

**2015 FORMAT**

**OHIO AGRICULTURAL EASEMENT PURCHASE PROGRAM  
AND  
AGRICULTURAL CONSERVATION EASEMENT PROGRAM**

**Agricultural Land Easement**

Under Cooperative Agreement (**Insert Agreement Number**) between  
The (**Insert Name of Cooperating Entity**) and The United States of America

This Agricultural Land Easement (“Easement”), dated \_\_\_\_\_, 2016, is made and entered into by and between (**Name of Landowners/Corporation**), (**address**) (“Grantor”), the (**Insert Name of Cooperating Entity and address**) (**if applicable**) – an Ohio non-profit corporation, (“Local Grantee”) and the **Director, Ohio Department Of Agriculture**, 8995 East Main Street, Reynoldsburg, Ohio, 43068 (“State Grantee”), and the **United States of America** (“United States”), **acting by and through the United States Department of Agriculture, Natural Resources Conservation Service** (“NRCS”), acting on behalf of the Commodity Credit Corporation as its interest appears herein, jointly referred to as the “Parties” acknowledge that the Easement is acquired to protect the agricultural use and future viability, and related conservations values, of the Protected Property (later described herein) 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. The State Grantee and Local Grantee listed above are hereinafter collectively referred to as the “Grantees,” except when otherwise specified as the State Grantee or the Local Grantee.

This is an agreement for the sale and purchase of an agricultural easement and the monitoring and enforcement of that agricultural easement. Specifically, the Grantees and the United States agree to purchase the Easement from the Grantor for \$ \_\_\_\_\_ (**SPELL OUT DOLLAR AMOUNT and 00/100 Dollars**). Of that amount, the State Grantee’s contribution share is \$ \_\_\_\_\_ (**SPELL OUT ODA DOLLAR AMOUNT and 00/100 Dollars**), and the NRCS contribution share is \$ \_\_\_\_\_ (**SPELL OUT NRCS DOLLAR AMOUNT and 00/100 Dollars**). This Easement protects \_\_\_\_ acres of prime, unique, or other productive soil. In addition, the Local Grantee agrees to monitor the property in perpetuity and assist with the enforcement of the terms of the Easement. The State Grantee agrees to enforce the terms of this Easement, as necessary, and subject to the rights of the United States. The Easement is acquired with funds provided, in part, by the Agricultural Conservation Easement Program (“ACEP”) under Cooperative Agreement Number [##-####-##-##] dated [Date of CA] between the

Local Grantee and the United States, acting by and through NRCS on behalf of CCC. The Grantor, Grantees and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them shall comply with all terms, conditions and restrictions of this easement including the following:

The following provisions apply to this Agricultural Land Easement as required by 16 U.S.C. 3865 *et seq.* and as a condition of receiving ACEP funds, and all present and future use shall remain subject to the provisions described herein:

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 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 shall continue to be valued during the term of this Easement 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. Agricultural Land Easement Plan

As required by section 16 U.S.C. § 3865, agricultural production and related uses of the Protected Property are subject to an Agricultural Land Easement Plan, as approved by the NRCS State Conservationist or his or her designee, to promote the long-term viability of the land. Grantor agrees to implement the Agricultural Land Easement Plan on the Protected Property.

If the Protected Property contains grasslands, Highly Erodible Land as defined in 16 USC § 3801(a)(11)(A), or forestland then component plans are required as part of the Agricultural Land Easement Plan. Component plans to the Agricultural Land Easement Plan are required as follows: 1) parcels with grasslands must have a Grassland Management Plan; 2) parcels with Highly

Erodible Land must have a Conservation Plan and where appropriate, the plan will include conversion of highly erodible cropland to less intensive uses; 3) parcels with contiguous forest that exceeds the greater of 40 acres or 20 percent of the Protected Property must have a Forest Management Plan. The Agricultural Land Easement Plan shall not include any provisions inconsistent with the conservation purposes of this Easement.

This Agricultural Land Easement Plan including any applicable component plans, collectively referred to as the Agricultural Land Easement Plan, is herein incorporated by reference. The Local Grantee and Grantor agree to update the plan in the event the agricultural uses of the property change. A copy of the current Agricultural Land Easement Plan must be kept on file with the Local Grantee and will be provided to the State Grantee or NRCS upon request after reasonable notice.

NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantees and Grantor, in order to monitor compliance with the Agricultural Land Easement Plan and as provided for in Paragraph 5.3. In the event of substantial ongoing noncompliance with the Agricultural Land Easement Plan, NRCS shall notify the Grantees. NRCS will give the Grantees and Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action during which time the Grantees will explore methods of compliance with Grantor. The Grantees shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Agricultural Land Easement Plan following written notification from NRCS that there is a substantial, ongoing event or circumstance of non-compliance with the Agricultural Land Easement Plan. If Grantees fail to enforce the terms of the Easement, including, but not limited to compliance with the Agricultural Land Easement Plan, the United States may exercise its right of enforcement.

D. Authority of Grantees and The United States

The Local Grantee is a qualified organization under Section 170 of the U.S. Internal Revenue Code, as amended, and under the regulations promulgated thereunder, and is authorized to receive Agricultural Easements. The State 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. The United States is authorized to provide funding for the purchase of Agricultural Easements pursuant to the Food Security Act of 1985, as amended, 16 U.S.C. § 3865 *et seq.*, for the purpose of protecting topsoil by limiting nonagricultural uses of the land.

E. Agricultural Preservation Programs

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, or State Grantee, 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 selling and purchasing an agricultural easement over the Protected Property, the Grantor and Grantees 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 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 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 also 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. Ohio's agricultural conservation policy is consistent with a federal soil protection policy as reflected below.

### **Purchase of Agricultural Easement**

Now therefore, in consideration of \_\_\_\_\_ Dollars (\$) and 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 Grantees 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 Grantees 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 aka Baseline Documentation Report ("Report") prepared by the Local Grantee, and signed and acknowledged by the Grantor and a representative of the Local Grantee. 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 Impervious Surfaces – Impervious surfaces shall not exceed 2 percent of the Protected Property, excluding NRCS-approved conservation practices developed under the Agricultural Land Easement Plan described in Section C. "Impervious Surface" is defined as a surface that does not allow water to percolate into the soil on the Protected Property. Types of impervious surfaces include, but are not limited to: permitted residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. The following activities are not considered impervious surfaces for the purposes of this easement: Roads and parking lots with soil or gravel surfaces or public roads or other roads owned and controlled by

parties with superior rights to those rights conveyed to Grantees in this Easement, and temporary greenhouses that cover the soil surface for less than 6 months.

- 2.2 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.
- 2.3 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.
- 2.4 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) removes or otherwise disallow the Protected Property from Current Agricultural Use Value (CAUV) assessment as defined in Ohio Revised Code Section 5713.30; *or* (ii) requires 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. Permitted activities are the following:
- (i) agricultural production and related uses conducted in accordance with the Agricultural Land Easement Plan required by Paragraph C;
  - (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 2.4(i) that the State 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 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 or other energy structures approved by State Grantee in writing as consistent with the conservation purposes of this Easement;
- (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.

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 any prohibited activities.

2.5 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. **[INSERT IF no home currently exists and LANDOWNER IS RESERVING A 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 2.3). 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 buildings or structures, roads, impervious structures or any other temporary or permanent structure or facility on the Protected Property without the prior, written approval of the State Grantee or as otherwise provided in this Easement. Currently existing structures as documented on the Present Condition Report and/or as otherwise approved in writing by the State Grantee may be maintained, repaired, replaced, or reasonably enlarged without the prior written consent of the Grantees; however any existing recreational structures outside of the Homestead may not be enlarged or modified without the prior written consent of the State Grantee.

The boundaries and location of the Homestead may be adjusted, provided that the State Grantee and NRCS provide prior written approval of the adjusted boundaries and location. NRCS approval shall be conditioned on determining that the Homestead will

not be increased in size and the adjustment will provide equal or greater protection of the agricultural use and future viability of the Protected Property.

Utilities to serve permitted buildings or structures, including farm energy structures allowed under Paragraph 3, and de minimis agricultural structures that neither individually or collectively have an adverse impact on the agricultural use, future viability, and related conservation values of the Protected Property may be built outside of the Homestead provided the structures follow NRCS-approved conservation practices consistent with the Agricultural Land Easement Plan described in Paragraph C.

Activities described in the existing utility easements or rights-of-way as described in Exhibit C are permitted under this Easement. Except 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.** 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 State Grantee and provide to the State 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 Grantees.

- 2.6 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, and for residential uses permitted by this Easement, provided that no use of motor vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purpose of this Easement.
- 2.7 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 Agricultural Land Easement 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 State Grantee as being consistent with the conservation purpose of this Easement; and
- (iv) agricultural activities conducted in accordance with the Agricultural Land Easement Plan.

2.8 Oil, Gas, or Mineral Exploration and Extraction – Except as otherwise provided herein, 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 from the Protected Property, except for limited mining activities to the extent that the materials mined (e.g. sand, gravel, or shale) are used for agricultural operations on the Protected Property. In the case of this limited mining for materials used for agricultural operations, extraction must be limited to a small, defined area or acreage identified in Exhibit B and may not harm the conservation values or the agricultural uses of the Protected Property.

- (i) Oil and gas exploration and extraction on the Protected Property is permitted if approved by the State Grantee in accordance with this Paragraph, and if such exploration and extraction of oil and gas is: not accomplished by any surface mining method;
- (ii) accomplished by a method of extraction that has no more than a limited and localized impact that does not harm the conservation values of the Protected Property, including but not limited to the Protected Property's use for agriculture;
- (iii) within the impervious surface limits of the Easement;
- (iv) subject to the Agricultural Land Easement Plan that includes provisions for oil and gas exploration and extraction. The exploration and extraction provisions must address the timing, location, and intensity of oil and gas exploration and extraction and associated activities, including, but not limited to, the construction and use of production facilities, roads, and pipelines to ensure oil and gas exploration and extraction and associated activities do not interfere with the conservation values of the Protected Property, including but not limited to the Protected Property's use for agriculture; and
- (v) carried out in accordance with all Federal, state, and local regulations.

Any mineral leases or other conveyances of minerals entered into after the date of this Easement are subordinate to the terms of this Easement. Grantor agrees that State Grantee shall approve in advance in writing any lease or agreement pertaining to use of the surface of the Protected Property for mining which is between Grantor and

owners or lessees of minerals (including oil and gas), and for which State Grantee may withhold its approval in its sole discretion if it determines that the proposed surface use is not consistent with the conservation values of the Protected Property, including but not limited to the Protected Property's use for agriculture or is not consistent with the terms of this paragraph.

Impervious surfaces as defined in Paragraph 2.1 of this Easement shall include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses permitted by this paragraph.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to this Easement, the Grantor shall require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party, including without limitation, impacts to the Protected Property from any oil and gas exploration and extraction and associated activities is:

- (i) not accomplished by any surface mining method;
- (ii) accomplished by a method of extraction that has no more than a limited and localized impact and which has the least adverse impact of extraction methods available on the conservation values of the Protected Property, including but not limited to the Protected Property's use for agriculture;
- (iii) within the impervious surface limits of the Easement; and
- (iv) carried out in accordance with all Federal, state, and local regulations.

Exploration and extraction activities must be conducted in accordance with Section 170(h)(5) of the U.S. Internal Revenue Code, applicable Treasury Regulations, state, and local regulations with minimal impact on the Protected Property and the agricultural operation. Upon completion of any subsurface oil and gas exploration activities granted within the easement area, Grantor shall promptly restore any portion of the Protected Property affected thereby as nearly as possible to its condition existing prior to commencement of said subsurface oil and gas exploration activities.

2.9 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 values of the Protected Property, and provided that the installation and use are not in conflict with any other term or provision of this Easement.

### 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 or the Agricultural Land Easement Plan, and not expressly prohibited by this Easement. Although the Grantor need not obtain approval of the State Grantee in order to exercise any reserved rights in this Paragraph, unless otherwise stated herein, the Grantor hereby agrees to notify the State 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 and in accordance with this Easement and written notice is provided to the Grantees in accordance with Paragraph 11 and 14 below.
- 3.2 Agricultural Production – 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 Agricultural Land Easement 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 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, in consultation with the Local Grantee and approved by the NRCS State Conservationist or his or her designee (State Conservationist). Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a), another practice plan approved by the State Forester, or another plan determined appropriate by the State Conservationist.

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 and Non-Consumptive Recreation and Educational Activities – Recreational and educational activities that are both non-developed and non-consumptive are permitted if they do not negatively affect the soils and the agricultural operations, and are consistent with the purpose of the Easement. 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 minimus” 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 considered consumptive and 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 Grantees and NRCS 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 Grantees. New roads may be constructed if they are necessary to carry out the agricultural operations or other permitted uses on the Protected Property, are within the impervious surface limits specified in this Easement, and are approved in advance by the State Grantee. All roads documented on the Present Condition Report may be maintained as needed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits specified in this Easement, approved in advance in writing by the State Grantee, and necessary to carry out the agricultural operations or other permitted uses on the Protected Property.

- 3.7 Renewable Energy – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy structures or facilities must be built, placed, and maintained in accordance with any local zoning ordinance and applicable State and Federal law. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the 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. All other signage, specifically including but not limited to billboards, are prohibited.

- 3.10 Grassland Uses of the Property – Grantor is permitted to graze, hay, harvest for hay and non- crop seed production, mow, construct fire breaks, conduct fire pre-suppression and

rehabilitation activities, and conduct common grazing practices, including maintenance and necessary cultural practices, consistent with the provisions and conservation purposes of this Easement. As used in this Easement, the term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, and includes forage management and necessary cultural practices such as the infrastructure required to conduct livestock grazing on the Protected Property. Grantor shall not hay, mow or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by Grantees or NRCS. Such determinations shall be made in writing to the Grantor, or set forth within the Agricultural Land Easement Plan for the Protected Property.

- 3.11 Other permitted uses may be allowed if they do not harm agricultural use and future viability, do not conflict with the conservation values of the Protected Property, and is approved in advance by NRCS State Conservationist and the State Grantee.
- 3.12 *[Drafting Note: The following paragraph will only be added for farms applying for the Historic or Archaeological Resources below.]*

Historic or Archaeological Resources – Existing archaeologically, culturally or historically significant features on the Protected Property including, but not limited to, such features as documented in the Present Condition Report shall be maintained consistent with the guidelines provided in The Secretary of The Interior’s Standards for the Treatment of Historic Properties pursuant to 36 CFR 68, as amended. The up to date version of such guidelines shall be maintained by Grantees in the Present Condition Report and made available to Grantor upon request. The archaeologically, culturally or historically significant features may not be altered or removed without State Grantee’s prior written approval, which approval shall not be given except where the proposed activity is accomplished in accordance with the guidelines provided in The Secretary of The Interior’s Standards for the Treatment of Historic Properties.]

4. Responsibilities of Grantor and Grantees

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 Grantees are ever required to pay any taxes or assessments on its interest in the Protected Property, the Grantor will reimburse the Grantees 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 Grantees shall include the following:

- 4.3 Present Condition Report – The Local Grantee is responsible for maintaining the Present Condition Report in Exhibit B and a current copy of the Agricultural Land Easement Plan.
- 4.4 Monitoring – The Local Grantee 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. The Local Grantee shall submit an annual monitoring report to the State and to the United States.
- 4.5 Compliance of Farm Operations – The Local Grantee is responsible for ensuring that active farm operations are in compliance with the Agricultural Land Easement Plan for the Protected Property.
- 4.6 Investigation – The Local Grantee is responsible for investigating potential violations of this Easement. If the Local Grantee determines the provisions of the Easement are not being complied with, the Local Grantee shall notify the State Grantee and the United States 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 by the United States. The State Grantee reserves the right to conduct an inspection of the Protected Property and enforce any violations of the Easement.
5. Grantees' Enforcement Rights and Remedies  
In order to enforce the terms of this Easement, the Grantees shall have the following rights and remedies:
- 5.1 Rights of the Grantees – The Grantees 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 United States' Right of Enforcement – United States Right of Enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations.

The Local Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantees and Grantor are in

compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantees, the United States will have reasonable access to the Protected Property with advance notice to Grantees and Grantor or Grantor's representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantees and Grantor or Grantor's representative at the earliest practicable time.

- 5.3 Right of Inspection – The Grantees and the United States, including but not limited to NRCS, and their agents, successors and assigns shall have the right to enter the Protected Property in a reasonable manner and at reasonable times after advance notice to the State and Local Grantee and the Grantor or Grantor's representative 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; (iii) ensuring Agricultural Land Easement Plan implementation and compliance; (iv) ensuring compliance with the provisions of the United States Cooperative Agreement with the Local Grantee. In the event of an emergency, the Grantees and NRCS 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.
- 5.4 Indemnity – Grantor shall indemnify, defend, and hold harmless the United States, the Grantees 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 Grantees or the United States 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.

General Disclaimer. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantees' or Grantor's negligent acts or omissions or Grantees' or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or

governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

- 5.5 Remedies – In accordance with the provisions set forth in Ohio Adm. Code 901-2-11, the Grantees 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 5.5, and any other remedies available in law or equity, the Grantees shall also be entitled to recover all damages necessary to place the Grantees in the same position that it would have been in but for the violation. The Grantor and Grantees 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 Grantees 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 Grantees have 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 5.5.

The Grantees, 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 Grantees 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, provided, however, that the Grantor shall notify the State and Local Grantees 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 such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to indemnify and hold harmless the Grantees and the United States 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 Laws 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 United States or Grantees to Grantor with respect to the Protected Property, or any restoration activities carried out by the Grantees 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 Grantees and a right of enforcement in the United States. This Easement may only be extinguished or terminated by a court of competent jurisdiction upon a request to terminate made jointly by the Grantor, the Grantees, and the United States 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. Due to its interest in the Protected Property, the United States must approve in advance and in writing any proposed condemnation action or extinguishment. The Grantees and the United States stipulate to have a fair market value of \_\_\_\_\_ percent (\_\_\_ %), the proportionate share of the fair market value of the Protected Property unencumbered by this Easement. The proportionate share is determined at the time of conveyance of this Easement by dividing the fair market value of this Easement (FILL IN \$) by the fair market value of the Protected Property without this Easement (FILL IN \$FMV). The proportionate share will remain constant over time.

Grantor, upon receipt of notification of any pending condemnation action brought by any government entity or utility affecting and/or relating to the Property, shall notify the Grantees and the United States, in writing, within fifteen (15) days of receipt of said notification.

If this Easement is extinguished, terminated or condemned, in whole or in part, Grantor shall reimburse the State Grantee and the United States for the amount equal to the proportionate share

of the fair market value of the Protected Property unencumbered by this Easement as required by R.C. 901.22(A)(2)(b). The fair market value of the Protected Property shall be determined at the time this Easement is extinguished, terminated or condemned by a complete summary appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards for Federal Land Acquisition (UASFLA) conducted by an Ohio certified general appraiser that is approved by both the State Grantee and the United States. The fair market value of the Protected Property shall not include any increase in value after the date of this Easement attributable to improvements.

Upon receipt of the proportionate value proceeds, the proportionate share paid to the State Grantee and the United States shall be allocated as follows: (i) to the State Grantee or its designee, \_\_\_\_\_ percent (\_\_\_\_%) of the proportionate share; and (ii) to the United States, \_\_\_\_\_ percent (\_\_\_\_%) of the proportionate share, representing the proportion each party contributed to the value of this Easement. The proportionate share of the State Grantee also includes \_\_\_\_\_ percent (\_\_\_\_%) of the appraised value of this Easement, donated by the Grantor to the State Grantee.

Until such time as the State Grantee and the United States receive their proportionate shares from the Grantor or the Grantor's successor or assigns, the State Grantee and the United States shall each have a lien against the Protected Property for the amount of the proportionate share due to each of them. If proceeds from the extinguishment, termination or condemnation are paid directly to either the United States or the State Grantee, the entity receiving the payment shall reimburse the other for the amount of its proportionate share due. All monies credited to the Ohio Department of Agriculture shall be deposited into the Agricultural Easement Purchase Fund.

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 in compliance with all applicable laws and regulations in the sole and exclusive judgment of the Grantees and the United States, by and through the Chief of NRCS. 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. Such amendment or modification of the Easement shall be in the form of a Corrective Deed of Easement. The Grantees must provide timely written notice to the Chief of NRCS of the proposed amendment(s). Any purported amendment that is recorded without the prior approval of the United States will be considered null and void.

9. Perpetual Burden

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

10. Transfer or Assignment of Easement

Upon prior written consent from the United States and the Grantees, this Easement may be assigned or transferred by the Grantees 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 Grantor's 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 and/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 Grantees, their successors, agents and assigns, of any such conveyance in writing within fifteen (15) days after closing.

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 Grantees are 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]

**Local Grantee:** [Insert Name of Cooperating Entity/address]

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

**United States:** United States Department of Agriculture  
Natural Resources Conservation Service  
200 North High Street, Room 522, Columbus, Ohio 43215.

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 State Grantee, with a copy available on file with the Local Grantee.

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, the Ohio Court of Claims, or if by the United States in the appropriate Federal Court.

19. No Merger

In the event that either of the Grantees take 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 Grantees 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.

**TO HAVE AND TO HOLD** the above-described Agricultural Easement to the use, benefit, and behalf of the Grantees, and the United States 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 \_\_\_\_\_ 2016 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 Local Grantee**

**NAME OF LOCAL GRANTEE**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Acknowledgement**

State of Ohio  
County of \_\_\_\_\_) ss.:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, acting for and on behalf of \_\_\_\_\_, State of Ohio, 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: FOR NONPROFITS**

**Acknowledgement**

State of Ohio  
County of \_\_\_\_\_) ss.:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, acting for and on behalf of \_\_\_\_\_, an Ohio nonprofit corporation, 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:

**Acceptance by State Grantee**

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 \_\_\_\_\_, 2016, 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:

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

1/15/2016