

2011 FORMAT

**OHIO AGRICULTURAL EASEMENT PURCHASE PROGRAM
AND
FARM AND RANCH LANDS PROTECTION PROGRAM**

Agricultural Easement

Under Cooperative Agreement 735E3412076 between
The [Ohio Department of Agriculture](#) and The United States of America

This Agricultural Easement (“Easement”), dated _____, 2013, is made and entered into by and between **(NAME OF LANDOWNERS/CORPORATION)**, **(address)** (“Grantor”), the Director, Ohio Department Of Agriculture, 8995 East Main Street, Reynoldsburg, Ohio, 43068 (“State Grantee”), the **(Insert Name of Local Grantee and address)** (“Local 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 for the purpose of forever conserving the agricultural productivity of the Property and its value for food production, resource preservation and as open space. 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)**. 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 following provisions apply to this Easement:

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

A. Protected Property and Title Warranty

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

B. Agricultural Value and Use

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

C. Conservation Plan

As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct agricultural operations on highly erodible land on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and the Conservation District. 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 on the date of this Deed of Agricultural 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. NRCS 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.

In the event of noncompliance with the conservation plan, NRCS 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, NRCS will inform Grantees of the Grantor's noncompliance. 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 NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of Grantor's or Grantor's heirs, executors, personal representatives, successors or assigns' negligence or failure to comply with the Conservation Easement requirements as it relates to Conservation Plan violations

If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed of Agricultural Easement based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

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. §§ 3838h-i, for the purpose of protecting topsoil by limiting nonagricultural uses of the land.

E. Agricultural Preservation Programs

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

conservation policy to preserve and protect viable agricultural land. The Grantor intends that this Easement will confine the use of the Protected Property, in perpetuity, to activities that are consistent with the Purpose of this Easement. Ohio's policy to preserve and promote agriculture and agricultural land is further reflected in the enactment of R.C. 901.21 and 901.22 which allow, inter alia, the Director of the Ohio Department of Agriculture to acquire agricultural easements by gift, devise or bequest, and to establish a procedure for awarding matching grants for the purchase of agricultural easements. These sections also provide that the Director shall monitor Ohio's agricultural easement program to evaluate its effectiveness and efficiency as a farmland preservation tool. Additionally, this policy is reflected in R.C. 901.54, which creates the Office of Farmland Preservation within the ODA to actively preserve farmland and encourage and assist others in doing so. The grant of this agricultural easement is 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.

The purpose of the Federal Farm and Ranch Lands Protection Program ("FRPP"), 16 U.S.C. 3838h and 3838i, is to protect prime, unique, or statewide and locally important soils or historic and archaeological resources on farmland from conversion to non-agricultural uses. The grant and acceptance of this agricultural easement is also pursuant to the clearly delineated federal conservation policy to protect topsoil by limiting nonagricultural uses of the land as evidenced by the Food, Conservation, and Energy Act of 2008.

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 agricultural use 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 Commercial Activity – There shall be no commercial activity undertaken or allowed on the Protected Property. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.
- 2.2 Construction on the Protected Property – There shall be no construction of new buildings or structures or placing of any dwelling, residence, building, athletic or recreational structure, landing strip, helicopter pad, fence or sign, asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit line, or any other temporary or permanent structure or facility on the Protected Property, except as provided in Paragraph 3 below.
- 2.3 Agricultural Subdivision – The legal subdivision of the Protected Property, recording of a subdivision plan, partition, or any other division of the Protected Property into two or more parcels, 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 and shall remain a part of the Protected Property.

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

Notwithstanding the foregoing prohibition, if the Protected Property meets the large farm exception as described in the ODA, Office of Farmland Preservation's Clean Ohio Agricultural Easement Purchase Program, 2011 Guidelines and Policies set forth in Paragraph 2.3.1 below, and only upon prior written application to and approval of NRCS and the Grantees pursuant to the Guidelines and Policies, Grantor is permitted one legal subdivision of the Protected Property.

- 2.3.1 Large Farm Exception Policy – ODA's 2011 Clean Ohio AEPP large farm exception policy allowed the landowner of this farm to request an exception based on the farm ***[Choose one: value OR size]***. The Director of ODA, in his discretion, granted this exception. The Director's approval

was obtained prior to the submission of the application and a copy of such approval was submitted with the other required attachments.

[Choose one of the paragraphs below]

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

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

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

- 2.4 Mining – Mining or extraction of soil, sand, gravel, oil, natural gas or other mineral is prohibited, except as permitted under Paragraph 3.13 below. Additionally, Grantor may extract soil, sand and gravel solely for a permitted use on the Protected Property in a manner consistent with the Purpose of this Easement. The disturbance from such extraction of soil, sand or gravel as permitted in this Paragraph shall not exceed one acre and be located in a position so as to minimize adverse effects to prime and/or unique soils.
- 2.5 Water – Grantor shall retain all water rights necessary for present or future agricultural production on the protected property and shall not transfer, encumber, lease, sell, or otherwise separate water rights from title to the Protected Property itself.
- 2.6 Waste and Dumping – Dumping, accumulation, or storage of contaminated soil, non-compostable garbage, abandoned vehicles or parts, appliances, machinery, hazardous substances, or toxic or hazardous waste is prohibited. The storage and/or composting of agricultural products, byproducts generated on the Protected Property, and agricultural equipment used on the Protected Property is permitted, provided that such storage and/or composting is done in accordance with all applicable federal, state and local laws and regulations and in such a manner so as to not impair the conservation purpose of this Easement.
- 2.7 Storage Tanks – The installation and use of above or below ground storage tanks is permitted for the purposes of operating the farm provided that the installation and use of these tanks are in compliance with all state and federal laws and are installed and operated in such a manner so as to not impair the conservation purpose of this Easement, and provided that the installation and use are not in conflict with any other term or provision of this Easement.

- 2.8 Roads – There shall be no building of new roads, parking lots, or other paved surfaces, or the widening of such existing surfaces, except on the Homestead identified in the Report, local or state highway rights-of-way and those improvements permitted under Paragraph 3.11 below. Any building of roads under this Paragraph is subject to the impervious surface limitation in Paragraph 2.9 below.
- 2.9 Impervious Surfaces – Is defined as a surface that does not permit the absorption of fluids into the soil under natural conditions. Common impervious surfaces include, but are not limited to: Roofs, walkways, patios, roads, parking lots, storage areas, which are paved, or made of packed or oiled earthen materials or other surfaces which similarly impede the natural infiltration of fluids into the soil. The amount of impervious surface shall not exceed 2 percent of the easement area. The following activities are not considered impervious surfaces for the purposes of this easement: Roads and parking lots with soil or gravel surfaces, conservation practices identified in the NRCS Field Office Technical Guide and in a conservation plan for the subject farm or ranch, and temporary greenhouses that cover the soil surface for less than 6 months. Impervious surface shall not exceed two percent (2%) **[or insert amount allowed by waiver]** of the Protected Property.
- 2.10 Utility Services and Septic Systems – Activities described in the existing utility easements or rights-of-way recorded in the Official Land Records in (**County Name**) County at _____ (**Example: 268, Page 428**), are permitted under this Easement. Except as permitted by Paragraph 3.10 below, the **Grantor is expressly prohibited from seeking or granting easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunication towers, or wind farms over, across, under or through the Protected Property.** In the event that the Grantor receives any communication from a utility company or its agent about acquiring such an easement or right-of-way, the Grantor shall promptly notify the Grantees and provide to the Grantees copies of any relevant correspondence. Notwithstanding the foregoing, the Grantor may install utilities for permitted uses of the Protected Property that are not inconsistent with the Purpose of this Easement.

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

[Drafting Note: The following paragraph will only be used as an alternate 2.10 for farms with no existing utility easements or rights-of-way]

2.10 Utility Services and Septic Systems – Except as permitted by Paragraph 3.10 below, the **Grantor is expressly prohibited from seeking or granting easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunication towers, or wind farms over, across, under or through the Protected Property.** In the event that the Grantor receives any communication from a utility company or its agent about acquiring such an easement or right-of-way, the Grantor shall promptly notify the Grantees and provide to the Grantees copies of any relevant correspondence. Notwithstanding the foregoing, the Grantor may install utilities for permitted uses of the Protected Property that are not inconsistent with the Purpose of this Easement.

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

2.11 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.

2.12 Surface Alterations – Unless otherwise permitted in this Easement there shall be no removal, filling, or other disturbances of soil surface, and no changes in topography, surface or subsurface water systems, wetlands, or natural habitat unless they are in accordance with the Conservation Plan referenced in Paragraph C above and general agricultural uses of the Protected Property.

2.13 Commercial Recreational Use – There shall be no commercial recreational use of the Protected Property except (i) those uses considered “de minimus” according to the provisions of Section 2031(c)(8)(B) of the U.S. Internal Revenue Code, as amended, (ii) those uses to which the State Grantee consents after a determination that they are consistent with the Conservation Plan, the goals of the Ohio Agricultural Easement Purchase Program and the soil conservation purpose of this Easement, (iii) those uses that do not require infrastructure on the Protected Property and (iv) those uses permitted in Paragraph 3.9 below.

3. Grantor's Reserved Rights

The Grantor reserves for himself, his heirs, successors and assigns, all rights and privileges of ownership of the Protected Property to use the Protected Property for all purposes that are not inconsistent with the Purpose of this Easement and not expressly prohibited by this Easement. Although the Grantor need not obtain approval of the Grantees in order to exercise any reserved rights in this Paragraph, unless otherwise stated herein, the Grantor hereby agrees to notify the Grantees 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 Grantees in accordance with Paragraph 16 below.
- 3.2 Right to Farm – Grantor retains the right to farm, or to permit others to farm, in accordance with applicable local, state and federal laws and regulations and the Conservation Plan identified in Paragraph C above.
- 3.3 Agricultural Education Programs and Agri-tourism – As a part of the agricultural activities of the farm, the Grantor reserves the right to conduct or authorize another party (individual or organization) to conduct educational programs and public field days on the Protected Property for the purpose of teaching about agricultural practices and promoting awareness of agriculture, as long as it does not affect the agricultural values or status of the Protected Property, and does not adversely affect the soils of the Protected Property. Grantor is permitted on a case by case basis as approved by the Grantees to engage in agri-tourism including, but not limited to, farm tours, work experiences, field trips, petting zoos, corn mazes and hay rides.
- 3.4 Right to Privacy – Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property.

Notwithstanding this provision, the Grantees and NRCS shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with Paragraph C above and Paragraph 5.3 below.

- 3.5 Right to use the Protected Property for Customary Rural Enterprises – Grantor retains the right to use the Protected Property for otherwise lawful and customary rural enterprises including, but not limited to: processing, packaging and

marketing of farm products primarily produced on the Protected Property; farm machinery repair; roadside market stands; and riding stables, so long as these uses do not adversely affect the soils or agricultural values of the Protected Property and are subordinate to the agricultural and residential use of the Protected Property. The enterprises must be conducted in: 1) existing buildings on the Protected Property so long as the existing buildings and building sites are not expanded; or 2) in buildings required for the agricultural use of the Protected Property, or residences in which full time employees or family members of the owner of the Protected Property or farm operator reside.

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

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

OPTION A:

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

OPTION B:

- 3.7 Existing Personal Residence – There is no existing personal residence on the Protected Property.
- 3.8 Agricultural Structures and Improvements – The existing agricultural structures and improvements included in the Report in Exhibit B may be repaired, enlarged and/or replaced at their current locations as shown on the Report, without any further permission from the Grantees. New buildings and other structures and improvements, not including any residence, dwelling or farm labor housing, to be used predominantly for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Protected Property, may be built on the Protected Property with permission of the Grantees, not to be unreasonably withheld. Such construction shall be necessary for the operations and shall be sited so long as their location does not negatively impact prime, unique or important soils and every effort shall be made to locate the aforesaid future improvements within one hundred (100) feet of existing roadway.

Subject to the Grantees prior written approval the Grantor, or its successors and assigns may construct housing for necessary full-time farm labor.

3.9 Recreational Structures/Activities

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

3.9.2 New Recreational Structures – New recreational activities and structures are permitted as long as they do not impact the soils or the agricultural operations and are consistent with the Purpose of this Easement. New recreational structures may be built for the Grantor’s personal use within the area identified as the Homestead on the Report in Exhibit B without further permission of the Grantees. Recreational activities that require infrastructure outside the Homestead are prohibited unless written permission is granted in advance by the State Grantee.

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

3.10 Renewable Energy – To promote the use of renewable energy sources on the Protected Property, Grantor may, only with prior written approval of the State Grantee, add renewable energy facilities on the Protected Property for the purpose of generating energy predominantly for the agricultural and residential needs of the Protected Property. Such renewable energy facilities must be built and maintained in accordance with any local zoning ordinance and applicable Ohio and Federal law, including but not limited to the regulations of the Public Utilities Commission of Ohio and the Federal Energy Regulatory Commission. Grantor

may sell any excess electricity generated to the local electric utility grid. Grantor must obtain permission from State Grantee for the installation of renewable energy facility(ies). A written request for permission to install renewable energy facility(ies), which includes the justification, must be submitted to State Grantee for each desired installation.

The energy facilities, access roads, and any other related improvements shall be situated, constructed, and maintained pursuant to a plan approved by the State Grantee. A copy of this plan will be provided to the NRCS State Conservationist within 30 days of the State Grantee's approval. Such plan shall be designed to comport with the Purpose of this Easement, minimize adverse effects on soils and the agricultural value of the Protected Property, and be in accordance with the terms and conditions set forth in this Easement.

- 3.11 Roads – Grantor shall have the right to construct and maintain unpaved farm roads that are necessary for agricultural operations and permitted uses on the Protected Property by this Easement. Grantor shall also have the right to construct and maintain paved roads pursuant to Paragraph 2.9 above. All existing roads may be maintained and repaired in their current state.
- 3.12 Water – Grantor shall retain and reserve the right to use any appurtenant water rights necessary and sufficient to maintain the agricultural productivity of the Protected Property.
- 3.13 Oil and Gas Exploration and Extraction – To the extent permitted under Section 170(h)(5) of the U.S. Internal Revenue Code and applicable Treasury Regulations, Grantor may undertake subsurface exploration, development and extraction of oil and gas as permitted in this Paragraph. Grantor is permitted to undertake subsurface exploration if the method of extraction will be from outside of the easement area. Any such extraction from outside the easement area must result in no damage to the surface of the easement area. The Grantor may submit a written request to the Grantees and United States for approval of extraction methods within the easement area. Exploration and extraction activities must be conducted in accordance with State and local regulations with minimal impact on the Protected Property and the agricultural operation. The Grantees and United States must be unanimous in granting any approval for such a request. 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.

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

OPTION A (no new house):

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

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

3.14.1 Notwithstanding the foregoing, if the Protected Property is subdivided pursuant to the large farm exception in section 2.3.1 above, one new single-family house with residence-related appurtenances such as attached or detached garages, septic systems, utilities, underground pipes and wires, or overhead wires, is permitted on the subdivided portion of the Protected Property that does not include the existing residence subject to the impervious surface limitations referenced above. The new residence must be built for the use of family members working full time on the Protected Property or full time workers on the Protected Property.

OPTION B (one new house with marked Homestead):

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

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

3.16 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.

3.17 All structures and improvements are subject to the impervious surface limitation in Paragraph 2.9 above.

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.

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 Conservation Plan for the Protected Property.

4.6 Investigation – The Local Grantee is responsible for investigating potential violations of this Easement and taking appropriate enforcement action pursuant to Ohio Adm. Code 901-2-11. 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 – Under this Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (“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 fail to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event NRCS determines it must exercise its Right of Enforcement, NRCS will provide written notice, by certified mail, return receipt requested, to Grantee or Grantee's, Grantee's successors and/or assigns last known address. The notice will set forth the nature of the noncompliance by the Grantee and a 60-day period to cure. If Grantee fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in the land it seeks to protect.

- 5.3 Right of Entry – The Grantees and NRCS, and their agents, successors and assigns shall have the right to enter the Protected Property in a reasonable manner and at reasonable times for the purposes of: (i) inspection of the Protected Property to determine if the Grantor, or his heirs, successors or assigns are complying with the provisions of this Easement; (ii) obtaining evidence for the purpose of seeking judicial enforcement of this Easement; and (iii) ensuring Conservation Plan implementation and compliance.
- 5.4 Right to Enforcement Costs – All reasonable costs incurred by the Grantees and the United States in enforcing the terms of this Easement including, but not limited to, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by the Grantor. It is understood by the parties that if Grantor ultimately prevails in a judicial enforcement action, the Grantees shall pay all

reasonable costs, however, if the United States exercises its rights described in Paragraph 5.2 above, this sentence shall be of no effect.

- 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. 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. 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.
7. 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.
8. Transfer of Protected Property
Grantor agrees that upon transfer of the Protected Property, or interest in the Protected Property, from one landowner to another, the terms, conditions, restrictions and Purpose of this Easement will either be referenced in or inserted into any subsequent deed or other legal instrument by which the Grantor divests himself of any interest in all or part of the Protected Property, and be binding upon the parties of the subsequent deed or other legal

instrument. The Grantor agrees to notify the Grantees, their successors, agents and assigns, of any such conveyance in writing within fifteen (15) days after closing.

9. Extinguishment or Termination of Easement

The United States shall receive, at the time the Agricultural Easement is extinguished or terminated, its share of the Agricultural Easement based on the appraised fair market value of the Agricultural Easement at the time the Agricultural Easement is extinguished or terminated. The United States' share shall be proportionate to its percentage of its original investment.

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

This Easement constitutes a real property interest immediately vested in the Grantees and the United States. This Easement may only be extinguished or terminated by a court of competent jurisdiction upon a request to terminate made by 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 _____ 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 purchase price (FILL IN \$) by the fair market value of the Protected Property without this Easement (FILL IN \$FMV).

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 certified appraisal 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.

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.

10. Environmental Warranty

Grantor warrants that Grantor is in compliance with, and shall remain in compliance with all applicable Environmental Laws. 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 on, at, beneath or from the Protected Property exceeding regulatory limits.

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 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 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 Grantees shall be responsible for any Hazardous Materials contributed by Grantees 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.

11. Indemnity

Grantor shall indemnify, defend, and hold harmless Grantees and the, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, but not limited to, court costs, reasonable attorneys' fees and attorneys' fees on appeal) to which Grantees or the United States may be subject or incur relating to the Protected Property, which may arise from events including, but not limited to, Grantor's negligent acts or omissions, Grantor's breach of any representation, warranty, covenant, agreement contained in this Easement, or violations of any federal, state or local law, including all Environmental Laws as that term is defined in Paragraph 10 above.

Grantor shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and 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, 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 Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Agricultural Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws as the term is defined in Paragraph 10 above.

12. Amendment or Modification of Easement

This Easement may be amended or modified only if such amendment or modification furthers or is consistent with the Purpose of this Easement in the sole and exclusive judgment of the Grantor, the Grantees and the United States. Any amendment or modification must be mutually agreed upon by all parties to this Easement, comply with all applicable laws and regulations, and be signed and duly recorded by the parties to this Easement. The United States must receive timely notice of the proposed amendment or modification prior to signing and recordation. No amendment shall be made without the express written approval of NRCS).

13. Boundary Line Adjustments

Boundary line adjustments are permitted only in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed two acres for the entire Protected Property. A correction deed containing the revised legal description shall be properly executed and duly recorded.

14. Subordination

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

15. Re-Recording

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

16. Notices

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

Grantor: [Insert contact name/address]

Local Grantee: (Insert Name of Cooperating Entity and 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.

17. Severability

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

18. Entire Agreement and Waiver

This Easement sets forth the entire agreement between the parties hereto, and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically

agreed upon in writing by the parties hereto. This Easement supersedes all prior discussions, negotiations, understandings, or agreements between the parties relating to this Easement, whether written or oral. Originals and supporting documentation are on file with the 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.

19. Termination of Rights and Obligations

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

20. Governing Law

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

21. 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.

22. Rules of Convenience

For convenience, masculine pronouns used in this document include the feminine and neuter pronouns, and the singular tense includes the plural tense. Additionally, all references to either Grantor or 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 _____ 2013 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 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 _____, 2013, 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:

Acceptance by Local Grantee

Local Grantee: **Add Name Here**

Signature: _____

Printed Name: _____

Title: _____

Acknowledgement

State of Ohio
County of _____)ss.:

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____, acting for and on behalf of _____, who acknowledged that they executed the same for and on behalf of that local jurisdiction and that they did so on their, the local jurisdiction’s own free act and deed.

Notary Public
My Commission Expires:

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____, acting for and on behalf of _____, an Ohio nonprofit corporation, who acknowledged that they executed the same for and on behalf of that corporation and that they did so on their, the corporation’s own free act and deed.

Notary Public
My Commission Expires:

Acceptance by the United States

The Natural Resources Conservation Service, United States Department of Agriculture, an agency of the United States Government, hereby accepts and approves the foregoing Agricultural Easement deed, and the rights conveyed therein, on behalf of the United States of America.

Authorized Signatory for the NRCS

Printed Name: _____

Title: _____

Acknowledgement

State of Ohio
County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, acting for and on behalf of the Natural Resource Conservation Service, who acknowledged that (s)he executed the same for and on behalf of that Agency and the United States of America and that (s)he did so on her/his, 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

2-1-13

Exhibit A
Easement Boundary Description

SAMPLE

Exhibit A-1
Easement Area Ingress Egress Description

SAMPLE

Exhibit A-2
Easement Boundary Map

SAMPLE

Exhibit B
Baseline Documentation a.k.a Present Condition Report

SAMPLE