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APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, AND
CONTRACT ENCUMBRANCE RECORD RELATING TO THE
PURCHASE OF A TRACT OF LAND IN NILE TOWNSHIP,
SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, September 22, 1937.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural
Experiment Station, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you resubmitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 49 and other files relating to the proposed purchase of a tract of 78.19 acres of land which is owned of record by Rose R. Lundstrom and Charles T. Lundstrom in Nile Township, Scioto County, Ohio, and which is being purchased by the Board of Control of the Ohio Agricultural Experiment Station for and in the name of the State of Ohio for the use of the Forestry Division of the Ohio Agricultural Experiment Station.

This abstract of title and the other files above named were submitted to me some time in the month of June last past and on June 24, 1937, I directed to you Opinion No. 782 of this office in which I disapproved the title of Rose R. Lundstrom and Charles T. Lundstrom in and to the tract of land here in question for the reason set out in said opinion as follows:

“Upon examination of the abstract of title, I find that the title to this tract of land passed by mesne conveyance from Ohio State University, which owned originally the whole of said Lot No. 4 containing 158 acres and including the tract of land in question, to one Oliver Piatt who obtained title to this tract of land by deed from one John Piatt, under date of September 1, 1895. Oliver Piatt died intestate some time in the month of Semtember, 1910, and, it appearing that he left no widow surviving him, the title to this property passed by descent to his three children and heirs at law, Philip H. S. Piatt, Inez Piatt and Blanch M. Golden, who thereupon owned and held this land as tenants in common, each having an undivided one-third interest therein. Some time in the month of May, 1913, said Inez Piatt died intestate and thereupon her undivided one-third estate and interest in the property passed

by descent in equal moieties to her surviving brother and sister, Philip H. S. Piatt and Blanch M. Golden, who then each had an undivided one-half interest in the property.

On May 16, 1914, Philip R. S. Piatt, then unmarried, executed a deed to his sister, Blanch M. Golden, and by this deed conveyed to said grantee an *undivided one-third interest* in this tract of land. Thereafter, Blanch M. Golden, her husband, Floyd Golden, joining with her in the conveyance, conveyed this property to one T. A. Henson, in and by which deed she apparently assumed to convey to said grantee the whole fee simple title to the property. And thereafter on April 13, 1926, T. A. Henson conveyed this property to Rose R. Lundstrom and Charles T. Lundstrom in a deed in and by which it was likewise apparently intended to convey to said grantee the whole outstanding estate and interest in this property.

Although, as above noted, T. A. Henson and Rose R. and Charles T. Lundstrom, as successors in interest of Blanch M. Golden, assumed to own and hold the whole of the fee simple estate and interest in this property by reason of the respective deeds to them, above referred to, it is obvious that neither T. A. Henson in the first instance nor the Lundstroms in the second, had by reason of the respective deeds executed to them, any greater legal estate and interest in the property than that which Blanch M. Golden could convey. As to this, it appears that although Philip H. S. Piatt at the time of the execution of his deed to his sister, Blanch M. Golden, had an undivided one-half interest in this property which he could have conveyed to said Blanch M. Golden and which, probably, he intended to convey to her, the fact is that he conveyed to her by this deed only an undivided one-third interest in the property leaving remaining in him, said Philip H. S. Piatt, an undivided one-sixth interest in the property. In other words, after this deed of conveyance to Blanch M. Golden, she and her brother were still tenants in common in this property, with interest therein of five-sixths and one-sixth, respectively. And, thereafter, T. A. Henson and the Lundstroms, respectively, by the several deeds executed to them, became tenants in common with said Philip H. S. Piatt in the legal title to this property. And so far as I am advised by the abstract of title or any information therein contained, said Philip H. S. Piatt, as a tenant in common with the Lundstroms, still has an undivided one-sixth interest in this

property which is not covered by the deed which has been tendered by the Lundstroms to the State of Ohio.”

Quite recently and after the rendition of the opinion above referred to disapproving the title of Rose R. Lundstrom and Charles T. Lundstrom in and to this tract of land for the reason therein and above stated, you submitted for my further consideration an affidavit executed by one Andy Ivers under date of August 9, 1937, from which it fairly appears that on some date not stated in the affidavit Philip H. S. Piatt, hereinabove referred to, died intestate, unmarried and without issue. In this situation, the undivided one-sixth interest of Philip H. S. Piatt would go to his sister, Blanch M. Golden, if she be now living, or to her heirs, if she be now deceased. As to this, it appears, however, that in the deed executed by Blanch M. Golden and Floyd Golden, her husband, to T. A. Henson, in which they assumed to convey to said T. A. Henson the whole of the title in and to this tract of land, there was a covenant of warranty which under the law would have the effect of estopping said grantors, their heirs and assigns from setting up as against said T. A. Henson, his heirs and assigns any right or title into the one-sixth interest in this land which Blanch M. Golden or her heirs may have thereafter acquired on the death of Philip H. S. Piatt. And in this connection, it is likewise noted that the deed executed by T. A. Henson and Lucy C. Henson conveying this property to Rose R. Lundstrom and Charles T. Lundstrom likewise contained a covenant of warranty covering the whole of the title and interest in and to this property.

On the considerations above noted and upon further consideration of the abstract of title submitted, I am of the opinion that Rose R. Lundstrom and Charles T. Lundstrom have a good merchantable title to the tract of land above referred to, which tract of land is more particularly described by metes and bounds in the deed which they have tendered to the State of Ohio; and that they own and hold this land free and clear of all encumbrances except delinquent taxes in the amount of \$73.46, the taxes for the year 1936, amounting to \$3.17, and the undetermined taxes on the property for the year 1937. All of these taxes are, of course, liens upon this property and some adjustment of the same should be made before the transaction for the purchase of this property is closed by your department.

In this connection, it should be noted that the abstract of title submitted to me was certified by the abstracter under date of May 18, 1937. In view of this fact, it is quite apparent that in the interval of time between the date of the certification of the abstract and the present time the property here in question may have been subjected to other liens

and encumbrances, such as judgments, foreign executions, mortgages or other liens which would appear of record in the office of the Clerk, Sheriff or County Recorder of Scioto County, Ohio. In this connection, it is suggested that before the transaction for the purchase of this property is closed by the payment of the purchase price thereof a further check be made either by the abstracter or by some responsible representative of your department to see whether or not any liens or encumbrances have been placed upon this property since the date of the certification of the abstract as above noted.

Upon examination of the warranty deed tendered by Rose R. Lundstrom and Charles T. Lundstrom, I find that said deed has been properly executed and acknowledged by said grantors and that the form of this deed is such that the same is legally sufficient to convey the property therein described to the state of Ohio by fee simple title with a covenant of warranty that the property is free and clear of all encumbrances whatsoever.

Not having at hand any map or plat of the tract of land described in the deed and of lands contiguous thereto, I am unable to identify the tract of land described in the deed by the description therein contained with the tract of land described in former deeds in the chain of title, to wit, the deed executed by Blanch M. Golden and Floyd Golden, her husband, to T. A. Henson, and the deed executed by T. A. Henson and Lucy C. Henson, his wife, to Rose R. Lundstrom and Charles T. Lundstrom. Further, in this connection, it is noted that in both of the deeds last above referred to the tract of land here in question is referred to as containing 120 acres, whereas in the deed tendered to the state of Ohio by Rose R. Lundstrom and Charles T. Lundstrom it is stated that this tract of land contains 78.19 acres. I assume that the description of this property set out in the deed which has been tendered to the state of Ohio by Rose R. Lundstrom and Charles T. Lundstrom follows a survey of the property made by the Division of Forestry and that this accounts for the fact that the description of the property set out in this deed does not in terms follow the description of the property as the same is set out in the former deeds above referred to. In any event, the description of this property as the same is set out in the Lundstrom deed should be checked with that set out in former deeds in the chain of title so that it may be definitely known that the State is getting the identical tract of land which was conveyed to the Lundstroms.

Upon examination of contract encumbrance record No. 49, which has been submitted as a part of the files relating to the purchase of this property, I find that this instrument has been properly executed and that there is shown thereby a sufficient balance, otherwise unencumbered, to

the credit of the Division of Forestry to pay the purchase price of this property which is the sum of \$312.75.

It appearing further that the Board of Control of the Ohio Agricultural Experiment Station is purchasing this property under the authority of House Bill No. 571, section 1173-6, General Code, and out of the funds provided for in this act, no approval of the purchase of this property by the Controlling Board was or is necessary.

Subject only to the exceptions, observations and recommendations above noted, I am approving the title of Rose R. Lundstrom and Charles T. Lundstrom in and to the above described tract of land and I am likewise approving the warranty deed and contract encumbrance record submitted to me. I am herewith enclosing the abstract of title, warranty deed, contract encumbrance record and other files for your further attention in closing the transaction for the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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APPROVAL—GRANTS OF EASEMENT EXECUTED TO THE
STATE OF OHIO BY PROPERTY OWNERS IN HANOVER
AND MIDDLETON TOWNSHIPS, COLUMBIANA COUN-
TY, OHIO.

COLUMBUS, OHIO, September 22, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval two certain grants of easement executed to the State of Ohio by property owners in Hanover and Middleton Townships, Columbiana County, Ohio, conveying to the State of Ohio, for the purposes therein stated, certain tracts of land in said townships and county.

The grants of easement here in question, designated with respect to the number of the instrument and the name of the grantor, are as follows:

| Number | Name |
|--------|----------------|
| 1097 | Lida J. Frantz |
| 1099 | W. E. Warren |