

Model Agriculture/Conservation Easement -- Licking County

This is a sample easement only. It is for agricultural property. It is important for you to retain counsel to review the LLT draft easement specific to your property to be satisfied it includes all necessary clauses, including those needed in connection with your charitable income tax deduction. This sample is for illustration purposes only, and may not reflect more recent changes in tax and other laws.

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made on (*month*) ____, ____, by _____ and _____, husband and wife, and collectively herein the Grantor, of _____ Township, Licking County, Ohio, in favor of the Licking Land Trust, a nonprofit Ohio corporation qualified to do business in Ohio, having an address at 128 South Main Street, P.O. Box 196, Granville, Ohio 43023 (the Grantee), both acting under authority of, among other authorizations, Sections 5301.67 to 5301.70 of the Ohio Revised Code.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in _____ Township, Licking County, Ohio, described in Exhibit A, attached hereto and incorporated by this reference (the Protected Property); and

WHEREAS, the Protected Property possesses prime [natural, scenic,] open space, and agricultural values of great importance to Grantor, the people of _____ Township, Licking County, and the people of the State of Ohio; and

WHEREAS, the Protected Property consists of approximately (*number*) acres of land in _____ Township which has special conservation values, including its [beautiful terrain, streams, agricultural fields, woodlots, and scenic vista]; and

WHEREAS, the Protected Property consists of approximately (*number*) acres of land devoted exclusively to agricultural use as defined by Section 5713.30, Ohio Revised Code. As of the date of this easement, _____ of the Protected Property is valued for purposes of real property taxation at its current agricultural use value and the agricultural use will protect the watershed by reducing erosion, [and] provide better habitat for wildlife[, and enhance the scenic enjoyment provided by the scenic views from (*road name*) and (*road name*)]; and the Grantor has an interest in preserving and continuing the agricultural use upon the Protected Property to maintain its current agricultural use valuation; and

WHEREAS, it is the policy of the State of Ohio as expressed in Section 36 of Article II of its Constitution to encourage forestry and agriculture and to provide for the conservation of the natural resources of the State, including streams and lakes; and in recognition of this policy the Ohio General Assembly has adopted a wide range of laws to preserve and protect the natural resources of the State and to that end has created a Department of Natural Resources; and

WHEREAS, the electors of Ohio in 1993, 2000, and 2007 adopted amendments to the Ohio Constitution authorizing the issuance of general obligation bonds of the State to be used for state

and local parks, land and water recreation facilities, land management, including preservation of natural areas and reforestation, water management, stream and lakes, and other projects to enhance use of natural resources (1993 bonds), for conservation and preservation of natural areas and open spaces and farm lands (2000 bonds) and for conservation and preservation of natural areas and open spaces and farm lands and land, forest, water, and other natural resource management projects (2007 Bonds); and

WHEREAS, the comprehensive plan of _____ Township contemplates and provides for a conservation policy through goals [stating that _____] and areas designated for _____; and this policy is implemented in the _____ Township zoning resolution through the establishment of _____ districts and _____;]

WHEREAS, land use planning goals and objectives have been developed to guide decision making in the State of Ohio which include a policy reflected in Section 901.54, Ohio Revised Code, creating an office of farmland preservation to develop and support state and local programs and actions for the preservation of farmland and to encourage and assist others in doing so; and

WHEREAS, the United States Department of Agriculture's 2002 Census of Agriculture found that from 1950 to 2002 Ohio has 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; and 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 through gift, bequest and purchase in accordance with Sections 901.21, 901.22, and 5301.691 of the Ohio Revised Code; and

WHEREAS, the State of Ohio through the enactment of Ohio Revised Code Section 5301.692 has further established the State of Ohio policy with respect to the preservation of land for agriculture by authorizing counties, cities, villages, and townships to hold easements for the purpose of retaining the use of the land predominately in agriculture and to do all things necessary or appropriate to achieve that purpose; and

WHEREAS, Ohio's agricultural conservation policy is consistent with federal farmland preservation policy as reflected in the following paragraph; and

WHEREAS, the purpose of the Federal Farmland Protection Act, P.L. 97-98, 7 U.S.C. Section 42-01, *et seq.*, (the Act) is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland" and the grant and acceptance of this Easement is also pursuant to the clearly delineated federal conservation policy to preserve agricultural land as evidenced by the Act; and

[WHEREAS, scenic enjoyment by a scenic view of the Protected Property along its [easterly] boundary is provided from (*road name*) which borders the Protected Property on the east and along its [northerly] boundary is provided from (*road name*) which borders the Protected Property on the [north]; and]

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WHEREAS, the Protected Property provides a natural habitat for [deer, rabbits, coyotes, wild turkeys, groundhogs, fox, raccoons, wild flowers, and numerous birds]; and

WHEREAS, the Protected Property possesses prime natural, scenic, open space, conservation and agricultural values (collectively, the conservation values) of great importance to Grantor, the people of _____ Township, Licking County and the State of Ohio; and

WHEREAS, the conservation values of the Protected Property are documented in an inventory of relevant features of the Protected Property filed at the office of Grantee identified as the (*property name*) Baseline Documentation and incorporated by this reference (the Baseline Documentation), which consists of reports, maps, photographs, and other documentation that Grantor and Grantee agree provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the conservation values of the Protected Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to agricultural uses existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, it is the purpose of this Easement to assure that the Protected Property will be retained primarily in its open space and agricultural use by preserving and protecting its open space and agricultural character and viability through a perpetual restriction on the use of the Protected Property; and

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the conservation values of the Protected Property in perpetuity; and

WHEREAS, by granting and accepting a conservation easement over the Protected Property the Grantor and Grantee are furthering the State of Ohio's conservation policy to preserve and protect viable agricultural land; and

WHEREAS, 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; and

WHEREAS, the grant of this easement is exclusively for "conservation purposes" as that term is described in Section 170(h)(4)(A)(iii) of the Internal Revenue Code, which encourages the preservation of open space, including farmland and forest land.

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501 (c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation of land in its natural condition; and

WHEREAS, Grantor desires to obtain a charitable contribution deduction under Section 170 of the Internal Revenue Code and all provisions of this Easement are intended to be construed in a manner consistent to accomplish this desire; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Protected Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Ohio, and in particular Section 5301.67, Ohio Revised Code, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth (the Easement).

1. Purpose. It is the purpose of this Easement to assure that the Protected Property will be retained forever in its natural, scenic, forested, and open space condition, to preserve and protect its agricultural soils and viability and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property. Grantor intends that this Easement will confine the use of the Protected Property to such activities, including, without limitation, those involving agriculture, as are consistent with the purpose of this Easement. The specific conservation purpose served by this Easement is the preservation of open space, including farmland and forest land, where such preservation is –
 - [for the scenic enjoyment of the general public]
 - pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit.
2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
 - (a) To preserve and protect the conservation values of the Protected Property;
 - (b) To enter upon the Protected Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property; and
 - (c) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 6.
3. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Development. Any residential, commercial, or residential use or development or any other similar activity on the Protected Property, including the placement or construction of any buildings, improvements, signs, or billboards, except for historical and identifying marker in and of such design, size, color and placement as are approved by Grantee, and except as provided in Paragraph 4(a), 4(b), 4(j), and 4(k). 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.
- (b) Alteration of the Protected Property. The alteration, draining, filling or diking of any wetland area or the cultivation, mowing, clearing or other disturbance of the soil on the Protected Property, except as permitted under Paragraph 3(d) and Paragraphs 4(a), (b), and (c).
- (c) Ponds and Water Courses. The alteration or manipulation of any ponds and/or water courses located on the Protected Property or the creation of new water impoundments or water courses, for any purpose other than to: (i) maintain existing water courses, (ii) remove debris from existing water courses brought in by flooding, (iii) create and maintain a ford for animals to cross water courses, or (iv) engage in agricultural practices as allowed in Paragraph 4(b). Any permitted water impoundment which utilizes a dam shall be constructed and maintained in accordance with the requirements of Chapter 1521 of the Ohio Revised Code and applicable regulations and rules of the Ohio Department of Natural Resources with respect to those matters, or, if such dam is exempted from those provisions, Grantor, nevertheless, agrees that the dam shall be constructed and maintained in accordance with standards, rules and regulations promulgated or recommended by the Ohio Division of Water for dams which are not exempted.
- (d) Surface and Subsurface Alterations; Mining; Oil and Gas. Surface or subsurface mining, exploration for removal, production, and/or transportation of oil and/or gas; excavation and/or removal of soil, sand, gravel, rock, peat or sod; and any alteration or destruction of historical or archeological artifacts or structures. Subject to the rights reserved by Paragraphs 4(a) and 4(j), there may be no construction above the surface of the land with the exception of paths and trails and buildings which are necessary for the agricultural use, so long as such activities shall not be detrimental to the purposes of this Easement. The surface may be temporarily disturbed for the installation, maintenance, and repair of sub-surface drainage lines, but the surface shall be restored as nearly as practicable to its natural state, which restoration shall take place immediately after such disturbance.

Grantor may remove soil, sand, gravel, rock, peat, or sod for normal farm use on the Protected Property as permitted by this Easement, subject to the same conditions listed in (a) through (c) of this Paragraph 3, and subject also to meeting conditions and requirements of Section 170(h)(5) of the Internal Revenue Code and applicable Treasury Regulations to the extent applicable to those permitted activities.

- (e) Soil and Water. Any activity that causes or is likely to cause soil degradation or erosion or significant pollution of any surface or subsurface soils, waters or water courses. Discharge from an aeration system installed (and to be thereafter maintained) with the approval of and inspected by the Licking County Health Department and/or the Ohio Environmental Protection Agency or the appropriate governmental agency having jurisdiction in the premises shall not be deemed to be a violation of this Paragraph 3(e).
 - (f) Woodland Management. The pruning, cutting down, or other destruction or removal of live or dead trees, except as provided in Paragraph 4(h); provided, however the following shall be permitted without a forestry management plan: specifically identified trees may be removed, cut or otherwise managed if they are diseased or damaged and prompt action is necessary in order to prevent personal or property damage or to alleviate a clear and present safety hazard; the clearing of nuisance shrubs, trees and vines such as multiflora rose, black locust, ivy, and other invasive, non-native vegetation; and the removal of trees, which are necessary for the agricultural use provided for in Paragraph 4, such as maintenance or installation of fencing for livestock grazing or for protection of buildings to the extent agreed to by the Grantor and Grantee.
 - (g) Water. Grantor shall not transfer, encumber, lease, sell or otherwise separate the water rights provided for in Paragraph 4(i) from title to the Protected Property itself.
 - (h) Waste Dumps. The dumping or other disposal of trash, noncompostable garbage, hazardous or toxic substances or other unsightly or offensive material, except as reasonably required for the use of the Protected Property in accordance with all applicable local, state and federal laws and regulations.
 - [(i) Hunting and Trapping. The hunting and/or trapping of birds and animals of any kind [except for nuisance types allowed by law].]
4. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are reserved:
- [(a) Farmstead. For the purposes of land use restrictions and reserved rights hereunder, the Protected Property is treated as two land use areas consisting of the Farmstead Areas – Part A and Part B (collectively, the “Farmstead Areas”) and the Resource Development and Management Areas, as follows:
 - (i) the Farmstead Area – Part A, which is a part of the Protected Area within Exhibit A and is approximately identified on Exhibit B which is attached hereto and made a part hereof, which is the site of the existing single family

residence, garage, _____ barns and other accessory out buildings, all as more generally described in Exhibit C.

- (ii) Farmstead Area – Part B, which is a part of the Protected Area within Exhibit A and is approximately identified on Exhibit B, which will include at least one single family residence, and may include a barn, or barns, garage and other accessory out buildings, all as more generally described in Exhibit C.
- (iii) the Resource Development & Management Area, which is the remainder of the Protected Property outside of the Farmstead Area.

In Farmstead Area B, Grantor reserves the right to establish and maintain not more than one driveway between (road name) and Farmstead Area B, provided that the driveway shall not exceed 12 feet in width. The reserved rights provided for in subparagraphs (i) and (ii) of paragraph 4(a) include the right to use, construct, maintain, repair, remodel, renovate, make additions to, restore, enlarge, raze, and reconstruct permitted structures in Farmstead Areas A and B, subject to applicable limitations and conditions of paragraph 4(a). The Part A and B Farmstead Areas are approximately located on Exhibit B.

The total area of each Farmstead Area shall not exceed five acres and the total living space of each single family residence within each Farmstead Area shall not exceed _____ square feet but subject in all respects to meeting _____ Township zoning, if then in effect, Licking County planning commission requirements and Licking County Health Department regulations, and any other application rules and regulations of governmental agencies having lawful regulatory jurisdiction. The improvements and locations thereof to be made pursuant to the reserved rights under this paragraph 4(a), including locations of buildings, forest clearings, septic and utility placements, and any stream crossings shall be subject to all Licking County and _____ Township zoning regulations in effect at the time of construction. In addition, the location and improvements thereon to be made pursuant to the rights reserved under clause (ii) of paragraph 4(a) with respect to Farmstead Area -- Part B shall be subject to the prior written approval of Grantee, which shall not be unreasonably conditioned, delayed or withheld and shall be based on Grantee's evaluation of the impact of the improvements and the location of the improvements on the conservation values of the Protected Property, recognizing however the reserved rights of Grantor with respect to the use of Farmstead Area B for those purposes and the other reserved rights provided for in paragraph 4.

- (b) Agricultural Use. The right to engage in any and all agricultural uses of the Protected Property in accordance with sound, generally acceptable agricultural practices. For the purposes of this Easement "agricultural uses" shall be defined as: breeding, raising, pasturing, and grazing livestock of every nature and description; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, horticultural, and forestry crops and

products of every nature and description; and the primary processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the Protected Property. Agricultural uses shall also include the construction of a pond or ponds appurtenant to and to carry out or implement the agricultural uses; placing the land in any type of governmental program recognized by a federal or state agency or department for the protection, conservation, or regulation of soils, crops or other farm commodities in furtherance of a recognized conservation policy; and providing services that support agricultural endeavors, such as farm machinery repair, training of dogs or horses, riding stables, kennels or similar uses that do not adversely affect the agricultural values of the Protected Property.

- (c) Home Business. The right to engage in any business that is conducted by, and in the home of, a person residing on the Protected Property and/or the right to engage in any business that involves the provision of goods or services incidental to, and occupies structures used principally for, the agricultural uses of the Protected Property.
- (d) Fences. The right to clear repair and replace existing fences, and to build new fences on the Protected Property for purposes of reasonable and customary management of livestock and wildlife and to define the perimeter and sections of the property, without any further permission of the Grantee.
- (e) Right to Privacy. The right to privacy and the right to exclude any member of the public from trespassing on the Protected Property.
- (f) Recreational Use. The right to engage in and permit others to engage in recreational uses of the Protected Property, including, without limitation, [hunting, trapping] fishing, walking, horseback riding, cross country skiing, and other activities that require no surface alterations or other development of the land.
- (g) Public Access. The right to permit others to use the Protected Property for low impact educational, research, and passive recreational activities which do not threaten the conservation value of the Protected Property. Such public access shall be only with the express prior permission of the Grantor.
- (h) Woodland Management. Subject to the exception in paragraph 3(f) with respect to certain actions without a forestry management plan, all other removal, cutting, or harvesting of trees, including clearing land for cultivation, use of livestock, or commercial timber harvesting, must be done in accordance with a forestry management plan prepared by a certified forester, a state forester from the Ohio Department of Natural Resources or a forester (public or private) who has experience in the preparation of forestry management plans in Ohio. The forestry management plan or harvesting supplement to it shall, in addition to the usual determinations, address the following: the place or places of access to the trees to be removed, the specific trees to be removed, the location of temporary access lanes, skid trails, and graded timber landing areas, the types of equipment, including size,

to be used; the disposition, on site or otherwise of limbs and branches not suitable for commercial use; erosion control; clean up of the area disturbed by the equipment and other activity; other remedial actions; the bidding and on-site inspection and supervision of removal services to be provided by the forester or other qualified professional. In each case the forestry management plan and/or the harvesting supplement shall be submitted to and approved by Grantee, which approval shall not be unreasonably withheld but shall be subject to close scrutiny and value judgments regarding the overall best interests of the Protected Property in the context of the conservation purposes of this Easement.

Grantor also reserves the right to establish and maintain additional woods roads and associated erosion control devices, graded timber landing areas, temporary access lanes and skid trails (collectively, the alterations) as necessary to exercise permitted forestry in accordance with the forestry management plan and harvesting supplement thereto, provided that the alterations must be located only within areas absolutely necessary for the forestry operations provided for in the forestry management plan and harvesting supplement thereto and the remediation of the alterations provided for in the forestry management plan or harvesting supplement thereto shall be commenced and completed at the earliest reasonable and practical time.

- (i) Water. Grantor retains and reserves the right to use any appurtenant water rights necessary and sufficient to maintain the agricultural productivity of the Protected Property and to provide sufficient water for household use in the permitted residences.
- (j) Agricultural Structures and Improvements. The existing agricultural structures and improvements may be repaired, reasonably enlarged and replaced at their current locations as shown on the Baseline Documentation, without further permission from the Grantee. New buildings and other structures and improvements to be used primarily 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 in the Resource Development and Management Area with the advance written permission of the Grantee. The Grantee shall not give such permission if it determines that the proposed building, structure or improvement would significantly diminish or impair the agricultural values of the Protected Property.
- (k) Utility Services and Septic Systems. 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 for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements permitted by this Easement, and the right to grant easements over and under the Protected Property for such purposes, is permitted without further permission of the Grantee. Maintenance, repair or improvement of a septic system(s) or other underground sanitary system which exists on the Protected Property at the time of this Easement,

or the construction of septic or other underground sanitary system for the benefit of any of the permitted improvements is permitted without further approval of the Grantee.

5. Notice of Intention to Undertake Certain Permitted Actions. Grantor shall notify Grantee prior to undertaking any activities on the Protected Property which would require Grantee's approval or would be inconsistent with, or violative of, the purpose of the Easement or the retained rights of the Grantor. The purpose of requiring Grantor to notify Grantee is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required Grantor shall notify Grantee in writing not less than forty-five (45) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.
 - (a) Grantee's Approval. Where Grantee's approval is required, as set forth in Paragraph 5, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. In making any such determination, Grantee may consult with and rely on the advice of such persons or organizations as Grantee considers appropriate. (For example, Grantee may consult with a representative of the Ohio Department of Agriculture or a representative of the Ohio State University Extension Service or another qualified consultant with respect to matters involving or potentially affecting the agricultural values of the Protected Property.)
6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until fully cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Protected Property to the condition that existed prior to any such injury.

Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

If Grantee, in its sole discretion, determines that the circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, Grantee may pursue its remedies under this Paragraph 6 without prior notice to Grantor or without waiting for the period for cure to expire.

Grantee's rights under this Paragraph 6 apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- (a) Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.
- (b) Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- (c) Waiver of Certain Defenses. Grantor waives any defense of laches, estoppel, or prescription.
- (d) Acts Beyond Grantors' Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

7. Access. No right of access by the general public to any portion of the Protected Property is conveyed by this Easement.
8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage, if available for Grantor's activities contemplated herein.
 - (a) Governmental Charges. Grantor shall pay before delinquency all taxes and assessments and other governmental charges, imposed or levied against the Protected Property by competent authority (collectively the governmental charges), including any governmental charges imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor reserves all rights available under Ohio or federal law to contest, challenge, and petition for redress any such taxes, assessments or other governmental charges. Grantee is authorized but in no event obligated to make or advance any payment of governmental charges, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the governmental charges or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time charged by (*Financial Institution*), or its lawful successor, or the maximum rate allowed by law.
 - (b) Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively the Indemnified Parties) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act omission, condition or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in this Paragraph 8; and (3) the existence of this Easement.
9. Conservation Stewardship Fund. The Grantee has established a Conservation Stewardship Fund (the Fund) to be used for costs of monitoring and enforcing the terms of the restrictions of the easements on the properties under the protection of the Grantee. Monitoring and enforcing conservation easements by Grantee is crucial to the success of its commitments to protect the land in perpetuity.

Contributions to the Fund help the Grantee keep the commitment. Voluntary contributions to the Grantee for the Fund can be made in accordance with the Grantee's current policy in a lump sum, through annual installments, or through other planned giving arrangements

[or through agreement to the following Stewardship Conveyance Fee evidenced by its inclusion in this Easement].

[Stewardship Fee. Grantor hereby covenants, promises, and agrees to pay, or to cause the closing agent to pay to Grantee, or any successor having stewardship obligations pertaining to the Protected Property, in the event of a future transfer for value of all or less than all of the Protected Property, a Stewardship Fee (the Fee) in an amount equal to one percent (1%) of the full consideration paid, including that portion of such consideration attributable to improvements, any fixtures and other improvements permanently attached to the Protected Property. The Fee shall be paid at the closing for that transfer from seller's settlement funds. In the event the Fee is not paid as provided herein, Grantee shall have the right to file a lien against the Protected Property to secure the continuing obligation of Grantor and its successors in title to pay the Fee; provided that the lien securing payment of the Fee shall be subordinate to this Conservation Easement and to the lien of any first mortgage on the Protected Property. Such lien may be enforced and/or foreclosed in accordance with the laws of the State of Ohio.

This fee is not applicable to the transfer of all or any part of the Protected Property through or by gift or inheritance.]

10. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Ohio law at the time, in accordance with paragraph 9(a). Grantee shall use all such proceeds in a manner consistent with the purposes of this grant.
 - (a) Proceeds. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Paragraph 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by the reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall remain constant.
 - (b) Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable Ohio law.

11. Amendment. If circumstances arise under which an amendment to or modification of this Easement should be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including applicable provisions of the Ohio Revised Code or Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Licking County, Ohio.
12. Assignment. The Grantee may assign its rights and obligations under this Easement but only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Ohio law; provided further, however, that the Grantee must obtain Grantor's written consent in advance to such transfer, which consent may not be unreasonably withheld. Grantor may suggest to Grantee those organizations qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, which are acceptable or preferable if an assignment is to be made by Grantee. As a condition of such transfer, Grantee shall require that the purposes that this grant is intended to advance continue to be carried out.
13. Subordination. Upon request, Grantee agrees to subordinate its rights under this Easement to the proceeds of any sale, condemnation proceedings or insurance or to the leases, rents and profits of the Property to the rights of any future mortgage holders or beneficiaries of deeds of trust to the proceeds, leases, rents, and profits described above and likewise to subordinate its rights under any lien and to execute any documents required with respect to such subordination, except that the priority of any lien created by Grantee's exercise of any of its rights under this Easement prior to the creation of a mortgage or deed of trust shall not be affected thereby, nor shall this Easement be subordinated in any other respect.
14. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
15. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.
16. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

Model Agriculture/Conservation Easement -- Licking County

To Grantor: (name)
(address)
(city, state, zip)

To Grantee: Licking Land Trust
128 South Main Street
P.O. Box 196
Granville, Ohio 43023

or to such other address as either party from time to time shall designate by written notice to the other.

17. Recordation. Grantee shall record this instrument in timely fashion in the official records of Licking County, State of Ohio and may re-record it at any time as may be required to preserve its rights under this Easement.
18. General Provisions.
 - (a) Controlling Law. The interpretation and performance of this Easement shall be governed by Ohio law. References in this instrument to a Paragraph or Paragraphs or divisions or parts of paragraphs are references to specific parts of this Easement.
 - (b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of Ohio law with respect to agricultural easements. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
 - (c) 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, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
 - (d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements, relating to this Easement all of which are merged herein.
 - (e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
 - (f) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their

respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Protected Property.

- (g) 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 occurring prior to transfer shall survive transfer.
- (h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- (i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, as to each counterpart, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

(Signature)

(Typed Name), Grantor

LICKING LAND TRUST, Grantee

(Signature)

(Typed Name), Grantor

By Its: _____
_____, Chairman

Model Agriculture/Conservation Easement -- Licking County

STATE OF OHIO
COUNTY OF LICKING

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____ and _____, Grantor, who each acknowledged that they are husband and wife.

Notary Public

STATE OF OHIO
COUNTY OF LICKING

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by the Licking Land Trust, Grantee, by _____, its Chairman.

Notary Public

This instrument was prepared by:
(Name, address)

EXHIBIT A

Legal Description of Protected Property Subject to Easement:

Prior Instrument Reference: *(Number)*

Licking County Auditor Parcel No. *(Number)*

From Warranty Deed recorded *(date)* from *(name)* to *(name)*

Real Property Described as Follows:

(Legal Description)

EXHIBIT B

Plan/Map Depicting Approximate Location of Farmstead.

(Plan/Map of property)

EXHIBIT C

Homestead Description and Uses

(1) General Description of Homestead Area A: (*Description and age of structure*) and partially remodeled in (*year*); detached (*type of*) garage; farm buildings include (*number*) barns, [machinery shed, milk house, smoke house, and storage shed].

(2) Proposed Homestead Area B. (*Description of structure*). The farm buildings referred to in Part (1) above can be used in connection with the use of the residence authorized in Area B provided that the use of the residence in Area A is exclusive of those farm buildings.