



Resolution No. 15
Fernald Preserve Natural Resource Trustees

Re: Approval of offer to purchase conservation/agricultural easements for Hesselbrock Farms pilot project property by Three Valley Conservation Trust.

WHEREAS, the Fernald Preserve Trustee Council was established pursuant to the July 2001 Memorandum of Understanding entered into by the Ohio Environmental Protection Agency ("Ohio EPA"), the United States Department of Energy ("DOE"), and the United States Department of the Interior ("DOI") (collectively, the "Trustees");

WHEREAS, the Natural Resource Damage Consent Decree for the Fernald Preserve, dated November 11, 2008, required DOE to deposit \$13,750,000 into an interest-bearing escrow account in the Registry of the United States District Court for the Southern District of Ohio ("Escrow Account"), and on February 17, 2009, the United States on behalf of DOE deposited \$13,750,000 into the Escrow Account;

WHEREAS, on August 19, 2010, the United States District Court for the Southern District of Ohio ordered the transfer of \$13,781,225.18 from the Escrow Account to the Treasurer, State of Ohio, to be deposited into the Natural Resource Damages Fund, for the Fernald Preserve;

WHEREAS, the Consent Decree, Paragraph 4.6, provides that any transferred funds shall be applied toward the costs of restoration, replacement, or acquisition of the equivalent of injured Natural Resources at and in the vicinity of the Fernald Preserve, as set forth in the Natural Resource Restoration Plan ("NRRP");

WHEREAS, the Consent Decree, Paragraph 4.7, provides that the Trustees shall expend the funds to implement the plan developed pursuant to Section 1.5 of the NRRP;

WHEREAS, on June 17, 2009, the Trustees published a draft Natural Resource Funds Use Plan ("draft NRFUP") for the Fernald site and accepted comments on the draft NRFUP until August 8, 2009. The Trustees also convened a public availability session on July 8, 2009 at the Fernald Preserve to

discuss the draft NRFUP and accept comments and suggestions from the public. On February 23, 2010, the Trustees issued the final Natural Resource Funds Use Plan (“NRFUP”); and

WHEREAS, on October 13, 2010, the Trustees approved Trustee Resolution #7 authorizing Ohio EPA to enter into a contract with Three Valley Conservation Trust to identify, acquire and/or preserve restoration pilot project properties approved by the Trustees within the Paddys Run Conservation Project.

WHEREAS, on July 12, 2011, the Trustees approved Trustee Resolution #12 confirming that Ohio EPA should authorize Three Valley Conservation Trust to conduct an appraisal of the Hesselbrock farms properties as a part of the contract required pilot project.

WHEREAS, the Trustee Council, by unanimous consent, agrees that Ohio EPA and its contractor Three Valley Conservation Trust to may offer and execute the purchase of the attached agricultural conservation easements for the following Hesselbrock farms properties in amounts up to but not exceeding the following amounts: Carl and Marjorie Hesselbrock property \$676,952 (754 acres) and Joseph and Tamara Hesselbrock property \$110,382 (137 acres).

NOW THEREFORE BE IT RESOLVED that the Trustee Council agrees, by unanimous consent, that Ohio EPA and its contractor Three Valley Conservation Trust may offer and execute the purchase of the attached agricultural conservation easements for the following Hesselbrock farms properties in amounts up to but not exceeding the following amounts: Carl and Marjorie Hesselbrock property \$676,952.00 (754 acres) and Joseph and Tamara Hesselbrock property \$110,382.00 (137 acres).

Resolution No. 15
Fernald Preserve Natural Resource Trustees

DATED this 26th day of March, 2012.

United States Department of the Interior
U. S. Fish and Wildlife Service



By: Jennifer Finfera, Columbus, Ohio Field Office

Resolution No. 15
Fernald Preserve Natural Resource Trustees

DATED this 26th day of March, 2012.

Ohio Environmental Protection Agency



By: Thomas A Schneider, Fernald Project Manager

Resolution No. 15
Fernald Preserve Natural Resource Trustees

DATED this 26th day of March, 2012.

United States Department of Energy



Thomas C. Pauling
2012.03.27 16:31:58
-04'00'

By: Thomas C. Pauling, Director of Site Operations, Office of Legacy Management

Agricultural Conservation Easement

This Agricultural Conservation Easement (hereinafter referred to as the “Easement”) is made and entered into this _____ day of _____, 2012, by Carl Hesselbrock and Marjorie Hesselbrock, husband and wife, whose address is 6065 Alert New London Road, Okeana, Ohio 45053 (hereinafter referred to as “Grantor”), and the Three Valley Conservation Trust, an Ohio nonprofit corporation, whose address is 5920 Morning Sun Road, Oxford, Butler County, Ohio 45056 together with its successors and assigns, (hereinafter referred to as “Grantee”), in cooperation with the United States of America (“United States”) acting by and through Department of Agriculture, Natural Resources Conservation Service (“NRCS”) acting on behalf of the Commodity Credit Corporation, and also in cooperation with the Ohio Environmental Protection Agency (“Ohio EPA”) on behalf of the Fernald Natural Resource Damage Trustees, which consist of authorized representatives of the United States Department of Energy, the United States Department of the Interior (United States Fish & Wildlife Service), and the Ohio EPA (hereinafter referred to as the “Fernald Trustees”). The Grantor, the Grantee, the United States and the Fernald Trustees are hereinafter collectively referred to as the “Parties.” The terms Grantor and Grantee as used herein include heirs, successors and assigns of each.

This is an agreement for the sale and purchase of an agricultural conservation easement and the monitoring and enforcement of such Easement. Specifically, Grantee agrees to purchase the Easement from the Grantor for \$2,071,852 with \$1,394,900 provided by the United States through the Farm and Ranch Lands Protection Program (16 U.S.C. §§ 3838h and 3838i) and the balance of \$676,952 provided by the Ohio EPA on behalf of the Fernald Trustees pursuant to the State of Ohio’s natural resource damage settlement with the United States Department of Energy (November 11, 2008 Consent Decree, United States District Court for the Southern District of Ohio, Western Division; State of Ohio ex rel. Nancy Rogers Attorney General of Ohio v. United States Department of Energy, et al., case no. C-1-86-0217). Grantee agrees to monitor and enforce the Easement in perpetuity.

RECITALS

A. Protected Property

Whereas, Grantor is the owner in fee simple of approximately 754 acres of agricultural and natural property, located at 6065 Alert New London Road, in Morgan Township, Butler County, Ohio (hereinafter referred to as the “Protected Property”), more fully described on Exhibit A attached hereto and to which this Easement applies. Grantor has full authority to convey this Easement and has a good and indefeasible fee simple title to the Protected Property, which Grantor hereby warrants is free and clear of all liens and encumbrances not conducive to agriculture and natural use, and acceptable to Grantee and the United States and the Fernald Trustees.

B. Conservation and Agricultural Values

In particular, the Protected Property consists of land that is either (i) devoted predominantly to agricultural or natural use as defined by Sections 5301.67-.70 of the Ohio Revised Code and in relevant part exclusively to agricultural use under Section 5713.30 of the Ohio Revised Code and is valued for real property taxation at its current value for agricultural uses under Section 5713.31 of the Ohio Revised Code, or (ii) constitutes a homestead as defined by Section 901.21(A)(3) of the Ohio Revised Code. Grantor intends to preserve the Protected Property for agricultural and natural use. Specifically, the Protected Property conserves riparian and woodland features necessary for both contiguous habitat corridors for waterfowl, migratory birds and pollution-intolerant fish species, in

addition to the agricultural values associated with prime soils and productive agricultural use; together hereinafter referred to as “Conservation Values” of the Protected Property.

C. Present Condition Report

The natural characteristics, the soil types, the physical conditions, the physical structures, and the agricultural/conservation uses of the Protected Property as of the date of this Easement, including a map that accurately identifies the Agricultural, Natural, and Homestead Zones of the Protected Property, are documented in a Present Condition Report (also known as a Baseline Monitoring Report) (hereinafter referred to as the “Report”) prepared by Grantee and signed and acknowledged by Grantor and representatives of Grantee, establishing the condition of the Protected Property as of the date of this Easement, including photographs, maps and other documents, as set forth in Exhibit B.

D. Qualified Organization

Grantee is a qualified organization under Section 170 of the U.S. Internal Revenue Code, as amended from time to time, and under the regulations promulgated thereunder, to receive conservation easements, and is also qualified under Section 5301.69 of the Ohio Revised Code to hold conservation and agricultural easements.

E. Federal Farm and Ranch Lands Protection Program

The purpose of the Federal Farm and Ranch Lands Protection Program (“FRPP”), which is codified at 16 U.S.C. §§ 3838h and 3838i, is to protect prime, unique, or statewide and locally important soils or historic and archaeological resources on farmland from conversion to non-agricultural uses. The grant and acceptance of this Easement is also pursuant to a clearly delineated federal conservation policy to preserve agricultural land as evidenced by the FRPP.

Terms and Conditions of the Agricultural and Conservation Easement

Now therefore, in consideration of the mutual promises, conditions, restrictions and obligations contained herein pursuant to the laws of the State of Ohio and the United States, Grantor hereby voluntarily grants and conveys with general warranty covenants to Grantee a perpetual agricultural easement and a perpetual conservation easement, as defined in Sections 5301.67 through 5301.70 of the Ohio Revised Code, and which is intended to meet the terms and conditions of a Qualifying Conservation Contribution under U.S. Internal Revenue Code Section 170(h), with respect to the Protected Property. The Easement is subject to the following terms and conditions:

1. Statement of Purpose. It is the purpose of this Easement to assure that the Conservation Values of the Protected Property, as identified in Exhibit B, will be preserved, that the portion of the Protected Property currently in agriculture will be available for agricultural use by preserving and protecting its agricultural soils, that the entire Protected Property will be retained forever in its natural and agricultural condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property or that are inconsistent with the purpose of this Easement, all through a perpetual restriction on the use of the Protected Property (hereinafter referred to as the “Purpose of this Easement”).

1.1 The Protected Property is comprised of three use zones:

1.1.1 Agricultural Zone: Approximately 574 acres of fields predominantly containing prime agricultural soils.

- 1.1.2 Natural Zone:** Approximately 170 acres of forest, stream and riparian corridor along Dry Fork Creek and a tributary to Paddys Run Creek.
- 1.1.3 Homestead Zone:** Approximately 10 acres, including 2 residential structures and support buildings.

2. General Authority provided to the Grantee by this Easement. By granting this Easement, Grantor hereby grants Grantee the following rights:

- 2.1** To preserve and protect the Conservation Values of the Protected Property;
- 2.2** To post or clearly mark the boundaries of the Protected Property, including the Natural, Agricultural, and Homestead Zones, at reasonable boundary intervals;
- 2.3** To enter upon the Protected Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that except in cases in which immediate action is necessary to protect the Conservation Values, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property; and
- 2.4** To prevent any activity on or use of Protected Property that is inconsistent with the Conservation Values and the Purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.

3. Conservation Plan. As required by Section 1238I of the Food Security Act of 1985, as amended, Grantor shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the Butler County Soil and Water Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect as of the date of this Easement. However, 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. A copy of the plan shall be provided to Grantee at the time the plan is completed. NRCS and Grantee shall have the right to enter upon the Protected Property, at reasonable times, in order to monitor compliance with the conservation plan.

In the event of noncompliance with an NRCS conservation plan, NRCS shall work with Grantor to explore methods of compliance and give Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS shall inform Grantee in writing of Grantor's noncompliance. Grantee may take any actions it deems appropriate if it determines that Grantor's non-compliance affects the Conservation Values. NRCS, after determining that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations, may take any steps NRCS is empowered under law to take to secure compliance. In addition, if the NRCS standards and specifications for highly erodible land are revised after the date of this Easement based on an Act of Congress, NRCS shall work cooperatively with Grantor to develop and implement a revised conservation plan. The provisions of this Paragraph apply to the highly erodible land conservation

requirements of the FRPP and are not intended to affect any other natural resources conservation requirements to which Grantor may be or become subject.

4. Prohibited Uses/Restrictions. Except to the extent that activities and uses are authorized in this Easement, any activity on or use of the Protected Property inconsistent with the Conservation Values of the Protected Property, or with the Purpose of this Easement, or with other significant conservation interests, is prohibited. The Natural Zone shall be protected from any inconsistent agricultural, commercial, residential or other inconsistent uses. The Agricultural Zone shall be protected from any inconsistent residential and/or other inconsistent uses. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited throughout the Protected Property:

- 4.1 Subdivision.** The legal subdivision of the Protected Property, including the recording of a subdivision plan, partition, or any other division of the Protected Property into two or more parcels, is prohibited.
- 4.2 Residential Structures.** There shall be no construction or placement on the Protected Property of new residential structures, dwellings, buildings, mobile homes, except as permitted in Paragraph 5 of this Easement and then only in the Homestead Zone depicted in Exhibit B (the "Homestead Zone").
- 4.3 Industrial or Commercial Activity.** Other than activity that is specifically permitted in Paragraph 5 of this Easement, or permitted *de minimis* activity discussed in Paragraph 5.9, there shall be no industrial or commercial activity undertaken or allowed on the Protected Property, including, but not limited to, a golf course, landfill or dump, or mobile home or trailer park. No easement or other right of passage shall be granted or retained across or upon the Protected Property if such right of passage is used in conjunction with prohibited activities related to the Protected Property, or could adversely impact the Conservation Values of the Protected Property or the Purpose of this Easement.
- 4.4 Utility Structures and Equipment.** There shall be no construction or placement on the Protected Property of any antenna, utility pole, telecommunication tower, tower, commercial, industrial or municipal-scale conduit line, lines, poles, towers, pipes, or other equipment or facilities for the transmission of electric power, natural gas, or petroleum products, or for commercial, industrial or municipal-scale telecommunications, sewage, septic, drainage, or any other utility, or the sale, transfer, or granting of any interest in the Protected Property for any such purpose except on-farm use as noted in Paragraph 5.10 of this Easement, or as otherwise permitted in this Easement. Grantor may consent to acquisition of such rights of way pursuant to proper exercise of eminent domain; however, any such condemnation that compromises the Conservation Values of the Protected Property shall give rise to a right in the United States and the Fernald Trustees and Grantee to compensation as if the Easement or the affected part thereof had been extinguished. After notice to and approval by Grantee as provided for in Paragraph 18 of this Easement, facilities for the generation of energy that are consistent with the objective of maintaining the Conservation Values of the Protected Property may be installed, but only in locations that Grantee agrees will not harm the Conservation Values of the Protected Property.
- 4.5 Surface Mining.** The mining or extraction of any mineral by any method that substantially disturbs the surface of the land subject to this Easement is prohibited. Methods of mineral

extraction that are managed so as to have limited and localized impact on the Protected Property and which do not have a materially adverse effect on the Conservation Values of the Protected Property may be permitted upon notice to and approval by Grantee, the Fernald Trustees and the United States, as specified in Paragraph 18 of this Easement. Grantor shall not transfer, encumber, lease, sell, or otherwise separate mineral rights from the Protected Property.

- 4.6 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 Protected Property in any manner unless in accordance with the conservation plan as referenced in Paragraph 3 of this Easement.
- 4.7 Dumping.** There shall be no accumulation, storage, dumping, or other disposal of garbage, trash, abandoned vehicles or parts, appliances, machinery, waste, refuse, debris (excluding agricultural activity), ashes, hazardous or toxic substances or other unsightly or offensive material, nor any placement of underground storage tanks, on or in the Protected Property, and no changing of its topography through the placing of soil or any other substance or material such as land fill or dredging spoils. The storage of agricultural products, byproducts (including the composting of biodegradable material generated on the Protected Property for on-farm use) and agricultural equipment used on the Protected Property is permitted, so long as such storage is conducted in accordance with all applicable government laws and regulations and in such a manner that such storage does not impair the Conservation Values of the Protected Property.
- 4.8 Roads.** Except as specifically permitted in Paragraph 5.11 of this Easement, there shall be no building of new roads, parking lots, or other paved surfaces, or the widening of such existing surfaces on the Protected Property, except in the Homestead Zone.
- 4.9 Confined Animal Facility Operations.** There shall be no large concentrated animal facility operations or major concentrated animal feeding facilities, as defined under Sections 903.01(M) and 903.01 (N) of the Ohio Revised Code, permitted on the Protected Property unless Grantee, the Fernald Trustees and the United States all agree in writing that such facilities have been designed so as to avoid any adverse impact on the Conservation Values of the Protected Property or other significant conservation interests on the Protected Property or offsite. If such a facility is permitted by Grantee and the other Parties hereto, then Grantee, the Fernald Trustees or the United States may require that the operation be immediately terminated should Grantee or any of the other Parties hereto determine in their discretion and in good faith that the operation is compromising the Conservation Values of the Protected Property or any other significant conservation interest.
- 4.10 Water Wells.** Grantor shall not drill nor allow drilling for water on the Protected Property for the construction of municipal, industrial, or commercial water wells, nor shall Grantor transfer, encumber, lease, sell, or otherwise separate water rights with respect to the Protected Property from the Protected Property.
- 4.11 Motor Vehicles.** Grantor shall not operate on the Protected Property (or allow the operation of) motorized vehicles including, but not limited to, automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, and any recreational motorized vehicles, in a

manner that can harm the Conservation Values of the Protected Property. However, motorized vehicles are permitted on the Homestead and Agricultural Zones. Farm equipment utilized in connection with farm activities is permitted on the Protected Property. Motorized vehicles are also permitted on the Protected Property to maintain trails, conduct educational or low impact recreational/quiet enjoyment activity, or perform functions otherwise consistent with protection of the Conservation Values of the Protected Property.

4.12 Impervious Surfaces. The aggregate coverage of impervious surfaces on the Protected Property, including all residential and agricultural structures (with or without flooring), non-seasonal roof tops and paved roads and other paved, including concrete, areas, existing or permitted in this Easement, shall not exceed 2 percent of the total acreage of the Protected Property. Conservation practices approved by NRCS and in the conservation plan of the Protected Property that are installed on the Protected Property shall not count against the impervious surface limit.

4.13 Trees and Native Plants. To protect vegetative and wildlife habitat values in the Natural Zone, any native tree or plant cutting or harvesting activity must comply with an official woodland stewardship management plan or its equivalent (“forest plan”) through the Ohio Department of Natural Resources Division of Forestry and with current species-specific guidance of relevant state and federal agencies. The forest plan shall incorporate such current guidance at the time it is finalized and shall include contact information for updating such guidance. Activities permitted by the forest plan in the Natural Zone may include commercial harvest of timber, propagation and harvest of native plants or mushrooms, measures to restore native habitat communities, control or eradication of non-native trees and plants, measures to control disease and measures necessary for safety, so long as such activities are consistent with the Conservation Values of the Protected Property. Introduction of invasive or noxious plants is prohibited. If the Natural Zone is to be managed under an alternative to the forest plan described above, such alternative must include equivalent guidance and contact information.

4.14 Surface Water. There shall be no manipulation or alteration of creeks, streams, natural water courses, marshes, surface or subsurface springs or other bodies of water or the shorelines thereof at or on the Natural Zone except as a restoration of an existing watercourse, wetland, etc., as a part of a restoration plan approved by Grantee. In other zones of the Protected Property, restoration or maintenance activities necessary to maintain the Conservation Values of the Protected Property, including agricultural use, are permitted as a part of an approved conservation plan, if applicable, and consistent with all applicable laws. Existing small dams and ponds on the Protected Property, if any, may be maintained and repaired, and wildlife or erosion control ponds may be restored, provided that such activity shall not cause or result in hydro-modification.

5. Retained and Reserved Rights. Grantor retains for themselves, and for their beneficiaries, successors, and assigns, all rights accruing from Grantor’s ownership of the Protected Property that are not prohibited in this Easement or inconsistent with the maintenance of the Conservation Values of the Protected Property, including: the right of access to, and quiet enjoyment of, all portions of the Protected Property; the right to exclude any member of the public from trespassing on the Protected Property; the right to sell or otherwise transfer the Protected Property subject to the terms hereof; the right to engage in recreational activity that is conducted so as not to compromise the Conservation

Values of the Protected Property, including: hiking, cross-country skiing, snowshoeing, activity associated with non-commercial horseback riding, fishing, educational programs and temporary, individual or small group camping. This Easement shall not be construed as a dedication of the Protected Property for public use, nor is the Grantee authorized by this Easement to make any use of the Property other than as provided herein. In addition, Grantor may permit recreational activities, provided the quality and quantity of such activities are low-impact, and do not impair the Conservation Values of the Protected Property. Agricultural or other activities on the Protected Property shall be conducted in a manner which protects the Natural Zone and which does not harm the Conservation Values of the Protected Property. Agricultural activity may be permitted in the Natural Zone, but only if such activity is to be conducted for use as a management tool, included in the conservation plan, and approved by the Grantee. In addition to the foregoing, and notwithstanding anything else contained herein, the following rights are expressly reserved to the Grantor:

- 5.1 Conveyance.** Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is subject to this Easement and written notice is provided to the Grantee, the United States and the Fernald Trustees in accordance with Paragraph 18 of this Easement.
- 5.2 Farming.** Consistent with the Purpose of this Easement, Grantor may farm or permit others to farm in the Agricultural Zone, in accordance with applicable local, state and federal laws and regulations and the conservation plan identified in Paragraph 3 of this Easement.
- 5.3 Agricultural Education Programs.** As a part of the agricultural activities conducted on the Agricultural Zone of the Protected Property, Grantor may conduct or authorize another party (individual or organization) to conduct educational programs and public field days on the Protected Property for the purpose of teaching about agricultural practices and promoting awareness of agriculture as long as it does not adversely affect the Conservation Values of the Protected Property and does not adversely affect the soils of the Protected Property.
- 5.4 Right to Privacy.** Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property. Notwithstanding this provision, Grantee and NRCS shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with Paragraphs 2, 3 and 8 of this Easement.
- 5.5 Right to use the Protected Property for Customary Rural Enterprises.** Grantor may use the Protected Property for otherwise lawful and customary rural enterprises, including, but not limited to, processing, packaging and marketing farm products produced primarily on the Protected Property, farm machinery repair, roadside market stands, small professional office business, bed and breakfast, party and horse barns, so long as these uses are confined to the Homestead Zone, and are of a nature, scale and character that do not adversely affect the Conservation Values of the Protected Property.
- 5.6 Fences.** Grantor may clear, repair and replace existing fences, and build new fences on the Protected Property for purposes of trespass prevention and reasonable and customary management of livestock and wildlife.
- 5.7 Agricultural Structures and Improvements.**

5.7.1 Residential Structures and Improvements. Grantor may maintain, enlarge, remodel or demolish and rebuild existing dwelling structures and necessary infrastructure to serve the structure so long as such activity would not result in harm to the Conservation Values of the Protected Property. Grantor shall notify Grantee in advance of such demolition, enlargement or reconstruction

5.7.2 Agricultural Structures and Improvements. Subject to the impervious surface limit of Paragraph 4.12 of this Easement, Grantor may repair, enlarge by up to 50% from current size and replace existing agricultural structures and improvements on the Protected Property at their current locations as shown on the Report. Within the Homestead Zone but not elsewhere on the Protected Property, Grantor may build new buildings and other structures and improvements on the Protected Property 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 dwelling or farm labor housing.

5.8 Existing Recreational Improvements. Grantor may repair or replace all existing recreational improvements on the Protected Property at their current locations.

5.9 New Recreational Improvements. Grantor may build new personal recreational improvements or enlargements of existing personal recreational improvements but not to include a dwelling, only with the advance written permission of the Grantee, and so long as such improvements or enlargements do not harm the Conservation Values of the Protected Property. Permission will be granted only for *de minimis* commercial recreational improvements upon a determination by Grantee that such commercial recreational improvements are not inconsistent with the goals of the FRPP and the Purpose of this Easement.

5.10 Utility Services and Septic Systems. Grantor may install, maintain, repair, replace, remove and relocate electric, gas, geothermal, water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Protected Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements permitted herein. Grantor may also grant easements over and under the Protected Property for such purposes. Grantor may maintain, repair or improve a septic system(s) or other underground sanitary system which exists on the Protected Property at the time of this Easement, and may construct septic or other underground sanitary system for the benefit of any of the permitted improvements. Upon approval by Grantee, the Grantor may install farm-scale wind or solar energy systems thirty (30) days after providing notice to Grantee at the address specified in Paragraph 18 of this Easement, or a subsequent address provided to Grantor by Grantee, in locations that would not harm the Conservation Values of the Protected Property. Upon receipt of notice, Grantee will review Grantor's proposal and choice of locations, and make a final determination as to whether the proposed energy development would be consistent with the Conservation Values of the Protected Property, and would not destroy other significant conservation interests. If Grantee determines that the proposed energy development would destroy other conservation interests or would be inconsistent with the Conservation Values of the Protected Property, Grantee shall so inform Grantor within thirty (30) days of its notification, and the proposed energy development shall be prohibited.

- 5.11 Road Construction.** Grantor may construct and maintain unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Protected Property by this Easement.
- 5.12 Water.** Grantor may use any water rights necessary and sufficient to maintain the agricultural productivity of the Protected Property.
- 5.13 Trails.** Grantor may maintain and/or establish unpaved foot and equine trails, so long as the Conservation Values of the Protected Property are maintained, and the project is approved by Grantee.
- 5.14 Removal of Invasive Species and Nuisance Animal Control.** Grantor may remove invasive species of plants, such as honeysuckle and Russian olive, and may remove nuisance animals by lethal means, or may authorize Grantee to employ others to do so. In the Agricultural Zone and Natural Zone, the Grantor may conduct, or authorize others to conduct restoration of native grassland prairie or eastern woodland habitat. Grantor shall notify Grantee of any plans to conduct such activities at least ten (10) days prior to undertaking such activity to ensure that specific plans are consistent with the protection of the Conservation Values of the Protected Property.

6. Ongoing Responsibilities of Grantor. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee or the United States or the Fernald Trustees, or in any way to affect any existing obligation of Grantor as owner of the Protected Property. In particular, but without limitation:

- 6.1 Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property, and is required to do so by the scheduled due date. If the Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, or if Grantee determines that it should pay taxes or assessments in order to protect its interests, Grantor shall within ten (10) days of written demand reimburse Grantee for the amount of such taxes.
- 6.2 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. The Grantee shall have no obligation for the upkeep and maintenance of the Protected Property.
- 6.3 Liability and Indemnification.** Grantor shall indemnify and hold harmless Grantee and the United States and the Fernald Trustees for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities, whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal, to which the Grantee or the United States or the Fernald Trustees may be subject or incur relating to the Protected Property, including, but not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Easement, or violations of any Federal, State, or local laws, including all applicable Environmental Laws.

7. Current Agricultural Use Valuation. Except for the Homestead Zone, the Protected Property is, as of the date of execution of this Easement, valued at its current agricultural use valuation for purposes of real property taxation, under Section 5713.31 of the Ohio Revised Code. Grantor shall annually file a renewal application under Section 5713.31 of the Ohio Revised Code unless Ohio law specifically exempts Grantor from payment of certain real estate taxes on the Protected Property.

8. Enforcement Rights and Remedies of the Grantee and the United States and the Fernald Trustees. In order to enforce the terms of this Easement, the Grantee and the United States and the Fernald Trustees shall have the following rights and remedies:

- 8.1** To file any legal action Grantee determines is appropriate to enforce this Easement, and to obtain evidence during any visit to the Protected Property for the purpose of seeking judicial enforcement of this Easement. Grantee and/or the United States and/or the Fernald Trustees may seek money damages, injunctive relief, restoration of the Protected Property to its condition at the time of the conveyance of this Easement and any other remedy available under applicable law. Grantor acknowledges that money damages are not a sufficient remedy for Easement violations;
- 8.2** In addition to the general right of entry specified in Paragraph 2.3 of this Easement, Grantee and NRCS, and their successors or assigns, shall have a right to access to the Protected Property to ensure conservation plan implementation and compliance.
- 8.3** Grantee and others holding an interest in the Easement may also enter the Protected Property without notice to Grantor if in the reasonable judgment of either party, it is necessary to protect the Conservation Values of the Protected Property.
- 8.4** The Secretary of the United States Department of Agriculture (~~the Secretary~~), and his or her successors or assigns on behalf of the United States, and the Attorney General of Ohio on behalf of the Ohio EPA and/or the Fernald Trustees, may also seek to enforce the terms of this Easement as permitted under any and all authorities available under Federal or State law.
- 8.5 Enforcement Costs.** All reasonable costs incurred by Grantee or the United States or the Fernald Trustees in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable professional services fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor if Grantee or any other party taking action in court for enforcement is successful.

9. Extinguishment and Appropriation.

- 9.1 Extinguishment.** This Easement may be extinguished, in whole or in part, only by a judicial ruling by a court of competent jurisdiction that an unexpected change in condition has occurred that renders impossible the protection of all of the Conservation Values of the Protected Property and fulfillment of the Purpose of this Easement. In such a case, Grantee and the United States and the Fernald Trustees, no later than the time of subsequent sale of the formerly restricted land, shall be entitled to compensation for the rights thereby extinguished. The total amount of the proceeds to which Grantee, the United States and the Fernald Trustees shall be entitled shall not be less than the proportionate share of the unencumbered value of the Protected Property at the time of the conveyance of this

Easement. The Grantee, the United States and the Fernald Trustees shall be entitled to the value of the Easement as compensation for their share of the loss in a condemnation proceeding, or in the event of an extinguishment and the generation of proceeds from the formerly restricted land through subsequent sale or other means.

- 9.2 Appropriation.** Notwithstanding any other provision of this Easement, public roads which are open to the public may be constructed, repaired, relocated, maintained, etc. by the authorized governmental entity, subject to applicable state and federal law, within the existing right of way. In such a circumstance of a governmental appropriation of any portion of the Protected Property, applicable state and federal law shall be supplemented as between the Parties to this Easement by the terms of this Easement.
- 9.3 Notices to Grantee.** In the event Grantor is notified by a government agency of any proposed design/improvement to an existing public road adjoining/affecting the Protected Property, Grantor shall immediately notify Grantee, in writing, of such proposal to allow Grantee to exercise its obligations and protect its rights hereunder. Upon receipt of such notice, the Grantee shall notify the United States and the Fernald Trustees, in writing, of such proposal.
- 9.4 Distribution of Compensation.** Following review, and, as applicable, approval of said proposal or appropriation consistent with Ohio law, the portion of the funds paid for the appropriation to Grantor but due under the terms of this Easement to Grantee and the United States and the Fernald Trustees shall be held in trust by Grantor for payment of the proportionate shares to the Grantee and the United States and the Fernald Trustees as specified in Paragraph 9.1 of this Easement. Grantor shall discharge the obligation of the trust by immediately distributing the portion of such compensation to which Grantee and the United States and the Fernald Trustees are entitled under Paragraph 9.1 of this Easement.
- 9.5 Extinguishment Proceeds.** If this Easement is ever extinguished in whole or in part, the proceeds of a subsequent sale of the formerly restricted land, the proceeds obtained from an insurance policy that provides compensation for losses on the Protected Property, and any other recovery of value upon or associated with extinguishment, shall be distributed according to the terms of Paragraph 9.1 of this Easement.

10. Promotion. With the permission of Grantor, which shall not be unreasonably withheld, Grantee may post a sign(s) which state(s) that the Protected Property is preserved by an agricultural conservation easement.

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

12. Assignment. This Easement is in gross and may be assigned or transferred by Grantee, in whole or in part, with the approval of the United States and the Fernald Trustees. The transferee or assignee will be required to carry out in perpetuity the agricultural and conservation purposes which this Easement was originally intended to advance. In addition, the Grantee agrees to the following:

- 12.1** The organization or entity receiving this interest must be (a) a qualified organization as that term is defined in Section 170(h)(3) of the U.S. Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder and (b) an

entity 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.

12.2 If either Grantee, or its assignee, ever cease to exist or no longer qualify under Section 170(h) of the U.S. Internal Revenue Code, and the United States or the Fernald Trustees decline to take or accept such party's rights and obligations under this Easement, a court of competent jurisdiction shall order the transfer of this Easement to another qualified organization that agrees to assume the responsibility imposed by this Easement on such party.

13. Immediate Property Right. This perpetual Easement gives rise to a property right, immediately vested in the Grantee, which is equal to the proportionate value that the restrictions of this Easement bear to the value of the Protected Property absent the restrictions at the time of this conveyance of the Protected Property, as required by Treasury Reg. 1.170A-14(g)(6)(ii) and Section 901.22(A)(2)(b) of the Ohio Revised Code.

14. Transfer of Protected Property. Unless this Easement is extinguished, the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests themselves of any interest in all or part of the Protected Property. Grantor agrees to notify the Grantee, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.

15. Hazardous Waste. "Environmental Law" or "Environmental Laws" 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.

Grantor warrants that the Protected Property is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Law relating to the operations or conditions of the Protected Property.

Grantor warrants that they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the United States and the Fernald Trustees and the Grantee against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with

a violation of any Environmental Laws, by Grantor or any prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantee to Grantor with respect to the Protected Property.

16. Amendment of Easement. This Easement may be amended only with the written consent of Grantor, Grantee, the United States and the Fernald Trustees. Any such amendment shall not confer financial benefit upon Grantor and shall be consistent with the "Statement of Purpose" of this Easement and with the easement amendment policies of the Grantee and the United States and the Fernald Trustees and shall comply with Section 170(h) of the U.S. Internal Revenue Code or any regulations promulgated in accordance with that Section. Any such amendment shall also be consistent with Section 5301.67 *et seq.*, of the Ohio Revised Code or any regulations promulgated pursuant to those laws. Any such amendment shall be duly recorded.

16.1 Boundary Line Adjustments. Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. Any adjustments shall be duly recorded as well, with costs borne by Grantor.

16.2 Subordination of Subsequent Liens. Any mortgage or lien arising after the date of this Easement must be subject to the terms of this Easement. Any liens, mortgages, easements, or other clouds on the title of the Protected Property existing prior to the date of the Easement must be subordinated to this Easement or eliminated prior to recording this Easement.

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

18. Notices. Any notices required by this Easement shall be sent by registered or certified mail, return receipt requested, to Grantee, and the United States and the Fernald Trustees at the following addresses or such addresses as may be hereafter specified in writing:

Grantor: Carl Hesselbrock and Marjorie Hesselbrock, 6065 Alert New London Road, Okeana, OH 45053.

Grantee: Three Valley Conservation Trust, 5920 Morning Sun Rd., PO Box 234, Oxford, OH 45056. -

United States: USDA Natural Resources Conservation Service, 200 North High Street, Room 522, Columbus, OH, 43215.

Ohio EPA: Ohio EPA, 50 W. Town Street, Columbus, OH 43216-1049.

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

20. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

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

22. Modifications. This Easement may not be changed, modified or discharged except by a writing signed by the duly authorized representatives of Grantor, the Grantee, the United States and the Fernald Trustees. The cost of recording any such modifications shall be paid by Grantor.

23. 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 and regulations that are contained in this Easement shall be construed to mean the version of that statute 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 Butler County, Ohio.

24. No Merger. Should Grantee obtain fee title to the Protected Property, either the purposes, terms, obligations and restrictions of this Easement shall continue to bind and govern Grantee with respect to its rights and obligations regarding the Protected Property, or Grantee shall, with approval of the United States and the Fernald Trustees, transfer this Easement to a State or local government agency or non-profit organization which, at the time of transfer, is a qualified organization under Ohio law and Section 170(h) or successor provision of the U.S. Internal Revenue Code, which has among its purposes the conservation and preservation of land and water areas.

25. Recitals. The recitals shall be considered substantive terms of this Easement.

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

The Grantors

Signature: _____

Signature: _____

Acknowledgement

State of Ohio, County, SS:

On this day of , 2012, before me, a Notary Public in and for said County and State, personally appeared , Grantors in the foregoing Agricultural Conservation Easement, who acknowledged before me to be said persons and who signed the foregoing instrument and acknowledged the same as their voluntary act and deed.

Witness my official signature and seal on the day last above mentioned.

Notary Public, State of Ohio

Acceptance by Three Valley Conservation Trust

Grantee: Three Valley Conservation Trust

Signature: _____

Print Name: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, acting for and on behalf of the Three Valley Conservation Trust, who acknowledged that (s)he executed the same for and on behalf of that organization and did so on her/his and as the Three Valley Conservation Trust's own free act and deed.

Notary Public
My Commission Expires:

Acceptance by the United States of America

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

Signature: _____

Print Name: _____

Title: _____

Acknowledgement

State of Ohio
County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, acting for and on behalf of the Natural Resources Conservation Service, United States Department of Agriculture, who acknowledged that (s)he executed the same for and on behalf of that agency and the United States of America and that (s)he did so as the agency's own free act and deed.

Notary Public

My Commission Expires:

Acceptance by Ohio EPA on behalf of the Fernald Trustees

The Ohio Environmental Protection Agency, an agency of the State of Ohio, on behalf of the Fernald Trustees, which consist of authorized representatives the United States Department of Energy, the United States Department of the Interior (Fish & Wildlife Service), and the Ohio Environmental Protection Agency, hereby accepts and approves the foregoing Agricultural Conservation Easement, and the rights conveyed therein, on behalf of the Fernald Trustees.

Signature: _____

Print Name: Scott J. Nally

Title: Director

Acknowledgement

State of Ohio)
) ss:
County of Franklin)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Scott J. Nally, Director of the Ohio Environmental Protection Agency, acting for and on behalf of the Fernald Trustees, who acknowledged that he executed the same for and on behalf of the Agency and the Trustees and that he did so as the Agency’s and the Trustees’ voluntary act and deed.

Notary Public, State of Ohio

This Instrument Prepared By:
Larry Frimerman
Three Valley Conservation Trust
5920 Morning Sun Road
Oxford, OH 45056

EXHIBIT A

EXHIBIT B

Agricultural Conservation Easement

This Agricultural Conservation Easement (hereinafter referred to as the “Easement”) is made and entered into this _____ day of _____, 2012, by Joseph Hesselbrock and Tamara Hesselbrock, husband and wife, whose address is 3036 State Road 252, Brookville, Indiana 47012 (hereinafter referred to as “Grantor”), and the Three Valley Conservation Trust, an Ohio nonprofit corporation, whose address is 5920 Morning Sun Road, Oxford, Butler County, Ohio 45056 together with its successors and assigns, (hereinafter referred to as “Grantee”), in cooperation with the United States of America (“United States”) acting by and through Department of Agriculture, Natural Resources Conservation Service (“NRCS”) acting on behalf of the Commodity Credit Corporation, and also in cooperation with the Ohio Environmental Protection Agency (“Ohio EPA”) on behalf of the Fernald Natural Resource Damage Trustees, which consist of authorized representatives of the United States Department of Energy, the United States Department of the Interior (United States Fish & Wildlife Service), and the Ohio EPA (hereinafter referred to as the “Fernald Trustees”). The Grantor, the Grantee, the United States and the Fernald Trustees are hereinafter collectively referred to as the “Parties.” The terms Grantor and Grantee as used herein include heirs, successors and assigns of each.

This is an agreement for the sale and purchase of an agricultural conservation easement and the monitoring and enforcement of such Easement. Specifically, Grantee agrees to purchase the Easement from the Grantor for \$309,207 with \$198,825 provided by the United States through the Farm and Ranch Lands Protection Program (16 U.S.C. §§ 3838h and 3838i) and the balance of \$110,382 provided by the Ohio EPA on behalf of the Fernald Trustees pursuant to the State of Ohio’s natural resource damage settlement with the United States Department of Energy (November 11, 2008 Consent Decree, United States District Court for the Southern District of Ohio, Western Division; State of Ohio ex rel. Nancy Rogers Attorney General of Ohio v. United States Department of Energy, et al., case no. C-1-86-0217). Grantee agrees to monitor and enforce the Easement in perpetuity.

RECITALS

A. Protected Property

Whereas, Grantor is the owner in fee simple of approximately 137.127 acres of agricultural and natural property, located at Cincinnati Brookville Road and 2915 S. Wynn Road, in Morgan Township, Butler County, Ohio (hereinafter referred to as the “Protected Property”), more fully described on Exhibit A attached hereto and to which this Easement applies. Grantor has full authority to convey this Easement and has a good and indefeasible fee simple title to the Protected Property, which Grantor hereby warrants is free and clear of all liens and encumbrances not conducive to agriculture and natural use, and acceptable to Grantee and the United States and the Fernald Trustees.

B. Conservation and Agricultural Values

In particular, the Protected Property consists of land that is either (i) devoted predominantly to agricultural or natural use as defined by Sections 5301.67-.70 of the Ohio Revised Code and in relevant part exclusively to agricultural use under Section 5713.30 of the Ohio Revised Code and is valued for real property taxation at its current value for agricultural uses under Section 5713.31 of the Ohio Revised Code, or (ii) constitutes a homestead as defined by Section 901.21(A)(3) of the Ohio Revised Code. Grantor intends to preserve the Protected Property for agricultural and natural use. Specifically, the Protected Property conserves riparian and woodland features necessary for both contiguous habitat corridors for waterfowl, migratory birds and pollution-intolerant fish species, in

addition to the agricultural values associated with prime soils and productive agricultural use; together hereinafter referred to as “Conservation Values” of the Protected Property.

C. Present Condition Report

The natural characteristics, the soil types, the physical conditions, the physical structures, and the agricultural/conservation uses of the Protected Property as of the date of this Easement, including a map that accurately identifies the Agricultural, Natural, and Homestead Zones of the Protected Property, are documented in a Present Condition Report (also known as a Baseline Monitoring Report) (hereinafter referred to as the “Report”) prepared by Grantee and signed and acknowledged by Grantor and representatives of Grantee, establishing the condition of the Protected Property as of the date of this Easement, including photographs, maps and other documents, as set forth in Exhibit B.

D. Qualified Organization

Grantee is a qualified organization under Section 170 of the U.S. Internal Revenue Code, as amended from time to time, and under the regulations promulgated thereunder, to receive conservation easements, and is also qualified under Section 5301.69 of the Ohio Revised Code to hold conservation and agricultural easements.

E. Federal Farm and Ranch Lands Protection Program

The purpose of the Federal Farm and Ranch Lands Protection Program (“FRPP”), which is codified at 16 U.S.C. §§ 3838h and 3838i, is to protect prime, unique, or statewide and locally important soils or historic and archaeological resources on farmland from conversion to non-agricultural uses. The grant and acceptance of this Easement is also pursuant to a clearly delineated federal conservation policy to preserve agricultural land as evidenced by the FRPP.

Terms and Conditions of the Agricultural and Conservation Easement

Now therefore, in consideration of the mutual promises, conditions, restrictions and obligations contained herein pursuant to the laws of the State of Ohio and the United States, Grantor hereby voluntarily grants and conveys with general warranty covenants to Grantee a perpetual agricultural easement and a perpetual conservation easement, as defined in Sections 5301.67 through 5301.70 of the Ohio Revised Code, and which is intended to meet the terms and conditions of a Qualifying Conservation Contribution under U.S. Internal Revenue Code Section 170(h), with respect to the Protected Property. The Easement is subject to the following terms and conditions:

1. Statement of Purpose. It is the purpose of this Easement to assure that the Conservation Values of the Protected Property, as identified in Exhibit B, will be preserved, that the portion of the Protected Property currently in agriculture will be available for agricultural use by preserving and protecting its agricultural soils, that the entire Protected Property will be retained forever in its natural and agricultural condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property or that are inconsistent with the purpose of this Easement, all through a perpetual restriction on the use of the Protected Property (hereinafter referred to as the “Purpose of this Easement”).

1.1 The Protected Property is comprised of three use zones:

1.1.1 Agricultural Zone: Approximately 89 acres of fields predominantly containing prime agricultural soils.

- 1.1.2 Natural Zone:** Approximately 47 acres of forest, stream and riparian corridor along Dry Fork Creek and a tributary to Dry Fork Creek.
- 1.1.3 Homestead Zone:** Approximately 1acre, including a residential structure and support buildings.

2. General Authority provided to the Grantee by this Easement. By granting this Easement, Grantor hereby grants Grantee the following rights:

- 2.1** To preserve and protect the Conservation Values of the Protected Property;
- 2.2** To post or clearly mark the boundaries of the Protected Property, including the Natural, Agricultural, and Homestead Zones, at reasonable boundary intervals;
- 2.3** To enter upon the Protected Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that except in cases in which immediate action is necessary to protect the Conservation Values, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property; and
- 2.4** To prevent any activity on or use of Protected Property that is inconsistent with the Conservation Values and the Purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.

3. Conservation Plan. As required by Section 1238I of the Food Security Act of 1985, as amended, Grantor shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the Butler County Soil and Water Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect as of the date of this Easement. However, 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. A copy of the plan shall be provided to Grantee at the time the plan is completed. NRCS and Grantee shall have the right to enter upon the Protected Property, at reasonable times, in order to monitor compliance with the conservation plan.

In the event of noncompliance with an NRCS conservation plan, NRCS shall work with Grantor to explore methods of compliance and give Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS shall inform Grantee in writing of Grantor's noncompliance. Grantee may take any actions it deems appropriate if it determines that Grantor's non-compliance affects the Conservation Values. NRCS, after determining that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations, may take any steps NRCS is empowered under law to take to secure compliance. In addition, if the NRCS standards and specifications for highly erodible land are revised after the date of this Easement based on an Act of Congress, NRCS shall work cooperatively with Grantor to develop and implement a revised conservation plan. The provisions of this Paragraph apply to the highly erodible land conservation

requirements of the FRPP and are not intended to affect any other natural resources conservation requirements to which Grantor may be or become subject.

4. Prohibited Uses/Restrictions. Except to the extent that activities and uses are authorized in this Easement, any activity on or use of the Protected Property inconsistent with the Conservation Values of the Protected Property, or with the Purpose of this Easement, or with other significant conservation interests, is prohibited. The Natural Zone shall be protected from any inconsistent agricultural, commercial, residential or other inconsistent uses. The Agricultural Zone shall be protected from any inconsistent residential and/or other inconsistent uses. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited throughout the Protected Property:

- 4.1 Subdivision.** The legal subdivision of the Protected Property, including the recording of a subdivision plan, partition, or any other division of the Protected Property into two or more parcels, is prohibited.
- 4.2 Residential Structures.** There shall be no construction or placement on the Protected Property of new residential structures, dwellings, buildings, mobile homes, except as permitted in Paragraph 5 of this Easement and then only in the Homestead Zone depicted in Exhibit B (the "Homestead Zone").
- 4.3 Industrial or Commercial Activity.** Other than activity that is specifically permitted in Paragraph 5 of this Easement, or permitted *de minimis* activity discussed in Paragraph 5.9, there shall be no industrial or commercial activity undertaken or allowed on the Protected Property, including, but not limited to, a golf course, landfill or dump, or mobile home or trailer park. No easement or other right of passage shall be granted or retained across or upon the Protected Property if such right of passage is used in conjunction with prohibited activities related to the Protected Property, or could adversely impact the Conservation Values of the Protected Property or the Purpose of this Easement.
- 4.4 Utility Structures and Equipment.** There shall be no construction or placement on the Protected Property of any antenna, utility pole, telecommunication tower, tower, commercial, industrial or municipal-scale conduit line, lines, poles, towers, pipes, or other equipment or facilities for the transmission of electric power, natural gas, or petroleum products, or for commercial, industrial or municipal-scale telecommunications, sewage, septic, drainage, or any other utility, or the sale, transfer, or granting of any interest in the Protected Property for any such purpose except on-farm use as noted in Paragraph 5.10 of this Easement, or as otherwise permitted in this Easement. Grantor may consent to acquisition of such rights of way pursuant to proper exercise of eminent domain; however, any such condemnation that compromises the Conservation Values of the Protected Property shall give rise to a right in the United States and the Fernald Trustees and Grantee to compensation as if the Easement or the affected part thereof had been extinguished. After notice to and approval by Grantee as provided for in Paragraph 18 of this Easement, facilities for the generation of energy that are consistent with the objective of maintaining the Conservation Values of the Protected Property may be installed, but only in locations that Grantee agrees will not harm the Conservation Values of the Protected Property.
- 4.5 Surface Mining.** The mining or extraction of any mineral by any method that substantially disturbs the surface of the land subject to this Easement is prohibited. Methods of mineral

extraction that are managed so as to have limited and localized impact on the Protected Property and which do not have a materially adverse effect on the Conservation Values of the Protected Property may be permitted upon notice to and approval by Grantee, the Fernald Trustees and the United States, as specified in Paragraph 18 of this Easement. Grantor shall not transfer, encumber, lease, sell, or otherwise separate mineral rights from the Protected Property.

- 4.6 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 Protected Property in any manner unless in accordance with the conservation plan as referenced in Paragraph 3 of this Easement.
- 4.7 Dumping.** There shall be no accumulation, storage, dumping, or other disposal of garbage, trash, abandoned vehicles or parts, appliances, machinery, waste, refuse, debris (excluding agricultural activity), ashes, hazardous or toxic substances or other unsightly or offensive material, nor any placement of underground storage tanks, on or in the Protected Property, and no changing of its topography through the placing of soil or any other substance or material such as land fill or dredging spoils. The storage of agricultural products, byproducts (including the composting of biodegradable material generated on the Protected Property for on-farm use) and agricultural equipment used on the Protected Property is permitted, so long as such storage is conducted in accordance with all applicable government laws and regulations and in such a manner that such storage does not impair the Conservation Values of the Protected Property.
- 4.8 Roads.** Except as specifically permitted in Paragraph 5.11 of this Easement, there shall be no building of new roads, parking lots, or other paved surfaces, or the widening of such existing surfaces on the Protected Property, except in the Homestead Zone.
- 4.9 Confined Animal Facility Operations.** There shall be no large concentrated animal facility operations or major concentrated animal feeding facilities, as defined under Sections 903.01(M) and 903.01 (N) of the Ohio Revised Code, permitted on the Protected Property unless Grantee, the Fernald Trustees and the United States all agree in writing that such facilities have been designed so as to avoid any adverse impact on the Conservation Values of the Protected Property or other significant conservation interests on the Protected Property or offsite. If such a facility is permitted by Grantee and the other Parties hereto, then Grantee, the Fernald Trustees or the United States may require that the operation be immediately terminated should Grantee or any of the other Parties hereto determine in their discretion and in good faith that the operation is compromising the Conservation Values of the Protected Property or any other significant conservation interest.
- 4.10 Water Wells.** Grantor shall not drill nor allow drilling for water on the Protected Property for the construction of municipal, industrial, or commercial water wells, nor shall Grantor transfer, encumber, lease, sell, or otherwise separate water rights with respect to the Protected Property from the Protected Property.
- 4.11 Motor Vehicles.** Grantor shall not operate on the Protected Property (or allow the operation of) motorized vehicles including, but not limited to, automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, and any recreational motorized vehicles, in a

manner that can harm the Conservation Values of the Protected Property. However, motorized vehicles are permitted on the Homestead and Agricultural Zones. Farm equipment utilized in connection with farm activities is permitted on the Protected Property. Motorized vehicles are also permitted on the Protected Property to maintain trails, conduct educational or low impact recreational/quiet enjoyment activity, or perform functions otherwise consistent with protection of the Conservation Values of the Protected Property.

4.12 Impervious Surfaces. The aggregate coverage of impervious surfaces on the Protected Property, including all residential and agricultural structures (with or without flooring), non-seasonal roof tops and paved roads and other paved, including concrete, areas, existing or permitted in this Easement, shall not exceed 2 percent of the total acreage of the Protected Property. Conservation practices approved by NRCS and in the conservation plan of the Protected Property that are installed on the Protected Property shall not count against the impervious surface limit.

4.13 Trees and Native Plants. To protect vegetative and wildlife habitat values in the Natural Zone, any native tree or plant cutting or harvesting activity must comply with an official woodland stewardship management plan or its equivalent (“forest plan”) through the Ohio Department of Natural Resources Division of Forestry and with current species-specific guidance of relevant state and federal agencies. The forest plan shall incorporate such current guidance at the time it is finalized and shall include contact information for updating such guidance. Activities permitted by the forest plan in the Natural Zone may include commercial harvest of timber, propagation and harvest of native plants or mushrooms, measures to restore native habitat communities, control or eradication of non-native trees and plants, measures to control disease and measures necessary for safety, so long as such activities are consistent with the Conservation Values of the Protected Property. Introduction of invasive or noxious plants is prohibited. If the Natural Zone is to be managed under an alternative to the forest plan described above, such alternative must include equivalent guidance and contact information.

4.14 Surface Water. There shall be no manipulation or alteration of creeks, streams, natural water courses, marshes, surface or subsurface springs or other bodies of water or the shorelines thereof at or on the Natural Zone except as a restoration of an existing watercourse, wetland, etc., as a part of a restoration plan approved by Grantee. In other zones of the Protected Property, restoration or maintenance activities necessary to maintain the Conservation Values of the Protected Property, including agricultural use, are permitted as a part of an approved conservation plan, if applicable, and consistent with all applicable laws. Existing small dams and ponds on the Protected Property, if any, may be maintained and repaired, and wildlife or erosion control ponds may be restored, provided that such activity shall not cause or result in hydro-modification.

5. Retained and Reserved Rights. Grantor retains for themselves, and for their beneficiaries, successors, and assigns, all rights accruing from Grantor’s ownership of the Protected Property that are not prohibited in this Easement or inconsistent with the maintenance of the Conservation Values of the Protected Property, including: the right of access to, and quiet enjoyment of, all portions of the Protected Property; the right to exclude any member of the public from trespassing on the Protected Property; the right to sell or otherwise transfer the Protected Property subject to the terms hereof; the right to engage in recreational activity that is conducted so as not to compromise the Conservation

Values of the Protected Property, including: hiking, cross-country skiing, snowshoeing, activity associated with non-commercial horseback riding, fishing, educational programs and temporary, individual or small group camping. This Easement shall not be construed as a dedication of the Protected Property for public use, nor is the Grantee authorized by this Easement to make any use of the Property other than as provided herein. In addition, Grantor may permit recreational activities, provided the quality and quantity of such activities are low-impact, and do not impair the Conservation Values of the Protected Property. Agricultural or other activities on the Protected Property shall be conducted in a manner which protects the Natural Zone and which does not harm the Conservation Values of the Protected Property. Agricultural activity may be permitted in the Natural Zone, but only if such activity is to be conducted for use as a management tool, included in the conservation plan, and approved by the Grantee. In addition to the foregoing, and notwithstanding anything else contained herein, the following rights are expressly reserved to the Grantor:

- 5.1 Conveyance.** Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is subject to this Easement and written notice is provided to the Grantee, the United States and the Fernald Trustees in accordance with Paragraph 18 of this Easement.
- 5.2 Farming.** Consistent with the Purpose of this Easement, Grantor may farm or permit others to farm in the Agricultural Zone, in accordance with applicable local, state and federal laws and regulations and the conservation plan identified in Paragraph 3 of this Easement.
- 5.3 Agricultural Education Programs.** As a part of the agricultural activities conducted on the Agricultural Zone of the Protected Property, Grantor may conduct or authorize another party (individual or organization) to conduct educational programs and public field days on the Protected Property for the purpose of teaching about agricultural practices and promoting awareness of agriculture as long as it does not adversely affect the Conservation Values of the Protected Property and does not adversely affect the soils of the Protected Property.
- 5.4 Right to Privacy.** Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property. Notwithstanding this provision, Grantee and NRCS shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with Paragraphs 2, 3 and 8 of this Easement.
- 5.5 Right to use the Protected Property for Customary Rural Enterprises.** Grantor may use the Protected Property for otherwise lawful and customary rural enterprises, including, but not limited to, processing, packaging and marketing farm products produced primarily on the Protected Property, farm machinery repair, roadside market stands, small professional office business, bed and breakfast, party and horse barns, so long as these uses are confined to the Homestead Zone, and are of a nature, scale and character that do not adversely affect the Conservation Values of the Protected Property.
- 5.6 Fences.** Grantor may clear, repair and replace existing fences, and build new fences on the Protected Property for purposes of trespass prevention and reasonable and customary management of livestock and wildlife.
- 5.7 Agricultural Structures and Improvements.**

5.7.1 Residential Structures and Improvements. Grantor may maintain, enlarge, remodel or demolish and rebuild existing dwelling structures and necessary infrastructure to serve the structure so long as such activity would not result in harm to the Conservation Values of the Protected Property. Grantor shall notify Grantee in advance of such demolition, enlargement or reconstruction

5.7.2 Agricultural Structures and Improvements. Subject to the impervious surface limit of Paragraph 4.12 of this Easement, Grantor may repair, enlarge by up to 50% from current size and replace existing agricultural structures and improvements on the Protected Property at their current locations as shown on the Report. Within the Homestead Zone but not elsewhere on the Protected Property, Grantor may build new buildings and other structures and improvements on the Protected Property 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 dwelling or farm labor housing.

5.8 Existing Recreational Improvements. Grantor may repair or replace all existing recreational improvements on the Protected Property at their current locations.

5.9 New Recreational Improvements. Grantor may build new personal recreational improvements or enlargements of existing personal recreational improvements but not to include a dwelling, only with the advance written permission of the Grantee, and so long as such improvements or enlargements do not harm the Conservation Values of the Protected Property. Permission will be granted only for *de minimis* commercial recreational improvements upon a determination by Grantee that such commercial recreational improvements are not inconsistent with the goals of the FRPP and the Purpose of this Easement.

5.10 Utility Services and Septic Systems. Grantor may install, maintain, repair, replace, remove and relocate electric, gas, geothermal, water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Protected Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements permitted herein. Grantor may also grant easements over and under the Protected Property for such purposes. Grantor may maintain, repair or improve a septic system(s) or other underground sanitary system which exists on the Protected Property at the time of this Easement, and may construct septic or other underground sanitary system for the benefit of any of the permitted improvements. Upon approval by Grantee, the Grantor may install farm-scale wind or solar energy systems thirty (30) days after providing notice to Grantee at the address specified in Paragraph 18 of this Easement, or a subsequent address provided to Grantor by Grantee, in locations that would not harm the Conservation Values of the Protected Property. Upon receipt of notice, Grantee will review Grantor's proposal and choice of locations, and make a final determination as to whether the proposed energy development would be consistent with the Conservation Values of the Protected Property, and would not destroy other significant conservation interests. If Grantee determines that the proposed energy development would destroy other conservation interests or would be inconsistent with the Conservation Values of the Protected Property, Grantee shall so inform Grantor within thirty (30) days of its notification, and the proposed energy development shall be prohibited.

- 5.11 Road Construction.** Grantor may construct and maintain unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Protected Property by this Easement.
- 5.12 Water.** Grantor may use any water rights necessary and sufficient to maintain the agricultural productivity of the Protected Property.
- 5.13 Trails.** Grantor may maintain and/or establish unpaved foot and equine trails, so long as the Conservation Values of the Protected Property are maintained, and the project is approved by Grantee.
- 5.14 Removal of Invasive Species and Nuisance Animal Control.** Grantor may remove invasive species of plants, such as honeysuckle and Russian olive, and may remove nuisance animals by lethal means, or may authorize Grantee to employ others to do so. In the Agricultural Zone and Natural Zone, the Grantor may conduct, or authorize others to conduct restoration of native grassland prairie or eastern woodland habitat. Grantor shall notify Grantee of any plans to conduct such activities at least ten (10) days prior to undertaking such activity to ensure that specific plans are consistent with the protection of the Conservation Values of the Protected Property.

6. Ongoing Responsibilities of Grantor. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee or the United States or the Fernald Trustees, or in any way to affect any existing obligation of Grantor as owner of the Protected Property. In particular, but without limitation:

- 6.1 Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property, and is required to do so by the scheduled due date. If the Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, or if Grantee determines that it should pay taxes or assessments in order to protect its interests, Grantor shall within ten (10) days of written demand reimburse Grantee for the amount of such taxes.
- 6.2 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. The Grantee shall have no obligation for the upkeep and maintenance of the Protected Property.
- 6.3 Liability and Indemnification.** Grantor shall indemnify and hold harmless Grantee and the United States and the Fernald Trustees for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities, whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal, to which the Grantee or the United States or the Fernald Trustees may be subject or incur relating to the Protected Property, including, but not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Easement, or violations of any Federal, State, or local laws, including all applicable Environmental Laws.

7. Current Agricultural Use Valuation. Except for the Homestead Zone, the Protected Property is, as of the date of execution of this Easement, valued at its current agricultural use valuation for purposes of real property taxation, under Section 5713.31 of the Ohio Revised Code. Grantor shall annually file a renewal application under Section 5713.31 of the Ohio Revised Code unless Ohio law specifically exempts Grantor from payment of certain real estate taxes on the Protected Property.

8. Enforcement Rights and Remedies of the Grantee and the United States and the Fernald Trustees. In order to enforce the terms of this Easement, the Grantee and the United States and the Fernald Trustees shall have the following rights and remedies:

- 8.1** To file any legal action Grantee determines is appropriate to enforce this Easement, and to obtain evidence during any visit to the Protected Property for the purpose of seeking judicial enforcement of this Easement. Grantee and/or the United States and/or the Fernald Trustees may seek money damages, injunctive relief, restoration of the Protected Property to its condition at the time of the conveyance of this Easement and any other remedy available under applicable law. Grantor acknowledges that money damages are not a sufficient remedy for Easement violations;
- 8.2** In addition to the general right of entry specified in Paragraph 2.3 of this Easement, Grantee and NRCS, and their successors or assigns, shall have a right to access to the Protected Property to ensure conservation plan implementation and compliance.
- 8.3** Grantee and others holding an interest in the Easement may also enter the Protected Property without notice to Grantor if in the reasonable judgment of either party, it is necessary to protect the Conservation Values of the Protected Property.
- 8.4** The Secretary of the United States Department of Agriculture (~~the Secretary~~), and his or her successors or assigns on behalf of the United States, and the Attorney General of Ohio on behalf of the Ohio EPA and/or the Fernald Trustees, may also seek to enforce the terms of this Easement as permitted under any and all authorities available under Federal or State law.
- 8.5 Enforcement Costs.** All reasonable costs incurred by Grantee or the United States or the Fernald Trustees in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable professional services fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor if Grantee or any other party taking action in court for enforcement is successful.

9. Extinguishment and Appropriation.

- 9.1 Extinguishment.** This Easement may be extinguished, in whole or in part, only by a judicial ruling by a court of competent jurisdiction that an unexpected change in condition has occurred that renders impossible the protection of all of the Conservation Values of the Protected Property and fulfillment of the Purpose of this Easement. In such a case, Grantee and the United States and the Fernald Trustees, no later than the time of subsequent sale of the formerly restricted land, shall be entitled to compensation for the rights thereby extinguished. The total amount of the proceeds to which Grantee, the United States and the Fernald Trustees shall be entitled shall not be less than the proportionate share of the unencumbered value of the Protected Property at the time of the conveyance of this

Easement. The Grantee, the United States and the Fernald Trustees shall be entitled to the value of the Easement as compensation for their share of the loss in a condemnation proceeding, or in the event of an extinguishment and the generation of proceeds from the formerly restricted land through subsequent sale or other means.

- 9.2 Appropriation.** Notwithstanding any other provision of this Easement, public roads which are open to the public may be constructed, repaired, relocated, maintained, etc. by the authorized governmental entity, subject to applicable state and federal law, within the existing right of way. In such a circumstance of a governmental appropriation of any portion of the Protected Property, applicable state and federal law shall be supplemented as between the Parties to this Easement by the terms of this Easement.
- 9.3 Notices to Grantee.** In the event Grantor is notified by a government agency of any proposed design/improvement to an existing public road adjoining/affecting the Protected Property, Grantor shall immediately notify Grantee, in writing, of such proposal to allow Grantee to exercise its obligations and protect its rights hereunder. Upon receipt of such notice, the Grantee shall notify the United States and the Fernald Trustees, in writing, of such proposal.
- 9.4 Distribution of Compensation.** Following review, and, as applicable, approval of said proposal or appropriation consistent with Ohio law, the portion of the funds paid for the appropriation to Grantor but due under the terms of this Easement to Grantee and the United States and the Fernald Trustees shall be held in trust by Grantor for payment of the proportionate shares to the Grantee and the United States and the Fernald Trustees as specified in Paragraph 9.1 of this Easement. Grantor shall discharge the obligation of the trust by immediately distributing the portion of such compensation to which Grantee and the United States and the Fernald Trustees are entitled under Paragraph 9.1 of this Easement.
- 9.5 Extinguishment Proceeds.** If this Easement is ever extinguished in whole or in part, the proceeds of a subsequent sale of the formerly restricted land, the proceeds obtained from an insurance policy that provides compensation for losses on the Protected Property, and any other recovery of value upon or associated with extinguishment, shall be distributed according to the terms of Paragraph 9.1 of this Easement.

10. Promotion. With the permission of Grantor, which shall not be unreasonably withheld, Grantee may post a sign(s) which state(s) that the Protected Property is preserved by an agricultural conservation easement.

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

12. Assignment. This Easement is in gross and may be assigned or transferred by Grantee, in whole or in part, with the approval of the United States and the Fernald Trustees. The transferee or assignee will be required to carry out in perpetuity the agricultural and conservation purposes which this Easement was originally intended to advance. In addition, the Grantee agrees to the following:

- 12.1** The organization or entity receiving this interest must be (a) a qualified organization as that term is defined in Section 170(h)(3) of the U.S. Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder and (b) an

entity 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.

12.2 If either Grantee, or its assignee, ever cease to exist or no longer qualify under Section 170(h) of the U.S. Internal Revenue Code, and the United States or the Fernald Trustees decline to take or accept such party's rights and obligations under this Easement, a court of competent jurisdiction shall order the transfer of this Easement to another qualified organization that agrees to assume the responsibility imposed by this Easement on such party.

13. Immediate Property Right. This perpetual Easement gives rise to a property right, immediately vested in the Grantee, which is equal to the proportionate value that the restrictions of this Easement bear to the value of the Protected Property absent the restrictions at the time of this conveyance of the Protected Property, as required by Treasury Reg. 1.170A-14(g)(6)(ii) and Section 901.22(A)(2)(b) of the Ohio Revised Code.

14. Transfer of Protected Property. Unless this Easement is extinguished, the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests themselves of any interest in all or part of the Protected Property. Grantor agrees to notify the Grantee, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.

15. Hazardous Waste. "Environmental Law" or "Environmental Laws" 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.

Grantor warrants that the Protected Property is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Law relating to the operations or conditions of the Protected Property.

Grantor warrants that they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the United States and the Fernald Trustees and the Grantee against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with

a violation of any Environmental Laws, by Grantor or any prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantee to Grantor with respect to the Protected Property.

16. Amendment of Easement. This Easement may be amended only with the written consent of Grantor, Grantee, the United States and the Fernald Trustees. Any such amendment shall not confer financial benefit upon Grantor and shall be consistent with the "Statement of Purpose" of this Easement and with the easement amendment policies of the Grantee and the United States and the Fernald Trustees and shall comply with Section 170(h) of the U.S. Internal Revenue Code or any regulations promulgated in accordance with that Section. Any such amendment shall also be consistent with Section 5301.67 *et seq.*, of the Ohio Revised Code or any regulations promulgated pursuant to those laws. Any such amendment shall be duly recorded.

16.1 Boundary Line Adjustments. Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. Any adjustments shall be duly recorded as well, with costs borne by Grantor.

16.2 Subordination of Subsequent Liens. Any mortgage or lien arising after the date of this Easement must be subject to the terms of this Easement. Any liens, mortgages, easements, or other clouds on the title of the Protected Property existing prior to the date of the Easement must be subordinated to this Easement or eliminated prior to recording this Easement.

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

18. Notices. Any notices required by this Easement shall be sent by registered or certified mail, return receipt requested, to Grantee, and the United States and the Fernald Trustees at the following addresses or such addresses as may be hereafter specified in writing:

Grantor: Joseph Hesselbrock and Tamara Hesselbrock, 3036 State Road 252, Brookville, Indiana 47012.

Grantee: Three Valley Conservation Trust, 5920 Morning Sun Rd., PO Box 234, Oxford, OH 45056. -

United States: USDA Natural Resources Conservation Service, 200 North High Street, Room 522, Columbus, OH, 43215.

Ohio EPA: Ohio EPA, 50 W. Town Street, Columbus, OH 43216-1049.

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

20. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

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

22. Modifications. This Easement may not be changed, modified or discharged except by a writing signed by the duly authorized representatives of Grantor, the Grantee, the United States and the Fernald Trustees. The cost of recording any such modifications shall be paid by Grantor.

23. 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 and regulations that are contained in this Easement shall be construed to mean the version of that statute 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 Butler County, Ohio.

24. No Merger. Should Grantee obtain fee title to the Protected Property, either the purposes, terms, obligations and restrictions of this Easement shall continue to bind and govern Grantee with respect to its rights and obligations regarding the Protected Property, or Grantee shall, with approval of the United States and the Fernald Trustees, transfer this Easement to a State or local government agency or non-profit organization which, at the time of transfer, is a qualified organization under Ohio law and Section 170(h) or successor provision of the U.S. Internal Revenue Code, which has among its purposes the conservation and preservation of land and water areas.

25. Recitals. The recitals shall be considered substantive terms of this Easement.

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

The Grantors

Signature: _____

Signature: _____

Acknowledgement

State of Ohio, County, SS:

On this day of , 2012, before me, a Notary Public in and for said County and State, personally appeared , Grantors in the foregoing Agricultural Conservation Easement, who acknowledged before me to be said persons and who signed the foregoing instrument and acknowledged the same as their voluntary act and deed.

Witness my official signature and seal on the day last above mentioned.

Notary Public, State of Ohio

Acceptance by Three Valley Conservation Trust

Grantee: Three Valley Conservation Trust

Signature: _____

Print Name: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, acting for and on behalf of the Three Valley Conservation Trust, who acknowledged that (s)he executed the same for and on behalf of that organization and did so on her/his and as the Three Valley Conservation Trust's own free act and deed.

Notary Public
My Commission Expires:

Acceptance by the United States of America

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

Signature: _____

Print Name: _____

Title: _____

Acknowledgement

State of Ohio
County of _____)ss.:

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, acting for and on behalf of the Natural Resources Conservation Service, United States Department of Agriculture, who acknowledged that (s)he executed the same for and on behalf of that agency and the United States of America and that (s)he did so as the agency's own free act and deed.

Notary Public

My Commission Expires:

Acceptance by Ohio EPA on behalf of the Fernald Trustees

The Ohio Environmental Protection Agency, an agency of the State of Ohio, on behalf of the Fernald Trustees, which consist of authorized representatives the United States Department of Energy, the United States Department of the Interior (Fish & Wildlife Service), and the Ohio Environmental Protection Agency, hereby accepts and approves the foregoing Agricultural Conservation Easement, and the rights conveyed therein, on behalf of the Fernald Trustees.

Signature: _____

Print Name: Scott J. Nally

Title: Director

Acknowledgement

State of Ohio)
) ss:
County of Franklin)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Scott J. Nally, Director of the Ohio Environmental Protection Agency, acting for and on behalf of the Fernald Trustees, who acknowledged that he executed the same for and on behalf of the Agency and the Trustees and that he did so as the Agency’s and the Trustees’ voluntary act and deed.

Notary Public, State of Ohio

This Instrument Prepared By:
Larry Frimerman
Three Valley Conservation Trust
5920 Morning Sun Road
Oxford, OH 45056

EXHIBIT A

EXHIBIT B