

OHIO AGRICULTURAL EASEMENT DONATION PROGRAM

Agricultural Easement

This Agricultural Easement (“Easement”), dated _____, 2012, is made and entered into by and between **(NAME OF LANDOWNERS/CORPORATION)**, **(address)** (“Grantor”), and the Director, Ohio Department Of Agriculture, 8995 East Main Street, Reynoldsburg, Ohio, 43068 (“Grantee”).

This Easement is a perpetual conveyance as defined in Section 5301.67(C) of the Ohio Revised Code (“R.C.”). In addition, the **(INSERT NAME OF MONITORING AGENT)** (“Monitoring Agent”) agrees to monitor the property in perpetuity and assist with the enforcement of the terms of the Easement. The Grantee agrees to enforce the terms of this Easement, as necessary. The following provisions apply to this Easement:

It is the purpose of this Easement (“Purpose”) to assure that the Protected Property will be retained in agricultural use, as that term is defined by Ohio Revised Code (“R.C.”) 5713.30, by preserving and protecting its agricultural soils identified in Exhibit B and agricultural viability through a perpetual restriction on the use of the Protected Property.

A. Protected Property and Title Warranty

The Grantor is the owner in fee simple of approximately _____ acres of certain agricultural property located at **(address)**, **(city)**, in _____ Township, _____ County, Ohio (“Protected Property”). A full legal description of the Protected Property is attached as Exhibit A and incorporated herein by reference. The Grantor warrants that Grantor has full authority to grant this Easement, has good and indefeasible fee simple title to the Protected Property described in Exhibit A, that the legal description in Exhibit A is complete and accurate to the best of Grantor’s knowledge, and that the Protected Property is free and clear of all liens and encumbrances that are inconsistent with the Purpose of this Easement. The Grantor claims title to the land by instruments recorded in the Official Land Records of **(County Name)** County at Official Records Book **(Example: 268, Page 428)**.

B. Agricultural Value and Use

Except for the Homestead, and any energy facility, the Protected Property consists of land devoted exclusively to agricultural use, as that term is defined by R.C. 5713.30, and is valued for real property taxation at its current value for agricultural uses under R.C. 5713.31, which may also include a Homestead as defined by R.C. 901.21(A)(3). The Homestead (known as the “Homesite” in Ohio Administrative Code (“Ohio Adm.Code.”) 5703-25-34(I)), and energy facilities are taxed in accordance with R.C. Chapter 5713 and Ohio Adm.Code Chapter 5703-25. The Grantor has an interest in preserving the Protected Property for agricultural use.

C. Conservation Plan

The Grantor or his heirs, successors, or assigns shall conduct agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with the United States Department of Agriculture, Natural Resources Conservation Service “NRCS” and approved by the local Soil and Water Conservation

District in which the Protected Property is located. This Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect as of the date of this Easement. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Easement by reference. All farming operations shall be conducted in accordance with all applicable local, state and federal laws and regulations.

D. Qualified Organization

Grantee is a qualified organization under Section 170 of the U.S. Internal Revenue Code, as amended from time to time, and under the regulations promulgated thereunder to receive conservation easements. The Grantee is authorized pursuant to R.C. 901.21 to hold agricultural easements under the laws of the State of Ohio for the public purpose of retaining the Protected Property predominantly in agriculture.

E. Agricultural Preservation Program

The United States Department of Agriculture's 2002 Census of Agriculture found that from 1950 to 2002, Ohio lost one-third of its total agricultural lands. The State of Ohio has a clearly delineated conservation policy to preserve and promote agriculture and agricultural land for a significant public benefit. The Ohio Department of Agriculture ("ODA") is charged with the responsibility of protecting and promoting agriculture, including the preservation of Ohio's farmland by accepting agricultural easements in accordance with R.C. 901.21(B). By granting and accepting an agricultural easement over the Protected Property, the Grantor is furthering the State of Ohio's conservation policy to preserve and protect viable agricultural land. The Grantor intends that this Easement will confine the use of the Protected Property, in perpetuity, to activities that are consistent with the Purpose of this Easement. Ohio's policy to preserve and promote

agriculture and agricultural land is further reflected in the enactment of R.C. 901.21 and 901.22 which allow, inter alia, the Director of the Ohio Department of Agriculture to acquire agricultural easements by gift, devise or bequest, and to establish a procedure for awarding matching grants for the purchase of agricultural easements. These sections also provide that the Director shall monitor Ohio's agricultural easement program to evaluate its effectiveness and efficiency as a farmland preservation tool. Additionally, this policy is reflected in R.C. 901.54, which creates the Office of Farmland Preservation within the ODA to actively preserve farmland and encourage and assist others in doing so. The grant of this agricultural easement is exclusively for the "conservation purpose" as that term is described in Section 170(h)(4)(A)(iii) of the U.S. Internal Revenue Code, which encourages the preservation of open space, including farmland and forest land.

Grant of Agricultural Easement

Now therefore, in consideration of the mutual promises, conditions, restrictions and obligations contained herein pursuant to the laws of the State of Ohio, Grantor grants with general warranty covenants to the Grantee a perpetual agricultural easement, as defined in R.C. 5301.67(C), on the Protected Property. This Easement is subject to the following terms and conditions:

1. Present Condition Report

The Grantor and Grantee agree that the natural characteristics, soil types, physical conditions, physical structures, and the agricultural use of the Protected Property at the time of this purchase are documented in a Present Condition Report ("Report") prepared by the Monitoring Agent, and signed and acknowledged by the Grantor and the Monitoring Agent. The Report establishes the condition of the Protected Property at the time of this Easement conveyance, and includes photographs, maps and other documents. The Present Condition Report is attached as Exhibit B and incorporated herein by reference.

2. Prohibited Uses/Restrictions

Any activity on or use of the Protected Property inconsistent with the Purpose of this Easement is prohibited. The following activities are expressly prohibited, except as provided in Paragraph 3 below:

- 2.1 Industrial or Commercial Activity – There shall be no industrial or commercial activity undertaken or allowed on the Protected Property. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.
- 2.2 Construction on the Protected Property – There shall be no construction of new buildings or structures or placing of any dwelling, residence, building, athletic or recreational structure, landing strip, helicopter pad, fence or sign, asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit line, or any other temporary or permanent structure or facility on the Protected Property, except as provided in Paragraph 3 below.
- 2.3 Agricultural Subdivision – The Protected Property at the time of this conveyance shall remain in a unified ownership, which may be joint or undivided but without division, partition subdivision or other legal or de facto creation of lots or parcels in separate ownership. If a homestead exists or is ever established, which includes the residential dwelling and agricultural buildings as shown in Exhibit B, it shall not be subdivided and shall remain a part of the Protected Property. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.

[Drafting Note: The following paragraph and 2.3.1 will only be added for farms applying for the Large Farm Exception below. A copy of the Large Farm Exception approval letter is on file with ODA.]

Notwithstanding the foregoing prohibition, if the Protected Property meets the large farm exception as described in the ODA, Office of Farmland Preservation's Ohio Agricultural Easement Donation Program, Program Guidelines and Policies set forth in Paragraph 2.3.1 below, and only upon prior written application to and approval of the Grantee pursuant to the Program Guidelines and Policies, Grantor is permitted one legal subdivision of the Protected Property.

2.3.1 Large Farm Exception Policy: ODA's large farm exception policy allowed the landowner of this farm to request an exception based on the farm ***[Choose one: value OR size]***. The Director of ODA, in his discretion, granted this exception. The Director's approval was obtained prior to the Notice.

[Choose one of the paragraphs below]

Large Farm Size Exception: Farms comprised of no less than 400 acres may request the one-time option to split the farm into two parcels of approximately equal size.

Large Farm Value Exception: Farms with an appraised value of more than \$1 million may request the one-time option to split the farm into two parcels of approximately equal size.

Notification describing the proposed division must be provided to the Grantee directly prior to the split.

- 2.4 Mining – Mining or extraction of soil, sand, gravel, oil, or other mineral is prohibited, except as allowed under Sec. 3.13 below and except that Grantor may extract soil, sand and gravel solely for a permitted use on the Protected Property in a manner consistent with the Purpose of this Easement. The disturbance from such extraction of soil, sand or gravel as permitted in this Paragraph shall not exceed one acre at any one time and be located in a position so as to minimize adverse effects to prime and/or unique soils.
- 2.5 Water – Grantor shall not transfer, encumber, lease, sell, or otherwise separate water rights from title to the Protected Property itself.
- 2.6 Waste and Dumping – There shall be no dumping of trash, non-compostable garbage, hazardous or toxic substances or other unsightly or offensive material. The storage and/or composting of agricultural products, byproducts generated on the Protected Property, and agricultural equipment used on the Protected Property is permitted, provided that such storage and/or composting is done in accordance with all applicable federal, state and local laws and regulations and in such a manner so as to not impair the purpose of this Easement.
- 2.7 Storage Tanks – The installation and use of above or below ground storage tanks is permitted for the purposes of operating the farm provided that the installation and use of these tanks are in compliance with all state and federal laws and are installed and operated in such a manner so as to not impair the conservation purpose of this Easement, and provided that the installation and use are not in conflict with any other term or provision of this Easement.
- 2.8 Roads – There shall be no building of new roads, parking lots, or other paved surfaces, or the widening of such existing surfaces, except on the Homestead,

local or state highway rights-of-way and those improvements permitted under Paragraph 3.11 below.

2.9 Utility Services and Septic Systems – Activities described in the existing utility easements or rights-of-way recorded in the Official Land Records in **(County Name)** County at _____ **(Example: 268, Page 428)**, are permitted under this Easement. Except as permitted by Paragraph 3.10 below, the **Grantor is expressly prohibited from seeking or granting easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunication towers, or wind farms over, across, under or through the Protected Property.** In the event that the Grantor receives any communication from a utility company or its agent about acquiring such an easement or right-of-way, the Grantor shall promptly notify the Grantee and provide to the Grantee copies of any relevant correspondence. Notwithstanding the foregoing, the Grantor may install utilities for permitted uses of the Protected Property that are not inconsistent with the Purpose of this Easement.

Maintenance, repair or improvement of a septic system(s) or other underground sanitary system which exists on the Protected Property at the time of this Easement or the construction of septic or other underground sanitary system for the benefit of any of the permitted improvements is permitted without further approval of the Grantee.

[Drafting Note: Use the following alternative 2.9 if there are no existing utility easements or rights-of-way.]

2.9 Utility Services and Septic Systems – Except as permitted by Paragraph 3.10 below, the **Grantor is expressly prohibited from seeking or granting**

easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunication towers, or wind farms over, across, under or through the Protected Property. In the event that the Grantor receives any communication from a utility company or its agent about acquiring such an easement or right-of-way, the Grantor shall promptly notify the Grantee and provide to the Grantee copies of any relevant correspondence. Notwithstanding the foregoing, the Grantor may install utilities for permitted uses of the Protected Property that are not inconsistent with the Purpose of this Easement.

Maintenance, repair or improvement of a septic system(s) or other underground sanitary system which exists on the Protected Property at the time of this Easement or the construction of septic or other underground sanitary system for the benefit of any of the permitted improvements is permitted without further approval of the Grantee.

- 2.10 Surface Alterations – Unless otherwise permitted in this Easement there shall be no removal, filling, or other disturbances of soil surface, and no changes in topography, surface or subsurface water systems, wetlands, or natural habitat unless they are in accordance with the Conservation Plan referenced in Paragraph C above and general agricultural uses of the Protected Property.
- 2.11 Commercial Recreational Use – There shall be no commercial recreational use of the Protected Property except (i) those uses considered “de minimus” according to the provisions of Section 2031(c)(8)(B) of the U.S. Internal Revenue Code, as amended, (ii) those uses to which the Grantee consents after a determination that they are consistent with the Conservation Plan, the goals of the Ohio Agricultural Easement Donation Program and the soil conservation purpose of this Easement,

(iii) those uses that do not require infrastructure on the Protected Property and (iv) those uses permitted in Paragraph 3.9 below.

3. Grantor's Reserved Rights

The Grantor reserves for himself, his heirs, successors and assigns, all rights and privileges of ownership of the Protected Property to use the Protected Property for all purposes that are not inconsistent with the Purpose of this Easement and not expressly prohibited by this Easement. Although the Grantor need not obtain approval of the Grantee in order to exercise any reserved rights in this Paragraph, unless otherwise stated herein, the Grantor hereby agrees to notify the Grantee in writing before exercising any reserved right which may have an adverse effect on the conservation of the agricultural values associated with the Protected Property. The following rights are expressly reserved by the Grantor:

- 3.1 Conveyance – Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is made subject to this Easement and written notice is provided to the Grantee and Monitoring Agent in accordance with Paragraph 16 below.
- 3.2 Right to Farm – Grantor retains the right to farm, or to permit others to farm, in accordance with applicable local, state and federal laws and regulations and the Conservation Plan identified in Paragraph C above.
- 3.3 Agricultural Education Programs and Agri-tourism – As a part of the agricultural activities of the farm, the Grantor reserves the right to conduct or authorize another party (individual or organization) to conduct educational programs and public field days on the Protected Property for the purpose of teaching about agricultural practices and promoting awareness of agriculture, as long as it does

not affect the agricultural values or status of the Protected Property, and does not adversely affect the soils of the Protected Property. Grantor is permitted to engage in agri-tourism including, but not limited to, farm tours, work experiences, field trips, petting zoos, corn mazes and hay rides.

3.4 Right to Privacy – Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property.

Notwithstanding this provision, the Grantee shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with Paragraph C above and Paragraph 5.2 below.

3.5 Right to use the Protected Property for Customary Rural Enterprises – Grantor retains the right to use the Protected Property for otherwise lawful and customary rural enterprises including, but not limited to: processing, packaging and marketing of farm products primarily produced on the Protected Property; farm machinery repair; roadside market stands; and riding stables, so long as these uses do not adversely affect the soils or agricultural values of the Protected Property and are subordinate to the agricultural and residential use of the Protected Property.

3.6 Fences – Existing fences may be cleared, repaired and replaced, and new fences may be built on the Protected Property for purposes of trespass and reasonable and customary management of livestock and wildlife, without any further permission of the Grantee.

[Drafting Note: Select either Option A or Option B and DELETE both “Option” titles and the paragraph that was not selected.]

OPTION A:

- 3.7 Existing Personal Residence – Grantor may improve, maintain, repair, replace, and restore the existing residential structure and residence-related appurtenances such as attached or detached garages, septic systems, utilities, underground pipes and wires, or overhead wires in substantially their same locations within the existing *<insert size>* acre Homestead shown on the Report in Exhibit B and located at *<<insert Property Address>>*.

OPTION B:

- 3.7 Existing Personal Residence – There is no existing personal residence on the Protected Property.
- 3.8 Agricultural Structures and Improvements – The existing agricultural structures and improvements included in the Report in Exhibit B may be repaired, enlarged and/or replaced at their current locations as shown on the Report, without any further permission from the Grantee. New buildings and other structures and improvements, not including any residence, dwelling or farm labor housing, to be used predominantly for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Protected Property, may be built on the Protected Property without any further permission of the Grantee. Such construction shall be necessary for the operations and shall be sited so as to minimize adverse effects to prime and unique soils.
- 3.8.1 Agricultural Labor Housing – Subject to the Grantee’s prior written approval, the Grantor of a Protected Property of more than 100 acres may construct a single house exclusively for necessary full time or seasonal agricultural labor employed on the Protected Property. At no time shall such house be used as a residence for Grantor, Grantor’s spouse, Grantor’s parents, Grantor’s lineal descendants, Grantor’s spouse’ parents, Grantor’s spouse’s lineal

descendants or any other person not engaged in agricultural labor on the Protected Property. The site shall be located so as to minimize the loss of productive agricultural land. Grantor agrees that at no time shall Grantor or successors request that the farm labor housing be subdivided from the entire Protected Property. The housing will be constructed and operated in accord with Ohio Department of Health requirements (Ohio Administrative Code Section 3701.33) for agricultural labor housing and inspected annually. For purposes of complying with this section, the house will be inspected according to Section 4 and 5 of the Deed. Grantor must also comply with Ohio Revised Code Chapter 3733, and regulations promulgated thereunder, and federal agricultural housing regulations as applicable.

3.9 Recreational Structures/Activities

3.9.1 Existing Recreational Structures – All existing recreational structures may be repaired or replaced at their current locations without further permission of the Grantee. Existing personal recreational structures may be reasonably improved or enlarged for the Grantor’s personal use within the area identified as the Homestead on the Report in Exhibit B without further permission of the Grantee. Any improvements or enlargements of existing recreational structures outside the Homestead may occur only with the advance written permission of the Grantee.

3.9.2 New Recreational Structures – New recreational structures may be built for the Grantor’s personal use within the area identified as the Homestead on the Report in Exhibit B without further permission of the Grantee. New recreational structures to be located outside the area identified as the

Homestead are prohibited unless written permission is granted in advance by the Grantee.

3.9.3 Commercial Recreational Uses – Grantor may use the Protected Property to personally derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Protected Property in its existing condition as of the granting of the easement. Other recreational activities from which income is derived and which alters the Protected Property, such as athletic fields, golf courses or driving ranges, airstrips or helicopter pads, or motocross biking, are prohibited.

3.10 Renewable Energy – Grantor may, only with prior written approval of the Grantee, add renewable energy facilities on the Protected Property for the purpose of generating energy predominantly for the agricultural and residential needs of the Protected Property. Such renewable energy facilities must be built and maintained in accordance with any local zoning ordinance and applicable Ohio and Federal law, including but not limited to the regulations of the Public Utilities Commission of Ohio and the Federal Energy Regulatory Commission. Grantor may sell any excess electricity generated to the local electric utility grid. Grantor must obtain permission from Grantee for the installation of renewable energy facility(ies). A written request for permission to install renewable energy facility(ies), which includes the justification, must be submitted to Grantee for each desired installation.

The energy facilities, access roads, and any other related improvements shall be situated, constructed, and maintained pursuant to a plan approved by the Grantee

in its sole discretion. Such plan shall be designed to comport with the Purpose of this Easement, minimize adverse effects on soils and the agricultural value of the Protected Property, and be in accordance with the terms and conditions set forth in this Easement.

- 3.11 Roads – Grantor shall have the right to construct and maintain unpaved farm roads that are necessary for agricultural operations and permitted uses on the Protected Property by this Easement. All existing roads may be maintained and repaired in their current state.
- 3.12 Water – Grantor shall retain and reserve the right to use any appurtenant water rights necessary and sufficient to maintain the agricultural productivity of the Protected Property.
- 3.13 Oil and Gas Exploration and Extraction – Grantor may undertake subsurface exploration, development and extraction of oil and gas under the following conditions:
- (i) Any extraction of oil and natural gas shall have no more than a limited, localized impact on the Protected Property.
 - (ii) In any Oil and Gas Lease (“Lease”) hereafter entered into, Grantor shall require an acknowledgement by the oil and gas lessee (“Driller”) that the Protected Property is subject to this duly recorded Agricultural Easement.
 - (iii) All activities performed by Grantor or Driller pursuant to a Lease shall comply with all regulations outlined in Ohio Administrative Code (OAC) Chapter 1501:9 and Ohio Revised Code (ORC) Chapter 1509, as the same are revised or superseded from time to time, and shall also follow practices outlined in the Ohio Department of Natural Resources’ most

current version of Best Management Practices for Oil and Gas Well Site Construction, or other such guidance on best management practices issued by the appropriate governmental agency overseeing oil and gas activities in Ohio, prior to and throughout all extraction activities, including closure.

- (iv) The area within which all drilling and surface storage activities take place on the Protected Property is referred to as the “Disturbed Area.” Any Disturbed Area shall be sited within the existing Agricultural Areas as identified on the map in attached hereto as Exhibit B. No more than the minimum amount of surface area of the Protected Property necessary for the safe and effective extraction of oil and natural gas may be cleared, graded, or otherwise disturbed for extraction activities.
- (v) A buffer zone of at least 164 feet (50 meters) shall be maintained between the Drilling Site and areas deemed sensitive by Grantee, including water resources such as wetlands, streams (perennial, intermittent or ephemeral), riparian areas within the 100 year flood plain, and areas of known sensitive species habitat (“Sensitive Areas”). Where necessary, and in consultation with Grantee, transmission lines may cross the Sensitive Areas provided that consideration is given first to those portions of the Sensitive Areas where there will be a minimal adverse impact and in any event, all impacts are to be restored pursuant to OAC, ORC and any regulation promulgated in accordance therewith. Buffer zone distances shall be adhered to unless site-specific situations make these distances infeasible and Grantee approves a variation in buffer zone requirements.
- (vi) At least 30 days prior to the commencement of any proposed oil and natural gas extraction activities (including construction of the access road), Grantor shall notify Grantee of the date of the commencement of such activities and provide Grantee with a to-scale drawing depicting the location of all proposed natural gas extraction facilities (including the

access road) to be placed on the Protected Property. On or before 30 days following the completion of construction and installation of oil and gas facilities, Grantee shall be provided with an as-built to-scale drawing of all such facilities.

- (vii) Once the well and all installation of infrastructure have been completed, and upon termination of extraction activities, all soil and vegetative resources on the portions of the Protected Property affected by such activities shall promptly be restored as near as possible to their original state prior to commencement of extraction activities.
- (viii) All activities performed by Grantor or Driller pursuant to a Lease shall comply with all regulations outlined in Ohio Administrative Code (OAC) Chapter 1501:9 and Ohio Revised Code (ORC) Chapter 1509, as the same are revised or superseded from time to time, or guidance on best management practices issued by the Ohio Department of Natural Resources, providing oversight of oil and gas activities in Ohio, prior to and throughout all extraction activities, including closure.

[Drafting Note: The following paragraph should only be left in when there are existing oil and gas leases on the title. DELETE if not necessary.]

Upon completion of any oil and gas activities on existing leases or existing, active wells within the easement area, Grantor shall promptly restore any portion of the Protected Property affected thereby as nearly as possible to its condition and productivity existing prior to commencement of said subsurface oil and gas well activities.

[Drafting Note: Select the appropriate option and DELETE all "Option" titles and the paragraphs that were not selected.]

OPTION A (no new house):

3.14 New Personal Residence – No new residence, dwelling or house, or residence-related appurtenances are permitted on the Protected Property, except for those presently existing on the Homestead. Any existing residence, dwelling or house, or residence-related appurtenances may be replaced or restored in accordance with Paragraph 3.7 above. A residence, dwelling or house is any structure which includes, but is not limited to, cabins and lodges, designed for or capable of occupation by humans, as distinguished from agricultural structures.

[Drafting Note: Use the paragraph below only if there is no existing residence and none reserved.]

3.14 New Personal Residence – No new residence, dwelling or house, or residence-related appurtenances are permitted on the Protected Property. A residence, dwelling or house is any structure which includes, but is not limited to, cabins and lodges, designed for or capable of occupation by humans, as distinguished from agricultural structures.

[Drafting Note: The following paragraph will only be added for farms applying for the Large Farm Exception.]

Notwithstanding the foregoing, if the Protected Property is subdivided pursuant to the large farm exception in section 2.3.1 above, one new single-family house with residence-related appurtenances such as attached or detached garages, septic systems, utilities, underground pipes and wires, or overhead wires, is permitted on the subdivided portion of the Protected Property that does not include the existing residence.

OPTION B (one new house *with* marked Homestead):

3.14 New Personal Residence – Grantor may construct, improve, maintain, repair, replace, and restore on the Protected Property one new single-family house with

residence-related appurtenances such as attached or detached garages, septic systems, utilities, underground pipes and wires, or overhead wires. Grantor must locate the new house and all of its residence-related appurtenances within the *<insert size>* acre “New Homestead” shown on the Report in Exhibit B. A residence, dwelling or house is any structure which includes, but is not limited to, cabins and lodges, designed for or capable of occupation by humans, as distinguished from agricultural structures.

3.14 Forest Management – Forest management activities shall be performed in a manner consistent with the Purpose of this Easement. Commercial timber harvesting shall be conducted in accordance with a forest stewardship plan as defined by the State Forester or equivalent state official.

3.15 Signage – Grantor may place on the Protected Property interpretive signs, such as signs identifying that the Protected Property is protected by this Easement, or signs identifying prairie habitat improvements, as well as “no hunting,” “no trespassing” or similar signs.

4. Responsibilities of Grantor and Grantee

The responsibilities of Grantor shall include the following:

4.1 Taxes – Grantor is responsible for payment of all taxes and assessments levied against the Protected Property. If a Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, the Grantor will reimburse the Grantee for the same.

- 4.2 Upkeep and Maintenance – Grantor is responsible for the upkeep and maintenance of the Protected Property, including any requirements by local, state and federal laws and regulations.

The responsibilities of the Grantee and Monitoring Agent shall include the following:

- 4.3 Present Condition Report – The Monitoring Agent is responsible for maintaining the Present Condition Report in Exhibit B.
- 4.4 Monitoring – The Grantee or its agent is responsible for at least annually monitoring the Protected Property to verify that Grantor is in compliance with the terms and conditions of this Easement. If Grantee designates an agent, the agent shall submit an annual monitoring report to Grantee.
- 4.4.1 Designation of Monitoring Agent – Grantee designates <<Monitoring Agent, Address, City, Ohio Zip>>, as Grantee’s agent to perform any and all rights of inspection and monitoring as described in Paragraph 4.4 herein. Grantee reserves the right, at any time, to revoke the appointment of <<Monitoring Agent>> and to designate other agents for the purposes described herein. Grantor consents to the designation of <<Monitoring Agent>> and consents to any subsequent appointment of any other agent reasonably selected by Grantee.
- 4.5 Compliance of Farm Operations – The Grantee or its agent is responsible for ensuring that active farm operations are in compliance with the Conservation Plan for the Protected Property.

4.6 Investigation – The Grantee or its agent is responsible for investigating potential violations of this Easement and taking appropriate enforcement action pursuant to Ohio Adm.Code 901-2-11. If the agent determines the provisions of the Easement are not being complied with, they shall notify the Grantee of the alleged violation, and include this information in the annual monitoring report required under Paragraph 4.4 above. Failure to cure the violations may result in enforcement of the terms of this Easement. The Grantee reserves the right to conduct an inspection of the Protected Property and enforce any violations of the Easement.

5. Grantee's Enforcement Rights and Remedies

In order to enforce the terms of this Easement, the Grantee shall have the following rights and remedies:

5.1 Rights of the Grantee and Monitoring Agent – The Grantee and the Monitoring Agent have the right to protect the conservation values of the Protected Property, periodically monitor compliance with this Easement on the Protected Property, and enforce the terms of this Easement.

5.2 Right of Entry – The Grantee, and their agents, successors and assigns shall have the right to enter the Protected Property in a reasonable manner and at reasonable times for the purposes of: (i) inspection of the Protected Property to determine if the Grantor, or his heirs, successors or assigns are complying with the provisions of this Easement; and (ii) obtaining evidence for the purpose of seeking judicial enforcement of this Easement.

5.3 Right to Enforcement Costs – All reasonable costs incurred by the Grantee or the Monitoring Agent in enforcing the terms of this Easement including, but not

limited to, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by the Grantor. It is understood by the parties that if Grantor ultimately prevails in a judicial enforcement action, the Grantee shall pay all reasonable costs.

5.4 Remedies – In accordance with the provisions set forth in Ohio Adm. Code 901-2-11, the Grantee, its agents or assigns shall have the right to enforce the terms of this Easement by proceedings at law or in equity including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of the granting of this Easement, subject to the reserved rights of the Grantor set forth herein. The Grantee, or their successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights, or the unauthorized wrongful acts of third persons, provided, however, that the Grantor shall notify the Grantee and the Monitoring Agent of any occurrence which would adversely affect or interfere with the agricultural purposes of this Easement, whether caused by the acts or omissions of the Grantor or third parties, or by natural occurrences.

6. Perpetual Burden

This Easement shall run with and burden the Protected Property in perpetuity and shall bind the Grantor and the Grantee, their heirs, successors, agents, and assigns.

7. Transfer or Assignment of Easement

This Easement may be assigned or transferred by the Grantee to a public agency or non-profit organization, which, at the time of transfer, is a qualified organization under Section 170(h) or successor provision of the United States Internal Revenue Code, as amended, and organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) or successor provision of the United States Internal Revenue Code, as amended. The transferee or assignee will be required to carry out in perpetuity the agricultural purpose which this Easement was originally intended to advance.

8. Transfer of Protected Property

Grantor agrees that upon transfer of the Protected Property, or interest in the Protected Property, from one landowner to another, the terms, conditions, restrictions and Purpose of this Easement will either be referenced in or inserted into any subsequent deed or other legal instrument by which the Grantor divests himself of any interest in all or part of the Protected Property, and be binding upon the parties of the subsequent deed or other legal instrument. The Grantor agrees to notify the Grantee, its successors, agents and assigns, of any such conveyance in writing within fifteen (15) days after closing.

9. Extinguishment or Termination of Easement

This Easement constitutes a real property interest immediately vested in the Grantee. This Easement may only be extinguished or terminated by a court of competent jurisdiction upon a request to terminate made by Grantor and the Grantee after a finding by the court that the conditions or circumstances on or surrounding the Protected Property have changed to such a degree that it has become impossible to fulfill the conservation purpose of this Easement.

If this Easement is extinguished, whether or not Grantor has utilized tax advantages from such Easement, then upon the sale, exchange, or involuntary conversion of the Protected Property or any portion of it, the Grantor shall remit to the Grantee a recoupment of funds for deposit in the agricultural easement purchase fund created in division (E) of section 901.21 of the R.C. The recoupment amount shall be the greater of either (a) the difference between the fair market value of the Protected Property unencumbered by this Easement and the fair market value of the Protected Property with the Easement at the time the agricultural easement was acquired, or (b) seventy-five percent of the fair market value of the land at the time the agricultural easement is extinguished. The fair market value of the Protected Property shall be determined at the time this Easement is extinguished, terminated or condemned by a complete certified appraisal conducted by an Ohio certified general appraiser, that is approved by the Grantee. The fair market value of the Protected Property shall not include any increase in value after the date of this Easement attributable to improvements.

Monies received by the Director shall be credited to the Agricultural Easement Purchase Fund. Until such sale, exchange, or involuntary conversion of the Protected Property occurs, the Grantee shall have a lien for the full amount of the payment due to Grantee hereunder on the Protected Property. If proceeds from extinguishment, termination or condemnation are paid directly to the Monitoring Agent, the Monitoring Agent shall reimburse the Grantee for the full amount of the payment due.

10. Hazardous Waste

The Grantor warrants that he has no knowledge of a release, use, or deposit of a hazardous substance or toxic waste on the Protected Property as such substances or wastes are defined by applicable local, state and federal laws and regulations, and hereby promises to indemnify and defend the Grantee, and hold the Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorneys' fees) arising

from or with respect to any release, use, or deposit of hazardous waste or violation of environmental laws and regulations.

11. Indemnity

Grantor shall indemnify, defend, and hold harmless the Grantee and the Monitoring Agent, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, but not limited to, court costs, reasonable attorneys' fees and attorneys' fees on appeal) to which the Grantee or the Monitoring Agent may be subject or incur relating to the Protected Property, which may arise from events including, but not limited to, Grantor's negligent acts or omissions, Grantor's breach of any representation, warranty, covenant, agreement contained in this Easement, the release, use or deposit of any hazardous substance on the property, or violations of any federal, state or local law.

12. Amendment or Modification of Easement

This Easement may be amended or modified only if such amendment or modification furthers or is consistent with the Purpose of this Easement in the sole and exclusive judgment of the Grantor and the Grantee. Any amendment or modification must be mutually agreed upon by all parties to this Easement, comply with all applicable laws and regulations, and be signed and duly recorded by the parties to this Easement.

13. Boundary Line Adjustments

Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed two acres for the entire Protected Property.

14. Subordination

Any mortgage or lien arising after the date of this Easement shall be subordinate to this Easement. Any liens, mortgages, easements (except maintenance easements and rights of way for already installed utilities) or other clouds on title existing prior to the date of this Easement must be subordinated to this Easement or otherwise appropriately dealt with prior to the execution and recording of this Easement.

15. Re-Recording

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement.

16. Notices

Any correspondence required by this Easement shall be sent to the parties at the following addresses or such addresses as may be hereafter specified in writing:

Grantor: [\[Insert contact name/address\]](#)

Grantee: Ohio Department of Agriculture, Office of Farmland Preservation, 8995 East Main Street, Reynoldsburg, Ohio 43068.

Monitoring Agent: [\[Insert contact name/address\]](#)

17. Severability

The provisions of this Easement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

18. Entire Agreement and Waiver

This Easement sets forth the entire agreement between the parties hereto, and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Easement supersedes all prior discussions, negotiations, understandings, or agreements between the parties relating to this Easement, whether written or oral. Originals and supporting documentation are on file with the Grantee, with a copy available on file with the Monitoring Agent.

A waiver by any party or any breach or default by the other party under this Easement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

19. Termination of Rights and Obligations

A party's rights and obligations under this Easement terminate upon the transfer of that party's interest in the Easement or Protected Property, except the liability for acts or omissions prior to transfer shall survive transfer.

20. Governing Law

This Easement shall be governed by and interpreted under the laws of the State of Ohio and applicable federal law. Except as otherwise specifically provided, all references to statutes, rules and regulations in this Easement shall be construed to mean the version of that statute, rule or regulation in effect as of the date on which this Easement is recorded. Any action or proceeding arising out of the terms of this Easement shall be brought in a court of competent jurisdiction located in Franklin County, Ohio.

21. No Merger

In the event that the Grantee takes legal title to Grantor's interest in the Protected Property, the interest conveyed by this Easement will not merge with the fee title but will

continue to exist and be managed as a separate estate. In addition, and as soon as possible, the Grantee will transfer this Easement to a qualified organization within the meaning of Section 170(h)(3) of the U.S. Internal Revenue Code, as amended, which has among its purposes the conservation and preservation of land and water areas. No purchase or transfer of the underlying fee interest in the Protected Property by or to the Grantee, or any successor or assignee, shall be deemed to eliminate these Easement terms, or any portion thereof.

22. 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, agents, heirs, successors, devisees and assigns, unless otherwise noted.

TO HAVE AND TO HOLD the above-described Agricultural Easement to the use, benefit, and behalf of the Grantee and their successors and assigns forever.

The Grantor(s)

Signature: _____
Printed Name

Signature: _____
Printed Name

Acknowledgement

State of Ohio
County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____ 2012 by _____, who acknowledges that S/he/they did sign the foregoing instrument, and that the same is her/his/their free act and deed.

Notary Public
My Commission Expires:

[Drafting Note: Repeat the acknowledgment if more than one Grantor]

Acceptance by Grantee

Ohio Department of Agriculture

Signature: _____
David T. Daniels
Director of the Ohio Department of Agriculture

Acknowledgement

State of Ohio
County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by David T. Daniels, the Director of the Ohio Department of Agriculture, acting for and on behalf of the State of Ohio, who acknowledged that S/he/they executed the same for and on behalf of that department and the State of Ohio and that S/he/they did so on her/his/their, the Department's and the State of Ohio's own free act and deed.

Notary Public
My Commission Expires:

Consent of Monitoring Agent

<<Monitoring Agent>> accepts its appointment as Monitoring Agent for the Ohio Department of Agriculture pursuant to the terms of this Easement.

Signature: _____

Printed Name: _____

Title: _____

Acknowledgement

State of Ohio
County of _____)ss.:

[Drafting Note: Notary Block for Monitors that are government entities]

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by _____, acting for and on behalf of _____, who acknowledged that they executed the same for and on behalf of that local jurisdiction and that they did so on their, the local jurisdiction's own free act and deed.

Notary Public
My Commission Expires:

[Drafting Note: Notary Block for Monitors that are nonprofit organizations]

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by _____, acting for and on behalf of _____, an Ohio nonprofit corporation, who acknowledged that they executed the same for and on behalf of that corporation and that they did so on their, the corporation's own free act and deed.

Notary Public
My Commission Expires:

This instrument was prepared by:
Ohio Department of Agriculture
Office of Farmland Preservation
8995 E. Main Street
Reynoldsburg, Ohio 43068

11-15-12

SAMPLE