

OHIO AGRICULTURAL EASEMENT PURCHASE PROGRAM

Deed of Agricultural Easement

State of Ohio

This Deed of Agricultural Easement (hereinafter referred to as the “Easement”) dated as of _____, 2009, is made and entered into by and between **(INSERT LANDOWNER NAME(s)), (INSERT ADDRESS)**, (hereinafter referred to as the “Grantor”), and the **Director, Ohio Department of Agriculture**, 8995 East Main Street, Reynoldsburg, Ohio, 43068, (hereinafter referred to as the “State Grantee”), along with the **(INSERT SPONSOR NAME)** in **(INSERT COUNTY)** County, Ohio, (hereinafter referred to as the “Local Grantee”). Both the State Grantee and the 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 the Easement. Specifically, the State Grantee agrees to purchase the Easement from the Grantor for **\$00,000.00 (INSERT DOLLAR AMOUNT and 00/100 Dollars)**. In addition, the Local Grantee agrees to monitor the property in perpetuity. The following provisions apply to this Easement:

A. Protected Property

Whereas, the Grantor is the owner in fee simple of approximately **(INSERT NUMBER OF ACRES)** acres of certain agricultural property located at **(INSERT ADDRESS), (INSERT TOWNSHIP), (INSERT COUNTY)**, County, Ohio (hereinafter referred to as

the “**Protected Property**”) more fully described in **Exhibit A** attached hereto and over which this Easement attaches. The Grantor has full authority to grant this Easement and has a good and indefeasible fee simple title to the land described in **Exhibit A** which is free and clear of all liens and encumbrances not conducive to agriculture. The Grantor claims title to the land by instruments recorded in the Official Land Records of **(County Name)** County at Official Records Book **(Ex: 268, Page 428)**.

B. Agricultural Value and Use

In particular, the Protected Property consists of land devoted exclusively to agricultural use as defined by Section 5713.30 of the Ohio Revised Code and is valued for real property taxation at its current value for agricultural uses under Section 5713.31 of the Ohio Revised Code, or that constitutes a homestead as defined by Section 901.21(A)(3) of the Ohio Revised Code. The Grantor has an interest in preserving the Protected Property for agricultural use.

C. Agricultural Practices

The Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with the United States Department of Agriculture’s Natural Resources Conservation Service (NRCS). This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect as of the date of this Easement. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS and the Grantees shall have the right to enter upon the Protected Property, at a reasonable time, in order to monitor compliance with the conservation plan. All farming operations shall be conducted in accordance with all applicable local, state and federal laws and regulations.

D. Qualified Organization

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

Purchase of Agricultural Easement

Now, therefore, in consideration of _____ **Dollars (\$ _____)** 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 Section 5301.67(C) of the Ohio Revised Code, on the Protected Property. The Grantees have the authority to accept agricultural easements pursuant to Section 901.21(A) of the Ohio Revised Code. The Easement is subject to the following terms and conditions:

1. Statement of Purpose

It is the purpose of this Easement to assure that the Protected Property will be retained predominantly in agricultural use as defined by Section 5713.30 of the Ohio Revised Code by preserving and protecting its agricultural soils as identified in **Exhibit B** – Present Condition Report and viability through a perpetual restriction on the use of the Protected Property.

2. State Agricultural Conservation Policy

State Farmland Preservation Programs - The United States Department of Agriculture's 2002 Census of Agriculture found that from 1950 to 2002 Ohio lost 1/3 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 is charged with the responsibility of protecting and promoting agriculture, including the preservation of Ohio's farmland by accepting agricultural easements in accordance with Section 901.21(B) of the Ohio Revised Code. 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 Protected Property, in perpetuity, to activities that are consistent with the purposes of the Easement. Ohio's policy to preserve and promote agriculture and agricultural land is further reflected in the enactment of the previously mentioned Section 901.21 and Section 901.22 of the Ohio Revised Code which allows, 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 and provides 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 Section 901.54 of the Ohio Revised Code, which creates the Office of Farmland Preservation within the Ohio Department of Agriculture to actively preserve farmland and encourage and assist others in doing so. The grant of this agricultural easement is exclusively for the "conservation purpose" as that term is described in Section 170(h)(4)(A)(iii) of the U.S. Internal Revenue Code, which encourages the preservation of open space, including farmland and forest land.

3. Present Condition Report

The Grantor and Grantees agree that the natural characteristics, the soil types, the physical conditions, the physical structures, and the agricultural use of the Protected Property at the time of this purchase are documented in a Present Condition Report (hereinafter referred to as the "Report") prepared by the Local Grantee and signed and acknowledged by the Grantor and a representative of the Local Grantee establishing the

condition of the Protected Property at the time of this Easement conveyance, including photographs, maps and other documents, as set forth in **Exhibit B**.

4. Prohibited Uses/Restrictions

Any activity on or use of the Protected Property inconsistent with the purposes of this Easement is prohibited. The following activities are expressly prohibited, except as provided in Paragraph 5 below:

4.1 Industrial or Commercial Activity - There shall be no industrial or commercial activity undertaken or allowed on the Protected Property, except as provided for in Paragraph 5 below. 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.

4.2 Structures - There shall be no new structures or placing of any dwelling, building, athletic or recreational structure, landing strip, helicopter pad, fence or sign (other than those signs permitted, required or allowed by the State Grantee for appropriate management, prevention of hunting or trespass, etc.), asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, telecommunication tower, tower, conduit line, or any other temporary or permanent structure or facility on the Protected Property, except as provided in Paragraph 5 below.

4.3 Agricultural Subdivision - It is the intent of the parties that the whole Protected Property at the time of this conveyance remains as a single viable farm in perpetuity. Therefore, 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 Area 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. Notwithstanding the foregoing prohibition, if subdivision occurs by any means, the terms of this easement shall be conveyed and recorded with the separate deeds.

4.4 Mining - Under no circumstances shall surface mining be permitted on the Protected Property. 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. Upon completion of the subsurface oil and gas well activities, Grantor shall promptly restore any portion of the Protected Property affected thereby as nearly as possible to its condition existing prior to commencement of the subsurface oil and gas well activities. In addition, and to the extent permitted under Section 170(h)(5) of the U.S. Internal Revenue Code and applicable Treasury Regulations, Grantor may remove sand and gravel for normal farm use on the Protected Property. However, disturbance for such removal is to be limited to one acre at any one time and located in such a manner so as to minimize adverse effects to prime and unique soils.

4.5 Topography - There shall be no ditching; draining; diking; filling; excavating; removal of topsoil, sand, gravel, rock, or other materials; or any change in the topography of the land in any manner, unless in accordance with the farm conservation plan for agricultural use on the Protected Property referenced in Paragraph C above.

4.6 Water - Grantor shall not transfer, encumber, lease, sell, or otherwise separate water rights from title to the Protected Property itself.

4.7 Dumping - Dumping or storage of contaminated soil, non-compostable garbage, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or above ground storage tanks or other materials is prohibited. Provided, however, that the storage of agricultural products, byproducts (including the composting of biodegradable material for on-farm use) and agricultural equipment used on the Protected Property is allowable, so long as such storage is done in accordance with all applicable government laws and regulations and in such a manner so as to not impair the Conservation Values of the Protected Property.

4.8 Roads - There shall be no building of new roads, parking lots, or other paved surfaces, or the widening of existing such surfaces, except on the Homestead Area, local or state highway rights-of-way, and those improvements permitted under 5.12 below.

4.9 Impervious Surfaces – Notwithstanding any provision herein to the contrary, impervious surfaces on the Protected Property shall not exceed two (2) percent of the total Protected Property acreage, unless the Protected Property is under 50 acres, in which case the impervious surfaces shall not exceed one (1) acre. Impervious surfaces include any surface that prohibits the penetration or passage of precipitation or other fluids or liquids into the soil and includes, but is not limited to, the footprint of all structures (with or without flooring), non-seasonable roof tops, pavement and concrete. NRCS approved Conservation Practices that are installed on the Protected Property shall not be considered impervious surfaces.

5. 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 State Grantee in order to exercise any reserved rights in Paragraph 5, 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:

- 5.1 Conveyance** - Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is subject to this Easement and written notice is provided to the Grantees in accordance with Paragraph 21 below.
- 5.2 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.
- 5.3 Agricultural Education Programs** - 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..
- 5.4 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, Grantees shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with Paragraph C above and Paragraph 8.3 below.

5.5 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, such as, 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.

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

CHOOSE ONE

5.7 Existing Personal Residence - There is no existing residence on the Protected Property.

5.7 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 ACRES)** acre “Homestead Area” shown on the Report, and located at **(INSERT PROPERTY ADDRESS)**.

5.8 Agricultural Structures and Improvements – Certain agricultural structures and improvements exist on the Protected Property and are depicted and described in the Report. The existing agricultural structures and improvements may be repaired, enlarged and replaced at their current locations as shown on the Report, without any further permission from the Grantees. New buildings and other structures and improvements to be used predominantly for agricultural purposes,

including the processing or sale of farm products predominantly grown or raised on the Protected Property, but not including any residence, dwelling or farm labor housing, may be built on the Protected Property without any further permission of the Grantees. However, such construction shall be necessary for the operations and shall be sited so as to minimize adverse effects to prime and unique soils.

5.9 Recreational Improvements

5.9.1 Existing Recreational Improvements - All existing recreational improvements may be repaired or replaced at their current locations without further permission of the Grantees.

5.9.2 New Recreational Improvements – New personal recreational improvements may be built and existing personal recreational improvements may be reasonably enlarged for the Grantor’s personal use within the area identified as the “Homestead Area” on the Report without further permission of the Grantees. Also, any new personal recreational improvements or enlargements of existing personal recreational improvements proposed for locations outside the area identified as the “Homestead Area” on the Report may be built only with the advanced written permission of the State Grantee. However, no new commercial recreational improvements are permitted anywhere on the Protected Property without the advance written permission of the State Grantee. Permission will only be granted for de minimus personal recreational improvements or commercial recreational improvements upon a determination by the State Grantee that such personal recreational improvements or commercial recreational improvements are not

inconsistent with the goals of the Ohio Agricultural Easement Purchase Program and the soil conservation purpose of this Easement.

5.10 No 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 and (ii) those uses to which State Grantee consents after a determination that they are consistent with the goals of the Ohio Agricultural Easement Purchase Program and the soil conservation purpose of this Easement.

5.11 Utility Services and Septic Systems - Except for wind energy facilities as provided in Paragraph 5.11.1 below, installation, maintenance, repair, replacement, removal and relocation of electric, gas, geothermal, water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Protected Property and the right to grant easements over and under the Protected Property for such purposes, is permitted without further permission of the State Grantee, provided that such utility improvements are limited to the sole purpose of providing electrical, gas, water, sewer, or other utilities to serve only the Protected Property and improvements permitted in this Easement. Utility improvements that provide service beyond the Protected Property are not permitted.

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 State Grantee.

5.11.1 Wind Energy - To promote the use of renewable energy sources, Grantor may, only with prior written approval of the State Grantee, add one or more wind turbines on the Protected Property. Such wind turbines 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.

The wind turbines, access roads, and any other related improvements shall be situated, constructed, and maintained pursuant to a plan approved by the State Grantee in its sole discretion. Such plan shall be designed to comport with the purposes 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.

5.12 Roads - Grantor shall have the right to construct and maintain unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Protected Property by this Easement.

5.13 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.

CHOOSE ONE

5.14 New Personal Residence - Notwithstanding any other provision herein but subject to the requirements of this Paragraph 5.14, no new residence, dwelling or house or residence-related appurtenances are permitted on the Protected Property, except for those presently existing on the Homestead Area, as the same may be

replaced or restored in accordance with Paragraph 5.7. A residence, dwelling or house is any structure, which includes, but is not limited to, cabins and lodges, which is designed for or capable of occupation by humans, as distinguished from agricultural structures.

New Personal Residence The 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. The Grantor must locate the new house and all of its residence-related appurtenances within the **(INSERT ACRES)** acre “New Homestead Area” shown on the Report. A residence, dwelling or house is any structure, which includes, but is not limited to, cabins and lodges, which is designed for or capable of occupation by humans, as distinguished from agricultural structures.

6. Ongoing Responsibilities of Grantor and Grantees

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantees, or in any way to affect any existing obligation of the Grantor as owner of the Protected Property. Among other things, this shall apply to:

6.1 Taxes - The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. If a Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, the Grantor will reimburse the Grantee for the same.

6.2 Upkeep and Maintenance - The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by local, state and federal laws and regulations. The Grantees shall have no obligation for the upkeep and maintenance of the Protected Property.

6.3 Liability and Indemnity - The Grantor agrees to indemnify, defend and hold the Grantees harmless for any and all claims or liability, including, but not limited to, reasonable attorney fees arising from personal injury, accidents, negligence, environmental contamination, or damage relating to the Protected Property or any claim thereof, unless due to the negligence of Grantees or their agents, in which case liability shall be apportioned accordingly.

7. Current Agricultural Use Valuation

Except for the Homestead Area, the Protected Property is, as of the date of execution of this Easement, valued at its agricultural use for purposes of real property taxation, under Section 5713.31 of the Ohio Revised Code. Furthermore, the Grantor shall not fail to annually file a renewal application under Section 5713.31 of the Ohio Revised Code, unless Ohio law specifically exempts the Grantor from payment of real estate taxes on the land.

8. Grantees' Enforcement Rights and Remedies

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

8.1 Remedies – In accordance with the provisions set forth in the Ohio Administrative Code §901-2-11, the Grantee shall have the right to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of the grant 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 or the unauthorized wrongful acts of third persons; 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 the Easement, whether caused by the acts or omissions of the Grantor or third parties, or by natural occurrences.

8.2 Enforcement Costs - All reasonable costs incurred by the Grantees in enforcing the terms of this Easement against Grantor, including, without limitation, 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. The State Grantee may request assistance from the Local Grantee in its effort to enforce the terms of this Easement.

8.3 Right of Entry - The Grantees or their agents shall have the right to enter the Protected Property, in a reasonable manner and at reasonable times, for the purposes of:

8.3.1 Inspection of the Protected Property to determine if the Grantor, or his heirs, successors or assigns, is complying with the provisions of this Easement;

8.3.2 Obtaining evidence for the purpose of seeking judicial enforcement of this Easement; and

8.3.3 In particular, NRCS and the Grantees have the right to access the easement area at a reasonable time and a reasonable manner to ensure conservation plan implementation and compliance.

9. Monitoring

The Local Grantee shall conduct at least an annual monitoring visit of the Protected Property verifying that the Grantor is in compliance with the terms and conditions of this Easement, and shall submit an annual monitoring report to the State Grantee. If the Local Grantee determines the provisions of this Easement are not being complied with and these violations cannot be resolved with the Grantor, then the Local Grantee shall notify the State Grantee of the alleged violation. The State Grantee shall then determine if judicial action is necessary to enforce the Easement, and shall assume responsibility for all necessary enforcement action in court. Notwithstanding any other provisions in this Easement the State Grantee or the State Grantee's designee reserves the right to conduct an inspection of the Protected Property and enforce any violations of the Easement.

10. Promotion

With the permission of the Grantor, the Grantees may post a sign(s) which states that the Protected Property is preserved by an agricultural easement.

11. 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 and assigns.

12. Assignment

This Easement is in gross and may be assigned or transferred by the Grantees, in whole or in part. The transferee or assignee will be required to carry out in perpetuity the agricultural purposes which this Easement was originally intended to advance. In addition, if the Grantor donated a portion of the agricultural easement value, the Grantees agree to the following:

12.1 The organization or entity receiving this interest will be a qualified organization as that term is defined in Section 170(h)(3) of the U.S. Internal Revenue Code, as

that section may be amended from time to time, and in the regulations promulgated thereunder and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the U.S. Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder.

12.2 If the State Grantee, or its assigns, ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, a court with jurisdiction shall order the transfer of this Easement to another qualified organization that agrees to assume the responsibility imposed by this Easement.

13. Immediate Property Right

The Grantor agrees that this perpetual Easement gives rise to a property right, immediately vested in the Grantees, which is equal to the proportionate value of the Protected Property as required by Section 901.22(A)(2)(b) of the Ohio Revised Code. The proportionate value is determined only if the Easement is ever extinguished in accordance with Paragraph 15 below.

14. Transfer of Protected Property

Unless this Easement is extinguished, as set forth below, the Grantor agrees that the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by the Grantor 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. The Grantor agrees to notify the Grantees, their successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.

15. Extinguishment of Easement

This Easement is in perpetuity. Ohio law allows for this Easement to be extinguished under the following situations:

- 15.1** At the request of Grantor, State Grantee, with the approval of the Local Grantee, may extinguish this Easement if it is determined that an unexpected change in the conditions of or surrounding the land that is subject to the Easement makes impossible or impractical the continued use of the land for the purposes described in the Easement, as required by Section 901.22(A)(2)(a) of the Ohio Revised Code and Section 901-02-12 of the Ohio Administrative Code.
- 15.2** This Easement may be extinguished by judicial proceedings, as permitted by Section 901.22(A)(2)(a) of the Ohio Revised Code, and including extinguishment by eminent domain proceedings under applicable state or federal law, as permitted by section 901-02-12(J) of the Ohio Administrative Code.
- 15.3** At the joint request of the Grantor and Grantees a court with jurisdiction may extinguish this Easement if it determines that an unexpected change in the conditions of or surrounding the land that is subject to the Easement makes impossible or impractical the continued use of the land for the purposes described in the Easement, in accordance with Section 170(A)-14(g)(6)(ii) of the U.S. Internal Revenue Code.

The parties acknowledge that this agricultural easement is a real property interest that vests upon the recording of the Easement. Under Ohio law this easement constitutes an agricultural easement as defined and governed by Ohio Revised Code Sections 901.21 and 5301.67.

If this Easement is extinguished by the Grantees or by judicial proceeding, then upon the sale, exchange, or involuntary conversion of the land subject to the Easement, the Local Grantee shall be paid the value of the easement which is an amount of money that is at least equal to the proportionate value of the Easement compared to the total value of the land at the time this Easement was acquired, as required by Section 901.22(A)(2)(b) of the Ohio Revised Code and Section 901-02-13 of the Ohio Administrative Code.

Upon receipt of the proportionate value proceeds, the Local Grantee must remit to the Director of the Ohio Department of Agriculture an amount of money equal to the percentage of the cost of purchasing this Easement, as required by Section 901.22(A)(2)(c) of the Ohio Revised Code and Section 901-02-13 of the Ohio Administrative Code. Monies received by the Director shall be credited to the Agricultural Easement Purchase Fund.

16. Hazardous Waste

Grantor warrants that he 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 warrants that he 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 against all 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 of the Protected Property. Grantors indemnification obligation shall not be affected by any authorizations provided by Grantees to Grantor with respect to the Protected Property.

17. Indemnity

Grantor shall indemnify, defend, and hold harmless Grantees from any liability resulting from Grantor's negligent acts, including, but not limited to, the release, use or deposit of any hazardous substance on the Protected Property.

18. Amendment of Easement

Grantees may amend this Easement only with the written consent of the Grantor. Any such amendment shall be consistent with the "Statement of Purpose" of this Easement and with the Grantees' Easement amendment regulations and policies and shall comply with Section 170(h) of the U.S. Internal Revenue Code or any regulations promulgated in accordance with that Section. Any such amendment shall also be consistent with Section 5301.67 *et seq.*, of the Ohio Revised Code or any regulations promulgated pursuant to those laws. Any such amendment shall be duly recorded.

19. Re-Recording

The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, the Grantor appoints the Local Grantee his attorney-in-fact to execute, acknowledge and deliver any necessary instrument on his behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

20. Definitions

The terms "Grantor" and "Grantees" as used herein shall be deemed to include, respectively, the Grantor, his heirs, successors and assigns, and the Grantees, their successors and assigns.

21. Notices

Any notices required by this Easement shall be sent by registered or certified mail, return receipt requested, to the State Grantee and the Local Grantee at the following addresses or such addresses as may be hereafter specified in writing:

State Grantee:

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

Local Grantee:

(INSERT ADDRESS)

22. Severability

If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

23. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. Originals and supporting documentation are on file in the Ohio Department of Agriculture, with a copy available on file with the Local Grantee.

24. Termination of Rights and Obligations

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

25. Modifications

This Easement may not be changed, modified or discharged except by a writing signed by the duly authorized representatives of the Grantor and the Grantees.

26. Governing Law

This Easement shall be governed by and interpreted under the laws of the State of Ohio. Except as otherwise specifically provided, all references to statutes and regulations that are contained in this Easement shall be construed to mean the version of that statute or regulation (as the case may be) 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.

27. No Merger

If a Grantee at some future time acquires the underlying fee title 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, as soon as possible, Grantee will transfer easement to a qualified organization.

28. Rules of Convenience

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

29. Recitals

The recitals shall be considered substantive terms of this Easement.

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

The Grantor(s)

Signature: _____

(INSERT LANDOWNER NAME)

Signature: _____

(INSERT LANDOWNER NAME)

Acknowledgement

State of Ohio

County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____ 2009 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:

Acceptance by State Grantee

Ohio Department of Agriculture

Signature: _____

Robert J. Boggs
Director of the Ohio Department of Agriculture

Acknowledgement

State of Ohio

County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by Robert J. Boggs, 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

(INSERT 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 _____, 2009 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:

This instrument was prepared by:
Ohio Department of Agriculture
Office of Farmland Preservation
8995 E. Main Street
Reynoldsburg, Ohio 43068
12-4-09