|  |  |
| --- | --- |
|  |  |

**Contract For Right Of Entry**

PARCEL(S): 002-U

FAI-037-06.10/110412

The purpose of this Agreement is to allow the State to enter upon, occupy and have exclusive possession of the real property described in Exhibit A for the purposes of constructing a highway or facility incidental to the highway while the Parties attempt to negotiate further the sale and purchase of the property described in Exhibit A.

This Agreement is by and between the State of Ohio, Department of Transportation [“State”] and ACT Investments LLC [“Owner”; “Owner” includes all of the foregoing named persons or entities]. State and Owner are referred to collectively in this Agreement as “Parties.”

 In consideration of the mutual promises, agreements and covenants herein contained, the Parties contract as follows:

**1.** State shall pay to Owner the sum of $1.00, which sum shall constitute the entire amount of consideration due to the Owner for granting to State the rights, interests and privileges described immediately below in Section 2.

 Except as specified in this Agreement, in no event shall Owner be entitled to receive from State any interest, rent or other consideration of any kind for the period of time during which State occupies, possesses and uses the real property described in Exhibit A attached to this Agreement.

**2.** On and after 8/1/2022 , State, its employees, agents, consulting engineers, contractors, subcontractors, utility companies and any other representatives of State shall have the irrevocable right to enter upon, occupy and have exclusive possession of the real property described in Exhibit A for the purposes of constructing a highway or a facility incidental to the highway.

 For consideration of the aforementioned sum to Owner, State shall have the right to physical possession of any land, and all buildings, houses, garages, sheds or any other types of structures, fixtures and other property, if any, located within or upon the real property described in Exhibit A.

 If structures are within this described area, the terms and conditions of occupancy or non-occupancy and access are set forth in the attached Exhibit B.

**3.** Owner affirms that Owner is the true and lawful owner of the fee simple of the real property described in Exhibit A and/or Owner has the right and full power to grant to State the rights, interests and privileges described in Exhibit A.

**4.** Owner shall notify State of any prospective transfer of any of Owner’s rights, titles or interests in the property. This notification shall be in writing not less than 14 days prior to the date on which the transfer is to be closed or otherwise consummated. If the transfer will be closed or otherwise consummated less than 14 days after Owner agrees to such transfer, then Owner shall provide to State such notification in writing immediately.

**5.** Owner acknowledges that State has the right to commence an action to appropriate the property described in Exhibit A and Exhibit B (if used) at any time it appears to the State that further negotiations with Owner are not warranted.

 State agrees to commence promptly an action to appropriate the property described in Exhibit A and Exhibit B (if used) upon State’s receipt from Owner of a written notice to commence an action to appropriate.

**6.** The Parties agree that the above mentioned $1.00 shall be credited to and applied against the total purchase price the Parties may negotiate for the sale and purchase of the property described in Exhibit A, and the conveyance and transfer by the Owner to State.

**7.** The Parties agree that if State acquires the property described in Exhibit A and Exhibit B (if used) by way of an action to appropriate, then the abovementioned $1.00 shall be credited to and applied against any amount awarded to the Owner in such appropriation action. If the $1.00 is greater than the amount awarded to Owner in such appropriation action, then Owner expressly agrees to refund promptly the difference to State.

**8.** Owner acknowledges that State has explained to Owner that no owner of property can be required to surrender possession of the same to State prior to:

 (i) the payment of the total agreed upon purchase price by State; or

(ii) in the case of an appropriation, the deposit by State with the court, for the benefit of the owner, an amount not less than State’s approved appraisal of the fair market value of the property; or

(iii) the court award of compensation in the appropriation proceeding for the property.

Notwithstanding the rights described above, Owner in executing this Agreement waives such rights and permits State to occupy, possess and use the property described in Exhibit A and Exhibit B (if used).

**9.** Except and unless otherwise specifically modified by the terms and conditions of this Agreement, any and all rights, privileges, titles and interests in or to the property described in Exhibit A are preserved and retained by Owner.

**10.** Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall pass to the benefit of State and Owner and their respective heirs, executors, administrators, successors and assigns.

**11.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

**12.** This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatever, express or implied, other than herein set forth, shall be binding upon either State or Owner.

**13.** No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by State and Owner.

 In Witness Whereof, the State of Ohio, Department of Transportation, and ACT Investments LLC have executed this Agreement on the date(s) indicated immediately below their respective signatures.

|  |  |
| --- | --- |
|  | ACT INVESTMENTS LLC |

|  |  |  |
| --- | --- | --- |
|  | By: | Chris Welsh, AGENT |
| Date: |  |  |

|  |  |
| --- | --- |
|  | STATE OF OHIODEPARTMENT OF TRANSPORTATION |
|  |  |
|  |  |  |
|  | Jack Marchbanks, Ph.D., Director |  |
|  |  |
|  | Date: |       |  |
|  | By: | John R. Wooldridge |
|  | District 5, Real Estate Administrator |