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 WAYNE COUNTY RECORDER
 JANE CARMICHAEL
 12-28-2007 At 02:41 pm.
 DEED 24.00
 OR Book 602 Page 1370 - 1378

DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement ("Easement") is granted on this 22 day of December, 2007 by **Barry Cavanna and Kimberly Meredith Cavanna**, husband and wife, having an address at 4686 Valley Road, Wooster, OH 44691, together with their heirs, successors and assigns ("**Grantors**") in favor of the **Killbuck Watershed Land Trust**, a nonprofit corporation, qualified to do business in the State of Ohio, having an address at 2171-B Eagle Pass, Wooster, Ohio 44691, its successors and assigns ("**Trust**").

WITNESSETH:

Grantors are the sole owners in fee simple of certain real property in Wayne County, the State of Ohio, more particularly described on Exhibit A attached (hereinafter referred to as the "**Property**"). The Grantors have full authority to donate this Easement and have a good and indefeasible fee simple title to the Property free and clear of all liens and encumbrances.

The Trust is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a)(2) of the Code. The Trust is a "qualified organization" as such term is defined in Section 170(h) of the Code and is qualified to take, hold and enforce conservation easements under the laws of the State of Ohio.

The Property consists of approximately 50 acres which is primarily open farmland and wetlands. The majority of its soil has been classified as Wooster Canfield, a "prime" soil by standards of the Natural Resource Conservation Service, U.S. Department of Agriculture. The Property also includes approximately 1 acre of woods and 14 acres of lake and marsh. The Killbuck Creek adjoins a railroad right of way on the East side of the Property. The Property hosts a wide variety of wildlife and vegetation indigenous to this area of the State of Ohio, including the ecosystem along the Killbuck Creek. The Property has a single homesite with a house, bank barn and other outbuildings.

The specific conservation values and features of the Property are further documented in a Present Condition Report, maintained at the offices of Trust, which contains a plat map, soils map, photographs and other information.

All of the information referred to in the above attachments (hereafter the "**Baseline Documentation**") provides an accurate representation of the Property at the time of this grant for the purpose of monitoring future compliance with this grant.

Grantors intend that the natural characteristics and features established in the Property's Baseline Documentation together with all activities which shall hereafter be permitted under this grant (the "**Conservation Values**") shall be preserved and maintained in perpetuity and that activities which would disrupt or adversely alter the Conservation Values shall be prohibited.

Grantors, by their Easement, intend to convey to Trust the right to preserve and protect the Conservation Values of the Property in perpetuity.

The Trust, by accepting this grant, shall honor the intentions of the Grantors stated herein and shall preserve and protect in perpetuity the Conservation Values of the Property.

Now, therefore, in consideration of the above conditions and the mutual covenants, terms, conditions and restrictions contained herein and pursuant to the applicable Federal and State laws, Grantors, on behalf of themselves, their personal representatives, heirs, successors, and assigns, grant and convey unto Trust, its successors, and assigns, a Conservation Easement in perpetuity over the Property as hereinafter set forth ("Easement").

1. **Statement of Purpose.** It is the purpose of this Easement to assure that the

Property will be retained forever in a condition consistent with its Conservation Values. No activity will be allowed which would significantly impair or interfere with the Conservation Values of the Property.

Grantors intend that this Easement will confine the use of the Property to agricultural and conservation activities including, without limitation, farming, ranching, timber production, growing and harvesting crops, private hunting and trapping, private recreation and education. Notwithstanding the foregoing, the hunting of predators, deer, waterfowl and other birds shall not be permitted. In furtherance of this purpose, if, at any future time, the owners of the Property cannot or do not desire to use the land for agricultural purposes, then the Property may be allowed to remain in a natural state, undeveloped and unoccupied.

2. Rights of Grantors.

- 2.1 Rights of Ownership. Grantors reserve all customary rights and privileges of ownership, including the rights to sell, lease, transfer by gift or devise the Property, as long as such rights and privileges are exercised in a manner which is consistent with the terms and conditions of this Easement.
- 2.2 Acts Beyond Grantors' Control. Unless otherwise specified below, nothing in this Easement shall be construed to entitle Trust to bring any action against the Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm and earth movement or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- 2.3 Privacy. The Grantors retain the right to privacy and the right to exclude any member of the public from trespassing on the Property. No right of access by the general public to any portion of the Property is conveyed by this Easement. This right shall not prevent the Trust from entering onto the Property at all reasonable times for the purpose of inspecting the Property or enforcing the provisions of this Easement.
- 2.4 Agricultural and Conservation Purposes. The Grantors retain the right to use the Property for agricultural and conservation purposes or to allow others to use the Property for such purposes within applicable laws. Such purposes shall include, but not be limited to:
 - A. The right to use the Property for the enjoyment of the natural environment for themselves and others in private ways and, at their discretion, through limited public recreational and educational activities.
 - B. The right to make minor improvements to the Property, such as trails, necessary for agricultural and conservation purposes, but which are consistent with the purpose of this Easement.
 - C. The right to repair, replace, or build new fences for purposes of reasonable and customary management of livestock and wildlife.
 - D. The right to use the water rights for agricultural production or domestic use on the Property, as well as all non-tributary ground water and all water rights appurtenant to the Property, known or unknown, provided the Grantors shall not transfer, encumber, lease or

otherwise sever such water rights from the title to the Property itself. Grantors maintain the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement. Grantors may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the terms of this Easement and is carried out in accordance with law.

- E. The right to hunt or trap wild animals on the Property or to extend such rights to other individuals, provided that the same shall not be conducted as a commercial enterprise, provided that the hunting of predators, deer and waterfowl or other birds shall not be permitted.
- F. The right to construct and maintain unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement.
- G. The right to drill for oil and gas production or storage or to utilize the Property with other adjoining properties for the purpose of developing oil and gas, as long as no disturbance to more than one acre of the surface of the Property shall occur.

3. **Rights of Trust.** To accomplish the purpose of this Easement the following rights are conveyed to Trust by this Easement:

- 3.1 To preserve and protect the Conservation Values of the Property. In furtherance thereof, all development rights appurtenant to the Property, and not otherwise reserved to the Grantors, are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it is now or hereafter may be bounded or described, or used for the purpose of calculating permissible lot yields of any other property.
- 3.2 To enter upon the Property at reasonable times in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors. Trust's entry shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property.
- 3.3 To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

4. **Prohibited Activities.** It is impossible to anticipate every use of the Property which will adversely affect the Conservation Values of the Property. However, there are specific activities which, in addition to others, are particularly abhorrent to the parties and therefore are specifically prohibited.

- 4.1 Subdivision. No portion of the Property shall be subdivided, whether by physical or legal process, without the advance written permission of the Trust, provided that Grantors reserve the right to construct one additional residential homesite to occupy not more than 5 acres at a location determined by Grantors.

- 4.2 Road Construction. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.
- 4.3 Trash. No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste or radioactive or hazardous waste nor agri-sludge shall be placed, stored, dumped, buried or permitted to remain on the Property. The storage of agricultural products, byproducts and agricultural equipment on the Property in accordance with the purposes of this Easement is permitted.
- 4.4 Mining/Extraction of Minerals. No mining activity shall be conducted for the extraction of soil, sand, gravel, rock, or any other mineral substance, using any method that disturbs the surface of the land. Soil, sand, gravel and rock may be moved, without prior written permission, for agricultural purposes or to enhance or protect the natural qualities of the Property. Utilizing the Property for oil and gas production, pursuant to Paragraph 2.4.G. above is permitted. Notwithstanding the foregoing, Grantors reserve the right to dredge or otherwise improve the water and wetland sites on the Property and, in such event, shall be permitted to sell the aggregate material removed as part of such improvement.
- 4.5 Timber. Standing live timber shall not be cut for commercial use or sale except in accordance with a timber management plan approved by Trust. This prohibition shall not preclude Grantors from selectively cutting trees for Grantors' personal use or from removing diseased or damaged live trees.
- 4.6 Construction. No structures shall be built on the Property, except buildings and facilities for agricultural or other use consistent with the purposes of this Easement and except the homesite described in paragraph 4.1 above.

5. **Responsibilities of Grantors and Trust Not Affected.** Other than as specified herein, this Deed shall not impose any legal or other responsibility on the Trust, nor affect, in any way, any existing obligation of the Grantors as owners of the Property. Without limitation, this shall include:

- 5.1 Taxes. The Grantors shall continue to be solely responsible for payment of all taxes or assessments levied against the Property that accrue while Grantor owns the Property. If the Trust is ever required to pay any such taxes or assessments on its interest in the Property, Grantors will reimburse the Trust for same.
- 5.2 Upkeep and Maintenance. The Grantors shall continue to be solely responsible for the upkeep and maintenance of the Property. The Trust shall have no obligation for the upkeep and maintenance of the Property.
- 5.3 Liability and Indemnification. If the Trust is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property during the period that the Grantor owns the Property, the Grantors shall indemnify and reimburse the Trust for these payments as well as for reasonable attorney fees and other expenses of defending itself, unless the Trust or any of its agents has committed a deliberate act that is determined by a court to be the sole cause of the injury or damage.
- 5.4 Trust's Environmental Liability. Nothing in this Easement, nor any activities of the Trust, shall be construed as giving rise, in the absence of a judicial

decree, to any right or ability in the Trust to exercise physical or managerial control over the day-to-day operations of the Property, nor shall the Trust be considered an owner or operator of the Property when such term would have the effect of imposing any liability upon the Trust arising out of any Federal, State or local environmental laws or regulations.

6. **Enforcement.** Trust shall have the following rights of enforcement, in addition to all other rights provided by law.

6.1 The right to enter upon the Property shall belong to the Trust, with reasonable advance notice given to Grantors, for the purpose of inspecting for compliance with the terms of this Easement.

6.2 Written notice, mailed to the address provided herein, shall be given to the Grantors if the Trust determines or discovers that a violation of the terms of this Easement has occurred or is threatened. The notice shall be effective upon receipt or upon Grantors' refusal of receipt. Grantors shall thereupon undertake corrective action to restore the property in accordance with the terms of this Easement. If circumstances require immediate action, which in the opinion of the Trust, are necessary for the protection of the Property, Trust may proceed to enforce its rights herein and to seek all appropriate remedies without first issuing a notice, subject only to Ohio laws, regulations and rules of civil procedure.

6.3 Injunctive relief may be sought if in Trust's sole discretion, an ongoing or threatened violation could irreversibly diminish or impair the Conservation Values of the Property. The parties acknowledge that, with respect to violations of this Easement, Trust may have an inadequate remedy at law and therefore Trust shall be entitled to enjoin a violation through a temporary restraining order, preliminary injunction and /or permanent injunction.

6.4 Additional relief. In addition to injunctive relief, Trust shall be entitled to seek the following remedies in the event of a violation:

- A. Monetary damages, including damages for the loss of the Conservation Values protected by this Easement
- B. Restoration of the Property to its condition existing prior to such violation

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. The failure of Trust to discover a violation or to take immediate legal action shall not bar Trust from doing so at a later time and the defenses of laches or the provisions of any applicable statutes of limitation are hereby expressly waived.

7. **Notice to Trust.** With regard to any activity requiring Trust's approval, Grantors shall notify the Trust, in writing, prior to conducting such activity in sufficient time (but not less than 30 days) to allow Trust an opportunity to consider the activity within the purposes of the Easement. After receipt of such notice, Trust shall respond within a reasonable time, but not later than 30 days; provided that if the Trust needs additional time to consider Grantors' request, Trust shall notify Grantors of its need for additional time. Trust shall not unreasonably withhold its permission if the proposed activity will not hinder nor impair the purposes of the Easement.

8. **Amendment of Easement.** This Easement may be amended only with the written

consent of Trust and Grantors. Any such amendment shall be considered with the Statement of Purpose of this Easement and with Trust's easement amendment policies and shall comply with Section 170(h) of the Code, any regulations promulgated in accordance with that section, and any applicable Ohio statutes and regulations. No amendment shall make this Easement less restrictive. Any such amendment shall be duly recorded in the official records of Wayne County and annotated by reference to this original document.

9. **Transfer of Easement.** Trust shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and Ohio law provided the transferee expressly agrees to assume the responsibility imposed on Trust by this Easement. If Trust ever ceases to exist or no longer qualifies under Section 170(h) of the Code, or applicable state law, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement. Trust shall give Grantors at least 30 days written notice of its intent to transfer the Easement under this paragraph and Grantors shall have the right to approve the selected agency or organization, which approval shall not be unreasonably withheld.

10. **Transfer of the Property.** At any time the Property itself, or any interest in it, is transferred by the Grantors to any third party, the Grantors shall notify the Trust, in writing, prior to the transfer of the Property and the document of conveyance shall expressly refer to this Deed of Easement. Copies of any recorded documents of transfer shall be timely provided to Trust.

11. **Interpretation.** This Deed shall be interpreted under the laws of the State of Ohio, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

12. **Perpetuation.** The rights created by this Easement shall run with the land in perpetuity. Every provision of this Deed that applies to the Grantors or Trust shall apply to their respective agents, heirs, executors, administrators, assigns and all other successors as their interests may appear.

No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous or subsequent deed, grant or assignment of an interest or estate in the Property or any portion thereof, to Trust, it being the express intent of the parties that this Easement not be extinguished by or merged into any other interest or estate in the Property now or hereafter held by Trust.

13. **Termination of Easement.** The Court of Common Pleas of Wayne County, if it determines that conditions surrounding the Property have changed so much that it becomes impossible or impractical to fulfill the conservation purposes of the Easement, shall be empowered to extinguish or modify this Easement in accordance with all applicable laws and regulations, at the joint request of Grantors and Trust.

13.1 If judicial proceedings, whether by eminent domain, condemnation, or other legal proceeding, extinguish or modify this Easement, Trust shall be entitled to that portion of the proceeds from any subsequent sale or other disposition of the Property which represents the value of the Property's development rights so modified.

14. **Release of Dower Rights.**

Grantors waive all of their respective rights of dower herein.

15. **Notices.**

For purposes of this document, legal notices shall be given as follows:

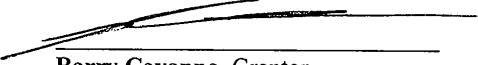
To Grantors: Barry Cavanna
4686 Valley Road
Wooster, OH 44691

Kimberly Meredith Cavanna
539 Osborn Lane
Pleasant Hill, CA 94523

To Trust: Statutory Agent, Killbuck Watershed Land Trust
Attn: Ronald E. Holtman
2171-B Eagle Pass
Wooster, Ohio 44691-5320

The parties or their successors shall provide current addresses to the other parties at any time that such addresses change. In the event a change of statutory agent and or the agent's address shall be filed by the Trust with the Ohio Secretary of State, such change shall be effective upon such filing date.

In Witness Whereof, we have hereunto set our hands this ____ day of December, 2007.




Barry Cavanna, Grantor



Kimberly Meredith Cavanna, Grantor

The Killbuck Watershed Land Trust



By: Ronald E. Holtman, President

State of California

Contra Costa County

SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named **Barry Cavanna** and **Kimberly Meredith Cavanna**, husband and wife, the Grantors, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal at Concord, CA this 22 day of December, 2007.


Notary Public



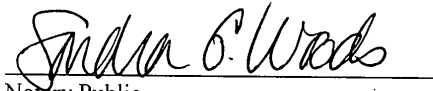
State of Ohio

Wayne County

SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named **Ronald E. Holtman**, President of **Killbuck Watershed Land Trust**, the Trust, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, personally and as said officer.

In Testimony Whereof, I have hereunto set my hand and official seal at Wooster, Ohio, this 22 day of December, 2007.


Notary Public



SONDRA G. WOODS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES
FEBRUARY 27, 2011

This instrument prepared by:
Logee, Hostetler, Stutzman & Lehman
Ronald E. Holtman, Attorney at Law
2171-B Eagle Pass, Wooster, OH 44691-5320
Phone (330)264-6115

DESCRIPTION OF A 40.502 ACRE PARCEL

Situated in the Township of Wooster, County of Wayne and State of Ohio:

Located in the Southwest Quarter of Section 29, Township 15-N, Range 13-W, and being a part of the lands of Barry Cavanna as described in Official Record Volume 294, Page 170 and bounded and described as follows:

COMMENCING at a stone with an iron pipe above it found in Valley Road (Township Road 76) and known as the Southwest Corner of the Southwest Quarter of Section 29, Wooster Township,

Thence, S 86° 44' 38" E along the Section Line a distance of 800.00 feet to a point and the **TRUE PLACE OF BEGINNING**,

Thence with the following four (4) courses:

- 1) N 03° 30' 00" E across the Grantor's lands a distance of 1485.16 feet to a point on the Grantor's north line,
- 2) S 83° 46' 27" E along the Grantor's north line a distance of 1629.12 feet to a 5/8 inch iron bar with ident cap "Gasbarre" found on the west line of the lands of the Conrail Railroad,
- 3) S 34° 11' 34" W along the Grantor's east line and the west line of the Conrail lands a distance of 1633.07 feet to a point on the Section Line,
- 4) N 86° 44' 38" W along the Section Line a distance of 793.71 feet to a point and the **TRUE PLACE OF BEGINNING** containing 40.502 acres, more or less, subject to legal highways, easements, or restrictions, if any, of record.

All capped iron bars set are a 5/8 inch iron bar, 30 inches in length, with a yellow plastic cap marked "RUDOLPH 6449".

Basis of Bearings: Bearings from Survey "FF"-313.

Survey recorded in Survey Vol. _____, Pg. _____.

This description prepared from a field survey by: R.G. Rudolph Surveying, Inc. By:

RONALD G. RUDOLPH P.S. 6449
September 18, 2006
Job No. 18677-1

EXHIBIT A