

OHIO AGRICULTURAL EASEMENT DONATION PROGRAM
Agricultural Easement

This Agricultural Easement (“Easement”), as defined in Ohio Revised Code (“ORC”) § 5301.67(C), dated _____, 20____, 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”), jointly referred to as the “Parties.” The Parties acknowledge that the Easement is being donated to Grantee with the express purpose and intent to protect the agricultural use and future viability, and related conservation values, of the Protected Property (later described herein). This is accomplished by limiting nonagricultural uses of the Protected Property, thereby preserving and protecting in perpetuity the multiple, interrelated land features which are critical to agricultural lands, historic structures, archaeological resources, open space, and wildlife habitats. The Parties further acknowledge that the Protected Property will be managed for long-term agricultural viability.

This is an agreement for the donation of an Easement and the monitoring and enforcement of this Easement. Specifically, this Easement is being donated by Grantor to Grantee in accordance with Ohio Revised Code § 901.21. In addition, the **(INSERT NAME OF MONITORING AGENT)**, **(address)** (“Monitoring Agent”) agrees to monitor the Protected Property, as hereinafter defined,

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, as hereinafter defined, will be retained in agricultural use, as that term is defined by ORC § 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. 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 instrument(s) 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, the Protected Property consists of land devoted exclusively to agricultural use, as that term is defined by ORC § 5713.30, and is currently valued and shall continue to be valued during the term of this Easement for real property taxation purposes at its current value for agricultural uses under ORC § 5713.31, which may also include a Homestead, as defined by ORC § 901.21(A)(3). The Homestead (known as the “Homesite” in Ohio Administrative Code (“OAC”) § 5703-25-34(I)), is taxed in accordance with ORC Chapter 5713 and OAC Chapter 5703-25. The Grantor will preserve 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”) or 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. Grantee and Monitoring Agent shall have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the Conservation Plan and Paragraph 5.2 regarding the provisions of this Easement.

In the event of noncompliance with the Conservation Plan, Grantee shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the Conservation Plan, the Grantees shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from the Grantee that (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan, and (b) the Grantee has worked with the Grantor to correct such noncompliance.

The term “Conservation District” means any district or unit of State or local government formed under State or territorial law, and more specifically as organized under ORC

Chapter 940, for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a “conservation district”, “soil conservation district”, “soil and water conservation district”, “resource conservation district”, “natural resource district”, “land conservation committee”, or a similar name.

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. Grantee is authorized pursuant to ORC § 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. Since that finding, 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 ORC § 901.21(B). By granting and accepting an agricultural easement over the Protected Property, the Grantor and Grantee are furthering the State of Ohio’s conservation policy to preserve and protect viable agricultural land and maintain it in agricultural production in perpetuity. 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 ORC §§ 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 ORC § 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, and 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 ORC § 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 approved uses 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 a representative of 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 Waste and Dumping – Accumulation or dumping of trash, refuse, sewage, junk, or toxic materials, or storage of contaminated soil, non-compostable garbage, abandoned vehicles or parts, appliances, machinery, hazardous substances, or waste is prohibited. This restriction will not prevent generally accepted agricultural or wildlife management practices, such as the creation of brush piles, composting, or the storage of farm machinery which is regularly used on the farm, organic matter, agricultural products, or agricultural byproducts on the Protected Property, provided that it is done in such a manner so as to not impair the conservation purpose of this Easement.

- 2.2 Subdivision – Separate conveyance, sale or purchase, of any portion of the Protected Property, division or subdivision of the Protected Property into separate parcels, or recording of a subdivision plan on the Protected Property is prohibited. This prohibition applies regardless of how many separately described parcels are contained in the legal description attached as Exhibit A. 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 or conveyed separately from the remaining Protected Property and shall remain a part of the Protected Property.

- 2.3 Industrial or Commercial Uses – Industrial or commercial activities on the Protected Property are prohibited except for the following listed activities (“Permitted Activities”). Permitted Activities shall automatically become prohibited if the conduct of the Permitted Activity (i) remove or otherwise disallow the Protected Property from Current Agricultural Use Value (“CAUV”) assessment

as defined in ORC § 5713.30; *or* (ii) require the construction or installation of new, non-farm buildings not otherwise permitted on the Protected Property; *or* (iii) adversely affect prime and/or unique soils of the Protected Property. No right of way shall be granted or retained across or upon the Protected Property if that right of way is used in conjunction with any prohibited activities . Permitted activities are the following:

- (i) agricultural production and related uses conducted in accordance with all applicable statutes and regulations and with any plans developed by state or federal agricultural agencies;
- (ii) agriculture (including livestock production), equine activities, or forestry;
- (iii) processing or sale of farm or forest products produced or substantially produced on the Protected Property in permitted buildings;
- (iv) small-scale incidental commercial or industrial operations compatible with activities set forth in Paragraph 2.3(i) that the Grantee approves in writing as being consistent with the conservation purpose of this Easement;
- (v) activities that can be and in fact are conducted within permitted buildings which are within the Homestead and which do not require material alteration to their external appearance or harming the agricultural use and future viability of such permitted buildings;
- (vi) the sale of excess power generated in the operation of approved alternative energy structures and associated equipment approved by Grantee in writing as consistent with the conservation purposes of this Easement and at a scale appropriate to generate energy primarily for on-farm use;

- (vii) temporary or seasonal outdoor activities or events (“Activities”) that do not permanently alter the physical appearance of the Protected Property and that do not harm the agricultural use and future viability or impair the conservation values of the Protected Property herein protected; and
- (viii) customary rural enterprises related to agriculture or forestry or small-scale commercial enterprises compatible with agriculture or forestry such as, but not limited to, farm machinery repair, agri-tourism, processing, packaging, and marketing of farm or forest products, and small-scale farm wineries, cafés, shops, and studios for arts or crafts.

2.4 Construction on the Protected Property All new non-agricultural structures and improvements must be located within the Homestead(s), containing approximately _____ acres and described in Exhibit B, except as provided in this Easement.

[DRAFTING NOTE: INSERT IF no home currently exists and LANDOWNER IS RESERVING HOME - Grantor may construct, improve, 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 Homestead as described in Exhibit B. The new home will remain a part of the farm and cannot be subdivided or sold separately (as prohibited under Paragraph 2.2). 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.].

Except as provided in this Easement, there shall be no construction of new, non-agricultural buildings or structures, roads, impervious surfaces, or any other temporary or permanent structure or facility on the Protected Property without the prior, written approval of the Grantee or as otherwise provided in this Easement. Agricultural buildings, including but not limited to barns, silos, and stockyards, may be built without the prior, written approval of the Grantee. [Drafter's Note: the following language must be used in place of the preceding sentence if the Grantor plans to take the IRS Qualified Conservation Contribution tax deduction – "Agricultural buildings to be located outside of the Homestead, including but not limited to barns, silos, and stockyards, may be built with the prior written approval of the Grantees.] Currently existing structures as documented on the Present Condition Report and/or as otherwise approved in writing by the Grantee may be maintained, repaired, replaced, or reasonably enlarged without the prior written consent of the Grantee; however any existing recreational structures outside of the Homestead may not be enlarged or modified without the prior written consent of the Grantee.

The boundaries and location of the Homestead may be adjusted, provided that the Grantee provides prior written approval of the adjusted boundaries and location.

Activities described in the existing utility easements or rights-of-way as described in Exhibit C are permitted under this Easement. Except for utilities to serve permitted buildings or structures or as otherwise permitted herein, the Grantor is expressly prohibited from seeking or granting easements or rights-of-way, or modifications or amendments thereto, for power lines, roads (private or public), gas lines, pipelines of any kind, sewer lines, water lines, telecommunication towers, or wind farms over, across, under or through the Protected Property without prior written permission from Grantee. 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.

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.

2.5 Motorized Vehicle Use – There shall be no use of motor vehicles on the Protected Property or grant of permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, or for residential uses permitted by this Easement, provided that no use of motor vehicles has a detrimental impact on the productivity of the soils on the Protected Property and the Purpose of this Easement.

2.6 Surface Alteration Grading, blasting, filling, sod farming, or earth removal that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (i) dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement, or creation, in accordance with the Conservation Plan and NRCS standards and specifications;
- (ii) erosion and sediment control pursuant to an erosion and sediment control plan approved by NRCS or the local Soil and Water Conservation District

in which the Protected Property is located;

- (iii) as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by the Grantee as being consistent with the conservation purpose of this Easement;
- (iv) agricultural activities conducted in accordance with the Conservation Plan; or
- (v) as otherwise permitted with prior written approval of Grantee.

2.7 Oil, Gas, or Mineral Exploration and Extraction –Except as otherwise provided herein or identified in Exhibit C, mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Easement or later acquired by Grantor from the Protected Property is prohibited. Grantor is further prohibited from using any surface mining, subsurface mining, or dredging method, on or from the Protected Property, except for limited mining activities to the extent that the materials mined (e.g. peat, sand, gravel) are used for agricultural operations on the Protected Property. In the case of mining for agricultural operations, any mineral extraction activities must minimize any effect on the conservation values stated herein and agricultural uses of the soils present on the Protected Property. Further, extraction must be limited to one (1) acre or less and may not adversely impact the nature, soils, or conservation purposes of the Protected Property stated herein. Horizontal hydraulic fracturing (also known as fracking) or activity similar to horizontal hydraulic fracturing upon the Protected Property is prohibited, except that horizontal hydraulic fracturing under the Protected Property from property which is adjacent to the Protected Property is permitted with advance written notice and consent of the Grantee.

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, or as nearly as possible, to its condition and productivity existing prior to commencement of said subsurface oil and gas well activities. Grantor may undertake subsurface explorations, 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, and shall not impact more than one half acre of 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 Easement.
- (iii) The Lease does not permit the Driller or any successor in interest to construct, place, or erect any non-agricultural structures or lay or install any pipeline or transmission lines without the prior, written approval of the Grantee.
- (iv) All activities performed by Grantor, Driller, or Lessee pursuant to a Lease shall comply with all regulations outlined in ORC Chapter 1509 and OAC § 1501:9, 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.

- (v) The area within which all drilling and surface storage activities take place on the Protected Property is referred to as the “Disturbed Area”. 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.

- (vi) A buffer zone of at least 164 feet (50 meters) shall be maintained between the Disturbed Area 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 the ORC, OAC, and any regulation promulgated in accordance therewith. Buffer zone distances shall be adhered to unless site-specific situations make these distances infeasible and Grantee approve a variation in buffer zone requirements in writing.

- (vii) 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 oil or 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.

(viii) 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 to their original state, or as near as possible, prior to commencement of extraction activities.

2.8 Storage Tanks – The installation and use of above or below ground storage tanks is permitted for the purposes of operating the farm so long as: (1) the installation and use of these tanks are in compliance with all state and federal laws; (2) the tanks are installed and operated in such a manner so as to not impair the conservation values of the Protected Property; and (3) the installation and use of such tanks are not in conflict with any other term or provision of this Easement.

2.9 Notice of Proposed Action – For proposed activities as described in 2.4, 2.6, 2.7 and 2.8, Grantor shall provide a written request to Grantee at least 30 days prior to taking any action with respect to the property, or prior to taking any significant action reserved to Grantor under paragraph 3. The notice shall describe the proposed action in sufficient detail to allow the Grantee to determine whether the proposed action is not inconsistent with policy of this easement and any restrictions that shall be placed on the activity. Within 30 days after receipt of the notice, Grantee shall provide written notice to the Grantor of its rejection or approval of the proposed action. Grantee's decision on a proposed action shall be based on a reasonable determination of the impact on the agricultural use of the property and the impact to the local community.

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 consistent with the Purpose of this Easement or the Conservation Plan, 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 11 and 14 below.
- 3.2 Right to Farm – Grantor retains the right to farm, or to permit others to farm, including the production, processing, and marketing of agricultural crops and livestock in accordance with applicable local, state and federal laws and regulations and the Conservation Plan.
- 3.3 Forest Management and Timber Harvest – Forest management activities and timber harvesting shall be permitted, provided all forest management and timber harvesting must be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations and to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20% of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager.

A forest management plan shall not be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads, utilities, buildings and structures on the Protected Property; (ii) cutting of trees for trail clearing; (iii) cutting of trees for firewood or for other domestic uses of Grantor; (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock; or (v) removal of invasive species.

3.4 Non-developed Passive Recreation and Educational Activities – Non-developed passive recreational and educational activities are permitted if they do not negatively affect the soils and the agricultural operations, do not require new structures, and are consistent with the purpose of the Easement. Examples of such activities include farm tours, work experiences, field trips, petting zoos, corn mazes, and hay rides. 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 comply with the terms of this Easement and those commercial activities are considered “de minimis” according to the provisions of Section 2031(c)(8)(B) of the U.S. Internal Revenue Code, as amended. Recreational activities from which income is derived and which alter the Protected Property, such as athletic fields, golf courses or driving ranges, airstrips or helicopter pads, or motocross biking, are prohibited.

3.5 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 the provisions of this Easement.

- 3.6 Fences and Roads – Existing fences may be cleared, repaired and replaced, and new fences may be built on the Protected Property for purposes of trespass prevention, to mark boundaries of the Protected Property, and reasonable and customary management of livestock and wildlife, without any further permission of the Grantee. Non-paved roads may be constructed if they are necessary to carry out the agricultural operations or other permitted uses on the Protected Property. All roads documented on the Present Condition Report may be maintained as needed and if necessary to carry out the agricultural operations or other permitted uses on the Protected Property.
- 3.7 Renewable Energy – Grantor may, except as otherwise provided herein, 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, so long as such facilities are located on the Homestead shown in Exhibit B and are in keeping with the conservation purposes of this Easement. Such renewable energy facilities must be built, placed, 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. Leases for and installation of commercial renewable energy facilities are prohibited without the prior written consent of the Grantee and may be granted only if all aspects of the project impact less than one percent of the Protected Property and do not interfere with the conservation purposes of this Easement.

Renewable 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.

- 3.8 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 and shall not transfer, encumber, lease, sell, or otherwise separate water rights from title to the Protected Property itself.
 - 3.9 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 Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, the Grantor must 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 and a current copy of the Conservation Plan.
 - 4.4 Monitoring – The Monitoring Agent is responsible for annually monitoring the Protected Property to verify that Grantor is in compliance with the terms and conditions of this Easement. The Monitoring Agent must submit an annual monitoring report to Grantee.
 - 4.5 Compliance of Farm Operations – The Monitoring Agent is responsible for ensuring that active farm operations are in compliance with the Conservation Plan for the Protected Property.
 - 4.6 Investigation – The Monitoring Agent is responsible for investigating potential violations of this Easement. If the Monitoring Agent determines the provisions of the Easement are not being complied with, the Monitoring Agent shall notify the Grantee and Grantor 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 a separate inspection of the Protected Property and take any enforcement action necessary for violation of the term contained herein.
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 Monitoring Agent, 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 (including photographic documentation of the condition of the Protected Property) to determine if the Grantor, or his heirs, successors or assigns are complying with the provisions of this Easement; (ii) obtaining evidence for the purpose of seeking judicial enforcement of this Easement; and (iii) ensuring Conservation Plan implementation and compliance. In the event of an emergency, the Grantee and Monitoring Agent may enter the Protected Property to prevent, terminate, or mitigate a potential violation of these restrictions. Notice to Grantor or Grantor’s representative shall be given at the earliest possible time.
- 5.3 Indemnity – Grantor shall indemnify, defend, and hold harmless the Grantee and Monitoring Agent and their respective 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 Grantee or Monitoring Agent may be subject or incur relating to the Protected Property, which may arise from, but not limited to, Grantor’s negligent acts or omissions, Grantor’s breach of any representation, warranty, covenant, agreement contained in this Easement, or violations of any federal, state or local law, including all Environmental Laws.
- 5.4 Remedies – In accordance with the provisions set forth in OAC § 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.

In the event of a violation of the terms of this Easement, in addition to the other remedies provided for in this Paragraph 5.4, and any other remedies available in law or equity, the Grantee shall also be entitled to recover all damages necessary to place the Grantee in the same position that it would have been in but for the violation. The Grantor and Grantee agree that in determining such damages the following factors, among others, may be considered: (i) the costs of restoration of the Protected Property as provided in the Paragraph above; and (ii) the full market cost and Proportionate Share of Grantee as provided in Paragraph 7 below of purchasing a conservation easement containing terms comparable to the terms of this Easement on land in the vicinity of the Protected Property of a size and with conservation values roughly comparable to those of the Protected Property. The Grantee has the right to proceed against any third party or parties whose actions threaten or damage the Conservation Values, including the right to pursue all remedies and damages as provided in this Paragraph 5.4.

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. Environmental Warranty

Grantor warrants that Grantor is in compliance with, and shall remain in compliance with all applicable Environmental Laws as hereinafter defined. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of non-compliance or alleged non-compliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that Grantor has no actual knowledge of a release or threatened release of any Hazardous Materials, as hereinafter defined, on, at, beneath or from the Protected Property exceeding regulatory limits.

Moreover, Grantor hereby promises to indemnify and hold harmless the Grantee and Monitoring Agent against all litigation, costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Law by Grantor or any other prior owner or operator of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantee or Monitoring Agent to Grantor with respect to the Protected Property, or any restoration activities carried out by the Grantee or Monitoring Agent at the Protected Property. The Grantor shall be responsible for any Hazardous Materials contributed by Grantor after the date of execution of this Easement to the Protected Property.

"Environmental Law(s)" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials,

worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

7. Extinguishment or Termination of Easement

This Easement constitutes a real property interest immediately vested in the Grantee. Grantor, upon receipt of notification of any pending condemnation action brought by any government entity or utility affecting and/or relating to the Protected Property, shall notify the Grantee and Monitoring Agent, in writing, within fifteen (15) days of receipt of said notification.

If the Easement is extinguished in whole or in part, whether or not Grantor has utilized tax advantages from such Easement, Grantor shall remit to the Grantee a Proportionate Share of any proceeds of the sale, exchange, or involuntary conversion of the Protected Property, or any portion of said property, equal to the value of the Easement relative to the fair market value of the property as a whole at the time the Easement was granted. The Proportionate Share shall be the ratio of (a) the fair market value of the Easement on the effective date of this Easement to (b) the fair market value of the Protected Property, without deduction for the value of this Easement, on the effective date of this Easement (the “Proportionate Share”). The values on the effective date of this Easement shall be those values, if available

on the date hereof, as set forth in an appraisal prepared on behalf Grantor, a copy of which Grantor shall deliver to the Grantee and to be retained thereafter in Grantee's files.

[Drafter's Note: If the Grantor does not wish to take an IRS 8283 or other federal tax deduction or the Grantor otherwise elects to forgo an appraisal, the preceding language may need adjusted in the above paragraph]

Until such time as the Grantee receives its Proportionate Share from the Grantor or the Grantor's successor or assigns, the Grantee shall have a lien against the Protected Property for the amount of the Proportionate Share due to it.

8. 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 and is compliant with all applicable laws and regulations in the sole and exclusive judgment of 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 all parties to this Easement or their heirs, assigns, or successors. Such amendment or modification of the Easement shall be in the form of a Corrective or Amended Deed of Easement.

9. 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.

10. Transfer or Assignment of Easement

Upon prior written consent from the Grantee, 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.

11. Transfer of Protected Property

Grantor agrees that upon transfer of the Protected Property, or interest in the Protected Property as proscribed above, from one landowner to another, the terms, conditions, restrictions and Purpose of this Easement will be referenced by volume and page number or instrument number in 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 and Monitoring Agent, their successors, agents and assigns, of any such conveyance in writing at least 30 days prior to closing, or before any purchase agreement or other contract for the sale of land is entered into by the Grantor.

12. 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.

13. Re-Recording

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

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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 Grantees, or any successor or assignee, shall be deemed to eliminate these Easement terms, or any portion thereof.

20. Rules of Convenience

For convenience, masculine pronouns used in this document include the feminine and neutral pronouns, and the singular tense includes the plural tense. Additionally, all references to either Grantor or Grantees include their respective personal representatives, agents, heirs, successors, devisees and assigns, unless otherwise noted.

[This portion was intentionally left blank.]

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 _____ 20____ by _____, who acknowledges that S/he/they did sign the foregoing instrument, and that the same is her/his/their free act and deed. No oath or affirmation was administered to the signers with regard to this acknowledgement.

Notary Public
My Commission Expires:

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

Acceptance by Grantee

Ohio Department of Agriculture

Signature: _____
Tracy Intihar
Assistant Director of the Ohio Department of Agriculture

Acknowledgement

State of Ohio
County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Tracy Intihar, the Assistant Director of the Ohio Department of Agriculture, acting for and on behalf of the State of Ohio, who acknowledged that she executed the same for and on behalf of that department and the State of Ohio and that she did so on hers, the Department's and the State of Ohio's own free act and deed. No oath or affirmation was administered to the signers with regard to this acknowledgement.

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 _____, 20____ 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. No oath or affirmation was administered to the signers with regard to this acknowledgement.

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 _____, 20____ 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. No oath or affirmation was administered to the signers with regard to this acknowledgement.

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

Template Date: 10/15/2020