

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

Plaintiff,

v.

DOVER CHEMICAL CORPORATION,

Defendant.

Civil Action No. 5:17-cv-02335-BYP

**CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

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## I. BACKGROUND

A. On November 7, 2017, the United States of America (“United States”) filed a complaint (“Complaint”) in this action pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9606 and 9607.

B. The United States’ Complaint alleged that Dover Chemical Corporation (“Settling Defendant”), the potentially responsible party that has entered into this Consent Decree (“CD”), is liable under CERCLA for response actions and response costs relating to the Dover Corporation Superfund Site (“Site”) in Dover, Ohio.

C. In *United States v. Dover Chemical Corp.*, No. 5:17-cv-02335-BYP (N.D. Ohio), the United States and Settling Defendant entered into a prior consent decree captioned “Remedial Design/Remedial Action Consent Decree” (hereinafter the “RD/RA Consent Decree”), which addresses response actions and response costs relating to Operable Unit 2 of the Site and was entered by the Court on January 12, 2018. Subparagraph 60.a of the RD/RA Consent Decree expressly reserved the United States’ claims for “liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damages assessments.”

D. Pursuant to Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987) and the National Contingency Plan, 40 C.F.R. Part 300, the United States Department of the Interior (“DOI”), through the United States Fish and Wildlife Service (“FWS”), has been delegated authority to act on behalf of the public as the Federal Trustee for Natural Resources injured by the releases of hazardous substances at or from the Site.

E. The Governor of the State of Ohio has designated the Director of Ohio Environmental Protection Agency (“Ohio EPA”) as the State Trustee for Natural Resources injured by the releases of hazardous substances at or from the Site.

F. The above-referenced Federal Trustee and State Trustee (collectively, the “Trustees”) contend that they have claims for recovery of natural resource damages (including for recovery of natural resource damage assessment costs) against Settling Defendant.

G. By entry into this CD, Settling Defendant does not admit any liability to the Trustees arising out of the transactions or occurrences alleged in the Complaint.

H. The Parties to this CD recognize, and the Court by entering this CD finds, that this CD: (a) has been negotiated by the Parties in good faith; (b) will avoid prolonged and complicated litigation among the Parties; (c) will expedite natural resource protection and restoration actions to be performed by Settling Defendant; and (d) is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this CD, it is hereby ORDERED, ADJUDGED, and DECREED:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and CERCLA Sections 107 and 113(b), 42 U.S.C. §§ 9607 and 9613(b). The Court also has personal jurisdiction over Settling Defendant. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) and (c) and CERCLA Section 113(b), 42 U.S.C. § 9613(b), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. Solely for the purposes of this CD and the underlying Complaint, Settling Defendant waives all objections and defenses that it may have to

jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

### III. PARTIES BOUND

2. This CD applies to and is binding upon the United States and the State and upon Settling Defendant and its successors and assigns. The State Trustee is a beneficiary of this CD and can enforce this CD as if it were a party to the November 7, 2017 Complaint. Any change in ownership or corporate or other legal status of Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the responsibilities of Settling Defendant under this CD.

3. Settling Defendant shall provide a copy of this CD to each contractor hired to perform the Restoration Work and to each person representing Settling Defendant with respect to the Site or the Restoration Work, and shall condition all contracts entered into hereunder upon performance of the Restoration Work in conformity with the terms of this CD. Settling Defendant shall be responsible for ensuring that its contractors and subcontractors perform the Restoration Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

### IV. DEFINITIONS

4. Unless otherwise expressly provided in this CD, terms used in this CD that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning

assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CD or its appendices, the following definitions shall apply:

a. “Assessment Area” shall mean the Sugar Creek Valley Assessment Area, encompassing approximately 683 acres of land, which includes Sugar Creek from approximately river mile two to river mile zero, the confluence with the Tuscarawas River. Injured ground water resources in the Sugar Creek buried valley aquifer extend approximately one and one-quarter miles south of Settling Defendant’s plant and encompass approximately 174 acres. A map depicting the Assessment Area is attached as Appendix A.

b. “Assessment Costs” or “NRD-Related Costs” shall mean direct and indirect costs related to Natural Resource Damages that are incurred or to be incurred by the Trustees, as defined in 43 C.F.R. § 11.15(a)(3) and recoverable under 43 C.F.R. § 11.15(a)(3). Such costs shall include administrative costs and other costs or expenses, including but not limited to attorney costs, that are incurred to provide for, carry out, or support the activities or responsibilities of the Trustees consistent with this CD. This includes costs incurred in assessing the Natural Resources the Trustees allege were injured, destroyed, or lost in connection with the releases at or from the Site; in identifying and planning Restoration Projects to compensate for such injuries and loss; in overseeing the implementation of the Restoration Projects; and in overseeing the monitoring of the Restoration Projects contemplated by this CD.

c. “CD” shall mean this Consent Decree and all appendices incorporated hereto (listed in Section XX of this CD (Integration/Appendices)).

d. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601–9675.

- e. “Conservation Easement” shall be defined according to Ohio Revised Code § 5301.67(A) and consistent with Ohio Revised Code §§ 5301.68–5301.70.
- f. “Conserve” shall mean to preserve or protect Natural Resources pursuant to this CD through the use of Conservation Easements and/or Environmental Covenants.
- g. “Conserved Land” shall mean those parcels of land that Settling Defendant is required to conserve in accordance with Section VII of this CD (Natural Resource Restoration Projects).
- h. “Dover, Ohio” shall mean the City of Dover and nearby areas impacted by releases of hazardous substances at or from the Site.
- i. “Date of Lodging” shall mean the date the proposed CD is filed with the Court as an attachment to a Notice of Lodging of Consent Decree, pending public comment as required in Section XXIII of this CD (Lodging and Opportunity for Public Comment).
- j. “Day” or “day” shall mean a calendar day. In computing any period of time under this CD, where the last day would fall on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next working day.
- k. “DOI” shall mean the United States Department of the Interior and any successor departments, agencies, or instrumentalities.
- l. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities.
- m. “Effective Date” shall mean the date of entry of this CD, as provided in Section XXI of this CD (Effective Date and Retention of Jurisdiction).
- n. “Environmental Covenant” shall be defined according to Ohio Revised Code § 5301.80(D) and consistent with Ohio Revised Code §§ 5301.80–5301.92.

o. “Future General NRD Work and Oversight Costs” shall mean general Assessment Costs to be incurred by the Trustees after the Effective Date of this CD in connection with the projects that Settling Defendant must implement under Section VII of this CD.

p. “Future Ground Water Restoration/Protection Project Costs” shall mean costs to be incurred by the State Trustee after the Effective Date of this CD to implement one or more natural resource restoration projects that restore and/or protect groundwater resources.

q. “FWS” shall mean the U.S. Fish and Wildlife Service of the United States Department of the Interior, and its successor departments, agencies, or instrumentalities.

r. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

s. “Interim NRD-Related Costs” shall mean Assessment Costs incurred by the Trustees from January 1, 2021 up to the Effective Date of this CD, including but not limited to costs incurred for the development and issuance of the Restoration Plan and the Statement of Work for each Restoration Project.

t. “Natural Resource” or “Natural Resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to,



managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State.

u. “Natural Resource Damages” or “NRD” shall mean any compensation recoverable by the United States or the State on behalf of the public for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources at the Assessment Area as a result of a release of hazardous substances from the Site, including, but not limited to: (i) the reasonable costs of assessing such injury, destruction, loss, loss of use, or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

v. “NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund.

w. “Ohio EPA” shall mean the Ohio Environmental Protection Agency.

x. “Paragraph” shall mean a portion of this CD identified by an Arabic numeral or an upper case letter.

y. “Parties” shall mean the United States, the State, and Settling Defendant.

z. “Past NRD-Related Costs” shall mean all Assessment Costs incurred by the Trustees through December 31, 2020.

aa. “Restoration Plan” shall mean the Natural Resource Restoration Plan & Environmental Assessment for the Site.

bb. “Restoration Projects” shall mean those restoration projects described in Section VII of this CD and in the Restoration Statements of Work (Appendix C).

cc. “Restoration Statements of Work” or “Restoration SOWs” shall mean the documents describing the activities Settling Defendant must perform to implement the Restoration Projects, attached as Appendix C.

dd. “Restoration Work” shall mean all activities and obligations Settling Defendant is required to perform under this CD pertaining to construction/implementation of the Restoration Projects.

ee. “Restoration Work Plan” shall mean a work plan for each project, as appropriate, providing detailed descriptions of activities proposed to be undertaken, consistent with the Restoration Plan and the Restoration Statements of Work, to restore, replace, or acquire the equivalent of the Natural Resources that the Trustees allege are injured as a result of releases of hazardous substances into or within the Assessment Area, together with proposed schedules for implementation of such activities.

ff. “Section” shall mean a portion of this CD identified by a Roman numeral.

gg. “Settling Defendant” shall mean Dover Chemical Corporation.

hh. “Site” shall mean the Dover Chemical Corporation Superfund Site located in Dover, Ohio, including the combined areas of Operable Unit 1 and Operable Unit 2. Operable Unit 1 encompasses the main plant area east of Interstate 77 along with an abandoned canal/lagoon area and a wooded low-lying area west of Interstate 77. Operable Unit 2 extends from the southern boundary of Operable Unit 1 at 3676 Davis Road N.W., toward the southwest, to approximately 5th Street within the City of Dover. A map depicting the Site is attached as Appendix B.

ii. “State” shall mean the State of Ohio.

jj. “Subparagraph” shall mean a portion of this CD identified by a lower case Roman numeral or letter.

kk. “Sugar Creek” shall mean the tributary of the Tuscarawas River that runs through the Assessment Area.

ll. “The Wilderness Center” or “TWC” shall mean the conservation organization with the Federal Tax Identification Number 34-0943581, located at 9877 Alabama Ave. SW, Wilmot, OH 44689 on the Date of Lodging.

mm. “Trustees” shall mean DOI, acting through the FWS, and Ohio EPA.

nn. “Tuscarawas River” shall mean the tributary of the Muskingum River that runs to the east and south of the Assessment Area.

oo. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including DOI.

pp. “Western Reserve Land Conservancy” or “WRLC” shall mean the conservation organization with the Federal Tax Identification Number 34-1571233, located at 3850 Chagrin River Road, Moreland Hills, OH 44022 on the Date of Lodging.

#### V. STATEMENT OF PURPOSE

5. By entering into this CD, the mutual objectives of the Parties are for Settling Defendant: (a) to provide for the restoration, replacement, or acquisition of the equivalent of the Natural Resources allegedly injured, destroyed, or lost as a result of hazardous substance releases at and from the Site through the implementation of Restoration Projects consistent with the Restoration Statements of Work, attached as Appendix C and the Restoration Plan; (b) to

reimburse Natural Resource Damage Assessment Costs incurred by the Trustees; and (c) to resolve its alleged civil liability for Natural Resource Damages as provided herein.

VI. PAYMENTS BY SETTling DEFENDANT

6. Settling Defendant shall make payments to the Trustees in the manner described in Paragraphs 7–10 below.

7. Payments for Past NRD-Related Costs.

a. Payment to the United States by Settling Defendant. Within 30 Days of the Effective Date, Settling Defendant shall pay to the United States \$613,697.30 in reimbursement of the DOI's Past Assessment Costs. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Northern District of Ohio following entry of the CD. The Payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which the Defendant shall use to identify all payments required to be made in accordance with this CD. Payments under this CD will be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-3-11517/1. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The FLU will provide payment instructions by registered U.S. Mail to: Dover Chemical Corporation, c/o Karleen James, 3676 Davis Rd. N.W., Dover, OH 44622.

b. Payment to the State of Ohio by Settling Defendant. Within 30 Days of the Effective Date, Settling Defendant shall pay to the State of Ohio \$498,689.37 in reimbursement of the Ohio EPA's Past Assessment Costs and \$9,740.64 in reimbursement of the Past Assessment Costs of the Office of the Attorney General of Ohio. The payments shall be

made in the form of an Electronic Funds Transfer according to payment instructions provided following lodging of the CD by the Ohio EPA and the Office of the Attorney General of Ohio. A copy of the Electronic Funds Transfer transmittal shall be sent to: Steven Snyder or his successor, DERR Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049; and Sandra Finan, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

8. Payments for Interim NRD-Related Costs.

a. Within 60 days of the Effective Date, the Trustees shall provide Settling Defendant an invoice for the Interim NRD-Related Costs.

b. Within 30 days of receiving each Trustee's invoice, Settling Defendant shall pay all Interim NRD-Related Costs of the DOI, the Ohio EPA, and the Ohio Attorney General's Office.

c. Payment of Interim NRD-Related Costs to the DOI shall be made consistent with payment instructions in Subparagraph 7.a.

d. Payment of Interim NRD-Related Costs to the Ohio EPA and the Ohio Attorney General shall be made consistent with payment instructions in Subparagraph 7.b.

9. Payments for Future General NRD Work and Costs.

a. Future General NRD Work and Oversight Costs. Within 30 days of the Effective Date, Settling Defendant shall pay \$103,500 to the Trustees in satisfaction of its obligations for Future General NRD Work and Oversight Costs, including:

i. \$51,750 that shall be deposited in a sub-account segregated in the NRDAR Fund by the DOI Restoration Fund Manager, to be paid to the DOI consistent with the payment instructions in Subparagraph 7.a; and

ii. \$51,750 that shall be paid to the State consistent with the payment instructions in Subparagraph 7.b.

iii. In the event that the Trustees incur costs not identified in this CD as a result of (i) non-performance by Settling Defendant; or (ii) review of new proposed projects not identified in this CD that are necessary because Settling Defendant and the Trustees determine that an identified project is not viable, those Trustee costs will not be satisfied by the payment for Future General NRD Work and Oversight Costs made under this Paragraph and will be billed to Settling Defendant separately. Settling Defendant shall pay such costs within 30 days, subject only to its right to invoke Section XIII (Dispute Resolution).

b. Future Ground Water Restoration/Protection Project Costs. Within 30 days of the Effective Date, Settling Defendant shall pay \$880,000 to the State of Ohio, consistent with the payment instructions in Subparagraph 7.b. The State shall deposit this money in the Ohio Natural Resources Damages Fund (to the “Sugar Creek Restoration Account,” a segregated sub-account), to be managed by Ohio EPA for the joint benefit of the Trustees. The State Trustee will use this money to implement one or more Natural Resource restoration projects that restore and/or protect groundwater resources.

10. Notice of Payment. Upon making any payment under Paragraphs 7, 8, or 9, Settling Defendant shall send written notice that payment has been made to:

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
DJ # 90-11-3-11517/1  
P.O. Box 7611  
Washington, DC 20044-7611

Bruce Nessler  
DOI Restoration Fund Manager  
Office of Restoration and Damage Assessment (ORDA)  
1849 C Street, NW  
Room 2653, MIB  
Washington, DC 20240

Kelly Brooks Bakayza  
Senior Attorney  
Department of the Interior  
Office of the Solicitor  
3 Parkway Center, Suite 385  
Pittsburgh, PA 15220  
[Kelly.Bakayza@sol.doi.gov](mailto:Kelly.Bakayza@sol.doi.gov)

Maggie Selbe  
Site Coordinator  
Ohio EPA – Southeast District Office  
Division of Environmental Response and Revitalization  
2195 E. Front Street  
Logan, Ohio 43138-8367  
[maggie.selbe@epa.ohio.gov](mailto:maggie.selbe@epa.ohio.gov)

Ian F. Gaunt  
Assistant Attorney General  
Ohio Attorney General's Office  
30 E. Broad St. 25th Fl.  
Columbus, OH 43215  
[Ian.Gaunt@ohioattorneygeneral.gov](mailto:Ian.Gaunt@ohioattorneygeneral.gov)

11. Interest. In the event any payment required by Paragraphs 7, 8, or 9 is not made when due, Settling Defendant shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment. Payment of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Trustees by virtue of Settling Defendant's failure to make timely payments under this Section,

including, but not limited to, payment of stipulated penalties pursuant to Section XIV (Stipulated Penalties).

12. Any Interest payments under Paragraph 11 shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principal amount, consistent with the payment instructions in Subparagraphs 7.a and 7.b.

#### VII. NATURAL RESOURCE RESTORATION PROJECTS

13. Settling Defendant shall finance and, as specified in more detail below, commence and complete performance of the Restoration Projects consistent with the Restoration Statements of Work and Restoration Plan and in accordance with the provisions set forth below in this Section. Such projects shall also be in accordance with 43 C.F.R. Part 11, including the factors identified in 43 C.F.R. § 11.82(d). Any work proposed for a Conserved Land shall be technically feasible and in compliance with applicable federal, state, and local laws and regulations.

14. Restoration Plan. The Trustees will have prepared a Restoration Plan describing the Restoration Projects and how the projects are to be implemented. As provided by 42 U.S.C. § 9611(i) and 43 C.F.R. § 11.93, the Restoration Plan identifies how the Restoration Projects will be implemented for restoration, rehabilitation, or replacement of the injured Natural Resources, or acquisition of equivalent resources.

15. Restoration Statements of Work. The Trustees have approved Restoration SOWs describing the activities Settling Defendant must perform to implement the Restoration Projects. The Restoration SOWs are attached as Appendix C.

16. Within 150 days of the Effective Date, Settling Defendant shall submit to the Trustees a proposed Restoration Work Plan for each Restoration Project that provides further



details about acreages, goals, materials and methods, location of the work, and a schedule. The Trustees will have authority to approve or require modifications to the proposed Restoration Work Plans, as provided in Section IX (Approval by Trustees of Plans, Reports, and Other Deliverables), to ensure, among other things, the suitable environmental condition of the associated properties and that appropriate land use restrictions are defined. The Trustees' authority to approve or require modifications to the proposed Restoration Work Plans is not subject to the provisions of Section XIII (Dispute Resolution). Each such Restoration Work Plan shall be consistent with the Restoration Plan and the attached Restoration SOWs (Appendix C).

17. Each Conservation Easement or Environmental Covenant shall be subject to approval or modification by the Trustees, as provided in Section IX (Approval by Trustees of Plans, Reports, and Other Deliverables). To the extent permitted by law, the Trustees shall have rights to enforce the Conservation Easements and Environmental Covenants. Any modification of a Conservation Easement or Environmental Covenant must be approved by the Trustees. Within 30 days of receiving the Trustees' approval of a proposed Conservation Easement or Environmental Covenant, Settling Defendant shall cause the fully executed Conservation Easement or Environmental Covenant to be recorded, as provided by Ohio Revised Code §§ 5301.68 and 5301.88.

18. All Restoration Projects shall be restored, enhanced, and/or conserved in accordance with the schedule provided in the applicable, approved Restoration Work Plan, and shall be completed within five years of the Effective Date of this CD. An extension of time may be granted by written agreement of the Trustees.

19. In the event that Settling Defendant and the Trustees determine that any Restoration Project required under this CD is not viable, Settling Defendant shall provide a

proposed statement of work and Restoration Work Plan for an equivalent, substitute project or projects that will be subject to the Trustees' approval. Any substitute project or projects must be completed within five years of the Effective Date unless the Trustees grant an extension by written agreement.

20. Settling Defendant will implement the Restoration Projects summarized below in Subparagraphs (a) through (d) of this Paragraph, consistent with the requirements of the Restoration Plan and the attached Restoration SOWs (Appendix C). The Trustees shall utilize Settling Defendant's payment for Future Ground Water Restoration/Protection Project Costs, required under Subparagraph 9.b, to implement one or more natural resource restoration projects that restore and/or protect groundwater resources.

a. The Wilderness Center – Falcon Flats Restoration Project. Settling Defendant shall work with The Wilderness Center ("TWC") to restore at least 13.5 acres, and enhance at least 11.5 acres, of wetlands and riparian habitat within the 141-acre Falcon Flats preserve that is wholly owned by TWC and located in Sugar Creek Township, Stark County, Ohio. Settling Defendant shall also conserve the restored property by ensuring the addition of deed restrictions, subject to review and approval by the Trustees.

b. The Wilderness Center – Lash's Bog Enhancement and Restoration Project. Settling Defendant shall work with TWC to restore and enhance at least 15 acres within the 40-acre Lash's Bog Preserve that is wholly owned by TWC and located within Sugar Creek Township, Stark County, Ohio. The key restoration tasks include the treatment/removal of approximately 8 acres of invasive reed canary grass (*Phalaris arundinacea*) and autumn olive (*Elaeagnus umbellata*) invasive species control efforts. Settling Defendant shall also conserve the restored property by ensuring the addition of deed restrictions, subject to review and approval

by the Trustees.

c. Sugar Creek Habitat Conservation Project. Settling Defendant shall conserve Sugar Creek habitat by placing an Environmental Covenant on two parcels totaling 25.28 acres adjacent to Sugar Creek that are currently owned by Settling Defendant. The Sugar Creek Template Environmental Covenant is attached as Appendix E to this CD.

d. Western Reserve Land Conservancy – Eastern Hellbender Project. Settling Defendant shall consult with the Western Reserve Land Conservancy (“WRLC”) to identify specific parcels adjacent to Little Beaver Creek, Yellow Creek, Cross Creek and/or Captina Creek and will use the template Conservation Easement document, attached as Appendix D of this CD, to negotiate Conservation Easements with landowners that conserve at least 170 acres. This project was designed to conserve important stream and riparian habitat of the Eastern Hellbender salamander and protect ground water recharge.

#### VIII. RESTORATION REPORTING REQUIREMENTS

21. In addition to any other requirement of this CD, Settling Defendant shall submit to the Trustees electronic quarterly progress reports on the Restoration Work that, in addition to information required under the Restoration SOWs: (a) describe the actions that have been taken toward achieving compliance with the Restoration Work requirements during the previous quarter; (b) identify all required plans, reports, and other deliverables required by the Restoration Work that have been completed and submitted during the previous quarter; (c) describe all actions, including, but not limited to, implementation of Restoration Work Plans, that are scheduled for the next quarter and provide other information relating to the progress of the Restoration Projects; (d) provide a brief description of properties being considered for conservation and the value of the properties from a Natural Resource restoration standpoint; (e)

include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Restoration Projects, and a description of efforts to mitigate such delays; and (f) include any modifications to the Restoration Work Plans or other schedules that Settling Defendant has proposed to the Trustees or that have been approved by the Trustees. Following the Effective Date of this CD until the date that the Trustees notify Settling Defendant pursuant to Section XI (Certification of Completion), Settling Defendant shall submit these quarterly progress reports to the Trustees by the tenth day of March, June, September, and December (unless the due date or reporting frequency is modified or waived in writing by the Trustees). If requested by the Trustees, Settling Defendant shall also provide briefings for the Trustees to discuss the progress of the Restoration Projects.

22. Settling Defendant shall notify the Trustees of any change in the schedule described in a quarterly progress report for the performance of any activity not later than seven days prior to the scheduled performance of the activity.

23. Settling Defendant shall deliver an electronic copy to each Trustee of all plans, reports, and any deliverables required by the Restoration Work Plans, or any other approved plans, in accordance with the schedules set forth in such plans. All reports and other documents submitted by Settling Defendant to the Trustees that purport to document Settling Defendant's compliance with the terms of this CD shall be signed by an authorized representative of Settling Defendant, who shall, by his or her signature, certify to the accuracy of the report.

#### IX. APPROVAL BY TRUSTEES OF PLANS, REPORTS, AND OTHER DELIVERABLES

##### 24. Initial Submissions.

a. After review of any Restoration Work Plan, report, or other deliverable

that is required to be submitted for approval pursuant to this CD, the Trustees shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

b. The Trustees also may modify the initial submission to cure deficiencies in the submission if: (i) the Trustees determine that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Restoration Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

25. Following approval, approval upon conditions, or modification by the Trustees of any submittal pursuant to Paragraph 24, Settling Defendant shall proceed to take any action required by the submittal, as approved or modified by the Trustees, subject only to any right of Settling Defendant to contest such disapproval or modification under Section XIII (Dispute Resolution).

26. Resubmission.

a. Upon receipt of a notice of disapproval pursuant to Subparagraph 24.a (iii) or (iv), Settling Defendant shall, within 30 days or such longer time as approved by the Trustees, correct the deficiencies and resubmit the Restoration Work Plan, report, or other deliverable for approval.

b. Notwithstanding the receipt of a notice of disapproval of any submission pursuant to Subparagraph 24.a (iii) or (iv), Settling Defendant shall proceed, at the direction of the Trustees, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant

of any liability for stipulated penalties under Section XIV (Stipulated Penalties).

27. In the event that a resubmitted submission, or portion thereof, is disapproved by the Trustees, the Trustees may again require Settling Defendant to correct the deficiencies, in accordance with Subparagraph 26.a. The Trustees also retain the right to modify or develop the resubmitted submission. Settling Defendant shall implement any submission as modified or developed by the Trustees, subject only to any right of Settling Defendant to contest such disapproval or modification under Section XIII (Dispute Resolution).

28. If upon resubmission a Restoration Work Plan, report, or other deliverable is disapproved or modified by the Trustees due to a material defect, Settling Defendant shall be deemed to have failed to timely and adequately submit that Restoration Work Plan, report, or other deliverable, unless Settling Defendant invokes the dispute resolution procedures set forth in Section XIII (Dispute Resolution) and the Trustees' action is overturned pursuant to that Section. The provisions of Section XIII (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the implementation of the Restoration Work Plan and Restoration Projects and accrual and payment of any stipulated penalties during dispute resolution. If the Trustees' disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIV (Stipulated

Penalties).

29. All items required to be submitted to the Trustees for approval under this CD shall, upon approval or modification by the Trustees, be enforceable under this CD. In the event the Trustees approve or modify a portion of a report, or other item required to be submitted to the Trustees under this CD, the approved or modified portion shall be enforceable under this CD.

#### X. PROJECT COORDINATORS

30. Within 30 days after the Date of Lodging, Settling Defendant and the Trustees will notify each other, in writing, of the name, address, telephone number, and email address of their respective designated Restoration Project Coordinators and Alternate Restoration Project Coordinators. If a Restoration Project Coordinator or Alternate Restoration Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Restoration Project Coordinator shall be subject to disapproval by the Trustees and shall have the technical expertise to adequately oversee all aspects of the Restoration Work. He or she may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during the restoration.

31. The Trustees may designate other representatives, including but not limited to DOI or State employees, and the Trustees' contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this CD.

XI. CERTIFICATION OF COMPLETION

32. Within 90 days after Settling Defendant concludes that the Restoration Work for a Restoration Project has been fully performed, Settling Defendant shall schedule and conduct an inspection to be attended by Settling Defendant and the Trustees. If, after the inspection, the Trustees and Settling Defendant conclude that the Restoration Work for the Restoration Project appears to have been fully performed, Settling Defendant shall submit to the Trustees a Restoration Completion Report. The Restoration Completion Report shall comply with the Restoration Work Plan and Restoration SOWs and state that the Restoration Project has been completed in full satisfaction of the requirements of this CD. The report shall contain the following statement, signed by a responsible corporate official for Settling Defendant:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

33. If, after review of the Restoration Completion Report, the Trustees determine that any portion of the Restoration Project addressed therein has not been completed in accordance with the approved Restoration Work Plan, the Trustees shall notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this CD to complete the Restoration Project. The Trustees will set forth in the notice a schedule for performance of such activities consistent with the CD. Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution). If the Trustees conclude based on the initial or any subsequent Restoration Completion Report(s) submitted by Settling Defendant that a Restoration Project has been performed in accordance with



the approved Restoration Work Plan, the Trustees will so notify Settling Defendant in writing.

34. If and when Settling Defendant believes that all Restoration Projects and any necessary replacement projects have been performed in accordance with the approved Restoration Work Plans, it may submit to the Trustees a request for confirmation that the Restoration Work required by this CD has been achieved for the Site. If the Trustees conclude that, subject to Paragraph 59 (General Reservations by the United States and the State) and Paragraph 60 (Special Reservations Regarding Natural Resource Damages), full restoration, for the purposes of this CD only, has been achieved, they will so notify the Defendant in writing.

## XII. FORCE MAJEURE

35. “Force majeure,” for purposes of this CD, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant’s contractors that delays or prevents the performance of any obligation under this CD, despite Settling Defendant’s best efforts to fulfill the obligation. The requirement that Settling Defendant exercises “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring; and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Restoration Work.

36. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify orally the Trustees’ Project Coordinator, as applicable, or, in the absence of the Project Coordinator, the Trustees’ Alternate Project Coordinator or, in the event the designated representatives are unavailable, the Director of the

FWS, Region 3, and Ohio EPA, DERR Assessment, Remediation and Corrective Action (ACRA) Manager within five business days of when Settling Defendant first knew that the event might cause a delay. Within 14 business days thereafter, Settling Defendant shall provide in writing to the Trustees an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known. Failure to comply with the above requirements regarding a force majeure event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if the Trustees, despite the late notice, are able to assess to their satisfaction whether the event is a force majeure under Paragraph 35, the Trustees may, in their unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely notices under this Paragraph.

37. If, after a reasonable opportunity for review and comment by the Trustees, the Trustees agree that the delay or anticipated delay is attributable to a force majeure, the Trustees will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of

any other obligation. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Trustees will notify Settling Defendant in writing of their decision.

38. If, after receiving the notice provided by the Trustees pursuant to Paragraph 37, Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than 15 business days after receipt of the notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 35 and 36, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this CD identified to the Trustees and the Court.

### XIII. DISPUTE RESOLUTION

39. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this CD, provided, however, that nothing in this CD shall be construed to authorize Settling Defendant to dispute any action or determination by the Trustees disapproving, modifying, or conditionally approving any provision in any Restoration Work Plan submitted pursuant to Paragraph 16. The procedures set forth in this Section shall not apply to actions by the United States and/or the State to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

40. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Settling Defendant and/or one or both of the Trustees send a written Notice of Dispute in accordance with this Section.

41. Statements of Position.

a. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under Paragraph 40, then the position advanced by the Trustees shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the Trustees a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 42 (Record Review) or Paragraph 43.

b. Within 30 days after receipt of Settling Defendant's Statement of Position, the Trustees will serve on Settling Defendant their joint Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustees. The Statement of Position advanced by the Trustees shall include a statement as to whether formal dispute resolution should proceed under Paragraph 42 (Record Review) or Paragraph 43. Within 15 days after Settling Defendant's receipt of the Statement of Position advanced by the Trustees, Settling Defendant may submit a Reply.

c. If there is a disagreement between the Trustees and Settling Defendant as to whether dispute resolution should proceed under Paragraph 42 (Record Review) or Paragraph 43, the parties to the dispute shall follow the procedures set forth in the paragraph determined to be applicable by the Trustees. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraph 42 (Record Review) or Paragraph 43.

42. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any restoration action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any Restoration Project includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by the Trustees under this CD, and the adequacy of the performance of response actions or restoration actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by Settling Defendant regarding the validity of the provisions of the Restoration Plan.

a. An administrative record of the dispute shall be maintained by Ohio EPA as to any restoration actions, and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Trustees may allow submission of supplemental statements of position by the parties to the dispute.

b. The Trustees will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph 42.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Subparagraph 42.c.

c. Any administrative decision made by the Trustees pursuant to Subparagraph 42.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all parties to the dispute within ten days after receipt of the administrative decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The Trustees may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating, based on the administrative record, that the decision of the Trustees is arbitrary and capricious or otherwise not in accordance with law. Judicial review of such decision shall be on the administrative record compiled pursuant to Subparagraph 42.a.

43. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any restoration action, or Restoration Project, nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Subparagraph 41.a, the Trustees will issue a final decision resolving the dispute. Such decision shall be binding on Settling Defendant unless, within ten days after receipt of the decision, Settling Defendant files with the Court and serves on the parties to the dispute a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The Trustees may file a response to

Settling Defendant's motion.

b. Except as otherwise provided in this CD, in any dispute brought under Paragraph 43, Settling Defendant shall bear the burden of demonstrating that its position complies with this CD and better furthers the objectives of the CD.

44. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this CD, unless the Trustees or the Court agree otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 48. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. To the extent that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties). To the extent that Settling Defendant prevails, the stipulated penalties shall not be assessed and shall no longer be applicable.

#### XIV. STIPULATED PENALTIES

45. Settling Defendant shall be liable to the United States and the State for stipulated penalties in the amounts set forth in Paragraphs 46 and 47 for failure to comply with the requirements of this CD, unless excused under Section XII (Force Majeure). "Compliance" by Settling Defendant shall include completion of all payments and activities required under this CD or any plan, report, or other deliverable required or approved under this CD, in accordance with all applicable requirements of law, the Restoration SOWs, the Restoration Work Plans, and any plans, reports, or other deliverables required or approved under this CD, and within the specified time schedules established by or approved under this CD.

46. Stipulated Penalty Amounts – Work (Including Payments and Excluding Plans,

Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for each failure to implement any approved Restoration Work Plan in accordance with Section VII (Natural Resource Restoration Projects):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 14th day
\$2,500	15th through 30th day
\$4,000	31st day and beyond

b. The following stipulated penalties shall accrue per violation per day for each failure to make any payment of Past NRD-Related Assessment Costs, Interim NRD-Related Assessment Costs, and Future NRD Oversight Costs:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$3,000	31st day and beyond

47. Stipulated Penalty Amounts – Plans, Reports, and other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables pursuant to this CD, the Restoration Plan, the Restoration Work Plans, and any approved or modified reports, plans, specifications, schedules, and attachments under such Restoration Work Plans or this CD:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 14th day
\$ 2,500	15th through 30th day



\$ 4,000

31st day and beyond

48. All stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing in this CD shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this CD.

49. Following the Trustees' determination that Settling Defendant has failed to comply with a requirement of this CD, the Trustees may give Settling Defendant written notification of the same and describe the noncompliance. The Trustees may send Settling Defendant a written demand for the payment of the stipulated penalties. However, stipulated penalties shall accrue as provided in the preceding Paragraph regardless of whether the Trustees have notified Settling Defendant of a violation.

50. All stipulated penalties accruing under this Section shall be due and payable within 30 days after Settling Defendant's receipt from the Trustees of a demand for payment of the stipulated penalties, unless Settling Defendant invokes the dispute resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. For any stipulated penalties due to the Trustees, Settling Defendant shall pay one-half of the stipulated penalty amount to the United States, and one-half of the stipulated penalty amount to the State. All payments to the United States and the State under this Section shall indicate that the payment is for stipulated penalties and shall be made as specified in Subparagraphs 7.a and 7.b.

51. Stipulated penalties shall continue to accrue as provided in Paragraph 48 during any dispute resolution period, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the parties to the dispute or by a

decision of the Trustees that is not appealed to this Court, accrued stipulated penalties determined to be owed shall be paid to the Trustees within 15 days after the agreement or the receipt of the decision or order by the Trustee, as applicable;

b. If the dispute is appealed to this Court and the Trustees prevail in whole or in part, Settling Defendant shall pay all accrued stipulated penalties determined by the Court to be owed to the Trustees within 60 days after receipt of the Court's decision or order, except as provided in Subparagraph 51.c;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued stipulated penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the Trustees, or to Settling Defendant to the extent that it prevails.

52. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 50 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 50 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States and/or the State may institute proceedings to

collect the penalties and Interest.

53. The payment of stipulated penalties and Interest, if any, shall not alter in any way Settling Defendant's obligation to complete the performance of the Restoration Work required under the CD.

54. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States and the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l); provided, however, that the United States and the State shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

55. Notwithstanding any other provision of this Section, either Trustee may, in its unreviewable discretion, waive any portion of the stipulated penalties due to it.

#### XV. COVENANTS BY TRUSTEES

56. Covenant by the United States to Settling Defendant. Except as specifically provided by Paragraph 59 (General Reservations by the United States and the State) and Paragraph 60 (Special Reservations Regarding Natural Resource Damages), the United States covenants not to sue or to take administrative action against Settling Defendant for Natural Resource Damages relating to this Site, pursuant to CERCLA Section 107, 42 U.S.C. § 9607. This covenant not to sue shall take effect upon the Effective Date of this CD. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this CD. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

57. Covenant by the State to Settling Defendant. Except as specifically provided by Paragraph 59 (General Reservations by the United States and the State) and Paragraph 60 (Special Reservations Regarding Natural Resource Damages), the State of Ohio covenants not to sue or to take administrative action against Settling Defendant for Natural Resource Damages relating to this Site, pursuant to CERCLA Section 107, 42 U.S.C. § 9607, Ohio statutory law, or common law. This covenant not to sue shall take effect upon the Effective Date of this CD. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this CD. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

58. Documentation Related to Past NRD-Related Costs. Following entry of this CD, Trustees shall provide Settling Defendant with all final third party written analyses, documentation, and report findings, as well as raw data from final and non-final documents, for all studies that were funded by the Past NRD-Related Costs.

#### XVI. RESERVATION OF RIGHTS BY TRUSTEES

59. General Reservations by the United States and the State.

a. The United States and the State reserve, and this CD is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 56 (Covenant by the United States) and Paragraph 57 (Covenant by the State) of this CD. Notwithstanding any other provisions of this CD, the United States and the State reserve all rights against Settling Defendant with respect to:

i. claims based on a failure by Settling Defendant to meet a requirement of this CD;

ii. liability for Assessment Costs not identified in this CD that are incurred by the Trustees as a result of (i) non-performance by Settling Defendant; or (ii) review of new proposed projects not identified in this CD that are necessary because Settling Defendant and the Trustees determine that an identified project is not viable; those Trustee costs will not be satisfied by the payment for Future NRD Oversight Costs made under Subparagraph 9.a and will be billed to Settling Defendant separately;

iii. liability for injunctive relief or administrative order enforcement under CERCLA Section 106, 42 U.S.C. § 9606;

iv. liability under CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), for costs of removal or remedial action incurred by the United States or by the State;

v. liability under Section 107(a)(4)(D), 42 U.S.C. § 9607(a)(4)(D), for costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i);

vi. liability for any other costs incurred or to be incurred by the United States or by the State that are not within the definition of Natural Resource Damages;

vii. liability for damages for injury to, destruction of, or loss of Natural Resources resulting from releases or threatened releases of hazardous substances outside of the Site;

viii. liability arising from injury to Natural Resources by any disposal of hazardous substances at the Site after the Date of Lodging by Settling Defendant, aside from any action constituting Work under the RD/RA Consent Decree;

ix. liability under Ohio Rev. Code 3734.13 or 3745.12; and

x. criminal liability.

b. Nothing in this Paragraph shall be construed as limiting the Covenants for Settling Defendant by United States as set forth in Paragraph 59 of the RD/RA Consent Decree.

60. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this CD, the United States and the State reserve the right to institute civil judicial or administrative proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, whether under 42 U.S.C. § 9607 and Ohio Rev. Code 3745.12 or both including costs of damages assessment, if: (a) conditions with respect to the Site previously unknown to the Trustees are discovered after the Date of Lodging that result in releases of hazardous substances that contribute to new or additional injury to, loss of, or destruction of Natural Resources, or resource service losses, of a type or future persistence unknown or of a magnitude greater than was known by the Trustees; or (b) information that previously was unknown to the Trustees is received, in whole or in part, after the Date of Lodging and the Trustees determine that the previously unknown information, together with any other relevant information, indicates that the release of hazardous substances at the Site has resulted in new or additional injury to, loss of, or destruction of Natural Resources, or resource service losses, of a type or future persistence unknown or of a magnitude greater than was known by the Trustees.

61. The failure of the Trustees to insist upon strict and prompt performance of the Restoration SOWs and the Restoration Work Plans shall not operate as a waiver of any requirement of this CD or of the Trustees' right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by the Trustees to enforce such a provision.

XVII. COVENANTS BY SETTLING DEFENDANT

62. Covenants by Settling Defendant. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to Natural Resource Damages or this CD, including but not limited to:

a. any direct or indirect claim for reimbursement of any payment for Natural Resource Damages from the Hazardous Substance Superfund based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; and

b. any claim against the United States or the State pursuant to CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, relating to Natural Resource Damages.

63. Nothing in this CD shall be deemed to constitute approval or preauthorization of a claim within the meaning of CERCLA Section 111, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XVIII. EFFECT OF SETTLEMENT / CONTRIBUTION PROTECTION

64. Nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this CD diminishes the right of the United States or the State, pursuant to CERCLA Section 113(f)(2) and (3), 42 U.S.C. § 9613(f)(2) and (3), or any applicable Ohio law under Ohio Rev. Code Chapter 3734 or 3745, to pursue any such persons to obtain additional Natural Resource

Damages, response costs, or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

65. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement for purposes of CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this CD. The “matters addressed” in this CD are Natural Resource Damages. The Parties further agree, and by entering this CD this Court finds, that the Complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States and the State within the meaning of CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B).

66. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against Settling Defendant for matters related to this CD, Settling Defendant shall notify the persons identified in Section XIX (Notices) in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify the persons identified in Section XIX (Notices) within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this CD.

67. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, Natural Resource Damages, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any



defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the Trustees set forth in Section XV (Covenants by Trustees).

#### XIX. NOTICES

68. Whenever, under the terms of this CD, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

##### As to the United States:

##### As to the Department of Justice:

[eescasemanagement.enrd@usdoj.gov](mailto:eescasemanagement.enrd@usdoj.gov)

EES Case Management Unit  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, DC 20044-7611  
Re: DJ # 90-11-3-11517/1

##### As to the Department of Interior:

Office of the Solicitor  
U.S. Department of the Interior  
Three Parkway Center, Suite 385  
Pittsburgh, PA 15220  
Attention: Kelly Brooks Bakayza  
[Kelly.Bakayza@sol.doi.gov](mailto:Kelly.Bakayza@sol.doi.gov)

As to the State of Ohio:

Ian F. Gaunt  
Assistant Attorney General  
Ohio Attorney General's Office  
30 E. Broad St. 25th Fl.  
Columbus, OH 43215  
[Ian.Gaunt@ohioattorneygeneral.gov](mailto:Ian.Gaunt@ohioattorneygeneral.gov)

Clint White  
Staff Attorney  
Ohio Environmental Protection Agency  
50 W. Town Street, Ste. 700  
Columbus, Ohio 43216  
[Clint.White@epa.ohio.gov](mailto:Clint.White@epa.ohio.gov)

As to Settling Defendant:

Karleen James  
Dover Chemical Corporation  
3676 Davis Rd. N.W.  
Dover, OH 44622  
[KJames@doverchem.com](mailto:KJames@doverchem.com)

Seth v.d.H. Cooley, Esquire  
Duane Morris LLP  
30 S. 17<sup>th</sup> Street  
Philadelphia, PA 19103  
[scooley@duanemorris.com](mailto:scooley@duanemorris.com)

XX. INTEGRATION / APPENDICES

69. This CD and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in this CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD. In the event of conflict between this CD and any appendix, this CD shall control.

70. The following appendices are attached to and incorporated into this CD:

“Appendix A” is a map of the Assessment Area.

“Appendix B” is a map of the Site.

“Appendix C” is the Restoration Statements of Work.

“Appendix D” is the template Conservation Easement document for the Eastern Hellbender Project.

“Appendix E” is the template Environmental Covenant document for the Sugar Creek Project.

#### XXI. EFFECTIVE DATE AND RETENTION OF JURISDICTION

71. This CD shall take effect on the date upon which approval of this CD is recorded on the Court’s docket.

72. The Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this CD.

#### XXII. CONSENT DECREE MODIFICATIONS

73. Any material modification of this CD shall be made by agreement of the Parties to this CD and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this CD shall be made by agreement of the Parties to this CD and in writing, and shall not take effect until filed with the Court. Nothing in this CD shall be deemed to alter the Court’s power to enforce, supervise, or approve modifications to this CD.

74. The provisions of this CD are not severable. The Parties’ consent hereto is conditioned upon the entry of the CD in its entirety without modification, addition, or deletion except as agreed to by the Parties.

75. Economic hardship or changed financial circumstances of Settling Defendant shall not serve as a basis for modifications of this CD.

XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

76. This CD shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States and the State reserve the right to withdraw or withhold their consent if comments regarding the CD disclose facts or considerations which indicate that this CD is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this CD without further notice.

77. If for any reason the Court should decline to approve this CD in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXIV. SIGNATORIES / SERVICE

78. The undersigned representatives of Settling Defendant and the State each certify that he or she is authorized to enter into the terms and conditions of this CD and to execute and bind legally such Party to this document. The Assistant Attorney General for the DOJ Environment and Natural Resources Division, identified on the DOJ signature page below, is fully authorized to enter into the terms and conditions of this CD and to legally bind the United States to this document and has authorized signature by the undersigned counsel. This CD may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

79. Settling Defendant agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD, unless the United States or the State have notified Settling Defendant in writing that it no longer supports entry of the CD.

80. Settling Defendant shall identify, on the attached signature pages, the name and address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this CD. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons. The Parties agree that Settling Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this CD.

XXV. FINAL JUDGMENT

81. Upon entry of this CD by the Court, this CD and its appendices shall constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

82. Upon approval and entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States, the State, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 31st DAY OF March, 2023.


/s/ Benita Y. Pearson  
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in United States, et al. v. Dover Chemical Corporation:

FOR THE UNITED STATES OF AMERICA

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: October 3, 2022



KATHERINE A. ABEND  
Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 514-2463  
Katherine.Aabend@usdoj.gov

MICHELLE M. BAEPPLE  
First Assistant United States Attorney  
Northern District of Ohio

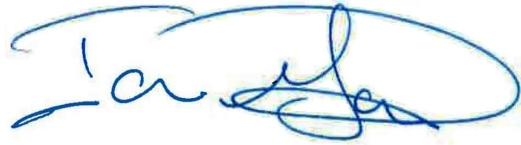
Date: October 3, 2022

s/ Steven J. Paffilas  
STEVEN J. PAFFILAS  
Assistant United States Attorney  
Northern District of Ohio  
801 West Superior Avenue  
Suite 400  
Cleveland, Ohio 44113-1852  
(216) 622-3698  
Steven.Paffilas@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in United States, et al. v. Dover Chemical Corporation:

FOR THE STATE OF OHIO

DAVE YOST  
Ohio Attorney General



Date: September 13, 2022

---

IAN F. GAUNT  
Assistant Attorney General  
Ohio Attorney General  
30 E. Broad St. 15th Fl.  
Columbus, OH 43215  
(614) 728-5711

Ian.Gaunt@OhioAttorneyGeneral.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in United States, et al. v. Dover Chemical Corporation:

FOR DOVER CHEMICAL CORPORATION

Date: July 27, 2022

  
Signature

Typed Name: Jack L. Teat Jr. \_\_\_\_\_

Title: President \_\_\_\_\_

Address: 3676 Davis Road NW \_\_\_\_\_

Dover, OH 44622 \_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Jack L. Teat Jr. \_\_\_\_\_

Title: President \_\_\_\_\_

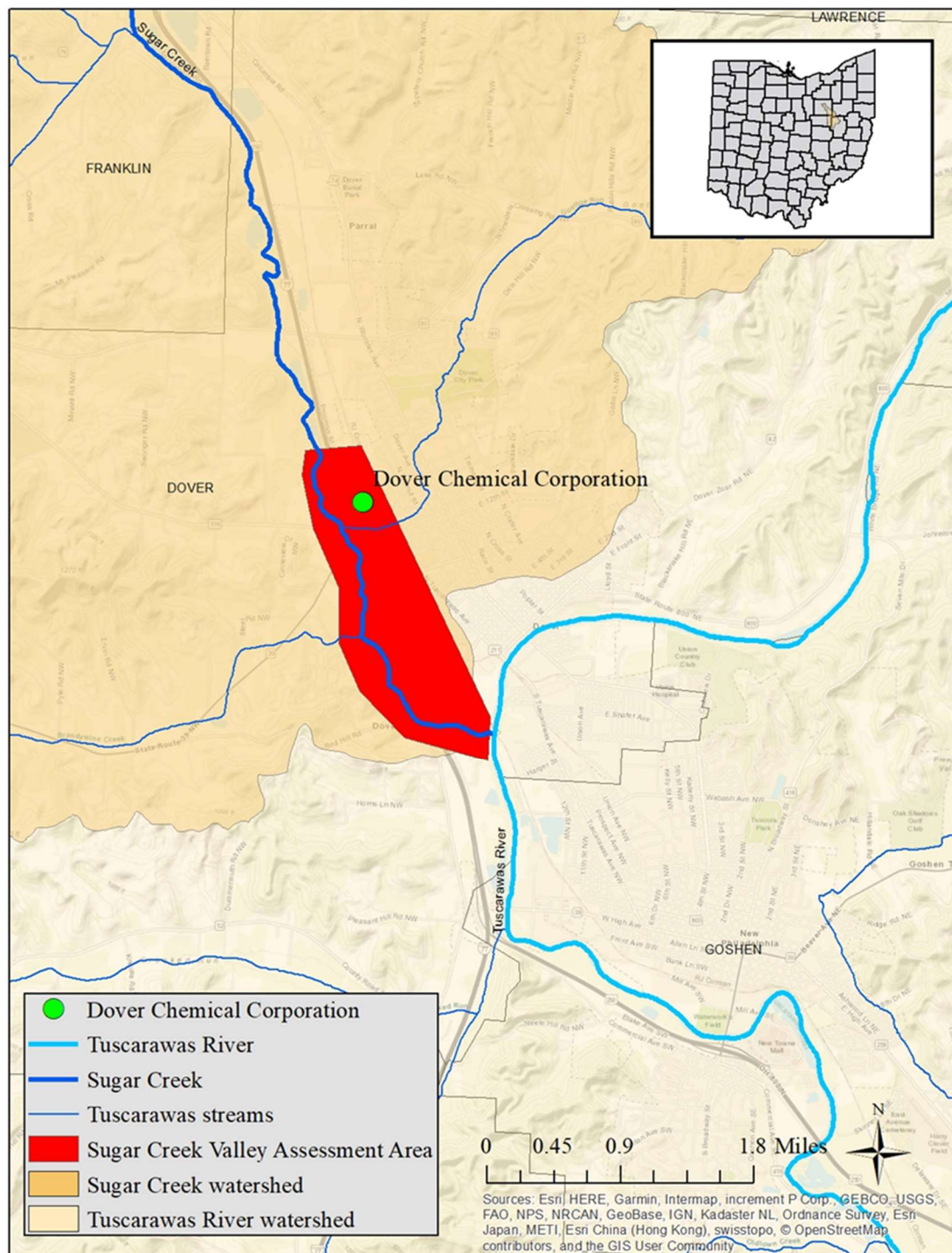
Address: 3676 Davis Road NW \_\_\_\_\_

Dover, OH 44622 \_\_\_\_\_



## **Appendix A**

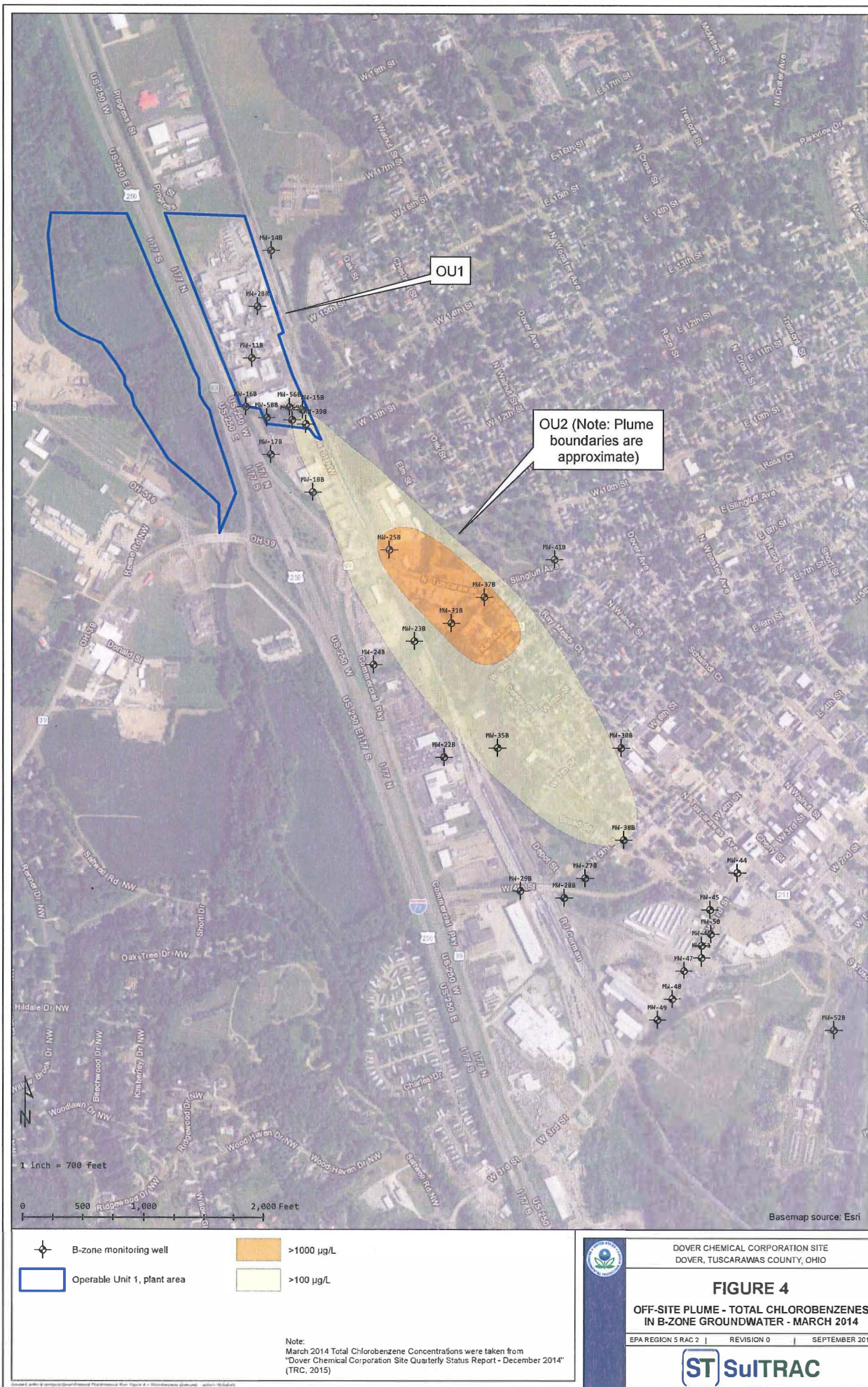
### Assessment Area Map



## **Appendix B**

Site Map





## **Appendix C**

### Restoration Statements of Work

## **The Wilderness Center – Falcon Flats Restoration Project**

### **I. Purpose**

This Scope of Work describes the requirements for the implementation of The Wilderness Center – Falcon Flats Restoration Project. This project will restore and enhance wetlands and riparian habitat within the 141-acre Falcon Flats preserve owned by The Wilderness Center (“TWC”), located in Sugar Creek Township, Stark County, Ohio, from approximately RM 17.55 to RM 18.55 of Sugar Creek. The Consent Decree requires Dover Chemical Corporation (“Settling Defendant”) to develop a Restoration Work Plan to implement this project, which will be submitted to the Trustees for review and approval.

### **II. Project Requirements (General)**

This project requires Settling Defendant to restore at least 13.5 acres of TWC’s Falcon Flats preserve within five years of the Effective Date of the Consent Decree. Within the larger preserve, two main areas have been identified for restoration. The first area (the 24-acre north area or NA) consists of two agricultural fields and adjacent wetland areas and a stream corridor (Attachment 1). Within the NA, a minimum of 11.5 acres of restoration will occur. Two Key Restoration Areas (KRAs 1 and 2) have been identified in the NA for wetland restoration and creation, stream restoration and riparian buffer enhancement, and wetland and upland enhancement through invasive species removal and supplemental plantings.

The second area (the 7-acre south area or SA) contains an existing wetland (identified as KRA 3) that is dominated by invasive species. Within the SA, a minimum of 2.0 acres of restoration will occur through invasive species removal.

Settling Defendant shall enter into a consulting agreement (to be approved by the Trustees) with TWC requiring the latter to be responsible for the long-term ownership and care of the property, subject to restrictive deed language to be added by Settling Defendant and TWC, which will be subject to review and approval by the Trustees. Settling Defendant is responsible for ensuring the execution of the restrictive deed language, which will also be subject to approval by the Trustees. Settling Defendant will also implement soil excavation and/or management to improve water characteristics of the site, planting of native wetland and riparian vegetation, and a five-year invasive species management program.

### **III. Project Requirements (Specific)**

The Settling Defendant’s proposed Restoration Work Plan for this project will be consistent with the design identified in the conceptual restoration design in Attachment 1. and will include:



- A. A topographic map showing the location of the property or properties to be part of the project.
- B. The total acreages of each property, as well as an estimate from aerial photographs and GIS, or other mapping software, of the acreages of various habitat types existing on each property.
- C. A description and/or map of the current ecological value of and natural resource services provided by each property and the improvements that are expected from the project. Ecological values and natural resource services may include, but are not limited to, nesting habitat for migratory and local birds and improved wetland habitat for amphibian populations.
- D. A description of wetlands and other features on the property that will be enhanced through actions such as control of exotic and/ or invasive species, establishment of native species.
- E. A description of trash and/or debris, if any, on the property and a plan for removal of such.
- F. An implementation schedule.
- G. Detailed plans for:
  - 1. Physical changes (*e.g.*, excavating, berms) including approximate elevations and expected water control/depths of water bodies.
  - 2. Removal of exotic and/or invasive species throughout the defined minimum 13.5 acres of restoration area.
  - 3. Planting of native species of plants and shrubs that the Trustees deem adequate to enhance the existing emergent wetland habitat. This includes maps of locations for native plantings, a list of species to be used, and the number of plantings for each location.
  - 4. Identification and removal of all debris and trash within the project area.
  - 5. Maintenance and monitoring, including restoration performance measures to be implemented by TWC for a five-year period.

The Settling Defendant or its contractor will obtain any permits required for implementation of the Falcons Flats Restoration Project.

#### **IV. Progress Reports**

During the period of the development and implementation of the Restoration Work Plan, Settling Defendant will submit brief (1 to 2 page) quarterly progress reports describing the status of the project. The Progress Report for each preceding quarter will be submitted by the 15<sup>th</sup> day of January, April, July, and October. The Progress Reports will include:

- A. Activities conducted during the period.
- B. Problems encountered during the period.
- C. Schedule variances and corrective actions, as necessary.
- D. Status of permits and applications.
- E. Projected activities planned for the next quarter.

#### **V. Annual Monitoring Reports**

TWC will prepare and submit a brief (*e.g.*, 1 to 2 page) annual report documenting the status of the property as related to the deed restrictions put in place as part of this project. The annual report will be due each year in accordance with the schedule provided in the deed restrictions and will include:

- A. Property name and address.
- B. Summary of any observations made during the annual inspection, including photographs or other pertinent information.
- C. Documentation of any potential breaches of the terms of the deed restrictions and proposed corrective actions.
- D. Summary of any land transfer or sale of property, including the name of the new landowner.
- E. Discussion of any proposed restoration or habitat enhancement activities considered for the property.



**VI. Deliverables**

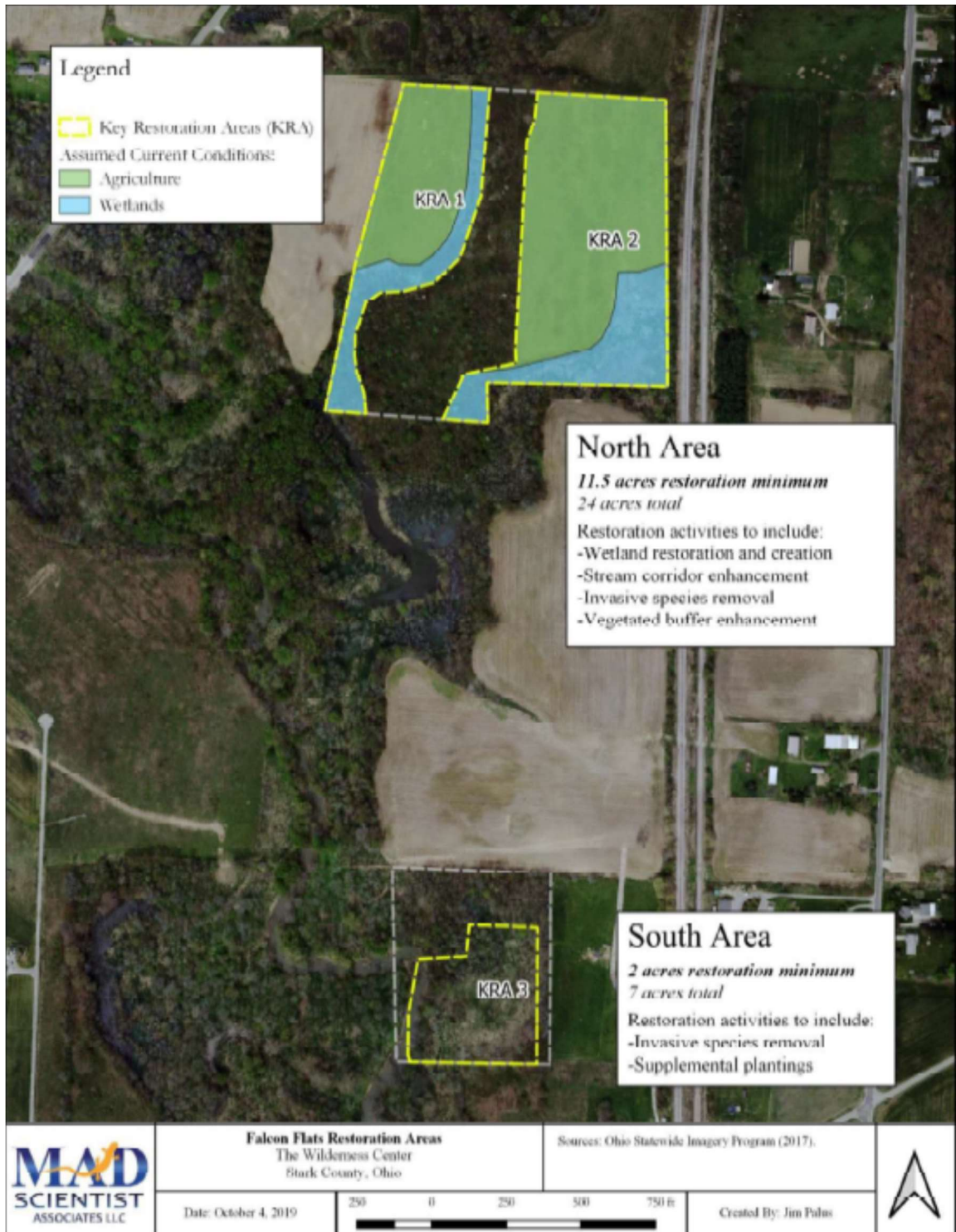
The following deliverables will be generated and submitted to the Trustee representatives for approval as per the schedule below.

<b>DELIVERABLE (UNLESS WAIVED BY THE TRUSTEES)</b>	<b>DUE DATE</b>
Restoration Work Plan	Due 150 days after the Effective Date of the Consent Decree.
Restoration Completion Report	In accordance with the schedule provided in the approved Restoration Work Plan. This will occur after the five-year monitoring period.
Deed Restrictions	Due 60 days after the Trustees approved the Restoration Completion Report.
Quarterly Progress Reports	The 15 <sup>th</sup> day of January, April, July, and October for the preceding quarter, unless the due date is modified or the requirement is waived by the Trustees
Annual Monitoring Report	Due each year in accordance with the schedule provided in the deed restrictions.

Deliverables will be submitted via electronic mail to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change in writing:

- Deborah Millsap, U.S. Fish and Wildlife Service, [deborah\\_millsap@fws.gov](mailto:deborah_millsap@fws.gov)
- Brian Tucker, Ohio EPA, [brian.tucker@epa.oh.gov](mailto:brian.tucker@epa.oh.gov)

## Attachment 1



## **The Wilderness Center – Lash’s Bog Enhancement and Restoration Project**

### **I. Purpose**

This Scope of Work describes the requirements for the Lash’s Bog Enhancement and Restoration Project. This project will restore and enhance wetlands and adjacent forested buffer habitat within the 40-acre Lash’s Bog preserve owned by The Wilderness Center (“TWC”), located in Sugar Creek Township, Stark County, Ohio. The Consent Decree requires Dover Chemical Corporation (“Settling Defendant”) to develop a Restoration Work Plan to implement this project, which will be submitted to the Trustees for review and approval.

### **II. Project Requirements (General)**

This project requires Settling Defendant to enhance and restore at least 15 acres owned by TWC within five years of the Effective Date of the Consent Decree. This project will include enhancement through the removal of invasive species and supplemental native species plantings. The key restoration tasks include the treatment/removal of invasive reed canary grass (*Phalaris arundinacea*) and additional invasive species control efforts (primarily autumn olive, *Elaeagnus umbellata*) within the adjacent forested buffer at the Lash’s Bog Preserve as shown in Attachment 2. Settling Defendant shall enter into a consulting agreement (to be approved by the Trustees) with TWC requiring the latter to be responsible for the long-term ownership and care of the property, subject to restrictive deed language to be added by Settling Defendant and TWC, which will be subject to review and approval by the Trustees. Settling Defendant is responsible for ensuring the execution of the restrictive deed language, which will also be subject to approval by the Trustees. The Settling Defendant will: 1) implement management of invasive plant species in the bog through herbicide applications, manual and/or mechanical plant removal, and planting of native wetland and riparian species; 2) implement a five-year invasive species management program.

### **III. Restoration Work Plan Requirements (Specific)**

The Settling Defendant’s proposed Restoration Work Plan for this project will include:

- A. Topographic map(s) showing the location of the property or properties to be consolidated into this project. Maps will include species types (including invasive species) at the beginning of the restoration, and will outline the planned restoration areas, including planting locations and lists of native species to be used. The Wilderness Center will be consulted during in the drafting of the Restoration Work Plan and at other appropriate points during the restoration.

- B. The total acreages of each property, as well as an estimate from aerial photographs and GIS, or other mapping software, of the acreages of various habitat types existing on each property.
- C. A description and/or map of the current ecological value and natural resource services of each property and the improvements that are expected from the restoration project. Ecological values and natural resource services may include, but are not limited to, nesting habitat for migratory and local birds and improved wetland habitat for amphibians.
- D. A description of wetlands and other features on the property that will be enhanced through restoration actions, such as control of exotic and/or invasive species and establishment of native plant species.
- E. A description of trash and/or debris, if any, on the Property and a plan for removal of such.
- F. An implementation schedule.
- G. Detailed plans for:
  - 1. The locations, materials, and methods for removal of exotic and/or invasive species throughout the defined 15 acres of restoration area.
  - 2. Planting of native species of plants and shrubs that the Trustees deem adequate to enhance the existing emergent wetland habitat. This includes maps of locations for native plantings, a list of species to be used, and the number of plantings for each location.
  - 3. Identification and removal of all debris and trash within the boundaries of the project area.
  - 4. Maintenance and monitoring, including restoration performance measures to be implemented by TWC, for a five-year period.

The Settling Defendant or its contractor will obtain any permits required for implementation of the Lash's Bog Enhancement and Restoration Project.

#### **IV. Progress Reports**

During the period of the development and implementation of the Lash's Bog Restoration Work Plan, Settling Defendant will submit brief (1 to 2 pages) quarterly progress reports describing the status of the project. The Progress Report for each preceding quarter will be submitted by the 15<sup>th</sup> day of January, April, July, and October. The Progress Reports will include:

- A. Activities conducted during the period.
- B. Problems encountered during the period.
- C. Schedule variances and corrective actions, as necessary.
- D. Status of any permits and applications.
- E. Projected activities planned for the next quarter.

**V. Annual Monitoring Reports**

TWC will prepare and submit a brief (*e.g.*, 1 to 2 page) annual report documenting the status of the property and consistency with the deed restrictions executed as part of this project. The annual report will include:

- A. Property name and address.
- B. Summary of any observations made during the annual inspection, including photographs or other pertinent information.
- C. Documentation of any potential breaches of the terms of the deed restrictions and proposed corrective actions.
- D. Summary of any land transfer or sale of property, including the name of the new landowner.
- E. Discussion of any proposed restoration or habitat enhancement activities considered for the property.

**VI. Deliverables**

The following deliverables will be generated and submitted to the Trustee representatives for approval as per the schedule below.

<b>DELIVERABLE (UNLESS WAIVED BY THE TRUSTEES)</b>	<b>DUE DATE</b>
Restoration Work Plan	Due 150 days after the Effective Date of the Consent Decree.
Restoration Completion Report	In accordance with the schedule provided in the approved Restoration Work Plan. This will occur after the five-year monitoring period.
Deed Restrictions	Due 60 days after the Trustees approved the Restoration Completion Report.
Quarterly Progress Reports	The 15 <sup>th</sup> day of January, April, July, and October for the preceding quarter, unless the due date is modified or the requirement is waived by the Trustees
Annual Monitoring Report	Due each year in accordance with the schedule provided in the deed restrictions.

Deliverables will be submitted via electronic mail to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to in writing to Settling Defendant and The Wilderness Center:

- Deborah Millsap, U.S. Fish and Wildlife Service, [deborah\\_millsap@fws.gov](mailto:deborah_millsap@fws.gov)
- Brian Tucker, Ohio EPA, [brian.tucker@epa.oh.gov](mailto:brian.tucker@epa.oh.gov)



Attachment 2 – Map of Lash's Bog Area



Figure 2. Invasive treatment areas for Lash's Bog. Estimated 7 acres impacted by reed canarygrass and ~8 acres degraded by autumn olive and other non-native upland species (Minimum restoration area of 15 acres).

## **Sugar Creek Habitat Conservation Project**

### **I. Purpose**

This Scope of Work describes the requirements for the Sugar Creek Habitat Conservation Project. The Consent Decree requires Dover Chemical Corporation (“Settling Defendant”) to place Environmental Covenants on two properties adjacent to Sugar Creek that are owned by the Settling Defendant to protect approximately 25.28 acres of Sugar Creek habitat in perpetuity. The proposed Environmental Covenants will be submitted to the Trustees for their review and approval prior to recording with the Tuscarawas County Auditor.

### **II. Project Properties**

The project area includes approximately 25.28 acres adjacent to Sugar Creek.

Location- Permanent Parcel # 10-00297-000 10.36 acres  
Location- Permanent Parcel # 10-00298-000 14.92 acres

The Sugar Creek Habitat Conservation Project includes the following:

- A. Within one year of the Effective Date of the Consent Decree, Settling Defendant will place and maintain Environmental Covenants on approximately 25.28 acres adjacent to Sugar Creek in Tuscarawas County, Ohio. This land is undeveloped and a legal restriction will be put in place to prevent any future development.
- B. The Settling Defendant will secure Environmental Covenants, in a form approved by the Trustees, protecting that land in perpetuity.
- C. Long-term ownership and care of the property will be the responsibility of the Settling Defendant, requiring the conservation and long-term management of the property subject to the terms of the Environmental Covenants.

The Sugar Creek Habitat Conservation project will meet specific requirements, as provided below.

### **III. Sugar Creek Habitat Conservation Project Requirements (General)**

The Settling Defendant will prepare and submit for review and approval a Current Conditions Report containing the information required by the Trustees, including:



- A. The location of the properties including the natural features and any existing structures and built infrastructure.
- B. The total acreages of each property, as well as an estimate from aerial photographs and GIS, or other mapping software, of the acreages of various habitat types at each property.
- C. A brief description of the ecological value of the Property and natural resource services provided by the properties.
- D. A brief description of wetlands and other natural features on the properties that will be protected through the placement of Environmental Covenants.
- E. A brief description of existing land use and permitted activities of the landowner.

#### **IV. Sugar Creek Habitat Conservation Project Requirements (Specific)**

In addition to the General Requirements described above, the Sugar Creek Habitat Conservation project will include:

- A. Draft language for the proposed Environmental Covenants that will be reviewed and approved by the Trustees before finalizing the agreement with the Settling Defendant.
- B. Schedule, at the convenience of the Settling Defendant and the Trustees, an inspection of each property proposed for the Project.
- C. Conduct a licensed survey of each property, if necessary, and prepare a final draft of the proposed Environmental Covenants specifying the areas to be protected and rights reserved by the Settling Defendant.
- D. Conduct an annual inspection of each property entered into this project to verify the terms of the covenant are being satisfied by the Settling Defendant and prepare an annual report documenting the status of the Environmental Covenants.
- E. Notify the Trustees of any breaches in the terms of the Environmental Covenants and communicate the progress of any corrective actions to return the properties into compliance with the Environmental Covenants.

#### **V. Annual Monitoring Reports**

The Settling Defendant will prepare and submit a brief (1 to 2 page) annual report documenting the status of each Environmental Covenant entered into as part of this project. The annual report will be submitted each year in accordance with the schedule provided in each Environmental Covenant and will include:

- A. Property name and address, as shown in the Environmental Covenants.
- B. Summary of any observations made during the annual inspection, including photographs or other pertinent information.
- C. Documentation of any potential breaches of the terms of the Environmental Covenants and proposed corrective actions.
- D. Summary of any land transfer or sale of property, including the name of the new landowner.
- E. Discussion of any proposed restoration or habitat enhancement activities considered for each property.

## **VI. Deliverables**

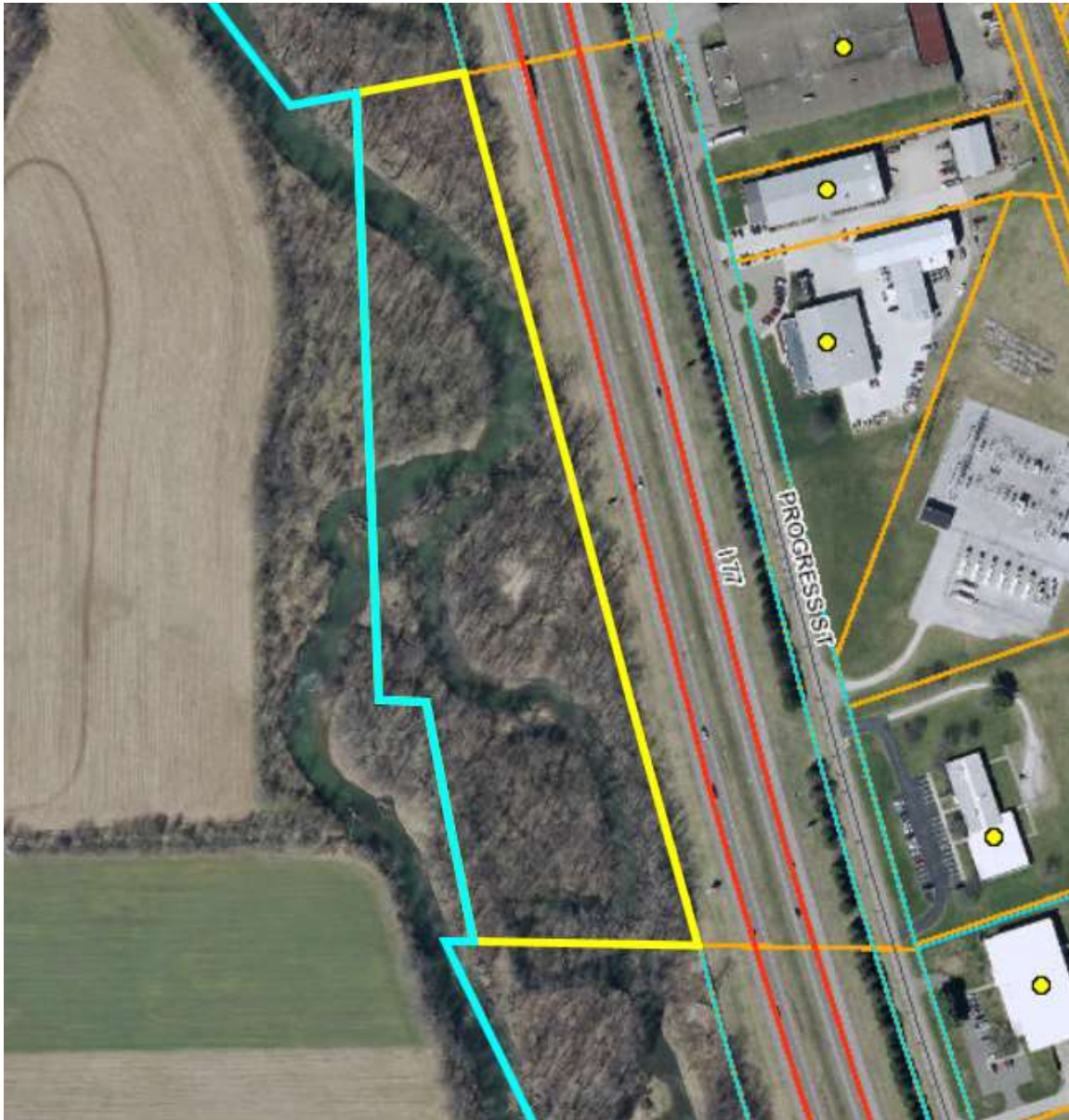
The following deliverables will be generated and submitted to the Trustee representatives for approval as per the schedule below.

<b>DELIVERABLE (UNLESS WAIVED BY THE TRUSTEES)</b>	<b>DUE DATE</b>
Current Conditions Report for Each Property Under Consideration	Due 60 days after the Trustees have conducted a site visit and provided notice to proceed but not fewer than 150 days after the Effective Date of the Consent Decree
Draft Environmental Covenants	Due 30 days after the Trustees approved the Current Conditions Report.
Annual Monitoring Report	Due each year in accordance with the schedule provided in the Conservation Easement.

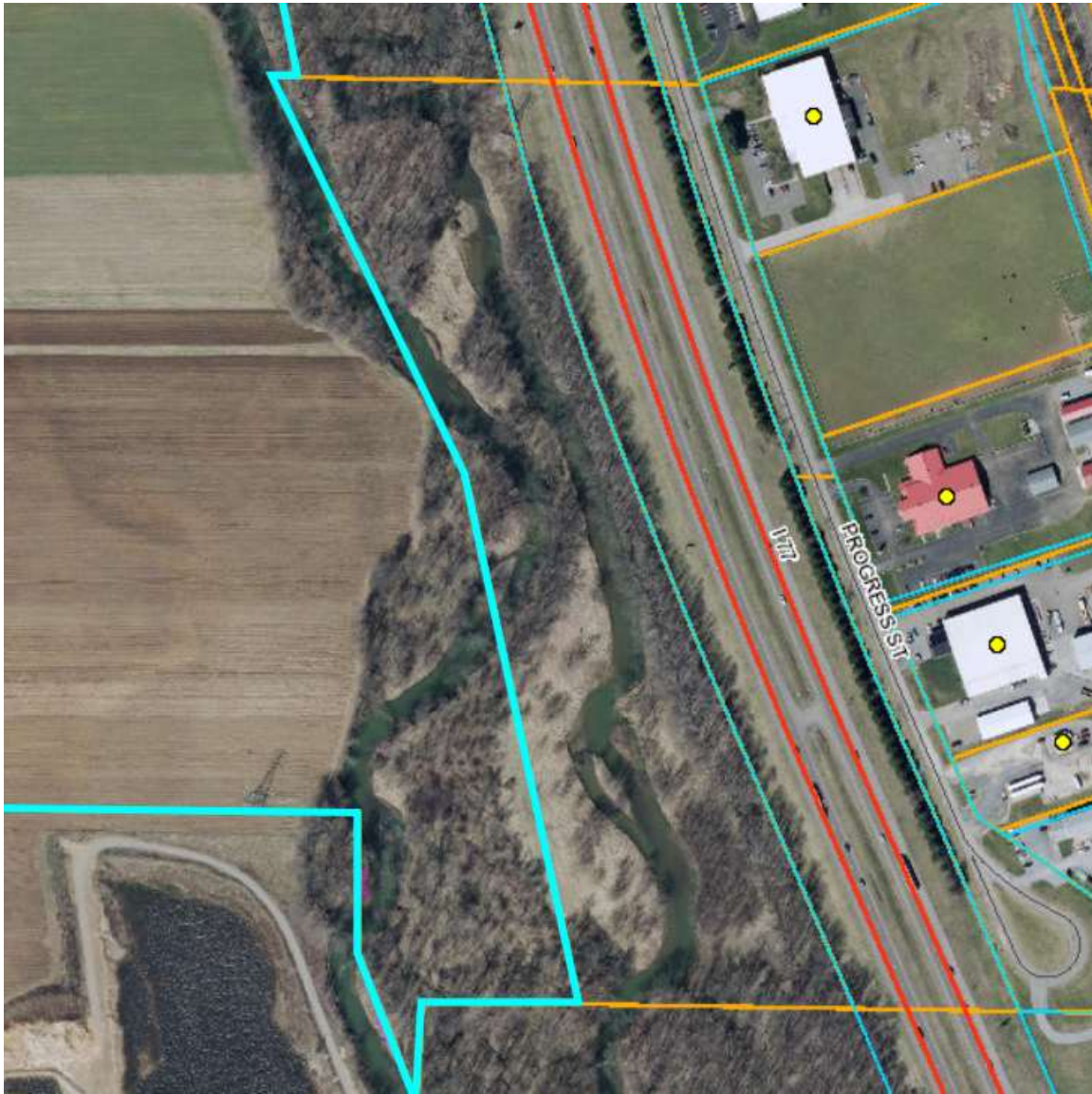
Deliverables will be submitted via electronic mail to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to Settling Defendant in writing:

- Deborah Millsap, U.S. Fish and Wildlife Service, [deborah\\_millsap@fws.gov](mailto:deborah_millsap@fws.gov)
- Brian Tucker, Ohio EPA, [brian.tucker@epa.oh.gov](mailto:brian.tucker@epa.oh.gov)

Attachment 1 – Parcel # 10-00297-000 (10.36 Acres)



Attachment 2 – Parcel #10-000298-000 (14.92 Acres)





## **Western Reserve Land Conservancy – Eastern Hellbender Project**

### **I. Purpose**

This Scope of Work describes the requirements for the Western Reserve Land Conservancy – Eastern Hellbender Project. This project will protect at least 170 acres of critical stream and riparian habitat of the Eastern Hellbender salamander, while also supporting groundwater recharge. The Consent Decree requires Dover Chemical Corporation (“Settling Defendant”) to work with the Western Reserve Land Conservancy (“WRLC”) to implement the requirements of this project.

### **II. Project Requirements (General)**

This project requires Settling Defendant to ensure the protection of a minimum of 170 acres within five years of the Effective Date of the Consent Decree. WRLC will identify and assess specific parcels adjacent to Little Beaver Creek, Yellow Creek, Cross Creek and/or Captina Creek. Following preliminary discussions with the landowners, WRLC will visit the proposed location(s) and determine whether to enter into negotiations with the landowners. WRLC will then, at the convenience of the landowners and Trustees, schedule a Trustee inspection of each property proposed for the project. If the Trustees authorize WRLC to continue negotiations, WRLC will use a Trustee-approved template Conservation Easement document to negotiate a proposed Conservation Easement with the landowners. Once WRLC and the landowners reach an agreement in principle, WRLC will draft a Current Conditions Report (described below) for the property. WRLC will provide the draft Conservation Easement and Current Conditions Report for each property to the Trustees for review and approval. Following approval by the Trustees of each proposed property and Conservation Easement, Settling Defendant shall fund and ensure the execution of the Conservation Easement. WRLC shall hold the Conservation Easements and shall have primary responsibility for the long-term enforcement of the land use restrictions provided in the Conservation Easements, with the Trustees also having enforcement authority.

### **III. Project Requirements (Specific)**

A. The Current Conditions Report will include:

1. The location of the Property including the natural features, and any existing structures and built infrastructure.

2. The total acreages of each Property, as well as an estimate from aerial photographs and GIS, or other mapping software, of the acreages of various habitat types at each property.
  3. A description and/or map of the ecological value of and natural resource services provided by the Property. Ecological values and natural resource services may include, but are not limited to, wetland habitat for Hellbender salamander populations and nesting habitat for migratory and local birds.
  4. A description of surface water, wetlands, and other natural features on the Property that will be protected through the placement of the Conservation Easement.
  5. A description, including a map of existing and future land use(s) and permitted activities of the landowner, including delineation of any areas used for farming, maple sugaring, residential areas or other approved activities.
- B. In addition to the General Requirements described above, Settling Defendant will ensure that WRLC:
1. Conducts a licensed survey of each property, if needed, and includes a map specifying areas to be protected and rights reserved by the landowner with each proposed Conservation Easement that is submitted to the Trustees for approval.
  2. Conducts an annual inspection of each property entered into this project to verify the terms of the Conservation Easement are being satisfied by the landowner and prepare an annual report (described below) documenting the status of the Conservation Easement.
  3. Notifies the Trustees and Settling Defendant of any breaches in the terms of the Conservation Easements and communicates the progress of any corrective actions to return the property into compliance with the Conservation Easement.

#### **IV. Annual Monitoring Reports**

WRLC will prepare and submit a brief (*e.g.*, 1 to 2 page) annual report documenting the status of each Conservation Easement entered into as part of this project. The annual report will be due each year in accordance with the schedule provided in the Conservation Easement and will include:

- A. Property name and address, as shown in the Conservation Easement.

- B. Summary of any observations made during the annual inspection, including photographs or other pertinent information.
- C. Documentation of any potential breaches of the terms of the Conservation Easements and proposed corrective actions.
- D. Summary of any land transfer or sale of property, including the name of the new landowner.
- E. Discussion of any proposed restoration or habitat enhancement activities considered for the property.

## V. Deliverables

The following deliverables will be generated and submitted to the Trustee representatives for approval as per the schedule below.

<b>DELIVERABLES (UNLESS WAIVED BY THE TRUSTEES)</b>	<b>DUE DATE</b>
Draft Conservation Easement	Due 90 days after the Trustees visit the property and authorize WRLC to proceed with negotiations.
Current Conditions Report for Each Property Under Consideration	Due 90 days after the Trustees visit the property and authorize WRLC to proceed with negotiations.
Annual Monitoring Report	Due each year in accordance with the schedule provided in the Conservation Easement.

Deliverables will be submitted via electronic mail to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to Settling Defendant and WRLC in writing:

Deborah Millsap, U.S. Fish and Wildlife Service, [deborah\\_millsap@fws.gov](mailto:deborah_millsap@fws.gov)  
 Brian Tucker, Ohio EPA, [brian.tucker@epa.oh.gov](mailto:brian.tucker@epa.oh.gov)

## **Appendix D**

Template Conservation Easement for Eastern Hellbender Project



## CONSERVATION EASEMENT

This Conservation Easement (hereinafter referred to as the “Easement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20XX, by [*Insert Grantor’s name(s)*], whose address is [*Insert full address*] (hereinafter referred to as “Grantor(s)”), and the [*Insert Grantee’s name*], an Ohio nonprofit corporation, whose address is [*Insert full address*], together with its successors and assigns, (hereinafter referred to as “Grantee” ). The Grantor and the Grantee 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 granting of a conservation easement by Grantor and the monitoring, reporting, and enforcement of such Easement by Grantee. Grantee agrees to monitor, report and enforce the Easement in perpetuity.

### RECITALS

#### A. Conserved Land

**WHEREAS**, Grantor is the owner in fee simple of approximately [*insert property acreage*] of real property located at [*insert full address, including county and parcel Nos*] (hereinafter referred to as the “**Conserved Land**”), legally described on Exhibit A and further described and depicted in a Baseline Documentation Report, designated Exhibit B, with the Property Identification map of Exhibit B graphically depicting the Conserved Land, both exhibits are attached hereto and made a part hereof; and

**WHEREAS**, the United States Fish and Wildlife Service (“USFWS”) and the Ohio Environmental Protection Agency (“OEPA”) (collectively referred to herein as “Trustees”) are responsible for overseeing the protection of natural resources that have been impacted by the release of hazardous substances and have therefore secured through consent decree the funding necessary to acquire conservation easements on properties that possess valuable natural resources worthy of permanent protection; and

**WHEREAS**, the Conserved Land is such a property and now the subject of this purchased conservation easement; and

**WHEREAS**, the Conserved Land possesses significant scenic, natural, agricultural, and open space values (collectively, the “**Conservation Values**”) of great importance to Grantor, Grantee, to the residents of \_\_\_\_\_ Township, \_\_\_\_\_ County, and to the State of Ohio; and

**WHEREAS**, the Conserved Land is located within Grantee's service area and has substantial value as a scenic, natural, agricultural, and educational resource in its present state as a natural, scenic, wooded and open area, constituting a natural habitat for plants and wildlife; and

**WHEREAS**, the Conserved Land contains approximately \_\_\_\_\_ linear feet of \_\_\_\_\_, a tributary to the \_\_\_\_\_ River; and

**WHEREAS**, *the preservation of the Conserved Land is consistent with goals outlined in the Farmland Protection Policy Act, P.L. 97-98, Section 2 [7 USC 4201], in which "Congress finds that the Nation's farmland is a unique natural resource and provides food and fiber necessary for the continued welfare of the people of the United States," and that "the Department of Agriculture and other Federal agencies should take steps to assure that the actions of the Federal Government do not cause United States farmland to be irreversibly converted to nonagricultural uses"; and*

**WHEREAS**, *the preservation of the Conserved Land is consistent with goals to protect farmland contained in the Ohio Farmland Protection Policy that directs state agencies to take the protection of productive farmland into consideration when they make policy decisions affecting land acquisition and development; and*

**WHEREAS**, *the Conserved Land produces food and fiber that enters into commercial food supply markets; and*

**WHEREAS**, *the Conserved Land consists in part of open pasture land, which part as described and depicted in Exhibit B is herein called the "Agricultural Zones," the majority of whose soils are significant because of their fertility; and*

**WHEREAS**, *the Conserved Land consists in part of woodlands, wetlands, and stream corridors, which part as described and depicted in Exhibit B is herein called the "Natural Zones," which provides wildlife habitat and acts as a groundwater recharge source for local aquifers, and provides relief from flooding and erosion to downstream properties; and*

**WHEREAS**, the Conserved Land has outstanding scenic qualities that can be enjoyed by the general public; namely, the open space and farm view from \_\_\_\_\_ in \_\_\_\_\_ Township, \_\_\_\_\_ County, Ohio; and

#### **B. Baseline Documentation Report (BDR)**

**WHEREAS**, Grantor intends to preserve the Conserved Land for conservation of natural resources, specifically, the Conserved Land conserves: *[include, for example, riparian and woodland features necessary for contiguous habitat corridors for waterfowl, migratory birds and pollution-intolerant fish or amphibian species, or prime agricultural soils]*, together hereinafter referred to as "natural resource values" of the Conserved Land, and

**WHEREAS**, Grantor and Grantee recognize that the Baseline Documentation Report (BDR) (contained within Exhibit B hereto) describes the natural resource values, the physical

conditions, any existing physical structures, and the uses of the Conserved Land and provides an accurate representation of the current conditions (the “**Current Conditions**”) as of the effective date of this Easement and that it is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

**WHEREAS**, there are situated on the Conserved Land, within the \_\_\_\_ acre **Existing Building Area**, existing structures and other improvements, including, but not limited to, one single family residence, landscaping, a septic system, driveways and parking areas, a barn, and utilities and appurtenances associated with such improvements (all hereinafter referred to as the “**Existing Structures and Improvements**”), and further depicted and described in the Existing Building Area map in Exhibit B; and

**WHEREAS**, Grantor and Grantee intend that the Current Conditions on the Conserved Land are permitted to continue and to be maintained as they exist as of the date of the BDR or change through natural ecological succession.

#### **C. Qualified Organization**

**WHEREAS**, Grantee is a charitable organization authorized to acquire conservation easements in accordance with the provisions of Ohio Revised Code (ORC) Section 5301.69(B) and is a “qualified organization” under Section 170 of the U.S. Internal Revenue Code (IRC), as amended from time to time, and under the regulations promulgated thereunder, and

**WHEREAS**, Grantee is willing to accept this Easement subject to the reservations and to the terms, conditions and obligations set out herein; and

**WHEREAS**, consistent with consistent with provisions of the IRC requiring Grantee to have a commitment to protect the Conservation Purposes (as defined below) and the resources to enforce the restrictions contained in this Easement, (a) Grantee’s obligation under this Easement entails a commitment to defend the ecological, scientific, and educational value, and the agricultural, natural scenic and open condition of the Conserved Land; (b) significant costs are necessary to carry out this commitment; and (c) accordingly, Grantor and Grantee have reached agreement on the payment by Grantor of a stewardship fee as described in paragraph *[Insert]* below.

#### **D. Statement of Purpose**

It is the purpose of this Easement to assure that the Conservation Values of the Conserved Land, as identified by the BDR in Exhibit B, will be preserved and that the entire Conserved Land will be retained forever *as: with respect to the Agricultural Zone (defined below), this Easement is granted for the purposes of preserving agricultural land as open space for the scenic enjoyment of the general public and/or pursuant to clearly delineated federal, state or local governmental*

*policies, which will yield a significant public benefit, as well as enabling the Agricultural Zone to remain (a) in agricultural use, whether for the raising and caring of various species of farm animals and/or for the production of food and fiber, by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use of the Agricultural Zone of the Protected Property that would significantly impair or interfere with its agricultural value, character, use or utility; and (b) available in perpetuity for agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity; provided that, at the election of Grantor, all or a part of the Agricultural Zone shall be permitted to return to its natural state and condition during the course of undisturbed ecological succession. In the event that any portion of the Agricultural Zone is allowed to return to a natural state, it shall not be a violation under any provision of this Easement for Grantor to re-establish agricultural use even if re-establishment of such use requires the clearing of vegetation which would otherwise be prohibited; and with respect to the Natural Zone (defined below), this Easement is granted for the purposes of the (a) protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystems, and (b) preservation of open space and forest land, together with the right of visual access to and a view of the Natural Zone by the general public in its scenic, relatively natural and predominantly undeveloped, wooded and open condition, which will yield a significant public benefit. The Agricultural Zone and Natural Zone purposes described herein shall be referred to collectively as the “**Conservation Purposes**”. The Conserved Land shall be permitted to be used and maintained in accordance with the Current Conditions identified in the BDR. Any use of the Conserved Land that will significantly impair or interfere with the Conservation Values of the Conserved Land or that is inconsistent with the Conservation Purposes of this Easement shall be prohibited.*

**Now therefore**, for and in consideration of the premises and the foregoing recitations and other good and valuable consideration, and in consideration of the mutual promises, covenants, conditions, restrictions, and obligations contained herein pursuant to the laws of the State of Ohio and the United States, Grantor does hereby voluntarily grant, give and convey with general warranty covenants unto Grantee its successors and assigns, a perpetual [*agricultural and conservation easement*], as defined in Sections 5301.67 through 5301.70 of the Ohio Revised Code, and which is intended to meet the requirements of a Qualified Conservation Contribution under the IRC, with respect to the Conserved Land. The Easement is subject to the following terms and conditions:

## **TERMS AND CONDITIONS OF THE EASEMENT**

1. **The Conserved Land** is comprised of two use zones:

1.1.1. *Agricultural Zone – the area of the Conserved Land within which uses consistent with fulfilling the agricultural purposes of this Easement are permitted.*

1.1.2. *Natural Zone – the area of the Conserved Land within which uses consistent with fulfilling the natural purposes of this Easement are permitted.*

2. **Retained and Reserved Rights.** Grantor retains for itself, and for its beneficiaries, successors, and assigns, all rights accruing from Grantor's ownership of the Conserved Land that are not prohibited in this Easement or inconsistent with the maintenance of the Conservation Values of the Conserved Land, including: the right of access to, and quiet enjoyment of, all portions of the Conserved Land; the right to exclude any member of the public from trespassing on the Conserved Land; the right to sell or otherwise transfer the Conserved Land subject to the terms hereof; and the right to engage in recreational activity that is conducted so as not to compromise the Conservation Values of the Conserved Land. This Easement shall not be construed as a dedication of the Conserved Land for public use, nor is the Grantee authorized by this Easement to make any use of the Conserved Land other than as provided herein. Any and all activities permitted under this Easement shall be conducted in a manner which protects and does not harm the Conservation Values of the Conserved Land. In addition to the foregoing, and notwithstanding anything else contained herein, the following rights are expressly reserved to the Grantor:

- 2.1. **Conveyance.** Grantor may sell, give, mortgage, lease or otherwise convey the Conserved Land, provided that such conveyance is subject to this Easement and written notice is provided to the Grantee and Trustees in accordance with Paragraph 10 of this Easement.
- 2.2. **Right to Privacy.** Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Conserved Land. Notwithstanding this provision, Grantee shall have the right to inspect the Conserved Land and enforce the provisions of this Easement as set forth herein.
- 2.3. **Fences.** Grantor may clear, repair, and replace existing fences, and build new fences on the Conserved Land for purposes of trespass prevention and reasonable and customary management of livestock and wildlife.
- 2.4. **Use of Fertilizers and Herbicides.** *Grantor reserves the right to use natural and chemical fertilizers and herbicide controls within the Agricultural Zone and wetland approved herbicides in the Natural Zone; provided such use is in compliance with all applicable federal, state and local statutes and regulations, but only to the extent such*

*use does not have an adverse impact on the Conservation Values of the Conserved Land and is otherwise consistent with the Conservation Purposes.* Chemical fertilizers and non-wetland approved herbicide controls are prohibited in the Natural Zone unless expressly approved by the Trustees.

- 2.5. **Tree Removal.** Grantor reserves the right to remove (i) from anywhere on the Conserved Land dead, diseased or materially damaged trees and trees that pose a danger to human life or neighboring properties, (ii) trees from areas within which existing trails are being widened or new trails created (as provided in subparagraph 2.11), (iii) trees pursuant to and in accordance with the provisions of subparagraph 2.14, and (iv) trees from anywhere within the Agricultural Areas in furtherance of the Conservation Purposes as described above for the Agricultural Areas; provided, however, that any such removal does not impair significant conservation interests as described in the IRC.

2.6. **Existing Structures and Improvements.**

- 2.6.1. Notwithstanding the terms, conditions and restrictions expressed below, Grantor and Grantee agree that the Existing Structures and Improvements shall be permitted to remain on the Conserved Land and be used by Grantor, and Grantor's successors and assigns, in substantially the same manner as they are being used as of the effective date of this Easement. In addition, new structures and amenities related to the use of the Conserved Land for [residential, recreational and/or agricultural] purposes (collectively "New Structures"), may be constructed within the Existing Building Area, so long as (A) there is never more than one single-family residence and one septic system located within the Existing Building Area, and (B) all New Structures are constructed within the Existing Building Area.

- 2.6.2. The Existing Structures and Improvements and any New Structures may be maintained, remodeled, resurfaced, regraded, removed, expanded and replaced; provided that (A) any removal of any of the Existing Structures and Improvements or New Structures shall be promptly followed by Grantor either (1) grading and restoring the site of such removed structure(s) and/or improvement(s) to a vegetated state and removing from the Conserved Land all materials resulting from such removal, or (2) replacing the same; and (B) expansion of the Existing Structures and Improvements and any New Structures shall (1) be confined to and remain within the Existing Building Area, and (2) conform to all governmental regulations then in effect.



2.7. **Reserved Building Area.**

- 2.7.1. **Creation.** Notwithstanding anything to the contrary contained in this Grant, Grantor reserves the right, after notice to Grantee, to create a \_\_\_\_\_ acre house lot as depicted in the Reserved Building Area map of Exhibit B, which, notwithstanding the prohibition in subparagraph 4.7 herein, may be subdivided from the remainder of the Conserved Land but not transferred separately from the Conserved Land (the “Reserved Building Area”). If at the time Grantor exercises its right to create the Reserved Building Area the minimum lot size required by local zoning and/or health department regulations is greater than the acreage specified above, the Reserved Building Area may be increased to, but may not be greater than, such minimum lot size; provided, however, that the cleared area within the Reserved Building Area shall not be increased to greater than \_\_\_\_ acres. Upon exercise of the right reserved herein, this Easement may be amended for the purpose of describing and depicting the exact location and size of the Reserved Building Area.
- 2.7.2. **Clearing, Landscaping and Grading.** The Reserved Building Area may be cleared, landscaped or graded by Grantor; provided that the size of any such clearing, landscaping, and grading shall be conducted in a manner that is not detrimental to water quality, significant natural habitats, or the scenic qualities of the Conserved Land, and be otherwise consistent with the Conservation Purposes.
- 2.7.3. **Construction.** Grantor may construct, within the Reserved Building Area, a single residential dwelling, utilities (including a single septic system), outbuildings, landscaping, and other improvements typically associated with a single-family residence (the “New Residential Improvements”). Utilities and driveways to serve the Reserved Building Area may be constructed within the Reserved Building Area and across the Conserved Land as is reasonably necessary to access the Reserved Building Area.
- 2.7.4. **Siting Approval.** The siting of the Reserved Building Area and of all New Residential Improvements pursuant to this subparagraph 2(c), including the siting of buildings, driveway alignments, tree clearing, septic and utility placement, and wetland and stream fillings or crossings, shall be subject to (A) all governmental regulations in effect at the time of construction, and (B) the prior written approval of Grantee.
- 2.7.5. **Maintenance, Renovations, etc.** Once constructed within the Reserved Building Area, the New Residential Improvements thereon may, from time to time, be maintained, remodeled, resurfaced, regraded, removed, expanded and replaced; provided that any (A) removal of any of the New Residential Improvements shall be promptly followed by Grantor either grading and restoring the site of such removed New Residential Improvements to a vegetated state and removing from the Conserved

Land all materials resulting from such removal, or promptly replacing same, and (B) expansion of the New Residential Improvements shall be confined to and remain within the Reserved Building Area and conform to all governmental regulations then in effect.

2.7.6. Easement Terms Apply. Other than as excepted in this subparagraph 2.7, uses of and activities on the Reserved Building Area are subject to the remaining terms and provisions of this Easement.

2.8. **Utility Services and Septic Systems.** With sixty (60) days advance notice provided to the Grantee and approval of the proposed project by Grantee, 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 Conserved Land for the purpose of providing electrical, gas, water, sewer, or other utilities to serve the Existing Structures and Improvements, New Structures, the New Residential Improvements (collectively, the Permitted Improvements”) described herein. Grantor may also grant easements over and under the Conserved Land for such purposes. Grantor may maintain, repair, replace, install, remove, or improve a septic system(s) or other underground sanitary system for the benefit of any of the Permitted Improvements. The utilities and sanitary system described above shall be collectively referred as the “Infrastructure Improvements”). Upon receipt of advance notice, Grantee will review Grantor’s proposal and choice of location(s) for the Infrastructure Improvements, and in Grantee’s reasonable discretion determine whether the proposal would be consistent with the Conservation Values of the Conserved Land, and the Conservation Purposes of this Easement. If Grantee determines that the proposal would be inconsistent with the Conservation Values of the Conserved Land, or the Conservation Purposes of this Easement Grantee shall work with Grantor to determine a reasonable alternative location for such Infrastructure Improvements.

2.9. **Road Construction.** Grantor may construct and maintain unpaved roads that may be reasonably necessary and incidental to maintaining the Infrastructure Improvements, the Reserved Building Area Improvements (defined below) and for carrying out the uses permitted on the Conserved Land by this Easement. Notwithstanding the foregoing, existing paved roads on the Conserved Land as of the date of this Easement may be re-paved by Grantor within the existing roadway as necessary to maintain the same following the execution of this Easement.



- 2.10. **Water.** Grantor may use any water rights necessary and sufficient to maintain the Conserved Land and Permitted Improvements herein provided that Grantee or Trustees do not find that such use impairs the Conservation Values intended to be conserved by this Easement.
- 2.11. **Trails.** Grantor may maintain and/or establish unpaved trails, so long as the Conservation Values of the Conserved Land are maintained. Existing trails may be widened and new trails created with the express approval of the Trustees. Notwithstanding the foregoing, existing paved walking trails on the Conserved Land as of the date of this Easement may be re-paved by Grantor as necessary to maintain the same following the execution of this Easement.
- 2.12. **Hunting.** Grantor reserves the right to hunt, and to permit others to hunt, including extending such right to the public on the Conserved Land, provided that such hunting is conducted by (i) individuals possessing appropriate licensing or other required permits, (ii) in compliance with all federal, state and local hunting laws and regulations, and (iii) where hunting access is provided to the public, access must be limited as necessary so that such activity does not degrade the Conservation Value of the Conserved Land or is otherwise consistent with the Conservation Purposes of this Easement.
- 2.13. **Agricultural Uses.** Grantor reserves the right to continue within the Agricultural Zone all lawfully permitted manner of agricultural use and enjoyment of the existing farm structures and grounds of the Agricultural Zone including, but not limited to:
- 2.13.1. the construction, maintenance, repair and restoration of paths and fences;
  - 2.13.2. the installation, maintenance and repair of drainage tiles and swales, including grass waterways, and the right to repair, maintain and install drainage systems including catch basins, drainage fields, and the like within the Agricultural Zone, and as reasonably necessary for agricultural uses and as approved in advance by Grantee, within the Natural Zone;
  - 2.13.3. the right to spread manure, to remove trees (including trees and limbs encroaching on the Agricultural Zone), grass or other vegetation;
  - 2.13.4. the right to place soil or fill or to excavate or change the general topography of the Agricultural Zone as reasonably necessary or desirable for agricultural uses, including

the creation of new ponds, so long as such excavation and topography manipulation does not interrupt the flow of existing natural water courses;

2.13.5. the right to perform routine maintenance, landscaping, horticultural activities and upkeep;

2.13.6. the right to construct fences and temporary agricultural structures (which are defined as structures that are not permanently attached to the ground and do not contain a foundation or an impermeable surface covering the ground), such as run-in sheds and hoop houses; provided that at no time shall the aggregate square footage of the footprints of such temporary agricultural structures exceed 7,500 square feet, and once constructed, such temporary agricultural structures may be maintained, repaired and restored; and

2.13.7. the right to keep horses and livestock for agricultural and recreational activities.

Provided, however, in exercising the rights described above, Grantor shall take reasonable measures to limit the impact on the Conservation Values of the Conserved Land and conduct such uses and activities within the Agricultural Zone in a manner that will remain consistent with the Purposes of this Easement.

2.14. **Maple Sugaring.** Grantor reserves the right to tap maple trees on the Conserved Land and to collect sap from such trees for the purpose of converting maple sap into maple syrup by any methods utilized by the maple syrup industry (“Sugaring”); provided, however, that such activities do not impair conservation interests as described in this Easement. Grantor may construct trails necessary for Sugaring, provided such trails shall be installed and maintained using Best Management Practices, including practices that reduce or prevent soil erosion, soil degradation, and habitat disturbance. Temporary structures directly associated with sap collection, such as small pole buildings commonly used to cover sap gathering tanks, may be constructed on the Conserved Land; however permanent structures, such as a sugarhouse, which are permanently attached to the ground and contain a foundation or impermeable surface covering the ground, are not permitted.

2.15. **Forestry Practices.** Grantor reserves the right to sustainably harvest trees as delineated on the BDR and maps within the Natural Zone, for commercial and non-commercial uses, including timber, crop tree release, firewood and other woodland management practices using prudent silviculture techniques, machinery, vehicles and

equipment and otherwise in accordance with a Woodland Stewardship Management Plan (the “Management Plan”) and pursuant to a Timber Harvest Plan. Forested areas on the Protected Property shall be managed by Grantor to create and enhance healthy forests consistent with the purposes and pursuant to prudent silviculture techniques set forth in the Management Plan prepared for Grantor by a Professional Forester. For the purposes hereof, “Professional Forester” is defined as a State of Ohio Service Forester, a Certified Forester (certified through the Society of American Foresters), a member in good standing of the Association of Consulting Foresters, or a NRCS Technical Service Provider (or their successors or equivalents as of the date of the Management Plan), or other professional agreed to in advance by Grantee. The Management Plan shall be in the form of the Ohio Department of Natural Resources (ODNR) Division of Forestry Woodland Stewardship Management Plan template document (a copy of which has been provided to Grantor), or a substantially similar form subject to Grantee’s prior approval, and shall describe in detail objective goals for any non-commercial harvesting activities, such as crop tree release and firewood production for use on the Conserved Land. The Management Plan shall be delivered to Grantee no less than 30 days prior to the commencement of any harvest activities on the Conserved Land, after which the Grantee shall have 30 days to approve, approve with modifications, or disapprove the Management Plan. Any subsequent updates or modifications to an approved Management Plan shall be submitted to the Grantee for review and are subject to approval, approval with modification, or disapproval by the Grantee. At least 15 days prior to any commercial harvest, Grantor shall provide Grantee with the current Management Plan and a written Timber Harvest Plan (“Harvest Plan”) prepared by a Professional Forester. The Harvest Plan shall be in the form of the ODNR Division of Soil & Water Conservation’s Timber Harvest Notice of Intent (NOI) and Timber Harvest Plan template document (a copy of which has been provided to Grantor), or substantially similar document subject to Grantee’s prior approval. Grantee shall have 15 days to approve, approve with modifications or disapprove the Harvest Plan. Unless otherwise agreed to by Grantee, the Harvest Plan must include, at a minimum, the signatures of the Grantor, Professional Forester, and the logging company, as well as a summary of activities and practices intended to comply with all industry best management practices (BMPs) as of the time of the harvest, including guidelines found in the publication by The Ohio State University Extension Service entitled BMPs for Erosion Control for Logging Practices in Ohio (Bulletin 916), as may be amended or replaced from time to time. Harvesting activities and techniques such as “high grading” (taking the highest value/quality trees and leaving the lowest value/quality trees), “diameter limit cutting” (taking only the largest trees), and “clear cutting” (cutting all trees) are expressly prohibited hereunder unless consistent with the purposes for which

this Easement is granted, strongly recommended by the Professional Forester preparing the Harvest Plan, and approved in advance by Grantee. Grantor will preserve the Conserved Land in a manner consistent with a Farm Conservation Plan (“Conservation Plan”) prepared in consultation with Natural Resource Conservation Service (NRCS) and a Woodland Stewardship Management Plan prepared in consultation with the Division of Forestry, Ohio Department of Natural Resources. However, Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the objectives of this Easement as stated in Paragraph 1 of this Easement. A copy of the plan or plan updates, shall be provided to the Grantee and Trustees at the time the plan is completed. Grantee shall have the right to enter the Conserved Land, at reasonable times, in order to monitor compliance with the Conservation Plan(s).

- 2.16. **Subsurface Oil and Gas Exploration.** Grantor reserves the right to allow for the subsurface exploration and extraction of oil and gas and similar substances from the Conserved Land provided that any such exploration and extraction is done from neighboring properties and there are no surface disturbances (e.g., drill pads, pipelines, tanks, water retention ponds, meters, access roads) upon the Conserved Land from any such activities.
- 2.17. **Total Impervious Surface Limitation.** Notwithstanding any other provision of this Easement authorizing the Permitted Improvements and/or the Infrastructure Improvements, the total combined footprint of all impervious surfaces resulting from Grantor’s exercise of the right to install, construct, maintain, expand, or replace the Permitted Improvements and Infrastructure Improvements shall not exceed three percent (3%) of the total calculated area of the Conserved Land.
- 2.18. **General Authority provided to the Grantee by this Easement.** By granting this Easement, Grantor hereby generally grants to Grantee the right to (a) preserve and protect the Conservation Values of the Conserved Land; (b) post or clearly mark the boundaries of the Conserved Land, including any conserved natural resources, at reasonable boundary intervals; (c) to enter upon the Conserved Land as provided herein; (d) to prevent any activity on or use of the Conserved Land that is inconsistent with the Conservation Purposes of this Easement and to require the restoration of such areas or features of the Conserved Land that may be damaged by any inconsistent activity or use.
3. **Prohibited Uses/Restrictions.** Except to the extent that activities and uses are authorized in this Easement, any activity on or use of the Conserved Land inconsistent with the Conservation

Values of the Conserved Land, or with the Conservation Purpose of this Easement, 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 Conserved Land:

- 3.1. **Structures and Commercial Use.** Except as otherwise provided herein, the Conserved Land shall be kept in its natural state [or agricultural state] and no new buildings, billboards, signs or other structures of any kind, either temporary or permanent, shall be placed or erected on the Conserved Land. Commercial use, including, but not limited to, a golf course, landfill or dump, or mobile home or trailer park is not permitted. For purpose of this paragraph 4.1 agricultural uses are not considered commercial. Signs which are consistent with the purpose of this Easement and whose placement and number do not diminish the Conservation Values of the conserved Land are permitted, including (1) educational signage; (2) signs stating the name and address of the Conserved land; (3) signs facilitating directions; and (4) signs identifying the Conservation Value of the Conserved Land and restricting access to the same.
- 3.2. **Filling, Excavation and Roads.** Subject to the Grantor's reservation of rights in Paragraph 2 of this Easement, there shall be no ditching, draining, filling, excavating, or removal of top soil, sand, gravel, or rock, minerals or other materials on or at the Conserved Land, nor any change in topography of the land in any manner, other than that caused by the forces of nature. Any existing roads or trails constructed as of the date of this Easement may continue to be maintained but any new trails or roads constructed on the Conserved Land after the date of this Easement must be constructed of pervious material. Notwithstanding the reservation of rights in Paragraph 2 of this Easement, no road or trail development, agricultural or forest management activities shall be performed within 100 feet of [*insert creek name*], with the exception of invasive species management including herbicide treatment (near aquatic use approved only), controlled burns, and or selective hand removal of invasive plant species. All trails and roads will be limited in scope and all trails and roads will be installed and maintained using best management practices to prevent soil erosion and other impacts on the Conserved Land. Any activities permitted by this subparagraph 4.2 shall not be detrimental to water quality, significant natural habitats, or the scenic qualities of the Conserved Land and shall be otherwise consistent with the Conservation Purposes and the Conservation Values.

- 3.3. **Utility Structures and Equipment.** Subject to Grantor's reservation of rights in Paragraph 2 of this Easement, there shall be no construction or placement on the Conserved Land of commercial, industrial, or municipal antennas, poles, towers, pipes, conduit lines, or other infrastructure intended for electric power, natural gas, petroleum products, sewage, drainage, telecommunications, or any other utilities; and no sale, transfer, or granting of any interest in the Conserved Land for such purposes.
- 3.4. **Mining/Extraction.** The mining or extraction of any mineral, including oil or gas, by any method that disturbs the surface of the Conserved Land is prohibited. Notwithstanding the foregoing, nothing herein shall prohibit the Conserved Land from being leased or otherwise committed as part of a drilling unit for oil and gas production, so long as any such lease or other commitment does not authorize or provide for activities, including but not limited to drilling pads, access roads, or surface pipelines, that will damage the surface of the Conserved Land in any manner that is inconsistent with the Purpose of this Easement, regardless of whether such impacts are temporary or permanent in nature.
- 3.5. **Habitat Disturbance.** Except as permitted in Grantor's exercise of the reserved rights retained in this Easement and for the purposes of promoting the growth and management of native vegetation no native trees, ground cover or other vegetation shall be removed from the Conserved Land.
- 3.6. **Dumping.** Except for leaves, mulch, wood chips and other similar materials typically used in the creation of compost ("Compost Material") generated on the Conserved Land or for Compost Material brought onto and used exclusively on the Conserved Land for [agricultural and] landscaping purposes in a manner compatible with the Purpose of this Easement, the Conserved Land shall at all times be kept free of garbage, waste, debris, ashes, Compost Material, trash, abandoned vehicles or parts, appliances, and machinery (unless necessary for performance of activities contemplated under this Easement on a temporary basis), hazardous or toxic substances, and placement of underground storage tanks on or in the Conserved Land..
- 3.7. **Motor Vehicles.** Use of motorized vehicles for recreation, including snow mobiles, all-terrain vehicles or other motorized vehicles, shall not be permitted on the Conserved Land. However, non-recreational motorized vehicles (e.g., road vehicles, tractors and other all-terrain vehicles) are permitted on the Conserved Land for maintenance, monitoring and management of the Conserved Land (including permitted trails and roads) and improvements thereon provided such vehicles are used in a manner consistent with the Conservation Purpose of this Easement. Any use of motorized vehicles on the Conserved Land shall not cause rutting or other damage to the surface of the Conserved Land which

could create the potential for erosion or contribute to other adverse impacts to the Conservation Values.

- 3.8. **Subdivision.** Except as may be otherwise provided in this Easement, (i) the parcel(s) presently constituting the Conserved Land shall not be divided, subdivided or transferred separately from the other; and (ii) any transfer of the Conserved Land must include all parcels.
- 3.9. **General Prohibition.** Each and every other activity, construction or use that is inconsistent with the Conservation Purpose of this Easement or which may endanger, adversely affect or impair the Conservation Values of the Conserved Land is prohibited.
4. **Ongoing Responsibilities of Grantor and Grantee.** Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of Grantor as owner of the Conserved Land. In particular, but without limitation:
- 4.1. **Real Property Interest.** This Conservation Easement constitutes a real property interest immediately vested in Grantee binding upon Grantor and Grantee, their respective agents, personnel, representatives, heirs, assigns, and all other successors to them in interest, and shall continue as a servitude running with and burdening the Conserved Land in perpetuity.
- 4.2. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Conserved Land, 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 Conserved Land, 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.
- 4.3. **Upkeep and Maintenance.** Grantor shall continue to be solely responsible for the upkeep and maintenance of the Conserved Land, 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 Conserved Land.
- 4.4. **Liability and Indemnification; Insurance.** Grantor and Grantee acknowledge and agree that Grantor retains the fee simple ownership of the Conserved Land and therefore Grantor controls day-to-day activities on, and access to, the Conserved Land, except for Grantee's limited rights to monitor the condition of the Conservation Values and to enforce the terms of this Easement. Grantor therefore agrees that general liability for risks, damages, injuries, claims or costs arising by virtue of Grantor's continued ownership, use, and control of the Conserved Land shall remain with



Grantor as a normal and customary incident of the right of property ownership. Accordingly, Grantor shall indemnify Grantee, its employees, agents and assigns against, and hold Grantee, its employees, agents and assigns, harmless from any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Conserved Land and not caused by Grantee or its employees, agents or assigns. Grantor shall keep the Conserved Land insured with comprehensive general liability insurance in reasonable amounts (which insurance shall cover the contractual indemnity obligations of Grantor to Grantee hereunder) against claims for personal injury, death and property damage, cause Grantee to be named as an additional insured on such insurance policies, and provide evidence of such insurance to Grantee as of the effective date of this Easement and periodically thereafter as such insurance coverage is renewed or replaced. Such evidence shall be in the form of a certificate of insurance which (a) indicates that Grantee is an additional insured; and (b) requires written notice from the insurer to Grantee not less than 30 days before making a material change in or canceling such coverage.

5. **Enforcement Rights and Remedies of the Grantee.** In order to enforce the terms of this Easement, the Grantee shall have the following rights and remedies:

- 5.1. **Right to Enforce.** Notwithstanding anything to the contrary contained in this Easement, based on a shared interest in the conservation of the Conserved Land and the Conservation Values therein, Grantor agrees that the restrictions set forth in this Easement shall be for the mutual benefit of the OEPA and the USFWS, as the Trustees, and shall be enforceable by them to the extent that Grantee fails to enforce such restrictions or acts contrary to the Conservation Purpose of this Easement as determined by OEPA and/or USFWS. This Easement and the covenants and restrictions set forth herein shall not be amended, released, extinguished, assigned or otherwise modified without the prior written consent of the OEPA and the USFWS.
- 5.2. **Right to Enter and Inspect.** Grantee, or its duly authorized representatives, may enter the Conserved Land at all reasonable times, after not less than 24 hours written or telephone notice, for the purposes of inspecting the Conserved Land in order to further the objectives of and determine compliance with the terms of this Easement; provided that no such notice need be given prior to Grantee entering the Conserved Land under emergency circumstances. For the purpose of this provision, "emergency circumstances" shall mean that Grantee has a good-faith basis to believe that a violation of this Easement is occurring or is imminent. Grantee will enter and inspect the Conserved Land at least annually and subsequent to each inspection will provide a monitoring report to Grantor detailing Grantee's findings including all potential or apparent violations, if any, identified during such inspection. Additionally, Grantee will also provide Grantor with a copy of the status report that Grantee is required to submit to the OEPA and USFWS every five years documenting that the Conserved Land is being maintained in accordance with the Conservation Purpose of this Easement and reporting any concerns or violations



identified. Trustees may also enter the Conserved Land if, in the reasonable judgment of either party, it is necessary to protect the Conservation Values of the Conserved Land.

5.3. **Grantee's Approval and Withholding of Approval.** When Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefor. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of Approval, and the conditions, if any, on which approval might otherwise be given. Failure of Grantee to respond in writing within such sixty (60) days shall be deemed to constitute written approval by Grantee of any request submitted for approval that is not contrary to the express restrictions hereof.

5.3.1. **Approval by Grantee of Certain Uses or Activities.** Grantor's exercise of certain Reserved Rights under paragraph 2 of this Easement shall be subject to the prior approval of Grantee. Grantor shall request such approval in writing and shall include therewith information identifying the proposed activity and the reasons for the proposed activity with reasonable specificity. Grantee's evaluation of the request shall generally take into account the criteria included at subparagraph 6.2.2, below, as they relate to the activity itself as well as to the site for the proposed activity, and Grantee's approval shall not be unreasonably withheld.

5.3.2. **Approval by Grantee of Sites.** The exercise of the right to construct structures, improvements or other surface disturbing activity shall be subject to the prior approval by Grantee of the site for such proposed activity. Grantor shall request such approval in writing and shall include therewith information identifying the proposed site with reasonable specificity, evidencing conformity with the requirements of the applicable paragraphs under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. Grantee's approval, which shall not be unreasonably withheld, shall take into account the following criteria:

5.3.2.1. the extent to which use of the site for the proposed activity would impair the scenic qualities of the Conserved Land that are visible from public roads;

5.3.2.2. the extent to which use of the site for the proposed activity would destroy an important habitat or would have a material adverse effect on the movement of wildlife;

5.3.2.3. the extent to which use of the site for the proposed activity would impair water quality;

5.3.2.4. in the case of any proposal to build new structures or roads, the extent to which the scenic quality of the Conserved Land may be adversely impacted;

5.3.2.5. the extent to which the proposed activity or use of the site for the proposed activity would otherwise significantly impair the Conservation Values.

Grantor and Grantee shall cooperate and shall act in good faith to arrive at agreement on suitable sites in connection with any determinations that are necessary to be made by them (either separately or jointly) under this paragraph 6.2. Notwithstanding the foregoing, Grantee's approval of a proposed site or activity shall be withheld if the site for the proposed activity would interfere with or impair the Conservation Values of the Conserved Land.

5.4. **Notice to Grantee.** Following the receipt of Grantee's approval when required under subparagraph 6.2, and not less than thirty (30) days prior to the commencement of any use or activity approved under subparagraph 6.2, Grantor agrees to notify Grantee in writing of the intention to exercise such right. The notice shall describe the nature, scope, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to monitor such activity. When such information was not provided to Grantee under the requirements of subparagraph 6.2, the notice shall also include information evidencing the conformity of such activity with the requirements of the applicable paragraphs under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. At Grantee's sole discretion, Grantee may permit commencement of the activity less than thirty (30) days after receiving Grantor's written notice. Nothing in this paragraph shall diminish or limit Grantor's obligations under paragraph 10, with respect to Grantor's written notice to Grantee concerning a transfer of any interest in the Conserved Land.

5.5. **Breach.** Failure to secure such approval or give such notice as may be required by this paragraph 6.2 shall be a material breach of this Easement notwithstanding any other provision of this Easement and shall entitle Grantee to such rights or remedies as may be available under this Easement.

6. **Grantee's Remedies.** In the event of a violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, if the violation involves damage to the Conserved Land resulting from any use or activity inconsistent with the Conservation Purposes, to restore the portion of the Conserved Land so damaged. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or if the violation cannot reasonably

be cured within a 30-day period, Grantor fails to begin curing such violation within the 30-day period or, once having commenced a cure, fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation *ex parte* if necessary, by way of temporary or permanent injunction, to recover from Grantor any damages to which it may be entitled for violation of the terms of this Easement or damage to any of the Conservation Values arising from such violation, including damages for diminished environmental values, and to require the restoration of the Conserved Land to the condition that existed prior to any such damage, without limiting Grantor's liability therefor. Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conserved Land. If Grantee, in its reasonable discretion, determines that circumstances require its immediate action to prevent or mitigate significant damage to the Conservation Values of the Conserved Land, Grantee may pursue its remedies under this paragraph upon giving notice to Grantor of such circumstances but without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violation of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both temporary and permanent, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph apply to violations caused directly by Grantor or by third persons, whether or not claiming by, through or under Grantor, and shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms, conditions and purposes of this Easement by prior failure to act. Any costs incurred by Grantee in enforcing the terms of this Easement, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by the violation of the terms of this Easement shall be borne by Grantor.

## **7. Extinguishment and Appropriation.**

**7.1. Extinguishment.** This Easement may be extinguished, in whole or in part, only by a judicial ruling by a court of competent jurisdiction that, inter alia, an unexpected change in condition has occurred that renders impossible the protection of all of the Conservation Values of the Conserved Land and fulfillment of the Conservation Purpose of this Easement. If this Easement is extinguished, in whole or in part, Grantor shall reimburse Grantee. In such a case, Grantee, no later than the time of subsequent sale of the formerly restricted land, shall be entitled to compensation for the rights thereby extinguished. The Grantee shall be entitled to compensation for its share of the loss in a condemnation proceeding (as described in paragraph 9.2 below), or in the event of an extinguishment

and the generation of proceeds from the formerly restricted Conserved Land through subsequent sale or other means. The Grantee shall receive, at the time the Easement is extinguished or terminated, compensation for its entire lost interest in the Easement, the value of which shall be in proportion of the ratio of the appraised fair market value of the Easement on the effective date of the Easement to the appraised fair market value of the Conserved Land without deduction for the value of the Easement on the effective date of the Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with the Conservation Purpose of this Easement.

- 7.2. **Eminent Domain.** If all or any portion of the Conserved Land or interest therein is taken or proposed to be taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor shall within fifteen days (15) of being notified of such proposed taking notify Grantee in writing and Grantor and Grantee shall join in appropriate proceeding at the time of such taking to recover the full value of the interests in the Conserved Land subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Paragraph 9.1.
- 7.3. **Distribution of Compensation.** The portion of the funds paid to Grantor as a result of the transactions identified in this Paragraph 8 but due under the terms of this Easement to Grantee shall be held in trust by Grantor for payment to the Grantee as specified in Paragraph 8.1 (Extinguishment) of this Easement. Grantor shall discharge the obligation of the trust by immediately distributing the portion of such compensation to Grantee under Paragraph 8.1 (Extinguishment) of this Easement.
8. **Promotion.** With the permission of Grantor, which shall not be unreasonably withheld, Grantee may post a sign(s) which state(s) that the Conserved Land is preserved by a conservation easement.
9. **Assignment.** Subject to the restrictions set forth herein, this Easement is in gross and may be assigned or transferred by Grantee. The transferee or assignee will be required to carry out in perpetuity the Conservation Purpose of this Easement. In addition, the Grantee agrees to the following:

9.1. 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 IRC, 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 IRC, as that section may be amended from time to time, and in the regulations promulgated thereunder.

9.2. If either Grantee, or its assignee, ever ceases to exist or no longer qualifies under Section 170(h) of the IRC, 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.

10. **Transfer of Conserved Land.** In order to assure that the transferee of title to or a possessory interest in the Protected Property is aware of the existence of this Grant, Grantor agrees that a reference to this Conservation Easement shall be incorporated in any subsequent deed, or other legal instrument, by which Grantor divests either the fee simple title to, or a possessory interest in, the Protected Property. Grantor shall give Grantee notice of the proposed transfer of any interest in the Protected Property at least fifteen (15) days prior to such transfer.

11. **Compliance with Environmental Laws.** “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, 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. Grantor warrants that the Conserved Land 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 Conserved Land. Grantor warrants that they have no actual knowledge of a release or threatened release of any hazardous materials, waste, or other harmful substance on, at, beneath, or from the Conserved Land exceeding regulatory limits.

12. **Amendment; Discretionary Approval.**

12.1. **Background.** Grantee and Grantor recognize that future circumstances that are unforeseen at the time of this Easement may arise which make it beneficial or

necessary to take certain action in order to ensure the continued protection of the Conservation Values of the Conserved Land and to guaranty the perpetual nature of this Easement. Any such action, if determined to be beneficial or necessary, shall be in the form of either (i) an amendment, in the case of a permanent modification of the terms of this Easement, including but not by way of limitation, a clerical or technical correction or modification of a reserved right; or (ii) a discretionary approval, in the case of a temporary activity or impact relating to the maintenance or management of the Conserved Land which does not require a permanent modification of the Easement terms. All amendments and discretionary approvals shall be subject to this paragraph 12. Nothing in this paragraph, however, shall require Grantor or Grantee to consult or negotiate regarding, or to agree to any amendment or discretionary approval.

12.2. **Amendment.** This Easement may be amended only with the written consent of Grantee, Grantor and the Trustees. Grantee shall not consent to any amendment of this Easement unless (i) Grantor submits a written request for amendment pursuant to Grantee's existing amendment policy and such amendment otherwise qualifies under Grantee's policy then in effect respecting conservation easement amendments; (ii) the effect of such amendment is neutral with respect to or enhances the Conservation Purposes; and (iii) the Trustees consent to such amendment. Any such amendment shall be consistent with the purposes of this Easement and shall comply with IRC Sections 170(h) and shall also be consistent with ORC Sections 5301.67 through 5301.70 and any regulations promulgated pursuant to such sections. Any such amendment shall be recorded in the Official Records of \_\_\_\_\_ County, Ohio. Grantee shall require subordination of any mortgage as a condition of permitting any amendment to this Easement.

12.3. **Discretionary Approval.** Grantee's consent for activities otherwise prohibited under this Easement may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, the performance of an activity prohibited under this Easement is deemed beneficial or necessary by Grantor, Grantor may request, and Grantee may, in consultation with the Trustees, grant permission for such activity without resorting to the formalities of an amendment, subject to the following limitations. Such request for Grantee's consent shall (i) be made, and Grantee shall consider and respond to such request in accordance with the provisions of paragraph 6.3, entitled "Grantee's Approval or Withholding of Approval"; and (ii) describe the proposed activity in sufficient detail to allow Grantee to evaluate the consistency of the proposed activity with the purpose of this Easement. Grantee may grant its consent only if it determines that (x) the performance of such activity is, in fact, beneficial or necessary; (xi) the Trustees, after consultation with Grantee, consent to Grantee's issuance of a discretionary approval; and (xii) such activity (A) does not violate the Conservation Purposes of this Easement, and (B) results in an outcome that is neutral with respect to or enhances the Conservation Purposes of this Easement.



13. **General.** Notwithstanding the foregoing, Grantee, Grantor and Trustees shall have no power or right to agree to any activity that would (i) result in the extinguishment of this Easement; (ii) adversely affect the perpetual nature of this Easement; (iii) adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including IRC Sections 170(h) and 501(c)(3) and the laws of the State of Ohio; or (iv) result in either private benefit or inurement to any party. For purposes of this paragraph, the terms private benefit and inurement shall have the same meanings ascribed to them in IRC Section 501(c)(3) and associated Treasury Regulations.
14. **Subordination of Liens.** Any liens or mortgages on the title of the Conserved Land existing prior to the date of the Easement must be subordinated to this Easement or eliminated prior to recording this Easement.
15. **Recording.** The Grantee is authorized to record or file this Easement and any subsequent amendments to this Easement, as well as any notices or instruments appropriate to assure the perpetual enforceability of this Easement; for such purpose, Grantor appoints Grantee as its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request.
16. **Stewardship Fee.** Grantor hereby covenants, promises, and agrees to pay, or to cause the closing agent in connection with the future transfer for value of all or less than all of the Protected Property to pay, to Grantee, or any successor having stewardship obligations pertaining to the Protected Property, at closing, a Stewardship Fee (the "Fee") in an amount equal to two percent (2%) of the full consideration paid, including that portion of such consideration attributable to improvements. In the event the Fee is not paid as provided herein, Grantee shall have the right to initiate proceedings to impose a lien on the Protected Property to secure the continuing obligation of Grantor and its successors in title to pay the Fee; provided that any lien securing payment of the Fee shall be subordinate to the lien of any first mortgage on the Protected Property. Such lien may be imposed, enforced and/or foreclosed in accordance with the laws of the State of Ohio.
17. **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.
18. **Entire Agreement; Recitals and Exhibits.** This Grant sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Conservation Easement, all of which are merged herein. Any and all recitals in this Conservation Easement are agreed by the

parties to be accurate, are incorporated into this Conservation Easement by this reference, and shall constitute integral terms and conditions of this Grant. Any and all exhibits and addenda attached to and referred to in this Conservation Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

19. **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 Conserved Land, except that the Party's liability for acts or omissions prior to transfer shall survive transfer.
20. **Counterparts.** This Easement may be executed in multiple counterparts by Grantor and Grantee, each acting at different times and at separate locations, whether or not in the presence of each other, and any copy of this Easement to which signatures of both Grantor and Grantee have been appended shall constitute one and the same original, and one of which shall constitute proof of the terms of this Easement without the necessity of producing any other original copy.
21. **Waiver.** Any forbearance by Grantee to exercise its rights under this Easement shall not be deemed or construed to be a waiver by Grantee of such violation or another violation of this Easement or any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed a waiver.
22. **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 the applicable court of competent jurisdiction.
23. **No Merger.** Should Grantee obtain fee title to the Conserved Land, 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 Conserved Land, or Grantee shall, 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 IRC, which has among its purposes the conservation and preservation of land and water areas.
24. **Notices.** Any notice, demand, request, consent, approval, instruction or communication that either party desires or is required to give to the other hereunder shall be in writing and either



delivered personally or sent by United States registered or certified mail, return receipt requested, postage prepaid, or by prepaid overnight express courier, and addressed as follows:

To Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

To Grantee: Western Reserve Land Conservancy  
3850 Chagrin River Road  
Moreland Hills, OH 44022  
Attention: President or General Counsel

To OEPA: Division of Environmental Response  
and Revitalization- Ohio EPA  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138

To USFWS: U.S. Fish and Wildlife Service,  
Midwest Region 3  
5600 American Blvd. West, Ste. 990  
Bloomington, Minnesota 55437

or to such other address as either of the above parties from time to time shall designate by written notice to the other, and the same shall be effective upon receipt if delivered personally or by overnight courier or three business days after deposit in the mail, if mailed. If any deadline under this Easement falls on a Saturday, Sunday or legal holiday (which for purposes of this Easement shall not be considered a “business day”), the deadline shall be extended to the next business day.

***[Remainder of page intentionally left blank – Signature pages to follow]***

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

**The Grantor(s)**

(ADD NAME)

Signature: \_\_\_\_\_

(ADD NAME)

Signature: \_\_\_\_\_

**Acknowledgement**

State of Ohio                    )  
  )       ss:  
County of \_\_\_\_\_        )

On this \_\_\_\_ day of \_\_\_\_\_, 20XX, before me, a Notary Public in and for said County and State, personally appeared (ADD NAME OF GRANTOR(S)), Grantor(s) in the foregoing 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 (INSERT GRANTEE NAME)**

Grantee: (INSERT NAME)

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Acknowledgement**

State of Ohio                )  
                                      )        ss:  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20XX,  
by \_\_\_\_\_, acting for and on behalf of the (insert Grantee name) who  
acknowledged that (s)he executed the same for and on behalf of that organization and did so  
on her/his and as the (insert Grantee's name) own free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**Acceptance by Trustee Ohio Environmental Protection Agency**

The Ohio Environmental Protection Agency, an agency of the State of Ohio, as a Trustee responsible for overseeing the protection of natural resources in the State of Ohio, hereby accepts and approves the foregoing Conservation Easement, and the rights conveyed therein.

Signature: \_\_\_\_\_

[Insert Name]

[Insert Title]

**Acknowledgement**

State of Ohio )  
 )  
County of [Insert County]\_\_\_\_\_ ) ss:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20XX, by [Insert Name and Title], Director of the Ohio Environmental Protection Agency, acting for and on behalf of the Agency, who acknowledged executing the same for and on behalf of the Agency as Trustee, and that the signature was completed as the Agency's voluntary act and deed.

\_\_\_\_\_  
Notary Public, State of Ohio  
My Commission Expires:

**Acceptance by Trustee United States Fish and Wildlife Service**

The United States Fish and Wildlife Service (USFWS), a bureau of the United States Department of the Interior, as a Trustee responsible for overseeing the protection of natural resources in the State of Ohio, hereby accepts and approves the foregoing Conservation Easement, and the rights conveyed therein.

Signature: \_\_\_\_\_

[Insert Name]

[Insert Title]

**Acknowledgement**

**Acknowledgement**

State of Ohio )  
 ) ss:  
County of [Insert County]\_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20XX, by [Insert Name and Title], of the United States Fish and Wildlife Service, acting for and on behalf of USFWS, who acknowledged executing the same for and on behalf of the USFWS as Trustee, and that the signature was completed as the USFWS’s voluntary act and deed.

\_\_\_\_\_  
Notary Public, State of Ohio  
My Commission Expires:

## **Appendix E**

Template Environmental Covenant for Sugar Creek Project

**To be recorded with Deed  
Records - R.C. 317.08**

### **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by Dover Chemical Corporation, having an address of 3676 Davis Road NW, Dover, Ohio 44622 (Owner), the Ohio Environmental Protection Agency (Ohio EPA) and the United States Fish and Wildlife Service ("FWS" or "Service") (the Party or Parties) pursuant to Ohio Revised Code (RC) 5301.80 to 5301.92. The Service and Ohio EPA are non-holder agencies (collectively the Trustees), for the purpose of subjecting the properties described herein ("the Covenant Area") to the activity and use limitations set forth herein.

**WHEREAS**, the Owner is the owner in fee of certain real property, comprised of two parcels, 10.6 acres and 14.92 acres, for a total of 25.28 acres (the "Covenant Area") in their entirety and is situated in Tuscarawas County, Ohio, in the Tuscarawas River watershed;

**WHEREAS**, negotiations between Dover Chemical Corporation and the Trustees, in conjunction with the United States Department of Justice and the Ohio Attorney General, resulted in a Consent Decree filed in the United States District Court, Northern District of Ohio, *United States v. Dover Chemical Corp.*, No. 5:17-cv-02335-BYP (N.D. Ohio) ("the remedial action") and in *United States v. Dover Chemical Corp.*, No. XX-cv-XXXXX (N.D. Ohio) ("the natural resource damages action"), resulting in Dover Chemical Corporation's decision to place an Environmental Covenant on the Covenant Area properties. The Administrative Record for the natural resource damages action is maintained by the Ohio EPA at Ohio EPA's Southeast District Office, 2195 East Front Street, Logan, Ohio 43138;

**WHEREAS**, the activity and use limitations protect against exposure to chlorobenzenes; hexachlorocyclohexane (BHC); carbon tetrachloride (CCl<sub>4</sub>); polychlorinated dibenzodioxins; and polychlorinated dibenzofurans ([PCDDs/PCDFs], a group of compounds referred to collectively as "dioxins"), and other chemicals the [on or underlying the Covenant Area; and will also protect or enhance the groundwater recharge which shall occur in the Covenant Area.

**WHEREAS**, Dover Chemical Corporation agreed to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant.

Now therefore, Owner and the Trustees agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. 5301.80 to 5301.92.

2. Covenant Area. This Covenant concerns an approximately 25.28 acre tract of real property comprised of two parcels, Parcel # 10-00297-000 and Parcel # 10-00298-000, in Tuscarawas County, Ohio, and more particularly described in **Exhibit A** [legal description] and **Exhibit B** [map] attached hereto and hereby incorporated by reference herein (the Covenant Area).

3. Owner. The Owner is the fee simple owner of the Covenant Area.

4. Holder. Pursuant to R.C. 5301.81, the Holder of this Environmental Covenant is the Owner of the property identified above.

5. Activity and Use Limitations. As part of the conditions set forth in the Consent Decree issued to Dover Chemical Corporation, the Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

- a. Land Use: Any commercial, industrial or residential activities are prohibited;
- b. Construction: The placement or construction of any man-made modifications, either temporary or permanent, such as buildings, structures, billboards, fences, roads, parking lots, wind turbines, and towers for communications or otherwise on the Covenant Area is prohibited;
  - i. There shall be no filling, excavating, or removal of top soil, sand, gravel, rock, minerals or other materials on or at the Covenant Area, nor changes in topography of the Covenant Area, other than those caused by the forces of nature.
  - ii. No power or petroleum transmission lines may be constructed, nor may any other interests in the Covenant Area be grated for this purpose. However, the Owner reserves the right to maintain and repair telephone, electric, water, wells, or other utility lines or mains needed to provide for the needs of the Owner, successor or assigns.
- c. Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or



pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the Restoration Work Plan approved by the Trustees;

- d. Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and
- e. Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the Restoration Work Plan approved by the Trustees;
- f. Motor Vehicles: Use of vehicles of recreation, including all-terrain vehicles, snowmobiles or other motorized recreational vehicles, shall not be permitted on the Covenant Area.

6. Running with the Land. This Environmental Covenant, shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. 5301.85, subject to amendment or termination as set forth herein. The term "Transferee" as used in this Environmental Covenant, shall mean any future owner of any interest in the Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced by the Trustees pursuant to R.C. 5301.91 and other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any provision of this Covenant. Nothing in this Environmental Covenant shall restrict the Trustees from exercising any authority under applicable law in order to protect public health or safety or the environment.

8. Rights of Access. Owner hereby grants to the Trustees, its agents, contractors, and employees the right of access to the Covenant Area for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner and any Transferee, if applicable, shall annually submit to the Trustees by September 1<sup>st</sup> of each year after the year of this

Covenant's Effective Date written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED\_\_\_\_\_, 2021, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE TUSCARAWAS COUNTY RECORDER ON \_\_\_\_\_, 2021, IN [DOCUMENT \_\_\_\_\_, or BOOK\_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[Restate restrictions from Paragraph 5 of this Covenant]

Owner or Transferee, if applicable, shall notify the Trustees within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. Owner's notice shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- a. that the Owner is the sole owner of the Covenant Area;
- b. that the Owner holds fee simple title to the Covenant Area that is free, clear and unencumbered and, for example, is not subject to any utility, road or other easement;
- c. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- d. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be

amended or terminated only by consent of all of the following: the Owner and Holder or a Transferee and the Trustees, pursuant to R.C. 5301.89 or 5301.90 and other applicable law. "Amendment" means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. "Termination" means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Amendment or termination shall not affect Dover Chemical Corporation's obligations pursuant to the Consent Decree.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Trustees [Regional Director of the Service, and the Director of Ohio,] and the Owner or Transferee[s] of the Covenant Area as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee[s] shall file such instrument for recording with the Tuscarawas County Recorder's Office, and shall provide a file and date-stamped copy of the recorded instrument to the Service and Ohio EPA.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the Tuscarawas County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Covenant Area with the Tuscarawas County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to the Trustees.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or the Trustees, any document or communication required by this Environmental Covenant shall be submitted to:

As to Ohio EPA:

Ohio EPA – Central Office  
Division of Environmental Response and Revitalization  
50 West Town Street  
Columbus, Ohio 43216  
Attn.: DERR Records Management Officer

Or, send electronically to: [records@epa.ohio.gov](mailto:records@epa.ohio.gov)

And

Ohio EPA - Southeast District Office  
2195 East Front Street  
Logan, Ohio 43138  
Attn.: DERR Site Coordinator for Dover Chemical NRD

As to U.S. Fish and Wildlife Service:

Regional Director  
U.S. Fish and Wildlife Service  
Midwest Region 3  
5600 American Boulevard West, Suite 990  
Bloomington, Minnesota 55437

And

U.S. Fish and Wildlife Service  
Ohio Ecological Services Office  
4625 Morse Road  
Columbus, Ohio 43230  
Attn: NRDAR Case Manager

As to Owner:

Dover Chemical Corporation  
[Name, title, or position]  
[Address]

19. Counterparts. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The undersigned represents and certifies that they are authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

**OWNER:**

Dover Chemical Corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss:

Before me, a notary public, in and for said county and state, personally appeared , a duly authorized representative of \_\_\_\_\_, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

—  
\_\_\_\_\_  
Notary Public

**OHIO ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_

By: \_\_\_\_\_  
Director

Date: \_\_\_\_\_

State of Ohio            )  
                                  )       ss:  
County of Franklin    )

Before me, a notary public, in and for said county and state, personally appeared  
, the Director of Ohio EPA, who acknowledged to me that she did execute the foregoing  
instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official  
seal this \_\_\_\_day of \_\_\_\_\_, 2021.

—

\_\_\_\_\_  
Notary Public

**U.S. FISH AND WILDLIFE SERVICE:**

By: Charles Wooley  
Regional Director, Midwest Region 3

Date: \_\_\_\_\_

State of Minnesota     )  
                                      )  
County of             )                         ss:

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, the Regional Director of Region 3, U.S. Fish and Wildlife Service, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of U.S. Fish and Wildlife Service.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

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