

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

STATE OF OHIO, ex rel.
MICHAEL DeWINE,
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

HARSHMAN II DEVELOPMENT
COMPANY, LLC

Defendant.

CASE NO. 2010 CV 10110

Judge Mary Wiseman

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General, Michael DeWine (“Plaintiff” or “State”), and Defendant Harshman II Development Company, LLC (“Harshman” or “Defendant”) having consented to the entry of this Order;

NOW THEREFORE, without trial of any issue of fact or law, without any admission of any issues of law, liability or fact, and upon consent of the Parties hereto, it is **ADJUDGED, ORDERED, and DECREED** as follows:

I. DEFINITIONS

1. As used in this Consent Order: “the Harshman Site” shall mean the approximately nineteen (19)-acre piece of property consisting of Parcels Nos. #R72217303-0012 and #R72217303-0034 and located in the 2700 block of Harshman Road in the City of Dayton, Montgomery County.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Revised Code Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 6111. Venue is proper in this Court.

III. PARTIES

3. Subject to the terms and provisions set forth herein, the provisions of this Consent Order shall apply to and are binding upon the Parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, successors in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in the State's Complaint. This Consent Order is in settlement and compromise of disputed claims and nothing in this Consent Order is to be construed as an admission of facts or liability.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- (a) Seek any legal or equitable relief from Defendant or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;
- (b) Seek any legal or equitable relief from Defendant or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;

- (d) Take any action authorized by law against any appropriate person, including Defendant, to eliminate or mitigate conditions the Site that may present a threat to the public health or welfare, or the environment; and/or,
- (e) Bring any legal or equitable action against any appropriate person other than Defendant for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this paragraph, the term “person” includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

V. INJUNCTION

6. Defendant agrees and is ordered and enjoined to comply with Revised Code Chapter 6111 and the rules promulgated thereunder, including, but not limited to, the applicable provisions of Ohio Adm. Code Chapter 3745-32.

7. By no later than sixty (60) days from the entry of this Consent Order, Defendant shall execute an environmental covenant pursuant to R.C. 5301.80 to 5301.92, which is identical in substance to Exhibit A. Within the same time frame, Defendant shall also execute a deed which transfers the Harshman Site to Harshman Holdings, LLC.

8. By no later than ninety (90) days from the entry of this Consent Order, Defendant shall supply a copy of the signed and executed environmental covenant and deed to Ohio EPA, Attn.: Rachel DeMuth, 50 West Town Street, Suite 700, Columbus, Ohio 43215.

9. In the event that Harshman Holdings, LLC will not accept the property, Defendant shall have an additional one hundred and eighty (180) days to find another party, approved by Ohio EPA, to which to transfer the Site, subject to and in accordance with the environmental covenant attached hereto as Exhibit A.

10. If Defendant is unable to find a party within the permitted one hundred and eighty days described above in Paragraph 9, Defendant shall immediately execute the conservation easement attached hereto as Exhibit B.

11. Once Defendant executes an environmental covenant and deed transferring the Harshman Site to Harshman Holdings, LLC (or another approved party) and delivers same to Ohio EPA, the Parties acknowledge and agree Defendant will immediately dissolve Harshman II Development Company, LLC in accordance with R.C. 1705.43 and any other applicable provisions of Ohio law and Administrative Code, and provide written confirmation of such dissolution to Ohio EPA, Attn.: Rachel DeMuth, 50 West Town Street, Suite 700, Columbus, Ohio 43215.

VI. CIVIL PENALTY

12. The Parties agree that, even though a civil penalty is appropriate for violations as alleged in the State's Complaint, Defendant has adequately demonstrated an inability to pay an appropriate civil penalty. Effective immediately upon the entry of this Consent Order, and continuing until written confirmation of the dissolution of Harshman II Development Company, LLC is provided to Ohio EPA, Defendant shall submit a complete copy of its completed federal and state tax returns, including all forms and worksheets, to Ohio EPA, Attn.: Rachel DeMuth, 50 West Town Street, Suite 700, Columbus, Ohio 43215, to prove that it continues to have an inability to pay a civil penalty.

VII. STIPULATED PENALTIES

13. In the event that Defendant fails to comply with any requirement of this Consent Order, Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. Defendant shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Consent Order is violated up to the first thirty (30) days of violation;
- b. For each day any requirement of this Consent Order is violated, between thirty (30) days and ninety (90) days of violation, Defendant shall pay six hundred dollars (\$600.00) per day;
- c. For each day any requirement of this Consent Order is violated, greater than (90) days of violation, Defendant shall pay one thousand dollars (\$1,000.00) per day.

14. Stipulated penalties due under this Consent Order shall be paid by check or money order, payable to "Treasurer, State of Ohio" and mailed to Martha Sexton or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VIII. SITE ACCESS

15. Defendant agrees and consents that Ohio Environmental Protection Agency and their employees and agents shall have full access to the Site and any appurtenant property within Defendant's control at all reasonable times, without the need for a warrant, as may be necessary for the implementation of this Consent Order and/or to monitor compliance with this Consent Order and/or Ohio environmental laws. Defendant further agrees and consents that any and all contractors, subcontractors, consultants, or other persons working for or on behalf of Ohio Environmental Protection Agency, full access to the Site and any appurtenant property within Defendant's control at all reasonable times, without the need for a warrant, as may be necessary.

16. Paragraph 15 of this Consent Order shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency may otherwise have under Federal, State or local law to seek access to the Site.

IX. RETENTION OF JURISDICTION AND WAIVER OF SERVICE

17. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof.

X. EFFECTIVE DATE

18. This Consent Order shall be effective upon the date of its entry by the Court.

XI. COMPLIANCE DATE

19. The Parties agree and acknowledge Defendant's compliance with this Consent Order representing full satisfaction of any civil liability by Defendant for all claims alleged in the State's Complaint, as contemplated in paragraph 4 above, shall be deemed complete and fully satisfied upon (a) Defendant's execution of an environmental covenant and deed transferring the Harshman Site to Harshman Holdings, LLC (or another approved party) and delivery of same to Ohio EPA; and (b) Defendant's dissolution of Harshman II Development Company, LLC and delivery of written confirmation of such dissolution to Ohio EPA.

XII. COURT COSTS

20. Defendant is hereby ordered to pay all court costs of this action.

XIII. SIGNATORIES

21. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective party to this document.

XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

22. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all parties

notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the current docket.

IT IS SO ORDERED.

JUDGE WISEMAN
Montgomery County Court of Common Pleas

DATE

APPROVED BY:

MICHAEL DEWINE
Ohio Attorney General

/s/ Nicholas J. Bryan

NICHOLAS J. BRYAN (0079570)
JANEAN WEBER (0083960)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Street
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

Attorneys for Plaintiff State of Ohio

/s/ Adam C. Armstrong

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FREUND, FREEZE & ARNOLD
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1 S. Main St., Suite 1800
Dayton, Ohio 45402
Phone: (937) 222-2424
Fax: (937) 222-5369
callison@ffalaw.com
aarmstrong@ffalaw.com

Attorneys for Defendant

To be recorded with Deed
Records - R.C. 317.06

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into pursuant to Ohio Revised Code ("R.C.") 5301.80 to 5301.92 by Hardman II Development Company, LLC, an Ohio limited liability company (the "Owner"), having an address of 482 N. Springboro Pike, West Carrollton, Ohio 45409 and County Corp, an Ohio not for profit corporation (the "Holder"), having an address of 139 West Second Street, Suite 1423, Dayton, Ohio 45402, and the Ohio Environmental Protection Agency ("Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

WHEREAS, the Owner is the owner (to be of certain real property known as the Hardman Site, which contains the Covenant Area and is situated in Montgomery County, Ohio, in the Mad River watershed;

WHEREAS, the Owner having consented to the entry of order in the Common Pleas Court of Montgomery County, Ohio Civil Division, Case No. 2010 CV 10110 (herein referred to as the "Consent Order"), agrees to execute a deed which transfers the Hardman Site to Hardman Holdings, LLC,

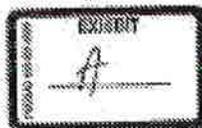
WHEREAS, the Owner agrees to protect this property in perpetuity with an Environmental Covenant;

WHEREAS, the Covenant Area possesses substantial value in conserving and protecting the physical, biological and chemical integrity of the Mad River and is important in the protection of the existing or designated use of the waters of the state pursuant to § 503 of the Clean Water Act, 33 U.S.C. § 1313 and § 6111.041 of the Ohio Water Pollution Control Act.

WHEREAS, the Owner proposes to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant.

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Now therefore, Owner and Holder and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. 3301.80 to 3301.92.

2. Covenant Area. The Covenant Area is an approximate 5.8227 acres of real property delineated as Parcels Nos. #R72217303-0012 and #R72217303-0034 located in the 2700 block of Hershman Road, in Mad River Township, Montgomery County, Ohio 45404, and more particularly described in Exhibit A [narrative description], and Exhibit B [map] attached hereto and hereby incorporated by reference herein ("the Covenant Area").

3. Harsman II Development Company, LLC is the fee simple owner of the Covenant Area.

4. County Corp is the holder of this Environmental Covenant.

5. Activity and Use Limitations. Given the conservation values of the Covenant Area, the Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

Division: Any division or subdivision of the Covenant Area is prohibited;

Commercial Activities: Commercial developments or industrial activity on the Covenant Area is prohibited;

Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are authorized by the Ohio EPA.

Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species, and control activities that are authorized by the Ohio EPA.

Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and

Water Course: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or

otherwise altered on the Covenant Area other than as part of activities that are authorized by the Ohio EPA.

Signage: Signs shall be placed within visual distance along the Covenant Area that indicate the area is a protected wetland and that mowing, dumping, or any other activity that would result in a degradation of the wetland without prior authorization from Ohio EPA is prohibited.

6. **Running with the Land.** This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. 5301.85, subject to amendment or termination as set forth herein. The term "Transferee" as used in this Environmental Covenant, shall mean any future owner of any interest in the Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. **Compliance Enforced.** Compliance with this Environmental Covenant may be enforced pursuant to R.C. 5301.94 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any provision of this Covenant. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

8. **Right of Access.** Owner hereby grants to Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or enforcement of this Environmental Covenant.

9. **Compliance Reporting.** Owner and any Transferee shall submit to Ohio EPA, upon request by the Ohio EPA, written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. **Notice upon Conveyance.** Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 20____, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 20____, IN [DOCUMENT _____, or BOOK _____, PAGE _____].

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING
ACTIVITY AND USE LIMITATIONS:

[In the instrument conveying the property interest, the above text shall be
followed by a restatement of the restrictions from Paragraph 5 of this Covenant.]

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion
of the Covenant Area. Owner's notice shall include the name, address and telephone number of the
Transferee, and a copy of the original document that imposed restrictions on the Covenant Area.

11. Representations and Warranties. Owner hereby represents and warrants to the other
signatories hereto:

- a. that the Owner is the sole owner of the Covenant Area;
- b. that the Owner holds fee simple title to the Covenant Area that is free, clear
and unencumbered with the exception of preexisting interests of record as set forth in Exhibit C;
- c. that the Owner has the power and authority to enter into this Environmental
Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
and
- d. that this Environmental Covenant will not materially violate or contravene or
constitute a material default under any other agreement, document or instrument to which Owner is
a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or
terminated only by consent of all of the following: the Owner or a Transferee, the Holder, and the
Ohio EPA, pursuant to R.C. §§ 5301.29 or 5301.90 and other applicable law. "Amendment" means
any changes to the Environmental Covenant, including the activity and use limitations set forth
herein, or the elimination of one or more activity and use limitations when there is at least one
limitation remaining. "Termination" means the elimination of all activity and use limitations set
forth herein and all other obligations under this Environmental Covenant. Amendment or
termination shall not affect Marathon II Development Company, LLC's obligations pursuant to the
Consent Order.

This Environmental Covenant may be amended or terminated only by a written instrument
duly executed by the Director of Ohio EPA, the Owner, and the Holder. Within thirty (30) days of
signature by all requisite parties on any amendment or termination of this Environmental Covenant,
the Owner shall file such instrument for recording with the Montgomery County Recorder's Office,
and shall provide a true copy of the recorded instrument to Ohio EPA.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recording. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the Montgomery County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Covenant Area with the Montgomery County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the City of Dayton, the Holder, any lessee, any other person who signed the Environmental Covenant, each person holding a recorded interest in the Property, and any other person designated by Ohio EPA.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Manager, 401 Water Quality Certification Section
Division of Surface Water
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

Marshman B Development Company, LLC
Attn: LMS Realty, LLC, Managing Member
442 N. Springboro Pike
West Carleton, Ohio 45449

Conway Corp.
Attn: President
130 West Second Street
Suite 1420

Dayton, Ohio 45402

19. ~~Counterparts~~. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The undersigned representatives of the Owner and Heiliger represent and certify that they are authorized to execute this Environmental Covenant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES TO FOLLOW]

IT IS SO AGREED:

COUNTY CORP. ("HOLDER"):

Stephen D. Nass

By: Stephen D. Nass

Its: President

Date: December 21, 2012

State of Ohio

County of Montgomery

ss:

I, Steph D. Nass, a duly authorized representative of County Corp., who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of County Corp.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 21st day of December, 2012.

Notary Public



STEPHEN D. NASS, Notary Public
Notary Public, State of Ohio
My Commission Expires 12/31/2015
Article 10, Section 1, O.R.C.

IT IS SO AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY

.....
By: Scott Nally
Director

Date:

State of Ohio |
 | sec
County of Franklin |

Before me, a notary public, in and for said county and state, personally appeared _____ the Director of Ohio EPA, who acknowledged to me that (he/she) did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 2012.

.....
Notary Public

EXHIBIT A



VANATTA ENGINEERING INC

270 Congress Park Dr • Dayton, OH 45424 • P 937.438.9550 F 937.438.3843

November 7, 2012

**WETLANDS AREA - HARRISMAN ROAD
8.7227 ACRES**

LOCATED IN THE CITY OF DAYTON, MONTGOMERY COUNTY, STATE OF OHIO, BEING PART OF THE SOUTHEAST QUARTER OF SECTION 26, TOWN 2, RANGE 8 M.R., AND A PART OF THE SOUTHWEST QUARTER OF SECTION 26, TOWN 2, RANGE 8 M.R., AND BEING A PART OF LOT 86364 AND A PART OF LOT 86380 OF THE REVISED AND CONSECUTIVE NUMBERS OF LOTS ON THE PLAT OF SAID CITY OF DAYTON, OHIO AND PART OF THAT 19.250 ACRE TRACT AS CONVEYED TO HARRISMAN II DEVELOPMENT COMPANY, LLC, AN OHIO LIMITED LIABILITY COMPANY BY THE DEED RECORDED ON L.R. DEED 06-003114 OF THE DEED RECORDS OF SAID COUNTY AND BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

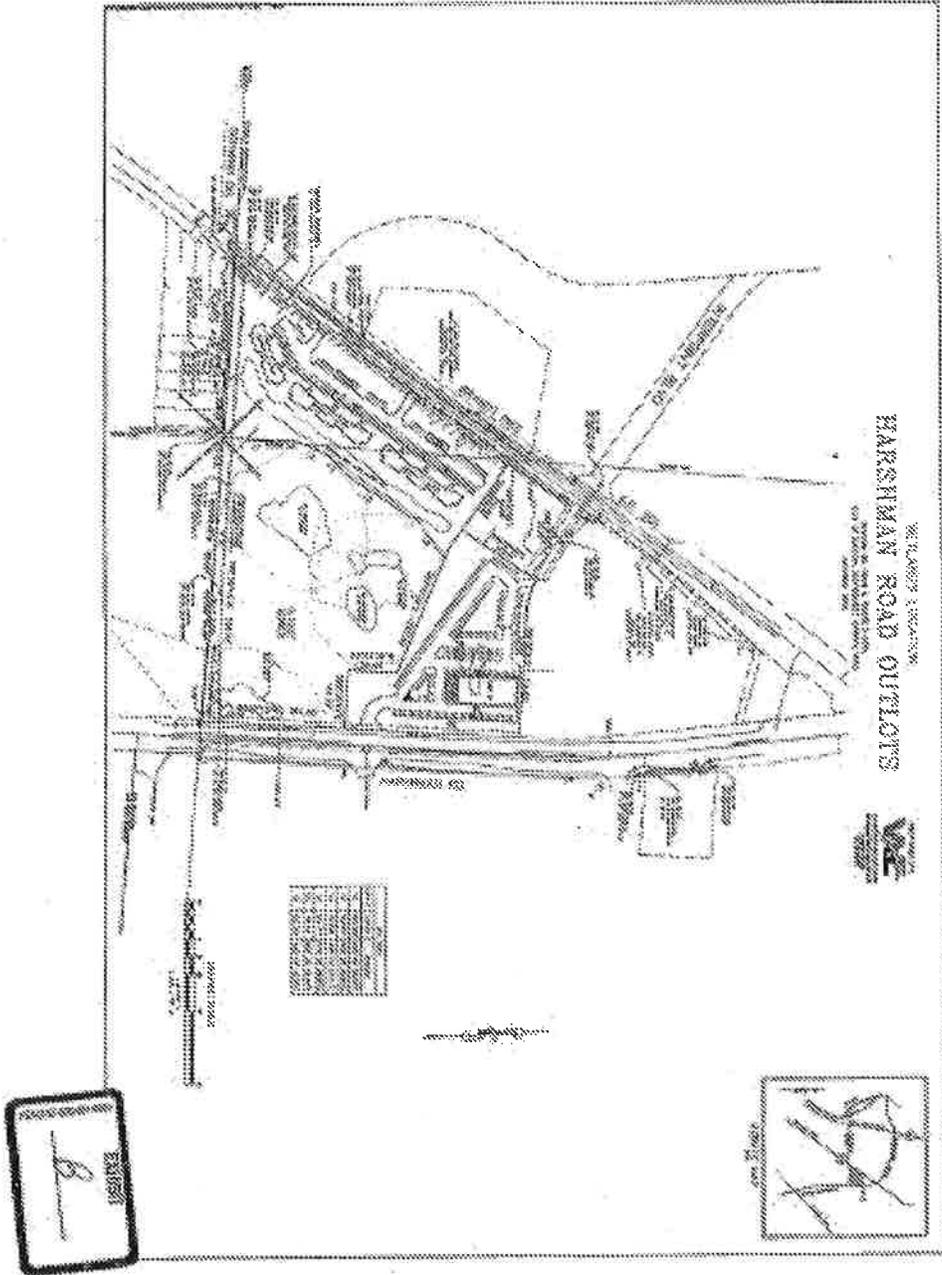
BEGINNING AT THE SOUTHEAST CORNER OF SAID 19.250 ACRE TRACT, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF HARRISMAN ROAD;

THENCE WITH THE SOUTH LINE OF SAID 19.250 ACRE TRACT NORTH 35°52'48" WEST, 784.59 FEET TO A POINT;

THENCE LEAVING THE SOUTH LINE OF SAID 19.250 ACRE TRACT ON THE FOLLOWING COURSE:

1. NORTH 02°46'01" EAST, 294.21 FEET TO A POINT;
2. THENCE NORTH 58°29'56" EAST, 109.08 FEET TO A POINT;
3. THENCE NORTH 54°21'28" EAST, 50.94 FEET TO A POINT;
4. THENCE NORTH 54°27'00" EAST, 211.74 FEET TO A POINT;
5. THENCE NORTH 03°39'23" EAST, 16.41 FEET TO A POINT;
6. THENCE NORTH 53°44'43" EAST, 137.74 FEET TO A POINT;
7. THENCE SOUTH 67°11'20" EAST, 347.36 FEET TO A POINT;
8. THENCE SOUTH 03°21'13" WEST, 129.43 FEET TO A POINT;
9. THENCE SOUTH 86°06'41" EAST, 161.35 FEET TO A POINT ON THE EAST LINE OF SAID 19.250 ACRE TRACT AND LYING ON THE WEST RIGHT-OF-WAY LINE OF HARRISMAN ROAD;

THENCE WITH THE EAST LINE OF SAID 19.250 ACRE TRACT AND THE WEST RIGHT-OF-WAY LINE OF HARSHMAN ROAD SOUTH 03°23'19" WEST, 384.96 FEET TO THE POINT OF BEGINNING CONTAINING 8.7217 ACRES, MORE OR LESS, SUBJECT HOWEVER TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.



CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this _____ (date),
by _____, whose address is _____
_____ ("Grantor"), in favor of _____
_____ ("Grantee") under the following circumstances:

- A. Grantor is the owner of the real property described in Exhibit A attached to this Deed (the "Property").
- B. The Property possess natural features that Grantor wishes to protect and preserve in perpetuity.
- C. Grantor desires to convey to Grantee a conservation easement to protect and preserve the natural features of the Property, and Grantee is willing to accept this easement; and
- D. Grantee is a _____ and is qualified to acquire a conservation easement pursuant to Section 5301.69(A) of the Ohio Revised Code.

NOW, THEREFORE, for valuable consideration, and pursuant to the Sections 5301.67-70 of the Ohio Revised Code, Grantor grants to Grantee a conservation easement in perpetuity over the Property on the terms and conditions set forth below (the "Easement").

- 1. **Purpose.** The purpose of this Easement is to assure that the Property will be retained forever in its natural condition, and to prevent any use of the Property that will impair or interfere with the preservation of the Property in that condition.
- 2. **Use Limitations.** Grantor agrees to limit the use of the Property to activities that are consistent with the purpose of the Easement. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. In addition to the general limitation described above the following specific limitations shall apply to the Property:
 - a. No buildings, billboards or other structures of any kind, either temporary or permanent, shall be placed or erected on the Property.



- b. No filling, excavating, or removal of topsoil, sand, gravel, rock, minerals or other materials shall be permitted on the Property, nor shall there be any building of roads or changes in the topography of the land in any manner, other than that caused by the forces of nature.
 - c. There shall be no spraying with herbicides or pesticides on the Property.
 - d. No transmission lines for electric power, natural gas or petroleum products shall be placed on the Property nor shall any interests in the Property be granted for these purpose(s). Lines which provide ordinary gas and electric service for the Property only are not prohibited by this restriction.
 - e. No garbage, trash or other unsightly materials shall be allowed to accumulate to be stored on the Property.
 - f. No timber shall be cut or harvested from the Property.
 - g. Grantee reserves the right to post or clearly mark the boundaries of the Property at mutually agreed upon points.
3. **Rights of Grantor.** To accomplish the purpose of this Easement, Grantor conveys to Grantee the rights: (a) to enter upon the Property at reasonable times in order to monitor Grantee's compliance with and otherwise enforce the terms of this Easement, provided that such entry shall be upon prior reasonable notice to Grantor; and (b) 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.
 4. **Reserved Rights.** Grantor reserves all other rights accruing from the ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not inconsistent with the purpose of this Easement. This Easement shall not be construed as a dedication of the Property for public use, nor is Grantee authorized by this Easement to make any use of the Property except to monitor and enforce the terms of this Easement as provided in Paragraph 3 above.
 5. **Responsibilities of Ownership.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation and maintenance of the Property. By accepting this Easement, Grantee does not assume any obligations with respect to the ownership, operation, or maintenance of the Property.
 6. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Section 5301.47-70 of the Ohio Revised Code (or any successor provision then applicable).
 7. **General Provisions.**
 - a. **Non-Waiver.** Any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any item of this Easement by Grantor shall

not be deemed or construed to be a waiver by Grantee of such term or of any of Grantor's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor waives any defense of laches, estoppel, or prescription.

- b. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- c. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment signed with due authority by each of Grantor and Grantee.
- d. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

Signed and Acknowledged
in the presence of:

GRANTOR:

GRANTEE:
By: _____
Name: _____
Title: _____



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Agreed Entry Signed By Judge
Case Number: 2010 CV 10110
Case Title: STATE OF OHIO EX REL vs HARSHMAN II DEVELOPMENT
COMPANY LLC

So Ordered

May Wiseman

