

**STATE OF OHIO
DEPARTMENT OF AGRICULTURE**

PURCHASE AGREEMENT FOR EASEMENT

This Purchase Agreement (“Agreement”) is entered into by [SELLER’S NAME] (hereinafter “Seller”), [SELLER’S ADDRESS], and the State of Ohio, acting by and through the Department of Agriculture (“ODA”), and the [LOCAL SPONSOR’S NAME] (“Local Sponsor”).

1. **PURCHASE.** Upon the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell and ODA and Local Sponsor agree to purchase (“Purchase”), under the terms and conditions hereinafter set forth, an Agricultural Easement (“Easement”) in the approximately _____ acre(s) of land which is located in _____ County, [STREET ADDRESS] in [CITY, STATE] and which is further described in the legal description attached hereto as Exhibit A (“Property”). It is the purpose of this Easement to assure that the Property will be retained in agricultural use, as that term is defined by Ohio Revised Code (“R.C.”) 5713.30, by preserving and protecting its agricultural soils identified in Exhibit A and agricultural viability through a perpetual restriction on the use of the Property. For the purposes of this Agreement, Property will be deemed to refer to not only the described land but also all rights and interests in said land, including without limitation all water and mineral rights, development rights, rights-of-way, utility agreements and improvements located on or related in any way to such land.

2. **PURCHASE PRICE:** The purchase price of the Easement is expected to be \$[_____] (WRITTEN OUT DOLLAR AMOUNT and 00/100 Dollars), or \$[_____] per acre. Of the total purchase price, ODA shall contribute \$[_____] (WRITTEN OUT DOLLAR AMOUNT and 00/100 Dollars). The expected purchase price is based on a calculation of the expected contribution from the Agricultural Land Easement (ALE) program administered by the Natural Resources Conservation Service (NRCS). Landowner must complete all requirements of the ALE program in addition the requirements provided by ODA in order to qualify for the purchase price specified above. After ODA receives an executed copy of this Agreement, ODA will verify the information which was submitted by the Seller. The final purchase price will be based upon ODA’s policies as applied to the verifiable facts in Seller’s application.

It is expressly understood by Seller that this Purchase is contingent upon the availability and receipt of all necessary funds from the appropriate State and Federal Agencies and all necessary approvals by the General Assembly and by the Controlling Board of the State of Ohio, when required, and is further contingent on the acquisition of any necessary funds from other non-state financing sources for purchase monies. Further the Purchase is contingent on Seller’s performance of all of its obligations under this Agreement.

3. **DUE DILIGENCE PERIOD:** ODA shall have such time to perform due diligence on the Property to review title work and any other aspects of the property to determine the property’s suitability for Purchase. ODA shall be granted until June 30, 2015, with the option of renewal for two, one (1) year terms in the sole discretion of ODA, commencing upon the execution of this Agreement by both parties. Seller agrees not to sell or transfer, or negotiate to sell or transfer the Property; or otherwise offer the Property for sale for grant any type of license, option, easement or other rights in and to the Easement during the option period. No modifications to this Agreement are permitted unless otherwise agreed to in writing by both parties.

4. **EXERCISE OF PURCHASE:** For the purpose of inducing ODA to enter into this Agreement, Seller

agrees, represents, and warrants:

- (A) That Seller is legally bound and has full right, power and authority to convey the Easement in said Property to the State of Ohio, Department of Agriculture and Local Sponsor in accordance with the terms of this entire agreement as set out herein, and has marketable fee simple title to the Property.
- (B) Seller has not received any notice of, nor has knowledge concerning, any adverse parties in possession of the Property, proceedings (including but not limited to eminent domain and foreclosure) against the Property or Seller, or public improvements or utilities contemplated to be placed on the Property, or any petitions now or in the future to subdivide or split off the Property.
- (C) That the Property is free of all liens and encumbrances except as shown on the title commitment or disclosed to ODA, and Seller has not and will not take any action which would result in any liens or encumbrances against the Property prior to the Closing, including but not limited to any type of mortgage, easement, permits, rights-of-way, or any other license against any right in the Property. This includes but is not limited to any rights granted to utilities and septic systems or for the building of roads or other improved surfaces.
- (D) That all laws, ordinances, rules, regulations and court orders (including, but not limited to, those relating to zoning, building, fire, health, safety, taxes, and environmental conditions and protection) of any applicable governmental agency or other party bearing on the Seller's ownership, operation or use of the Property or any part thereof, have been or will, prior to Closing, complied with by Seller.
- (E) That the Property is not currently used and will not be used for industrial or commercial activity beyond the production of agricultural products from the Property, and no further buildings other than for agricultural production are currently planned or will be built without further permission from ODA.
- (F) That Seller has consulted with legal counsel or has otherwise settled any estate planning matters regarding the disposition of the Property upon his death, and no further transfer or conveyance of the Property in furtherance of such planning is anticipated at this time. Seller acknowledges upon execution of this Agreement the Property, cannot be split off or otherwise broken apart, and must be conveyed as a single piece in any transfer or conveyance.
- (G) That there are no hazardous materials (including but not limited to any chemical, pollutant, contaminant, waste, toxic substance or petroleum product regulated by law or regulation) located on the Property and neither Seller, nor any previous owner of the Property, has ever violated or received any notice of the claimed violation of any federal, state, or local law or regulation relating to the health, safety or environment, including without limitation, the Clean Air Act, the Clean Water Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act. Seller agrees that it will hold ODA and Local Sponsor harmless from any and all liability or expense arising from violation of environmental laws and regulations.
- (H) Prior to the Closing, and with prior notice to Seller, ODA or its agents may enter the Easement at reasonable times for the purpose of preparing the Present Condition Report, conducting investigations, surveys, tests, and inspections as ODA may desire.

- (I) The acts of obtaining a prepared Easement and obtaining the evidence of title will be done by ODA or its agent. The cost of the Easement preparation and obtaining the evidence of title shall be borne by the Seller. The Seller will be responsible for all closing costs. Seller will cooperate with ODA and Local Sponsor in their efforts to obtain the Easement and timely respond to any requests for information.
- (J) Seller certifies that it has not given nor promised to give anything of value to any public official or employee of ODA or any other board, commission, or agency of the State of Ohio. Seller also certifies that it is in compliance with and will remain in compliance with all of the provisions of Ohio Ethics Law as provided by Ohio Revised Code Sections 102.03 and 102.04.

If ODA exercises the Purchase, then each of the representations and warranties set forth in this Paragraph will be deemed to have remade by Seller as of the Closing Date. ODA's remedies for Seller's breach before Closing shall be provided elsewhere in this Agreement.

5. **TERM AND CONDITION OF SALE:** Upon execution of this Agreement, the sale of the Easement will be completed as follows:

- (A) **Conveyance:** Seller shall convey the Easement on the Property to the Director of the Ohio Department of Agriculture by a deed of easement with release of dower, if any. The Property which the Easement will be on must also be free and clear of any and all liens, encumbrances, mortgages and other easements that affect this Easement, other than those permitted by ODA. Once the above requirements are met and the Easement interest is recorded, Seller shall receive payment of the purchase price. Seller shall indemnify, defend and save harmless ODA, Local Sponsor, and their respective agents and employees, from any claims, demands, injuries, suits, actions, proceedings, losses, costs and damages and attorney fees arising out of the actions and omissions of Seller, its employees and/or agents or contractors, in the completion of the activities under this Agreement or relating to this Agreement. This Article shall survive any termination of this Agreement.

NOTE: Any liens, encumbrances, mortgages and easements allowed to remain must be subordinated in accordance with the policies of the Department of Agriculture before payment of the purchase price is permitted.

- (B) **Taxes:** The Seller shall remain obligated for the payment of real estate taxes and assessments on the described Property as determined by the Auditor of the County. However, the Seller may apply to the County Auditor for any reduction in real estate taxes that may result from the execution of the Easement. Taxes shall not be apportioned between the Seller and ODA. The risk of loss to the Property shall remain with Seller before and after the sale of the Easement.
- (C) **Title, Appraisal and Survey:** ODA will obtain, at the Seller's expense, a title guaranty, title insurance as evidence of the title to be conveyed hereunder, and if necessary, an appraisal. ODA may require the Seller to have the Property surveyed by a duly licensed surveyor at the Seller's expense, if ODA determines that the boundaries of the Property are not sufficiently described to enforce the Easement or if a survey is required to record the Easement. Release of payment is subject to approval by ODA's Legal Section of the title information contained hereunder, including restrictions, reservations, conditions, agreements and easements of

record, if any, and zoning ordinances, if any. If the title commitment or survey discloses any exception to title which ODA in the exercise of its reasonable judgment finds unacceptable, the Seller shall have a reasonable time period, not to exceed one hundred and eighty days (180) to cure the exception to title. If Seller fails to cure the exception, then Seller shall be considered in breach of this Agreement, and this Agreement shall terminate. ODA's remedies for breach are described in Paragraph 6 of this Agreement.

The Seller's application may be submitted to the United States Department of Agriculture's ("USDA") Natural Resource Conservation Service ("NRCS") for partial reimbursement under the Agricultural Land Easement Program ("ALE") for the purchase of the Agricultural Easement. If Seller's application is submitted to USDA/NRCS, compliance with ALE requirements will be required.

(D) **Signs:** ODA may, at the State's expense, provide one or more signs to the landowner to erect on the property designating the farmland as being preserved with an agricultural easement.

6. **CONTINGENCY AND BREACH:** Seller may, upon thirty (30) days written notice, terminate this Agreement at any time prior to execution of the deed of Easement. In the event that Seller breaches or otherwise terminates this Agreement, ODA shall be entitled to return and/or payment by Seller of all its costs expended under this Agreement, including but not limited to any title search or other title costs, surveys or any other cost or expense incurred as related to this Agreement. ODA's obligation to purchase the Property is contingent upon the Seller's performance of all its obligations under this Agreement, that the Property is suitable for ODA's intended use, and all of Seller's representations and warranties being true and correct as of the date of the Closing.

Breach for the purposes of this Agreement shall specifically include but is not limited to any violation of any representations or warranties herein or any other material provision of this Agreement. No term or provision of this Agreement shall be deemed waived and no breach excused unless the waiver of consent is in writing and signed by both parties to this Agreement.

7. **CLOSING:** The closing will occur, if at all, at such specific date, time and place as are mutually agreed to by ODA and Seller. At the option of ODA, the closing of the transaction contemplated hereunder may be affected by the delivery by Seller and ODA of all closing documents and other required deliveries into escrow with an appointed Escrow Agent, and the Escrow Agent's holding, recordation and disbursement of all such closing documents and deliveries in accordance with escrow instructions.

8. **CLOSING OBLIGATIONS:** Seller's sale of the Easement to ODA will be effected by Seller and ODA taking the following described obligatory actions at Closing:

(A) **Purchase Price Payment:** ODA will pay the Purchase Price to Seller. The amount of such payment will be adjusted in the manner contemplated in Paragraph 2 of this Agreement.

(B) **Transfer of Easement:** Seller will execute and deliver to ODA a general deed of easement free and clear of liens and encumbrances other than as agreed by ODA.

(C) **Entity Resolutions:** If Seller is an entity (such as a corporation, limited liability company, or partnership), then Seller will execute an entity resolution affirming the authority of such party to enter into the transaction contemplated in this Agreement and further authorizing an

individual officer or representative of such party to execute this Agreement and all closing documents in the name and on behalf of such party.

- (D) **Closing Statement:** Seller and ODA will execute and deliver to the other a closing statement which sets forth the economics of ODA's purchase of the Easement from Seller, including the amount of the purchase price and all those closing credits, charges and other adjustments specified herein. Seller will execute and deliver to each other such other documents as are reasonably requested by ODA to further evidence or effect the sale of the Easement to ODA in the manner contemplated in this Agreement.
- (E) **Closing Costs:** Seller will pay all of the following closing costs:
- a. All premiums and other charges required to permit the title company to issue the title insurance policy;
 - b. All costs required to permit the surveyor to issue and certify the survey;
 - c. All recording fees associated with the recording of the general easement deed; and
 - d. All costs associated with due diligence as conducted by Local Sponsor and/or ODA.
9. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement of the parties and no prior oral or implied agreements or representations shall be binding on the parties hereto, and all rights and obligations shall accrue to and be binding on the heirs, executors, administrators, successors, and assigns of the parties hereto. Seller may not assign this Agreement at any time. This Agreement may be executed in counterparts, each of which will be deemed an original, and all such counterparts will collectively constitute a single agreement. This Agreement shall be construed in accordance with the laws of Ohio, and the parties irrevocably agree to venue in Franklin County, Ohio, or the Ohio Court of Claims, as applicable, and waive any claims as to convenience of forum. Any notices required or permitted to be given under this Agreement must be in writing and delivered to Seller or ODA at the address set forth above, and must be sent by certified mail, personally delivered, or by email or facsimile transmission with proof of delivery. A facsimile signature or other similar electronic reproduction of a signature shall have the force and effect of an original signature, and in the absence of an original signature, shall constitute the original signature. The provisions of this Agreement 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. The headings of this Agreement, including the name of this Agreement, are for informational purposes only and should not be construed against either party or otherwise used to determine the meaning of any section of this Agreement.

ACKNOWLEDGEMENTS:

IN WITNESS WHEREOF, the Seller, who hereby further agrees to release all right and expectancy of dower in said premises, have hereunto set his/her/their hand(s) this _____ day of _____, 20__.

SELLER:

[NAME OF SELLER]

[NAME OF SELLER]

STATE OF OHIO,

County of _____, Ohio, ss

I certify that on this date before me, a notary public duly authorized in the state and county named above to take acknowledgements, personally appeared _____, who is/are known to me and who executed the foregoing instrument, and who acknowledged before me that he/she/they executed the same as his/her/their own free act and deed, for the use and purpose stated therein. IN TESTIMONY WHEREOF, I have hereunto subscribed my name at _____,

Ohio, this _____ day of _____, 20__.

Notary Public

**OHIO DEPARTMENT OF
AGRICULTURE (ODA):**

David T. Daniels, Director

STATE OF OHIO,

County of _____, Ohio, ss

I certify that on this date before me, a notary public duly authorized in the state and county named above to take acknowledgements, personally appeared David T. Daniels, who is known to me to be the Director of the Ohio Department of Agriculture and who executed the foregoing instrument on behalf of the Ohio Department of Agriculture.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at _____, Ohio, this
_____ day of _____, 20__.

Notary Public

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