of funding as required by such sources. Nothing contained herein shall prohibit short-term, temporary signs, advocating or opposing political causes or candidates, provided that such signs are installed within a reasonable time period prior to political elections and removed immediately after same.
- (b) Waste Disposal. Except for leaves, mulch, wood chips and other similar materials typically used in the creation of compost (collectively, the “Compost Materials”) generated on the Protected Property or for Compost Materials brought onto and used exclusively on the Protected Property for landscaping purposes in a manner compatible with the Conservation Purposes, there shall be no (i) dumping of Compost Materials or of soil, trash, garbage, waste, or other unsightly or offensive material; (ii) placement of underground storage tanks; or (iii) application, storage, or placement of raw, untreated municipal, commercial or industrial sewage sludge or liquid generated from such sources on the Protected Property.
- (c) Filling or Excavation. Except as may otherwise be provided in this Grant, 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 installation,

maintenance or repair and replacement of existing and permitted low-impact, pervious or impervious trails or access roads (including placement of culverts and bridges associated with such trails or roads) and that caused by the forces of nature; provided, however, that existing trails may be widened and new trails may be created so long as they do not exceed eight feet in width and any tree removal involved in such widening or creation is restricted exclusively to the trail corridors. All trails and roads will be limited in scope and all trails and roads will be installed and maintained using best management practices to prevent soil erosion and other impacts on the Protected Property. Any activities permitted by this subsection 4(c) shall be otherwise consistent with the Conservation Purposes of this Grant.

- (d) Oil and Gas Exploration. Except as otherwise may be permitted in this Grant, there shall be no drilling for oil, gas or similar substances from on the surface of the Protected Property. Notwithstanding the preceding prohibition, however, nothing herein shall prohibit the Protected Property from being leased or otherwise committed as part of a drilling unit for oil and gas production, so long as any such lease or other commitment does not authorize or provide for activities that will impact the surface of the Protected Property in any manner that is inconsistent with the terms of this Grant, regardless of whether such impacts are temporary or permanent in nature.
- (e) Habitat Disturbance. Except as otherwise permitted in this Grant, Grantor shall not cut down, remove or destroy native trees or other plants.
- (f) Power Lines or Communications Towers. Except for utility lines necessary for structures, uses and activities permitted on the Protected Property and as may be permitted by utility easements of record at the time of this Grant, there shall be no power transmission lines or communications towers erected on the Protected Property and no interests in the Protected Property shall be granted for such purpose.
- (g) Manipulation of Water Courses. There shall be no manipulation or alteration of natural water courses, marshes, or other water bodies or activities or uses detrimental to water quality; provided that existing lakes, dams and ponds, if any, on the Protected Property may be maintained, repaired, replaced and expanded. 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.

- (h) Limitation on Motor Vehicles. No motorized vehicles shall be operated on the Protected Property except in the confines of the driveways and parking areas included in the Future Improvements and for pickup trucks, tractors, and non-recreational all-terrain vehicles that are used in connection with maintenance, monitoring and management activities. Any permitted use of motorized vehicles on the Protected Property shall be in such a manner so as not to cause rutting or other damage to the surface of the Protected Property that could create a potential for erosion or contribute to other adverse impacts to the Conservation Values.
 - (i) Density Yield; 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, building density, lot coverage, open space, or natural resource use for any future development of any property. Grantor may not transfer (whether or not for compensation) any development rights encumbered or extinguished by this Grant.
 - (j) Subdivision. Except as may be otherwise provided in this Grant, without the prior consent of Grantee, the parcel presently constituting the Protected Property shall not be divided or subdivided and any transfer of the Protected Property must include the entire parcel.
 - (k) Commercial Recreational Use. Except for those uses considered “*de minimis*” according to the provisions of IRC Section 2031(c)(8)(B), there shall be no commercial recreational use of the Protected Property.
5. Real Property Interest. This Conservation Easement constitutes a real property interest immediately vested in Grantee binding upon Grantor and Grantee, their respective agents, personnel, representatives, heirs, assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Protected Property.
6. Right to Enter and Inspect. Grantee, or its duly authorized representatives, may enter the Protected Property at all reasonable times, after not less than 24 hours written or telephone notice, for the purposes of inspecting the Protected Property in order to further the objectives

of and determine compliance with the terms of this Conservation Easement; provided that no such notice need be given prior to Grantee entering the Protected Property under emergency circumstances. For the purpose of this provision, "emergency circumstances" shall mean that Grantee has a good-faith basis to believe that a violation of this Conservation Easement is occurring or is imminent.

7. **Grantee's Approval and Withholding of Approval.** When Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantors' written request therefor. In the case of withholding of approval, Grantee shall notify Grantors in writing with reasonable specificity of the reasons for withholding of Approval, and the conditions, if any, on which approval might otherwise be given. Failure of Grantee to respond in writing within such sixty (60) days shall be deemed to constitute written approval by Grantee of any request submitted for approval that is not contrary to the express restrictions hereof.

- (a) **Approval by Grantee of Certain Uses or Activities.** Grantors' exercise of the Major Reserved Rights under Section 2 of this Conservation Easement shall be subject to the prior approval of Grantee. Grantor shall request such approval in writing and shall include therewith information identifying the proposed activity and the reasons for the proposed activity with reasonable specificity. Grantee's evaluation of the request shall generally take into account the criteria included at subsection 7(b), below, as they relate to the activity itself as well as to the site for the proposed activity, and Grantee's approval shall not be unreasonably withheld, delayed or conditioned.
- (b) **Approval by Grantee of Sites.** The exercise of the right to construct structures, improvements or other surface disturbing activities shall be subject to the prior approval by Grantee of the site for such proposed activity if such activity is likely to have a negative impact on the Conservation Values intended to be protected by this Grant. Grantors shall request any such required approval in writing and shall include therewith information identifying the proposed site with reasonable specificity, evidencing conformity with the requirements of the applicable paragraphs under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. Grantee's approval, which shall not be unreasonably withheld, delayed or conditioned shall take into account the following criteria:

- (i) the extent to which use of the site for the proposed activity would impair the scenic qualities of the Protected Property that are visible from public roads;
- (ii) the extent to which use of the site for the proposed activity would destroy an important habitat or would have a material adverse effect on the movement of wildlife;
- (iii) the extent to which use of the site for the proposed activity would impair water quality;
- (iv) in the case of any proposal to build new structures or roads, the extent to which the scenic quality of the Protected Property may be adversely impacted;
- (v) the extent to which the proposed activity or use of the site for the proposed activity would otherwise significantly impair the Conservation Values.

Grantors and Grantee shall cooperate and shall act in good faith to arrive at agreement on suitable sites in connection with any determinations that are necessary to be made by them (either separately or jointly) under this Section 7. Notwithstanding the foregoing, Grantee's approval of a proposed site or activity shall be withheld if the site for the proposed activity would interfere with or impair the Conservation Values of the Protected Property.

- (c) Notice to Grantee. Following the receipt of Grantee's approval when required under subsection 7(a) or subsection 7(b), and not less than thirty (30) days prior to the commencement of any use or activity approved under subsection 7(a) or 7(b), Grantors agree to notify Grantee in writing of the intention to exercise such right. The notice shall describe the nature, scope, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to monitor such activity. When such information was not provided to Grantee under the requirements of subsection 7(b), the notice shall also include information evidencing the conformity of such activity with the requirements of the applicable paragraphs under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. At Grantee's sole discretion, Grantee may permit commencement of the activity less than thirty (30) days after receiving Grantors' written notice. Nothing in this Section shall diminish or limit Grantor's obligations under Section 17, with respect to Grantors' written notice to Grantee concerning a transfer of any interest in all or a portion of the Protected Property.
- (d) Breach. Failure to secure such approval or give such notice as may be required by

this Section 7 shall be a material breach of this Conservation Easement notwithstanding any other provision of this Conservation Easement and shall entitle Grantee to such rights or remedies as may be available under this Conservation Easement.

8. **Grantee's Remedies.** In the event of a 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 way of temporary or permanent injunction, but shall have no right to recover from Grantor any damages to which it may otherwise 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, but shall be entitled to require the restoration of the Protected Property to the condition that existed prior to any such damage, without limiting Grantor's liability therefor. 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 apply to violations caused directly by Grantor or by third persons claiming by, through or under Grantor, and 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, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by the violation of the terms of this Conservation Easement shall be borne by Grantor, however the prevailing party in such action shall be entitled to recover their attorney fees and related expenses.

9. **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.
10. **Liability; Insurance.** Grantors and Grantee acknowledge and agree that Grantor retains the fee simple ownership of the Protected Property and therefore Grantor controls day-to-day activities on, and access to, the Protected Property, except for Grantee's limited rights to monitor the condition of the Conservation Values and to enforce the terms of this Conservation Easement. Grantor therefore agrees that general liability for risks, damages, injuries, claims or costs arising by virtue of Grantor's continued ownership, use, and control of the Protected Property shall remain with Grantor as a normal and customary incident of the right of property ownership. Accordingly, Grantor shall maintain comprehensive general liability insurance coverage on the Protected Property and shall, to the extent of such comprehensive general liability coverage limits, indemnify 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 and not caused by Grantee or its agents, contractors or invitees. Grantor shall cause Grantee to be named as an additional insured on 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) endeavors to provide written notice from the insurer to Grantee not less than 30 days before making a material change in or canceling such coverage.
11. **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 or

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.

12. **Incorporation in Subsequent Instruments.** In order to assure that the transferee of title to or a possessory interest in the Protected Property is aware of the existence of this Grant, Grantor agrees that a reference to this Conservation Easement shall be incorporated in any subsequent deed, or other legal instrument, by which Grantor divests either the fee simple title to, or a possessory interest in, the Protected Property.

13. **Amendment; Discretionary Approval.**

- (a) **Background.** Grantee and Grantor recognize that future circumstances that are unforeseen at the time of this Grant may arise which make it beneficial or necessary to take certain action in order to ensure the continued protection of the Conservation Values of the Protected Property and to guaranty the perpetual nature of this Conservation Easement. Any such action, if determined to be beneficial or necessary, shall be in the form of either (i) an amendment, in the case of a permanent modification of the terms of this Conservation Easement, including but not by way of limitation, a clerical or technical correction or modification of a reserved right; or (ii) a discretionary approval, in the case of a temporary activity or impact relating to the maintenance or management of the Protected Property which does not require a permanent modification of the Conservation Easement terms. All amendments and discretionary approvals shall be subject to this Section 13. Nothing in this paragraph, however, shall require Grantor or Grantee to consult or negotiate regarding, or to agree to any amendment or discretionary approval.
- (b) **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 unless (i) Grantor submits a written request for amendment pursuant to Grantee's existing amendment policy and such amendment otherwise qualifies under Grantee's policy then in effect respecting conservation easement amendments; and (ii) the effect of such amendment is neutral with respect to or enhances the

Conservation Purposes. Any such amendment shall be consistent with the purposes of this Grant and shall comply with IRC Sections 170(h) and 2031(c) and shall also be consistent with ORC Sections 5301.67 through 5301.70 and any regulations promulgated pursuant to such sections. Any such amendment shall be recorded in the Official Records of Geauga County, Ohio. Grantor and Grantee may amend this Conservation Easement to be more restrictive to comply with the provisions of IRC Section 2031(c). Grantee shall require subordination of any mortgage as a condition of permitting any amendment to this Conservation Easement.

- (c) Discretionary Approval. Grantee's consent for activities otherwise prohibited under this Conservation Easement may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, the performance of an activity prohibited under this Conservation Easement is deemed beneficial or necessary by Grantor, Grantor may request, and Grantee may in its sole discretion grant, permission for such activity without resorting to the formalities of Grantee's amendment policy and process, subject to the following limitations. Such request for Grantee's consent shall (i) be made, and Grantee shall consider and respond to such request in accordance with the provisions of Section 7, entitled "Grantee's Approval or Withholding of Approval"; and (ii) describe the proposed activity in sufficient detail to allow Grantee to evaluate the consistency of the proposed activity with the purpose of this Conservation Easement. Grantee may grant its consent only if it determines that (x) the performance of such activity is, in fact, beneficial or necessary; and (xi) such activity (A) does not violate the purpose of this Conservation Easement, and (B) results in an outcome that is neutral with respect to or enhances the Conservation Purposes of this Conservation Easement.

- (d) General. Notwithstanding the foregoing, Grantee and Grantor shall have no power or right to agree to any activity that would (i) result in the extinguishment of this Conservation Easement; (ii) adversely affect the perpetual nature of this Conservation Easement; (iii) adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including IRC Sections 170(h) and 501(c)(3) and the laws of the State of Ohio; or (iv) result in either private benefit or inurement to any party. For purposes of this paragraph, the terms private benefit and inurement shall have the same meanings ascribed to them in IRC Section 501(c)(3) and associated Treasury Regulations.

14. Assignment. Grantee may transfer or assign all or less than all of Grantee's rights and obligations under 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 or in the name of more than one organization which is a qualified organization at the time of transfer under IRC Section 170(h)(3) 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.

15. Extinguishment.

(a) Limitation. If future circumstances render the purposes 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 in accordance with their respective percentage interests in the fair market value of the Protected Property, as such percentage interests are determined under the provisions of subsection 15(b), adjusted, if necessary, to reflect a partial termination or extinguishment of this Conservation Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with the Conservation Purposes of this Conservation Easement.

(b) Percentage Interests. For purposes of this Section 15, Grantor and Grantee stipulate that, as of the effective date of this Grant, this Conservation Easement and the restricted fee interest in the Protected Property each represent a percentage interest in the fair market value of the Protected Property. Such percentage interests shall be determined by the ratio of (i) the value of this Conservation Easement on the effective date of this Grant to (ii) the value of the Protected Property, without deduction for the value of this Conservation Easement, on the effective date of this

Grant. In the event such percentage interests, for whatever reason, cannot be determined as described above, the percentage interests of Grantor and Grantee in the fair market value of the Protected Property shall be deemed to be fifty percent (50%) each. For purposes of this paragraph, the ratio of the value of this Conservation Easement to the value of the Protected Property unencumbered by this Conservation Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Protected Property thereby determinable shall remain constant.

16. **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 discourage 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 subsection 15(a) (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this Section 16 shall be in addition to, and not in limitation of, any rights they may have at common law.
17. **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.
18. **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 ten percent (10%) of the full consideration paid, including that portion of such consideration attributable to improvements, unless such transfer or sale is the result of an exercise or threat to exercise eminent domain. In the event the Fee is not paid as provided herein, Grantee shall have the right to initiate proceedings to impose a lien on the Protected Property to secure the continuing obligation of Grantor and its successors in title to pay the

Fee; provided that any lien securing payment of the Fee shall be subordinate to the lien of any first mortgage on the Protected Property. Such lien may be imposed, enforced and/or foreclosed in accordance with the laws of the State of Ohio.

19. **Forbearance Not a Waiver.** Any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any violation of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee of such violation or another violation of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.
20. **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 respective personal representatives, heirs, successors, devisees and assigns 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.
21. **Counterparts.** This Conservation Easement may be executed in multiple counterparts by Grantor and Grantee, each acting at different times and at separate locations, whether or not in the presence of each other, and any copy of this Conservation Easement to which the signatures of both Grantor and Grantee have been appended shall constitute an original hereof for all purposes, all such copies constituting one and the same original, and one of which shall constitute proof of the terms of this Conservation Easement without the necessity of producing any other original copy.
22. **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.
23. **Time of Essence.** Time is strictly of the essence in this Conservation Easement.
24. **Construction.** The parties acknowledge that each party has reviewed and revised this Conservation Easement and that the normal rule of construction that any ambiguities are to be

resolved against the drafting party shall not be employed in the interpretation of this Conservation Easement and any amendment or exhibit hereto.

25. **Entire Agreement; Recitals and Exhibits.** This Grant 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. Any and all recitals in this Conservation Easement are agreed by the parties to be accurate, are incorporated into this Conservation Easement by this reference, and shall constitute integral terms and conditions of this Grant. Any and all exhibits and addenda attached to and referred to in this Conservation Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.
26. **Notices.** Any notice, demand, request, consent, approval, instruction or communication that either party desires or is required to give to the other hereunder shall be in writing and either delivered personally or sent by United States registered or certified mail, return receipt requested, postage prepaid, or by prepaid overnight express courier, and addressed as follows:

To Grantor: The Board of Commissioners of the
Russell Township Park District
P.O. Box 28
Novelty, OH 44072
Attention: Linda O'Brien, Chairperson
440-725-2064 With a copy to: Dale H.

Markowitz

Thrasher, Dinsmore & Dolan
100 7th Avenue, Suite 150
Chardon, Ohio 44024
440-285-2242

To Grantee: Western Reserve Land Conservancy
3850 Chagrin River Road
Moreland Hills, OH 44022
Attention: President or General Counsel
440-528-4150

or to such other address as either of the above parties from time to time shall designate by written notice to the other, and the same shall be effective upon receipt if delivered personally or by overnight courier or three business days after deposit in the mail, if mailed. If any deadline under this Conservation Easement falls on a Saturday, Sunday or legal holiday (which for purposes of this Grant shall not be considered a "business day"), the deadline shall be extended to the next business day.

27. **Effective Date; Mortgage Subordination; Mechanics Liens.** 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. Grantor (a) shall cause any mortgage encumbering the Protected Property to be subordinated to this Grant effective as of the date this Grant is so recorded; and (b) hereby represents to Grantee that no material or labor has been furnished to or performed on the Protected Property within the last 90 days that has not been paid for in full. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Conservation Easement.
28. **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 Sections 14 and 17 (entitled "Assignment" and "Notice of Proposed Transfer", respectively). 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.
29. **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 or omissions occurring prior to such transfer shall survive transfer.
30. **Representations as to Authority.** Grantor hereby represents and warrants to Grantee that Grantor has the power to make this Grant and to carry out its obligations hereunder.

TO HAVE AND TO HOLD, unto and 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, and assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Protected Property.

[NO FURTHER TEXT; SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Grantor has executed this instrument this ____ day of _____, 2016.

GRANTOR:

**RUSSELL TOWNSHIP PARK
DISTRICT**

By: _____
Linda J. O'Brien

Its: Commissioner and Chairperson

STATE OF OHIO)
) SS:
COUNTY OF _____)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Board of Commissioners of the Russell Township Park District, by Linda J. O'Brien, its Chairperson, who acknowledged that she did execute the foregoing instrument and that the same is her own free act and deed as such representative and the free act and deed of Grantor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2016.

Notary Public

Instrument prepared by:
Western Reserve Land Conservancy
3850 Chagrin River Road
Moreland Hills, Ohio 44022
(440) 528-4150

ACCEPTANCE

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

IN WITNESS WHEREOF, the undersigned have executed and delivered this Acceptance this ____ day of _____, 2016.

GRANTEE:

WESTERN RESERVE LAND CONSERVANCY

By: _____
Robert B. Owen
Its: Assistant Secretary

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Western Reserve Land Conservancy by Robert B. Owen, its Assistant Secretary, 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 Grantee.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this ____ day of _____, 2016.

Notary Public

EXHIBIT A

Legal Description of the Property

(Legal Description of approximately 52 acres being prepared by Rudy Schwartz of Schwartz Surveying as depicted on Exhibit B to be attached upon completion)

EXHIBIT D

Naming Rights

(see attached)

Western Reserve Land Conservancy offers the following naming opportunities for donations made to the Modroo Farm Preserve:

\$100,000 and above - naming rights to the one-mile walking trail that will be located within the meadow area on the property.

\$50,000- naming rights to the meadow area located in the interior of the one-mile walking trail.

\$25,000- naming rights to the trail loop that branches off the main trail and continues through the wooded area on the property.

\$15,000 – commemorative bench engraved with your name.

\$10,000 – name recognition on a permanent brass plaque located on a boulder on the property.

\$5,000 – name engraved on a paver installed at the main trail head.