

2022 FORMAT

OHIO AGRICULTURAL EASEMENT PURCHASE PROGRAM
Agricultural Easement

This “Agricultural Easement” (“Easement”), as defined in Ohio Revised Code (“ORC”) § 5301.67(C), dated _____, 20____, (the “Effective Date”) is made and entered into by and between **(NAME OF LANDOWNERS/CORPORATION)**, **(address)** (“Grantor”), and the **Director, Ohio Department Of Agriculture**, 8995 East Main Street, Reynoldsburg, Ohio, 43068 (“State Grantee”), and **(Insert Name of Local Sponsor) (if applicable) – an Ohio nonprofit corporation, (address)** (“Local Grantee”), jointly referred to as the “Parties.” The Parties acknowledge that the Easement is acquired to protect the agricultural use and future viability, and related conservations values, of the Protected Property (as hereinafter defined). A full legal description of the Protected Property is attached as Exhibit A and incorporated herein by reference. This is accomplished by limiting nonagricultural uses of the Protected Property thereby preserving and protecting in perpetuity the multiple, interrelated land features that are critical to agricultural lands, historic structures, archaeological resources, open space, and wildlife habitats. The Parties further acknowledge that the Protected Property will be managed for long-term agricultural viability. The State Grantee and Local Grantee 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 donation, sale and purchase of an Easement and the monitoring and enforcement of that Easement. Specifically, the Grantees agree to purchase and accept this Easement from the Grantor for \$_____ **(SPELL OUT DOLLAR AMOUNT and 00/100 Dollars)** (the “Purchase Price”). In addition, the Local Grantee agrees to monitor the Protected Property, as hereinafter defined, in perpetuity and assist with the enforcement of the terms of this Easement.

The State Grantee agrees to enforce the terms of this Easement, as necessary. The following provisions apply to this Easement:

It is the purpose of this Easement to ensure that the Protected Property, as hereinafter defined, will be retained for use predominately in agricultural in accordance with the State of Ohio’s

conservation policy and ORC 5301.67 by preserving and protecting its agricultural soils identified in Exhibit B and agricultural viability through a perpetual restriction on the use of the Protected Property and will be used “exclusively for conservation purposes” in perpetuity in accordance with Sections 170(h)(1)(C) and 170(h)(4)(A)(iii)(II) of the Internal Revenue Code of 1986, as amended from time to time, and any successor provision, and any regulations promulgated thereunder (collectively, the “Code”) (collectively, the “Purpose”).

A. Protected Property and Title Warranty

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

B. Agricultural Value and Use

Except for any “Homestead,” as defined in ORC § 901.21(A)(3), within the Protected Property, the Protected Property consists of “land devoted exclusively to agricultural use,” as defined in ORC § 5713.30(A). The Protected Property, excluding any Homestead therein, shall be valued during the term of this Easement for real property taxation purposes at its current value for agricultural uses under ORC § 5713.31. Any Homestead (referred to as a “homesite” in Ohio Administrative Code (“OAC”) § 5703-25-34(I)) within the Protected Property is taxed in accordance with ORC Chapter 5713 and OAC Chapter 5703-25. The Grantor will preserve the Protected Property for agricultural use. The Homestead(s) permitted under this Easement within the Protected Property shall not exceed _____ **acres individual** (the “Maximum Individual Permitted Homestead Acreage”) and _____ **acres in the aggregate** (the “Maximum Permitted Homestead Acreage”), shall not exceed **[number] in number** (“Maximum Number of Permitted Homesteads”), and are described in Exhibit C (each, a “Permitted Homestead,” and collectively, the “Permitted Homesteads”). The only Homesteads permitted within the Protected Property are the Permitted Homesteads.

C. Conservation Plan

The Grantor or the Grantor’s heirs, successors, or assigns shall conduct agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with the United States Department of Agriculture, Natural Resources Conservation Service (“NRCS”) or the local Soil and Water Conservation District in which the Protected Property is located (the “Conservation Plan”). The

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 Effective Date. 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. The Conservation Plan is incorporated herein by reference. All farming operations on the Protected Property shall be conducted in accordance with all applicable local, state, and federal laws and regulations. Grantees shall have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the Conservation Plan and Paragraph 5.2 regarding the provisions of this Easement.

In the event of noncompliance with the Conservation Plan, Local Grantee shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the Conservation Plan, the Local Grantee will inform the State Grantee of the Grantor's noncompliance. The Grantees shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action by the State Grantee) to secure compliance with the Conservation Plan following written notification from the Local Grantee that (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan, and (b) the Local Grantee has worked with the Grantor to correct such noncompliance. The State Grantee may assist the Local Grantee in securing compliance with the Conservation Plan, as necessary.

The term "Conservation District" means any district or unit of State or local government formed under State or territorial law, and more specifically as organized under ORC Chapter 940, for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "natural resource district," "land conservation committee," or a similar name.

D. Grantee Authority

Local Grantee is a "qualified organization" under Section 170 of the Code to receive agricultural easements. The State Grantee is authorized pursuant to ORC § 901.21 to hold agricultural easements under the laws of the State of Ohio for the public purpose of retaining the Protected Property predominantly in agriculture.

E. Agricultural Preservation Programs

The State of Ohio has a clearly delineated conservation policy to preserve and promote agriculture and agricultural land for a significant public benefit. The Ohio Department of Agriculture ("ODA") is charged with the responsibility of protecting and promoting

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

Purchase of Agricultural Easement

Now therefore, in consideration of the Purchase Price and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises, conditions, restrictions and obligations contained herein, and 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 ORC § 5301.67(C), on the Protected Property, and the parties hereto agree as to the terms and conditions contained herein. This Easement is subject to the following terms and conditions:

1. Present Condition Report

The Grantor and Grantees agree that the natural characteristics, soil types, physical conditions, physical structures, and the approved uses of the Protected Property at the time of this purchase are documented in a present condition report (the "Present Condition Report"), also known as "baseline documentation," prepared by the Local Grantee, and signed and acknowledged by the Grantor and a representative of the Local Grantee. The Present Condition Report establishes the condition of the Protected Property as of the Effective Date, and includes photographs, maps, and other documents. The Present Condition Report is attached as Exhibit B and incorporated herein by reference.

2. Prohibited Uses/Restrictions

Any activity on or use of the Protected Property inconsistent with the Purpose of this Easement is prohibited. The following activities are expressly prohibited, except as provided in Paragraph 3 below:

- 2.1 Waste and Dumping – Accumulation or dumping of trash, refuse, sewage, junk, or toxic materials, or storage of contaminated soil, non-compostable garbage, abandoned vehicles or parts, appliances, machinery, hazardous substances, or waste is prohibited. This restriction will not prevent generally accepted agricultural or wildlife management practices, such as the creation of brush piles, composting, or the storage of farm machinery which is regularly used on the farm, organic matter, agricultural products, or agricultural byproducts on the Protected Property, provided that it is done in such a manner so as to not impair the Purpose.
- 2.2 Subdivision – Separate conveyance, sale or purchase, of any portion of the Protected Property, division or subdivision of the Protected Property into separate parcels, or recording of a subdivision plan on the Protected Property is prohibited. This prohibition applies regardless of how many separately described parcels are contained in the legal description attached as Exhibit A. If a Permitted Homestead exists or is ever established within the Protected Property it shall not be subdivided or conveyed separately from the remaining Protected Property and shall remain a part of the Protected Property.
- 2.3 Industrial or Commercial Uses – Industrial or commercial activities on the Protected Property are prohibited except for the following listed activities (“Permitted Activities”). Permitted Activities shall automatically become prohibited if the conduct of the Permitted Activity (i) remove or otherwise disallow the Protected Property from Current Agricultural Use Value (“CAUV”) assessment as defined in ORC § 5713.30; *or* (ii) require the construction or installation of new, non-farm buildings not otherwise permitted on the Protected Property; *or* (iii) adversely affect prime and/or unique soils of the Protected Property. Permitted activities are the following:
- (i) agricultural production and related uses conducted in accordance with all applicable statutes and regulations and with any plans developed by state or federal agricultural agencies;
 - (ii) agriculture (including livestock production), equine activities, or forestry;
 - (iii) processing or sale of farm or forest products produced or substantially produced on the Protected Property in permitted buildings;
 - (iv) small-scale incidental commercial or industrial operations compatible with activities set forth in Paragraph 2.3(i) that the Grantees approve in writing as being consistent with the Purpose;

- (v) activities that can be and in fact are conducted within permitted buildings which are within the Permitted Homestead and which do not require material alteration to their external appearance or harming the agricultural use and future viability of such permitted buildings;
- (vi) the sale of excess power generated in the operation of approved alternative energy structures and associated equipment approved by Grantees in writing as consistent with the Purpose and at a scale appropriate to generate energy primarily for on-farm use;
- (vii) temporary or seasonal outdoor activities or events (“Activities”) that do not permanently alter the physical appearance of the Protected Property and that do not harm the agricultural use and future viability or impair the conservation values of the Protected Property herein protected; and
- (viii) customary rural enterprises related to agriculture or forestry or small-scale commercial enterprises compatible with agriculture or forestry such as, but not limited to, farm machinery repair, agri-tourism, processing, packaging, and marketing of farm or forest products, and small-scale farm wineries, cafés, shops, and studios for arts or crafts.

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 any prohibited activities.

- 2.4 Construction on the Protected Property – All new non-agricultural structures and improvements must be located within the Permitted Homesteads, except as provided in this Easement.

[DRAFTING NOTE: INSERT the below provision IF no home currently exists and LANDOWNER IS RESERVING RIGHT TO CONSTRUCT HOUSE (this assumes One Permitted Homestead) (if there will be multiple Permitted Homesteads, this provision will need to be revised):]

[OPTIONAL PROVISION] [Grantor may construct, improve, 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; provided, however, that the house and all of its residence-related appurtenances shall be located solely within the Permitted Homestead as described in Exhibit C. The new house will remain a part of the Protected Property and cannot be subdivided or sold separately

(as prohibited under Paragraph 2.2). A residence, dwelling, or house is any structure which includes, but is not limited to, cabins and lodges, designed for or capable of occupation by humans, as distinguished from agricultural structures.].

The boundaries and location of each Permitted Homestead may be adjusted within the Protected Property, if that the Grantees provide prior written approval of the adjusted boundaries and location; provided, however, that in no case shall the total acreage of the Permitted Homesteads within the Protected Property exceed the Maximum Permitted Homestead Acreage.

Except as expressly provided in this Easement, there shall be no construction of new, non-agricultural buildings or structures, roads, impervious surfaces, or any other temporary or permanent structure or facility on the Protected Property without the prior, written approval of the Grantees or as otherwise provided in this Easement. Agricultural structures to be located outside of the Homestead, including, but not limited to, barns, silos, and stockyards, may be built without the prior, written approval of the Grantees; provided, however, that the Grantees shall be provided with written notice before any construction of such structures begin and such structures shall not be inconsistent with the terms and conditions of this Easement, including, but not limited to, the Purpose. Currently existing structures as documented on the Present Condition Report and/or as otherwise approved in writing by the Grantees may be maintained, repaired, replaced, or reasonably enlarged without the prior written consent of the Grantees; however, any existing non-agricultural structures outside of the Permitted Homesteads may not be enlarged or modified without the prior written consent of the Grantees.

Activities described in the existing utility easements or rights-of-way as described in Exhibit D are permitted under this Easement. Except for utilities to serve buildings or structures permitted under this Easement or otherwise permitted herein, the **Grantor is expressly prohibited from seeking or granting easements or rights-of-way, or modifications or amendments thereto, for power lines, roads (private or public), gas lines, pipelines of any kind, sewer lines, water lines, telecommunication towers, or wind farms over, across, under or through the Protected Property without prior written approval from Grantees**, which shall not be unreasonably withheld, conditioned, or delayed, provided that such approval is consistent with the Purpose of this Easement, does not remove any acreage from being protected by this Easement, and have any other adverse impact on the agricultural use of the Protected Property. In the event that the Grantor receives any communication from a utility company or its agent about acquiring such an easement or right-of-way, the Grantor shall promptly notify the Grantees and provide to the Grantees copies of any relevant correspondence.

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

- 2.5 Motorized Vehicle Use – There shall be no use of motor vehicles on the Protected Property or grant of permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, conservation uses of the Protected Property, or for residential uses permitted by this Easement, provided that no use of motor vehicles has a detrimental impact on the productivity of the soils on the Protected Property and the Purpose of this Easement.
- 2.6 Surface Alteration – Grading, blasting, filling, sod farming, or earth removal that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:
- (i) dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement, or creation, in accordance with the Conservation Plan and NRCS standards and specifications;
 - (ii) erosion and sediment control pursuant to an erosion and sediment control plan approved by NRCS or the local Soil and Water Conservation District in which the Protected Property is located;
 - (iii) as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by the Grantees as being consistent with the Purpose;
 - (iv) agricultural activities conducted in accordance with the Conservation Plan; or
 - (v) as otherwise permitted with prior written approval of Grantees.
- 2.7 Oil, Gas, or Mineral Exploration and Extraction – Except as otherwise provided herein or identified in Exhibit D, mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the

Effective Date or later acquired by Grantor from the Protected Property is prohibited. Grantor is further prohibited from using any surface mining, subsurface mining, or dredging method, on or from the Protected Property, except for limited mining activities to the extent that the materials mined (e.g. peat, sand, gravel) are used for agricultural operations on the Protected Property. In the case of mining for agricultural operations, any mineral extraction activities must minimize any effect on the conservation values stated herein and agricultural uses of the soils present on the Protected Property. Further, extraction must be limited to one (1) acre or less and may not adversely impact the nature, soils, or Purpose of the Protected Property stated herein. Horizontal hydraulic fracturing (also known as fracking) or activity similar to horizontal hydraulic fracturing upon the Protected Property is prohibited, except that horizontal hydraulic fracturing under the Protected Property from property which is adjacent to the Protected Property is permitted with advance written notice and consent of the Grantees.

Grantor may undertake subsurface explorations, development and extraction of oil and gas, under the following conditions:

- (i) Any extraction of oil and natural gas shall have no more than a limited, localized impact on the Protected Property, and shall not impact more than one-half acre of the Protected Property.
- (ii) In any Oil and Gas Lease (“Lease”) hereafter entered into, Grantor shall require an acknowledgement by the oil and gas lessee (“Driller”) that the Protected Property is subject to this duly recorded Agricultural Easement.
- (iii) The Lease does not permit the Driller or any successor in interest to construct, place, or erect any non-agricultural structures or lay or install any pipeline or transmission lines without the prior, written approval of the Grantees.
- (iv) All activities performed by Grantor, Driller, or Lessee pursuant to a Lease shall comply with all regulations outlined in ORC Chapter 1509 and OAC Chapter 1501:9, as the same are revised or superseded from time to time, and shall also follow practices outlined in the Ohio Department of Natural Resources’ most current version of Best Management Practices for Oil and Gas Well Site Construction, or other such guidance on best management practices issued by the appropriate governmental agency overseeing oil and gas activities in Ohio, prior to and throughout all extraction activities, including closure.
- (v) The area within which all drilling and surface storage activities take place on the Protected Property is referred to as the “Disturbed Area.” No more than

the minimum amount of surface area of the Protected Property necessary for the safe and effective extraction of oil and natural gas may be cleared, graded, or otherwise disturbed for extraction activities.

- (vi) A buffer zone of at least 164 feet (50 meters) shall be maintained between the Disturbed Area and areas deemed sensitive by Grantees, including water resources such as wetlands, streams (perennial, intermittent or ephemeral), riparian areas within the 100 year flood plain, and areas of known sensitive species habitat (“Sensitive Areas”). Where necessary, and in consultation with Grantees, transmission lines may cross the Sensitive Areas provided that consideration is given first to those portions of the Sensitive Areas where there will be a minimal adverse impact and in any event, all impacts are to be restored pursuant to the ORC, OAC, and any regulation promulgated in accordance therewith. Buffer zone distances shall be adhered to unless site-specific situations make these distances infeasible and Grantees approve a variation in buffer zone requirements in writing.
- (vii) At least 30 days prior to the commencement of any proposed oil and natural gas extraction activities (including construction of the access road), Grantor shall notify Grantees of the date of the commencement of such activities and provide Grantees with a to-scale drawing depicting the location of all proposed oil or natural gas extraction facilities (including the access road) to be placed on the Protected Property. On or before 30 days following the completion of construction and installation of oil and gas facilities, Grantees shall be provided with an as-built to-scale drawing of all such facilities.
- (viii) Once the well and all installation of infrastructure have been completed, and upon termination of extraction activities, all soil and vegetative resources on the portions of the Protected Property affected by such activities shall promptly be restored to their original state, or as near as possible, prior to commencement of extraction activities.

Upon completion of any oil and gas activities on existing leases or existing, active wells within the easement area, Grantor shall promptly restore any portion of the Protected Property affected thereby to its condition and productivity existing prior to commencement of said subsurface oil and gas well activities, or as nearly as possible.

- 2.8 Storage Tanks – The installation and use of above or below ground storage tanks is permitted for the purposes of operating the farm so long as: (1) the installation and use of these tanks are in compliance with all state and federal laws; (2) the tanks

are installed and operated in such a manner so as to not impair the conservation values of the Protected Property; and (3) the installation and use of such tanks are not in conflict with any other term or provision of this Easement.

3. Grantor's Reserved Rights

The Grantor reserves for (him)/(her)/(it)self, (his)/(her)/(its) 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 or the Conservation Plan, and not expressly prohibited by this Easement. Although the Grantor need not obtain approval of the Grantees in order to exercise any reserved rights in this Paragraph, unless otherwise stated herein, the Grantor hereby agrees to notify the Grantees in writing before exercising any reserved right which may have an adverse effect on the conservation of the agricultural values associated with the Protected Property. The following rights are expressly reserved by the Grantor:

- 3.1 Conveyance – Grantor may sell, give, mortgage, lease, or otherwise convey the Protected Property, provided that such conveyance is made subject to, and in accordance with, this Easement and written notice is provided to the Grantees in accordance with Paragraph 11 and 14 below.
- 3.2 Right to Farm – Grantor retains the right to farm, or to permit others to farm, including the production, processing, and marketing of agricultural crops and livestock in accordance with applicable local, state and federal laws and regulations and the Conservation Plan.
- 3.3 Forest Management and Timber Harvest – Forest management activities and timber harvesting shall be permitted, provided all forest management and timber harvesting must be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations and to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20% of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager.

A forest management plan shall not be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads, utilities, buildings and structures on the Protected Property; (ii) cutting of trees for trail clearing; (iii) cutting of trees for firewood or for other domestic uses of

Grantor; (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock; or (v) removal of invasive species.

- 3.4 Non-developed Passive Recreation and Educational Activities – Non-developed passive recreational and educational activities are permitted if they do not negatively affect the soils and the agricultural operations, do not require new structures, and are consistent with the Purpose of the Easement. Examples of such activities include farm tours, work experiences, field trips, petting zoos, corn mazes, and hay rides. Grantor may use the Protected Property to personally derive income from certain recreational activities such as hunting, fishing, cross country skiing, and ecological tours, only if such activities comply with the terms of this Easement and those commercial activities are considered “de minimis” under Section 2031(c)(8)(B) of the Code. Recreational activities from which income is derived and which alter the Protected Property, such as athletic fields, golf courses or driving ranges, airstrips or helicopter pads, or motocross biking, are prohibited.
- 3.5 Right to Privacy – Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property. Notwithstanding this provision, the Grantees shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with the provisions of this Easement.
- 3.6 Fences and Roads – Existing fences may be cleared, repaired and replaced, and new fences may be built on the Protected Property for purposes of trespass prevention, to mark boundaries of the Protected Property, and for reasonable and customary management of livestock and wildlife, without any further permission of the Grantees. Non-paved roads may be constructed if they are necessary to carry out the agricultural operations or other permitted uses on the Protected Property. All roads documented on the Present Condition Report may be maintained as needed and if necessary to carry out the agricultural operations or other permitted uses on the Protected Property.
- 3.7 Renewable Energy – Grantor may, except as otherwise provided herein, add renewable energy facilities on the Protected Property for the purpose of generating energy predominantly for the agricultural and residential needs of the Protected Property, so long as such facilities are located within the Permitted Homesteads and consistent with the Purpose. Such renewable energy facilities must be built, placed, and maintained in accordance with any local zoning ordinance and applicable Ohio and Federal law, including but not limited to the regulations of the Public Utilities Commission of Ohio and the Federal Energy Regulatory Commission. Grantor may sell any excess electricity generated to the local electric utility grid. Leases for and

installation of commercial renewable energy facilities are prohibited without the prior written consent of the Grantees and may be granted only if all aspects of the project impact less than one percent of the Protected Property and do not interfere with the Purpose.

Renewable energy facilities, access roads, and any other related improvements shall be situated, constructed, and maintained pursuant to a plan approved by the Grantees in their sole discretion. Such plan shall be designed to comport with the Purpose of this Easement, minimize adverse effects on soils and the agricultural value of the Protected Property, and be in accordance with the terms and conditions set forth in this Easement.

- 3.8 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 and shall not transfer, encumber, lease, sell, or otherwise separate water rights from title to the Protected Property itself.
- 3.9 Signage – Grantor may place on the Protected Property interpretive signs, such as signs identifying that the Protected Property is protected by this Easement, or signs identifying prairie habitat improvements, as well as “no hunting,” “no trespassing” or similar signs.
- 3.10 Other Permitted Uses – Other permitted uses may be allowed so long as the proposed use does not harm agricultural use and future viability of the Protected Property, and does not conflict with the Purpose of the Protected Property, as determined in advance in writing by the Grantees, in the Grantees’ sole and absolute discretion.
4. Responsibilities of Grantor and Grantees – The responsibilities of Grantor shall include the following:
- 4.1 Taxes – Grantor is responsible for payment of all taxes and assessments levied against the Protected Property. If Grantees are ever required to pay any taxes or assessments on its interest in the Protected Property, the Grantor must reimburse the Grantees for the same.
- 4.2 Upkeep and Maintenance – Grantor is responsible for the upkeep and maintenance of the Protected Property, including any requirements by local, state, and federal laws and regulations.

The responsibilities of the Grantees shall include the following:

- 4.3 Present Condition Report – The Local Grantee is responsible for maintaining the Present Condition Report in Exhibit B and a current copy of the Conservation Plan.
 - 4.4 Monitoring – The Local Grantee is responsible for annually monitoring the Protected Property to verify that Grantor is in compliance with the terms and conditions of this Easement. The Local Grantee must submit an annual monitoring report to State Grantee.
 - 4.5 Compliance of Farm Operations – The Local Grantee is responsible for ensuring that active farm operations are in compliance with the Conservation Plan.
 - 4.6 Investigation – The Local Grantee is responsible for investigating potential violations of this Easement. If the Local Grantee determines the provisions of the Easement are not being complied with, the Local Grantee shall notify the State Grantee and Grantor of the alleged violation, and include this information in the annual monitoring report required under Paragraph 4.4 above. Failure to cure the violations may result in enforcement of the terms of this Easement. The State Grantee reserves the right to conduct a separate inspection of the Protected Property and enforce the terms of this Easement.
5. Grantees' Enforcement Rights and Remedies – In order to enforce the terms of this Easement, the Grantees shall have the following rights and remedies:
 - 5.1 Rights of the Grantees – The Grantees have the right to protect the conservation values of the Protected Property, periodically monitor compliance with this Easement on the Protected Property, and enforce the terms of this Easement.
 - 5.2 Right of Inspection – The Grantees, and their agents, successors, and assigns shall have the right to enter the Protected Property in a reasonable manner and at reasonable times for the purposes of: (i) inspection of the Protected Property (including photographic documentation of the condition of the Protected Property) to determine if the Grantor, or the Grantor's heirs, successors or assigns are complying with the provisions of this Easement; (ii) obtaining evidence for the purpose of seeking judicial enforcement of this Easement; and (iii) ensuring Conservation Plan implementation and compliance. In the event of an emergency, the Grantees may enter the Protected Property immediately, without notice, to prevent, terminate, or mitigate a potential violation of these restrictions. Notice to Grantor or Grantor's representative shall be given as reasonably practicable.

- 5.3 Indemnity – Grantor shall indemnify, defend, and hold harmless the Grantees and their respective employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, but not limited to, court costs, reasonable attorneys’ fees and attorneys’ fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but not limited to, Grantor’s negligent acts or omissions, Grantor’s breach of any representation, warranty, covenant, agreement contained in this Easement, or violations of any federal, state or local law, including all Environmental Laws.
- 5.4 Remedies – In accordance with the provisions set forth in OAC § 901-2-11, the Grantees shall have the right to enforce the terms of this Easement by proceedings at law or in equity including, but not limited to, the right to require the restoration of the Protected Property to its condition as of the Effective Date, subject to the reserved rights of the Grantor set forth herein.

In the event of a violation of the terms of this Easement, in addition to the other remedies provided for in this Paragraph 5.4, and any other remedies available in law or equity, the Grantees shall also be entitled to recover all damages necessary to place the Grantees in the same position that it would have been in but for the violation. The Grantor and Grantees agree that in determining such damages the following factors, among others, may be considered: (i) the costs of restoration of the Protected Property as provided in the Paragraph above; and (ii) the full market cost and Proportionate Share of Grantees as provided in Paragraph 7 below of purchasing a conservation easement containing terms comparable to the terms of this Easement on land in the vicinity of the Protected Property of a size and with conservation values roughly comparable to those of the Protected Property. The Grantees have the right to proceed against any third party or parties whose actions threaten or damage the conservation values of the Protected Property, including the right to pursue all remedies and damages as provided in this Paragraph 5.4.

The Grantees, or their respective successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act. Nothing herein shall be construed to entitle the Grantees to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to causes beyond the Grantor’s control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights, provided, however, that the Grantor

shall notify the Grantees of any occurrence which would adversely affect or interfere with the Purpose of this Easement, whether caused by the acts or omissions of the Grantor or third parties, or by natural occurrences.

6. Environmental Warranty

Grantor warrants that Grantor is in compliance with, and shall remain in compliance with all applicable Environmental Laws as hereinafter defined. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of non-compliance or alleged non-compliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that Grantor has no actual knowledge of a release or threatened release of any Hazardous Materials, as hereinafter defined, on, at, beneath or from the Protected Property exceeding regulatory limits.

Moreover, Grantor hereby promises to indemnify and hold harmless the Grantees against all litigation, costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Law by Grantor or any other prior owner or operator of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantees to Grantor with respect to the Protected Property, or any restoration activities carried out by the Grantees at the Protected Property. In addition, the Grantor shall be responsible for any Hazardous Materials contributed by Grantor on or after the Effective Date of this Easement to the Protected Property.

"Environmental Law(s)" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

7. Extinguishment or Termination of Easement

[Drafter's Note: If the Grantor wishes to take advantage of a federal tax deduction the following language may be used].

Pursuant to Notice 2023-30, Grantor and Grantee agree that, if a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation of the Easement renders impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the property are used by the Grantee in a manner consistent with the conservation purposes of the original contribution.

Determination of Proceeds. Grantor and Grantee agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time (the "Proportionate Value"). The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the subject property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the Grantor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

On a subsequent sale, exchange, or involuntary conversion of the Protected Property (the, "Extinguishment Event"), the State Grantee shall be entitled to the Proportionate Value of the proceeds from such event and Grantor shall remit such amount to the State Grantee as soon as commercially reasonable following receipt of the proceeds from the Extinguishment Event. For purposes of clarity, the State Grantee shall be allocated one hundred percent (100%) of the Proportionate Value of the proceeds from the Extinguishment Event. Until such time as the State Grantee receives the Proportionate Value of the proceeds from the Extinguishment Event from the Grantor or the Grantor's successor or assigns, the State Grantee shall have a lien against the Protected Property for the amount.

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

[Drafter's Note: If the Grantor does not wish to take advantage of a federal tax deduction, the following language may be used instead of the above four paragraphs].

ALTERNATIVE PROVISION

Grantor agrees that the grant of the Easement gives rise to a property right, immediately vested in the State Grantee, with a fair market value that is at least equal to the proportionate value that the Easement, as of the Effective Date, bears to the fair market value of the Protected Property as a whole, as of the Effective Date (the "Proportionate Value"). For purposes of the clarity, the Proportionate Value shall be a fraction, the numerator of which is fair market value of the Easement as of the Effective Date and the denominator of which is the fair market value of the Protected Property as a whole as of the Effective Date. For purposes of determining the Proportionate Value, the fair market values as of the Effective Date shall be those values as set forth in an appraisal prepared on behalf Grantor, a copy of which Grantor shall deliver to the Grantees and to be retained thereafter in Grantees' files.

On a subsequent sale, exchange, or involuntary conversion of the Protected Property (the, "Extinguishment Event"), the State Grantee shall be entitled to the Proportionate Value of the proceeds from such Extinguishment Event (the "State Grantee's Share"); provided, however, that such proceeds shall not include the fair market value of any improvements incorporated upon the Permitted Homesteads during the period from and after the Effective Date through the date of the Extinguishment Event. Grantor shall remit an amount equal to the State Grantee's Share to the State Grantee as soon as commercially reasonable following receipt of the proceeds from the Extinguishment Event. Until such time as the State Grantee receives an amount equal to the State Grantee's Share from the Grantor or the Grantor's successor or assigns, the State Grantee shall have a lien against the Protected Property for such amount.

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

All proceeds received by the Director shall be credited to the Agricultural Easement Purchase Fund. Notwithstanding the foregoing, all of the proceeds received by the State Grantee from a subsequent sale, exchange, or involuntary conversion of the Protected Property, must be used by the State Grantee in a manner consistent with the conservation purposes of the original grant of the Protected Property under this Easement.

8. Amendment or Modification of Easement

This Easement may be amended or modified only if such amendment or modification furthers or is consistent with the Purpose of this Easement and is in compliance with all applicable laws and regulations in the sole and exclusive judgment of the Grantees. Any amendment or modification must be mutually agreed upon by all parties to this Easement, comply with all applicable laws and regulations, and be signed and duly recorded by the all parties to this Easement or their respective heirs, assigns, or successors. Such amendment or modification of the Easement shall be in the form of a Corrective or Amended Deed of Easement.

[Drafter's Note: If the Grantor wishes to take advantage of a federal tax deduction the following language will be included].

Pursuant to Notice 2023-30, Grantor and Grantee agree that boundary line adjustments to the Protected Property subject to the restrictions may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line's location.

9. Perpetual Burden

This Easement shall run with and burden the Protected Property in perpetuity and shall bind the Grantor and the Grantees, and their respective heirs, successors, agents, and assigns.

10. Transfer or Assignment of Easement

Upon prior written consent from the Grantees, this Easement may be assigned or transferred by the Grantees to a public agency or non-profit organization, which, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code, and organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code. The transferee or assignee will be required to carry out in perpetuity the Purpose that this Easement was originally intended to advance.

11. Transfer of Protected Property

Grantor agrees that upon transfer of the Protected Property, or interest in the Protected Property as proscribed above, from one landowner to another, the terms, conditions, restrictions and Purpose of this Easement will be referenced by volume and page number or instrument number 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, and be binding upon the parties of the subsequent deed or other legal instrument. The Grantor agrees to notify the Grantees, their successors, agents and assigns, of any such conveyance in writing at least 30 days prior to closing, or before any purchase agreement or other contract for the sale of land is entered into by the Grantor.

12. Subordination

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

13. Re-Recording

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

14. Notices

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

Grantor: [Insert contact name/address]

Local Grantee: [Insert contact name/address]

State Grantee: Ohio Department of Agriculture, Office of Farmland Preservation,
8995 East Main Street, Reynoldsburg, Ohio 43068.

15. Severability

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

16. Entire Agreement and Waiver

This Easement sets forth the entire agreement between the parties hereto, and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Easement supersedes all prior discussions, negotiations, understandings, or agreements between the parties relating to this Easement, whether written or oral. Originals and supporting documentation are on file with the State Grantee, with a copy available on file with the Local Grantee.

A waiver by any party or any breach or default by the other party under this Easement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

17. Termination of Rights and Obligations

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

18. Governing Law

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

19. No Merger

In the event that either of the Grantees take legal title to Grantor's interest in the Protected Property, the interest conveyed by this Easement will not merge with the fee title but will continue to exist and be managed as a separate estate. In addition, and as soon as possible in such event, the Grantees will transfer this Easement to a qualified organization within the meaning of Section 170(h)(3) of the Code, which has among its purposes the conservation and preservation of land and water areas. No purchase or transfer of the underlying fee interest in the Protected Property by or to the Grantees, or any successor or assignee, shall be deemed to eliminate these Easement terms, or any portion thereof.

20. Interpretation

The singular of any term, including any defined term, shall include the plural and the plural of any term, including any defined term, shall include the singular. The use of any pronoun with respect to general shall include the neutral, masculine, feminine, and plural. Additionally, all references to either Grantor or Grantees include their respective personal representatives, agents, heirs, successors, devisees and assigns, unless otherwise noted. All exhibits attached hereto and referred to herein are incorporated into and made a material part of this Easement as if fully set forth herein. In the event of any conflict between any exhibit and this Easement, the provisions of this Easement shall govern and control.

[This portion was intentionally left blank.]

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: _____
Printed Name

Signature: _____
Printed Name

Acknowledgement

State of Ohio
County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____ 20____ by _____, who acknowledges that S/he/they did sign the foregoing instrument, and that the same is her/his/their free act and deed. No oath or affirmation was administered to the signers with regard to this acknowledgement.

Notary Public
My Commission Expires:

[Drafting Note: Repeat the acknowledgment if more than one Grantor]

Acceptance by State Grantee

Signature: _____

Brian Baldrige
Director of the Ohio Department of Agriculture

Acknowledgement

State of Ohio
County of _____) ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Brian Baldrige, the Director of the Ohio 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. No oath or affirmation was administered to the signers with regard to this acknowledgement.

Notary Public
My Commission Expires:

Acceptance by Local Grantee

NAME OF LOCAL GRANTEE

Signature: _____

Printed Name: _____

Title: _____

Acknowledgement

State of Ohio
County of _____) ss.:

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

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, acting for and on behalf of _____, who acknowledged that they executed the same for and on behalf of that local jurisdiction and that they did so on their, the local jurisdiction's own free act and deed. No oath or affirmation was administered to the signers with regard to this acknowledgement.

Notary Public
My Commission Expires:

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

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, acting for and on behalf of _____, an Ohio nonprofit corporation, who acknowledged that they executed the same for and on behalf of that corporation and that they did so on their, the corporation's own free act and deed. No oath or affirmation was administered to the signers with regard to this acknowledgement.

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

Template Date: 06/14/2023

TEMPLATE

Exhibit A

Legal Description of Protected Property

See Attached.

TEMPLATE

Exhibit B

Description of Agricultural Soils and Present Condition Plan

See Attached.

TEMPLATE

Exhibit C

Description, Acreage, Boundaries and Map of Permitted Homestead(s)

See Attached.

TEMPLATE

Exhibit D

**Description of Existing Utility Easements; Rights-of-Way; and Oil, Gas, or Mineral
Exploration and Extraction**

See Attached.

TEMPLATE