

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT, made this 18th day of March 2021, by Robert H. Brace (hereinafter "Grantor");

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain tracts of land known as the "Marsh Site" and comprising two contiguous Tax Parcels, 47-011-004-0-003.00 and 31-016-063.0-003.00 and being the property conveyed to the Grantor by deed recorded as Instrument Number 2012-012837 in the land records of Erie County, Pennsylvania, more particularly described in the Deed attached hereto as Exhibit A and incorporated by reference, hereinafter referred to as the "Property";

WHEREAS, the United States of America initiated legal action pertaining to the Property in the United States District Court for the Western District of America as Case Number 1:17-cv-00006-BR (the "Legal Action"); and

WHEREAS, in the Legal Action, the United States District Court has entered permanent injunctive relief pertaining to the Property in its February 27, 2020 Order on Remedy (Remedy Order) attached hereto as Exhibit B, requiring the Grantor to restore the Property and record this instrument;

NOW, THEREFORE, in consideration of the terms, conditions, and restrictions contained herein, and pursuant to the laws of the Commonwealth of Pennsylvania, Grantor does agree to the following terms and conditions:

1. **Purpose:** The purpose of this Declaration of Restrictive Covenants for Conservation is to preserve and protect the native flora, fauna, soils, water table and drainage patterns, and other conservation values of the Property, and to ensure that all of its features, including its air space and subsurface, will be restored to its natural condition as provided herein and to prevent any use of the Property that will impair or interfere with its natural resource functions and values. Grantor intends that this Declaration will confine the use of the Property to such activities as are consistent with the purpose of this Declaration.

2. **Duration:** Unless modified as set forth herein, this Declaration shall remain in effect for 20 years from the date of recordation, shall run with the land regardless of ownership or use, and is binding upon all subsequent declarants, their heirs, executors, administrators, successors, representatives, devisees, and assigns, as the case may be, as long as said party shall have any interest in any part of the Property.

3. **Permitted Uses:** This Declaration will not prevent the Grantor, subsequent property owner(s), and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner from making use of the Property to comply with the Remedy Order, or from uses that are not expressly prohibited herein and are not inconsistent with the purpose of this Declaration.

2021 MAR 19
CLERK OF DEEDS
ERIE COUNTY, PA.

Robert H. Brace

4. **Restrictions:** The use of the Property is hereby restricted to effectuate the Remedy Order and restore the Property to its natural condition. Except when an approved purpose under Paragraph 1., above, or as necessary to accomplish restoration required by the Remedy Order, the following activities and uses are expressly prohibited in, on, over, or under the Property, subject to all of the express terms and conditions below:

- a. construction of man-made structures including but not limited to the construction, removal, placement, preservation, maintenance, alteration, or decoration of any buildings, roads, utility lines, billboards, or other advertising. This restriction does not include deer stands, bat boxes, bird nesting boxes, bird feeders, duck blinds, and the placement of signs for safety purposes or boundary demarcation;
- b. removal, excavation, disturbance, or dredging of soil, sand, peat, gravel, or aggregate material of any kind; or any change in the topography of the land, including any discharges of dredged or fill material, ditching, extraction, drilling, driving of piles, mining, or excavation of any kind;
- c. drainage or disturbance of the water level or the water table, except for pre-existing and approved stormwater discharges and any maintenance associated with those stormwater discharges. All pre-existing and approved drainage/stormwater discharge features should be shown on the accompanying plat map or approved plan and attached to this Declaration; and identified in Section 9;
- d. storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid, or hazardous waste substance, yard waste, materials or debris of whatever nature on, in, over, or underground or into surface or ground water, except for pre-existing and approved stormwater discharges and any maintenance associated with those stormwater discharges;
- e. planting or introduction of non-native species;
- f. use of herbicides, insecticides, or pesticides, or other chemicals, except for as may be necessary to control invasive species that threaten the natural character of the Conservation Area(s). State-approved municipal application programs necessary to protect the public health and welfare are not included in this prohibition;
- g. The mowing, cutting, pruning, or removal of vegetation of any kind; disturbance, destruction, or the collection of any trees, shrubs, or other vegetation; except for pruning, cutting or removal for: safety purposes, control in accordance with accepted scientific forestry management practices for diseased or dead vegetation, control of non-native species and noxious weeds, or scientific or nature study.

- h. Conversion of, or expansion into, any portion of the Property for use of agriculture, horticulture, aquaculture, silviculture, livestock production or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agriculture to silviculture).
- i. Other acts, uses, excavation, or discharges which adversely affect fish or wildlife habitat or the preservation of lands, waterways, or other aquatic resources within the Property;
- j. Recreational use of ATVs, dirt bikes, motorcycles, off-road vehicles, or motor vehicle of any kind is prohibited in the Property unless necessary to implement the terms of the Remedy Order.

5. **Access and Enforcement:** Representatives of the US Army Corps of Engineers (Corps), the US Environmental Protection Agency (EPA) and the US Department of Justice (DOJ) shall have the right to enter and go upon the Property, to inspect the Property, and to take actions necessary to verify compliance with this Declaration. When practicable, such entry shall be upon prior reasonable notice to the property owner. The Grantor grants to the Corps, EPA, and DOJ, a discretionary right to enforce this Declaration in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants: provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties.

6. **Recording and Execution by Parties:** The Grantor agrees to record this Declaration in the Land Records of Erie County and provide EPA with proof of recordation.

7. **Notice of Transfer of Property Interests:** No transfer of the rights of this Declaration, or of any other property interests pertaining to the Property shall occur without sixty (60) calendar days prior written notice to EPA

8. **Modifications:** No changes or alterations to the provision in this Declaration shall be made without prior written approval of EPA and by order of the Court.

9. **Reserved Rights:** Nothing in this Declaration shall prevent Grantor from selling, transferring, encumbering, or taking other action pertaining to the Property unless it is inconsistent with or prohibited by this Declaration or the Remedy Order. If the restoration required by the Remedy Order necessitates any unanticipated infrastructure modifications, utility relocation, drainage ditches, or stormwater controls within the Property or if situations require measures to remove threats to life or property within the identified Property said activities must be approved in writing by the EPA subject to terms and conditions set forth in the written approval. Approval is subject to the EPA's sole discretion. Approval of said activity by the EPA is in addition to any Clean Water Act, Section 404 permit, or other authorization, which may be required in order to legally implement said activity. The Grantor accepts the obligation to place any other responsible party on reasonable prior notice of their need to request such approval.

10. **Severability:** If any portion of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.