

# OHIO AGRICULTURAL EASEMENT DONATION PROGRAM

## Deed of Agricultural Easement

### *State of Ohio*

This Deed of Agricultural Easement (hereinafter referred to as “Easement”) dated as of \_\_\_\_\_, 2008, is made and entered into by and between <<Landowner>> and <<Landowner>> (husband and wife), residing at <<Address, Road, City, State Zip>>, (hereinafter referred to as the “Grantor”), and the **State of Ohio on behalf of the Director of the Ohio Department of Agriculture**, located at 8995 East Main Street, Reynoldsburg, Ohio, 43068 (hereinafter referred to as the “Grantee”).

This Easement conveys a perpetual agricultural easement (“Easement”) as defined in Section 5301.67(C) of the Ohio Revised Code (hereinafter “ORC”) and allocates responsibility for the monitoring and enforcement of the Easement.

### BACKGROUND FACTS

#### A. Protected Property

Whereas, the Grantor is the owner in fee simple of approximately <<number>> acres of certain agricultural property located at <<address or location>>, in <<Township>> Township, <<County>> County, Ohio (hereinafter referred to as the “Protected Property”) more fully described on **Exhibit A** attached hereto and over which this Easement attaches. The Grantor has full authority to sell 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.

#### B. Agricultural Value and Use

The Protected Property consists of land that is devoted exclusively to agricultural use (“Agricultural Use” or “Agriculture”) as defined by Section 5713.30 of the ORC and is valued for real property taxation at its current value for agricultural uses under Section 5713.31 of the ORC, or that constitutes a homestead as defined by Section 901.21(A)(3) of the ORC. Grantor intends to preserve the Protected Property for Agricultural Use.

**C. Qualified Organization**

Grantee is a qualified organization under Section 170 of the Internal Revenue Code of 1986, as amended from time to time, and under the regulations promulgated thereunder to receive conservation easements. Further, Grantee is authorized pursuant to Section 901.21 of the ORC to accept and hold agricultural easements under the laws of the State of Ohio for the public purpose of retaining the Protected Property predominantly in Agriculture.

**D. State Agricultural Conservation Policy and 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 ORC. By granting and accepting an agricultural easement over the Protected Property Grantor and Grantee are furthering the State of Ohio's conservation policy to preserve and protect viable Agricultural land. Grantor intends that the Easement will confine the use of Protected Property, in perpetuity, to activities that are consistent with the purpose 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 ORC which allows, among other things, 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 ORC, 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 Internal Revenue Code, which encourages the preservation of open space, including farmland and forest land.

## **GRANT OF AGRICULTURAL EASEMENT**

Now, therefore, in consideration of 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 Grantee a perpetual agricultural easement as defined in Section 5301.67(C) of the ORC, on the Protected Property. The Grantee has the authority to accept agricultural easements pursuant to Section 901.21(A) of the ORC. The Easement is subject to the following terms and conditions:

### **1. STATEMENTS OF PURPOSE AND INTENT**

**1.1 Specific 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 ORC and will be valued for real property taxation at its current value for agricultural uses under Section 5713 of the ORC, and to preserve and protect the Protected Property's agricultural soils (as identified on **Exhibit B** – Present Condition Report) and viability through a perpetual restriction on the use of the Protected Property. The Grantor covenants that the Protected Property shall remain available for agriculture in perpetuity.

**1.2 General Conservation Purpose.** The grant of this Easement is exclusively for a “conservation purpose” 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.

**1.3 Intent.** Grantor and Grantee intend that Grantor's donation portion of the Easement's entire value constitutes a “qualified conservation contribution” under Section 170 of the Internal Revenue Code. The value of the donation is not included in the consideration set forth in this Deed's Preamble.

### **2. PRESENT CONDITION REPORT**

**2.1 Definition.** 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 Deed are documented in a Present Condition Report (hereinafter referred to as "Report") prepared by Grantee and signed and acknowledged by Grantor establishing the condition of the Protected Property at the time of the Easement conveyance, including photographs, maps and other documents, as set forth in **Exhibit B**.

**3. PROHIBITED USES / RESTRICTIONS**

- 3.1 General.** Grantor shall not make any use of the Protected Property that is inconsistent with the purposes of this Easement, the Conservation Plan, or any federal, state, or local law. Except as otherwise specifically permitted under **Articles 4, 5, and 6**, the prohibited uses explicitly include, but are not limited to, those described in this **Article 3**.
- 3.2 Industrial or Commercial Activity** - There shall be no industrial or commercial activity undertaken or allowed on the Protected Property, except as provided for in **Article 4** 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.
- 3.3 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 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 **Article 5** below.
- 3.4 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 Area exists or is ever established, which includes the residential dwelling and agricultural buildings as shown on **Exhibit B**, it shall not be subdivided and shall remain a part of the Protected Property.

- 3.5 Mining** - Under no circumstances shall surface mining be permitted on the Protected Property. To the extent permitted under Section 170(h)(5) of the 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 Internal Revenue Code and applicable Treasury Regulations, Grantor may remove sand and gravel for normal farm use on the Protected Property. However, such removal is to be limited and located in such a manner so as to minimize the impact to prime and unique soils.
- 3.6 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.
- 3.7 Water** - Grantor shall not transfer, encumber, lease, sell, or otherwise separate such water rights from title to the Protected Property itself.
- 3.8 Dumping** - There shall be no new dumping of trash, non-compostable 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 applicable local, state and federal laws and regulations.
- 3.9 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.
- 4. GRANTOR'S RESERVED RIGHTS**  
The Grantor reserves for himself, his heirs, successors and assigns, all rights and privileges of ownership of the Protected Property and the right 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. The following rights are expressly reserved by the Grantor:

**4.1 Right to Convey.** Grantor may sell, give, mortgage, lease, or otherwise convey the Protected Property subject to the Easement. However, if there is an existing homestead or if permission to build a New Homestead Area is ever established, it shall not be subdivided and shall remain a part of the Protected Property.

**4.1.1 Notice to Grantor.** Grantor shall give written notice to Grantee no less than 60 days prior to any conveyance, which would divest Grantor of an interest in all or part of the Protected Property. Grantee's actual receipt of that notice is a condition precedent to the existence of Grantor's legal capacity to convey an interest in all or part of the Protected Property.

**4.1.2 Division of Protected Property.** No division of the Protected Property either by selling or giving shall be permitted.

**4.1.3 Notice to Future Lessees and Grantees.** Grantor shall insert or reference the terms, conditions, restrictions and purposes of this Deed in any subsequent deed or other legal instrument by which Grantor leases the Protected Property or otherwise conveys any interest in all or part of the Protected Property.

**4.1.4 Copy of Subsequent Deed.** Grantor shall provide to Grantee a copy of any subsequent deed recordings, which convey any interest in the Protected Property.

**4.2 Right to Use.** Grantor may use the Protected Property for Agriculture and customary rural enterprises such as the production, processing, packaging, and marketing of Agricultural products primarily produced on the Protected Property; farm machinery repair; roadside market stands; and riding stables, as long as these uses do not adversely affect the soils or agricultural values of the Protected Property.

**4.2.1 Right to Farm.** Grantor may farm, or permit others to farm, the Protected Property.

**4.2.2 Agricultural Education Programs.** Grantor may conduct educational

programs and public field days on the Protected Property for the purpose of teaching about and promoting awareness of Agriculture.

**4.3 Rights to Privacy and Exclusion.** Grantor retains the right to privacy and the right to exclude any member of the public from the Protected Property. Notwithstanding this provision, Grantee and/or its successors and assigns shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with Section 5.2 and Section 7.3 below.

**4.4 Water and Mineral Rights.** Grantor retains all appurtenant water and mineral rights necessary to maintain the Agricultural productivity of the Protected Property.

Although the Grantor need not obtain approval of the Grantee in order to exercise any reserved rights in **Article 4**, unless otherwise stated herein, the Grantor hereby agrees to notify the Grantee in writing before exercising any reserved right which may have an adverse impact on the conservation of the agricultural values associated with the Protected Property.

## **5. GRANTOR'S OBLIGATIONS**

**5.1 General.** This Deed does not affect Grantor's obligations as the fee owner of the Protected Property, except as otherwise explicitly stated. Grantor's obligations explicitly include, but are not limited to, those described in this **Article 5**.

**5.2 Conservation Plan.** Grantor shall conduct all farming operations on the Protected Property in a manner consistent with a conservation plan ("Conservation Plan") prepared in consultation with the United States Department of Agriculture's Natural Resources Conservation Service ("NRCS") and approved by the local Soil and Water Conservation District. The Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12. The Conservation Plan shall be updated as needed, and in any event at the time the basic type of agricultural operation on the Protected Property changes or at the time ownership of the Protected Property changes. All farming operations shall be conducted in accordance with all applicable local, state and federal laws and regulations.

**5.3 Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. Grantor shall immediately reimburse Grantee if Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property.

**5.4 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 ORC. Furthermore, the Grantor shall not fail to annually file a renewal application under Section 5713.31 of the ORC, unless Ohio law specifically exempts the Grantor from payment of real estate taxes on the land.

**5.5 Upkeep and Maintenance.** 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. Grantee shall have no obligation for the upkeep and maintenance of the Protected Property.

**5.6 Liability and Indemnity.** To the fullest extent permitted by law, Grantor shall indemnify, defend, and hold harmless Grantee from and against any and all liability, losses, suits, claims, damages, fines, and expenses, including reasonable attorney's fees, arising out of or related to the Easement and the Protected Property, except to the extent caused by Grantee's sole negligence.

**5.7 Notice to Grantee.** Grantor shall immediately report in writing to Grantee (a) any apparent noncompliance with this Deed of which Grantor becomes aware and (b) any third-party action or natural occurrence which may adversely affect the Protected Property's soil or Agricultural Use.

## **6. IMPROVEMENTS**

**6.1 Compliance with Law.** Nothing in this Deed relieves Grantor of Grantor's obligations (a) to pay for and obtain building and zoning permits or like documents and (b) to comply with all applicable building codes, zoning ordinances, or any other federal, state, or local law.

## **6.2 Residential Improvements.**

### **<<If no existing residence>>**

**6.2.1 Existing Residences.** There is no existing residence on the Protected Property.

**6.2.2 New Personal Residence.** The Grantor may construct a new house or residential appurtenances within the Homestead Area of the Protected Property only with the advance written permission of the Grantee. No more than one single-family dwelling shall be constructed. 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 human occupation, as distinguished from agricultural structures.

**<<or>>**

### **<<If an existing residence>>**

**6.2.1 Existing Residence.** Grantor may improve, maintain, repair, replace, and restore the existing single-family residence 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 <<number>> acre “Homestead Area” shown on the Report, and located at <<Address>>, <<City>>, Ohio <<Zip>>.

**6.2.2 New Personal Residence.** The Grantor shall not construct any new residences, dwellings, or houses on the protected Property. A residence, dwelling, or house is any structure, which includes, but is not limited to, cabins and lodges, which are designed for or capable of human occupation, as distinguished from agricultural structures.

**6.2.3 Residential Appurtenances.** The term “Residential Appurtenances” includes attached or detached garages, septic systems, utilities, underground pipes and wires, overhead wires, and similar things employed to

accommodate the existence and use of the associated residence.

**6.3 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 Grantee. 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 Grantee. However, such construction shall be necessary for the operations and shall be sited so as to minimize impact to prime and unique soils.

#### **6.4 Recreational Improvements.**

**6.4.1 Existing Recreational Improvements** – Certain recreational improvements exist on the Protected Property and are depicted and described in the Report. Recreational Improvements means non-commercial amenities designed for the personal recreational use and enjoyment of Grantor and Grantor's invitees. All of the Existing Recreational Improvements may be repaired or replaced at their current location without further permission of Grantee. Any of the Existing Recreational Improvements which are located within the Homestead Area may be reasonably enlarged without permission of Grantee so long as they remain within the Homestead Area. Any of the Existing Recreational Improvements which are located outside the Homestead Area may be enlarged only with the advance written permission of the State Grantee.

**6.4.2 New Recreational Improvements** – New Recreational Improvements may be constructed within the Homestead Area without further permission of Grantee. New Recreational Improvements may be constructed outside the Homestead Area only with the advance written permission of the State Grantee.

**6.5 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 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 Donation program and the soil conservation purpose of this Easement.

**6.6 Utilities Improvements.**

**6.6.1 General.** Grantor may construct, improve, maintain, repair, replace, enlarge, restore, and demolish electric, gas, communications, geothermal, water, sewer, and other public or private utility improvements on the Protected Property provided that the purpose of the improvements is to serve only the Protected Property. Utility improvements that provide service beyond the Protected Property are not permitted except for Wind Energy facilities as provided in **Subsection 6.6.3** below.

**6.6.2 Utility Easements.** Grantor may grant easements by which another entity constructs, improves, maintains, repairs, replaces, enlarges, restores, and demolishes electric, gas, communications, geothermal, water, sewer, and other public or private utilities on the Protected Property provided that the purpose of the improvements is only the transmission of the utility to serve only the Protected Property.

**6.6.3 Wind Energy.** To promote the use of renewable energy sources, Grantor may, only with prior written approval of the Grantee, add one wind turbine on the Protected Property. Such wind turbine 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 turbine, access roads, and any other related improvements shall be situated, constructed, and maintained pursuant to a plan approved by the 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.

**6.6.4 Utility Characteristics.** If Grantor undertakes any of the activities allowed under **Subsections 6.6.1 through 6.6.3**, Grantor shall limit the scope, duration, and location of the activity to minimize its affect on the Protected Property's soils and Agricultural Use.

**6.6.5 Restoration.** Immediately upon completion of any of the activities allowed under **Subsections 6.6.1 through 6.6.3**, Grantor shall restore the Protected Property to the condition in which it existed before the start of the activity.

## **6.7 Paved Surfaces.**

**6.7.1 Definition.** A "Paved Surface" includes any ground-covering surface made of asphalt, concrete, brick, stone, wood, or any other material used for pavement.

**6.7.2 Paved Surfaces Within a Homestead Area.** Grantor may construct, improve, maintain, repair, replace, enlarge, restore, and demolish Paved Surfaces within a Homestead Area.

**.1** Grantor shall locate any new Paved Surface to minimize its affect on the Protected Property's soil and Agricultural Use.

**6.7.3 Existing Paved Surfaces Outside of a Homestead Area.** Grantor may improve, maintain, repair, replace, restore, and demolish any existing Paved Surface, which is located outside of a Homestead Area.

**6.7.4 New and Enlarged Paved Surfaces Outside of a Homestead Area.** Grantee's advance written permission is a condition precedent to the construction of any new Paved Surface (which includes enlargements of existing Paved Surfaces) outside of a Homestead Area.

- .1 All new Paved Surfaces shall (a) be necessary for the Agricultural Use of the Protected Property and (b) used predominately for that purpose.
- .2 Grantor shall limit the size and location of any new Paved Surface to minimize its affect on the Protected Property's soils and Agricultural Use.
- .3 Before starting any construction work, Grantor shall record by affidavit Grantee's approval of the new Paved Surface in the office of the recorder of the county in which the Protected Property is located.

**6.7.5 Paved Surfaces in a Public Right-of-Way.** Nothing in this Deed restricts or prohibits the construction, improvement, maintenance, repair, replacement, enlargement, restoration, or demolition of a Paved Surface within a government held right-of-way over the Protected Property.

**6.8 Fences.** Grantor may construct, improve, maintain, repair, replace, enlarge, restore, and demolish fences on the Protected Property, provided that the purpose of the fencing is the reasonable and customary management of trespassing, livestock, and wildlife.

**7. GRANTEE'S ENFORCEMENT RIGHTS AND REMEDIES**

**7.1 General.** Grantee shall have the right to enforce the 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 grant of the Easement, subject to the reserved rights of Grantor set forth herein. Grantee, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the Easement by any prior failure to act. Nothing herein shall be construed to entitle Grantee to institute any enforcement proceeding against Grantor for any changes to the Protected Property due to causes beyond 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 Grantor shall notify Grantee of any occurrence which would adversely affect or interfere with the Agricultural purposes of the Easement, whether caused by the acts or omissions of Grantor or third parties, or by natural occurrences.

**7.2 Enforcement Costs.** All reasonable costs incurred by Grantee in enforcing the Easement, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the Easement shall be borne by Grantor.

**7.3 Right of Entry.** Grantee or its agents shall have the right to enter the Protected Property, in a reasonable manner and at reasonable times, for the purposes of:

**7.3.1** Inspection of the Protected Property to determine if Grantor, or his heirs, successors or assigns, is complying with the Easement; and

**7.3.2** Obtaining evidence for the purpose of seeking judicial enforcement of the Easement.

**7.4 Monitoring.** Grantee or its agent shall conduct at least an annual monitoring visit of the Protected Property to verify that Grantor is in compliance with the terms and conditions of this Deed. If Grantee designates an agent the agent shall submit an annual monitoring report to Grantee. In addition, if the agent determines that the provisions of the Deed are not being complied with, the agent shall notify Grantee of such violation. Notwithstanding any other provisions in this Deed, Grantee reserves the right to conduct an inspection of the Protected Property, and Grantee reserves the right to enforce any violations of the deed.

**7.5 Designation of Monitoring Agent.** Grantee herewith designates <<Monitoring Agent, Address, City, Ohio Zip>>, as Grantee's agent to perform any and all rights of inspection and monitoring as described in **Article 7** herein. Grantee reserves the right, at any time, to revoke the appointment of <<Monitoring Agent>> and to designate other agents for the purposes described herein. Grantor consents to the designation of <<Monitoring Agent>> and consents to any subsequent appointment of any other agent reasonably selected by Grantee.

## **8. EXTINGUISHMENT OF EASEMENT**

**8.1 Standard and Process for Extinguishment.** At the joint request of Grantor and Grantee, a court with jurisdiction may extinguish the Easement only after that court determines that an unexpected change in the conditions of or surrounding the Protected Property makes it impossible to achieve the purpose of the Easement or if there is an agreement in writing by all parties hereto that the conditions of or surrounding the land that is subject to the Easement makes impossible or impractical the continued use of the land for purposes described in this Easement. However, see 26 CFR 1.170A-14(g)(6) for more information.

**8.2 Recoupment.** If the Easement is extinguished, whether or not Grantor has utilized tax advantages from such Easement, then upon the sale, exchange, or involuntary conversion of the Protected Property or any portion of it, the Grantor shall remit to the Grantee a recoupment of funds for deposit in the agricultural easement purchase fund created in division (E) of section 901.21 of the ORC. The recoupment amount shall be the greater of either (a) the difference between the fair market value and the agricultural easement value of the land that was donated at the time the agricultural easement was acquired, or (b) seventy-five percent of the fair market value of the land at the time the agricultural easement is extinguished. The fair market value shall be determined by a general real estate appraiser who is certified under Chapter 4763 of the ORC, and such appraisal shall be obtained by the Grantor. Until such sale, exchange, or involuntary conversion of the Protected Property occurs, Grantee shall have a lien for the full amount of the payment due to Grantee hereunder on the Protected Property.

**8.3 Proceeds to Grantee.** Upon receipt of the recoupment proceeds, Grantee shall credit such money to the Agricultural Easement Purchase Fund.

## **9. GENERAL PROVISIONS**

**9.1 Immediate Property Right.** This Deed gives rise to a property right, immediately vested in Grantee.

**9.2 Perpetual Burden.** The Easement shall run with and burden the Protected Property in perpetuity and shall bind Grantor and Grantee, their heirs, successors and assigns.

**9.3 Assignment.** This Easement is in gross and may be assigned or transferred by the Grantee, in whole or in part. Any such assignment or transfer shall provide that the transferee or assignee assumes the obligation of the Grantee hereunder to enforce in perpetuity the terms of this Easement for the purpose of assuring the continuation of 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 Grantee agrees to the following:

**9.3.1** Any organization or entity to which Grantee assigns or transfers its interest in this Easement shall be a qualified organization as that term is defined in Section 170(h)(3) of the 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 Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder.

**9.3.2** If the Grantee, or its assignee, ever ceases to exist or no longer qualifies under Section 170(h) of the Internal Revenue Code, or applicable state, 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.

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

**9.5 Hazardous Waste.** The Grantor warrants that he has no actual knowledge of a release of a hazardous substance or toxic waste on the Protected Property as such substances or wastes are defined by applicable local, state and federal laws and regulations, and hereby promises to indemnify and defend the Grantee, and hold the Grantee harmless from, any and all loss, cost, claim, liability or expense (including

reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or violation of environmental laws and regulations.

**9.6 Amendment.** Grantor and Grantee may jointly amend this Deed only if the amendment is consistent with the purpose of the Easement and not in violation of Section 170(h) of the Internal Revenue Code, Section 5301.67 *et seq.*, of the ORC, or any regulations promulgated under those laws. To be effective, an amendment shall be in writing, signed by Grantor and Grantee (who shall acknowledge their signatures before a notary public), and recorded in the county in which the Protected Property is located.

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

**9.8 Definitions.** The terms "Grantor" and "Grantee" as used herein shall be deemed to include, respectively, the Grantor, his heirs, successors and assigns, and the Grantee, its successors and assigns.

**9.9 Notices.** Any notices required by this Deed shall be sent by registered or certified mail, return receipt requested, to Grantee at the following addresses or such addresses as may be hereafter specified in writing:

***Grantee:***

Ohio Department of Agriculture, Office of Farmland Preservation  
8995 East Main Street, Reynoldsburg, Ohio 43068-3399.

**9.10 Severability.** If any provision of this Deed or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Deed 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.

**9.11 Entire Agreement.** This instrument sets forth the entire agreement of Grantor and

Grantee 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 with Grantee.

**9.12 Termination of Rights and Obligations.** An entity's rights and obligations under this Easement terminate upon transfer of the entity's interest in the Easement or Protected Property, except the liability for acts or omissions prior to transfer shall survive transfer.

**9.13 Governing Law.** This Deed 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 and regulations that are contained in this Deed 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 Deed is recorded. Any action or proceeding arising in connection with this Deed or the Easement shall be brought in a court of competent jurisdiction located in Franklin County, Ohio.

**9.14 No Merger.** If Grantee at some future time acquires the underlying fee title in the Protected Property, the interest conveyed by this Deed will not merge with the fee title but will continue to exist and be managed as a separate estate.

**9.15 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, heir, successors, devisees and assigns, unless otherwise noted.

**9.16 Recitals.** The recitals contained in the Preamble and Background Facts sections of this Deed are substantive terms of this Deed.

**TO HAVE AND TO HOLD** the above-described Easement to the use, benefit, and behalf of Grantee, Grantee's successors and assigns forever.

**Acceptance by Grantor**

Signature: \_\_\_\_\_  
                  <<Landowner>> (husband)

**Acceptance by Grantor**

Signature: \_\_\_\_\_  
                  <<Landowner>> (wife)

**Acknowledgement**

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2008 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:

**Consent of Monitoring Designee:**

**<<Monitoring Agent>> accepts its appointment as Monitoring Agent for the Ohio Department of Agriculture pursuant to the terms of this Easement:**

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

**Print Name:** \_\_\_\_\_

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

**Acknowledgement**

State of Ohio

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, 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 Grantee**

**OHIO DEPARTMENT OF AGRICULTURE**

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Robert J. Boggs, Director  
Ohio Department of Agriculture

**Acknowledgement**

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Robert J. Boggs, the Director of the Department of Agriculture, acting for and on behalf of the State of Ohio, who acknowledged that he executed the same for and on behalf of that department and the State of Ohio and that he did so on his, the Department's and the State of Ohio's own free act and deed.

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Notary Public  
My Commission Expires:

This instrument was prepared by:  
Ohio Department of Agriculture  
Office of Farmland Preservation  
8995 E. Main Street  
Reynoldsburg, Ohio 43068-3399