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)	
UNITED STATES OF AMERICA,)	
)	
STATE OF NEW YORK, and)	
)	
TUSCARORA NATION,)	
)	
Plaintiffs,)	
)	Civil Action No. -----
v.)	
)	
HONEYWELL INTERNATIONAL INC.,)	
)	
Defendant.)	
_____)	

NOTICE OF LODGING OF CONSENT DECREE

The United States, the State of New York, and the Tuscarora Nation (collectively, the Plaintiffs) as trustees for natural resources hereby notify the Court that they are lodging with the Court today a proposed Consent Decree that resolves the claims in the Plaintiffs’ Complaint, also filed today, in the above-captioned action against defendant Honeywell International, Inc.

At this time, the Court should not take any action with respect to the proposed Consent Decree. Pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and United States Department of Justice policy, the United States will shortly publish a notice of the lodging of the Consent Decree in the Federal Register and provide the public with a 30-day comment period. After the public comment period, the United States will evaluate any public comments received. Upon completing its evaluation of any public comments, the United States will provide the Court with a copy of any comments and

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either (1) respond to the public comments and seek approval of the Consent Decree, or (2) notify the Court of that it withdraws its consent to the proposed Consent Decree.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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

11/15/21
Dated

/s/ C. A. Fiske
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

STATE OF NEW YORK, and

TUSCARORA NATION,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL INC.

Defendant.

Civil Action No. -----

----- X

CONSENT DECREE

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I. BACKGROUND

- A. Plaintiffs – the United States of America (“United States”), on behalf of the Secretary of the United States Department of Interior (“DOI”), the State of New York and the Commissioner of the New York Department of Environmental Conservation (collectively, the “State”), and the Tuscarora Nation (collectively, “the Plaintiffs”) -- have filed a complaint in this action concurrently with this Consent Decree. The complaint alleges that Defendant Honeywell International Inc. (“Honeywell”) is liable to the Plaintiffs under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607, for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, resulting from the release, or threat of release, of hazardous substances and oil within the portion of the Buffalo River riverine habitat between Lake Erie and just above the confluence of Cazenovia Creek, as well as the City of Buffalo (the “City”) Ship Canal and the Times Beach Confined Disposal Facility, in Buffalo, New York. These areas are collectively referred to herein as the “Site,” as more particularly defined in the definitions section below.
- B. DOI acting through the United States Fish and Wildlife Service (“USFWS”), the Commissioner of Environmental Conservation acting through the New York State Department of Environmental Conservation (“NYSDEC”), and the Tuscarora Nation (collectively, the “Trustees”), under the authority of Section 107(f)(2) of CERCLA, 42 U.S.C. § 9607(f)(2), and 40 C.F.R. Part 300, serve as trustees for natural resources for the assessment and recovery of damages for injury to, destruction of, or loss of natural resources under their trusteeship.
- C. The Trustees share trusteeship of various natural resources allegedly injured as a result of the release of hazardous substances and oil at the Site by multiple potentially responsible parties.
- D. Investigations conducted by the Trustees and the United States Environmental Protection Agency (“EPA”) detected hazardous substances and oil in the sediments, soils, and waters of the Site, including, but not limited to, polychlorinated biphenyls (“PCBs”), polycyclic aromatic hydrocarbons (“PAHs”), metals, aniline, and benzene, toluene, ethylbenzene, and xylenes (“BTEXs”).
- E. In response to the contamination, the Buffalo River Restoration Partnership, including the EPA, the United States Army Corps of Engineers (“ACE”), NYSDEC, Buffalo Niagara Riverkeeper (“Riverkeeper”) and Honeywell developed plans for a comprehensive cleanup of the Site that included two environmental dredging projects. The first project, Phase 1, begun by ACE in 2011, removed an estimated 372,000 cubic yards of contaminated sediments in the federal navigation channel using funds from the Great Lakes Restoration Initiative. EPA, the Riverkeeper, and Honeywell entered into a Project Agreement under the Great Lakes Legacy Act (“GLLA”) to conduct Phase 2 of the sediment remediation in the Buffalo River (“River”), including certain habitat restoration at the Site. Work under this Project Agreement included dredging and disposal of

approximately 500,000 cubic yards of contaminated sediment outside of the navigation channel, capping 50,000 cubic yards of contaminated sediment, and creation/restoration of eight acres of aquatic habitat in the River. The Trustees considered the value and compensation of this aquatic habitat restoration work in their assessment of natural resource damages at the Site, including mitigation for the remedial dredging work itself.

- F. The Trustees have engaged in natural resource injury studies, damage assessment, and restoration planning relating to the Site since as early as 2004 in accordance with 43 C.F.R. Part 11. In October 2009, the Trustees, Honeywell and Exxon Mobil Corporation (“Exxon”) entered into a Cooperative Agreement by which Honeywell and Exxon agreed to participate and provide funding for the performance of a cooperative natural resource damage assessment and restoration process. Eventually, Exxon entered into a separate agreement with Honeywell and withdrew from the Cooperative Agreement. Honeywell continued its cooperative engagement in the natural resource damage assessment and restoration process with the Trustees.
- G. The Tuscarora Nation alleges that the Site area is historically and culturally important to the Tuscarora. For example, as discussed in the Tuscarora Buffalo Creek Restoration Proposal, March 2010, the Site area includes several known points of historic and cultural importance to the Tuscarora including the Seneca Council House, Seneca Indian Academy, and Haudenosaunee grave sites. The Tuscarora claim that, in addition to the direct injuries to natural resources caused by contamination of the River, generations of the Tuscarora people have been prevented from using the River for traditional cultural activities, as a result of the natural resource injuries.
- H. To compensate for the natural resource injury, the Trustees prepared a draft Buffalo River Natural Resource Damage Assessment Restoration Plan and Environmental Assessment (“Restoration Plan”) consistent with 43 C.F.R. §§ 11.81 and 11.93, as set forth in Appendix A. The Trustees have invited public comment on the draft Restoration Plan through December 17, 2021.
- I. The Restoration Plan proposes three preferred restoration projects to compensate for natural resource injuries at the Site, including natural resource restoration work on land owned by the City and by CSX Transportation, Inc. (“CSXT”). These preferred restoration projects will occur on (1) identified portions of approximately 43-45 acres of CSXT undeveloped land, bisected by an active railroad line, abutting the River known generally as Concrete Central; (2) identified portions of approximately 7-9 acres of CSXT partially undeveloped land and partially crossed by active rail tracks, and/or side tracks, abutting the City Ship Canal known as the CSXT City Ship Canal Property, and (3) identified portions of approximately 22 acres of the City’s undeveloped Houghton Park land abutting the River, together with approximately 3 acres of contiguous undeveloped riverfront City-owned upstream parcels, known as Houghton Park and the Upstream Parcels, respectively. The Restoration Plan proposes these properties for stream bank enhancements, invasive species removal, native plantings, wetland creation, and/or (in certain locations) for recreational enhancements to compensate for lost natural resources and services. The Restoration Plan calls for a conservation easement and

restriction (“CER”) to be recorded on these properties to protect the restoration work and prevent the properties’ development in perpetuity. This proposed Consent Decree provides for implementation of all this Restoration Work.

- J. This Consent Decree is structured to provide individual participation by Honeywell, CSXT, and Other Settling Parties as follows: (1) Honeywell will make those monetary payments set forth in Section VI. (“Payments by Honeywell”) and Paragraph 17(a) (“closing costs”) herein to reimburse assessment costs and to fund certain Restoration Work according to the Restoration Plan and this Decree; (2) CSXT will grant CERs for Restoration Work on portions of CSXT’s City Ship Canal and Concrete Central Properties (Protected Property), as specified in the Restoration Plan and as substantially set forth in the forms comprising Appendix C.1 and C.2 of this Decree; (3) the Other Settling Parties listed in Appendix B have made payments to Honeywell for cleanup work and natural resource damages at the Site under prior separate settlements with Honeywell but are not signatories to this Consent Decree; (4) Honeywell and/or CSXT are potentially liable for respective stipulated penalties, if any; and (5) the City has separately agreed with Honeywell to execute and to authorize Honeywell to record Trustee-Approved CERs for Restoration Work on portions of certain properties owned by the City, namely the undeveloped portion of Houghton Park and the Upstream Parcels, as specified in the Restoration Plan, and as set forth in the Appendix E (Protected Property). Once the Trustee-Approved CERs are recorded on these City properties, the City will be deemed one of the Other Settling Parties listed in Appendix B.
- K. The City and the Trustees have agreed upon mutually acceptable proposed CERs for the City’s property known as the undeveloped portion of Houghton Park, and the Upstream Parcels. See Appendix E (the “City’s CERs”). Upon entry of the Consent Decree and completion of the necessary title work that is currently delayed as a result of the Covid-19 pandemic, the City has authorized Honeywell to record the City’s CERs. Once the City’s CERs are recorded, the City will be afforded the same status as, and deemed one of, the Other Settling Parties.
- L. Honeywell does not admit any liability to the Trustees arising out of the transactions or occurrences alleged in the complaint, nor do Honeywell or CSXT admit or endorse any fact and/or conclusion in the Restoration Plan.
- M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by them at arm’s length, in good faith; that implementation of this Consent Decree will expedite restoration of natural resources allegedly injured and avoid prolonged and complicated litigation among them and the Other Settling Parties; and that this Consent Decree is fair, reasonable, and in the public interest, including furthering the statutory objectives of CERCLA.

NOW, THEREFORE, 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, 1345, and 1367, and 42 U.S.C. §§ 9607 and 9613(b), and over the Plaintiffs, CSXT and Honeywell. Solely for the purposes of this Consent Decree and the underlying complaint, Plaintiffs, CSXT and Honeywell waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Tuscarora Nation has sovereign authority over its territory and citizens. Nothing in this Consent Decree shall be deemed to diminish the Tuscarora Nation's sovereignty or to waive the Nation's sovereign immunity. CSXT and Honeywell shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State, and the Tuscarora Nation, and upon CSXT and Honeywell and their successors and assigns. Any change in ownership or corporate or other legal status of CSXT or Honeywell, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of such Party under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree 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 Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

“Active River Area of the Niagara Greenway Municipal Boundary” shall mean the area depicted on page 6 of the Niagara Greenway Habitat Conservation Strategy Phase I Final Report. Available at <https://www.niagararivergreenway.com/copy-of-submit-a-project>

“Affected Property” shall mean that limited area on the east side of the CSXT City Ship Canal property not contained within the Protected Property (as depicted in the attachments to Appendix C.2), upon which CSXT is authorizing the Plaintiffs to perform Restoration Work for invasive species control and native plantings.

“CER” or “Conservation Easement and Restriction” shall mean a conservation easement and restriction that satisfies the requirements of the New York State Environmental Conservation Law (“ECL”), Article 49, Title 3, and substantially conforms to the example attached as Appendix C.1 (for the Concrete Central Property) and C.2. (For the City Ship Canal Property) and Appendix E (for the Houghton Park and the Upstream Parcels), which have been determined by Plaintiffs to be acceptable and to satisfy the requirements of the ECL.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“City” shall mean the City of Buffalo, New York.

“City Ship Canal” shall mean the canal that runs approximately 1.4 miles south from the mouth of the Buffalo River parallel to Lake Erie.

“Concrete Central” or “Concrete Central Property” shall mean those portions of the approximately 43-45 acre property, consisting of two separate tax parcels, which collectively are known as the Concrete Central Peninsula, owned by CSXT, located across the River from Red Jacket River Front Park, about 3.2 miles from the mouth of the River, for which a CER covering the Protected Property will be granted for conservation and Restoration Work as generally depicted in Appendix A (Restoration Plan). The “Concrete Central Property” does not include the western parcel adjacent to the Concrete Central Property which contains the tall concrete structure, commonly called “Concrete Central,” and such western parcel and structure are not owned by CSXT. A map of the CSXT Concrete Central Property is attached as Appendix F.

“Consent Decree” or “Decree” shall mean this consent decree and all appendices attached hereto (listed in Section XIX, Appendices) as well as all plans, reports, or other items or deliverables approved by the Trustees pursuant to this Consent Decree. In the event of conflict between this Decree and any appendix, plan, report or other item or deliverable, this Decree shall control.

“CSXT City Ship Canal” or “CSXT Ship Canal Property” shall mean those portions of the approximately 7-9 acre parcel of property owned by CSXT adjacent to the City Ship Canal for which a CER covering the Protected Property will be granted by CSXT for conservation and Restoration Work as generally depicted in Appendix A (Restoration Plan). A map of the CSXT Ship Canal Property is attached as Appendix G.

“Date of Lodging” shall mean the date the proposed Consent Decree is filed with the Court as an attachment to a Notice of Lodging of Consent Decree, pending public comment as required in Section XXI (Lodging and Opportunity for Public Comment).

“Day” or “day” shall mean a calendar day, unless otherwise specified. In computing any period of time under this Decree, 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.

“Designated Paths” shall mean those specific areas on the Ship Canal Protected Property where public access is permitted and directed, such as access between existing public paths to the north and west of the Protected Property.

“DOI” shall mean the United States Department of the Interior and its successor departments, agencies, or instrumentalities.

“DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Decree is recorded on the Court’s docket.

“Houghton Park” or “Houghton Park Property” shall mean the property owned by the City for which a CER covering the Protected Property will be provided by the City for

Restoration Work as generally depicted in Appendix A (Restoration Plan), including the approximately 22-acre undeveloped portion of Houghton Park, located along the north bank of the River approximately 7.2 miles from the mouth of the River.

“Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund, 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 <http://www2.epa.gov/superfund/superfund-interest-rates>.

“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, the State, or the Tuscarora Nation.

“Natural Resource Damages” shall mean any damages recoverable by the United States, the State, or the Tuscarora Nation, pursuant to Sections 107(a)(4)(C) and 107(f) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C) and 9607(f), and/or any other federal law, state law, local law, common law or regulation for injury to, destruction of, loss of, loss of use of, or impairment of natural resources, including any services such natural resources provide, resulting from a release of a hazardous substances or oil at, or that migrated to, or was transported to the Site. Natural Resource Damages include, without limitation: (i) the costs of assessing injury to, destruction of, loss of, loss of use of, or impairment of natural resources and the resulting damage; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources and the services they provide, or of acquisition of equivalent resources; (iii) the costs of planning and/or monitoring such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable state law.

“Natural Resource Damage Assessment Costs” shall mean, for purposes of this Consent Decree, all costs, including, but not limited to, direct, indirect, and administrative costs, incurred by the Trustees, in assessing the alleged injury to, destruction of, loss of, or loss of use of Natural Resources resulting from releases or threatened releases of hazardous substances or oil at the Site, and all costs incurred by Trustees directly or indirectly related to negotiating this Consent Decree.

“NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund established pursuant to 43 U.S.C. §§ 1474(b) and 1474(b)-1.

“Other Settling Parties” shall mean the group comprised of certain parties who, as of the Effective Date, have entered into a settlement relating to Natural Resource Damages with Honeywell, provided that such party is identified in Appendix B (or is the successor in interest to a party listed in Appendix B), and the City, once the City, or Honeywell, has recorded a Trustee-Approved CER on the City’s Houghton Park and Upstream Parcel properties in accordance with Appendix E. CSXT is both a member of the Other Settling Parties and separately bound by its obligations under this Consent Decree. To the extent

that there is any conflict between CSXT's obligations under this Consent Decree and CSXT's status as a member of the Other Settling Parties, its obligations as a signatory to this Consent Decree control. For avoidance of doubt, CSXT must perform its specific obligations under this Consent Decree, and is otherwise bound by the terms of this Consent Decree, even though it is also included as an "Other Settling Party."

"Paragraph" or "¶" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the Plaintiffs, CSXT, Honeywell, and the Other Settling Parties. Where distinctions need to be made among the Parties, the terms "Honeywell," "CSXT," and "Other Settling Parties" shall be used. CSXT is both a member of the Other Settling Parties and separately bound by its obligations under this Consent Decree. To the extent that there is any conflict between CSXT's obligations under this Consent Decree and CSXT's status as a member of the Other Settling Parties, its obligations as a signatory to this Consent Decree control. For avoidance of doubt, CSXT must perform its specific obligations under this Consent Decree, and is otherwise bound by the terms of this Consent Decree, even though it is also included as an "Other Settling Party."

"Plaintiffs" shall mean the United States, the State of New York, and the Tuscarora Nation.

"Protected Property" shall mean the portions of any property subject to a CER, including the designated portions of CSXT's Concrete Central and City Ship Canal Properties, and portions of the City's Houghton Park Property and Upstream Parcels.

"Restoration Plan" shall mean the Buffalo River Natural Resource Damage Assessment Restoration Plan and Environmental Assessment ("Restoration Plan"), consistent with 43 C.F.R. § 11.93, and as it may be amended by the Trustees in their discretion. This Restoration Plan is set forth in this Consent Decree as Appendix A.

"Restoration Work" shall mean the work to be performed under the Decree to restore, replace, enhance, and/or acquire the equivalent of Natural Resources, consistent with the Restoration Plan (Appendix A), including, but not limited to, invasive species control.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Site" shall mean the Buffalo River from just above the confluence of Cazenovia Creek to the mouth of the River at Lake Erie (approximately the lower 6.2 miles of the main stem of the River) as well as (1) the City Ship Canal that runs 1.4 miles south from the mouth of the River parallel to Lake Erie, and (2) the Times Beach Nature Preserve and the Times Beach Confined Disposal Facility.

"State" shall mean the State of New York and the Commissioner of Environmental Conservation acting through the New York Department of Environmental Conservation.

"Trustee-Approved CER" shall mean a CER that has been approved by the Trustees for recording under this Consent Decree.

“Trustees” shall mean DOI, acting through the FWS, the Commissioner of Environmental Conservation acting through the New York Department of Environmental Conservation, and the Tuscarora Nation, and each department, agency, and instrumentality of the Tuscarora Nation, and any of their respective successors.

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

“Upstream Parcels” shall mean the properties owned by the City along the River that are upstream of Houghton Park for which a CER covering the Protected Property will be recorded by the City for Restoration Work, as generally depicted in Appendix A (Restoration Plan).

V. GENERAL PROVISIONS

4. **Objectives of the Parties.** The objectives of the Parties in entering into this Consent Decree are to: (i) promote restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed or lost as a result of hazardous substance and oil releases at or from the Site; (ii) reimburse natural resource damage assessment costs incurred by the Trustees; (iii) resolve the claims of Plaintiffs against Honeywell, CSXT, and the Other Settling Parties for Natural Resource Damages as provided herein; and (v) avoid further transaction costs and time-consuming litigation.
5. **Compliance with Applicable Law.** All activities undertaken by, on behalf of, or pursuant to contracts with CSXT or Honeywell pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state, and local laws and regulations.
6. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PAYMENTS BY HONEYWELL

7. Within thirty (30) days of the Effective Date of this Consent Decree, Honeywell shall pay the Trustees a total of \$4,250,000, as follows:
 - a. \$682,100 for past United States’ assessment costs (“Assessment Costs”);
 - b. \$1,355,720 for natural resource habitat restoration projects (“Habitat Restoration Projects”);
 - c. \$606,710 for the Concrete Central Natural Resource Restoration Project;
 - d. \$277,150 for the Houghton Park Natural Resource Restoration Project;
 - e. \$179,500 for the CSXT City Ship Canal Natural Resource Restoration Project;
 - f. \$215,400 for Oversight Costs to oversee completion of the above Projects;
 - g. \$359,005 for projects to compensate for lost recreational use of natural resources; and
 - h. \$574,415 for Cultural Restoration Projects and Cultural Assessment Costs.

8. Payments to be disbursed to the United States: Payment for items in Sub-Paragraphs 7.a. to 7.f., above, shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Honeywell by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Western District of New York after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Honeywell shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Richard Galloway
Honeywell International Inc.
115 Tabor Road
Morris Plains, New Jersey 07950
973-455-4640
Rich.Galloway@Honeywell.com

on behalf of Honeywell. Honeywell may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and DOI in accordance with Section XVII (Notices and Submissions).

- a. Payment for the United States’ Assessment Costs: Payment for the United States’ Assessment Costs under paragraph 7.a., above, shall be deposited in the DOI NRDAR Fund to be applied toward natural resource damage assessment costs incurred by DOI.
- b. Payment for Ecological Restoration Projects: The amount paid pursuant to paragraph 7.b. to 7.f., above, for certain joint trustee-sponsored natural resource projects shall be deposited in a segregated sub-account within the NRDAR Fund (“Buffalo River sub-account”), to be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in accordance with Section VII (Trustee-Sponsored Restoration Projects) and the Trustees’ Memorandum of Agreement (“MOA,” Appendix D).

9. Payments to be disbursed to New York: Payment for items in paragraph 7.g., above shall be made by Electronic Fund Transfer to the New York Office of the Attorney General account in accordance with current EFT procedures and instructions provided to Honeywell by the State after the Effective Date. The funds shall be deposited in a segregated sub-account to be managed by NYSDEC for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects at the Site in accordance with Section VII (Trustee-Sponsored Restoration Projects) and the MOA, attached as Appendix D. The Attorney General's Office will remit a check payable to **"NYSDEC – Natural Resource Damages Fund"** in the amount of the full initial balance of the account. This check will be mailed to the address below:

New York State Dept. of Environmental Conservation
Office of General Counsel
ATTN: Andrew Guglielmi, Esq.
625 Broadway, 14th Floor
Albany, NY 12233-1500

The check will be deposited in a dedicated sub-account that has been created within the NRD Fund held at the Department of Environmental Conservation.

10. Payments to be disbursed to the Tuscarora Nation: Payment for items in paragraph 7.h., above, shall be made by Electronic Fund Transfer to the Tuscarora Nation in accordance with current EFT procedures and instructions provided to Honeywell by the Tuscarora Nation after the Effective Date. Such funds shall be applied toward the assessment and restoration of lost, damaged, or injured cultural resources of the Tuscarora Nation.
11. **Notice of Payment.** Upon making the payments required under Paragraphs 8-10, Honeywell shall send written notice to the United States, New York, and the Tuscarora Nation in accordance with Section XVII (Notices and Submissions). Such notification shall also be sent to:

Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
Mail Stop 3548
1849 C Street, N.W.
Washington, D.C. 20240.

Such notice shall include the following information: the amount of the payment that was made, the case name, “Honeywell – Buffalo River, NY matter,” the relevant civil action number, and the DOJ case number 90-11-3-08780.

12. **Interest.** In the event that any payment required by this Section is not made by the date required, Honeywell shall pay Interest on the unpaid balance through the date of payment. Payments of Interest made under this paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Honeywell’s failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XII (Stipulated Penalties).

VII. TRUSTEE-SPONSORED RESTORATION PROJECTS

13. Management and Application of Funds.

- a. All funds deposited in the segregated Buffalo River sub-account within the NRDAR Fund under Paragraph 8.b. shall be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration efforts in accordance with this Consent Decree, the Trustee MOA (attached as Appendix D), and the Restoration Plan. CSXT, Honeywell, and the Other Settling Parties shall have no responsibility for the performance of any habitat, recreational, or other restoration projects or for the payment of any costs other than those set forth in Section VI and Paragraph 17(a) (which costs shall be paid by Honeywell), and for stipulated penalties, if any.
- b. All funds deposited in the segregated sub-account under Paragraph 9 shall be managed by NYSDEC for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration efforts in accordance with this Consent Decree, the Trustee MOA, and the Restoration Plan.

- c. All such funds described in subparagraphs 13.a. and b., above, shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources, including, but not limited to, any administrative, legal, oversight and maintenance costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken.
14. **Restoration Planning.** The Trustees prepared a Restoration Plan describing how the funds dedicated for natural resource restoration efforts under this Section will be used in accordance with 43 C.F.R. § 11.93, for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources (Appendix A). Such natural resource restoration projects include, but are not limited to, Restoration Work, including CERs, for the CSXT Ship Canal and Concrete Central Properties, and the City's Houghton Park and Upstream Parcels Properties, as set forth in the Restoration Plan (Appendix A). If the Trustees do not or cannot implement any identified restoration project as described in Appendix A, as a result of public comment or otherwise, they may implement any other restoration project(s) that are consistent with the Trustees' restoration objectives as set forth in the Restoration Plan, subject to further public comment, if the Trustees determine further public comment is appropriate, however Honeywell shall have no liability or obligation, including without limitation liability or obligation to pay any costs, with regard to any such additional restoration project(s).
 15. Decisions regarding any use or expenditure of funds from any segregated Buffalo River sub-account under Paragraphs 8.b and 9 that are dedicated for Trustee-sponsored natural resource restoration efforts shall be made by unanimous written agreement of the Trustees, acting through the Trustee Council, pursuant to the MOA, attached hereto as Appendix D. Neither CSXT nor Honeywell shall be entitled to dispute, in any forum or proceeding, any decision relating to use of such funds or restoration efforts. Nothing in this Paragraph is intended to alter or modify any right, obligation, or limitation on the Trustees' implementation of Trustee-sponsored natural resource restoration efforts under any applicable law, rule, or regulation.

VIII. CONSERVATION EASEMENTS AND RESTRICTIONS

16. The draft CERs contained in Appendix C.1 and Appendix C.2 (the "CSXT CERs") have been determined by the Trustees to be approvable provided they are substantially in the respective forms of Appendix C.1 and C.2. CSXT shall execute the CSXT CERs within 30 days from the receipt of written agreement by CSXT and the Trustees that the accompanying survey and title work is acceptable.
 - a. A list of any prior liens and/or encumbrances as set forth in the title insurance commitments referenced below shall be provided to the Trustees for each property which will be subject to a CER;
 - b. If either of the CSXT CERs is not substantially in the form contained in Appendix C.1 or Appendix C.2, it is subject to the approval process set forth in Paragraphs 20-24:

- c. Pursuant to Paragraph 17 below, Honeywell is obtaining a current title insurance commitment which will provide the basis for a title policy to be issued in accordance with the laws, standards and practices of the State, running to the Grantee of the CER, insuring that the Grantee holds title to the conservation easement (which will cover portions of Protected Property located within the Concrete Central and City Ship Canal Properties), subject to any encumbrances of record, with a copy of any such encumbrances to be provided to the Grantee of the applicable CER. The title insurance policy shall be provided by a recognized title insurance company licensed to issue such insurance in the State, and coverage shall be in an amount equal to the real estate tax assessment for the applicable properties or another amount agreed to between Honeywell and the recipient of the title policy. If such foregoing title insurance commitment reveals an encumbrance on title which will interfere with the compensatory and intended purpose of the CER as set out in and limited by each such instrument, CSXT intends to undertake efforts to correct such defect within the exercise of its discretion. In no circumstances is Honeywell required to address any encumbrances, including without limitation obtaining or paying for any costs in connection with any efforts to cure defects, including without limitation any subordination agreements.

17. Honeywell shall be exclusively responsible for

- a. all “Closing Costs” related to the recording of each CER in the Erie County Clerk’s Office on portions of CSXT’s City Ship Canal and Concrete Central Properties and the City’s Houghton Park and Upstream Parcels pursuant to this Consent Decree. “Closing Costs” consist of and are limited to the costs of any necessary title insurance commitment and related title searches, transfer or recording fees charged by the Erie County Clerk with regard to each CER, and a boundary survey conducted by a licensed surveyor for each Protected Property. In no event shall Honeywell have any obligation to address or cure any title defects or encumbrances found to exist on the Concrete Central and City Ship Canal Properties or the City’s Houghton Park and Upstream Properties. It is understood and acknowledged by the Parties that in light of the global Covid-19 Pandemic, the ability to conduct title searches necessary to obtain title commitments and title policies has been significantly delayed. At present, title companies in Buffalo have been unwilling to commit to any timeframes for completing the title searches for each Protected Property. Honeywell will continue to work in good faith to secure the reasonable services of a qualified title company to perform the title searches, but cannot warrant when such searches and the issuance of title insurance policies will be completed. Honeywell and CSXT are not and shall not be liable for penalties under this Consent Decree for continued delays in the performance of title searches, the inability to obtain issuance of title insurance commitments or policies for each Protected Property, or the inability to record CERs due to delays related to the global Covid-19 Pandemic.
- b. “Closing Costs” do not include the attorneys’ fees, consultants’ fees, or salaries of the Parties; the costs paid directly to the Grantee of the CER for the cost of holding the CER in perpetuity, the latter such costs and expenses shall be paid by the Trustees to the Grantee or beneficiary of the CER at the time the CER is recorded; or any other costs not specifically identified in Paragraph 17.a. or b, above.

18. Recording the CERs:

- a. CSXT: No later than sixty (60) days after the respective date of completion of the Restoration Work on each Protected Property owned by CSXT (excluding ongoing invasive species management and other long-term monitoring and maintenance), or other reasonable time period that is agreed upon by the Trustees and CSXT due to the Covid-19 Pandemic, CSXT shall arrange for the recording of the applicable Trustee-approved CER (for which recording costs charged by the Erie County Clerk Honeywell is responsible pursuant to Paragraph 17 above), for each parcel of land that comprises the Protected Property. CSXT shall deliver proof of such recording, with page and book numbers, to the Trustees, within thirty (30) days of recording.
- b. Honeywell: It is anticipated that no later than within one (1) year of the Effective Date, or other reasonable time period that is agreed upon by the Trustees and Honeywell due to the Covid-19 Pandemic, including allowing reasonable time for a title search to be completed and title insurance to be obtained, Honeywell shall arrange for the recording of the applicable CER, in the form attached as Appendix E to this Consent Decree, for Houghton Park and each of the Upstream Parcels that is subject to Restoration Work. Honeywell shall deliver proof of such recording, with page and book numbers, to the Trustees, within thirty (30) days of recording. The Trustees have informed Honeywell that the Trustees and the City of Buffalo have agreed to the form of the CER attached as Appendix E.

19. Treatment of the Affected Property and the Protected Property During Intervening Time Period and Access to other CSXT Property.

- a. As of the Date of Lodging of this Consent Decree, and prior to recording a Trustee approved CER on the CSXT City Ship Canal Property and Concrete Central Property, the Parties agree to the following: (1) CSXT shall not use the Protected Property that is subject to approved CERs in a manner that is inconsistent with the Restoration Work planned for such properties, except this provision is not intended to prevent CSXT from removing the iron rails that remain on the CSXT City Ship Canal Protected Property, or continuing to use its reserved rights in the Properties; (2) provided Plaintiff executes and complies with a Right of Entry Agreement governing the proposed Restoration Work in a form substantially similar to that in Appendix H for Ship Canal West, CSXT shall not interfere with Plaintiffs' performance of Restoration Work on the Ship Canal Protected Property or Affected Property or interfere with Plaintiffs' limited right of access to enable Plaintiffs to perform such work; and (3) provided Plaintiff executes and complies with the relevant Private Crossing Agreement or Right of Entry Agreement governing the proposed Restoration Work in a form substantially similar to that in Appendix I for Concrete Central, CSXT shall not interfere with Plaintiffs' limited right of access across its property in designated locations to enable Plaintiffs to perform the proposed Restoration Work on the Concrete Central property.
- b. Upon execution of the CSXT CERs attached as Appendix C., Plaintiffs may begin undertaking the Restoration Work on any Protected Property or the Affected Property, subject to the limitations on such activities contained within each CER, or within the

Right of Entry Agreement [or Private Crossing Agreement] referenced in this Consent Decree.

20. Subject to Paragraphs 16. a and c, after review of any proposed CER submitted pursuant to Paragraph 16, if required, the Trustees shall in writing: (a) approve the CER (“Trustee-Approved CER”); (b) approve part of the CER, with conditions; or (c) disapprove the CER.
21. If the submission is disapproved in whole or in part pursuant to Paragraph 20(b) or (c), the landowner submitting the CER (“the submittee”) shall, within thirty (30) days or such other time as the parties to the dispute agree to in writing, correct all deficiencies and resubmit the CER, for approval, in accordance with the preceding Paragraphs.
22. If a resubmitted CER, or portion thereof, is disapproved in whole or in part, the Trustees may again require the submittee to correct any deficiencies, in accordance with the preceding Paragraph, or may themselves correct any deficiencies, subject to the submittee’s right to invoke Dispute Resolution and the right of the Trustees to seek stipulated penalties and other relief.
23. Any stipulated penalties applicable to any original submission of a CER, as provided in Section XIII (Stipulated Penalties), shall accrue during the thirty (30) day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part.
24. Each approved CER, or any portion thereof, shall be incorporated into and enforceable under this Consent Decree.

IX. ACCESS AND CER COORDINATORS

25.
 - a. Upon recording of a CER, Plaintiffs shall have the same access rights, and be subject to the same access limitations, as provided to the Grantee under the CER, including the obligation to obtain of Right of Entry Agreement to be granted additional access under certain conditions.
 - b. Within thirty (30) days of the Effective Date, the Plaintiffs and CSXT shall notify each other, in writing, of the name, address, and telephone number of their respective designated coordinator(s) for access and CER related work, with respect to the CSXT City Ship Canal Property. If a coordinator initially designated is changed, the identity of the successor shall be provided at least five (5) working days before the change occurs, unless impracticable. In no event shall notification be given later than the actual day the change is made unless impracticable. The coordinator(s) shall have sufficient expertise to adequately oversee all aspects of the work or access that they are to coordinate.
26.
 - a. Subject to Paragraphs 19 and 27, upon execution of the Right of Entry Agreement substantially in the form contained at Appendix C, CSXT shall provide Plaintiffs, their contractors, and subcontractors, with all the same rights of access to the Protected Property and/or to the Affected Property as provided to Grantee in the CERs attached as Appendix C., and each shall be subject to the limitations relating to such access contained in the CER and Right of Entry Agreement.

b. Plaintiffs acknowledge herein and shall ensure that its contractors and subcontractors acknowledge in any written contract that CSXT makes no guarantee, representation or warranty regarding the physical or environmental condition of either the Protected Property or the Affected Property, and CSXT expressly disclaims any and all obligation and liability to Plaintiffs, their contractors, and subcontractors, regarding any defects which may exist with respect to the condition of the Protected Property and/or Affected Property. Subject to the aforementioned limitations, those in Paragraph 27 below and the terms of each applicable CER or Right of Entry Agreement, access is authorized for the following:

- (a) Planning, implementing and monitoring the Restoration Work on Affected Property, including invasive species control and native species planting on the eastern shore of the City Ship Canal property;
- (b) Verifying any data or information submitted to the Trustees;
- (c) Obtaining samples for the purposes of implementing Restoration Work;
- (d) Determining whether the Protected Property is being used in a manner that is prohibited or restricted under the Consent Decree;
- (e) Implementing, monitoring, maintaining, reporting on, and enforcing any CER; and
- (f) Conducting any activity related to this Consent Decree.

27. In the event that Plaintiffs, their contractors and subcontractors require access to any Affected Property or Protected Property across any track with personnel or equipment, for purposes of this Consent Decree, such access shall be governed by a Private Crossing Agreement or other written access agreement, depending on the nature and duration of the access, as attached as Appendix C for the respective Affected Properties.
28. Obligations of Plaintiffs and CSXT during the performance of Restoration Work:
- a. the Plaintiffs shall install and maintain, at their own expense, for twenty years, appropriate signage at the north and south perimeters of the Protected Property of the Ship Canal to advise the public of the limits to the use of such Protected Property. This provision is intended to survive the termination of the Consent Decree.
 - b. the Plaintiffs shall install a gate and maintain it for twenty years, with dual locks, across the southern boundary line of the Protected Property of the Ship Canal, as depicted in Exhibit 1 of the Ship Canal CER, and provide a key or code combination to CSXT. This provision is intended to survive the termination of the Consent Decree.
 - c. the Plaintiffs shall not disturb the existing drainage on the Protected Property so as not to impair adjacent railroad operating property drainage and shall not redirect or increase the quantity or velocity of surface water runoff or streams into CSXT's drainage system or upon any adjacent railroad operating property or other lands and facilities of CSXT.

- d. Plaintiffs shall not introduce, foster, or release any threatened or endangered species of plant or wildlife, or intentionally create or enhance habitat for the purpose of attracting or benefitting any such species, on the Protected Property.
- e. Plaintiffs agree that the Designated Paths on the Ship Canal Protected Property will provide protective cover, such as pavement or collectively 6 inches of gravel, wood chips, or soil, or some other similarly protective cover.
- f. Neither Plaintiffs' nor its contractors or subcontractors shall operate any equipment at a distance closer than fifty (50) feet from the center of any track, without the prior approval of the CSXT Representative. CSXT shall mark any such fifty (50) foot boundary near any work area so as to be clearly visible to Plaintiffs and their contractors and subcontractors, and Plaintiffs shall ensure that their contractors or subcontractors install a temporary fence or stake line which shall remain in place for the entirety of any Restoration Work.
- g. Plaintiffs and its contractors, subcontractors and consultants must comply with CSXT's reasonable safety requirements as required in the applicable Right of Entry Agreement or Private Crossing Agreement.
- h. CSXT is not responsible for the costs of replacement or repair of any injured or damaged Restoration Work on the Protected Property or Affected Property if CSXT did not cause such injury or damage.
- i. CSXT shall remove the iron rails located within the property covered by the CSXT City Ship Canal CER, but it is not responsible under this Consent Decree for the removal of any railroad ties located on that property or any other scrap material, or equipment or infrastructure in any other location.

X. FORCE MAJEURE

- 29. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of CSXT or Honeywell, and/or of any entity controlled by such Party that delays or prevents the performance of any obligation under this Consent Decree despite such Party's best efforts to fulfill the obligation. The requirement that CSXT or Honeywell exercise "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 work under this Consent Decree or comply with any obligation of this Consent Decree.
- 30. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which any Party intends or may intend to assert a claim of force majeure, such Party shall notify the Trustees' project coordinator orally, within ten (10) days of when such Party first knew that the event might cause a delay. Within fourteen (14) days thereafter, such Party 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; the rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of such Party, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Such Party shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Such Party shall be deemed to know of any circumstance of which such Party, any entity controlled by such Party, or such Party's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude such Party from asserting any claim of force majeure regarding that event, provided, however, that if the Trustees, despite the late or incomplete notice, are able to assess to their satisfaction whether the event is a force majeure under ¶ 29 and whether such Party has exercised its best efforts under ¶ 29, the Trustees may, in their unreviewable discretion, excuse in writing such Party's failure to submit timely or complete notices under this Paragraph.

31. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the Trustees for such time as is necessary to complete those obligations. 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 such Party in writing of their decision. If the Trustees agree that the delay is attributable to a force majeure, the Trustees will notify such Party in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.
32. If such Party elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution) regarding the Trustees' decision, it shall do so no later than fifteen (15) days after receipt of the Trustees' notice. In any such proceeding, such Party shall have the burden of proving that the delay or anticipated delay has been or will be caused by a force majeure, 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 such Party complied with the requirements of ¶¶ 29 and 30. If such Party carries this burden, the delay at issue shall be deemed not to be a violation by such Party of the affected obligation of this Consent Decree.

XI. DISPUTE RESOLUTION

33. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve any disputes between or among the Parties arising under or with this Consent Decree; provided, however, that the provisions set forth in this Section shall not apply to proceedings to enforce obligations that have not been disputed in accordance with this Section, and further provided that nothing in this Consent Decree shall be construed to authorize CSXT or Honeywell to dispute any action or determination of the Trustees in selecting or

carrying out any natural resource restoration activities or in managing or expending funds under this Decree.

34. The Trustees' determinations made by the Trustees under Section VII (Trustee-Sponsored Restoration Projects) and Section XII (Stipulated Penalties), shall be final and binding unless within fifteen (15) business days of receipt of the Trustees' notice of disapproval of a submittal or revised submittal, or notice of an above-listed determination, the Party responsible for the submission invokes dispute resolution procedures of this Section by sending the Trustees a written notice specifying the nature of the dispute and requested relief ("Notice of Dispute").
35. **Informal Dispute Resolution.** Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the Trustees and the Party invoking the dispute. The period for informal negotiations shall not exceed twenty-one (21) days from the time the dispute arises, unless it is modified by written agreement of the disputing parties. A dispute shall be considered to have arisen when the disputing Party sends the Trustees a written Notice of Dispute.
36. **Formal Dispute Resolution.**
 - a. In the event that the disputing parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustees shall be considered final and binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, the disputing Party 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 the disputing Party.
 - b. Within twenty-one (21) days after receipt of such disputing Party's Statement of Position, the Trustees will serve on such disputing Party their written 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.
 - c. An administrative record of the dispute shall be maintained by the Trustees and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Section.
 - d. The Trustees and such disputing Party each shall identify Formal Dispute Resolution Representatives who shall meet to discuss the matter in dispute at the earliest available opportunity and will work in good faith to resolve the matter in dispute. If the disputing parties fail to resolve the dispute within twenty-one (21) days after the initial meeting of the Formal Dispute Resolution Representatives, then the position advanced by the Trustees in their Statement of Position shall be considered binding upon such disputing Party, subject to any agreements the Formal Dispute Resolution Representatives may have reached on one or more issues and further subject to such disputing Party's right to seek judicial review pursuant to the following subparagraph. In such event the Trustees shall within five (5) days of the conclusion of the formal dispute resolution process notify such disputing Party in writing that the formal dispute resolution process has concluded.

Such disputing Party may seek judicial review of Trustees' Statement of Position (as modified by any agreements the Formal Dispute Resolution Representatives may have reached) pursuant to the following subparagraphs.

- e. Any matter in dispute shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the disputing Party with the Court and served on all other Parties within twenty-one (21) days after receipt of the Trustees' letter notifying the disputing party of the conclusion of the formal dispute resolution process. The motion shall include a description of the matter in dispute, the efforts made by the disputing 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 Consent Decree. The disputing parties shall jointly move the Court to establish a schedule under which the Plaintiffs may file a response to such disputing Party's motion within twenty-one (21) days of receipt of the motion, and such disputing Party may file a reply brief within five (5) days of receipt of the response. If the Court does not grant the motion for such a schedule, then the disputing parties shall file the response and reply in accordance with the schedule set forth in the Local Rules for the Western District of New York.
- f. Standard of Review.
 - (1) Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 33 pertaining to: (1) the approval of CERs; (2) the Trustees' implementation of Trustee-sponsored Restoration Projects under Section VII; and (3) all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted as follows: CSXT and Honeywell shall have the burden of demonstrating, based on the administrative record, that the administrative resolution of the dispute by the Formal Dispute Resolution Representatives, or their designees, is arbitrary and capricious or otherwise not in accordance with law.
 - (2) Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute the Disputing Party shall bear the burden of demonstrating that its position complies with this Consent Decree.
- g. The foregoing notwithstanding, Plaintiffs, CSXT and Honeywell acknowledge that disputes may arise that require resolution on an expedited basis. In such cases, such Parties shall agree on an expedited schedule or, absent prompt agreement, the requesting Party may petition the Court for imposition of an expedited schedule.
- 37. The invocation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of such disputing Party under this Consent Decree, unless the Trustees agree or the Court determines 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 41. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that such disputing Party does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XII. STIPULATED PENALTIES

- 38.** CSXT and Honeywell shall be liable for stipulated penalties in the amounts set forth in Paragraphs 39 and 40 to the Plaintiffs for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section X (Force Majeure), or prevailing following the Dispute Resolution procedures in this Decree. “Compliance” by CSXT and Honeywell shall include completion of all activities and obligations, including payments, required under this Consent Decree, or any CERs approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, and any CERs approved under this Consent Decree. Each Party is only liable for stipulated penalties associated with its own failure to comply with the requirements of this Consent Decree and not for the failure of any other Party.
- 39. Stipulated Penalty Amounts – Payments.** In addition to Interest under Paragraph 12, the following stipulated penalties shall accrue per violation per day for each such failure to make any payment required pursuant to Section VI (Payments by Honeywell):

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

- 40. Stipulated Penalty Amounts – CERs.** The following stipulated penalties shall accrue per violation per day for CSXT’s failure to submit timely or adequate CERs pursuant to the Consent Decree and for CSXT’s and/or Honeywell’s failure to timely record approved CERs pursuant to the Consent Decree, except that stipulated penalties shall not apply for (i) delays in such recording process attributable to the Covid-19 pandemic, including delays in the ability to complete title searches and obtain title insurance, and (ii) delays due to the City’s failure to execute the CERs in recordable form provided that Honeywell exercises reasonable efforts to obtain the City’s cooperation.

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

- 41.** All penalties shall begin to accrue on the Day after performance or payment is due, or a violation occurs, whichever is applicable, and shall continue to accrue through the final date of satisfactory performance or payment, or until the violations ceases. However, stipulated penalties shall not accrue: with respect to judicial review by this Court of any dispute under Section XI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court’s receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.
- 42.** Any Party owing any stipulated penalty shall pay such stipulated penalties to the Plaintiffs within thirty (30) Days of a written demand by any Plaintiff, unless such Party invokes the

Dispute Resolution procedures under Section XI (Dispute Resolution) within the 30-Day period. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiffs. Penalties shall accrue as provided in the preceding Paragraph regardless of whether the Plaintiffs have notified the Party of a violation or made a demand for payment.

43. Any Party owing any stipulated penalty to the United States shall pay such stipulated penalties to the United States at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to: the DJ number, 90-11-3-08780; the case name; and the purpose of the payment. The Party making the payment shall provide confirmation notice of its payment as required by Paragraph 11.
44. Penalties shall continue to accrue as provided in Paragraph 38 during any dispute resolution period, but need not be paid until the following:
 - a. If the dispute is resolved by agreement of the parties or by a decision of the Trustees that is not appealed to this Court, accrued penalties determined to be owed shall be paid to the Trustees within thirty (30) days after the agreement or the receipt of the Trustees’ decision;
 - b. If the dispute is appealed to this Court and the Plaintiffs prevail in whole or in part, the applicable Party shall pay all accrued penalties determined by the Court to be owed to the Plaintiffs within sixty (60) days after receipt of the Court’s decision or order, except as provided in Paragraph 44.c;
 - c. If the District Court’s decision is appealed by any disputing Party, the disputing Party shall pay all accrued penalties determined by the District Court to be owed to the Trustees into a court registry investment system account (“CRIS Account”) or an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within sixty (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 sixty (60) days. Within fifteen (15) days after receipt of the final appellate court decision, any disputing party may request that the clerk of Court for the CRIS account, or the escrow agent, pay the balance of the account to the Plaintiffs or to the disputing Party to the extent that they prevail.
45. If a Party fails to pay stipulated penalties when due, such Party shall pay Interest on the unpaid stipulated penalties as follows: (a) if such Party 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 42 until the date of payment; and (b) if such Party fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 42 until the date of payment. If such Party fails to pay stipulated penalties and Interest when due, the United States, the State, or the Tuscarora Nation may institute proceedings to collect the penalties and Interest.

46. The payment of penalties and Interest, if any, shall not alter in any way the Parties' obligations to make any payment required under this Consent Decree or to perform any other requirement of this Consent Decree.
47. Except as provided in Section XIII (Covenant and Reservations of Rights by Plaintiffs), nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the Plaintiffs to seek any other remedies or sanctions available by virtue of any Party's violation of this Consent Decree 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 Plaintiffs shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.
48. Notwithstanding any other provision of this Section, Plaintiffs may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree. For stipulated penalties accruing pursuant to Paragraph 35, the Plaintiff to whom payment is owed may, in its unreviewable discretion, waive payment of any portion of those stipulated penalties that have accrued pursuant to Paragraph 35.

XIII. COVENANT AND RESERVATIONS OF RIGHTS BY PLAINTIFFS

49. Except as provided in Paragraph 50 (General Reservations of Rights), Paragraph 51 (Special Reservations Regarding Natural Resource Damages), and Paragraph 52 (Conditional Covenants), the United States, the State, and the Tuscarora Nation covenant not to sue or to take administrative action against CSXT and its successors, but only to the extent that the alleged liability of the successor of CSXT is based solely on its status as a successor of CSXT; Honeywell and its successors, but only to the extent that the alleged liability of the successor of Honeywell is based solely on its status as a successor of Honeywell; and Other Settling Parties for Natural Resource Damages as follows:
 - a. For Honeywell and the Other Settling Parties, this covenant shall take effect upon the Trustees' receipt of Honeywell's payments pursuant to Paragraph 7 of this Consent Decree;
 - b. For CSXT, this covenant shall take effect upon the Effective Date.

As to Honeywell, CSXT, and the City, the above covenant is respectively conditioned upon the satisfactory performance by Honeywell, CSXT, and the City of their respective obligations under, or related to, this Consent Decree, including (1) CSXT's obligation to submit, record, and comply with, Trustee-Approved CERs for the Restoration Work as set forth in the Restoration Plan regarding CSXT's Ship Canal and Concrete Central Properties, (2) the City's compliance with the Trustee-Approved CERs for Houghton Park Property, and the Upstream Parcels; and (3) Honeywell's obligations to make payments under Section VI and Paragraph 17.a. of the Decree and to record the CERs on the Houghton Park and Upstream Parcel properties. As to the Other Settling Parties, the above covenant is conditioned upon the satisfactory performance by Honeywell of its obligations under this Consent Decree, and the covenant is null and void as to any one of the Other Settling Parties, if such Other Settling Party brings an action against the United

States for any claim set forth in Paragraph 53 of this Consent Decree. These respective covenants extend only to the respective Parties and Other Settling Parties and do not extend to any other person.

- 50. General Reservations of Rights.** The United States, the State, and the Tuscarora Nation reserve, and this Consent Decree is without prejudice to, all rights against CSXT and Honeywell and Other Settling Parties with respect to all matters not expressly included within Plaintiffs' covenant in Paragraph 49. Notwithstanding any other provision of this Consent Decree, the United States, the State, and the Tuscarora Nation reserve all rights against CSXT and Honeywell and Other Settling Parties with respect to:
- a. liability for failure to meet a requirement of this Consent Decree, including but not limited to failure to timely record the CER(s) as set forth in Paragraph 18;
 - b. liability for injunctive relief or administrative order enforcement under any federal or State statute;
 - c. liability under CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), for costs of removal or remedial action incurred or to be incurred by the United States, the Tuscarora Nation, or State;
 - d. liability under CERCLA 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);
 - e. liability for any other damages, or for any other costs incurred or to be incurred by the United States, the State or the Tuscarora Nation, that are not within the definition of Natural Resource Damages;
 - f. liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances or discharge of oil outside of the Site;
 - g. liability based on the release of hazardous substances or discharge of oil at the Site from a facility owned or operated by CSXT, Honeywell or Other Settling Parties when such ownership or operation commences and such release occurs after the Date of Lodging of this Consent Decree with this Court and such release does not arise from performance of work required by any federal or state consent decree, any federal or state administrative order, or a federal or state permit or approval regarding the Site, including work required by the Great Lakes National Program Office of USEPA pursuant to the Great Lakes Legacy Act, assuming such work is performed in conformity with the requirements of any such decree, order, approval or permit;
 - h. liability arising from any CSXT, Honeywell's or Other Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of hazardous substances or oil at the Site, after the Date of Lodging of this Consent Decree with this Court that does not arise from the performance of work required by any federal or state consent decree, any federal or state administrative order, or a federal or state permit or approval regarding the Site, including work required by the Great Lakes National Program Office of USEPA pursuant to the Great Lakes Legacy Act,

assuming such work is performed in conformity with the requirements of any such decree, order, permit, or approval; and

i. criminal liability.

51. **Special Reservations Regarding Natural Resource Damages.** Notwithstanding any other provision of this Consent Decree, the United States, the State and the Tuscarora Nation each reserves the right to institute proceedings against CSXT, Honeywell and the Other Settling Parties in this action or in a new action seeking recovery of Natural Resource Damages, based on: (i) conditions relating to the Site, unknown to the Trustees as of the Date of Lodging of this Consent Decree, that cause or contribute to injury to, destruction of, or loss of Natural Resources (“Unknown Conditions”), or (ii) information received by the Trustees after the Date of Lodging of this Consent Decree which indicates that there is injury to, destruction of, or loss of Natural Resource Damages of a type or future persistence unknown by the Trustees as of the Date of Lodging of this Consent Decree (“New Information”). The following shall not be considered Unknown Conditions or New Information for purposes of this Paragraph: (i) an increase solely in the Trustees’ assessment of a known Natural Resource Damage; and (ii) injury to, destruction of, or loss of Natural Resources at the Site, arising from the re-exposure, re-suspension, or migration of hazardous substances or oil known by the Trustees to have been released into or at the Site prior to the Date of Lodging where such re-exposure, re-suspension or migration results from natural causes or causes other than the Settling Defendants. For purposes of this Paragraph, the conditions and information known to the Trustees on the Date of Lodging of this Consent Decree shall include the conditions and information set forth in any sampling data and other data and information in the possession or control of the United States, the State, or the Tuscarora Nation concerning the Site at any time prior to the Date of Lodging of this Consent Decree; and/or all analyses, diagrams, maps, reports, and surveys performed at the Site by or on behalf of the United States, the State, or the Tuscarora Nation.

52. **Conditional Covenant.** Notwithstanding the foregoing, the United States, the State, and the Tuscarora Nation each reserve its rights to assert and pursue all claims, causes of action, and defenses relating to Natural Resource Damages against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against the United States, the State, or the Tuscarora Nation relating to Natural Resource Damages at the Site.

XIV. COVENANTS BY CSXT AND HONEYWELL

53. **Covenants by CSXT and Honeywell.** CSXT and Honeywell each covenant not to sue and agree not to assert any claims or causes of action against the United States, the State, or the Tuscarora Nation, or their contractors or employees, including without limitation in their capacity as Trustees, with respect to Natural Resource Damages, for any liability for costs incurred in connection with any response action undertaken at the Site under the Great Lakes Legacy Act, 33 U.S.C. §1268, *et seq.*, or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. §§ 4611 and 9509, or any other provision of law;
- b. any claims under CERCLA §§ 107 or 113, 42 U.S.C. §§ 9607 or 9613, relating to Natural Resource Damages; or
- c. any claims arising out of activities related to restoration projects, including without limitation, claims based on the Trustees' selection of restoration projects, implementation and oversight of restoration projects, and/or approval of the CERs for such activities.

These covenants not to sue shall not apply in the event that one or more of the United States, the State, or the Tuscarora Nation, including without limitation in their capacity as Trustees, takes administrative action, issues administrative findings and orders, or brings a cause of action against CSXT or Honeywell pursuant to the reservations set forth in Paragraphs 47, 50, 51 and 52, above, but only with respect to such entity, and to the same extent and for the same matters, transactions, or occurrences as are raised in the claims asserted by the respective entity pursuant to such reservations.

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

XV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

55. Except as provided in Paragraph 49.(a) (Covenant as to Other Settling Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The Plaintiffs, CSXT and Honeywell each expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each such 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.
56. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which CSXT, Honeywell and each Other Settling Party has resolved its liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Natural Resource Damages; provided, however, that if the United States, the Tuscarora Nation, or the State exercises rights under Paragraph 52 (Conditional Covenant), or the reservations in Section XIII (Covenant and Reservations of Rights by Plaintiffs), other than in Paragraph 50.a (claims for failure to meet a requirement of the Consent Decree) or Paragraph 50.i (criminal liability), the "matters addressed" in this Consent Decree will no longer include those natural resource damages that are within the scope of the exercised reservation.

57. The Plaintiffs and CSXT and Honeywell agree, and by entering this Consent Decree 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 Consent Decree constitutes a judicially-approved settlement pursuant to which CSXT and Honeywell and each Other Settling Party has resolved its liability to the United States for Natural Resource Damages within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), subject to the reservations in Paragraph 53. The contribution protection afforded by this Consent Decree shall take effect:
- a. for Honeywell and the Other Settling Parties, upon the Trustees' receipt of the payments set forth in Paragraph 7 of the Consent Decree; and
 - b. for CSXT, upon the Effective Date.
58. CSXT and Honeywell shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States, the State and the Tuscarora Nation in writing no later than sixty (60) days prior to the initiation of such suit or claim.
59. CSXT and Honeywell shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States, the State and the Tuscarora Nation within ten (10) days after service of the complaint on such Party. In addition, each such Party shall notify the United States, the State and the Tuscarora Nation within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial.
60. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States, the State or the Tuscarora Nation for injunctive relief, recovery of response costs or Natural Resource Damages, or other appropriate relief relating to the Site, CSXT and Honeywell 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, the State or the Tuscarora Nation 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 not to sue set forth in Section XIII (Covenant and Reservations of Rights by Plaintiffs).

XVI. RETENTION OF RECORDS

61. Until ten (10) years after CSXT and Honeywell have respectively fully implemented its obligations under this Consent Decree, each such Party shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate to its liability under CERCLA with respect to the Site. In addition, each such Party must retain all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each such Party must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the implementation of the requirements of this Consent Decree, provided, however, that each

Party (and its contractors and agents) must retain, in addition, copies of all data generated during the implementation of the requirements of this Consent Decree and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

62. At the conclusion of this record retention period, each Party shall notify the Trustees at least ninety (90) days prior to the destruction of any such Records, and, upon request by the Trustees, such Party shall deliver any such Records to the Trustees.
63. CSXT and Honeywell each certify that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State, or the filing of suit against it regarding the Site, and that it has fully complied with any and all federal and state requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and state law.

XVII. NOTICES AND SUBMISSIONS

64. All approvals, consents, CERs, modifications, notices, notifications, objections, proposals, reports, and requests specified in this Consent Decree must be in writing. Whenever, under this Consent Decree, notice is required to be given, or a report or other document is required to be sent, by one party below to another, it must be directed to the person(s) specified below at the address(es) specified below. Any party listed below may change the person and/or address applicable to it by providing notice of such change to all parties listed below. All notices and submissions shall be considered effective upon receipt, unless otherwise specified. Written notice by regular mail, or by electronic mail with confirmed receipt, in accordance with this Section satisfies any notice requirement of the Consent Decree.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-08348/1

Kimberly Gilmore
Office of the Solicitor
U.S. Department of Interior
Three Parkway Center, Suite 385
Pittsburgh, PA 15220
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As to the State:

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Jared.reed@dec.ny.gov

As to the Tuscarora Nation:

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Attorney for the Tuscarora Nation
Sive, Paget & Riesel P.C.
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New York, NY 10022
astolorow@sprlaw.com

Chief Leo Henry
2006 Mt. Hope Road
Tuscarora Nation
Via: Lewiston, NY 14092

As to CSXT:

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Senior Counsel
CSX Transportation, Inc.
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Jacksonville, FLA 32202
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Kevin Boland, PG.
Project Coordinator
500 Water Street, J-915
Jacksonville, FLA 32202
Kevin_Boland@csx.com

As to Honeywell:

Richard Galloway
Honeywell International
115 Tabor Road
Morris Plains, New Jersey 07950
973-455-4640
Rich.Galloway@Honeywell.com

XVIII. RETENTION OF JURISDICTION

65. This Court retains jurisdiction to modify or enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XIX. APPENDICES

66. The following appendices are attached to and incorporated into this Consent Decree:
- “Appendix A” is the Restoration Plan;
 - “Appendix B” is the list of prior settlers with Honeywell who constitute the “Other Settling Parties” in this Consent Decree;
 - “Appendix C” is the draft form of CER for the CSXT properties, including C.1. for the Concrete Central Property, and C.2. for the City Ship Canal Property, including the respective general forms of access agreement set forth therein;
 - “Appendix D” is the Memorandum of Agreement signed by the Trustees;
 - “Appendix E” is the draft form of the mutually acceptable CER to be recorded on the City’s property known as the undeveloped portion of Houghton Park and the Upstream Parcels;
 - “Appendix F” is a map of the Concrete Central Property owned by CSXT, subject to the CER;

“Appendix G” is a map of the Ship Canal Property owned by CSXT, subject to the CER;
“Appendix H” is a proposed form of Right of Entry Agreement for Ship Canal West; and
“Appendix I” is a proposed form of Right of Entry Agreement/Private Crossing Agreement for Concrete Central.

XX. MODIFICATION

67. Any material modification of this Consent Decree shall be made by agreement of all Plaintiffs, CSXT, and Honeywell in writing, and shall not take effect unless approved by the Court. Any non-material modification to this Consent Decree shall be made by agreement of all Plaintiffs, CSXT and Honeywell and in writing, and shall not take effect until filed with the Court, including any agreement among Plaintiffs, CSXT and Honeywell to substitute properties equivalent in acreage, and habitat value, and located within the Active River Area of the Niagara Greenway Municipal Boundary for the CSXT Protected Properties, if the title work for such Protected Properties reveals complex defects in title that are not practicable to correct, however in no event shall Honeywell be liable or responsible for any costs associated with such substitute properties, including without limitation costs of acquisition or costs of Restoration Work. When a Trustee-Approved CER, as set forth in Appendix E, is recorded on the City’s undeveloped portion of Houghton Park and the Upstream Parcels, the City shall be deemed to be one of the Other Settling Parties listed in Appendix B within the meaning of this Consent Decree, without further need for notification or approval by the Court.
68. Nothing in this Consent Decree shall be deemed to alter the Court’s power to enforce, supervise, or approve modifications (if agreed to by the Plaintiffs, CSXT and Honeywell) to this Consent Decree.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

69. This Consent Decree shall be lodged with the Court for at least thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States, the State and the Tuscarora Nation reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. CSXT and Honeywell consent to the entry of this Consent Decree without further notice.
70. If for any reason the Court should decline to approve this Consent Decree 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 Plaintiff, CSXT or Honeywell and the terms of the agreement may not be used as evidence in any litigation among the Parties.

XXII. SIGNATORIES/SERVICE

71. Each undersigned representative of CSXT, Honeywell, the State, the Tuscarora Nation and the Assistant Attorney General for the Environment and Natural Resources Division

of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

72. CSXT and Honeywell agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified them in writing that it no longer supports entry of the Consent Decree.
73. CSXT and Honeywell shall each identify, on the attached signature page, the name, address, email address, and telephone number of an agent who is authorized to accept service of process by mail or by email on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Honeywell 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. Honeywell need not file an answer to the complaint in this action unless or until this Court expressly declines to enter this Consent Decree.

XXIII. FINAL JUDGMENT

74. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Plaintiffs, CSXT and Honeywell regarding the settlement embodied in the Consent Decree. The Plaintiffs, CSXT and Honeywell acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.
75. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, the Tuscarora Nation and Honeywell. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ___ DAY OF _____, 2021.

United States District Judge

Signature Page for Consent Decree regarding NRD for the Buffalo River Site

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

11/15/21

Dated: _____

/s/ C. A. Fiske

CATHERINE ADAMS FISKE
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
408 Atlantic Avenue – Suite 236
Boston, MA 02110
(617) 748-3399
Addie.fiske@usdoj.gov

Signature Page for Consent Decree regarding NRD for the Buffalo River

FOR THE STATE OF NEW YORK:

11/09/21

Dated

/s/ James C. Woods by caf.

JAMES C. WOODS
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
Albany, New York 12224
(518) 776-2418
Jaimie.Woods@ag.ny.gov

OF COUNSEL

THOMAS BERKMAN
Deputy Commissioner and General Counsel
New York State Department of Environmental
Conservation
Albany, New York 12233
(518) 402-8543
thomas.berkman@dec.ny.gov

Signature Page for Consent Decree regarding NRD for the Buffalo River

FOR THE STATE OF NEW YORK:

Dated

JAMES C. WOODS
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
Albany, New York 12224
(518) 776-2418

Jaimie.Woods@ag.ny.gov



Dated

THOMAS BERKMAN
Deputy Commissioner and General Counsel
New York State Department of Environmental
Conservation
Albany, New York 12233
(518) 402-8543

thomas.berkman@dec.ny.gov

8/30/2021

Signature Page for Consent Decree regarding NRD for the Buffalo River Superfund Site

FOR THE TUSCARORA NATION:

9/20/21

Dated



ADAM STOLOROW
Sive, Paget & Reisel P.C.
New York, NY
astolorow@sprlaw.com

Signature Page for Consent Decree regarding NRD for the Buffalo River Superfund Site

FOR HONEYWELL INTERNATIONAL INC.:

21-Oct-2021

Dated

DocuSigned by:
Van Hook, D. Evan
44AD6F6BBF55404...

Name (print): Evan van Hook
Title: Chief Sustainability Officer
Address: 115 Tabor Rd. Morris Plains, NJ 07950

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

Name (print): Charles Anthony, Esq.
Title: General Counsel, HSEPSS
Company: Honeywell International Inc.
Address: 300 South Tryon Street. Suite 500/600
Charlotte, NC 28202
Phone: 980-279-3070
Email: Charles.Anthony@Honeywell.com

Signature Page for Consent Decree regarding NRD for the Buffalo River Superfund Site

FOR CSXT CORPORATION:

August 16, 2021
Dated

Raghunath S. Chatrathi
Name (print): Raghunath S Chatrathi
Title: Sr. Dir. PSHE
Address: 500 Water St., J-275
Jacksonville, FL 32202

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

Name (print): Daniel Schmitt, Esq.
Title: Senior Counsel
Company: CSX Transportation, Inc.
Address: 500 Water Street, J150
Jacksonville, FL 32202
Phone: 904-359-1126
Email: Daniel_Schmitt@csx.com

APPENDIX A

The Restoration Plan is available at the following website:

https://www.fws.gov/northeast/nyfo/ec/buffalo/DRAFT_Buffalo_River_Restoration_Plan_Environmental_Assessment_September_2019.pdf

APPENDIX B
LIST OF PRIOR SETTLORS WITH HONEYWELL

- American Premier Underwriters, together with all of its predecessors, successors (merged, acquired or otherwise), subsidiaries (including without limitation Lehigh Valley Railroad), and assigns.
- Beazer East, Inc., formerly known as Koppers Company, Inc., together with all of its predecessors, successors (merged, acquired or otherwise), subsidiaries and assigns, including without limitation, its predecessor The Koppers Company; and Three Rivers Management, Inc. (solely in its capacity as an agent for Beazer).
- Buffalo Sewer Authority (subject to City's recording of conservation easement).
- City of Buffalo and all of its departments, agencies, divisions, and instrumentalities (subject to recording of conservation easement).
- Cooper Industries, LLC, together with all of its predecessors (including but not limited to the McGraw-Edison Company), successors (merged, acquired or otherwise), parents, subsidiaries, divisions, affiliates and assigns, and their predecessors, successors, parents, subsidiaries, affiliates and assigns.
- CSX Transportation, Inc., together with all of its parents, subsidiaries, affiliates, predecessors (merged, acquired or otherwise), successors (merged, acquired or otherwise), and assigns.
- DII Industries, LLC, together with all of its predecessors, successors (merged, acquired, or otherwise), parents, subsidiaries, divisions, affiliates and assigns (including but not limited to Dresser Industries, Inc., Dresser, Inc. and Dresser-Rand Company).
- Exxon Mobil Corporation, together with all of its predecessors, successors (merged, acquired or otherwise), subsidiaries and assigns.
- National Fuel Gas Distribution Corporation, together with all of its predecessors, successors (merged, acquired or otherwise), subsidiaries, affiliated and parent companies and assigns.
- Norfolk Southern Railway Company; Norfolk Southern Railway Company's parent corporation and their respective affiliated and subsidiary companies (including consolidated subsidiaries and their affiliates and subsidiary companies); together with each of its and/or their predecessors (merged, acquired or otherwise), successors (merged, acquired or otherwise), and assigns.

APPENDIX C 1

Form of CER for Concrete Central Property Owned by CSXT

Proceeding: #####

Landowner or CE Name, County ###

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (hereinafter the “Conservation Easement”), is made this __ day of __, 2021 between CSX Transportation, Inc. having its principle office at 500 Water Street, Jacksonville, FLA (hereinafter “Grantor”), and, Buffalo Niagara River Land Trust Inc., having an office at 2475 Niagara Street Buffalo, New York 14207 (hereinafter “Grantee”). The People of the State of New York, acting through the Department of Environmental Conservation (“DEC”), having an office at 625 Broadway, Albany, NY 12233, while not a party to this Conservation Easement, has third party enforcement rights, as set forth in New York State Environmental Conservation Law (ECL), Title 3 of Article 49 and this Conservation Easement. The United States Fish and Wildlife Service (“USFWS”), having an office at 3817 Luker Rd., Cortland, NY 13045, while also not a party to this Conservation Easement, has third party enforcement rights, as set forth in ECL, Title 3 of Article 49, and this Conservation Easement, the DEC and USFWS are hereinafter collectively and separately, “Third Party Enforcers”.

WITNESSETH

WHEREAS, Grantor is the owner of certain real property located in the City of Buffalo, Erie County, State of New York, described in Schedule A and depicted in Exhibit 1, subject to those encumbrances and exceptions set forth in Schedule B, both attached hereto and made a part hereof, portions of which will be the subject of this Conservation Easement (the areas protected by said Conservation Easement shall hereinafter be referred to as the “Protected Property”); and

WHEREAS, the Protected Property consists of those portions of the approximately 39 acre peninsula of land on either side of an active mainline rail track located across the River from Red Jacket Park as depicted on Exhibit 1 and

WHEREAS, under a Consent Decree between Grantor, The United States of America, The State of New York, The Tuscarora Nation and Honeywell International Inc., Grantor is required to grant a Conservation Easement covering the Protected Property in order to be eligible for the benefits conferred by such Consent Decree or as a result of such Consent Decree. Restoration of the Protected Property will be conducted by others pursuant to the Consent Decree, the Restoration Plan, and the Restoration Work Plan, and in accordance with the terms of this Conservation Easement; and

WHEREAS, the Protected Property is not used for active railroad operations and by the granting of this Conservation Easement, Grantor intends to preserve and limit the uses and development of the Protected Property in perpetuity, subject to the limitations and reservations specified herein which shall also remain in force and effect in perpetuity, and which among other purposes, allow Grantor’s continued use of portions of the

Protected Property for specified uses consistent with Grantor's ongoing railroad operations, including on adjacent or nearby land, and limit Grantee's activities near railroad infrastructure, including track; and

WHEREAS, work will be performed on the Protected Property pursuant to the Restoration Plan, Restoration Work Plan, and Grantee Work Plan in order to restore and protect habitat for birds, fish, and wildlife, and promote the ecological value of the land, provide open space protection, and protect scenic and natural features; and

WHEREAS, Grantee is a not-for-profit conservation organization created for, among other purposes, to promote, restore, and enhance the natural, ecological, environmental, scenic and recreational values of the Buffalo and Niagara Rivers, Lake Erie, Lake Ontario and their tributaries; and

WHEREAS, Grantee is eligible to accept and to hold this Conservation Easement to protect property important to the conservation of natural resources under the provisions of ECL, Title 3 of Article 49; and

WHEREAS, Grantee is a tax-exempt organization described in Sections 501(c)(3) of the Internal Revenue Code, is a qualified organization as described in Section 170(h) of the Internal Revenue Code, is a not-for-profit conservation organization as described at ECL § 49-0303, and is eligible to hold conservation easements thereunder.

NOW, THEREFORE, Grantor, in the consideration of the Consent Decree and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, grants, conveys, and releases to Grantee this Conservation Easement in perpetuity, pursuant to Article 49, Title 3 of the ECL in, on, over, under and upon the Protected Property on the terms and conditions set forth herein:

1. **DEFINITIONS**: Capitalized words or terms used in this Conservation Easement, or in documents associated with this Conservation Easement (such as the Baseline Documentation), shall have the definition and interpretation as set forth in **Appendix A** attached hereto and incorporated herein, unless such word or term is otherwise specifically and intentionally defined elsewhere in this Conservation Easement or associated document(s).

2. **PURPOSES**: This Conservation Easement is hereby granted to effect the following purposes (hereinafter, the "Purposes") in perpetuity while allowing Grantor to maintain its Railroad Operations on Adjacent Property (as herein defined), and to preserve all of its reserved rights identified herein, including but not limited to, its right of access on over and through the Protected Property as described herein:

2.1 **Intended Uses**. Provide appropriate land uses to assure that the Protected Property will be retained forever predominantly in its open and natural condition, to protect the natural habitat located on the Protected Property in perpetuity for birds, fish, and wildlife, including protecting wetlands, uplands, and stream habitat, protecting fish

and wildlife habitat and the ecological value of the land, providing open space protection, and protecting scenic and natural features and to confine the use of the Protected Property to the activities permitted by this Conservation Easement;

2.2 Limit Development. To limit the development of the Protected Property and prevent residential, commercial, industrial, transportation-related and/or extensive agricultural uses of the Protected Property, except as permitted by this Conservation Easement;

2.3 Prohibit Subdivision. To prohibit Subdivision of the Protected Property, except as permitted by this Conservation Easement, in order to protect existing habitat and habitat improvements at the Protected Property; and

2.4 Protect Scenic and Natural Resource Values. To conserve and protect the scenic and Natural Resource Values of the Protected Property in perpetuity and to prevent any use of the Protected Property that will interfere with the Natural Resource Values of the Protected Property.

3. **RESTRICTED USES AND PRACTICES:** The Parties agree that the following restrictions shall apply to the Protected Property in perpetuity:

3.1 Certain Prohibited Uses. Residential, commercial, extensive agricultural or industrial activities including rail operations of any kind shall not be permitted on the Protected Property nor any other use of, or activity upon, the Protected Property that will interfere with or diminish the Natural Resource Values of the Protected Property except as specifically permitted, or reserved, by the terms of this Conservation Easement, including, without limitation, the right of Grantor to exercise its reserved rights of access.

3.2 Conveyance of Portions of Protected Property; Subdivision. The transfer, conveyance or sale of less than the entire Protected Property described in **Schedule A** and the Subdivision of the Protected Property, or any portion thereof, or any subdivision of specific rights, including easements of any kind, are prohibited, except as follows:

- a. The following actions shall not be considered a division or Subdivision as defined in this Conservation Easement and are permitted under this Conservation Easement. The Grantor shall provide the Grantee with copies of any recorded documents upon completion of a transfer permitted herein and notice of the name and address of such transferee.
 1. Conveyance to Grantee, or to a third party solely for the purpose of facilitating ultimate conveyance to Grantee, of Grantor's interest, in any portion of the Protected Property or of any rights retained by Grantor in

this Conservation Easement with respect to any portion of the Protected Property;

2. Subdivision of the entire Protected Property to separate it from the portion of the same tax parcel upon which Grantor's conducts active rail operations;
3. Conveyance of portions of the Protected Property to abutters to the extent necessary to resolve a bona fide boundary dispute provided that:
 - i. Any conveyance for the purpose of resolving a bona fide boundary dispute requires the prior approval of Grantee, which shall not be unreasonably withheld;
 - ii. The portion of the Protected Property conveyed to a third-party to resolve a boundary dispute shall not remain subject to the terms of this Conservation Easement; and
 - iii. Any real property received by Grantor in exchange for such conveyance to resolve a boundary dispute shall become subject to this Conservation Easement unless Grantee agrees otherwise.
4. Subject to notice and prior written approval of Grantee, which shall not be unreasonably withheld, conveyance of any portion of the Protected Property to a governmental agency, or "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3) whose purpose is consistent with the Purposes of this Conservation Easement and who would qualify as an assignee under Section 9.8 hereof.
5. The Protected Property comprises a portion of the tax parcel owned by Grantor that it is located on. The Grantor's use of the remainder of that parcel does not constitute a division or subdivision of this property.

3.3 Structures. Except as specifically permitted by the terms of this Conservation Easement, and/or the Restoration Work Plan, no Structure shall be constructed or placed in, on, over or upon the Protected Property. For the purposes of this Conservation Easement, the term "Structure" shall be defined as broadly as possible, and shall include, but not be limited to, any building, facility, edifice, or man-made development of any kind or nature, whether of a permanent or temporary nature, including but not limited to: any residence, commercial or industrial building, tower, antenna, mobile home, dock, utility, pavilion, fence, sign, billboard or other advertising material, outhouse and other sanitary facility, bunkhouse, lean-to, camp, cabin, roads,

bridges or other man-made improvements. Grantor and its successors may maintain access roads and existing easements which may contain existing structures or future structures (such as utilities) over portions of the Protected Property in the locations indicated in Schedule C and/or depicted in Exhibit 4, in perpetuity.

3.4 Impervious Surfaces. Except as specifically permitted by the terms of this Conservation Easement, or as currently exists, roads, trails, and other such areas on the Protected Property shall not be paved or covered with impervious surface materials. Access roads on the Protected Property may be covered with gravel and suitable sub-base materials, and such access roads may be maintained in perpetuity by Grantor.

3.5 Utilities. No new telephone, cellular, fiber optic, cable television, electric, gas, water, sewer or other utilities, Structures and towers shall be located over, under, in, on, upon or above the Protected Property, except as follows:

- a. As provided for in Section 6.1;
- b. Pursuant to the provisions of Section 49-0305 of the ECL when no reasonable alternative exists and only to the minimum extent necessary to accommodate the new utility;
- c. Pursuant to the provisions of Section 49-0307 of the ECL;
- d. Municipal or publicly regulated utilities located within, or within 30 feet of, any public right of way easements which run through the Protected Property; or
- e. Any utility corridors, structures or towers that are proposed to be built in the future and specifically permitted by the terms of this Conservation Easement, or with the prior approval of Grantee.

3.6 Waste Disposal

- a. The dumping or storage of ashes (except those generated from onsite heating), trash, waste, non-composted organic waste, sewage, scrap material, sediment discharges, oil and its by-products, leached compounds, toxic fumes, or garbage, on any portion of the Protected Property is prohibited.
- b. No waste water or sewage, chemical wastes or other hazardous waste materials may be dumped or stored on the Protected Property except as provided for herein.

- c. Grantor shall to the best of its efforts, ensure the removal of any trash or debris (except for organic logging debris) from the Protected Property caused by its own activities or the activities of its lessees, contractors or guests.
- d. Grantee shall, to the best of its efforts, ensure the removal of any trash or debris from the Protected Property caused by its own activities. Grantee shall also use best efforts to remove any trash or debris from the Protected Property caused by anyone other than the Grantor, its lessees, contractors, or guests. Grantee intends to conduct semi-annual voluntary clean-ups of the Protected Property according to the Grantee Work Plan.

3.7 Mining; Sand and Gravel Use. The mining or extraction of soil, sand, rock, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited. In no case shall surface or subsurface mining of subsurface oil, gas or other minerals be permitted on the Protected Property.

3.8 Chemical Treatments. The use of herbicides, pesticides, fungicides, rodenticides, fertilizer and pH control or other chemicals ("Chemical Treatments") on the Protected Property is prohibited, except as permitted below:

- a. To control a pest or disease outbreak that threatens the health of the Protected Property;
- b. To control insect pests for human health and safety purposes;
- c. To control non-native plant or animal species.

Notwithstanding this restriction, Grantor is not prohibited from using Chemical Treatments on those portions of the Protected Property that have been reserved by Grantor for access to its property and facilities. Additionally, this paragraph is not intended to limit Grantor's use of its adjacent or nearby properties.

3.9 Exterior Lighting.

- a. No permanent exterior artificial illumination shall be employed on the Protected Property, other than that employed as of the date hereof and identified in the Baseline Documentation and/or Restoration Work Plan.
- b. Notwithstanding this restriction, Grantor may use permanent exterior artificial illumination if necessary for the enjoyment of the Reserved Rights by Grantor.

3.10 Dams and Water Impoundments. The construction of new dams or impoundments, or manipulation and alteration of Watercourses, Water bodies or

Wetlands, but not including necessary structures for storm water management as part of an allowable construction activity, on the Protected Property is prohibited, except for the following:

- a. Grantor may use, operate, maintain, and replace in-kind any existing dam or impoundment; manipulated or altered Watercourse, Water body, or Wetland Structure on the Protected Property, in a manner consistent with their historical use, purposes and impacts, as identified in the Baseline Documentation.;
- b. Grantor shall not be required to notify the Grantee in advance of taking actions in response to an emergency situation relating to dams, impoundments, or Watercourses; Grantor shall not be required to notify or seek approval of the Grantee in advance of conducting routine maintenance activities for the purpose of protecting and maintaining roads, rails, culverts, and other improvements adjacent to the Protected Property, including the lawful removal or breaching of beaver dams or lodges, and the lawful control of beaver populations.

3.11 Non-native Species. Neither Grantor nor Grantee shall plant or intentionally introduce, release or broadcast any non-native, hybrid, or genetically-modified species on the Protected Property, without the prior written consent of the other.

3.12 Control of Habitat. The Protected Property is located near active rail infrastructure. Therefore, Grantee shall not introduce, foster, or release any threatened or endangered species of plant or wildlife, or intentionally create or enhance habitat for the purpose of attracting or benefitting any such species, on the Protected Property.

3.13 Drainage. Grantee, hereby covenants that it, its successors, heirs, legal representatives or assigns shall not disturb the existing drainage on the Protected Property so as not to impair adjacent railroad operating property drainage and shall not redirect or increase the quantity or velocity of surface water runoff or streams into Grantor's drainage system or upon any adjacent railroad operating property or other lands and facilities of Grantor.

3.14 Clearing or Cutting Vegetation. Grantor shall not cut or remove vegetation on the Protected Property except as consistent with the Restoration Plan and Restoration Work Plan or as may be necessary for its reserved rights.

3.15 Noise, Light, Fume, Vibration Abatement. Grantee, and its successors and assigns, recognize that there are active rail operations in the immediate area of the Protected Property and by acceptance of this Conservation Easement, hereby covenants and agrees that this Conservation Easement does not require Grantor to

construct, erect or maintain any noise, light, fume or vibration abatement or reduction structure or facilities on or near the Protected Property and neither Grantor nor its successors or assigns, or any other company affiliated with Grantor shall be liable for or required to pay any part of the cost or expense of erecting or maintaining any such abatement or reduction structures or facilities or any part hereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any noise, light, fume or vibration abatement or reduction structures. Grantee acknowledges and accepts that there may be noise, light and odors associated with acquiring an interest in land adjacent to active rail facilities and Grantee covenants not to sue Grantor, its successors or assigns for existence of any noise, light, fumes and vibrations from Grantor's nearby operations. Grantee acknowledges that the Grantor's adjacent railroad operation is now or may be in the future a 24-hour a day, seven day a week continuous operation that may conceivably create noise, vibration, light, smoke and other inconveniences to those utilizing the Protected Property.

3.16 Development and Building Rights. Except as provided for by the terms of this Conservation Easement, the development and building rights associated with the Protected Property are hereby extinguished and as a result of such extinguishment, shall not be available for transfer to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Neither the Protected Property nor any portion thereof shall be included as part of the gross area of any other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under an otherwise applicable statute, regulation or ordinance controlling land use and building density.

4. GRANTEE'S AFFIRMATIVE RIGHTS: Grantor grants to Grantee the following affirmative rights which shall run in perpetuity with the Protected Property.

4.1 The Grantee, its agents, employees or other representatives shall have access on, over and across the Protected Property at all times to monitor and assure compliance with terms and conditions of this Conservation Easement, and to exercise and administer Grantee's affirmative rights set forth in this Conservation Easement, subject to the limitations in this Section 4, Section 5, and Section 6.5 below. However in no event shall Grantee's access or other activities interfere with Grantor's use or access on over and across the Protected Property, and such right of access does not provide Grantee with the right to cross rail tracks adjacent to the Protected Property with persons or equipment, except in accordance with the limitations stated herein. In addition, this provision does not authorize Grantee to cross any other property owned by Grantor near the Protected Property except as provided in Sections 4.2, 5 and 7 herein. Grantee's right to utilize the Protected Property expressly includes the following:

4.1.1 Inspecting the Protected Property, including inspection by drone or other remote sensing equipment, to determine compliance with the covenants and purposes of this Conservation Easement;

4.1.2 Working with Third Party Enforcers to take any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations of this Conservation Easement;

4.1.3 Undertaking restoration and/or protection projects on the Protected Property pursuant to the Restoration Plan and/or Restoration Work Plan; and

4.1.4 Necessary maintenance of the Protected Property consistent with and pursuant to the Grantee Work Plan.

4.2 Limited Right to Access. Based upon the location of the Protected Property, the sole access to the east side of the Protective Property shall be by boat, and there is only limited access to the west side of the Protected Property other than by boat as described herein.

4.2.1 Grantee and its successors and assigns recognize and acknowledge that Grantor does not warrant access to the Protected Property. Subject to Grantor's approval, and in its sole discretion, Grantee may request temporary or periodic access to the west side of the Protected Property, across CSXT's adjacent Ohio Street Yard, and dependent upon means of access (e.g., by foot or by vehicles and equipment) and depending upon the width of vehicles and equipment. Further, any such access is subject to the requirements contained in paragraph 7 herein. Grantee further agrees that in the event of any transfer of the Protected Property, it shall insure that written notice is provided and contained in relevant transfer documents that CSXT is not legally obligated to provide access to the Protected Property across its adjoining lands.

4.2.2 Grantee recognizes and acknowledges that the Protected Property has been historically used for industrial activity, including rail operations, by a variety of entities. In light of such historic industrial use, Grantee agrees to the following limitations by acceptance of this Conservation Easement:

4.2.2.1 No excavation of any type or of any depth is authorized on the Protected Property without the express written approval of Grantor, except as set forth in Section 4.4;

4.2.3 Grantee shall not, and shall not authorize any other party to, conduct surface or subsurface analytical sampling on or beneath the Protected Property without Grantor's written authorization, except for the purposes of determining soil characteristics for fertility/compatibility of native plantings for the Restoration Work.

4.2.4 Grantee is authorized to use motorized equipment and vehicles to monitor or maintain the Protected Property, subject to the limitations described herein regarding access and crossing tracks with personnel or equipment. Grantor is authorized to cross the Protected Property to access its property, equipment and infrastructure near the Protected Property, via designated access routes with vehicles and motorized equipment. Grantee agrees to indemnify, defend and hold harmless Grantor in the event of any property damage, injuries or death caused or occurring as a result of Grantee's use of such motorized equipment and vehicles on the Protected Property.

4.3 (intentionally blank)

4.4 Grantee's Rights Regarding the Protected Property. The Protected Property may be used for habitat restoration work consisting of stream bank, wetland and upland restoration, including removal of invasive plant species and planting of native species, consistent with the Restoration Plan. Such uses are subject to the limitations relating to intentional establishment of habitat for threatened or endangered species of plants and wildlife. Any excavation other than uprooting of plants and replacement with native plants, shrubs, and trees as set forth in the Restoration Plan, shall only be conducted with the prior written consent of Grantor.

4.5 Grantor's Costs. Grantor shall bear no costs associated with any permitted Restoration Work on the Protected Property or any other work in furtherance of the Restoration Plan.

4.6 Grantee's Rights Regarding the Protected Property's Natural Resource Values. Grantee, its agents, employees or other representatives shall have the right after ten (10) calendar day advance written notice to, but not approval of Grantor, to take such actions as are reasonably necessary to protect the Natural Resource Values of the Protected Property.

4.7 Emergency. Grantee may take such emergency action necessary to respond to natural disaster, public nuisance or threats to human safety in order to preserve the Protected Property and protect the public from such disaster, hazard, or threat.

5. ADDITIONAL LIMITATIONS ON GRANTEE'S RIGHTS TO THE PROTECTED PROPERTY:

The following limitations on Grantee's rights in the Protected Property shall run in perpetuity with the Protected Property:

- a. Grantee and its successors and assigns and agents and contractors shall comply with Grantor's safety requirements when traveling to or from the Protected Property;
- b. In the event that Grantee and its successors, assigns and/or its agents and contractors need to cross any active track with personnel or equipment, such access shall require reasonable advance notice to Grantor and be subject to the terms of a Private Crossing Agreement (Exhibit 3) with Grantor to ensure the safety of the accessing parties and Grantor's equipment and infrastructure.

6. GRANTOR'S RESERVED RIGHTS: Grantor specifically reserves the following rights with respect to the Protected Property (hereinafter "Grantor's Reserved Rights"):

6.1 Utilities. Grantor may lease, maintain, replace, remove and with the permission of the Grantee, relocate telephone, fiber optic, cellular, cable television, electric, gas, water, sewer, or other utility lines, or service, including maintaining an adequate width of the utility corridors identified as "existing" in the Baseline Documentation and Grantor may lease, install, construct, and maintain new utilities subject to the provisions of Section 3.5 of this Conservation Easement.

6.2 Future Sales; Transfers & Conveyances.

- a. Grantor reserves the right to sell, transfer, or otherwise convey the entire Protected Property, or any in-common and undivided interest in the Protected Property, subject to the terms and limitations of this Conservation Easement.
- b. Grantor agrees to give written notice to Grantee of the transfer of any interest in the Protected Property at least twenty (20) days prior to the date of such transfer, except for the grant of a mortgage on all or a portion of the Protected Property or the transfer or sale of stock in the Grantor or any other corporation which may hereafter own all or part of the Protected Property or

transfer or sale of membership interests in any limited liability company which may hereafter own all or part of the Protected Property.

- c. Any grant of a mortgage, or any other interest in the Protected Property after the date of the grant of this Conservation Easement is expressly subject to the terms of this Conservation Easement.
- d. Any grant of less than a fee interest in the Protected Property shall comply with the terms and conditions of this Conservation Easement.
- e. Grantor covenants and agrees that any instrument evidencing any subsequent conveyance, lease, mortgage, security interest, encumbrance, or any other transfer of the Protected Property shall contain the following statement: "This (grant, lease, mortgage, easement, etc.) is subject to a certain Conservation Easement entered into between CSX Transportation, Inc. and Buffalo Niagara River Land Trust Inc., dated _____ and recorded in the office of the _____ County Clerk on _____, in Book _____ of Deeds and Page_____". Both the People of the State of New York acting through the Department of Environmental Conservation and the United States Department of the Interior acting through the United States Fish and Wildlife Service have third party enforcement rights under this Conservation Easement.
- f. Grantor shall provide Grantee with copies of any recorded documents upon completion of a transfer under this Section and notice to Grantee of the name and address of transferee.
- g. Failure of Grantor to comply with the provisions of this Section 6.2 shall not affect the validity of the provisions of this Conservation Easement and Grantee's Affirmative Rights hereunder.

6.3 Emergency Actions.

The Grantor may, but shall have no obligation to, take such emergency actions as it deems necessary, in response to natural disaster, environmental hazards, or threats to human safety, but shall promptly notify the Grantee and Third Party Enforcers of any such actions taken.

6.4 Drainage.

- a. Grantor may maintain or replace existing drainage facilities if necessary to protect Railroad Operations on Adjacent Property, or its reserved rights.

- b. Grantor may undertake actions it deems necessary to prevent the erosion of any slope or shoreline necessary to maintain Railroad Operations on Adjacent Property or to protect its reserved rights, without notice to Grantee but shall promptly notify the Grantee and Third Party Enforcers of any such actions taken.

6.5 Gates, Barriers, Fences; Keys, Combinations; Marking Boundaries.

- a. The Grantor may in its sole discretion, erect additional signs, gates, fences or other barriers on the perimeter of the Protected Property necessary to carry out its rights and obligations hereunder, or to protect its rights in adjacent properties.
- b. The Parties shall provide one another with keys or combinations necessary to open gates and to allow access through such barriers consistent with the terms of this Conservation Easement.
- c. The Parties acknowledge that the Grantor may, but is under no obligation whatsoever, to identify, maintain, and mark the boundaries of the Protected Property. The Parties also agree that the Grantee may, but is under no obligation whatsoever, to mark the boundaries of the Protected Property and will provide notification to the Grantor prior to marking them.

6.6 Grantor's Access. The Grantor reserves the right to use and maintain existing roads on the Protected Property as shown on Exhibit 4.

7. **GRANTEE'S ACCESS TO THE PROTECTED PROPERTY:**

Access to the Protected Property is limited and dependent upon the type of access required and the type of vehicles and equipment (if any) to be used.

- a. Access to the eastern side of the Protected Property, whether with or without vehicles and/or equipment, shall only be by boat. Any other requested access must be pursuant to a Private Crossing Agreement as described further below.
- b. Access to the western side of the Protected Property shall either be by boat, or by the designated route identified in Exhibit 2. Due to the narrow nature of that route and its proximity to active rail tracks, such access requires a Right of Entry Agreement (Exhibit 5) and/or Private Crossing Agreement (Exhibit 3) as described further below, depending on whether such access is by pedestrians, vehicles or construction equipment.

7.1 Access for Vehicles and Equipment Across Other CSXT Property.

To the extent Grantee desires access to the western side of the Protected Property with vehicles and equipment by crossing other CSXT Property along the designated route, Grantee shall provide CSXT with a time schedule and list of all vehicle and equipment details, materials, and scope of work. If CSXT approves such requested access, Grantee and/or its contractors shall comply with CSXT's reasonable safety requirements including execution of a written Private Crossing Agreement and/or Right of Entry Agreement.

8. **ENFORCEMENT:** The Grantee, Third Party Enforcers, and Grantor shall each have the right to enforce terms of this Conservation Easement as follows:

8.1 Inspections. In accordance with Grantee's Right to Enter the Protected Property, as provided in Section 4.1 herein, the Grantee shall have the right to schedule periodic inspections of the Protected Property to determine compliance with the terms of this Conservation Easement. The Grantor shall have the right to accompany the Grantee on said inspections.

8.2 Notice to Cure.

- a. Any Party to this Conservation Easement and/or Third Party Enforcer that determines that the terms of this Conservation Easement have been breached (the "Aggrieved Party") shall notify the offending party (the "Noticed Party") of a breach of any of the terms or conditions of this Conservation Easement including the portion of the Protected Property affected thereby (the "Notice to Cure"). The Notice to Cure shall set forth how the Noticed Party can cure such breach or suspected breach and shall give the Noticed Party thirty (30) days from the date of receipt of the Notice to Cure, or such longer period of time as may be necessary to cure, provided that actions to cure are commenced within such thirty-day period and diligently pursued. Such time periods may be extended in the event of severe weather or if other conditions are experienced that cause a reasonable delay in the Noticed Party's efforts to cure.
- b. At the expiration of such period of time to cure, or any extensions thereof granted, the Aggrieved Party shall notify the Noticed Party of any failure to adequately cure the breach or suspected breach. The Noticed Party shall then have an additional fifteen (15) days from receipt of such notice to cure. At the expiration of said fifteen-day period, the Aggrieved Party may commence any legal or equitable action or proceedings in accordance with

any applicable law to require compliance with the terms of this Conservation Easement.

8.3 Dispute Resolution.

- a. In the event the Parties cannot resolve a dispute arising under this Conservation Easement through the Notice to Cure process outlined above, then either party may by written notice (the "Mediation Notice") require that the parties attempt to resolve the dispute through mediation using a mediator agreed upon by the Parties. If the Parties cannot agree upon a mediator within thirty (30) days of delivery of the Mediation Notice, a mediator will be appointed by the American Arbitration Association in Albany, New York pursuant to their procedures. The mediation shall be held within ninety (90) days of delivery of the Mediation Notice whose recommendations are advisory to the Parties.
- b. Any disputes remaining unresolved after mediation may be pursued through initiation of any appropriate action or proceeding in a court of competent jurisdiction.

8.4 Right to Restore.

- a. Subject to the provisions of this Section 7 hereof, the Noticed Party may be required to restore the Protected Property to its previous condition, in the event of a breach of the terms of this Conservation Easement, and to enforce this right by any action or proceeding necessary.
- b. In the event that the Noticed Party fails to cure in accordance with the provisions of Sections 7.2 and 7.3, the Aggrieved Party, at its sole discretion, and after fifteen (15) days advance notice to the Grantor, may enter the Protected Property for the purpose of restoring same to its Natural State. Such notice shall not be required in the event of an emergency provided that the Aggrieved Party provides notice to the Noticed Party within twenty-four (24) hours of the Aggrieved Party's entry onto the Protected Property in order to take emergency action to mitigate the consequences of a breach.
- c. The Aggrieved Party may resort to the following in order to restore the Protected Property to its prior condition:
 1. Remove items and materials not permitted by this Conservation Easement;

2. Close, fill, grade and plant with appropriate vegetative cover areas or otherwise restore areas affected by a breach;
3. Correct, through reasonably practicable measures, conditions that constitute a breach of this Conservation Easement;
4. Take any other appropriate action reasonably necessary to remedy any breach of this Conservation Easement.

8.5 Force Majeure/Acts of Third Parties. The Grantor shall not be liable for any changes to the Protected Property caused by:

- a. Any natural disaster or act of God, or governmental action not related to enforcement;
- b. Acts of the Grantee, its employees and contractors;
- c. Acts of the public while on the Protected Property.

8.6 Failure to Act. The failure of either party to enforce any of the terms of this Conservation Easement shall not be deemed a waiver of any such term nor shall any such failure in any way bar any enforcement rights hereunder in the event of any subsequent breach of, or noncompliance with, or fault in observance of, any of the terms of this Conservation Easement.

8.7 Third Party Enforcement Rights. Grantor and Grantee agree that as between Grantee and Third Party Enforcers, the Third Party Enforcers shall be primarily responsible for undertaking any and all necessary actions to enforce the terms, conditions and restrictions in this Conservation Easement and shall have the same rights as Grantee to enforce the terms, conditions and restrictions in this Conservation Easement as provided under Section 6 herein. Third Party Enforcers may inspect the Protected Property as contemplated by the terms of this Easement. Third Party Enforcers shall have the right to enter upon and inspect the Protected Property for the purpose of reporting to Grantor and Grantee any violations with the terms, conditions and restrictions of this Conservation Easement. Third Party Enforcers shall have the same rights as Grantee to enforce the terms, conditions and restrictions in this Conservation Easement as provided under Section 7 herein.

9.0 STEWARDSHIP FEES. Within ninety (90) calendar days of the recording of this Conservation Easement at the Erie County Clerk's office, Third Party Enforcers, consistent with the terms of the Consent Decree, shall pay to Grantee a one-time payment in the amount of two thousand four hundred and ninety five dollars

(\$2,495.00), per acre multiplied by the acreage of the Protected Property. Grantee shall provide Third Party Enforcers with payment instructions at or prior to the recording of this Conservation Easement at the Erie County Clerk's office. Grantor is not obligated to fund Grantee or to provide other compensation to Grantee.

10. OTHER TERMS AND CONDITIONS:

10.1 Construction of Terms and Interpretation.

- a. This instrument conveys a Conservation Easement which shall consist of the covenants, restrictions, rights, terms, and conditions recited herein. Reference to this "Conservation Easement" or its "provisions" shall include any and all of those covenants, restrictions, rights, terms and conditions.
- b. Notwithstanding any term or condition of this Conservation Easement, this Conservation Easement shall be construed in accordance with the plain meaning of its terms, and secondarily, to affect the Purposes for which the Conservation Easement was acquired and the Purposes of Article 49 of the ECL. In interpreting the terms of the Conservation Easement, there shall be no presumption favoring the Grantee or the Grantor.
- c. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- d. The captions herein have been inserted solely for convenience of reference and are not part of this Conservation Easement and shall have no effect upon construction or interpretation.
- e. Any reference in this Conservation Easement to a statute, regulation or ordinance shall include any amendment or successor thereto adopted after the date of this Conservation Easement. Any reference in this Conservation Easement to a published document, treatise, or guide shall include any successor or replacement thereto published after the date of this Conservation Easement.

10.2 Effect. This Conservation Easement shall run with the Protected Property as an incorporeal interest in the Protected Property, and shall extend to and be binding upon the Grantor, Grantor's agent, tenants, occupants, lessees, heirs, personal representatives, successors, assigns, and all other individuals and entities, and the Grantee and Grantee's agents, occupants, invitees, successors and assigns; the word

“Grantor” when used herein shall include all of those persons or entities. Any rights, obligations, and interests herein granted to Grantee or Grantor shall also be deemed granted to its subsequent agents, successors, and assigns; the ~~word~~ words “Grantee” and “Grantor” when used herein shall include all of those persons or entities. This Conservation Easement shall be a burden upon and run with the Protected Property in perpetuity.

10.3 Baseline Documentation.

- a. Third Party Enforcers, the Grantor and the Grantee agree that a physical inspection of the Protected Property will be made (which shall not include sampling) and a report of the physical inspection of the Protected Property, known as the Baseline Documentation, (the “Baseline Documentation”) will be prepared by the Grantee, with the approval of the Third Party Enforcers, at no expense to the Grantor.
- b. The Baseline Documentation shall be completed and certified by the Parties as an accurate reflection of the condition of the Protected Property prior to the property transaction closing, consisting of the execution of the Conservation Easement and the recordation of this Conservation Easement in the Erie County Clerk’s office, to be potentially factually supplemented as agreed by Third Party Enforcers and Grantee upon completion of the Restoration Work Plan and, as may be appropriate from time to time
- c. The Parties shall agree and acknowledge that the Baseline Documentation, and any subsequent updates, revisions and amendments, if any, shall consist of, at a minimum, descriptions, maps, photographs, surveys, biological assessments, and other related documentation which shows or depicts significant aspects of the Protected Property as of the date it is signed and acknowledged by the Parties. The Baseline Documentation is intended to serve as an objective, although not exclusive, informational baseline for monitoring compliance with the terms of this Conservation Easement. The Parties agree that, in the event a controversy arises with respect to the nature and extent of uses or the condition of the Protected Property, the Parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.
- d. Grantor and Grantee will make available to each other, and to the Third Party Enforcers, existing Baseline Documentation in their possession relating to the condition of the Protected Property. Either Party may cause to be prepared such additional documentation deemed appropriate by

them (not including sampling), including a survey of the Protected Property, showing its relationship to the parcel boundaries, adjacent features and properties and on-site photographs.

- e. Copies of the Baseline Documentation, signed and acknowledged by both Parties to the Conservation Easement, shall be provided to the Grantor, the Grantee, and the Third Party Enforcers, and maintained in each of their respective offices. One counterpart shall be maintained in DEC's Central Office in Albany.

10.4 Grantee Monitoring and Reporting Requirements. Grantee shall monitor the property for compliance with this Conservation Easement on a semi-annual basis as set forth in Grantee Work Plan. Grantee shall send an annual report on compliance with the terms of this Conservation Easement in the format specified by Grantee Work Plan to Third Party Enforcers and Grantor shall be provided a copy.

10.5 Notice, Review and Approval Process.

- a. Whenever notice or an approval is required from either Party, the Party that must provide notice or that is seeking the approval shall deliver a written or electronic notice or request for such approval in accordance with the notification directions herein.
- b. Requests shall be either approved, approved with conditions, or denied. Approvals shall be made in electronic or written form and shall be based upon whether the proposed action complies with the terms and/or Purposes of this Conservation Easement. If denied, the reasons for denial and criteria applied, with specific reference to the terms of this Conservation Easement, shall be specifically set forth in the written response to the request.
- c. The Parties shall not unreasonably delay, or deny a request for approval.

10.6 Notices, Notification.

- a. Any notice required to be sent to the Grantor herein shall be addressed to:

CSX Transportation, Inc
500 Water St
Real Estate Dept, J180
Jacksonville, FL 32277

CustomerRelations@csx.com

with a copy to Daniel E. Schmitt, Esq.
CSX Transportation, Inc
500 Water St, J150
Jacksonville, FL 32277
daniel_schmitt@csx.com

Or such other designees of Grantor upon written notice to Grantee.

- b. Any notice required to be sent to the Grantee herein shall be addressed to:

Buffalo Niagara River Land Trust
c/o President of the Board of Directors
1902 Niagara Street
Buffalo New York 14207
makedron@icloud.com

with a copy to Adam Walters, Esq., Phillips Lytle LLP, One
Canal Side, 125 Main Street, Buffalo, New York 14203.

Or such other designees of Grantee upon written notice to Grantee.

With a copy sent DEC at:

New York State Department of Environmental Conservation
Regional Forester, Region 9
Town/City 270 Michigan Avenue
Buffalo, NY 14203

With a copy sent USFWS at:
U.S. Fish & Wildlife Service
New York Field Office
3817 Luker Rd.
Cortland, NY 13045

- c. All notices and requests for approval required or permitted to be given under this Conservation Easement shall be made by electronic mail and delivered by hand or sent by registered or certified mail, return receipt requested, or by overnight mail, to the address of the other Party as provided herein. Notice shall be deemed to have been given on the earlier of: (1) receipt of electronic mail, (2) when delivered by hand, or (3) if mailed, three (3) business days

after mailing. The Party receiving a request for approval shall respond to the request within sixty (60) days of its receipt, unless otherwise specified herein.

- d. Either Party may change the individual or address to which notices are to be sent by giving written notice thereof to the other Party in accordance with paragraph (c) above.
- e. Upon mutual written agreement, the Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

10.7 Regulatory Authorities, Compliance with Law. This Conservation Easement shall not remove the necessity of the Grantor or Grantee to obtain any permit and/or approval from any governmental agency having jurisdiction over any activity conducted or to be conducted on the Protected Property.

10.8 Assignment of Grantee's Interest. Grantee may assign this Conservation Easement only to a governmental agency or a "qualified organization" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended. Such assignee should have among its purposes the conservation and preservation of land and water areas and should be capable of complying with its obligations under the terms of this Conservation Easement. Grantee shall require as a condition of assignment that the assignee assume all obligations of Grantee under this Conservation Easement and continue to carry out the conservation purposes of this Conservation Easement.

10.9 Cessation of Grantee's Existence. If Grantee ceases to exist or fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if Grantee is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall be assigned to an entity which is a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or another governmental entity. Grantee's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the cy-pres doctrine.

10.10 Reconveyance If Void. In the event a court of competent jurisdiction determines that this Easement is "void ab initio" in accordance with the provisions of Section 49-0311 of the ECL, Grantor shall, upon request by Grantee, reconvey without change or modification and for no consideration, this Easement to a qualified nominee selected by Grantee; said reconveyance to be made after such declaration that the Easement is "void ab initio" regardless of the fact that Grantee may pursue its right of appeal, or otherwise. In furtherance of this provision:

- a. Grantee, and Third Party Enforcers, shall have the right of enforcement of the reconveyance by Grantor to the nominee by any legal means;

- b. The form of reconveyance shall be satisfactory to Grantee;
- c. Grantee shall pay any costs and expenses, including but not limited to taxes, filing fees and reasonable attorney's fees that Grantor may incur as a result of the reconveyance of the Easement pursuant to the terms of this section.

10.11 Severability. The Parties agree that the provisions of this Conservation Easement are severable and that if any court of competent jurisdiction shall render a judgment voiding or nullifying any provision(s) hereof, the effect of said judgment shall be limited to the nullified or voided portion of this Conservation Easement and the remaining provisions hereof shall continue in full force and effect.

10.12 Modification(s) (Amendments). The Grantor and Grantee may modify this Conservation Easement by mutual agreement in writing, executed by both Parties, in accordance with the provisions of Section 49-0307 of the ECL and recorded in the appropriate County Clerk's Office, provided, however, that no modification shall be made that will adversely affect the status of this Conservation Easement under applicable laws. Any modification shall be consistent with the Purposes of this Conservation Easement and shall not affect its perpetual duration. The party requesting a modification shall be responsible for all related costs, including, but not limited to appraisals, surveys, abstracts, and recording fees.

10.13 Grantor's Negligence.

- a. The Grantor agrees to indemnify and hold the Grantee and/or Third Party Enforcers harmless against all claims, loss, damage and expense the Grantee and/or Third Party Enforcers may suffer as a result of the Grantor's negligence in the course of exercising any rights reserved under this Conservation Easement or as the fee owner.
- b. The Grantor's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to the Grantor by the Grantee and/or Third Party Enforcers of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after the Grantee and/or Third Party Enforcers are served with such document.

10.14 Grantee's Negligence.

- a. The Grantee agrees to indemnify and hold the Grantor and/or Third Party Enforcers harmless against all claims, loss, damage and expense the Grantor may suffer as a result of the Grantee's negligence in the course of exercising any rights granted under this Conservation Easement.

- b. The Grantee's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to the Grantee by the Grantor and/or Third Party Enforcers of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after the Grantor and/or Third Party Enforcers are served with such document.

10.15 Third Party Liability; Statutory Protections from Liability.

- a. Nothing contained in this Conservation Easement shall create any liability on behalf of the Grantor to any third party or create any right, claim or cause of action on behalf of any party other than the Grantor or the Grantee and their successors and assigns, DEC, and USFWS.
- b. Nothing in this Conservation Easement shall be interpreted as an assumption of responsibility by, or basis for liability on the part of, the Grantor for any injury to person or damage to property or loss of life that may be sustained by any person while on the Protected Property in the exercise of any of the rights afforded to the public by this Conservation Easement or sustained by any person as a result of any entry on or use of the Protected Property. This provision is not intended to release the Grantor from any liability for damages to the person or property of its invitees, employees or agents while on the Protected Property under the authority or by the permission of the Grantor.
- c. The Grantor specifically retains all protections from liability provided under New York law to private owners of land, including, but not limited to, the protections contained in Section 9-103 of the General Obligations Law (or any successor or other statutory or regulatory provision then applicable).
- d. Third Party Enforcers shall have no liability or other obligations for costs, taxes, assessments, insurance, maintenance, or other liabilities of any kind related to the Protected Property except to the extent that such liability(ies) arise from the negligent acts of either or both of Third Party Enforcers respectively or their respective agents, contractors or consultants. Third Party Enforcers' rights do not include the right, in absence of a judicial decree, to enter the Protected Property for the purpose of becoming an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, or any similar statute or regulation. Third Party Enforcers employees, and agents have no liability arising from injury or death to any person or physical damage on the Protected Property, except to the extent that such liability(ies) arise from the

negligent acts of either or both of Third Party Enforcers respectively or their respective agents, contractors or consultants.

- e. Grantee shall, at its own expense, procure commercial general liability insurance in which Grantor shall be an additional insured, and keep the same in force for the duration of this Conservation Easement. Such insurance shall defend and pay on behalf of both Grantee and Grantor against claims, including claims for bodily injuries and property damage, occurring on the Protected Property arising out of the negligence of Grantee with a per occurrence limit of not less than two million dollars (\$2,000,000). Grantee shall increase the minimum per occurrence limit by not less than ten percent (10%) cumulatively every five years on the anniversary date of the recording of this Conservation Easement. Grantee shall require that every contractor and/or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall have commercial general liability insurance with the same per occurrence limit as Grantee and shall name Grantor as an additional insured prior to performing such work or services on, at, over or under the Protected Property. Grantee shall also require that every contractor and/or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall indemnify Grantee and Grantor for any damages arising from any negligent acts or omissions on the part of such contractor and/or consultant. Grantee shall directly oversee and manage all volunteers it allows on to the Protected Property and shall require that any volunteers it brings onto the Protected Property sign a waiver releasing Grantor and holding Grantor harmless for bodily injuries and property damage occurring on the Protected Property except to the extent such bodily injuries or property damage are the result of Grantor's negligence. To the extent that additional or different liability insurance is required by any agreement authorizing Grantee to cross Grantor's tracks, such requirement shall not be avoided or impacted by this paragraph.

- f. Each Third Party Enforcer shall require that every contractor and or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall have commercial general liability insurance with at least the same minimum per occurrence limits as Grantee and shall name the Grantor as an additional insured prior to performing such work or services on, at, over or under the Protected Property. Prior to commencing such work or services, such contractor and or consultant shall provide the Grantor evidence of effectuation of additional insured status for the Grantor. To the extent that additional or different liability insurance is required by any agreement authorizing Third Party Enforcer to cross Grantor's tracks, such requirement shall not be avoided or impacted by this paragraph.

10.16 Additional Covenants. The Grantor does further covenant to the Grantee as follows:

- a. That the Grantor is seized of the Protected Property and has the right to convey this Conservation Easement and the rights hereunder.
- b. That the Grantee shall quietly enjoy said rights granted to the Grantee under this Conservation Easement, provided, however, that Grantee's enjoyment of such rights shall not interfere with the Grantor's quiet enjoyment of, and exercise of, its Reserved Rights.
- c. That the Protected Property is expressly subject to: all existing roads, fiber optic facilities, public utilities; all matters of record; any applicable zoning ordinances and subdivision regulations and laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance; all matters that would be revealed by a survey meeting applicable State minimum technical requirements or by an inspection of the Protected Property; the items or matters identified in Schedule B, attached hereto and made a part hereof, and all existing occupancies, encroachments, ways and servitudes, howsoever created and whether recorded or not .
- d. That this conveyance is made subject to the trust fund provisions of Section 13 of the Lien Law.
- e. Conrail Fiber Optic Easement. All right, title and interest in and to fiber occupancies on the Protected Property were reserved unto Consolidated Rail Corporation in deed dated June 1, 1999, recorded among the Public Records of Erie County, State of New York in Deed Book 10957, Page 9391.
- f. Grantee takes its rights to the Protected Property as conveyed by this Conservation Easement "as is". Further, Grantee releases Grantor and further covenants not to sue or bring any claim against Grantor which relates in any way to the environmental condition of the Protected Property, the presence of any contaminants of any nature on the Protected Property, or the recovery of any costs expended by it to investigate or remediate the Protected Property ("hereinafter, Environmental Claims") and Grantor shall defend and indemnify Grantee for any Environmental Claims, as herein defined, made against Grantee. The foregoing indemnification obligation shall be void if Grantee breaches subparagraph 4.2.2 by conducting, or authorizing a third party to conduct, surface or subsurface analytical sampling without Grantor's written authorization.

10.17 Eminent Domain. Whenever all or part of the Protected Property is taken in

exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds from such actions shall be payable to Grantor and Grantee to reimburse any reasonable expenses incurred by Grantor and Grantee in such actions, with the remaining balance payable to Grantee or Third Party Enforcers, at the sole discretion of Third Party Enforcers. Such remaining balance shall only be used to restore, replace, or acquire the equivalent of, injured natural resources having an ecological nexus to the Site.

10.18 Recitation. In consideration of the previously recited facts, mutual promises, undertakings and forbearances contained in this Conservation Easement, the Parties agree upon its terms, conditions, provisions, and Purposes, intending to be bound by it. This Conservation Easement contains the entire understanding between its Parties concerning its subject matter. Any prior agreement between the Parties concerning its subject matter shall be merged into this Conservation Easement and superseded by it.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first written above.

GRANTOR:

By: _____

Its: _____

GRANTEE:

By: _____

Its: _____

THIRD PARTY ENFORCEMENT RIGHTS ACCEPTED BY:
THE UNITED STATE DEPARTMENT OF THE INTERIOR
Acting By and Through its Authorized Official

By: _____
WENDI WEBER, Regional Director
U.S. Fish and Wildlife Service, Region 5

USFWS's Acknowledgment:

COMMONWEALTH OF MASSACHUSETTS)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared, WENDI WEBER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same and that by her signature on the instrument, she, or the person upon behalf of whom she acted, executed the instrument.

Notary Public, Commonwealth of Massachusetts

PEOPLE OF THE STATE OF NEW YORK
Acting By and Through Their Commissioner of Environmental Conservation

By: _____
NANCY LUSSIER, Director
Division of Management and Budget

Grantor's Acknowledgement.

STATE OF _____)
) ss:
COUNTY OF _____)

On the _____ day of _____ in the year 20__, before me, the undersigned, to personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to me that he executed the same and that by his signature on the instrument, he, or the person upon behalf of whom he acted, executed the instrument.

Notary Public, State of New York

Grantee's Acknowledgement.

STATE OF _____)
) ss:
COUNTY OF _____)

On the _____ day of _____ in the year 20__, before me, the undersigned, to personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to me that he executed the same and that by his signature on the instrument, he, or the person upon behalf of whom he acted, executed the instrument.

Notary Public, State of New York

DEC's Acknowledgment:

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared, NANCY LUSSIER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same and that by her signature on the instrument, she, or the person upon behalf of whom she acted, executed the instrument.

Notary Public, State of New York

LIST OF SCHEDULES AND EXHIBITS

APPENDIX A – DEFINITIONS

SCHEDULE A – DESCRIPTION OF THE PROTECTED PROPERTY

SCHEDULE B – EXCEPTED ENCUMBRANCES

SCHEDULE C – EXISTING LEASES

EXHIBIT 1 – MAP OF THE PROTECTED PROPERTY

EXHIBIT 2 – MAP OF ACCESS ROUTE

EXHIBIT 3 - PRIVATE CROSSING AGREEMENT

EXHIBIT 4 – RESERVED ACCESS ROAD AND UTILITIES

EXHIBIT 5 – RIGHT OF ENTRY AGREEMENT

EXHIBIT 6 – PUBLIC INFORMATION FOR REQUESTING ACCESS

APPENDIX A DEFINITIONS

Baseline Document: A compilation of information that documents the current condition and conservation values of the property at the time a conservation easement is closed, unless otherwise agreed by Grantor, Grantee and Third Party Enforcers, generally including maps, photographs and a description of significant features. The report is used to monitor and enforce the easement and is signed by Grantor and the Grantee at time of transfer. The Baseline Documentation may be updated, revised and amended by written agreement of Third Party Enforcers, Grantor and Grantee to reflect work undertaken under the Restoration Plan.

Consent Decree: Shall mean the Consent Decree between United States of America, State of New York, and Tuscarora Nation as Plaintiffs and Honeywell International Inc., and CSX Transportation Inc. as Defendants.

Department: The New York State Department of Environmental Conservation.

Endangered, Threatened, Rare, and Special Concern Species of Native Animals and Plants: Those species of animals listed as endangered or threatened by the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.) and by the State of New York, at Title 6 of the Rules and Regulations of the State of New York, of the Part 182 (6 NYCRR 182). For purposes of this Conservation Easement, this includes the "active inventory" of animal species listed in the most recent Rare Animal Status List produced by The New York Natural Heritage Program, and those species of plants defined as Endangered, Threatened, or Rare in Codes, Rules, and Regulations of the State of New York Part 193 or its successor regulation, and the "active inventory" of plant species listed in the most recent Rare Plant Status List produced by The New York Natural Heritage Program.

Forest Preserve: All lands owned by the State of New York and subject to Article 14 of the New York State Constitution.

Grantee: The Party identified as Grantee in the preamble, its officials, employees, contractors, successors, assigns, authorized agents, personal representatives, tenants, and occupants, and where specifically set forth herein licensees and lessees of Grantee.

Grantee Work Plan: A work plan to be developed by Third Party Enforcers with the concurrence of Grantee and Grantor to direct Grantee to conduct bi-annual monitoring of the Protected Property; and to direct Grantee to provide an annual report on compliance with this Conservation Easement annually to Third Party Enforcers. The

work plan also provides for voluntary pick up of litter and debris on the Protected Property.

Grantor: The term "Grantor" shall include Grantor, its successors, heirs and assigns, and its authorized agents, personal representatives, tenants, occupants, contractors, and employees, and where specifically set forth herein, licensees and lessees of Grantor.

Impervious: Resistant to penetration by moisture. Impervious materials include, but are not limited to, pavement, asphalt, concrete, or other non-porous materials or surfaces used in the construction of roads, trails, parking lots, and other such ground surface improvements. Gravel roads shall not be considered to have an impervious surface.

Lake and Pond(s): A body of water included and shown in the National Hydrography Dataset at a map scale of 1:24,000. Small ponds or lakes with a surface area at mean low water level of ten (10) acres or less, located in the course of a stream, shall be considered a part of the stream.

Mean High Water Mark: The approximate average high water level for a given body of water at a given location that distinguishes between predominantly aquatic and predominantly terrestrial habitat as determined, in order of use, by the following: (1) available hydrologic data, calculations, and other relevant information concerning water levels (e.g. discharge, storage, tidal, and other recurrent water elevation data); (2) vegetative characteristics (e.g., location, presence, absence or destruction of terrestrial or aquatic vegetation); (3) physical characteristics (e.g., clear natural line impressed on a bank, scouring, shelving, or the presence of sediments, litter or debris); and (4) other appropriate means that consider the characteristics of the surrounding area.

Motor Vehicle: Passenger vehicles limited to passenger cars, motorcycles intended for highway use, Snowmobiles or trucks, powered by any means. For the purposes of this Conservation Easement, this definition specifically excludes All-Terrain Vehicles ("ATVs"), mobile homes, off- road motorbikes and motocross cycles.

Motorized Equipment: Tractors, groomers, ATVs, Snowmobiles, motorboats, aircraft and other means of facilitating motorized access, as well as machines not designed for transporting people or for moving earth but incorporating a motor, engine, or other non-living power source to accomplish a task, such as but not limited to, saws, mowers, pumps, drills, and generators.

Motorized Public Access: Entry upon the Protected Property, or a designated corridor (road or trail), by Motor Vehicles.

Motorized Public Access Corridor: A Public Access Corridor designated for Motorized Public Access or general access by the public by any non-motorized means.

Natural Resource Value(s): Shall mean and include the natural habitat located on the Protected Property for birds, fish, and wildlife, including wetlands, uplands, and stream habitat, the ecological value of the Protected Property, and the open space, and scenic and natural features on the Protected Property.

Natural State: The approximate general condition of the Protected Property existing immediately prior to a breach of any term or condition of this Conservation Easement, giving due consideration to the impact of the normal effects of the passage of time; the results of natural forces such as wind, fire, earthquakes, landslides, lightning, floods, ice storms, or other acts of God; prior Forest Management Activities; and the Public Recreational Uses of the Protected Property.

Non-Motorized Public Access: Entry upon the Protected Property, or a designated corridor (road or trail), by means other than Motor Vehicles, Motorized Recreational Vehicles, Motorized Equipment, or any vehicle or machine with a motor.

Non-Motorized Public Access Corridor: A Public Access Corridor designated for Non-Motorized Public Access.

Non-Native Species: Species of organisms that are not native to the Western New York region of New York State, including living organisms introduced from outside their natural ranges. This definition shall also include genetically modified or genetically engineered organisms.

Party/Parties: As defined in the preamble.

Protected Property: The lands subject to this Conservation Easement, more particularly described in Schedule A.

Public Highway: A roadway maintained by the local town, county or state to provide passage by the public in motor vehicles.

Railroad Operations on Adjacent Property: Means any and all existing or future railroad related activities of Grantor on lands located south, east and west of the Protected Property.

Restoration Plan: The Buffalo River Natural Resource Damage Assessment Restoration Plan and Environmental Assessment attached as Appendix A to the Consent Decree.

Restoration Work Plan: A work plan to be developed by Third Party Enforcers, with the concurrence of the Grantee and Grantor, to specify work to be completed on the Protected Property to restore, maintain, and otherwise prepare the Property for the uses specified in this agreement as set forth in the Restoration Plan.

Riparian: Land area and associated vegetation located along, bordering upon, fronting on, abutting, adjacent to, and/or contiguous or in contact with, a watercourse.

Site: For the purposes of this Conservation Easement, the term "Site" shall mean the Buffalo River from the confluence of Cazenovia Creek to the mouth of the River at Lake Erie (approximately the lower 6.2 miles of the main stem of the River including the City Ship Canal that runs 1.4 miles south from the mouth of the River parallel to Lake Erie), as well as the Times Beach Nature Preserve and Confined Disposal Facility.

Significant Natural Communities: An assemblage of interacting plant and animal populations that share a common environment and are those ranked by the New York State Natural Heritage Program, or its successor agency, as being of excellent or good quality and have a high conservation value from a statewide perspective. New York State Natural Heritage Program or successor entity shall set forth specific, documented criteria from time to time to evaluate the occurrences of the specific assemblages of plant and animal populations on the Protected Property to determine the rankings.

State: The State of New York

Structure(s): For the purposes of this Conservation Easement, the term "Structure" shall be defined as broadly as possible, and shall include, but not be limited to, any building, facility, edifice, or man-made development of any kind or nature, whether permanent or temporary, including, but not limited to, buildings, Camps, cabins, lean-tos, towers, wind turbines, tanks, antennas, mobile homes, bridges, docks, utilities, fences, billboards, signs, sanitary facilities, or other man-made facilities or improvements; however, for the purposes of this Conservation Easement the term "Structure" shall specifically not include structures used in conjunction with Forest Management Activities, permitted road construction and maintenance, including, without limitation, roads, culverts, and bridges or those structures such as tree stands or hunting/observation blinds associated with wildlife dependent recreation with an area less than 64 square feet.

Subdivide; Subdivision: Any division of the Protected Property into two or more separate and distinctive lots, units or parcels, whether adjoining or not, for the purpose of sale or conveyance of a portion of the Protected Property to a separate owner.

Third Party Enforcers: The State of New York acting through DEC and the United States Department of the Interior acting through the USFWS.

Unique Habitats: A distinctive place or environment where a plant or animal naturally or normally lives and grows.

Water Bodies: A pond, lake or reservoir.

Watercourse: Natural or artificial channel through which water flows.

Wetland: A surface depression that (1) is inundated or saturated by surface water or groundwater for significant periods of time; (2) supports a prevalence of vegetation typically adapted for life in saturated soil conditions; and (3) contains predominantly hydric soils. Wetlands shall include any "freshwater Wetland" as defined in section 24-0107 of the ECL; Wetlands under the jurisdiction of the Adirondack Park Agency, the United States Army Corps of Engineers, or any other government entity.

SCHEDULE A
DESCRIPTION OF PROPERTY

SCHEDULE B
ENCUMBRANCE EXCEPTIONS

SCHEDULE C
LEASES/LICENSES/OCCUPATIONS/EASEMENTS

CSX Reference	Date	Party	Type
CR 001109	11-6-1953	Niagara Mohawk Power Co	Wireline
CR 311531	8-6-1996	Linde Inc	Pipeline
CR 114164	5-23-1957	Department of Army	Wireline

Potential access or other rights provided under out conveyance dated May 15, 1917 to Eastern Grain Mill and Elevator Corp

Potential access or other rights provided under out conveyance dated July 29, 1912 to the City of Buffalo

Conrail reserved rights in deed dated June 1, 1999 deed book 11006/5902

Any existing CSX facility and utility connections thereto, if any

EXHIBIT A

GIS #
57855-001

INTEL #
V82/7

PIN #
36029 0185
36029 0186






1" = 400'

0 100 200 400 600 800 Feet



CSX TRANSPORTATION, INC.
BUFFALO, NY
SITE: NY-029-1021952
ERIE COUNTY - BUFFALO, NY
MILEPOST: QD 1.76 - QD 2.14

REGION: N ZONE: NORTHERN
SUBDIVISION: BUFFALO TERMINAL
DATE: 03/13/2020
REVISED: 08/21/2020
DRAWN BY: o7525

-  Engineering Milepost
-  Protected Property 39.07 ± Acres
-  Reserved Access Roads - 30' ± Wide

THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.
GPR Concrete Central Pg. 39

TOWN OF BUFFALO
COUNTY OF ERIE
STATE OF NEW YORK

Site Boundary is 100' ± from Nearest Centerline

435' ±

1,500' ±

Site Boundary is 250' ± from Nearest CSX Centerline for 100' ±

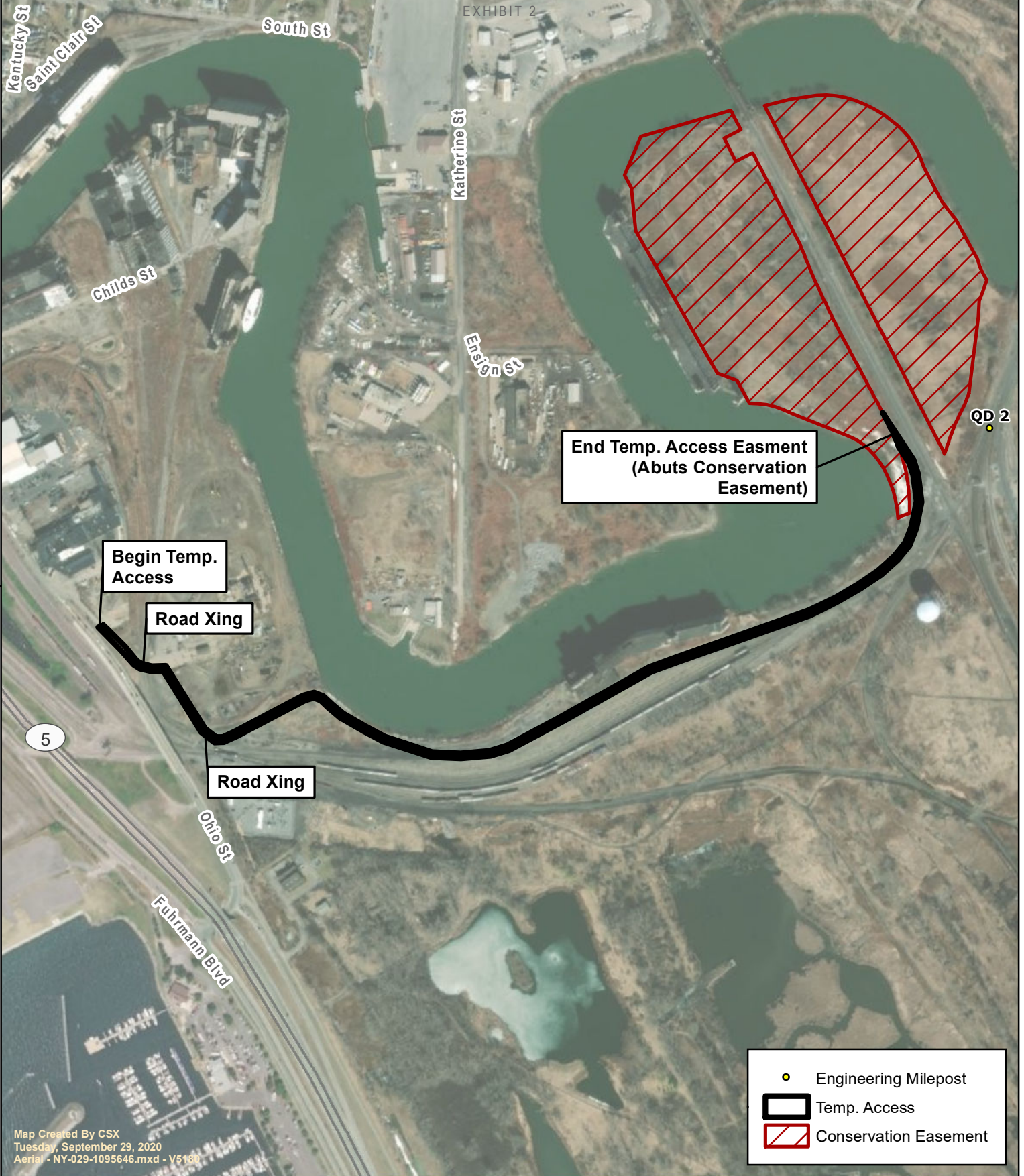
Site Boundary Transitions from 250' ± from Nearest CSX Centerline to 150' ± over 435' ± Long Segment

Site Boundary is 150' ± from Nearest CSX Centerline for 300' ±

Site Boundary is 50' ± from Nearest Centerline

QD 2

EXHIBIT 2

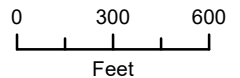


Map Created By CSX
Tuesday, September 29, 2020
Aerial - NY-029-1095646.mxd - V5180

Engineering Milepost
 Temp. Access
 Conservation Easement



BUFFALO NY - TEMP ACCESS LICENSE - CER
SITE: NY-029-1095646
ERIE COUNTY - BUFFALO, NY
N - NORTHERN - BUFFALO TERMINAL
MILEPOST: QDA 0 - QDA 1.2



TEMPORARY PRIVATE CROSSING AGREEMENT

This Temporary Private Crossing Agreement (“Agreement”), made this _____ day of _____, 2021 (hereinafter "Effective Date") between CSX TRANSPORTATION, INC., a Virginia corporation whose mailing address is 500 Water Street, Jacksonville, Florida 32202, (hereinafter called "Licensor"), its successors and assigns, and the Trustees of Natural Resources, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service, the Commissioner of Environmental Conservation acting through the New York State Department of Environmental Conservation, and the Tuscarora Nation (hereinafter collectively referred to as “Licensee”).

RECITALS

WHEREAS, under a Consent Decree between the Licensee and Honeywell Corporation (W.D.N.Y. 2021) and a conservation easement and restriction (“CER”) granted to the Buffalo Niagara River Land Trust, Inc., Licensee has been granted third party enforcement rights by Licensor on land that it owns, known as “Concrete Central” in Buffalo, New York, (the “Concrete Central Property”) which enables Licensee to conduct periodic inspections and certain pre-defined natural resource restoration activities on the Concrete Central Property (the “NRD Work”); and

WHEREAS, LICENSOR and LICENSEE entered into that certain Temporary Right of Entry Agreement dated _____, 2021, identified as CSX Agreement Number _____ (the “ROE Agreement”) detailing the terms and conditions associated with Licensee’s limited right and permission to enter and cross adjacent property owned by CSXT (the “Other CSXT Property”) in defined areas identified therein (the “Access”); and

WHEREAS, in connection with the Access granted by the ROE Agreement, Licensee desires authorization for the use and maintenance of two existing private at-grade crossings on, over and across the tracks and property owned or controlled by Licensor located at or near Buffalo, Erie County, New York, Northern Zone, Buffalo Terminal Subdivision, at 1) DOT No.874190U, approximate Latitude 42.85633, Longitude -78.86494 (“Crossing 1”) and 2) DOT _____, approximate Latitude 42.85541, Longitude -78.86401 (“Crossing 2”) , as shown in Exhibit A, attached hereto and made a part hereof (hereinafter collectively referred to as the “Crossing” or “Crossings”) solely for access by Licensee’s contractors, personnel and equipment on the CSX Other Property.

Licensee does not have a current legal or other right to use the Crossing beyond the permissive use which Licensor may have previously permitted Licensee.

Licensor is willing to permit Licensee to use the Crossings subject to the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions and agreements herein to be kept and performed, the parties agree as follows:

- 1. Purpose.** The sole purpose of this Agreement is to provide Licensee authorization and authority to utilize the Crossings identified in this Agreement in order to access the west side of the Concrete Central Property for the performance of the NRD Work. This Agreement does not authorize crossing of any other rail and does not authorize access to the east side of the Concrete Central Property.
- 2. Definitions.** For purposes of this Agreement, the following terms shall be defined as set forth below:

2.1 The term "Licensee" herein shall include the undersigned corporation, association, partnership, governmental body or individual, as the case may be. The term "Licensee" shall also include Licensee's agents, employees, servants, lessees, sublicensees and invitees, but shall not include members of the public. All words herein referring to Licensee shall be taken to be of such number and gender as the context may require.

2.2 The term "Licensor" herein shall include CSX Transportation, Inc. ("CSXT") and any other company or companies whose property at the aforesaid location may be leased or operated by the undersigned Licensor, and any parent, subsidiary or affiliated companies of Licensor and any of their respective employees, agents, representatives, servants, successors and assigns. .

2.3 The term "License" as used herein, shall mean with regard to any portion of the rail corridor where the applicable law of the State where the Crossing is located permits Licensor to make such grants to Licensee, a "permission to use" Licensor's property at the location of the Crossing for access, with dominion and control over such portion of Licensor's property and rail corridor remaining at all times in and with Licensor. No property or other interest in or exclusive right to possess Licensor's property is granted to Licensee other than that specifically delineated in this Agreement.

3. License.

3.1 Licensor, for and in consideration of the mutual covenants, terms, conditions and agreements herein to be kept and performed, hereby grants to Licensee the non-exclusive right or license to use Crossing shown on Exhibit A.

3.2 Licensee understands and acknowledges that this Agreement is a personal license to Licensee for the use and convenience of Licensee, its invitees, lessee, agents or employees, to access the adjacent conservation easement property only and the Crossing shall not be used nor permitted to become a roadway for the use of the public.

3.3 In the event Licensee contracts for the performance of any Crossing use or work, Licensee shall require its contractor(s) and/or subcontractor(s) ("Contractors") to comply with all the terms of this Agreement to observe and abide by the terms, conditions and provisions of this Agreement. Licensee further agrees that, prior to the commencement of any such Crossing use or work by any third party Contractor, such Contractor shall execute and deliver to CSXT Exhibit A-1 to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

3.4 This License and rights granted to Licensee are subject and subordinate to the prior and continuing right and obligation of Licensor and its permittees to use, construct and maintain the entire rail corridor.

4. Improvements; Maintenance.

4.1 Licensor shall be responsible for the costs and expenses related to maintaining the Crossing if the crossing is temporarily removed or otherwise in disrepair as a result of CSXT's use and/or maintenance of the tracks, rails or corridor where the Crossing is located.

4.2 Licensee shall be responsible for maintenance required at the Crossing resulting from his use or any enhancements requested by him and approved by CSXT.

5. Fences; Gates. If Licensee and Licensor agree that Licensee's authorized activities herein create {H4325399.1}

unintended increased public access at the Crossing, or if a public authority having jurisdiction over rail crossings so requires of Licensee, Licensor may request and Licensee shall construct, install and maintain, at its sole expense, a gate or fence with locking capabilities which shall be of a design and in a place approved by Licensor and which is further sufficient to prevent any unauthorized persons from using or accessing the Crossing. Licensee shall lock any such gates or fences after use of the Crossing by Licensee or its authorized parties.

6. Term, Termination; Removal. This Agreement shall run conterminous with the aforementioned ROE Agreement unless and until terminated by Licensee in accordance with Section 13 of the ROE Agreement. Upon termination of this Agreement, the Crossing may be removed, blocked or barricaded as determined by and within the sole discretion of Licensor.

7. Indemnity. Licensee acknowledges and recognizes that Licensor's operations and any use of Licensor's property, tracks and right-of-way involves increased risks to users of the Crossing. Accordingly, Licensee expressly agrees to assume all risks associated with use of the Crossing by Licensee, Licensee's invitees, and any other users of the Crossing (other than Licensor and its permittees). Licensee further agrees to release, defend and save harmless Licensor from and against all liability, claims, loss, damage, expense (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever, occurring or arising in any manner from the existence, use, maintenance, reconstruction, repair, relocation, or removal of the Crossing by Licensee, Licensee's invitees, and/or any other users of the Crossing (other than Licensor and its permittees). This release imposed upon the Licensee by this provision shall be absolute and shall not be affected by the negligence, either primary or contributory, of the Licensor or its officers, agents and employees. Licensor shall request that before any of Licensee's contractors and/or subcontractors access the Crossing that they sign a rider to this Agreement agreeing to indemnify and defend CSXT from liability associated with their access to the Crossing, and abide by the insurance requirements identified herein. Licensor may refrain from signing this Agreement or terminate this Agreement if Licensee's contractors or subcontractors decline to sign the requested rider.

8. Safety. Licensee shall use and shall cause its invitees, agents, lessee or employees to use the highest degree of care in the operation and use of said Crossing so as to avoid collisions and/or interference with operations of Licensor. Should a safety, maintenance, or other concern arise concerning the Crossing or its use, Licensee will notify Licensor of such issues or concerns by calling 1-877-TELLCSX.

9. Protective Services. Licensor has sole authority to determine the need for flagging required to protect its operations and property during certain activities occurring at the Crossing, including but not limited to semi-truck or oversize vehicles or equipment traversing the Crossing. Licensee shall reimburse Licensor directly for all costs of flagging that is required. Licensor will make such services available according to its standard publicly available rates for such services.

10. Insurance.

10.1 As a condition of Licensor's permission to Licensee for the use of the Crossing, Licensee, at its sole cost and expense, shall procure and maintain during the life of this Agreement, at its sole cost and expense, policies of:

- (i) Commercial General Liability Insurance (CGL) covering liability assumed by Licensee under this Agreement naming Licensor, and/or its designee, as additional insured. Coverage of at least FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) Combined Single Limit per occurrence for bodily injury and property damage is required as a minimum. If said CGL policy is written on a "Claims Made" basis rather than "per

{H4325399.1}

CSX Agreement Number: DOT874190U01

Page 4 of 7

occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to arrange adequate reporting time shall be Licensee's sole risk.

- (ii) Automobile Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;

10.2 The CGL Policy shall be endorsed to provide for thirty (30) days' notice in writing to Licensor's Insurance Department, at the address shown on Page 1, or its designee, prior to termination of or change in the coverage provided. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, email renewal certificate to RenewalCOI@CSX.com. In the event the CGL or Homeowner's Liability Policy is canceled or is allowed to lapse, the Crossing shall be subject to immediate closure and removal by Licensor upon notice to Licensee, at Licensee's sole cost and expense.

10.3 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), or the Federal Torts Claims Act, may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. Title.

11.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular right-of-way or rail corridor where the Crossing is occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to the property, and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the right-of-way, rail corridor and Crossing, and all leases, licenses and easements or other interests previously granted to others herein.

11.2 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right, to any claim against Licensor for damages on account of any deficiencies in title to the Crossing in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

11.3 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property or Crossing, nor shall the exercise of this Agreement for any length of time give rise to any right title or interest in Licensee to said property other than the license herein created.

12. **Notice.** Any notice to be given to Licensor, shall be deemed to be properly served and the same be deposited in the United States mail, postage prepaid, addressed to Licensee at _____. Any notice to be given by the Licensee to Licensor, shall be deemed to be properly served if it be deposited in the United States mail, postage prepaid, addressed to: CSX Transportation, Inc. 500 Water Street [J-180], Jacksonville, Florida 32202.

13. Intentionally omitted.

14. Breach, Waiver.

{H4325399.1}

14.1 Any waiver by either party at any time of its rights as to anything herein contained shall not be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or breach is waived in writing by said party.

14.2 The proper and complete performance of the terms and conditions of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform as provided herein or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately terminating this Agreement and the privileges and powers hereby conferred, regardless of Fees having been paid in advance for any annual or other period. Upon such termination, Licensee shall make removal in accordance with Article 6.

15. General Provisions.

15.1 All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State where the Crossing is situated.

15.2 Licensee shall comply with all federal, state, local and all environmental laws and regulations in its use, maintenance, and removal of the Crossing.

15.3 To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

15.4 This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of Licensor, and the heirs, legal representatives, successors or assigns of Licensee, as the case may be, but, this license is a personal privilege granted to Licensee and therefore no assignment sublease or sublicense hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of Licensor..

15.5 This Agreement is the full and complete agreement between Licensor and Licensee with respect to all matters relating to use of the Crossing, and supersedes any and all other agreements between the parties hereto relating to use of the Crossing. Neither this Agreement or any provision contained in this Agreement shall operate or be construed as being for the benefit of any third person.

[Signature Page Immediately Follows]

CSX Agreement Number: DOT874190U01

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IN WITNESS WHEREOF, the parties hereto have executed all originals of this Agreement, each of which shall be evidence of this Agreement but which shall constitute but one agreement, as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

TRUSTEES OF NATURAL RESOURCES, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service [Other Trustees may also sign if interested in obtaining access]

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee or Licensee contractor to the terms and conditions of this Agreement.

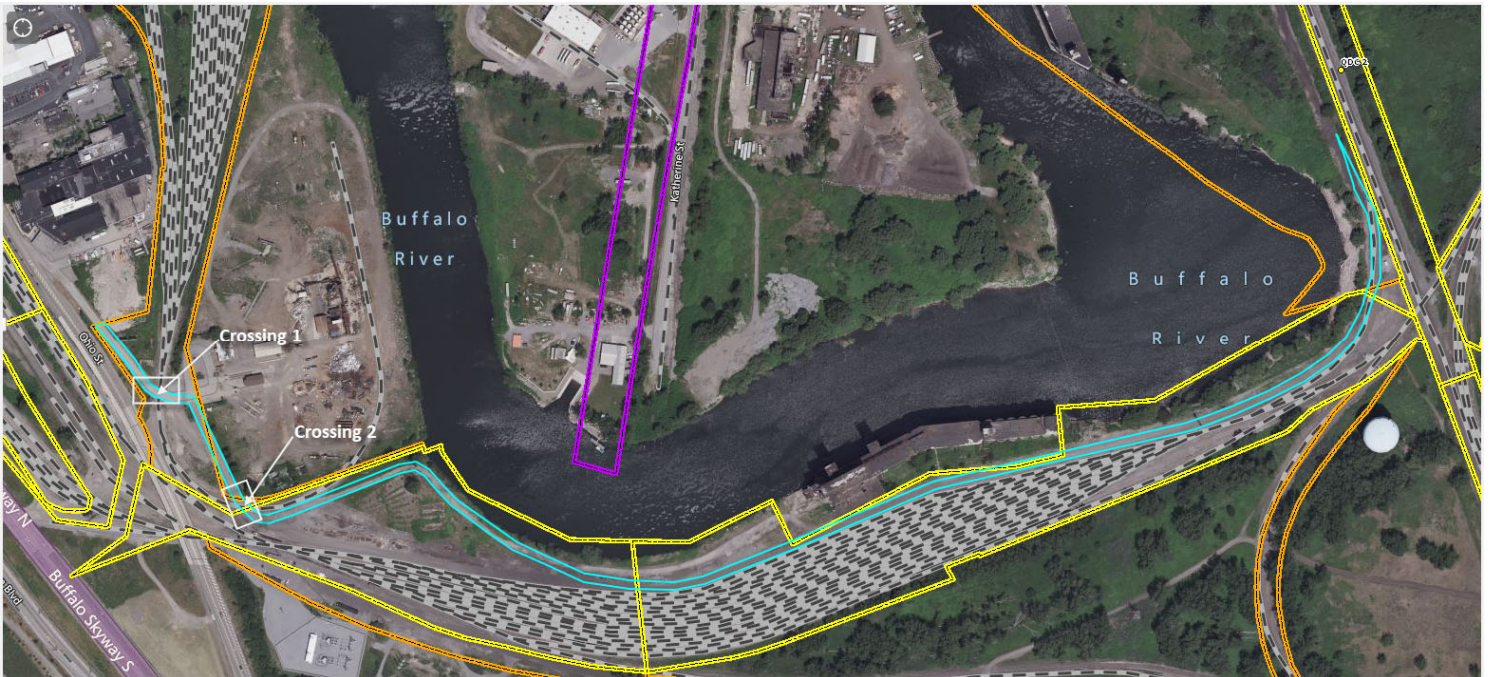
Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

EXHIBIT

EXHIBIT A



{H4825399.1}

Contractor's Acceptance Rider

This Rider is and shall be a part of the Right of Entry Agreement for the Concrete Central CER, and is incorporated therein.

To and for the benefit of CSX Transportation, Inc., ("Railroad") and to induce Railroad to permit Contractor on or about the Railroad's property for the purposes of performing work in accordance with the Concrete Central CER and the Right of Entry Agreement dated _____, between Trustees and Railroad, (the "Agreement"), Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, and the requirements listed below.

CONTRACTOR INSURANCE REQUIREMENTS:

Railroad requires that the following insurance coverage be provided prior to any entry and/or work within Railroad's property and maintained by the Contractor until completion of the work. Railroad or its designee, may at any time request evidence of insurance purchased by Contractor to comply with the Agreement. Securing such insurance shall not limit Contractor's liability under the Agreement but shall be a security therefor.

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against Railroad and its Affiliates;
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Railroad, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under the Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Railroad, or its designee, prior to cancellation or modification of any policy. If Contractor's existing CGL policy(ies) do(es) not automatically cover Contractor's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Contractor shall arrange for adequate time for reporting losses. Failure to do so shall be at Contractor's sole risk;
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;
- (iv) Such other insurance as Railroad may reasonably require.

Railroad may require Contractor performing the work to obtain Railroad Protective Liability ("RPL") Insurance coverage. In the event Contractor will be responsible for procuring and maintaining RPL Insurance coverage the following shall apply:

Contractor shall procure and maintain during the period of construction or demolition operations, at no cost to Railroad, Railroad Protective Liability (RPL) Insurance, naming Railroad, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS

(\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Railroad prior to commencement of such construction or demolition. Railroad reserves the right to demand higher limits.

At Railroad's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Contractor may pay Railroad, at Railroad's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Railroad's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Railroad's discretion and may not be available under all circumstances.

INDEMNITY REQUIREMENTS:

1. Contractor hereby assumes the risk of and agrees to indemnify, defend, protect and save CSXT and CSXT's Affiliates harmless with respect to any and all attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) for:

(i) personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

(ii) the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

(iii) any environmental damage and any related remediation brought or recovered against CSXT or any of its Affiliates; and

(iv) any and all other losses or damages;

arising directly or indirectly from the presence of Contractor or its Agents on or about the Property, whether or not attributable in whole or part to the negligence, gross negligence, or intentional misconduct of CSXT or its Affiliates.

2. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law. In the event that such court of competent jurisdiction finds that New York statutory construction contract indemnity monetary limits apply to this Agreement with respect to Contractor's indemnification of CSXT and its Affiliates for liability caused in whole or in part by any act, omission or default by CSXT or its Affiliates, the parties hereto agree that such limit shall be equal to the limits (exclusive of deductibles) of the applicable insurance required by Sections 3 and 4 of this Agreement. The parties acknowledge and agree that this monetary limit, if required, bears a commercially reasonable relationship to this Agreement, in so far as, among other factors, the parties have taken into account the availability and cost of insurance and

other risk transference devices, the scope of the Project, the risks associated with the Project, and the compensation and any other benefits exchanged between the parties in connection with this Agreement.

(i) Contractor shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity on the Property and agrees to indemnify, defend, and hold CSXT and its Affiliates harmless with respect to any fines, penalties, liabilities, or other consequences for its failure to so comply.

(ii) For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates and their respective officers, directors, employees and agents.

(iii) The provisions of this Section shall survive the termination or expiration of this Agreement.

CONTRACTOR: _____

By: _____

Name: _____

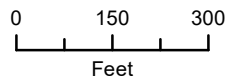
Title: _____

Date: _____

EXHIBIT 4



BUFFALO, NY
SITE: NY-029-1021952
ERIE COUNTY - BUFFALO, NY
N - NORTHERN - BUFFALO TERMINAL
MILEPOST: QD 1.76 - QD 2.14



TEMPORARY RIGHT OF ENTRY AGREEMENT
FOR ACCESS TO CONCRETE CENTRAL

THIS AGREEMENT, Made and effective as of _____, 20____, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, (hereinafter called "CSXT"), and the Trustees of Natural Resources, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service, the Commissioner of Environmental Conservation acting through the New York State Department of Environmental Conservations, and the Tuscarora Nation (collectively referred to as the "Licensee"), WITNESSETH:

WHEREAS, under a Consent Decree between the Licensee and Honeywell Corporation (W.D.N.Y. 2021) and a conservation easement and restriction ("CER") granted to the Buffalo Niagara River Land Trust, Inc., Licensee has been granted third party enforcement rights by CSXT on land that it owns, known as Concrete Central in Buffalo, New York, as shown on Exhibit A, attached hereto and made a part hereof, (the "Concrete Central Property") which enables Licensee to conduct periodic inspections and certain pre-defined natural resource restoration activities on the Concrete Central Property (the "NRD Work") by accessing the Concrete Central Property as set forth in the CER; and

WHEREAS, Licensee seeks access across other property owned by CSXT, designated as Access Area on Exhibit A, attached hereto and made a part hereof, ("Other CSXT Property"), in order to enter the Concrete Central Property; and

WHEREAS, CSXT is willing to grant to Licensee and its personnel, contractors and equipment the limited right and permission to enter and cross the Other CSXT Property (the "Access") in defined areas identified herein; and

WHEREAS the parties have executed CSXT's Private Crossing Agreement No. _____ effective as of _____;

NOW THEREFORE, CSXT hereby grants to Licensee the Access, subject to the terms and conditions set forth below:

1. **ACCESS:** Licensee shall submit to CSXT the scope, nature, and extent of the requested access, as indicated within the Public Project Manual available on the CSXT web page at <https://www.csx.com/index.cfm/library/files/about-us/property/public-project-manual/> provided that Licensee shall not be obligated to reimburse CSXT for its review of such proposal. The Access shall be undertaken in the specific locations identified in Figure A, and by methods approved by CSXT and in a manner to avoid accidents, damages, unnecessary delays to or interference with train traffic or infrastructure of CSXT as identified by CSXT's Representative. Prior to entry, Licensee must have received a fully executed Agreement, and Licensee and Licensee's employees, agents, contractors and other representatives (collectively, "Agents") shall maintain in their possession a copy of this Agreement at all times during their Access of the Other CSXT Property

2. RELEASE:

2.1 The Licensee and its Agents recognize that they will be accessing industrial property with both obvious and latent dangers, including the presence of rail infrastructure and active rail activity, and hereby assume risk of and agree to release CSXT from all liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) incurred as a result of such Access, for:

2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

2.1.3 any and all other losses or damages;

arising directly or indirectly from the presence of Licensee or its Agents on or about the Other CSXT Property, provided, however, such release shall not apply to the extent it is found in a final judgment by a court of competent jurisdiction to have resulted solely and directly from the negligence, gross negligence, or willful misconduct of CSXT.

2.2 CSXT shall request that before any of Licensee's contractors or subcontractors access the Other CSXT Property that they sign a rider to this Agreement agreeing to indemnify and defend CSXT from liability associated with their access on CSXT's property, and abide by the insurance requirements identified herein. CSXT may refrain from signing this Agreement or terminate this Agreement if Licensee's contractors or subcontractors decline to sign the requested rider.

2.3 The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

2.3.1 Licensee shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity during its Access on the Other CSXT Property.

2.3.2 For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees, lessees and agents and including such officers, directors, employees, lessees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates.

2.3.3 The provisions of this Section shall survive the termination or expiration of this Agreement.

3. GENERAL LIABILITY INSURANCE:

3.1 Licensee is self-insured. Before performing any Access on the Other CSXT Property, Licensee's contractors and/or subcontractors shall procure and maintain, at its expense: (i) statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which insurance must contain a waiver of subrogation against CSXT and its Affiliates, if permitted by state law; (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement; (iii) business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence; and (iv) such other insurance as CSXT may reasonably require. Upon request, Licensee shall ensure that its contractors and/or subcontractors shall provide CSXT with a copy of the aforementioned insurance policies. A policy endorsement naming CSXT, and/or its designee, as an additional insured and specifying such coverage shall be furnished to CSXT prior to the execution of this Agreement, and the required coverage will be kept in force until all of Licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT. The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited by Licensee's self-insurance or the required insurance coverage for Licensee's contractors

4. RAILROAD PROTECTIVE LIABILITY INSURANCE:

Licensee or its contractors shall: (a) notify CSXT; and (b) in the case of Licensee, notify CSX of its status as self-insured, and in the case of Licensee's contractors, procure and maintain during the period of construction or demolition operations, at no cost to CSXT, Railroad Protective Liability (RPL) Insurance, naming CSXT, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by CSXT prior to commencement of such survey, construction or demolition. CSXT reserves the right to demand higher limits.

5. PRIOR NOTIFICATION: Licensee or Licensee's Agents shall notify CSXT at least 30 days prior to requiring entry on the Other CSXT Property and shall abide by the instructions

of the CSXT Representative. Notice Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:
https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces, but further approval by CSXT is not required once granted under Paragraph 1, unless Licensee or Licensee's contractor requests changes to the approved scope of work.

6. **CLEARANCES:** Neither Licensee nor Agents shall place or operate any equipment of Licensee or Agents on the CSX Other Property without the prior approval of CSXT. CSXT may require protective services or such other services as deemed necessary or appropriate.

7. **PROTECTIVE SERVICES:** If protective services, such as flagging protection, are required by CSXT, Licensee shall make arrangements with the CSXT to furnish such personnel, flagman or watchman, that in CSXT's opinion may be necessary to protect the facilities and traffic of CSXT during the performance of the Project. CSXT will make such services available according to its standard publicly available rates for such services.

8. **PAYMENT FOR PROTECTIVE SERVICES:** Payment shall be made by Licensee in accordance with the following designated option:

Option 1: Licensee shall make an advance deposit of funds based on an estimate of the cost of protective or other services as determined by CSXT. The cost for CSXT's services shall then be assessed by CSXT against this advance deposit. Upon completion of the Project, any unused funding will be returned to Licensee. If CSXT's costs exceed the advance deposit(s), a request will be made to Licensee for additional funds or an invoice will be issued to Licensee for final payment. Licensee shall remit payment to CSXT within thirty (30) days of receipt of either a request for additional funds or an invoice; or

Option 2: Licensee shall promptly reimburse CSXT for the cost of protective or other services on an as-incurred basis, including all applicable surcharges, upon receipt of bill(s) therefore.

9. **ENVIRONMENTAL:** This Agreement does not include and expressly excludes the performance of any site investigation activities designed to determine environmental conditions on, about or beneath the Other CSXT Property. Precluded activities include performing soil borings for purposes other than geotechnical investigation, obtaining soil, sediment, groundwater and surface water samples, and conducting field or laboratory analyses of any soil, sediment, groundwater or surface water samples obtained from the Other CSXT Property to identify chemical composition or environmental condition. If any type of environmental investigation is desired, a separate right of entry agreement issued through CSXT's Environmental Department must be secured.

10. **CLAIMS:** Licensee shall, or shall require Agents, to promptly notify the CSXT Representative of any loss, damage, injury or death arising out of or in connection with the Project.

11. **REMEDICATION:** It is understood and agreed that, upon completion of each Access by Licensee, the Other CSXT Property shall be left in a condition similar to its condition prior to the Access by the Licensee.

12. **SAFETY:**

All personnel entering the Other CSXT Property with equipment must comply with CSXT safety rules and requirements, meaning, without exception, the wearing of hard hats and approved safety shoes and safety glasses with side shields. Anyone not in compliance with these rules and regulations will be asked to leave the Other CSXT Property

13. **TERM:** This Right-of-Entry Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement. It shall terminate within one year from the date of this Agreement, however, such Agreement may be renewed for additional successive periods of one year upon written request by Licensee and subsequent written approval by CSXT. Such extension shall be subject to CSXT's discretion, but shall not be unreasonably withheld and may require additional terms it deems necessary based upon prior incidents or concerns relating to such Access. Upon termination of Agreement, Licensee shall ensure that the Other CSXT Property if it has been modified or damaged in any way as a result of repeated Access.

14. **SEVERABILITY:** The parties agree that if any part, term or provision of the Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable. If any provision or any part of a provision of the Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

15. **MODIFICATIONS:** This Agreement may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter.

16. **NOTICES:** All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered; upon personal delivery, upon confirmation of email receipt, if confirmation is provided by return email; upon the expiration of three (3) business days following mailing by U.S. first class mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Administration, J180; or at such other addresses as either party may designate by delivery of prior notice to the other party.

17. **TERMINATION:** CSXT shall have the right at any time and at its sole discretion to terminate this Agreement based upon Licensee's failure to comply with the safety provisions of this Agreement or if the Other CSXT Property is needed for railroad purposes, upon reasonable notice to Licensee, unless such termination is for breach of CSXT's safety rules, in which case termination is effective immediately.
18. **WAIVER:** If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
19. **GOVERNING LAW; VENUE:** This Agreement shall be governed by and construed under the laws of the State of New York, without regard to the choice of law provisions thereof. Venue for any action arising from, or brought to enforce, this Agreement, shall vest exclusively in the state or federal courts located in the State of New York, and the parties agree to submit to the personal jurisdiction of any state or federal court located in Erie County, New York.
20. **NO ASSIGNMENT:** Notwithstanding anything to the contrary contained in this Agreement, Licensee shall not permit Agents to enter the Concrete Central Property through the Other CSXT Property without first requiring Agents to agree in writing to comply with all of the terms of this Agreement. Assignment of this Agreement to any party other than Agents in accordance with this Section shall not be permitted except upon the prior written consent of CSXT, which consent may be granted or withheld at CSXT's sole discretion. This Agreement shall be binding upon the parties and their respective successors and assigns.

Remainder of page intentionally left blank

PS - FORM ROE1
REVISED APRIL 3, 2008
AGREEMENT NO. _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the effective date of this Agreement.

Witness for CSXT:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: Senior Manager of Environmental & Property Management

Witness for Licensee:

TRUSTEES OF NATURAL RESOURCES,
consisting of the United States Department of the
Interior acting through the United States Fish and
Wildlife Service

By: _____

Who, by the execution hereof, affirms that he/she has
the authority to do so and to bind the Licensee or
Licensee contractor to the terms and conditions of this
Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

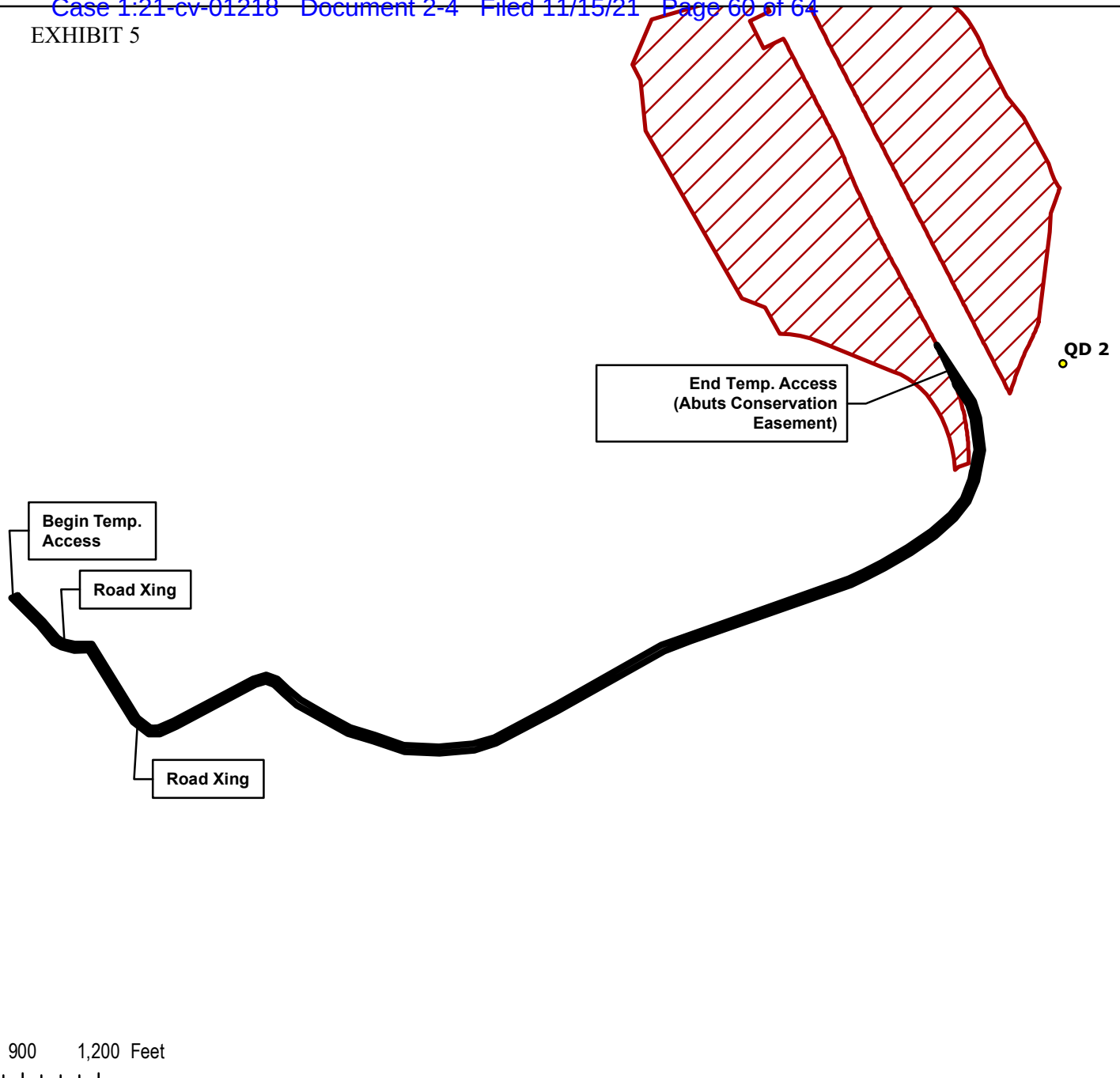
EXHIBIT A

EXHIBIT 5

GIS #
57552-001
57855-001
59657-001
59659-001

INTEL #
V24/5
V24/6
V36.4/5
V82/7

PIN #
36029 0132
36029 0178
36029 0180
36029 0185



1" = 600'

0 150 300 600 900 1,200 Feet



CSX TRANSPORTATION, INC.
BUFFALO NY - TEMP ACCESS LICENSE - CER
SITE: NY-029-1095646
ERIE COUNTY - BUFFALO, NY
MILEPOST: QDA 0 - QDA 1.2

REGION: N ZONE: NORTHERN
SUBDIVISION: BUFFALO TERMINAL
DATE: 09/29/2020
REVISED: 09/29/2020
DRAWN BY: V5180

-  Temp. Access - 2.84 ± AC
-  Conservation Easement

-  Engineering Milepost

THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE CORRECTED. **Central Pg. 59**

Contractor's Acceptance Rider

This Rider is and shall be a part of the Right of Entry Agreement for the Concrete Central CER, and is incorporated therein.

To and for the benefit of CSX Transportation, Inc., ("Railroad") and to induce Railroad to permit Contractor on or about the Railroad's property for the purposes of performing work in accordance with the Concrete Central CER and the Right of Entry Agreement dated _____, between Trustees and Railroad, (the "Agreement"), Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, and the requirements listed below.

CONTRACTOR INSURANCE REQUIREMENTS:

Railroad requires that the following insurance coverage be provided prior to any entry and/or work within Railroad's property and maintained by the Contractor until completion of the work. Railroad or its designee, may at any time request evidence of insurance purchased by Contractor to comply with the Agreement. Securing such insurance shall not limit Contractor's liability under the Agreement but shall be a security therefor.

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against Railroad and its Affiliates;
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Railroad, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under the Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Railroad, or its designee, prior to cancellation or modification of any policy. If Contractor's existing CGL policy(ies) do(es) not automatically cover Contractor's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Contractor shall arrange for adequate time for reporting losses. Failure to do so shall be at Contractor's sole risk;
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;
- (iv) Such other insurance as Railroad may reasonably require.

Railroad may require Contractor performing the work to obtain Railroad Protective Liability ("RPL") Insurance coverage. In the event Contractor will be responsible for procuring and maintaining RPL Insurance coverage the following shall apply:

Contractor shall procure and maintain during the period of construction or demolition operations, at no cost to Railroad, Railroad Protective Liability (RPL) Insurance, naming Railroad, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS

(\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Railroad prior to commencement of such construction or demolition. Railroad reserves the right to demand higher limits.

At Railroad's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Contractor may pay Railroad, at Railroad's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Railroad's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Railroad's discretion and may not be available under all circumstances.

INDEMNITY REQUIREMENTS:

1. Contractor hereby assumes the risk of and agrees to indemnify, defend, protect and save CSXT and CSXT's Affiliates harmless with respect to any and all attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) for:

(i) personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

(ii) the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

(iii) any environmental damage and any related remediation brought or recovered against CSXT or any of its Affiliates; and

(iv) any and all other losses or damages;

arising directly or indirectly from the presence of Contractor or its Agents on or about the Property, whether or not attributable in whole or part to the negligence, gross negligence, or intentional misconduct of CSXT or its Affiliates.

2. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law. In the event that such court of competent jurisdiction finds that New York statutory construction contract indemnity monetary limits apply to this Agreement with respect to Contractor's indemnification of CSXT and its Affiliates for liability caused in whole or in part by any act, omission or default by CSXT or its Affiliates, the parties hereto agree that such limit shall be equal to the limits (exclusive of deductibles) of the applicable insurance required by Sections 3 and 4 of this Agreement. The parties acknowledge and agree that this monetary limit, if required, bears a commercially reasonable relationship to this Agreement, in so far as, among other factors, the parties have taken into account the availability and cost of insurance and

EXHIBIT D

other risk transference devices, the scope of the Project, the risks associated with the Project, and the compensation and any other benefits exchanged between the parties in connection with this Agreement.

(i) Contractor shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity on the Property and agrees to indemnify, defend, and hold CSXT and its Affiliates harmless with respect to any fines, penalties, liabilities, or other consequences for its failure to so comply.

(ii) For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates and their respective officers, directors, employees and agents.

(iii) The provisions of this Section shall survive the termination or expiration of this Agreement.

CONTRACTOR: _____
By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT 6

Public Project Information, instructions for requesting access

<https://www.csx.com/index.cfm/library/files/about-us/property/public-project-manual/>

APPENDIX C 2

Form of CER for portion of Ship Canal Property Owned by CSXT

Proceeding: #####

Landowner or CE Name, County ###

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (hereinafter the “Conservation Easement”), is made this __ day of __, 2021 between CSX Transportation, Inc. having its principle office at 500 Water Street, Jacksonville, FLA (hereinafter “Grantor”), and, Buffalo Niagara River Land Trust Inc., having an office at 2475 Niagara Street Buffalo, New York 14207 (hereinafter “Grantee”). The People of the State of New York, acting through the Department of Environmental Conservation (“DEC”), having an office at 625 Broadway, Albany, NY 12233, while not a party to this Conservation Easement, has third party enforcement rights, as set forth in New York State Environmental Conservation Law (ECL), Title 3 of Article 49 and this Conservation Easement. The United States Fish and Wildlife Service (“USFWS”), having an office at 3817 Luker Rd., Cortland, NY 13045, while also not a party to this Conservation Easement, has third party enforcement rights, as set forth in ECL, Title 3 of Article 49, and this Conservation Easement, the DEC and USFWS are hereinafter collectively and separately, “Third Party Enforcers”.

WITNESSETH

WHEREAS, Grantor is the owner of certain real property located in the City of Buffalo, Erie County, State of New York, described in Schedule A, subject to those encumbrances and exceptions set forth in Schedule B, both attached hereto and made a part hereof, portions of which will be the subject of this Conservation Easement (the areas protected by said Conservation Easement shall hereinafter be referred to as the “Protected Property”); and

WHEREAS, the Protected Property consists of a portion of land west of the City Ship Canal generally as depicted on Exhibit 2; and

WHEREAS, under a Consent Decree between Grantor, The United States of America, The State of New York, The Tuscarora Nation and Honeywell International Inc., Grantor is required to grant a Conservation Easement covering the Protected Property in order to be eligible for the benefits conferred by such Consent Decree or as a result of such Consent Decree. Restoration of the Protected Property will be conducted by others pursuant to the Consent Decree, the Restoration Plan, and the Restoration Work Plan, and in accordance with the terms of this Conservation Easement; and

WHEREAS, the Protected Property is no longer used for active railroad operations and by the granting of this Conservation Easement, Grantor intends to preserve and limit the uses and development of the Protected Property in perpetuity, subject to the limitations and reservations specified herein which shall also remain in force and effect in perpetuity, and which among other purposes, allow Grantor’s continued use of portions of the Protected Property for specified uses consistent with Grantor’s ongoing railroad

operations on adjacent or nearby land, and limit Grantee's activities near railroad infrastructure; and

WHEREAS, work will be performed on the Protected Property pursuant to the Restoration Plan, Restoration Work Plan, and Grantee Work Plan in order to restore and protect habitat for birds, fish, and wildlife, and promote the ecological value of the land, provide open space protection, and protect scenic and natural features; and

WHEREAS, Grantee is a not-for-profit conservation organization created for, among other purposes, to promote, restore, and enhance the natural, ecological, environmental, scenic and recreational values of the Buffalo and Niagara Rivers, Lake Erie, Lake Ontario and their tributaries; and

WHEREAS, Grantee is eligible to accept and to hold this Conservation Easement to protect property important to the conservation of natural resources under the provisions of ECL, Title 3 of Article 49; and

WHEREAS, Grantee is a tax-exempt organization described in Sections 501(c)(3) of the Internal Revenue Code, is a qualified organization as described in Section 170(h) of the Internal Revenue Code, is a not-for-profit conservation organization as described at ECL § 49-0303, and is eligible to hold conservation easements thereunder.

NOW, THEREFORE, Grantor, in the consideration of the Consent Decree and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, grants, conveys, and releases to Grantee this Conservation Easement in perpetuity, pursuant to Article 49, Title 3 of the ECL in, on, over, under and upon the Protected Property on the terms and conditions set forth herein:

1. **DEFINITIONS:** Capitalized words or terms used in this Conservation Easement, or in documents associated with this Conservation Easement (such as the Baseline Documentation), shall have the definition and interpretation as set forth in **Appendix A** attached hereto and incorporated herein, unless such word or term is otherwise specifically and intentionally defined elsewhere in this Conservation Easement or associated document(s).

2. **PURPOSES:** This Conservation Easement is hereby granted to effect the following purposes (hereinafter, the "Purposes") in perpetuity while allowing Grantor to maintain its Railroad Operations on Adjacent Property (as herein defined), and to preserve all of its reserved rights identified herein, including but not limited to, its right of access on over and through the Protected Property as described herein:

2.1 **Intended Uses.** Provide appropriate land uses to assure that the Protected Property will be retained forever predominantly in its open and natural condition, to protect the natural habitat located on the Protected Property in perpetuity for birds, fish, and wildlife, including protecting wetlands, uplands, and stream habitat, protecting fish and wildlife habitat and the ecological value of the land, providing open space protection, and protecting scenic and natural features and to confine the use of the Protected Property to the activities permitted by this Conservation Easement;

2.2 Limit Development. To limit the development of the Protected Property and prevent residential, commercial, industrial, transportation-related and/or extensive agricultural uses of the Protected Property, except as permitted by this Conservation Easement;

2.3 Prohibit Subdivision. To prohibit Subdivision of the Protected Property, except as permitted by this Conservation Easement, in order to protect existing habitat and habitat improvements at the Protected Property;

2.4 Protect Scenic and Natural Resource Values. To conserve and protect the scenic and Natural Resource Values of the Protected Property in perpetuity and to prevent any use of the Protected Property that will interfere with the Natural Resource Values of the Protected Property;

2.5 Provide Limited Opportunities for Recreational Uses. To provide opportunities for specific, limited Public Recreational Uses on the Protected Property which are compatible with the above stated Purposes, limitations and reservations specified herein.

2.6 Avoid Conflicts Between Recreational Uses and Rail Uses. To segregate authorized Public Recreational Uses from Railroad Operations on Adjacent Property, the Conservation Easement contains limitations on the ability of the public to access portions of the Protected Property described in Sections 3 and 4 herein.

3. **RESTRICTED USES AND PRACTICES:** The Parties agree that the following restrictions shall apply to the Protected Property in perpetuity:

3.1 Certain Prohibited Uses. Residential, commercial, agricultural or industrial activities including rail operations of any kind shall not be permitted on the Protected Property nor any other use of, or activity upon, the Protected Property that will interfere with or diminish the Natural Resource Values of the Protected Property except as specifically permitted, or reserved, by the terms of this Conservation Easement, including, without limitation, the right of Grantor to exercise its reserved rights of access.

3.2 Conveyance of Portions of Protected Property; Subdivision. The transfer, conveyance or sale of less than the entire Protected Property described in **Schedule A** and the Subdivision of the Protected Property, or any portion thereof, or any subdivision of specific rights, including easements of any kind, are prohibited, except as follows:

- a. The following actions shall not be considered a division or Subdivision as defined in this Conservation Easement and are permitted under this Conservation Easement. The Grantor shall provide the Grantee with copies of any recorded documents upon completion of a transfer permitted herein and notice of the name and address of such transferee.

1. Conveyance to Grantee, or to a third party solely for the purpose of facilitating ultimate conveyance to Grantee, of Grantor's interest, in any portion of the Protected Property or of any rights retained by Grantor in this Conservation Easement with respect to any portion of the Protected Property;
2. Subdivision of the entire Protected Property to separate it from the portion of the same tax parcel upon which Grantor's conducts active rail operations;
3. Conveyance of portions of the Protected Property to abutters to the extent necessary to resolve a bona fide boundary dispute provided that:
 - i. Any conveyance for the purpose of resolving a bona fide boundary dispute requires the prior approval of Grantee, which shall not be unreasonably withheld;
 - ii. The portion of the Protected Property conveyed to a third-party to resolve a boundary dispute shall not remain subject to the terms of this Conservation Easement; and
 - iii. Any real property received by Grantor in exchange for such conveyance to resolve a boundary dispute shall become subject to this Conservation Easement unless Grantee agrees otherwise.
4. Subject to notice and prior written approval of Grantee, which shall not be unreasonably withheld, conveyance of any portion of the Protected Property to a governmental agency, or "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3) whose purpose is consistent with the Purposes of this Conservation Easement and who would qualify as an assignee under Section 9.8 hereof.
5. The Protected Property comprises a portion of the tax parcel owned by Grantor that it is located on. The Grantor's use of the remainder of that parcel does not constitute a division or subdivision of this property.

3.3 Structures. Except as specifically permitted by the terms of this Conservation Easement, and/or the Restoration Work Plan, no Structure shall be constructed or placed in, on, over or upon the Protected Property, with the exception of a fishing platform and/or launch for small hand-carried boats provided that maintenance funding, a gate, and signage are provided, as described in this Conservation Easement. For the purposes of this Conservation Easement, the term "Structure" shall be defined as broadly as possible, and shall include, but not be limited to, any building, facility, edifice, or man-made development of any kind or nature, whether of a permanent or temporary nature, including but not limited to: any residence, commercial or industrial building,

tower, antenna, mobile home, dock, utility, pavilion, fence, sign, billboard or other advertising material, outhouse and other sanitary facility, bunkhouse, lean-to, camp, cabin, roads, bridges or other man-made improvements. Grantor and its successors may maintain access roads and existing easements which may contain existing structures or future structures (such as utilities or sign boards) over portions of the Protected Property in the locations indicated in Exhibit 2, in perpetuity.

3.4 Impervious Surfaces and the Removal of Rails and Railroad Ties. Except as specifically permitted by the terms of this Conservation Easement, roads, trails, and other such areas on the Protected Property shall not be paved or covered with impervious surface materials. Notwithstanding the foregoing, the USFWS, DEC, and/or their contractors, may elect to create a paved path on a portion of the Protected Property. Access roads on the Protected Property may be covered with gravel and suitable sub-base materials. Prior to constructing any trails on former railbeds, such railbeds shall be covered with six (6) inches, or other similarly protective level, of suitable material such as gravel, wood chips, or dirt, or removed before use for public recreation. Grantor shall be responsible for the removal of the rails from the Protected Property but shall not be responsible for the removal of any other railroad track materials including but not limited to railroad ties or ballast, from the Protected Property, although such removal may occur pursuant to a process set forth in the Restoration Work Plan.

3.5 Utilities. No new telephone, cellular, fiber optic, cable television, electric, gas, water, sewer or other utilities, Structures and towers shall be located over, under, in, on, upon or above the Protected Property, except as follows:

- a. As provided for in Section 6.1;
- b. Pursuant to the provisions of Section 49-0305 of the ECL when no reasonable alternative exists and only to the minimum extent necessary to accommodate the new utility;
- c. Pursuant to the provisions of Section 49-0307 of the ECL;
- d. Municipal or publicly regulated utilities located within, or within 30 feet of, any public right of way easements which run through the Protected Property; or
- e. Any utility corridors, structures or towers that are proposed to be built in the future and specifically permitted by the terms of this Conservation Easement, or with the prior approval of Grantee.

3.6 Waste Disposal

- a. The dumping or storage of ashes (except those generated from onsite heating), trash, waste, non-composted organic waste, sewage, scrap material, sediment discharges, oil and its by-products, leached compounds, toxic fumes, or garbage, on any portion of the Protected Property is prohibited.
- b. No waste water or sewage, chemical wastes or other hazardous waste materials may be dumped or stored on the Protected Property except as provided for herein.
- c. Grantor shall to the best of its efforts, ensure the removal of any trash or debris (except for organic logging debris) from the Protected Property caused by its own activities or the activities of its lessees, contractors or guests.
- d. Grantee shall, to the best of its efforts, ensure the removal of any trash or debris from the Protected Property caused by its own activities. Grantee shall also use best efforts to remove any trash or debris from the Protected Property caused by anyone other than the Grantor, its lessees, contractors, or guests, such as trash generated by public use as permitted under this Agreement. Grantee intends to conduct semi-annual voluntary clean-ups of the Protected Property according to the Grantee Work Plan. To the extent Grantee's clean-up efforts prove inadequate, Grantee and Grantor shall work together in good faith to modify the Grantee Work Plan to provide for more frequent clean-ups of the Protected Property.

3.7 Mining; Sand and Gravel Use. The mining or extraction of soil, sand, rock, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited. In no case shall surface or subsurface mining of subsurface oil, gas or other minerals be permitted on the Protected Property.

3.8 Chemical Treatments. The use of herbicides, pesticides, fungicides, rodenticides, fertilizer and pH control or other chemicals ("Chemical Treatments") on the Protected Property is prohibited, except as permitted below:

- a. To control a pest or disease outbreak that threatens the health of the Protected Property;
- b. To control insect pests for human health and safety purposes;
- c. To control non-native plant or animal species.

Notwithstanding this restriction, Grantor is not prohibited from using Chemical Treatments on those portions of the Protected Property that have been reserved by Grantor for access to its property and facilities. Additionally, this paragraph is not intended to limit Grantor's use of its adjacent or nearby properties.

3.9 Exterior Lighting.

- a. No permanent exterior artificial illumination shall be employed on the Protected Property, other than that employed as of the date hereof and identified in the Baseline Documentation and/or Restoration Work Plan.
- b. Notwithstanding this restriction, Grantor may use permanent exterior artificial illumination if necessary for the enjoyment of the Reserved Rights by Grantor.

3.10 Dams and Water Impoundments. The construction of new dams or impoundments, or manipulation and alteration of Watercourses, Water bodies or Wetlands, but not including necessary structures for storm water management as part of an allowable construction activity, on the Protected Property is prohibited, except for the following:

- a. Grantor may use, operate, maintain, and replace in-kind any existing dam or impoundment; manipulated or altered Watercourse, Water body, or Wetland Structure on the Protected Property, in a manner consistent with their historical use, purposes and impacts, as identified in the Baseline Documentation.
- b. Grantor shall not be required to notify the Grantee in advance of taking actions in response to an emergency situation relating to dams, impoundments, or Watercourses; Grantor shall not be required to notify or seek approval of the Grantee in advance of conducting routine maintenance activities for the purpose of protecting and maintaining roads, rails, culverts, and other improvements adjacent to the Protected Property, including the lawful removal or breaching of beaver dams or lodges, and the lawful control of beaver populations.

3.11 Non-native Species. Neither Grantor nor Grantee shall plant or intentionally introduce, release or broadcast any non-native, hybrid, or genetically-modified species on the Protected Property, without the prior written consent of the other.

3.12 Control of Habitat. The Protected Property is located near active rail infrastructure. Therefore, Grantee shall not introduce, foster, or release any threatened or endangered species of plant or wildlife, or intentionally create or enhance habitat for the purpose of attracting or benefitting any such species, on the Protected Property.

3.13 Drainage. Grantee, hereby covenants that it, its successors, heirs, legal representatives or assigns shall not disturb the existing drainage on the Protected Property so as not to impair adjacent railroad operating property drainage and shall not redirect or increase the quantity or velocity of surface water runoff or streams into

Grantor's drainage system or upon any adjacent railroad operating property or other lands and facilities of Grantor.

3.14 Clearing or Cutting Vegetation. Grantor shall not cut or remove vegetation on the Protected Property except as consistent with the Restoration Plan and Restoration Work Plan or as may be necessary for its reserved rights.

3.15 Noise, Light, Fume, Vibration Abatement. Grantee, and its successors and assigns, recognize that there are active rail operations in the immediate area of the Protected Property and by acceptance of this Conservation Easement, hereby covenants and agrees that this Conservation Easement does not require Grantor to construct, erect or maintain any noise, light, fume or vibration abatement or reduction structure or facilities on or near the Protected Property and neither Grantor nor its successors or assigns, or any other company affiliated with Grantor shall be liable for or required to pay any part of the cost or expense of erecting or maintaining any such abatement or reduction structures or facilities or any part hereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any noise, light, fume or vibration abatement or reduction structures. Grantee acknowledges and accepts that there may be noise, light and odors associated with acquiring an interest in land adjacent to active rail facilities and Grantee covenants not to sue Grantor, its successors or assigns for existence of any noise, light, fumes and vibrations from Grantor's nearby operations Grantee acknowledges that the Grantor's adjacent railroad operation is now or may be in the future a 24-hour a day, seven day a week continuous operation that may conceivably create noise, vibration, light, smoke and other inconveniences to those utilizing the Protected Property.

3.16 Development and Building Rights. Except as provided for by the terms of this Conservation Easement, the development and building rights associated with the Protected Property are hereby extinguished and as a result of such extinguishment, shall not be available for transfer to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Neither the Protected Property nor any portion thereof shall be included as part of the gross area of any other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under an otherwise applicable statute, regulation or ordinance controlling land use and building density.

4. GRANTEE'S AFFIRMATIVE RIGHTS: Grantor grants to Grantee the following affirmative rights which shall run in perpetuity with the Protected Property.

4.1 Right to Enter. The Grantee, its agents, employees or other representatives shall have access on, over and across the Protected Property at all times to monitor and assure compliance with terms and conditions of this Conservation Easement, and to exercise and administer Grantee's affirmative rights set forth in this Conservation Easement, subject to the limitations in this Section 4, Section 5 and Section 6.5 below. However in no event shall Grantee's access or other activities interfere with Grantor's

use or access on over and across the Protected Property, and such right of access does not provide Grantee with the right to cross rail tracks adjacent to the Protected Property with persons or equipment, except in accordance with the limitations stated herein. In addition, this provision does not authorize Grantee to cross any other property owned by Grantor near the Protected Property except as provided in Section 5 herein. Grantee's right to utilize the Protected Property expressly includes the following:

- 4.1.1 Inspecting the Protected Property, including inspection by drone or other remote sensing equipment, to determine compliance with the covenants and purposes of this Conservation Easement;
- 4.1.2 Working with Third Party Enforcers to take any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations of this Conservation Easement;
- 4.1.3 Undertaking restoration and/or protection projects on the Protected Property pursuant to the Restoration Plan and/or Restoration Work Plan; and
- 4.1.4 Necessary maintenance of the Protected Property consistent with and pursuant to the Grantee Work Plan.

4.2 Limited Right to Provide for Public Access and Public Recreational Use.

Grantee recognizes that this Conservation Easement includes only a limited right of access and recreational use by the public, as follows. The public is authorized to cross through and use the Protected Property within designated areas depicted on the figure at Exhibit 2, including access to a potential fishing platform and/or hand-held boat launch located on the Protected Property through an existing designated public pathway from Fuhrmann Boulevard depicted in Exhibit 1, located near the northwestern portion of the Protected Property (the "Designated Path") provided such Designated Path shall be covered by gravel, wood chips, or soil (collectively 6", or some other similarly protective level), or pavement, if located in a former railbed that has not been removed.").

- 4.2.1 Grantee recognizes and acknowledges that the Protected Property has been historically used for industrial activity, including rail operations, by a variety of entities. In light of such historic industrial use, Grantee agrees to the following limitations by acceptance of this Conservation Easement:
 - 4.2.1.1 No excavation of any type or of any depth is authorized on the Protected Property without the

express written approval of Grantor, except as set forth in Section 4.4 and for the minimal excavation necessary for removal of railroad ties located on the Protected Property;

- 4.2.1.2 No public access or recreation will occur within any authorized location on the Protected Property unless such activity occurs over cover (such as gravel, wood chips, or soil collectively 6", or some other similarly protective level), or pavement, if in a former railbed.; and
- 4.2.2 Grantee shall not, and shall not authorize any other party to, conduct surface or subsurface analytical sampling on or beneath the Protected Property without Grantor's written authorization, except for the purposes of determining soil characteristics for fertility/compatibility of native plantings for the Restoration Work.
- 4.2.3 Public Access to the Designated Path shall be by non-motorized use only except as specified in Section 4.3.b.
- 4.2.4 Grantee is authorized to use motorized equipment and vehicles to monitor or maintain the Protected Property, subject to the limitations described herein on crossing tracks with personnel or equipment. Grantor is authorized to cross the Protected Property to access its property, equipment and infrastructure near the Protected Property, via designated access routes with vehicles and motorized equipment. Grantee agrees to indemnify, defend and hold harmless Grantor in the event of any property damage, injuries or death caused or occurring as a result of Grantee's use of such motorized equipment and vehicles on the Protected Property.
- 4.2.5 In the event existing signage is not effective to discourage the public's limited or prohibited uses of the Protected Property on a regular basis, Grantor may take additional steps to limit or prohibit public access as the case may be through fencing or other security measures at the perimeter of the Protected Property. Such restrictions are not intended to apply to Grantee.

4.3 Duties and Responsibilities regarding public use.

- a. Grantor shall have no responsibility to fund the cost of maintaining any authorized improvement on the Protected Property placed thereon by Grantee or the Third Party Enforcers, or other parties on behalf of the Grantee or Third Party Enforcers.
- b. Motorized public access and motorized public use of the Protected Property is prohibited, except for mechanized aid by persons with mobility impairment on designated pathways.
- c. Non-motorized uses of the Protected Property in areas designated for public use may include walking, hiking, jogging, cycling, cross-country skiing, snow-shoeing, and similar uses.

4.4 Grantee's Rights Regarding the Remainder of the Protected Property beyond the Designated Paths. Those portions of the Protected Property outside of the Designated Paths may be used for habitat restoration work consisting of stream bank, wetland and upland restoration, including removal of invasive plant species and planting of native species, consistent with the Restoration Plan. Such uses are subject to the limitations relating to intentional establishment of habitat for threatened or endangered species of plants and wildlife. Any excavation other than installation of a small hand-held boat launch, fishing platform, installation of signs, installation of benches, installation of a gate, and uprooting of plants and replacement with native plants, shrubs, and trees as set forth in the Restoration Plan, shall only be conducted with the prior written consent of Grantor. The installation of a fishing platform and/or boat launch may be made only if adequate funding arrangements are provided for maintenance or eventual removal.

4.5 Grantor's Costs. Grantor shall bear no costs associated with the public's use of the Protected Property, any permitted Restoration Work on the Protected Property such as a potential boat launch or fishing platform, the Grantee's maintenance of the Protected Property for public use, or any other work in furtherance of the Restoration Plan.

4.6 Grantee's Rights Regarding the Protected Property's Natural Resource Values. Grantee, its agents, employees or other representatives shall have the right after ten (10) calendar day advance written notice to, but not approval of Grantor, to take such actions as are reasonably necessary to protect the Natural Resource Values of the Protected Property.

4.7 Emergency. Grantee may take such emergency action necessary to respond to natural disaster, public nuisance or threats to human safety in order to preserve the Protected Property and protect the public from such disaster, hazard, or threat.

5. ADDITIONAL LIMITATIONS ON GRANTEE'S RIGHTS TO THE PROTECTED PROPERTY:

The following limitations on Grantee's rights in the Protected Property shall run in perpetuity with the Protected Property:

- a. Grantee and its successors and assigns and agents and contractors shall comply with Grantor's safety requirements when traveling to or from the Protected Property;
- b. In the event that Grantee and its successors, assigns and/or its agents and contractors need to cross any active track with personnel or equipment, such access shall require reasonable advance notice to Grantor and be subject to the terms of a Private Crossing Agreement with Grantor to ensure the safety of the accessing parties and Grantor's equipment and infrastructure.

6. GRANTOR'S RESERVED RIGHTS: Grantor specifically reserves the following rights with respect to the Protected Property (hereinafter Grantor's Reserved Rights):

6.1 Utilities, Signboards. Grantor may lease, maintain, replace, remove and with the permission of the Grantee, relocate telephone, fiber optic, cellular, cable television, electric, gas, water, sewer, or other utility lines, service, Structures and signboards, including maintaining an adequate width of the utility corridors identified as "existing" in the Baseline Documentation and Grantor may lease, install, construct, and maintain new utilities subject to the provisions of Section 3.5 of this Conservation Easement.

6.2 Future Sales; Transfers & Conveyances.

- a. Grantor reserves the right to sell, transfer, or otherwise convey the entire Protected Property, or any in-common and undivided interest in the Protected Property, subject to the terms and limitations of this Conservation Easement.
- b. Grantor agrees to give written notice to Grantee of the transfer of any interest in the Protected Property at least twenty (20) days prior to the date of such transfer, except for the grant of a mortgage on all or a portion of the Protected Property or the transfer or sale of stock in the Grantor or any other corporation which may hereafter own all or part of the Protected Property or transfer or sale of membership interests in any limited liability company which may hereafter own all or part of the Protected Property.
- c. Any grant of a mortgage, or any other interest in the Protected Property after the date of the grant of this Conservation Easement is expressly subject to the terms of this Conservation Easement.

- d. Any grant of less than a fee interest in the Protected Property shall comply with the terms and conditions of this Conservation Easement.
- e. Grantor covenants and agrees that any instrument evidencing any subsequent conveyance, lease, mortgage, security interest, encumbrance, or any other transfer of the Protected Property shall contain the following statement: "This (grant, lease, mortgage, easement, etc.) is subject to a certain Conservation Easement entered into between CSX Transportation, Inc. and Buffalo Niagara River Land Trust Inc., dated _____ and recorded in the office of the _____ County Clerk on _____, in Book _____ of Deeds and Page_____". Both the People of the State of New York acting through the Department of Environmental Conservation and the United States Department of the Interior acting through the United States Fish and Wildlife Service have third party enforcement rights under this Conservation Easement.
- f. Grantor shall provide Grantee with copies of any recorded documents upon completion of a transfer under this Section and notice to Grantee of the name and address of transferee.
- g. Failure of Grantor to comply with the provisions of this Section 6.2 shall not affect the validity of the provisions of this Conservation Easement and Grantee's Affirmative Rights hereunder.

6.3 Emergency Actions.

The Grantor may, but shall have no obligation to, take such emergency actions as it deems necessary, in response to natural disaster, environmental hazards, or threats to human safety, but shall promptly notify the Grantee and Third Party Enforcers of any such actions taken.

6.4 Drainage.

- a. Grantor may maintain or replace existing drainage facilities if necessary to protect Railroad Operations on Adjacent Property, or its reserved rights.
- b. Grantor may undertake actions it deems necessary to prevent the erosion of any slope or shoreline necessary to maintain Railroad Operations on Adjacent Property or to protect its reserved rights, without notice to Grantee but shall promptly notify the Grantee and Third Party Enforcers of any such actions taken. In the event that such work will interfere with the authorized use of the Protected Property by the public, Grantor shall provide prior written notice to Grantee.

6.5 Gates, Barriers, Fences; Keys, Combinations; Marking Boundaries.

- a. The Grantor may in its sole discretion, erect additional signs, gates, fences or other barriers on the perimeter of the Protected Property necessary to carry out its rights and obligations hereunder, or to protect its rights in adjacent properties.
- b. The Grantor may install and maintain gates or other barriers to prohibit access to any road, trail, parking area, landing, staging area, or related areas over which the Grantee has not been granted a right to permit the public use thereof pursuant to this Conservation Easement.
- c. The Parties shall provide one another with keys or combinations necessary to open gates and to allow access through such barriers consistent with the terms of this Conservation Easement.
- d. The Parties acknowledge that the Grantor may, but is under no obligation whatsoever, to identify, maintain, and mark the boundaries of the Protected Property. The Parties also agree that the Grantee may, but is under no obligation whatsoever, to mark the boundaries of the Protected Property and will provide notification to the Grantor prior to marking them.

6.6 Grantor's Access. The Grantor reserves the right to use and maintain existing roads on the Protected Property as shown on Exhibit 2.

7. **GRANTEE'S ACCESS TO THE PROTECTED PROPERTY:** Grantee shall use the existing public entrance from Fuhrmann Boulevard located on the northwestern side of the Protected Property for non-vehicle access. To the extent Grantee requires access by vehicles or equipment in order to perform authorized work across other property owned by Grantor, Grantee shall adhere to the following requirements:

7.1 Access for Vehicles and Equipment Across Other CSXT Property.

- a. To the extent Grantee requires access to the Protected Property with vehicles and equipment across other CSX Property without crossing any tracks, Grantee shall comply with CSXT's reasonable safety requirements including execution of a written Right of Entry Agreement ("ROE Agreement") substantially in the form of Exhibit 3 (Ship Canal West), and must comply with the requirements specified in that ROE Agreement. Grantor shall respond to any request by Grantee for execution of a ROE Agreement and shall execute such ROE

Agreement within thirty (30) days, unless there is a material reason precluding signing the Agreement within (30) days.

- b. In the event Grantee desires to cross tracks, or to traverse within fifty (50) feet from the centerline of any track, while accessing the Protected Property, Grantee shall comply with CSXT's reasonable safety requirements and executing and comply with a written Private Crossing Agreement.

8. ENFORCEMENT: The Grantee, Third Party Enforcers, and Grantor shall each have the right to enforce terms of this Conservation Easement as follows:

8.1 Inspections. In accordance with Grantee's Right to Enter the Protected Property, as provided in Section 4.1 herein, the Grantee shall have the right to schedule periodic inspections of the Protected Property to determine compliance with the terms of this Conservation Easement. The Grantor shall have the right to accompany the Grantee on said inspections.

8.2 Notice to Cure.

- a. Any Party to this Conservation Easement and/or Third Party Enforcer that determines that the terms of this Conservation Easement have been breached (the "Aggrieved Party") shall notify the offending party (the "Noticed Party") of a breach of any of the terms or conditions of this Conservation Easement including the portion of the Protected Property affected thereby (the "Notice to Cure"). The Notice to Cure shall set forth how the Noticed Party can cure such breach or suspected breach and shall give the Noticed Party thirty (30) days from the date of receipt of the Notice to Cure, or such longer period of time as may be necessary to cure, provided that actions to cure are commenced within such thirty-day period and diligently pursued. Such time periods may be extended in the event of severe weather or if other conditions are experienced that cause a reasonable delay in the Noticed Party's efforts to cure.
- b. At the expiration of such period of time to cure, or any extensions thereof granted, the Aggrieved Party shall notify the Noticed Party of any failure to adequately cure the breach or suspected breach. The Noticed Party shall then have an additional fifteen (15) days from receipt of such notice to cure. At the expiration of said fifteen-day period, the Aggrieved Party may commence any legal or equitable action or proceedings in accordance with any applicable law to require compliance with the terms of this Conservation Easement.

8.3 Dispute Resolution.

- a. In the event the Parties cannot resolve a dispute arising under this Conservation Easement through the Notice to Cure process outlined above, then either party may by written notice (the "Mediation Notice") require that the parties attempt to resolve the dispute through mediation using a mediator agreed upon by the Parties. If the Parties cannot agree upon a mediator within thirty (30) days of delivery of the Mediation Notice, a mediator will be appointed by the American Arbitration Association in Albany, New York pursuant to their procedures. The mediation shall be held within ninety (90) days of delivery of the Mediation Notice whose recommendations are advisory to the Parties.
- b. Any disputes remaining unresolved after mediation may be pursued through initiation of any appropriate action or proceeding in a court of competent jurisdiction.

8.4 Right to Restore.

- a. Subject to the provisions of this Section 7 hereof, the Noticed Party may be required to restore the Protected Property to its-previous condition, in the event of a breach of the terms of this Conservation Easement, and to enforce this right by any action or proceeding necessary.
- b. In the event that the-Noticed Party fails to cure in accordance with the provisions of Sections 7.2 and 7.3, the Aggrieved Party, at its sole discretion, and after fifteen (15) days advance notice to the Grantor, may enter the Protected Property for the purpose of restoring same to its Natural State. Such notice shall not be required in the event of an emergency provided that the Aggrieved Party provides notice to the Noticed Party within twenty-four (24) hours of the Aggrieved Party's entry onto the Protected Property in order to take emergency action to mitigate the consequences of a breach.
- c. The Aggrieved Party may resort to the following in order to restore the Protected Property to its prior condition:
 1. Remove items and materials not permitted by this Conservation Easement;
 2. Close, fill, grade and plant with appropriate vegetative cover areas or otherwise restore areas affected by a breach;
 3. Correct, through reasonably practicable measures, conditions that constitute a breach of this Conservation Easement;

4. Take any other appropriate action reasonably necessary to remedy any breach of this Conservation Easement.

8.5 Force Majeure/Acts of Third Parties. The Grantor shall not be liable for any changes to the Protected Property caused by:

- a. Any natural disaster or act of God, or governmental action not related to enforcement;
- b. Acts of the Grantee, its employees and contractors;
- c. Acts of the public while on the Protected Property.

8.6 Failure to Act. The failure of either party to enforce any of the terms of this Conservation Easement shall not be deemed a waiver of any such term nor shall any such failure in any way bar any enforcement rights hereunder in the event of any subsequent breach of, or noncompliance with, or fault in observance of, any of the terms of this Conservation Easement.

8.7 Third Party Enforcement Rights. Grantor and Grantee agree that as between Grantee and Third Party Enforcers, the Third Party Enforcers shall be primarily responsible for undertaking any and all necessary actions to enforce the terms, conditions and restrictions in this Conservation Easement and shall have the same rights as Grantee to enforce the terms, conditions and restrictions in this Conservation Easement as provided under Section 6 herein. Third Party Enforcers may inspect the Protected Property as contemplated by the terms of this Easement. Third Party Enforcers shall have the right to enter upon and inspect the Protected Property for the purpose of reporting to Grantor and Grantee any violations with the terms, conditions and restrictions of this Conservation Easement. Third Party Enforcers shall have the same rights as Grantee to enforce the terms, conditions and restrictions in this Conservation Easement as provided under Section 7 herein.

9.0 STEWARDSHIP FEES. Within ninety (90) calendar days of the recording of this Conservation Easement at the Erie County Clerk's office, Third Party Enforcers, consistent with the terms of the Consent Decree, shall pay to Grantee a one-time payment in the amount of two thousand four hundred and ninety five dollars (\$2,495.00), per acre multiplied by the acreage of the Protected Property. Grantee shall provide Third Party Enforcers with payment instructions at or prior to the recording of this Conservation Easement at the Erie County Clerk's office. Grantor is not obligated to fund Grantee or to provide other compensation to Grantee.

10. OTHER TERMS AND CONDITIONS:

10.1 Construction of Terms and Interpretation.

- a. This instrument conveys a Conservation Easement which shall consist of the covenants, restrictions, rights, terms, and conditions recited herein. Reference to this “Conservation Easement” or its “provisions” shall include any and all of those covenants, restrictions, rights, terms and conditions.
- b. Notwithstanding any term or condition of this Conservation Easement, this Conservation Easement shall be construed in accordance with the plain meaning of its terms, and secondarily, to affect the Purposes for which the Conservation Easement was acquired and the Purposes of Article 49 of the ECL. In interpreting the terms of the Conservation Easement, there shall be no presumption favoring the Grantee or the Grantor.
- c. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- d. The captions herein have been inserted solely for convenience of reference and are not part of this Conservation Easement and shall have no effect upon construction or interpretation.
- e. Any reference in this Conservation Easement to a statute, regulation or ordinance shall include any amendment or successor thereto adopted after the date of this Conservation Easement. Any reference in this Conservation Easement to a published document, treatise, or guide shall include any successor or replacement thereto published after the date of this Conservation Easement.

10.2 Effect. This Conservation Easement shall run with the Protected Property as an incorporeal interest in the Protected Property, and shall extend to and be binding upon the Grantor, Grantor’s agent, tenants, occupants, lessees, heirs, personal representatives, successors, assigns, and all other individuals and entities, and the Grantee and Grantee’s agents, occupants, invitees, successors and assigns; the word “Grantor” when used herein shall include all of those persons or entities. Any rights, obligations, and interests herein granted to Grantee or Grantor shall also be deemed granted to its subsequent agents, successors, and assigns; the words “Grantee” and “Grantor” when used herein shall include all of those persons or entities. This Conservation Easement shall be a burden upon and run with the Protected Property in perpetuity.

10.3 Baseline Documentation.

- a. Third Party Enforcers, the Grantor and the Grantee agree that a physical inspection of the Protected Property will be made (which shall not include sampling) and a report of the physical inspection of the Protected Property, known as the Baseline Documentation, (the "Baseline Documentation") will be prepared by the Grantee, with the approval of the Third Party Enforcers, at no expense to the Grantor.
- b. The Baseline Documentation shall be completed and certified by the Parties as an accurate reflection of the condition of the Protected Property prior to the property transaction closing, consisting of the execution of the Conservation Easement and the recordation of this Conservation Easement in the Erie County Clerk's office, to be potentially factually supplemented as agreed by Third Party Enforcers and Grantee upon completion of the Restoration Work Plan and, as may be appropriate from time to time
- c. The Parties shall agree and acknowledge that the Baseline Documentation, and any subsequent updates, revisions and amendments, if any, shall consist of, at a minimum, descriptions, maps, photographs, surveys, biological assessments, and other related documentation which shows or depicts significant aspects of the Protected Property as of the date it is signed and acknowledged by the Parties. The Baseline Documentation is intended to serve as an objective, although not exclusive, informational baseline for monitoring compliance with the terms of this Conservation Easement. The Parties agree that, in the event a controversy arises with respect to the nature and extent of uses or the condition of the Protected Property, the Parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.
- d. Grantor and Grantee will make available to each other, and to the Third Party Enforcers, existing Baseline Documentation in their possession relating to the condition of the Protected Property. Either Party may cause to be prepared such additional documentation deemed appropriate by them (not including sampling), including a survey of the Protected Property, showing its relationship to the parcel boundaries, adjacent features and properties and on-site photographs.
- e. Copies of the Baseline Documentation, signed and acknowledged by both Parties to the Conservation Easement, shall be provided to the Grantor, the Grantee, and the Third Party Enforcers, and maintained in each of their respective offices. One counterpart shall be maintained in DEC's Central Office in Albany.

10.4 Grantee Monitoring and Reporting Requirements. Grantee shall monitor the property for compliance with this Conservation Easement on a semi-annual basis as set forth in Grantee Work Plan. Grantee shall send an annual report on compliance with the terms of this Conservation Easement in the format specified by Grantee Work Plan to Third Party Enforcers and Grantor shall be provided a copy.

10.5 Notice, Review and Approval Process.

- a. Whenever notice or an approval is required from either Party, the Party that must provide notice or that is seeking the approval shall deliver a written or electronic notice or request for such approval in accordance with the notification directions herein.
- b. Requests shall be either approved, approved with conditions, or denied. Approvals shall be made in electronic or written form and shall be based upon whether the proposed action complies with the terms and/or Purposes of this Conservation Easement. If denied, the reasons for denial and criteria applied, with specific reference to the terms of this Conservation Easement, shall be specifically set forth in the written response to the request.
- c. The Parties shall not unreasonably delay, or deny a request for approval.

10.6 Notices, Notification.

- a. Any notice required to be sent to the Grantor herein shall be addressed to:

CSX Transportation, Inc
500 Water St
Real Estate Dept, J180
Jacksonville, FL 32277
CustomerRelations@csx.com
with a copy to Daniel E. Schmitt, Esq.
CSX Transportation, Inc
500 Water St, J150
Jacksonville, FL 32277
daniel_schmitt@csx.com

Or such other designees of Grantor upon written notice to Grantee.

- b. Any notice required to be sent to the Grantee herein shall be addressed to:

Buffalo Niagara River Land Trust
c/o President of the Board of Directors
1902 Niagara Street
Buffalo New York 14207
makedron@icloud.com

with a copy to Adam Walters, Esq., Phillips Lytle LLP, One
Canal Side, 125 Main Street, Buffalo, New York 14203.

Or such other designees of Grantee upon written notice to Grantee.

With a copy sent DEC at:

New York State Department of Environmental Conservation
Regional Forester, Region 9
Town/City 270 Michigan Avenue
Buffalo, NY 14203

With a copy sent USFWS at:
U.S. Fish & Wildlife Service
New York Field Office
3817 Luker Rd.
Cortland, NY 13045
Fw5es_nyfo@fws.gov

- c. All notices and requests for approval required or permitted to be given under this Conservation Easement shall be made by electronic mail and delivered by hand or sent by registered or certified mail, return receipt requested, or by overnight mail, to the address of the other Party as provided herein. Notice shall be deemed to have been given on the earlier of: (1) receipt of electronic mail, (2) when delivered by hand, or (3) if mailed, three (3) business days after mailing. The Party receiving a request for approval shall respond to the request within sixty (60) days of its receipt, unless otherwise specified herein.
- d. Either Party may change the individual or address to which notices are to be sent by giving written notice thereof to the other Party in accordance with paragraph (c) above.
- e. Upon mutual written agreement, the Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

10.7 Regulatory Authorities, Compliance with Law. This Conservation Easement shall not remove the necessity of the Grantor or Grantee to obtain any permit and/or approval

from any governmental agency having jurisdiction over any activity conducted or to be conducted on the Protected Property.

10.8 Assignment of Grantee's Interest. Grantee may assign this Conservation Easement only to a governmental agency or a "qualified organization" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended. Such assignee should have among its purposes the conservation and preservation of land and water areas and should be capable of complying with its obligations under the terms of this Conservation Easement. Grantee shall require as a condition of assignment that the assignee assume all obligations of Grantee under this Conservation Easement and continue to carry out the conservation purposes of this Conservation Easement.

10.9 Cessation of Grantee's Existence. If Grantee ceases to exist or fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if Grantee is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall be assigned to an entity which is a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or another governmental entity. Grantee's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the cy-pres doctrine.

10.10 Reconveyance If Void. In the event a court of competent jurisdiction determines that this Easement is "void ab initio" in accordance with the provisions of Section 49-0311 of the ECL, Grantor shall, upon request by Grantee, reconvey without change or modification and for no consideration, this Easement to a qualified nominee selected by Grantee; said reconveyance to be made after such declaration that the Easement is "void ab initio" regardless of the fact that Grantee may pursue its right of appeal, or otherwise. In furtherance of this provision:

- a. Grantee, and Third Party Enforcers, shall have the right of enforcement of the reconveyance by Grantor to the nominee by any legal means;
- b. The form of reconveyance shall be satisfactory to Grantee;
- c. Grantee shall pay any costs and expenses, including but not limited to taxes, filing fees and reasonable attorney's fees that Grantor may incur as a result of the reconveyance of the Easement pursuant to the terms of this section.

10.11 Severability. The Parties agree that the provisions of this Conservation Easement are severable and that if any court of competent jurisdiction shall render a judgment voiding or nullifying any provision(s) hereof, the effect of said judgment shall be limited to the nullified or voided portion of this Conservation Easement and the remaining provisions hereof shall continue in full force and effect.

10.12 Modification(s) (Amendments). The Grantor and Grantee may modify this Conservation Easement by mutual agreement in writing, executed by both Parties, in accordance with the provisions of Section 49-0307 of the ECL and recorded in the

appropriate County Clerk's Office, provided, however, that no modification shall be made that will adversely affect the status of this Conservation Easement under applicable laws. Any modification shall be consistent with the Purposes of this Conservation Easement and shall not affect its perpetual duration. The party requesting a modification shall be responsible for all related costs, including, but not limited to appraisals, surveys, abstracts, and recording fees.

10.13 Grantor's Negligence.

- a. The Grantor agrees to indemnify and hold the Grantee and/or Third Party Enforcers harmless against all claims, loss, damage and expense the Grantee and/or Third Party Enforcers may suffer as a result of the Grantor's negligence in the course of exercising any rights reserved under this Conservation Easement or as the fee owner.
- b. The Grantor's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to the Grantor by the Grantee and/or Third Party Enforcers of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after the Grantee and/or Third Party Enforcers are served with such document.

10.14 Grantee's Negligence.

- a. The Grantee agrees to indemnify and hold the Grantor and/or Third Party Enforcers harmless against all claims, loss, damage and expense the Grantor may suffer as a result of the Grantee's negligence in the course of exercising any rights granted under this Conservation Easement.
- b. The Grantee's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to the Grantee by the Grantor and/or Third Party Enforcers of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after the Grantor and/or Third Party Enforcers are served with such document.

10.15 Third Party Liability; Statutory Protections from Liability.

- a. Nothing contained in this Conservation Easement shall create any liability on behalf of the Grantor to any third party or create any right, claim or cause of action on behalf of any party other than the Grantor or the Grantee and their successors and assigns, DEC, and USFWS.

- b. Nothing in this Conservation Easement shall be interpreted as an assumption of responsibility by, or basis for liability on the part of, the Grantor for any injury to person or damage to property or loss of life that may be sustained by any person while on the Protected Property in the exercise of any of the rights afforded to the public by this Conservation Easement or sustained by any person as a result of any entry on or use of the Protected Property. This provision is not intended to release the Grantor from any liability for damages to the person or property of its invitees, employees or agents while on the Protected Property under the authority or by the permission of the Grantor.
- c. The Grantor specifically retains all protections from liability provided under New York law to private owners of land, including, but not limited to, the protections contained in Section 9-103 of the General Obligations Law (or any successor or other statutory or regulatory provision then applicable).
- d. Third Party Enforcers shall have no liability or other obligations for costs, taxes, assessments, insurance, maintenance, or other liabilities of any kind related to the Protected Property except to the extent that such liability(ies) arise from the negligent acts of either or both of Third Party Enforcers respectively or their respective agents, contractors or consultants. Third Party Enforcers' rights do not include the right, in absence of a judicial decree, to enter the Protected Property for the purpose of becoming an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, or any similar statute or regulation. Third Party Enforcers employees, and agents have no liability arising from injury or death to any person or physical damage on the Protected Property, except to the extent that such liability(ies) arise from the negligent acts of either or both of Third Party Enforcers respectively or their respective agents, contractors or consultants.
- e. Grantee shall, at its own expense, procure commercial general liability insurance in which Grantor shall be an additional insured, and keep the same in force for the duration of this Conservation Easement. Such insurance shall defend and pay on behalf of both Grantee and Grantor against claims, including claims for bodily injuries and property damage, occurring on the Protected Property arising out of the negligence of Grantee with a per occurrence limit of not less than one million dollars (\$1,000,000). Grantee shall increase the minimum per occurrence limit by not less than ten percent (10%) cumulatively every five years on the anniversary date of the recording of this Conservation Easement. Grantee shall require that every contractor and/or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall have commercial general liability insurance with the same per occurrence limit as Grantee and shall name

Grantor as an additional insured prior to performing such work or services on, at, over or under the Protected Property. Grantee shall also require that every contractor and/or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall indemnify Grantee and Grantor for any damages arising from any negligent acts or omissions on the part of such contractor and/or consultant. Grantee shall directly oversee and manage all volunteers it allows on to the Protected Property and shall require that any volunteers it brings onto the Protected Property sign a waiver releasing Grantor and holding Grantor harmless for bodily injuries and property damage occurring on the Protected Property except to the extent such bodily injuries or property damage are the result of Grantor's negligence. To the extent that additional or different liability insurance is required by any agreement authorizing Grantee to cross Grantor's tracks, such requirement shall not be avoided or impacted by this paragraph.

- f. Each Third Party Enforcer shall require that every contractor and or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall have commercial general liability insurance with at least the same minimum per occurrence limits as Grantee and shall name the Grantor as an additional insured prior to performing such work or services on, at, over or under the Protected Property. Prior to commencing such work or services, such contractor and or consultant shall provide the Grantor evidence of effectuation of additional insured status for the Grantor. To the extent that additional or different liability insurance is required by any agreement authorizing Third Party Enforcer to cross Grantor's tracks, such requirement shall not be avoided or impacted by this paragraph.

10.16 Additional Covenants. The Grantor does further covenant to the Grantee as follows:

- a. That the Grantor is seized of the Protected Property and has the right to convey this Conservation Easement and the rights hereunder.
- b. That the Grantee shall quietly enjoy said rights granted to the Grantee under this Conservation Easement, provided, however, that Grantee's enjoyment of such rights shall not interfere with the Grantor's quiet enjoyment of, and exercise of, its Reserved Rights.
- c. That the Protected Property is expressly subject to: all existing roads, fiber optic facilities, public utilities; all matters of record; any applicable zoning ordinances and subdivision regulations and laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance; all matters that would be revealed by a survey meeting

applicable State minimum technical requirements or by an inspection of the Protected Property; the items or matters identified in Schedule B, attached hereto and made a part hereof, and all existing occupancies, encroachments, ways and servitudes, howsoever created and whether recorded or not .

- d. That this conveyance is made subject to the trust fund provisions of Section 13 of the Lien Law.
- e. Conrail Fiber Optic Easement. All right, title and interest in and to fiber occupancies on the Protected Property were reserved unto Consolidated Rail Corporation in deed dated June 1, 1999, recorded among the Public Records of Erie County, State of New York in Deed Book 10957, Page 9391.
- f. Grantee takes its rights to the Protected Property as conveyed by this Conservation Easement "as is". Further, Grantee releases Grantor and further covenants not to sue or bring any claim against Grantor which relates in any way to the environmental condition of the Protected Property, the presence of any contaminants of any nature on the Protected Property, or the recovery of any costs expended by it to investigate or remediate the Protected Property ("hereinafter, Environmental Claims") and Grantor shall defend and indemnify Grantee for any Environmental Claims, as herein defined, made against Grantee. The foregoing indemnification obligation shall be void if Grantee breaches subparagraph 4.2.2 by conducting, or authorizing a third party to conduct, surface or subsurface analytical sampling without Grantor's written authorization.

10.17 Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds from such actions shall be payable to Grantor and Grantee to reimburse any reasonable expenses incurred by Grantor and Grantee in such actions, with the remaining balance payable to Grantee or Third Party Enforcers, at the sole discretion of Third Party Enforcers. Such remaining balance shall only be used to restore, replace, or acquire the equivalent of, injured natural resources having an ecological nexus to the Site.

10.18 Recitation. In consideration of the previously recited facts, mutual promises, undertakings and forbearances contained in this Conservation Easement, the Parties agree upon its terms, conditions, provisions, and Purposes, intending to be bound by it. This Conservation Easement contains the entire understanding between its Parties concerning its subject matter. Any prior agreement between the Parties concerning its subject matter shall be merged into this Conservation Easement and superseded by it.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first written above.

GRANTOR:

By: _____

Its: _____

GRANTEE:

By: _____

Its: _____

THIRD PARTY ENFORCEMENT RIGHTS ACCEPTED BY:
THE UNITED STATE DEPARTMENT OF THE INTERIOR
Acting By and Through its Authorized Official

By: _____
WENDI WEBER, Regional Director
U.S. Fish and Wildlife Service, Region 5

USFWS's Acknowledgment:

COMMONWEALTH OF MASSACHUSETTS)
) ss.:
COUNTY OF)

On the ___ day of _____ in the year 20__, before me, the undersigned,
personally appeared, WENDI WEBER, personally known to me or proved to me on the
basis of satisfactory evidence to be the individual whose name is subscribed to the
within instrument and acknowledged to me that she executed the same and that by her
signature on the instrument, she, or the person upon behalf of whom she acted,
executed the instrument.

Notary Public, Commonwealth of Massachusetts _____

PEOPLE OF THE STATE OF NEW YORK
Acting By and Through Their Commissioner of Environmental Conservation

By: _____
NANCY LUSSIER, Director
Division of Management and Budget

Grantor's Acknowledgement.

STATE OF _____)
) ss:
COUNTY OF _____)

On the _____ day of _____ in the year 20___, before me, the undersigned, to personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to me that he executed the same and that by his signature on the instrument, he, or the person upon behalf of whom he acted, executed the instrument.

Notary Public, State of New York

Grantee's Acknowledgement.

STATE OF _____)
) ss:
COUNTY OF _____)

On the _____ day of _____ in the year 20___, before me, the undersigned, to personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to me that he executed the same and that by his signature on the instrument, he, or the person upon behalf of whom he acted, executed the instrument.

Notary Public, State of New York

DEC's Acknowledgment:

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared, NANCY LUSSIER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same and that by her signature on the instrument, she, or the person upon behalf of whom she acted, executed the instrument.

Notary Public, State of New York

LIST OF SCHEDULES AND EXHIBITS

APPENDIX A – DEFINITIONS

SCHEDULE A – DESCRIPTION OF THE PROTECTED PROPERTY

SCHEDULE B – ENCUMBRANCES AND EXCEPTIONS

SCHEDULE C – EXISTING LEASES/LICENSES/EASEMENTS/OCCUPATIONS

EXHIBIT 1 – MAP OF PUBLIC RECREATION AREAS

EXHIBIT 2 – MAP OF THE PROTECTED PROPERTY AND RESERVED ACCESS

EXHIBIT 3 – RIGHT OF ENTRY AGREEMENT FOR SHIP CANAL EAST AND WEST

APPENDIX A DEFINITIONS

Baseline Document: A compilation of information that documents the current condition and conservation values of the property at the time a conservation easement is closed, unless otherwise agreed by Grantor, Grantee and Third Party Enforcers, generally including maps, photographs and a description of significant features. The report is used to monitor and enforce the easement and is signed by Grantor and the Grantee at time of transfer. The Baseline Documentation may be updated, revised and amended by written agreement of Third Party Enforcers, Grantor and Grantee to reflect work undertaken under the Restoration Plan.

Consent Decree: Shall mean the Consent Decree between United States of America, State of New York, and Tuscarora Nation as Plaintiffs and Honeywell International Inc., and CSX Transportation Inc. as Defendants.

Designated Paths: Those specific areas where public access is permitted and directed, such as paths providing access between existing public paths to the north and west of the Protected Property.

Department: The New York State Department of Environmental Conservation.

Endangered, Threatened, Rare, and Special Concern Species of Native Animals and Plants: Those species of animals listed as endangered or threatened by the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.) e State of New York Part 182 (6 NYCRR 182). For purposes of this Conservation Easement, this includes the "active inventory" of animal species listed in the most recent Rare Animal Status List produced by The New York Natural Heritage Program, and those species of plants defined as Endangered, Threatened, or Rare in Codes, Rules, and Regulations of the State of New York Part 193 or its successor regulation, and the "active inventory" of plant species listed in the most recent Rare Plant Status List produced by The New York Natural Heritage Program.

Forest Preserve: All lands owned by the State of New York and subject to Article 14 of the New York State Constitution.

Grantee: The Party identified as Grantee in the preamble, its officials, employees, contractors, successors, assigns, authorized agents, personal representatives, tenants, and occupants, and where specifically set forth herein licensees and lessees of Grantee.

Grantee Work Plan: A work plan to be developed by Third Party Enforcers with the concurrence of Grantee and Grantor to direct Grantee to conduct bi-annual monitoring of the Protected Property; and to direct Grantee to provide an annual report on compliance with this Conservation Easement annually to Third Party Enforcers. The work plan also provides for voluntary pick up of litter and debris on the Protected Property.

Grantor: The term "Grantor" shall include Grantor, its successors, heirs and assigns, and its authorized agents, personal representatives, tenants, occupants, contractors, and employees, and where specifically set forth herein, licensees and lessees of Grantor.

Impervious: Resistant to penetration by moisture. Impervious materials include, but are not limited to, pavement, asphalt, concrete, or other non-porous materials or surfaces used in the construction of roads, trails, parking lots, and other such ground surface improvements. Gravel roads shall not be considered to have an impervious surface.

Lake and Pond(s): A body of water included and shown in the National Hydrography Dataset at a map scale of 1:24,000. Small ponds or lakes with a surface area at mean low water level of ten (10) acres or less, located in the course of a stream, shall be considered a part of the stream.

Mean High Water Mark: The approximate average high water level for a given body of water at a given location that distinguishes between predominantly aquatic and predominantly terrestrial habitat as determined, in order of use, by the following: (1) available hydrologic data, calculations, and other relevant information concerning water levels (e.g. discharge, storage, tidal, and other recurrent water elevation data); (2) vegetative characteristics (e.g., location, presence, absence or destruction of terrestrial or aquatic vegetation); (3) physical characteristics (e.g., clear natural line impressed on a bank, scouring, shelving, or the presence of sediments, litter or debris); and (4) other appropriate means that consider the characteristics of the surrounding area.

Motor Vehicle: Passenger vehicles limited to passenger cars, motorcycles intended for highway use, Snowmobiles or trucks, powered by any means. For the purposes of this Conservation Easement, this definition specifically excludes All-Terrain Vehicles ("ATVs"), mobile homes, off- road motorbikes and motocross cycles.

Motorized Equipment: Tractors, groomers, ATVs, Snowmobiles, motorboats, aircraft and other means of facilitating motorized access, as well as machines not designed for transporting people or for moving earth but incorporating a motor, engine, or other non-

living power source to accomplish a task, such as but not limited to, saws, mowers, pumps, drills, and generators.

Motorized Public Access: Entry upon the Protected Property, or a designated corridor (road or trail), by Motor Vehicles.

Motorized Public Access Corridor: A Public Access Corridor designated for Motorized Public Access or general access by the public by any non-motorized means.

Natural Resource Value(s): Shall mean and include the natural habitat located on the Protected Property for birds, fish, and wildlife, including wetlands, uplands, and stream habitat, the ecological value of the Protected Property, and the open space, and scenic and natural features on the Protected Property.

Natural State: The approximate general condition of the Protected Property existing immediately prior to a breach of any term or condition of this Conservation Easement, giving due consideration to the impact of the normal effects of the passage of time; the results of natural forces such as wind, fire, earthquakes, landslides, lightning, floods, ice storms, or other acts of God; prior Forest Management Activities; and the Public Recreational Uses of the Protected Property.

Non-Motorized Public Access: Entry upon the Protected Property, or a designated corridor (road or trail), by means other than Motor Vehicles, Motorized Recreational Vehicles, Motorized Equipment, or any vehicle or machine with a motor.

Non-Motorized Public Access Corridor: A Public Access Corridor designated for Non-Motorized Public Access.

Non-Native Species: Species of organisms that are not native to the Western New York region of New York State, including living organisms introduced from outside their natural ranges. This definition shall also include genetically modified or genetically engineered organisms.

Party/Parties: As defined in the preamble.

Protected Property: The lands subject to this Conservation Easement, more particularly described in Schedule A.

Public Highway: A roadway maintained by the local town, county or state to provide passage by the public in motor vehicles.

Railroad Operations on Adjacent Property: Means any and all existing or future railroad related activities of Grantor on lands located south, east and west of the Protected Property.

Restoration Plan: The Buffalo River Natural Resource Damage Assessment Restoration Plan and Environmental Assessment attached as Appendix A to the Consent Decree.

Restoration Work Plan: A work plan to be developed by Third Party Enforcers, with the concurrence of the Grantee and Grantor, to specify work to be completed on the Protected Property to restore, maintain, and otherwise prepare the Property for the uses specified in this agreement as set forth in the Restoration Plan.

Riparian: Land area and associated vegetation located along, bordering upon, fronting on, abutting, adjacent to, and/or contiguous or in contact with, a watercourse.

Site: For the purposes of this Conservation Easement, the term "Site" shall mean the Buffalo River from the confluence of Cazenovia Creek to the mouth of the River at Lake Erie (approximately the lower 6.2 miles of the main stem of the River including the City Ship Canal that runs 1.4 miles south from the mouth of the River parallel to Lake Erie), as well as the Times Beach Nature Preserve and Confined Disposal Facility.

Significant Natural Communities: An assemblage of interacting plant and animal populations that share a common environment and are those ranked by the New York State Natural Heritage Program, or its successor agency, as being of excellent or good quality and have a high conservation value from a statewide perspective. New York State Natural Heritage Program or successor entity shall set forth specific, documented criteria from time to time to evaluate the occurrences of the specific assemblages of plant and animal populations on the Protected Property to determine the rankings.

State: The State of New York

Structure(s): For the purposes of this Conservation Easement, the term "Structure" shall be defined as broadly as possible, and shall include, but not be limited to, any building, facility, edifice, or man-made development of any kind or nature, whether permanent or temporary, including, but not limited to, buildings, Camps, cabins, lean-tos, towers, wind turbines, tanks, antennas, mobile homes, bridges, docks, utilities, fences, billboards, signs, sanitary facilities, or other man-made facilities or improvements; however, for the purposes of this Conservation Easement the term "Structure" shall specifically not include structures used in conjunction with Forest Management Activities, permitted road construction and maintenance, including, without limitation, roads, culverts, and bridges or those structures such as tree stands or hunting/observation blinds associated with wildlife dependent recreation with an area less than 64 square feet.

Subdivide; Subdivision: Any division of the Protected Property into two or more separate and distinctive lots, units or parcels, whether adjoining or not, for the purpose of sale or conveyance of a portion of the Protected Property to a separate owner.

Third Party Enforcers: The State of New York acting through DEC and the United

States Department of the Interior acting through the USFWS.

Tract(s): Specific parcels of the Protected Property identified by name and described in Schedule A herein.

Unique Habitats: A distinctive place or environment where a plant or animal naturally or normally lives and grows.

Water Bodies: A pond, lake or reservoir.

Watercourse: Natural or artificial channel through which water flows.

Wetland: A surface depression that (1) is inundated or saturated by surface water or groundwater for significant periods of time; (2) supports a prevalence of vegetation typically adapted for life in saturated soil conditions; and (3) contains predominantly hydric soils. Wetlands shall include any "freshwater Wetland" as defined in section 24-0107 of the ECL; Wetlands under the jurisdiction of the Adirondack Park Agency, the United States Army Corps of Engineers, or any other government entity.

SCHEDULE A
PROPERTY DESCRIPTION

SCHEDULE B
ENCUMBRANCES AND EXCEPTIONS

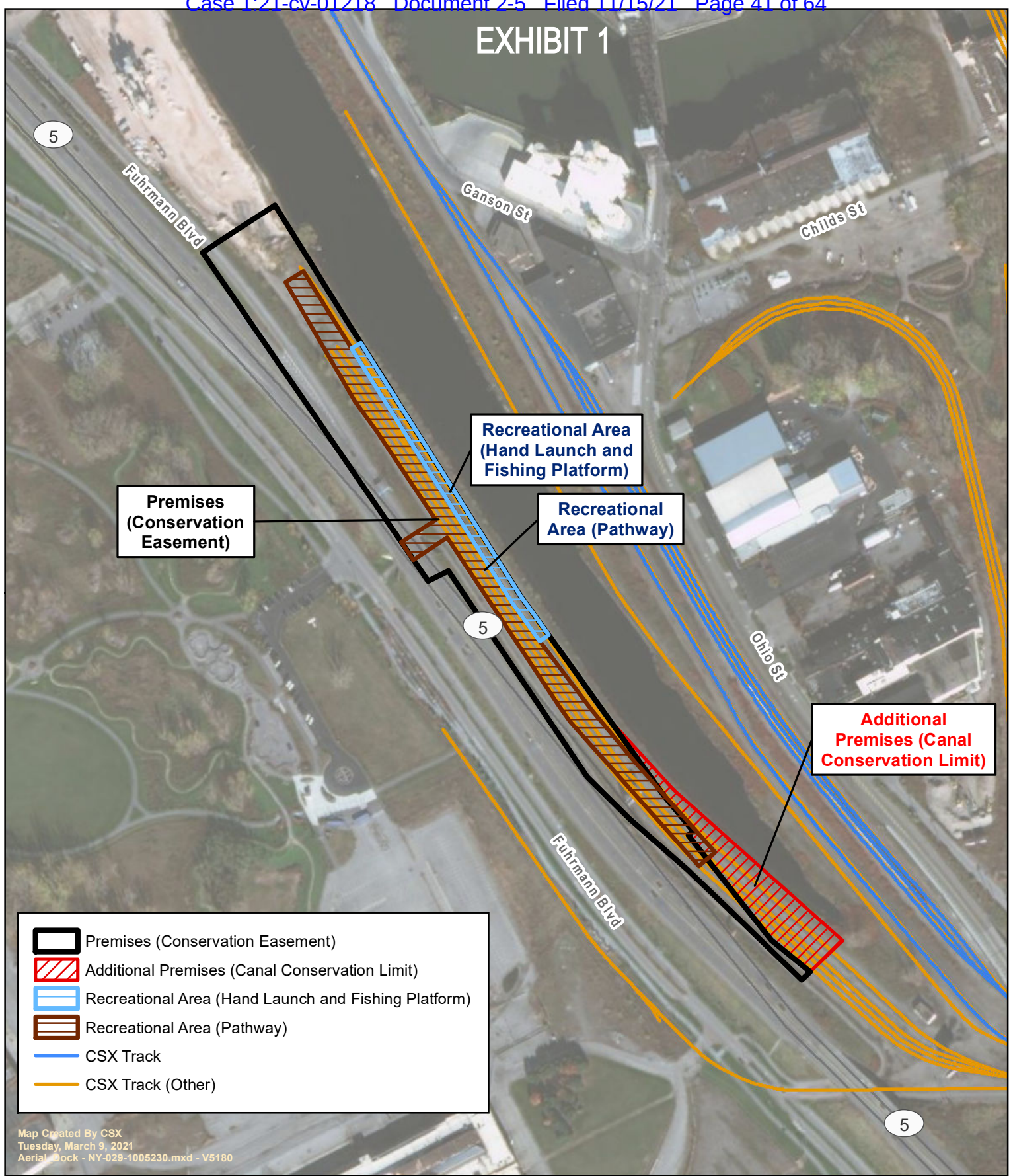
SCHEDULE C
LEASES/LICENSES/EASEMENTS/OCCUPATIONS







CSX Reference	Date	Party	Type
CR 320424	1-29-1997	Lamar Advertising Co	Signboard
CR 320425	1-28-1997	Lamar Advertising Co	Signboard
CR 303457	11-7-1991	Quality Outdoor	Wireline
CR 270425	9-9-1911	Niagara Mohawk Power	Wireline
CR 207368	8-4-1976	Erie County	Pipeline
CR 002633	8-1-1933	City of Buffalo	Pipeline
CR 002645	4-1-1931	City of Buffalo	Pipeline
CR 002162	5-4-1935	Buffalo General Electric Co	Wireline
CR 000844	11-15-1946	Buffalo Niagara Electric Coop	Wireline

Conrail reserved rights in deed dated June 1, 1999 deed book 11006/5902

Any existing CSX facility and utility connections thereto, if any

EXHIBIT 1



-  Premises (Conservation Easement)
-  Additional Premises (Canal Conservation Limit)
-  Recreational Area (Hand Launch and Fishing Platform)
-  Recreational Area (Pathway)
-  CSX Track
-  CSX Track (Other)

Map Created By CSX
 Tuesday, March 9, 2021
 Aerial Stock - NY-029-1005230.mxd - V5180

PROP SALE - CITY SHIPPING CANAL SITE
SITE: NY-029-1005230
ERIE COUNTY - BUFFALO, NY
N - NORTHERN - BUFFALO TERMINAL
MILEPOST: QDA 1.20 - QDA 1.73

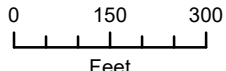
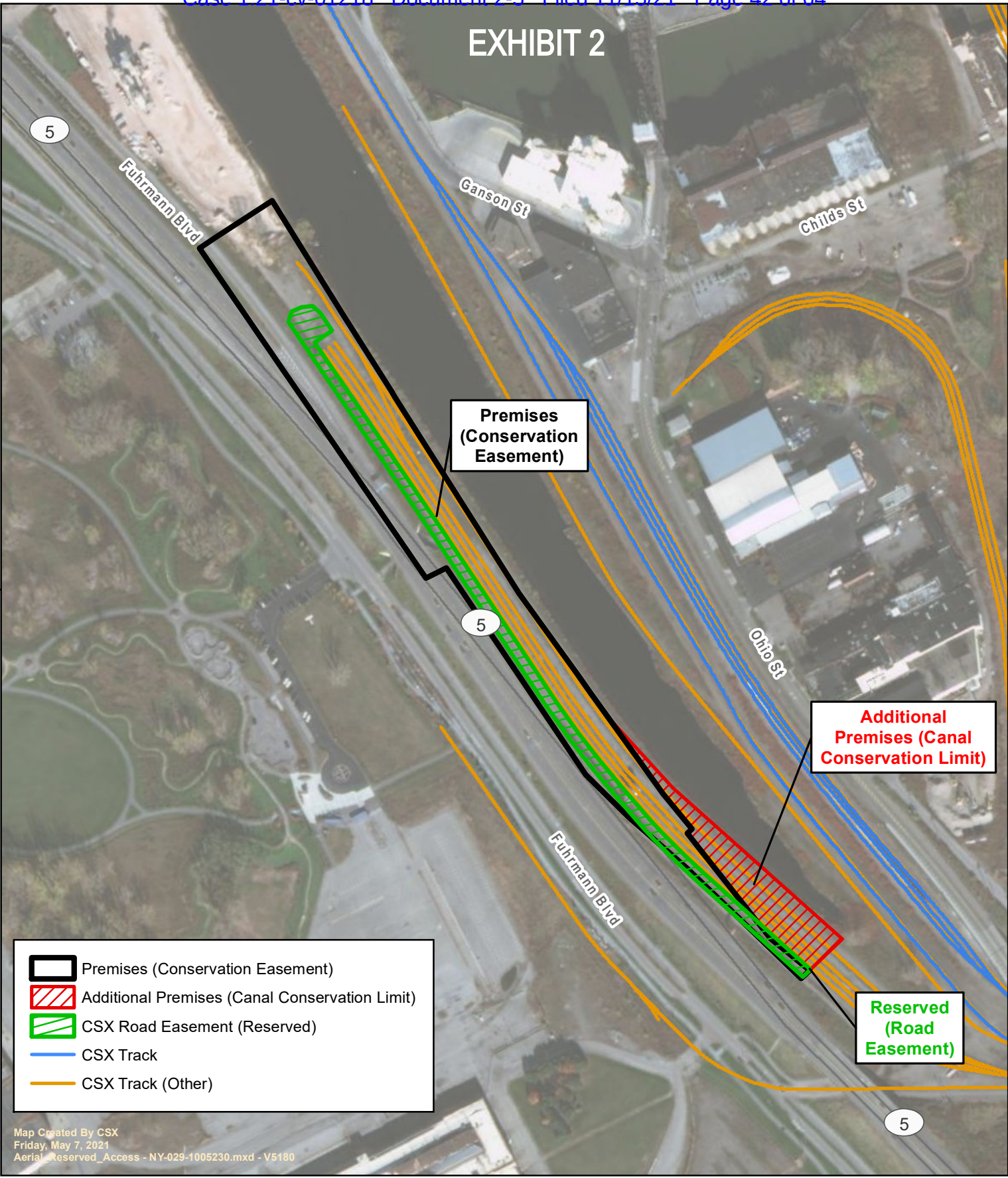







EXHIBIT 2

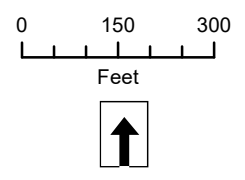


-  Premises (Conservation Easement)
-  Additional Premises (Canal Conservation Limit)
-  CSX Road Easement (Reserved)
-  CSX Track
-  CSX Track (Other)

Map Created By CSX
 Friday, May 7, 2021
 Aerial_Reserved_Access - NY-029-1005230.mxd - V5180



PROP SALE - CITY SHIPPING CANAL SITE
SITE: NY-029-1005230
ERIE COUNTY - BUFFALO, NY
N - NORTHERN - BUFFALO TERMINAL
MILEPOST: QDA 1.20 - QDA 1.73



TEMPORARY RIGHT OF ENTRY AGREEMENT
ON AND TO "WESTERN SHIP CANAL PROPERTY"

THIS AGREEMENT, Made and effective as of _____, 20____, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, (hereinafter called "CSXT"), and the Trustees of Natural Resources, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service, the Commissioner of Environmental Conservation acting through the New York State Department of Environmental Conservations, and the Tuscarora Nation (collectively referred to as the "Licensee"), WITNESSETH:

WHEREAS, under a Consent Decree between the Licensee and Honeywell Corporation (W.D.N.Y. 2021) and a conservation easement and restriction ("CER") granted to the Buffalo Niagara River Land Trust, Inc., Licensee has been granted third party enforcement rights by CSXT on land that it owns, on the west side of the City Ship Canal in Buffalo, New York, as shown on Exhibit A, attached hereto and made a part hereof, (the "Ship Canal Easement Property") which enables Licensee to conduct periodic inspections and certain pre-defined natural resource restoration activities on the Ship Canal Easement Property (the "NRD Work") by accessing the Ship Canal Easement Property from the north as set forth in the CER; and

WHEREAS, Licensee has also asked CSXT for authorization to conduct certain additional pre-defined natural resource restoration activities (the "Additional NRD Work") by accessing the Ship Canal Easement Property from the south. The scope of the Additional NRD Work includes potentially creating paths, installing native habitat plantings, and a fishing platform and/or launch for small hand-carried boats as is described in Exhibit 1 herein; and

WHEREAS, Licensee seeks authorization for its employees, agents, contractors, personnel (collectively, "Agents") and equipment to access the Ship Canal Easement Property from the south, across other property owned by CSXT, designated as "Access Area" on Exhibit "A", attached hereto and made a part hereof, ("Other CSXT Property"), in order to perform the Additional NRD Work on the Ship Canal Easement Property; and

WHEREAS, CSXT is willing to grant to Licensee and its "Agents" and equipment the limited right and permission to enter and cross the Other CSXT Property (the "Access") in defined areas identified herein;

NOW THEREFORE, CSXT hereby grants to Licensee and its Agents the Access, subject to the terms and conditions set forth below:

1. ACCESS: The Access shall be undertaken in the specific locations identified in Figure A, and by methods approved in advance by John White, Real Estate Specialist - CSXT, or his duly authorized representative (CSXT's Representative) and in a manner to avoid accidents, damages, unnecessary delays to or interference with train traffic or infrastructure of CSXT as identified by CSXT's Representative. Prior to entry, Licensee shall notify CSXT's Representative of the scope, nature, and extent of the requested access. Licensee and Licensee's employees, agents, contractors and other representatives (collectively, "Agents") shall maintain

in their possession a copy of this Agreement at all times during their Access of the Other CSXT Property . This Agreement is not required for access to the Ship Canal Easement Property by Licensees or its Agents from the public right of way adjacent to the northern portion of the Ship Canal Easement Property.

2. RELEASE:

2.1 The Licensee and its Agents recognize that they will be accessing industrial property with both obvious and latent dangers, including the presence of rail infrastructure and active rail activity, and hereby assume risk of and agree to release CSXT from all liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) incurred as a result of such Access, for:

2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

2.1.3 any and all other losses or damages;

arising directly or indirectly from the presence of Licensee or its Agents on or about the Other CSXT Property, provided, however, such release shall not apply to the extent it is found in a final judgment by a court of competent jurisdiction to have resulted primarily and directly from the negligence, gross negligence, or willful misconduct of CSXT.

2.2 CSXT shall request that before any of Licensee's contractors and subcontractors access the Other CSXT Property that they sign a rider to this Agreement agreeing to indemnify and defend CSXT from liability associated with their access to and work on CSXT's property, and abide by the insurance requirements identified herein. CSXT may refrain from signing this Agreement or terminate this Agreement if Licensee's contractors or subcontractors decline to sign the requested rider.

2.3 The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

2.3.1 Licensee shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity during its Access on the Other CSXT Property and the Ship Canal Easement Property.

2.3.2 For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees, lessees and agents and including such officers, directors, employees, lessees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates.

2.3.3 The provisions of this Section shall survive the termination or expiration of this Agreement.

3. GENERAL LIABILITY INSURANCE:

3.1 Licensee is self-insured. Before performing any Access on the Other CSXT Property, Licensee's contractors and/or subcontractors shall procure and maintain, at its expense: (i) statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which insurance must contain a waiver of subrogation against CSXT and its Affiliates, if permitted by state law; (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement; (iii) business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence; and (iv) such other insurance as CSXT may reasonably require. Upon request, Licensee shall ensure that its contractors and/or subcontractors shall provide CSXT with a copy of the aforementioned insurance policies. A policy endorsement naming CSXT, and/or its designee, as an additional insured and specifying such coverage shall be furnished to CSXT prior to the execution of this Agreement, and the required coverage will be kept in force until all of Licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT. The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited by Licensee's self-insurance or the required insurance coverage for Licensee's contractors

4. RAILROAD PROTECTIVE LIABILITY INSURANCE:

In the event Licensee, or its contractors, find it necessary to perform surveying, construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee or its contractors shall: (a) notify CSXT; and (b) in the case of Licensee, notify CSX of its status as self-insured, and in the case of Licensee's contractors, procure and maintain during the period of construction or demolition operations, at no cost to CSXT, Railroad Protective Liability (RPL) Insurance, naming CSXT, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage,

with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by CSXT prior to commencement of such survey, construction or demolition. CSXT reserves the right to demand higher limits.

At CSXT's option following a request, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee's contractors may pay CSXT, at CSXT's current rate at time of request, the cost of adding any surveying, construction or demolition activities, to CSXT's blanket Railroad Protective Liability (RPL) Policy for the period of actual surveying, construction or demolition activities. This coverage is offered at CSXT's discretion and may not be available under all circumstances.

5. PRIOR NOTIFICATION: Licensee or Licensee's Agents shall notify CSXT at least 30 days prior to requiring entry on the Other CSXT Property and shall abide by the instructions of the CSXT Representative. Notice will be made to John White, CSXT Real Estate Specialist at John_C_White@CSX.com ("CSXT Representative"), but further approval by CSXT is not required once granted under Paragraph 1, unless Licensee or Licensee's contractor requests changes to the approved scope of work.

6. CLEARANCES: Neither Licensee nor Agents shall place or operate any equipment of Licensee or Agents at a distance closer than fifty (50) feet from the center of any track, without the prior approval of the CSXT Representative. The CSXT Representative may require protective services or such other services as deemed necessary or appropriate. Equipment shall be moved across CSXT's track(s) only at a public crossing unless prior arrangements have been made with the CSXT Representative and if the CSXT Representative determines necessary, a Private Crossing Agreement is fully executed and in place. Licensee and Agents shall take all precautions necessary to avoid interference with or damage to CSXT's property and signal and communication facilities during their Access.

7. PROTECTIVE SERVICES: If protective services, such as flagging protection, are required by CSXT, Licensee shall make arrangements with the CSXT Representative to furnish such personnel, flagman or watchman, that in the CSXT Representative's opinion may be necessary to protect the facilities and traffic of CSXT during the performance of the Project. CSXT will make such services available according to its standard publicly available rates for such services.

8. PAYMENT FOR PROTECTIVE SERVICES: Payment shall be made by Licensee in accordance with the following designated option:

() **Option 1:** Licensee shall make an advance deposit of funds based on an estimate of the cost of protective or other services as determined by CSXT. The cost for CSXT's services shall then be assessed by CSXT against this advance deposit. Upon completion of the Project, any unused funding will be returned to Licensee. If CSXT's costs exceed the advance deposit(s), a request will be made to Licensee for additional funds or an invoice will be issued to Licensee

for final payment. Licensee shall remit payment to CSXT within thirty (30) days of receipt of either a request for additional funds or an invoice; or

(X) Option 2: Licensee shall promptly reimburse CSXT for the cost of protective or other services on an as-incurred basis, including all applicable surcharges, upon receipt of bill(s) therefore.

9. ENVIRONMENTAL: This Agreement does not include and expressly excludes the performance of any site investigation activities designed to determine environmental conditions on, about or beneath the Other CSXT Property. Precluded activities include performing soil borings for purposes other than geotechnical investigation, obtaining soil, sediment, groundwater and surface water samples, and conducting field or laboratory analyses of any soil, sediment, groundwater or surface water samples obtained from the Other CSXT Property to identify chemical composition or environmental condition. If any type of environmental investigation is desired, a separate right of entry agreement issued through CSXT's Environmental Department must be secured.

10. CLAIMS: Licensee shall, or shall require Agents, to promptly notify the CSXT Representative of any loss, damage, injury or death arising out of or in connection with the Project.

11. REMEDIATION: It is understood and agreed that, upon completion of each Access by Licensee and/or its Agents, the Other CSXT Property shall be left in a condition similar to its condition prior to the Access by the Licensee. 1.

12. SAFETY:

All personnel entering the Other CSXT Property with or without equipment must comply with CSXT safety rules and requirements, meaning, without exception, the wearing of hard hats and approved safety shoes and safety glasses with side shields. Anyone not in compliance with these rules and regulations will be asked to leave the Other CSXT Property

13. TERM: This Right-of-Entry Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement. It shall terminate within one year from the date of this Agreement, however, such Agreement may be renewed for additional successive periods of one year upon written request by Licensee and subsequent written approval by CSXT. Such extension shall be subject to CSXT's discretion, but shall not be unreasonably withheld and may require additional terms it deems necessary based upon prior incidents or concerns relating to such Access. Upon termination of Agreement, Licensee shall ensure that the Other CSXT Property is restored to original condition, if it has been modified or damaged in any way as a result of repeated Access.

14. SEVERABILITY: The parties agree that if any part, term or provision of the Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable. If any provision or any part of a provision of the

Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

15. **MODIFICATIONS:** This Agreement may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter.

16. **NOTICES:** All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered; upon personal delivery, upon confirmation of email receipt, if confirmation is provided by return email; upon the expiration of three (3) business days following mailing by U.S. first class mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Licensee at the address above, and to Licensors at the address shown on Page 1, c/o CSXT Contract Administration, J180; or at such other addresses as either party may designate by delivery of prior notice to the other party.

17. **TERMINATION:** CSXT shall have the right at any time and at its sole discretion to terminate this Agreement based upon Licensee's failure to comply with the safety provisions of this Agreement or if the Other CSXT Property is needed for railroad purposes, upon reasonable notice to Licensee, unless such termination is for breach of CSXT's safety rules, in which case termination is effective immediately.

18. **WAIVER:** If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

19. **GOVERNING LAW; VENUE:** This Agreement shall be governed by and construed under the laws of the State of New York, without regard to the choice of law provisions thereof. Venue for any action arising from, or brought to enforce, this Agreement, shall vest exclusively in the state or federal courts located in the State of New York, and the parties agree to submit to the personal jurisdiction of any state or federal court located in Erie County, New York.

20. **NO ASSIGNMENT:** Notwithstanding anything to the contrary contained in this Agreement, Licensee shall not permit Agents to enter the Ship Canal Property from the south and the Other CSXT Property without first requiring Agents to agree in writing to comply with all of the terms of this Agreement. Assignment of this Agreement to any party other than Agents in accordance with this Section shall not be permitted except upon the prior written consent of CSXT, which consent may be granted or withheld at CSXT's sole discretion. This Agreement shall be binding upon the parties and their respective successors and assigns.

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the effective date of this Agreement.

Witness for CSXT:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: Senior Manager of Environmental & Property Management

Witness for Licensee:

TRUSTEES OF NATURAL RESOURCES,
consisting of the United States Department of the
Interior acting through the United States Fish and
Wildlife Service

By: _____

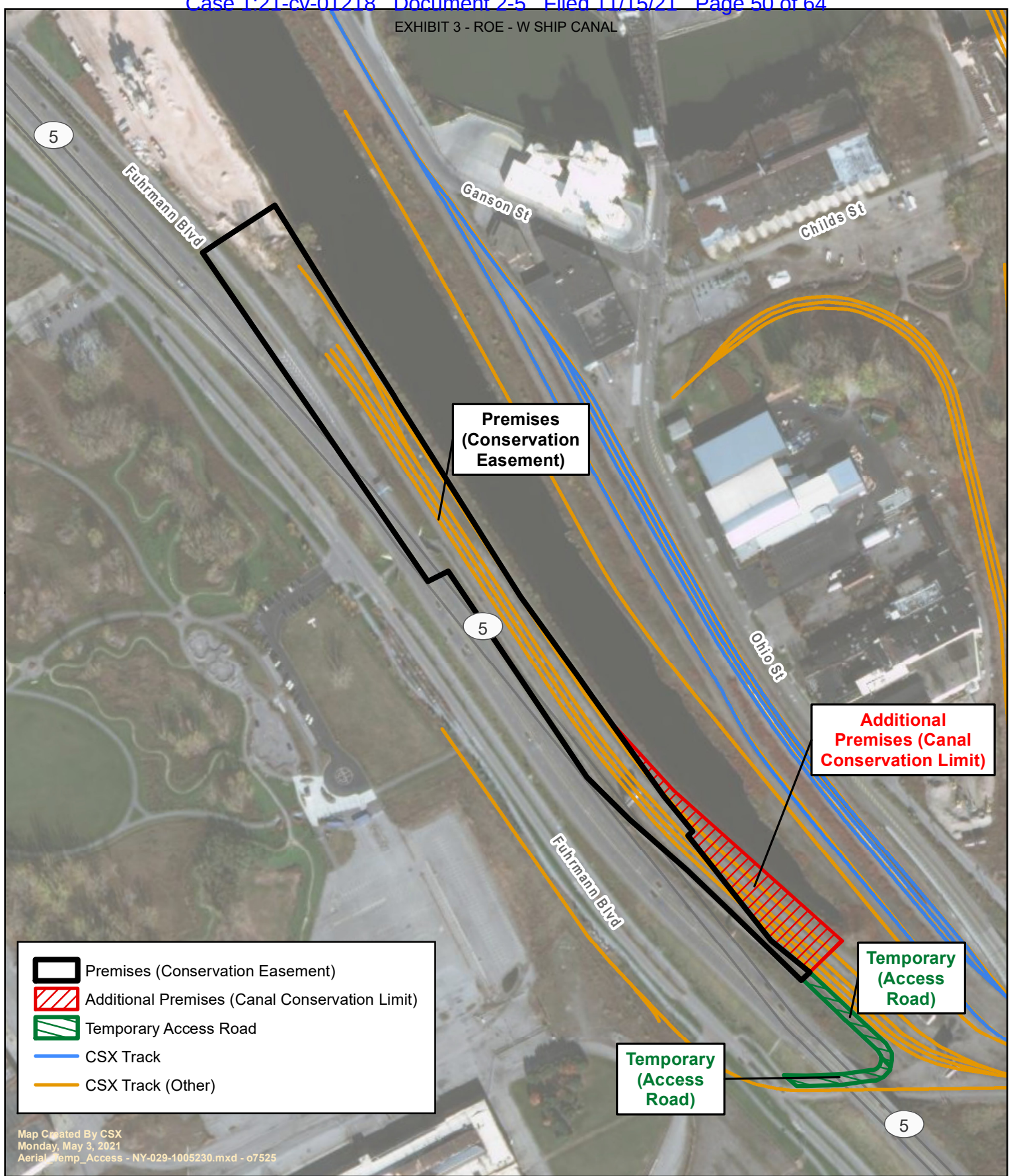
Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee or Licensee contractor to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

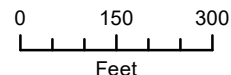
Tax ID No.: _____

EXHIBIT 3 - ROE - W SHIP CANAL



Map Created By CSX
Monday, May 3, 2021
Aerial_Temp_Access - NY-029-1005230.mxd - o7525

PROP SALE - CITY SHIPPING CANAL SITE
SITE: NY-029-1005230
ERIE COUNTY - BUFFALO, NY
N - NORTHERN - BUFFALO TERMINAL
MILEPOST: QDA 1.20 - QDA 1.73



Contractor's Acceptance Rider

This Rider is and shall be a part of the Right of Entry Agreement for the Ship Canal CER, and is incorporated therein.

To and for the benefit of CSX Transportation, Inc., ("Railroad") and to induce Railroad to permit Contractor on or about the Railroad's property for the purposes of performing work in accordance with the Ship Canal CER and the Right of Entry Agreement dated _____, between Trustees and Railroad, (the "Agreement"), Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, and the requirements listed below.

CONTRACTOR INSURANCE REQUIREMENTS:

Railroad requires that the following insurance coverage be provided prior to any entry and/or work within Railroad's property and maintained by the Contractor until completion of the work. Railroad or its designee, may at any time request evidence of insurance purchased by Contractor to comply with the Agreement. Securing such insurance shall not limit Contractor's liability under the Agreement but shall be a security therefor.

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against Railroad and its Affiliates;
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Railroad, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under the Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Railroad, or its designee, prior to cancellation or modification of any policy. If Contractor's existing CGL policy(ies) do(es) not automatically cover Contractor's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Contractor shall arrange for adequate time for reporting losses. Failure to do so shall be at Contractor's sole risk;
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;
- (iv) Such other insurance as Railroad may reasonably require.

Railroad may require Contractor performing the work to obtain Railroad Protective Liability ("RPL") Insurance coverage. In the event Contractor will be responsible for procuring and maintaining RPL Insurance coverage the following shall apply:

Contractor shall procure and maintain during the period of construction or demolition operations, at no cost to Railroad, Railroad Protective Liability (RPL) Insurance, naming Railroad, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS

(\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Railroad prior to commencement of such construction or demolition. Railroad reserves the right to demand higher limits.

At Railroad's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Contractor may pay Railroad, at Railroad's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Railroad's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Railroad's discretion and may not be available under all circumstances.

INDEMNITY REQUIREMENTS:

1. Contractor hereby assumes the risk of and agrees to indemnify, defend, protect and save CSXT and CSXT's Affiliates harmless with respect to any and all attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) for:

(i) personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

(ii) the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

(iii) any environmental damage and any related remediation brought or recovered against CSXT or any of its Affiliates; and

(iv) any and all other losses or damages;

arising directly or indirectly from the presence of Contractor or its Agents on or about the Property, whether or not attributable in whole or part to the negligence, gross negligence, or intentional misconduct of CSXT or its Affiliates.

2. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law. In the event that such court of competent jurisdiction finds that New York statutory construction contract indemnity monetary limits apply to this Agreement with respect to Contractor's indemnification of CSXT and its Affiliates for liability caused in whole or in part by any act, omission or default by CSXT or its Affiliates, the parties hereto agree that such limit shall be equal to the limits (exclusive of deductibles) of the applicable insurance required by Sections 3 and 4 of this Agreement. The parties acknowledge and agree that this monetary limit, if required, bears a commercially reasonable relationship to this Agreement, in so far as, among other factors, the parties have taken into account the availability and cost of insurance and other

risk transference devices, the scope of the Project, the risks associated with the Project, and the compensation and any other benefits exchanged between the parties in connection with this Agreement.

(i) Contractor shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity on the Property and agrees to indemnify, defend, and hold CSXT and its Affiliates harmless with respect to any fines, penalties, liabilities, or other consequences for its failure to so comply.

(ii) For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates and their respective officers, directors, employees and agents.

(iii) The provisions of this Section shall survive the termination or expiration of this Agreement.

CONTRACTOR: _____
By: _____
Name: _____
Title: _____
Date: _____

TEMPORARY RIGHT OF ENTRY AGREEMENT
ON AND TO "EASTERN SHIP CANAL PROPERTY"

THIS AGREEMENT, Made and effective as of _____, 20____, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, (hereinafter called "CSXT"), and the Trustees of Natural Resources, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service, the Commissioner of Environmental Conservation acting through the New York State Department of Environmental Conservations, and the Tuscarora Nation (collectively referred to as the "Licensee"), WITNESSETH:

WHEREAS, under a Consent Decree between the Licensee and Honeywell Corporation (W.D.N.Y. 2021) and a conservation easement and restriction ("CER") granted to the Buffalo Niagara River Land Trust, Inc., Licensee has been granted third party enforcement rights by CSXT on land that it owns, on the west side of the City Ship Canal in Buffalo, New York, as shown on Exhibit A, attached hereto and made a part hereof, (the "Ship Canal Easement Property") which enables Licensee to conduct periodic inspections and certain pre-defined natural resource restoration activities on the Ship Canal Easement Property (the "NRD Work") by accessing the Ship Canal Easement Property from the north as set forth in the CER; and

WHEREAS, Licensee has also asked CSXT for authorization to conduct certain additional pre-defined natural resource restoration activities (the "Additional NRD Work") on a separate CSXT-owned property located on the east side of the City Ship Canal, in the area depicted in Figure A, that is not within the Ship Canal Easement Property (the "Eastern CSXT Ship Canal Property"). The scope of the Additional NRD Work includes invasive species control and native habitat planting as is described in Exhibit 1 herein; and

WHEREAS, Licensee seeks authorization for its contractors, personnel and equipment to access the Eastern CSXT Ship Canal Property in order to perform the Additional NRD Work, and additionally seeks access by its contractors, personnel and equipment across other property owned by CSXT ("Other CSXT Property") in order to enter the Eastern CSXT Ship Canal Property; and

WHEREAS, CSXT is willing to grant to Licensee and its personnel, contractors and equipment the limited right and permission to enter and cross the Other CSXT Property (the "Access") in defined areas identified herein, as well as the limited right to perform the Additional NRD Work identified herein on the Eastern CSXT Ship Canal Property;

NOW THEREFORE, CSXT hereby grants to Licensee the Access, subject to the terms and conditions set forth below:

1. ACCESS: The Access shall be undertaken in the specific locations identified in Figure A, and by methods approved in advance by John White, Real Estate Specialist - CSXT, or his duly authorized representative (CSXT's Representative) and in a manner to avoid accidents, damages, unnecessary delays to or interference with train traffic or infrastructure of CSXT as identified by CSXT's Representative. Prior to entry, Licensee shall notify CSXT's

Representative of the scope, nature, and extent of the requested access. Licensee and Licensee's employees, agents, contractors and other representatives (collectively, "Agents") shall maintain in their possession a copy of this Agreement at all times during their Access of the Other CSXT Property and the Eastern CSXT Ship Canal Property.

2. RELEASE:

2.1 The Licensee and its Agents recognize that they will be accessing industrial property with both obvious and latent dangers, including the presence of rail infrastructure and active rail activity, and hereby assume risk of and agree to release CSXT from all liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) incurred as a result of such Access, for:

2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

2.1.3 any and all other losses or damages;

arising directly or indirectly from the presence of Licensee or its Agents on or about the Other CSXT Property and the Eastern Ship Canal Property, provided, however, such release shall not apply to the extent it is found in a final judgment by a court of competent jurisdiction to have resulted primarily and directly from the negligence, gross negligence, or willful misconduct of CSXT.

2.2 Licensee shall request that its contractors and subcontractors sign a rider to this Agreement agreeing to indemnify and defend CSXT from liability associated with their access to and work on CSXT's property. CSXT may refrain from signing this Agreement if Licensee's contractors or subcontractors decline to sign the requested rider.

2.3 The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

2.3.1 Licensee shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity during its Access on the Other CSXT Property and the Eastern CSXT Ship Canal Property.

2.3.2 For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its

respective officers, directors, employees, lessees and agents and including such officers, directors, employees, lessees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates.

2.3.3 The provisions of this Section shall survive the termination or expiration of this Agreement.

3. GENERAL LIABILITY INSURANCE:

3.1 Licensee is self-insured. Before performing any Additional NRD Work on the Eastern CSXT Ship Canal Property, Licensee's contractors and/or subcontractors shall procure and maintain, at its expense: (i) statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which insurance must contain a waiver of subrogation against CSXT and its Affiliates, if permitted by state law; (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement; (iii) business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence; and (iv) such other insurance as CSXT may reasonably require. Upon request, Licensee shall ensure that its contractors and/or subcontractors shall provide CSXT with a copy of the aforementioned insurance policies. A policy endorsement naming CSXT, and/or its designee, as an additional insured and specifying such coverage shall be furnished to CSXT prior to the execution of this Agreement, and the required coverage will be kept in force until all of Licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT. The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited to the required insurance coverage of its contractors.

4. RAILROAD PROTECTIVE LIABILITY INSURANCE:

In the event Licensee, or its contractors, find it necessary to perform surveying, construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee or its contractors shall: (a) notify CSXT; and (b) in the case of Licensee, notify CSX of its status as self-insured, and in the case of Licensee's contractors, procure and maintain during the period of construction or demolition operations, at no cost to CSXT, Railroad Protective Liability (RPL) Insurance, naming CSXT, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by

CSXT prior to commencement of such survey, construction or demolition. CSXT reserves the right to demand higher limits.

At CSXT's option following a request, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee's contractors may pay CSXT, at CSXT's current rate at time of request, the cost of adding any surveying, construction or demolition activities, to CSXT's blanket Railroad Protective Liability (RPL) Policy for the period of actual surveying, construction or demolition activities. This coverage is offered at CSXT's discretion and may not be available under all circumstances.

5. **PRIOR NOTIFICATION:** Licensee or Licensee's Agents shall notify CSXT at least 30 days prior to requiring entry on the Other CSXT Property and the Eastern CSXT Ship Canal Property and shall abide by the instructions of the CSXT Representative. Notice will be made to John White, CSXT Real Estate Specialist at John.C.White@CSX.com ("CSXT Representative"), but further approval by CSXT is not required once granted under Paragraph 1, unless Licensee or Licensee's contractor requests changes to the approved scope of work.

6. **CLEARANCES:** Neither Licensee nor Agents shall place or operate any equipment of Licensee or Agents at a distance closer than fifty (50) feet from the center of any track, without the prior approval of the CSXT Representative. CSXT shall mark any such fifty (50) foot boundary near any work area so as to be clearly visible to the Licensee, or its contractors and Licensee or Licensee's contractor shall install a temporary fence or stake line that shall remain in place for the entirety of the Additional NRD Work. The CSXT Representative may require protective services or such other services as deemed necessary or appropriate. Equipment shall be moved across CSXT's track(s) only at a public crossing unless prior arrangements have been made with the CSXT Representative and if the CSXT Representative determines necessary, a Private Crossing Agreement is fully executed and in place. Licensee and Agents shall take all precautions necessary to avoid interference with or damage to CSXT's property and signal and communication facilities during their Access.

7. **PROTECTIVE SERVICES:** If protective services, such as flagging protection, are required by CSXT, Licensee shall make arrangements with the CSXT Representative to furnish such personnel, flagman or watchman, that in the CSXT Representative's opinion may be necessary to protect the facilities and traffic of CSXT during the performance of the Project. CSXT will make such services available according to its standard publicly available rates for such services.

8. **PAYMENT FOR PROTECTIVE SERVICES:** Payment shall be made by Licensee in accordance with the following designated option:

() **Option 1:** Licensee shall make an advance deposit of funds based on an estimate of the cost of protective or other services as determined by CSXT. The cost for CSXT's services shall then be assessed by CSXT against this advance deposit. Upon completion of the Project, any unused funding will be returned to Licensee. If CSXT's costs exceed the advance deposit(s), a request will be made to Licensee for additional funds or an invoice will be issued to Licensee

for final payment. Licensee shall remit payment to CSXT within thirty (30) days of receipt of either a request for additional funds or an invoice; or

(X) Option 2: Licensee shall promptly reimburse CSXT for the cost of protective or other services on an as-incurred basis, including all applicable surcharges, upon receipt of bill(s) therefore.

9. ENVIRONMENTAL: This Agreement does not include and expressly excludes the performance of any site investigation activities designed to determine environmental conditions on, about or beneath the Other CSXT Property or the Eastern Ship Canal Property. Precluded activities include performing soil borings for purposes other than geotechnical investigation, obtaining soil, sediment, groundwater and surface water samples, and conducting field or laboratory analyses of any soil, sediment, groundwater or surface water samples obtained from the Other CSXT Property and the Eastern CSXT Ship Canal Property to identify chemical composition or environmental condition. If any type of environmental investigation is desired, a separate right of entry agreement issued through CSXT's Environmental Department must be secured. This provision does not preclude Licensee and its Agents from performing the Additional NRD Work on the Eastern Ship Canal Property, including invasive species control, planting of native habitat, and soil fertility testing for the purpose of informing the approach to successful native habitat plantings as identified in Exhibit 1.

10. CLAIMS: Licensee shall, or shall require Agents, to promptly notify the CSXT Representative of any loss, damage, injury or death arising out of or in connection with the Project.

11. REMEDIATION: It is understood and agreed that, upon completion of each Access by Licensee, the Other CSXT Property shall be left in a condition similar to its condition prior to the Access by the Licensee. Additionally, the Eastern Ship Canal Property shall be left to the extent practicable, in its original condition, except as modified by the Additional NRD Work, including invasive species control, and planting of native habitat, as identified in Exhibit 1.

12. SAFETY:

All personnel entering the Other CSXT Property and the Eastern Ship Canal Property with or without equipment must comply with CSXT safety rules and requirements, meaning, without exception, the wearing of hard hats and approved safety shoes and safety glasses with side shields. Anyone not in compliance with these rules and regulations will be asked to leave the Other CSXT Property and the Eastern CSXT Ship Canal Property.

13. TERM: This Right-of-Entry Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement. It shall terminate within one year from the date of this Agreement, however, such Agreement may be renewed for additional successive periods of one year upon written request by Licensee and subsequent written approval by CSXT. Such extension shall be subject to CSXT's discretion, but shall not be unreasonably withheld and may require additional terms it deems necessary based upon prior incidents or concerns relating to such Access. Upon termination of Agreement, Licensee shall ensure that the

Other CSXT Property and the Eastern CSXT Ship Canal Property is restored to original condition, if it has been modified or damaged in any way as a result of repeated Access, except as changed by the Restoration Work.

14. SEVERABILITY: The parties agree that if any part, term or provision of the Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable. If any provision or any part of a provision of the Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

15. MODIFICATIONS: This Agreement may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter.

16. NOTICES: All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered; upon personal delivery, upon confirmation of email receipt, if confirmation is provided by return email; upon the expiration of three (3) business days following mailing by U.S. first class mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Administration, J180; or at such other addresses as either party may designate by delivery of prior notice to the other party.

17. TERMINATION: CSXT shall have the right at any time and at its sole discretion to terminate this Agreement based upon Licensee's failure to comply with the safety provisions of this Agreement or if the Other CSXT Property and the Eastern CSXT Ship Canal Property are needed for railroad purposes, upon reasonable notice to Licensee, unless such termination is for breach of CSXT's safety rules, in which case termination is effective immediately.

18. WAIVER: If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

19. GOVERNING LAW; VENUE: This Agreement shall be governed by and construed under the laws of the State of New York, without regard to the choice of law provisions thereof. Venue for any action arising from, or brought to enforce, this Agreement, shall vest exclusively in the state or federal courts located in the State of New York, and the parties agree to submit to the personal jurisdiction of any state or federal court located in Erie County, New York.

20. NO ASSIGNMENT: Notwithstanding anything to the contrary contained in this Agreement, Licensee shall not permit Agents to enter the Eastern Ship Canal Property and the

Other CSXT Property without first requiring Agents to agree in writing to comply with all of the terms of this Agreement. Assignment of this Agreement to any party other than Agents in accordance with this Section shall not be permitted except upon the prior written consent of CSXT, which consent may be granted or withheld at CSXT's sole discretion. This Agreement shall be binding upon the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the effective date of this Agreement.

Witness for CSXT:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: Senior Manager of Environmental & Property Management

Witness for Licensee:

TRUSTEES OF NATURAL RESOURCES,
consisting of the United States Department of the
Interior acting through the United States Fish and
Wildlife Service

By: _____

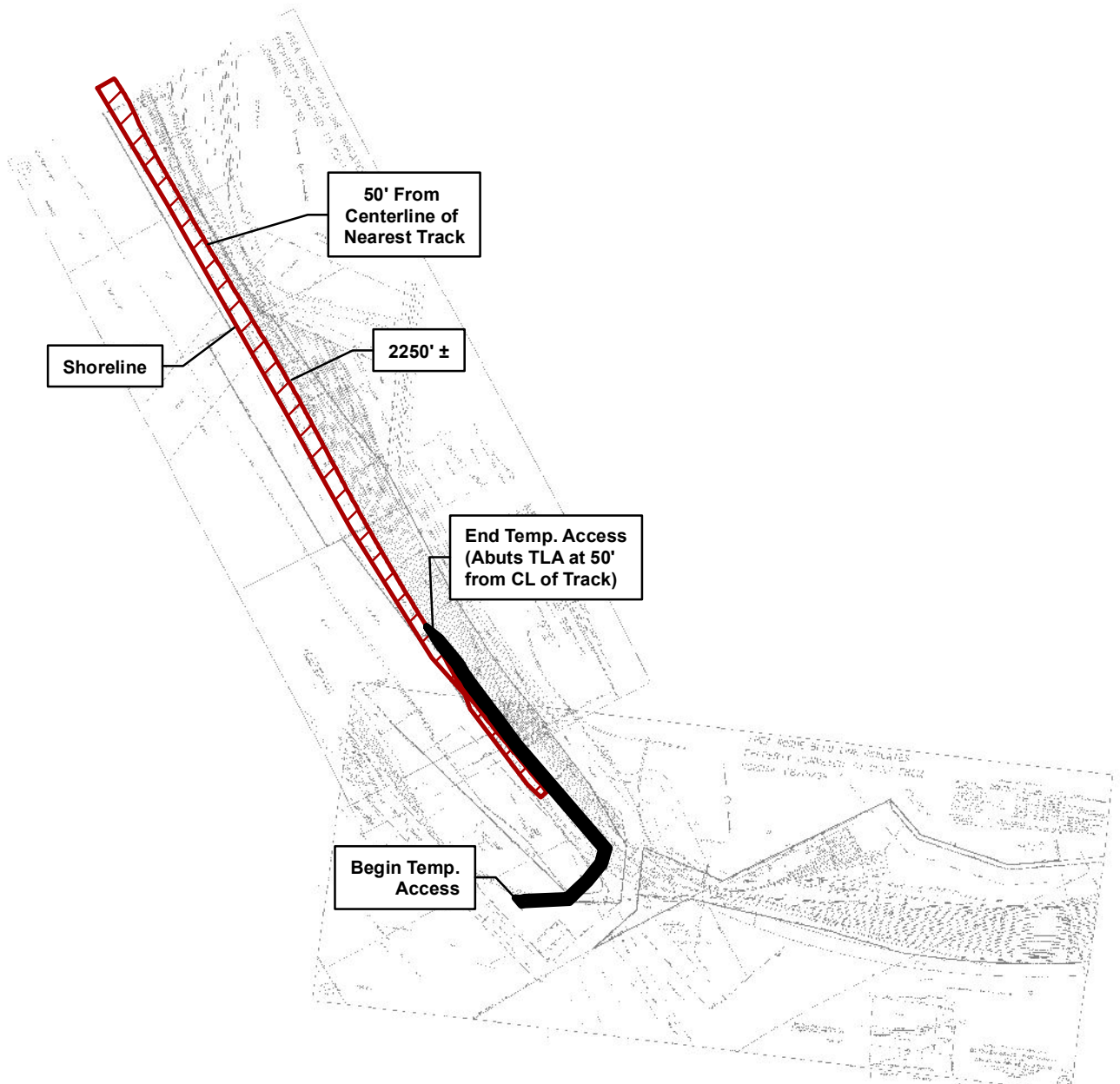
EXHIBIT A

EXHIBIT 3 - ROE - E SHIP CANAL

GIS #
59659-001
59661-001
59662-001



INTEL #
V24/6
V24/7
V24/8


PIN #
36029 0177
36029 0178
36029 0175



CSX TRANSPORTATION, INC.
BUFFALO NY- E SIDE CANAL - TEMP USE
SITE: NY-029-1095628
ERIE COUNTY - BUFFALO, NY
MILEPOST: QDA 1.15 - QDA 1.75

REGION: N ZONE: NORTHERN
SUBDIVISION: BUFFALO TERMINAL
DATE: 09/29/2020
REVISED: 09/30/2020
DRAWN BY: V5180

 Temp. Access -
0.80 ± AC
 Temp. License
Area - 3.50 ± AC

Total Area - 4.30
± Acres
 Engineering
Milepost

THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.

Contractor's Acceptance Rider

This Rider is and shall be a part of the Right of Entry Agreement for the Eastern Ship Canal Property, and is incorporated therein.

To and for the benefit of CSX Transportation, Inc., ("Railroad") and to induce Railroad to permit Contractor on or about the Railroad's property for the purposes of performing work in accordance with the Right of Entry Agreement dated _____, between Trustees and Railroad, (the "Agreement"), Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, and the requirements listed below.

CONTRACTOR INSURANCE REQUIREMENTS:

Railroad requires that the following insurance coverage be provided prior to any entry and/or work within Railroad's property and maintained by the Contractor until completion of the work. Railroad or its designee, may at any time request evidence of insurance purchased by Contractor to comply with the Agreement. Securing such insurance shall not limit Contractor's liability under the Agreement but shall be a security therefor.

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against Railroad and its Affiliates;
- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Railroad, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under the Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Railroad, or its designee, prior to cancellation or modification of any policy. If Contractor's existing CGL policy(ies) do(es) not automatically cover Contractor's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Contractor shall arrange for adequate time for reporting losses. Failure to do so shall be at Contractor's sole risk;
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;
- (iv) Such other insurance as Railroad may reasonably require.

Railroad may require Contractor performing the work to obtain Railroad Protective Liability ("RPL") Insurance coverage. In the event Contractor will be responsible for procuring and maintaining RPL Insurance coverage the following shall apply:

Contractor shall procure and maintain during the period of construction or demolition operations, at no cost to Railroad, Railroad Protective Liability (RPL) Insurance, naming Railroad, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS

(\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Railroad prior to commencement of such construction or demolition. Railroad reserves the right to demand higher limits.

At Railroad's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Contractor may pay Railroad, at Railroad's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Railroad's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Railroad's discretion and may not be available under all circumstances.

INDEMNITY REQUIREMENTS:

1. Contractor hereby assumes the risk of and agrees to indemnify, defend, protect and save CSXT and CSXT's Affiliates harmless with respect to any and all attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) for:

(i) personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

(ii) the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

(iii) any environmental damage and any related remediation brought or recovered against CSXT or any of its Affiliates; and

(iv) any and all other losses or damages;

arising directly or indirectly from the presence of Contractor or its Agents on or about the Property, whether or not attributable in whole or part to the negligence, gross negligence, or intentional misconduct of CSXT or its Affiliates.

2. The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law. In the event that such court of competent jurisdiction finds that New York statutory construction contract indemnity monetary limits apply to this Agreement with respect to Contractor's indemnification of CSXT and its Affiliates for liability caused in whole or in part by any act, omission or default by CSXT or its Affiliates, the parties hereto agree that such limit shall be equal to the limits (exclusive of deductibles) of the applicable insurance required by Sections 3 and 4 of this Agreement. The parties acknowledge and agree that this monetary limit, if required, bears a commercially reasonable relationship to this Agreement, in so far as, among other factors, the parties have taken into account the availability and cost of insurance and other

risk transference devices, the scope of the Project, the risks associated with the Project, and the compensation and any other benefits exchanged between the parties in connection with this Agreement.

(i) Contractor shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity on the Property and agrees to indemnify, defend, and hold CSXT and its Affiliates harmless with respect to any fines, penalties, liabilities, or other consequences for its failure to so comply.

(ii) For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates and their respective officers, directors, employees and agents.

(iii) The provisions of this Section shall survive the termination or expiration of this Agreement.

CONTRACTOR: _____
By: _____
Name: _____
Title: _____
Date: _____

APPENDIX D

Memorandum of Agreement

MEMORANDUM OF AGREEMENT
BETWEEN
THE TUSCARORA NATION,
THE STATE OF NEW YORK, AND
THE UNITED STATES DEPARTMENT OF THE INTERIOR
REGARDING
NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION
AND OTHER NATURAL RESOURCE TRUSTEE ACTIVITIES
FOR THE
BUFFALO RIVER SITE
LOCATED IN BUFFALO, ERIE COUNTY, NEW YORK

I. INTRODUCTION AND PURPOSE

This Memorandum of Agreement (“Agreement”) by and between the Tuscarora Nation (the “Tuscarora”), the State of New York, acting by and through the New York State Department of Environmental Conservation (“NYSDEC”), and the United States, acting by and through the United States Department of the Interior (“DOI”), (collectively referred to as “Trustees” or “Parties”) is entered into in recognition of the common interests of the Trustees in the assessment and restoration of the natural resources and associated services that have been injured, destroyed, or lost as a result of releases of hazardous substances at and/or from the Buffalo River Site located in the City of Buffalo, Erie County, New York (“the Site”). The Site includes the portion of the Buffalo River downstream from the confluence of Cazenovia Creek, including the City Ship Canal, the Times Beach Confined Disposal Facility, and their adjacent ecosystems in Buffalo, New York.

The Trustees agree that the scope of their coordination and cooperation under this Agreement may include, to the extent deemed appropriate by the Trustees, any and all activities relating to injuries to natural resources resulting from the release of hazardous substances (together with their sources) at and from the Site, as well as restoration actions related to such injuries.

This Agreement provides a framework for coordination and cooperation between the Trustees for the implementation of activities of the Trustees in furtherance of their mutual goal of planning and implementing restoration of natural resources at and near the Site. The activities of the Trustees covered under this Agreement include, but are not limited to: 1) coordination with response, remedial or corrective actions carried out by or under the direction of other federal or state agencies related to the Site; 2) any prosecution or settlement of natural resource damage claims associated with the Site; 3) the use and expenditure of all Site funds in the DOI and NYSDEC accounts under joint trusteeship for natural resources damages including planning, design, implementation, oversight, maintenance, and monitoring of actions to restore, replace, or acquire the equivalent of

those natural resources and services; and, 4) public outreach and information sharing related to any of the above activities of the Trustees related to the Site.

The Trustees have engaged in natural resource injury studies, damage assessments, and restoration planning relating to the Site since as early as 2004 in accordance with 43 C.F.R. Part 11. In 2006, the Trustees entered into a Joint Confidentiality Agreement regarding their joint prosecution and pursuit of claims for natural resource damages related to the Site. In 2009, the Trustees issued a preliminary estimate of damages, and subsequently issued injury determinations for fish (2011) and groundwater (2014). To compensate for the natural resource injury, the Trustees prepared the 2019 draft Buffalo River Natural Resource Damage Assessment Restoration Plan and Environmental Assessment (“Restoration Plan”) consistent with 43 C.F.R. §§ 11.81 and 11.93.

This Agreement will serve as the Memorandum of Agreement required by the Consent Decree (CD) to be entered into among the Trustees for the expenditure of the Settlement Funds in DOI and NYSDEC accounts and any accrued interest thereon (CD ¶¶7(b)-(g)).

II. AUTHORITY

The Trustees enter into this Agreement in accordance with the natural resource damage provisions under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9607(f), and other applicable federal and state law and authority (collectively referred to as “other applicable law”) including, but not limited to, the National Oil and Hazardous Substances Contingency Plan (“NCP”), as amended, 40 C.F.R. Part 300, and, to the extent appropriate and elected for use by the Trustees, the Natural Resource Damage Assessment Regulations, as amended, at 43 C.F.R. Part 11. The NYSDEC enters into this Agreement under the further authority of New York State Environmental Conservation Law Sections 1-0101, 3-0301, and 15-0601 and Article 12 of the New York State Navigation Law. The Tuscarora Nation serves as Trustee on behalf of the Haudenosaunee. The Haudenosaunee (“People of the Longhouse”), also known as the Iroquois Confederacy, is comprised of the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations.

This Agreement is intended to cover natural resources as defined under Section 101(16) of CERCLA, as amended, 42 U.S.C. § 9601(16).

III. TRUSTEESHIP

Pursuant to Section 107(f) of CERCLA, as amended, 42 U.S.C. § 9607(f); Executive Order No. 12580 (January 23, 1987); and Subpart G of the NCP, 40 C.F.R. Part 300.600, the Secretary of the United States DOI has been designated as a federal natural resource trustee for purposes of CERCLA, and otherwise has statutory responsibilities related to the natural resources injured, destroyed, or lost as a result of the release of hazardous substances at or from the Site.

The Secretary of the Interior has designated the Regional Director, United States Fish and Wildlife Service (USFWS), North Atlantic-Appalachian Region, to act as the Authorized Official, and has delegated to the Regional Director authority to act as natural resource trustee under CERCLA for natural resource damages and restoration activities related to the Site.

The Governor of the State of New York has designated the Commissioner of the NYSDEC to act as the Authorized Official, and has delegated to the Commissioner authority to act as natural resource trustee under CERCLA for natural resource damages and restoration activities related to the Site. The Commissioner also has the authority to act as natural resource trustee under the Oil Pollution Act, the Clean Water Act, Article 12 of the New York State Navigation Law, and the New York State Environmental Conservation Law.

As a federally recognized sovereign Indian Nation government, Tuscarora has authority pursuant to Section 107(f) of CERCLA, as amended, 42 U.S.C. § 9607(f); and 40 C.F.R. Part 300.610, to act as a natural resource trustee for natural resource damages and restoration activities related to the Site both in lands within the Site and other lands and resources adversely affected by the Buffalo River releases.

IV. ESTABLISHMENT OF TRUSTEE COUNCIL

- A. Purpose: The Trustees recognize the importance of coordinating their efforts in order to effectively and efficiently address their respective natural resource concerns and responsibilities under applicable law. Accordingly, the Trustees, as specified in Section III, hereby agree to establish the Buffalo River Site Trustee Council (“Buffalo River Trustee Council”).
- B. Composition of the Buffalo River Trustee Council:
1. The Trustee Council shall consist of three voting members. Each Trustee, as specified in Section III, shall designate one primary voting representative to the Trustee Council and one alternate representative to act in the absence of the primary voting representative.
 2. In addition, the United States Department of Justice, the New York State Attorney General, and in-house counsel for each of the Trustees specified in Section III may provide one or more delegates to serve in a legal/consultative role, who shall not be a member of the Trustee Council, but who shall nonetheless be able to attend all meetings of, or organized by, the Trustee Council.
 3. Each Trustee may, by written notification to all other Trustees, change the designated delegate and/or alternate.
 4. Other representatives of each voting Trustee Council member may attend meetings and participate in the deliberations of the Trustee Council.
 5. Trustee Council Chairperson. A representative of the Lead Administrative Trustee (“LAT”), as designated in Section V below, will serve as the initial

Chairperson for Trustee Council meetings. The Trustee Council Chairperson and his/her duties can be changed by Resolution of the Trustee Council. The Trustees may agree to reassign or rotate the position of Chairperson as they deem appropriate. The Chairperson, with the assistance of the LAT if the Chairperson is not a representative of the LAT, will be responsible for organizing and scheduling meetings, preparing proposed agendas, identifying in the agendas any issues to be voted upon at the proposed meeting, distributing agendas to the designated primary, alternate and legal representatives at least three (3) days in advance of meeting, barring any unforeseen and unavoidable circumstances, and presiding over convened meetings.

- C. Advisors and Consultants. As determined to be appropriate by the voting Trustees, or as required by applicable law, the voting Trustees will coordinate with, and seek the advisory participation of, appropriate tribal governments, federal and state agencies and departments, local governments, private parties, and the public.
- D. Communications. No later than twenty (20) working days after the execution of this Agreement by a Trustee, the Trustees will notify the other Trustees of the names, addresses, e-mail addresses, telephone, and facsimile numbers of the Trustee's primary, alternate, and legal representatives to the Trustee Council.
- E. Meetings. Any Trustee may, upon reasonable notice, through the Trustee Council Chairperson or the LAT, call a meeting of the Trustee Council to be conducted either in person, by telephone call, or virtually by e-mail or web based communications. Members of the Trustee Council may invite their respective staff members, consultants, and/or attorneys to attend. Members of the Trustee Council may also invite representatives of public, private, or non-profit entities, representatives of other agencies, or members of the public to its meetings unless the Trustee Council determines, in compliance with applicable law, that the subject of the meeting is privileged or that public disclosure of the Trustee Council's deliberations would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable law.
- F. Duties, Objectives, and Authority. In accordance with applicable law, the Trustees hereby authorize the Trustee Council to carry out the following duties:
 - 1. To undertake appropriate Natural Resource Damage Assessment (NRDA) and restoration activities at or related to the Site.
 - 2. To carry out studies, prepare reports, and collect information that the Trustee Council finds necessary and relevant to the NRDA.

3. To share information with and consult with each other as appropriate and consistent with this Agreement.
4. To coordinate activities undertaken pursuant to this Agreement with response, remedial, or corrective actions carried out by other federal and state agencies, as appropriate.
5. To develop, consider, and evaluate plans for the restoration of injured natural resources and/or the services provided by those resources.
6. To support the Trustees' efforts to recover damages for injuries to natural resources from potentially responsible parties ("PRPs").
7. To plan, arrange for, design, oversee, undertake, maintain, and/or monitor restoration.
8. To authorize individual Trustees to contract as deemed necessary and best qualified to achieve these objectives.
9. To utilize existing data and assessment related work product to the maximum extent feasible and appropriate.
10. To establish one or more Trustee technical working groups to undertake the technical efforts and day-to-day business of the Trustee Council.
11. To coordinate and/or carry out such other action as may be necessary and appropriate to achieve the purposes and objectives of this Agreement and to address the natural resource damage concerns and responsibilities of the Trustees.
12. To encourage public participation and involvement in a manner consistent with applicable law and regulation.
13. To facilitate the development of joint Trustee negotiation, settlement and/or litigation positions for recommendation to authorized Trustee officials and other decision makers.
14. To establish such bylaws, statements of Trustee Council policy or position, cost accounting procedures, or cost reimbursement guidelines as are needed to further the purpose of this Agreement.
15. To fairly and reasonably allocate the efforts, costs, and expenses of carrying out the objectives of this Agreement among the Trustees and make the best use of the resources, knowledge, and expertise of the Trustees in order to accomplish the goals of this Agreement in a cost efficient and timely manner.
16. To pursue the implementation or funding of the Restoration Plan, and reimbursement of assessment costs, by the PRPs.

G. Decision Making.

1. The members of the Trustee Council shall have equal authority and all decisions under this Agreement shall be by unanimous written agreement of all voting members of the Trustee Council, except as specifically provided in IV(G)(2) below.
2. Where a Trustee Council member has notified the Trustee Council of its intent to limit its involvement in NRDA activities, including any aspect of the damage assessment, restoration planning, restoration implementation,

oversight and monitoring activities, or any other specific upcoming decision of the Trustee Council, pursuant to IV(G)(4), the Trustee may choose to abstain from the actions or decisions, in which case the Trustee Council's actions and/or decisions shall be deemed unanimous notwithstanding the abstention.

3. The Trustee Council members will conduct extensive good faith discussions directed toward obtaining unanimous agreement. In the event unanimous agreement cannot be reached, the dispute resolution procedures in Section (H) below will govern.
4. The Trustees understand and acknowledge that each Trustee's duties and interests, although overlapping, may be sufficiently different that a Trustee may wish to bound or limit its involvement in certain aspects of the NRDA process. In recognition thereof, to avoid delaying the work of the Trustee Council as a whole, and to maximize the efficiency of Trustee NRDA activities, a Trustee may limit its involvement in aspects of the NRDA process, or a specific decision or decisions of the Trustee Council, by notifying the Trustee Council primary, alternate, and legal representatives in writing, and in a timely manner, of those NRDA activities or decisions for which the Trustee would like to limit or end their participation.

H. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Trustee Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the Trustees involved in the dispute and the consensus of the Trustee Council as a whole. The Trustees agree that deliberations will focus upon the Trustees' mutual goals of the timely and appropriate restoration of injured natural resources, rather than upon independent control or trusteeship over the affected natural resources and proposed restoration activities. If consensus still cannot be reached after good faith discussions, the matter shall be elevated to the next management level with each Trustee's agency for decision or further instructions. If consensus still cannot be reached, the matter shall be further elevated to the named Trustees who may expressly delegate their decision-making authority to a senior supervisory level designee for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved.

V. LEAD ADMINISTRATIVE TRUSTEE

The Parties to this Agreement shall designate a LAT for NRDA actions related to the Buffalo River Site. The Parties to this Agreement have designated the USFWS as the LAT. The LAT, and its duties, can be changed by Resolution of the Trustee Council. The Trustees agree that the LAT's responsibilities shall include directing and coordinating Trustee NRDA activities, maintaining an administrative record for the Site, and any other Trustee activities as authorized

by the Trustee Council. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. The LAT may delegate any of its duties to another Trustee with the unanimous approval of the Trustee Council.

VI. COST ACCOUNTING AND REIMBURSEMENT

The Trustees shall establish and adopt damage assessment and restoration cost accounting and reimbursement guidelines that shall ensure that recovered damages are spent only on reasonable and adequately documented costs. Each Trustee shall ensure that appropriate and reasonable cost documentation, cost accounting, reimbursement, and expenditure practices are followed in accordance with applicable law.

Each Trustee is responsible for tracking and documenting the costs and expenses it incurs as a result of its participation in the NRDA process under this Agreement in a form and manner sufficient to support the recovery of such costs and expenses under CERCLA. The documentation of such will, at a minimum, (1) evidence the actual time spent, by date, and the hourly salary rate applicable to each participant; (2) identify all indirect or overhead rates used in determining costs, including the manner of their application; and (3) include evidence (such as invoices or receipts) of all contract costs or other expenditures presented for payment. Each Trustee will be responsible for the accuracy of the assessment or restoration costs it reports or presents for payment under this Agreement. No Trustee is to certify or warrant any assessment or restoration cost information other than its own.

VII. JOINT PURPOSE AND OVERLAPPING AUTHORITIES

The Trustees recognize that each of them has trusteeship, through their respective natural resource trustee delegations under CERCLA and other applicable federal and state law, over natural resources affected by the release of hazardous substances at or from the Site, and further recognize that the scopes of some of their respective trusteeships overlap.

VIII. USE OF NATURAL RESOURCE DAMAGE RECOVERIES

To the extent permitted by law, the Trustees agree that any recovery of damages to natural resources under joint trusteeship, with the exception of recoveries to reimburse past damage assessment costs, or to restore injured cultural resources, obtained or received by the Trustees, individually or collectively, either as a result of judgment or settlement in whole or in part of natural resource damage claims brought against PRPs for the Site, and any interest earned thereon, shall be jointly used to restore, replace, rehabilitate, and/or acquire the equivalent of the natural resources at the Site which have been injured, destroyed, or lost as a result of

releases of hazardous substances at or from the Site, as stated in the CD (CD ¶¶7(b)-(g)) and Restoration Plan. Such funds shall be deposited in interest bearing accounts to be disbursed only for the purposes described in this Agreement and in accord with the provisions of this Agreement. The Trustees shall establish additional standards and procedures governing the joint use of all natural resource damages received by the Trustees. As noted above, the foregoing does not apply to recoveries to reimburse past damage assessment costs (CD ¶7(a)) or to compensate for injured, destroyed, or lost cultural resources (“cultural claims” (CD ¶7(h))).

The Trustees, in accordance with the decision-making process identified in Section IV(G), may identify protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of the payments made by Honeywell under Paragraphs 7(b)-(g) of the CD (“Settlement Funds”), or interest thereon, and to otherwise effectuate the purposes of this Agreement. Disbursement of all funds from the Settlement Fund accounts, including the DOI and NYSDEC accounts, will be by unanimous written agreement of all Trustee representatives, in the form of a Trustee Resolution. All ecological and recreational restoration project funding requests submitted to the Trustee Council shall provide project designs, a schedule for submission of status and completion reports, and monitoring reports to the other Trustees for review and approval to the Trustee Council. While disbursement of Cultural Restoration Project funds under Paragraph 7.h of the CD are not subject to the approval requirements of this Agreement, a summary report that documents expenditures on Cultural Restoration Projects will be submitted to the Trustee Council upon reasonable request. The Trustees shall establish and adopt damage assessment and restoration cost accounting and reimbursement guidelines that shall ensure that recovered damages are spent only on reasonable and adequately documented costs. Each Trustee shall ensure that appropriate and reasonable cost documentation, cost accounting, reimbursement, and expenditure practices are followed in accord with applicable law. All oversight and administrative funding requests submitted to the Trustee Council shall provide restoration project specific justification to the other Trustees for review and approval to the Trustee Council. The Trustees agree that expenditures from the Settlement Fund accounts should be managed in such a way to maximize restoration benefits and minimize post-settlement restoration planning and administrative costs. A Trustee Council Resolution will be developed to further define a process for Trustees to document and request reimbursement of oversight funds.

IX. PUBLIC PARTICIPATION

The Trustees agree that, to the extent consistent with the effective negotiation, settlement, and/or litigation of their claims, and in accord with Section X of this Agreement and applicable federal and state law, they will endeavor to provide

reasonable notice of, and invite public participation in, the NRDA activities related to the Site at appropriate times and via appropriate means.

X. COORDINATION AND NOTIFICATION

A. The Trustees recognize and agree that their interests in the development and recovery of claims for natural resource damages associated with the Site are related and have agreed to coordinate the development, negotiation and, if necessary, litigation of their claims and damages that arise out of the Site. Towards that end, the Trustees agree to notify and consult with each other concerning activities, events, or decisions that may affect the NRDA process or the recovery of natural resource damages for injuries to natural resources and associated services at the Site. The Trustees intend by this Agreement to communicate with each other on, among other things, the following:

- Plans, proposals, or actions related to damage assessment and/or restoration activities.
- Developments in negotiations or litigation with any PRPs.
- Any communications any Party may have, or anticipates having, with any PRP regarding restoration planning or implementation with regard to the Site.

B. The Trustees shall provide information to each other concerning such matters as promptly as practicable, but not later than within ten (10) business days from the activity, event, or decision, with the goal of enabling other Trustees to comment on any issues they deem significant. The Trustees further agree to provide copies of any agreements or other documents reflecting settlement or disposition of claims, including quasi-public claims, involving or related to natural resource injuries arising from or related to the Site, provided such documents are not privileged. If a Trustee is found to have failed to provide any of the above for any reason, the matter shall be elevated to Senior Management, which shall be tasked to: 1) explain to Co-Trustees the nature and causes of the failure; and 2) endeavor to ensure that it not recur.

XI. CONFIDENTIALITY

All Parties to this Agreement recognize that some written or oral communications related to the assessment and recovery of damages for injury to natural resources may be undertaken in anticipation of litigation. Accordingly, oral and written communications and work product which are privileged attorney-client communications, attorney work product, common interest privilege, or protected by other applicable privilege (or a combination thereof), and which are protected

from disclosure under applicable federal or state law, will be handled consistent with applicable law. The transmittal of any designated privileged documents or designated privileged communication between or among any of the Trustees or federal or state response action agencies or other federal, state, or tribal trustees (and their counsel, representatives, contractors, and consultants) does not waive, or imply any waiver of, any privilege or right which the transmitting government may assert with respect to that document or communication. They further agree that whenever a request for production of such record is received pursuant to any federal or state law, a copy of the request will be forwarded for comment to the Trustee or Trustees to which the privilege applies or whose representatives originally generated or contributed the record requested. Nothing contained herein shall be construed as prohibiting or restraining the Trustees or the Trustee Council from agreeing to release any record or from responding to a request in accordance with applicable law.

The Trustees and the Trustee Council members agree that they will coordinate with each other regarding communications with PRP's or their agents for matters related to the NRDA for this Site. No Trustee will discuss these matters with a PRP without first providing the other Trustees with notice and an opportunity to participate in such discussions as appropriate. The above Agreement shall not preclude a Trustee from having separate communications with a PRP on matters within the scope of this Agreement where circumstances warrant, provided that each Trustee notifies the other Trustees of the person contacted and summarizes the subject of the communications.

XII. GENERAL PROVISIONS

A. Reservations.

1. Nothing in this Agreement is intended to be or shall be construed to be an admission by any Trustee in any dispute or action between the Trustees or between the Trustees and a third party. Nothing in this Agreement is intended or shall be construed as a waiver by the Trustees of any claims or defenses in any legal action, or of any other rights or remedies.
2. Neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any legal responsibility under federal, state, or other applicable law to protect, restore, or enhance any natural resources associated with the Site over which any Party or non-Party asserts trusteeship, standing, or jurisdiction. Furthermore, neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any liability for damage or injury (which may be shown to have occurred by the NRDA activities performed under this

Agreement) to any natural resources associated with the Site over which any other Party or non-Party asserts trusteeship, standing, or jurisdiction.

3. Nothing in this Agreement is meant to imply, or operate in a manner, that any natural resource trustee with an interest in the Site, whether a Party to this Agreement or not, is in any way abrogating or ceding any natural resource trustee responsibility or authority over natural resources of the Site.
 4. Nothing in this Agreement shall be construed as a waiver of, or foreclosing the exercise of, any rights, powers, remedies, or privileges of the individual Trustees now or hereafter existing at law or in equity, by statute or otherwise.
 5. Nothing in this Agreement is intended to conflict with existing directives or policies of any Trustee. If the terms of this Agreement are found to be inconsistent with existing directives or policies of any Trustee, those portions of this Agreement that are determined to be inconsistent shall be identified by the affected Trustee. Within thirty (30) days of notice of the inconsistency, the Trustees shall discuss the inconsistency and determine whether it is possible, appropriate, and necessary to amend the Agreement as the Trustees determine appropriate.
 6. The Tuscarora Nation has sovereign authority over its territory and citizens. Nothing in this Agreement shall be deemed to diminish the Tuscarora Nation's sovereignty or to waive the Nation's sovereign immunity.
 7. This Agreement constitutes the final, complete, and exclusive Agreement and understanding among the Parties with respect to all matters addressed by this Agreement.
- B. Limitations of Authority.
1. No Party is authorized to enter into any settlement on behalf of any other Party.
 2. No Trustee is authorized to represent another Trustee in any litigation that may be commenced by another Trustee.
- C. Third Parties. This Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Trustees who have executed this Agreement or who are not Parties to this Agreement.
- D. Execution and Effective Date. This Agreement shall become effective 30 days from the date of execution by all of the Trustees who are Parties to this Agreement, that is, the date on which the last signature is obtained. This Agreement can be executed in one or more counterparts, each of which will be considered an original document.

E. Amendment.

1. This Agreement may be amended by agreement of the Trustees if it is determined that an amendment is necessary to accomplish the objectives of this Agreement, or it is necessary to modify the objectives of this Agreement, consistent with the requirements of CERCLA, any amendments thereto, or other applicable federal law or state common or statutory law.
2. Any amendment of this Agreement shall be effective only if it is in writing and executed by all Parties to this Agreement.

F. Termination. This Agreement shall be in effect from the day of execution until the Trustee Council determines that the Restoration Plan(s) and project(s) implemented under this Agreement have been completed, unless terminated before that time or extended beyond that time by written agreement of all Parties to this Agreement. If the Agreement is terminated, the Trustees shall select an appropriate party or parties to whom to transfer any remaining jointly received unobligated funds for natural resource damages and shall effect such transfer within 120 days and the funds must be used to restore, replace, rehabilitate, and/or acquire the equivalent of the injured natural resources at the Site, in accordance with the CD and the Restoration Plan.

G. Federal Natural Resource Damage Regulations. It is the intention of the Trustees to follow the DOI's natural resource damage assessment regulations, as amended, 43 C.F.R. Part 11, in matters relating to the Site.

H. Anti-Deficiency. Nothing in this Agreement shall be construed as obligating any of the Trustees to expend any funds in excess of appropriations or other amounts authorized by law.

Buffalo River Site Natural Resource Damage Assessment
Trustee Memorandum of Agreement

New York State Department of Environmental Conservation



Thomas S. Berkman
Deputy Commissioner and General Counsel

2/13/21

Date

Buffalo River Site Natural Resource Damage Assessment
Trustee Memorandum of Agreement

United States Department of the Interior

WENDI

Digitally signed by WENDI
WEBER

WEBER

Date: 2020.11.03
13:29:03 -05'00'

Wendi Weber

Date

Regional Director

U.S. Fish and Wildlife Service, Region 1

Buffalo River Site Natural Resource Damage Assessment
Trustee Memorandum of Agreement

Tuscarora Nation

Chief Leo Henry
Chief Leo Henry
Tuscarora Nation

03/29/2021
Date

APPENDIX E 1

Form of CER for Houghton Park

City of Buffalo, County of Erie, State of New York

**CONSERVATION EASEMENT for
UNDEVELOPED PORTIONS OF HOUGHTON PARK.**

THIS CONSERVATION EASEMENT (hereinafter the “Conservation Easement”), is made this ___ day of _____, 202_, between City of Buffalo having its office at 65 Niagara Square, Buffalo City Hall, Buffalo, New York 14202 (hereinafter “Grantor”), and the Buffalo Niagara River Land Trust Inc., having an office at 2475 Niagara Street Buffalo, New York 14207 (hereinafter “Grantee”). The People of the State of New York, acting through the Department of Environmental Conservation (“DEC”), having an office at 625 Broadway, Albany, NY 12233, while not a party to this Conservation Easement, has third party enforcement rights, as set forth in New York State Environmental Conservation Law (ECL), Title 3 of Article 49 and this Conservation Easement. The United States Fish and Wildlife Service (“USFWS”), having an office at 3817 Luker Rd., Cortland, NY 13045, while also not a party to this Conservation Easement, has third party enforcement rights, as set forth in ECL, Title 3 of Article 49 and this Conservation Easement.

WITNESSETH

WHEREAS, Grantor, without making representations and or warranties with respect to title, is the purported owner, in fee simple, of certain real property located along the northerly side of the Buffalo River in the City of Buffalo in Erie County, State of New York, described in Schedule A, subject to those encumbrances and exceptions set forth in Schedule B, both to be attached hereto and made a part hereof (hereinafter referred to as the “Protected Property”); and

WHEREAS, capitalized terms are defined in Schedule C; and

WHEREAS, under the Consent Decree between United States of America, State of New York, and Tuscarora Nation as Plaintiffs and Honeywell International Inc., and CSX Transportation, Inc. as Settling Defendants, Grantor is required to place a Conservation Easement on the Protected Property in order to be eligible for the benefits conferred by or as a result of such Consent Decree. Restoration of the Protected Property will be pursuant to the Consent Decree, the Restoration Plan, and the Restoration Work Plan; and

WHEREAS, work will be performed on the Protected Property pursuant to the Restoration Plan, Restoration Work Plan, and Grantee Work Plan in order to restore and protect habitat for birds, fish, wildlife, and human use, promote the ecological value of the land, provide open space protection, protect scenic and natural features, and facilitate compatible outdoor recreational and educational uses; and

WHEREAS, by the granting of this Conservation Easement, Grantor intends to preserve and limit the uses and development of the Protected Property in perpetuity beyond existing limits on uses and restrictions associated with alienation of public parks as

specified herein including the work specified in the Restoration Plan, Restoration Work Plan and/or Grantee Work Plan; and

WHEREAS, Grantee is a not-for-profit conservation organization created for, among other purposes, to promote, restore, and enhance the natural, ecological, environmental, scenic and recreational values of the Buffalo and Niagara Rivers, Lake Erie, Lake Ontario and their tributaries; and

WHEREAS, Grantee is eligible to accept and hold conservation easements to protect property important to the conservation of natural resources under the provisions of ECL, Title 3 of Article 49; and

WHEREAS, Grantee is a tax-exempt organization described in Sections 501(c)(3) of the Internal Revenue Code, is a qualified organization as described in Section 170(h) of the Internal Revenue Code, is a not-for-profit conservation organization as described at ECL § 49-0303, and is eligible to hold conservation easements thereunder.

NOW, THEREFORE, Grantor, in consideration of the Consent Decree and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, grants, conveys, and releases to Grantee this Conservation Easement in perpetuity, pursuant to and consistent with Article 49, Title 3 of the ECL in, on, over, under and upon the Protected Property on the terms and conditions set forth herein:

1. **DEFINITIONS:** Capitalized words or terms used in this Conservation Easement, or in documents associated with this Conservation Easement (such as the Baseline Documentation), shall have the definition and interpretation as set forth in Schedule C attached hereto and incorporated herein, unless such word or term is otherwise specifically and intentionally defined elsewhere in this Conservation Easement or associated document(s).
2. **PURPOSES:** This Conservation Easement is hereby granted to effect the following purposes (hereinafter, the "Purposes") in perpetuity:
 - 2.1. **Intended Uses.** Provide appropriate land uses to assure that the Protected Property will be retained forever predominantly in its open and natural condition, to protect the natural habitat located on the Protected Property in perpetuity for birds, fish, wildlife, and human use, including protecting wetlands, uplands, and stream habitat, protecting fish and wildlife habitat and the ecological value of the land, providing open space protection, protecting scenic and natural features and allowing compatible outdoor recreational and educational uses;
 - 2.2. **Limit Development.** To limit the development of the Protected Property and prevent residential, commercial, industrial and extensive agricultural uses of the Protected Property and/or to limit the construction of recreational uses inconsistent with maintaining the Protected Property in an open and natural condition (i.e. playing fields, basketball courts, tennis courts), except as permitted by this Conservation Easement;

- 2.3. Prohibit Subdivision. To prohibit Subdivision of the Protected Property, except as permitted by this Conservation Easement, in order to protect existing habitat and habitat improvements at the Protected Property;
- 2.4. Protect Natural Resource Values. To conserve and protect the Natural Resource Values of the Protected Property in perpetuity and to prevent any use of the Protected Property that will interfere with the Natural Resource Values of the Protected Property;
- 2.5. Provide Opportunities for Passive Recreational Use. To continue to provide opportunities for Passive Recreational Use of the Protected Property, recognizing that the Protected Property includes portion(s) of the undeveloped sections of Houghton Park, which is a municipally owned park within the City of Buffalo.
3. **RESTRICTED USES AND PRACTICES:** Except as expressly provided hereunder or in the Consent Decree and/or Restoration Plan, the Parties agree that the following restrictions shall apply to the Protected Property in perpetuity:
 - 3.1. Certain Prohibited Uses. Residential, commercial, agricultural or industrial activities of any kind or the construction of recreational uses inconsistent with maintaining the Protected Property in an open and natural condition (i.e. playing fields, basketball courts, tennis courts)) shall not be permitted on the Protected Property, nor any other use of, or activity upon, the Protected Property that will interfere with or diminish the Natural Resource Values of the Protected Property, except as specifically permitted, or reserved, by the terms of this Conservation Easement, the Restoration Plan, the Restoration Work Plan, and/or the Grantee Work Plan.
 - 3.2. Conveyance of Portions of Protected Property; Subdivision. The transfer, conveyance or sale of less than the entire Protected Property described in Schedule A and the Subdivision of the Protected Property, or any portion thereof, or any subdivision of specific rights, including easements of any kind, are prohibited, except as follows:
 - a. The following actions shall not be considered a division or Subdivision as defined in this Conservation Easement and are permitted under this Conservation Easement. Grantor shall provide Grantee with copies of any recorded documents upon completion of a transfer permitted herein and notice of the name and address of such transferee.
 1. Conveyance to Grantee, or to a third party solely for the purpose of facilitating ultimate conveyance to Grantee, of a fee interest in any portion of the Protected Property or of any rights retained by Grantor in this Conservation Easement with respect to any portion of the Protected Property;

2. Conveyance of portions of the Protected Property to abutters to the extent necessary to resolve a bona fide boundary dispute provided that:
 - i. Any conveyance for the purpose of resolving a bona fide boundary dispute requires the prior approval of Grantee, which shall not be unreasonably withheld;
 - ii. The portion of the Protected Property conveyed to a third-party to resolve a boundary dispute shall not remain subject to the terms of this Conservation Easement; and
 - iii. Any real property received by Grantor in exchange for such conveyance to resolve a boundary dispute shall become subject to this Conservation Easement unless Grantee agrees/consents otherwise, such agreement/consent not to be unreasonably withheld or delayed.
 3. Subject to ten (10) calendar day advance written notice and prior written approval of Grantee, which shall not be unreasonably withheld, conveyance of the Protected Property or any portion thereof to a governmental agency or a “qualified organization” whose purpose is consistent with the Purposes of this Conservation Easement and who would qualify as an assignee under Section 8.9 hereof.
- 3.3. Structures. Except as specifically permitted by the terms of this Conservation Easement, the Restoration Plan, and/or the Restoration Work Plan, no Structure shall be constructed or placed in, on, over or upon the Protected Property. For the purposes of this Conservation Easement, the term “Structure” shall be defined as broadly as possible, and shall include, but not be limited to, any building, facility, edifice, or man-made development of any kind or nature, whether of a permanent or temporary nature, including but not limited to: any residence, commercial or industrial building, tower, antenna, mobile home, dock, utility, pavilion, fence, sign, billboard or other advertising material, outhouse and other sanitary facility, bunkhouse, lean-to, camp, cabin, recreational facilities, roads, bridges or other man-made improvements.
 - 3.4. Impervious Surfaces. Except as specifically permitted by the terms of this Conservation Easement, roads, trails, parking lots, and other such areas on the Protected Property shall not be paved or covered with impervious surface materials.
 - 3.5. Utilities. No new telephone, cellular, fiber optic, cable television, electric, gas, water, sewer or other utilities, Structures and towers shall be located over, under, in, on, upon or above the Protected Property, except as follows:

- a. As provided for in Section 5.3;
- b. Pursuant to the provisions of Section 49-0305 of the ECL when no reasonable alternative exists and only to the minimum extent necessary to accommodate the new utility;
- c. Pursuant to the provisions of Section 49-0307 of the ECL;
- d. Municipal or publicly regulated utilities located within, or within 30 feet of, any public right of way easements which run through the Protected Property;
- e. Any utility corridors, structures or towers that are proposed to be built in the future and specifically permitted by the terms of this Conservation Easement, or with the prior approval of Grantee, such prior approval not to be unreasonably withheld or delayed; or
- f. Repairs and/or replacements, upgrades, enhancements, inspections, maintenance, operation and practical objectives involved in the continued operation of the petroleum pipeline(s) and any other utilities currently running through, across, on or above and or adjoining the Protected Property.

3.6. Waste Disposal.

- a. The dumping or storage of ashes, trash, waste, non-composted organic waste, sewage, scrap material, sediment discharges, oil and its by-products, leached compounds, toxic fumes, or garbage, on any portion of the Protected Property is prohibited.
- b. No waste water or sewage, chemical wastes or other hazardous waste materials may be dumped or stored on the Protected Property except as provided for herein.
- c. Consistent with its current obligations, Grantor shall ensure the removal of any trash or debris (except for organic vegetation restoration debris) from the Protected Property caused by its own activities or the activities of its lessees, contractors or guests. Grantor shall not be obligated under this Conservation Easement in connection with unauthorized dumping which may occur at the Protected Property.
- d. Grantee shall, to the best of their efforts, ensure the removal of any trash or debris from the Protected Property caused by its own activities or use of the Protected Property.

- 3.7. Mining; Sand and Gravel Use. The mining or extraction of soil (including topsoil), sand, rock, fuel or any other mineral substance or other material present on or under the Protected Property is prohibited. In no case shall surface or subsurface mining or removal of subsurface oil, gas or other minerals or materials be permitted.
- 3.8. Chemical Treatments. The use of herbicides, pesticides, fungicides, rodenticides, fertilizer and pH control or other chemicals on the Protected Property is prohibited, except as permitted below:
- a. To control a pest or disease outbreak that threatens the health of the Protected Property;
 - b. To control insect pests for human health and safety purposes; or
 - c. To control non-native plant or animal species.
- 3.9. Exterior Lighting.
- a. No permanent exterior artificial illumination shall be employed on any Tract, other than the type or function that is employed as of the date hereof, and/or other than repairs and/or replacements, upgrades, enhancements, inspections, maintenance, operation and practical objectives involved in operating the Protected Property as a municipal park, and/or as otherwise identified in the Baseline Documentation and/or Restoration Plan.
 - b. Notwithstanding this restriction, Grantor may use permanent exterior artificial illumination if necessary for the enjoyment of the Reserved Rights by Grantor and upon prior approval of Grantee, such prior approval not to be unreasonably withheld or delayed.
- 3.10. Dams and Water Impoundments. The construction of new dams or impoundments, or manipulation and alteration of Watercourses, Water bodies or Wetlands, but not including necessary structures for storm water management as part of an allowable construction activity, on the Protected Property is prohibited, except for the following:
- a. Grantor may use, operate, maintain, and replace in-kind any existing dam or impoundment; manipulated or altered Watercourse, Water body, or Wetland Structure on the Protected Property, in a manner consistent with their historical use, purposes and impacts, as identified in the Baseline Documentation. Grantor shall, unless Grantor determines that an emergency exists or is imminent or that public safety is an issue, give ten (10) calendar day advance written notice to Grantee prior to undertaking any dam or impoundment maintenance or replacement activities that require the use of heavy machinery or soil movement;

- b. Grantor shall not be required to notify Grantee in advance of taking actions in response to an emergency situation relating to dams, impoundments, or Watercourses; however, Grantor shall provide written notice to Grantee within forty-eight (48) hours of taking any such emergency action;
 - c. Grantor shall not be required to notify or seek approval of Grantee in advance of conducting routine maintenance activities for the purpose of protecting and maintaining roads, trails, culverts, bridges and other improvements on the Protected Property, including but not limited to the lawful removal or breaching of beaver dams or lodges, and the lawful control of beaver or other animal populations.
- 3.11. Non-native Species. Grantor shall not plant or intentionally introduce, release or broadcast any non-native, hybrid, or genetically-modified species on the Protected Property, unless such action provides a forest ecosystem benefit, significantly improves forest productivity, prevents soil erosion, or enhances native wildlife populations or habitats and such action is taken in accordance with the Restoration Plan, and/or Restoration Work Plan or Grantor obtains the prior written consent of Grantee, such consent not to be unreasonably withheld or delayed.
- 3.12. Clearing or Cutting Vegetation. Grantor shall not cut or remove vegetation except as consistent with the Restoration Plan and Restoration Work Plan.
- 3.13. Development and Building Rights. Except as provided for by the terms of this Conservation Easement, the development and building rights associated with the Protected Property are hereby extinguished and as a result of such extinguishment, shall not be available for transfer to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
- 3.14. Use of Motorized Vehicles. Use of trucks, all-terrain vehicles, trail bikes, and other motorized off-road vehicles and equipment are not allowed, except: 1) vehicles, machinery, and equipment used on the Protected Property for maintenance and cultivation of lawns and gardens and open areas and to fulfill the objectives of the Restoration Plan; 2) use of vehicles on existing or permitted roads and driveways; 3) use of vehicles and equipment for emergency purposes and/or to carry out required management actions on the Property; and (4) to monitor compliance with this Conservation Easement pursuant to Grantee Work Plan.
- 3.15. Ditching, Diking, Draining, and Filling. Subject to the provisions of Section 5.5 herein, there shall be no ditching, diking, draining, or filling on or at the Protected Property.

4. **GRANTEE'S AFFIRMATIVE RIGHTS:** Grantor grants to Grantee the following affirmative rights which shall run in perpetuity with the Protected Property.
- 4.1. **Right to Enter.** Grantee, its agents, employees or other representatives shall have access to, on, over and across the Protected Property at all times to monitor and assure compliance with terms and conditions of this Conservation Easement, and to exercise and administer Grantee's Affirmative Rights set forth in this Conservation Easement. Grantee's right to enter the Protected Property expressly includes but is not limited to access to, on, over and across the Protected Property for the purposes of:
- a. Inspecting the Protected Property to determine compliance with the covenants and purposes of this Conservation Easement;
 - b. Working with Third Party Enforcers to take any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations of this Conservation Easement after ten (10) calendar day advance written notice to, but not approval of Grantor;
 - c. Necessary maintenance of the Protected Property consistent with and pursuant to the Grantee Work Plan after ten (10) calendar days advance written notice to, but not approval of, Grantor.
- 4.2. **Right to Erect Signs, Gates and Fences.** Grantee, only with the prior written consent of Grantor and Third Party Enforcers, may erect signs, gates, fences or other barriers necessary to carry out its rights and obligations hereunder. Such consent shall be given, denied and or conditioned in the sole discretion of Grantor and Third Party Enforcers respectively.
- 4.3. **Right to Protect Natural Resource Values.** Grantee, its agents, employees or other representatives shall have the right after ten (10) calendar day advance written notice to, but not approval of Grantor, to take such actions as are reasonably necessary to protect the Natural Resource Values of the Protected Property.
- 4.4. **Emergency Actions.**
- a. Grantee may take emergency action necessary to respond to natural disaster, environmental hazard, public nuisance or threats to human safety in order to preserve the Protected Property and protect the public from such disaster, hazard, or threat.
 - b. To the extent practicable, Grantee shall notify Grantor of its entry under this Section and shall consult with Grantor regarding such emergency action. Nothing contained in this Section shall relieve Grantor from any liability for or duty under this Conservation Easement or under applicable

law to repair, remediate, dispose or otherwise remedy any condition which is my have caused and which is the proximate cause of Grantee's entry pursuant to this Section.

- 4.5. Paths and Trails. Maintenance of existing paths and trails shall be limited to removal of dead vegetation, necessary pruning or removal of trees or plants that could present a hazard, and/or application of permeable materials (e.g. sand, mulch, gravel, crushed stone) necessary to correct or prevent erosion. Upon written approval by Grantor, Grantee may install, operate and maintain new trails, and/or other non-paved walkways in order to accommodate public, pedestrian access and such recreational uses of the Protected Property as may be appropriate for a property intended to be maintained in perpetuity in an open and natural condition. Such approval shall be given, denied and or conditioned in the sole discretion of Grantor.
5. **GRANTOR'S RESERVED RIGHTS:** Notwithstanding anything to the contrary in this Conservation Easement, Grantor specifically reserves all rights as fee owner of the Protected Property not otherwise conveyed or limited by this Conservation Easement including but not limited to the following rights with respect to the Protected Property (hereinafter, "Grantor's Reserved Rights"):
 - 5.1. Recreation Rights. The Grantor reserves the unrestricted right to continue to operate the Protected Property as a public park in its current substantially undeveloped condition.
 - 5.2. Right to Maintain. Grantor reserves the right to develop, construct, maintain, install, replace, repair, relocate and remove roads, trails, and road improvements (including but not limited to roads, trails, and culverts) as reasonably necessary for Grantor to allow outdoor Passive Recreational Use on the Protected Property.
 - 5.3. Utilities. Grantor may lease, maintain, replace, remove and with the permission of Grantee (such permission not to be unreasonably withheld or delayed), relocate telephone, fiber optic, cellular, cable television, electric, gas, water, sewer, or other utility lines, service, and Structures, including maintaining an adequate width of the utility corridors identified as "existing" in the Baseline Documentation and Grantor may lease, install, construct, and maintain new utilities subject to the provisions of Section 3.5 of this Conservation Easement.
 - 5.4. Future Sales; Transfers & Conveyances.
 - a. Grantor reserves the right to sell, transfer, or otherwise convey the entire Protected Property, or any in-common and undivided interest in the Protected Property, subject to the terms and limitations of this Conservation Easement.
 - b. Grantor agrees to give written notice to Grantee of the transfer of any interest in the Protected Property at least twenty (20) calendar days prior

to the date of such transfer, except for the grant of a mortgage on all or a portion of the Protected Property or the transfer or sale of stock in Grantor or any other corporation which may hereafter own all or part of the Protected Property or transfer or sale of membership interests in any limited liability company which may hereafter own all or part of the Protected Property.

- c. Any grant of a mortgage or any other interest in the Protected Property after the date of the grant of this Conservation Easement is expressly subject to the terms of this Conservation Easement.
 - d. Any grant of less than a fee interest in the Protected Property shall comply with the terms and conditions of this Conservation Easement.
 - e. Grantor covenants and agrees that any instrument evidencing any subsequent conveyance, lease, mortgage, security interest, encumbrance, or any other transfer of the Protected Property shall contain the following statement: "This (grant, lease, mortgage, easement, etc.) is subject to a certain Conservation Easement entered into between The City of Buffalo and _____, dated _____ and recorded in the office of the Erie County Clerk on _____, in Book _____ of Deeds and Page _____". Both the People of the State of New York acting through the Department of Environmental Conservation and the United States Department of the Interior acting through the United States Fish and Wildlife Service have third party enforcement rights under this Conservation Easement.
 - f. Grantor shall provide Grantee with copies of any recorded documents upon completion of a transfer under this Section and written notice to Grantee of the name and address of transferee.
 - g. Failure of Grantor to comply with the provisions of this Section 5.4 shall not affect the validity of the provisions of this Conservation Easement and Grantee's Affirmative Rights hereunder.
- 5.5. Emergency Actions. Grantor may take emergency action, including but not limited to closure of the affected area of the Protected Property to the public, in response to natural disaster, environmental hazards, or threats to human safety but shall promptly notify Grantee and Third Party Enforcers of any such actions taken.
- 5.6. Gates, Barriers, Fences; Keys, Combinations; Marking Boundaries.

- a. Grantor, after ten (10) calendar days advance written notice to, but not approval of, Grantee and Third Party Enforcers, may install and maintain signs, gates, fences or other barriers necessary to carry out its rights and obligations with regard to operating the Protected Property as a public park, including but not limited to those necessary to prohibit access to any road, trail, parking area, landing, staging area, or related areas to discourage unauthorized dumping and or other unauthorized activities.
- b. The Parties shall provide one another with keys or combinations necessary to open gates and to allow access through such barriers consistent with public safety.
- c. The Parties acknowledge that Grantor may, but is under no obligation whatsoever, to identify, maintain, and mark the boundaries of the Protected Property. The Parties also agree that Grantee may, but is under no obligation whatsoever, and only upon prior written approval of Grantor, to mark the boundaries of the Protected Property and will provide notification to Grantor prior to marking them, Grantor's written approval shall not be unreasonably withheld or delayed.

5.7. Dams and Water Impoundments; Preserving Water Quality.

- a. Grantor may maintain or replace existing dams or impoundments identified in the Baseline Documentation.
- b. Grantor may undertake actions to preserve water levels and water quality, or to prevent the erosion of any slope or shoreline, provided that such actions shall be subject to the prior written approval by Grantee.

5.8. Deteriorated Structures. Should any structure on the Protected Property that is legally owned by Grantor, including any building, deteriorate to such a condition that it is dangerous to occupy or be around, Grantor, at its sole cost and expense, shall either correct the hazard, contain the hazard, or demolish such structure.

5.9. Licenses and Temporary Access Easements.

- a. After ten (10) calendar day advance written notice to, but not approval of Grantee, Grantor may grant licenses and temporary and permanent easements over any Tract and accept compensation therefor; any such grant shall be made by written instrument, recorded in the County Clerk's Office and such grant shall be subject to this Easement and contain the language provided in Section 5.4.e.
- b. Grantor may use roads and trails on the Protected Property to access lands that Grantor owns or desires to access but that are not encumbered by this Easement, or for any lawful purpose.

6. **ENFORCEMENT:** Grantee, and/or Third Party Enforcers, shall have the right to enforce terms of this Conservation Easement as follows:

6.1. Inspections. In accordance with Grantee's Right to Enter the Protected Property, as provided in Section 4.1 herein, Grantee shall have the right to undertake periodic inspections of the Protected Property to determine compliance with the terms of this Conservation Easement. Grantor shall have the right to accompany Grantee on said inspections.

6.2. Notice to Cure.

a. Any party to this Conservation Easement, including Third Party Enforcers (the "Aggrieved Party") shall notify the other party (the "Noticed Party") of a breach of any of the terms or conditions of this Conservation Easement including the portion of the Protected Property affected thereby (the "Notice to Cure"). The Notice to Cure shall set forth how the Noticed Party can cure such breach or suspected breach and shall give the Noticed Party sixty (60) days from the date of receipt of the Notice to Cure, or such longer period of time as may be necessary to cure, provided that actions to cure are commenced within such sixty (60) day period and diligently pursued. Such time periods may be extended in the event of severe weather or if other conditions are experienced that cause a reasonable delay in the Noticed Party's efforts to cure.

b. At the expiration of such period of time to cure, or any extensions thereof granted, the Aggrieved Party shall notify the Noticed Party of any failure to adequately cure the breach or suspected breach. The Noticed Party shall then have an additional thirty (30) days from receipt of such notice to cure. At the expiration of said thirty (30) day period, the Aggrieved Party may commence any legal or equitable action or proceedings in accordance with any applicable law to require compliance with the terms of this Conservation Easement as set forth below.

6.3. Dispute Resolution.

a. In the event the Parties cannot resolve a dispute arising under this Conservation Easement through the Notice to Cure process outlined above, then either party may by written notice (the "Mediation Notice") require that the parties attempt to resolve the dispute through mediation using a mediator agreed upon by the Parties. Mediation shall be held in Buffalo, New York. If the Parties cannot agree upon a mediator within ninety (90) days of delivery of the Mediation Notice, a mediator from the Buffalo New York area will be appointed by the American Arbitration Association pursuant to their procedures. The mediation shall be held in Buffalo, New York within ninety (90) days of delivery of the Mediation Notice. The mediator's recommendations are advisory to the Parties.

- b. Any disputes remaining unresolved after mediation may be pursued through initiation of any appropriate action or proceeding in a court of competent jurisdiction. Notwithstanding the foregoing or anything in this Conservation Easement that could be construed to the contrary, the venue and place for all disputes and or meetings and or proceedings hereunder shall be in Buffalo, New York in all events.
- c. Notwithstanding the forgoing dispute resolution provisions, and the forgoing Notice to Cure provisions (Section 6.2), in the event of non-compliance with this Conservation Easement resulting in immediate injury to, destruction of, or loss of natural resources on the Protected Property, Grantee and/or Third Party Enforcers may take immediate action in Federal District Court in Buffalo to enforce the terms of this Conservation Easement through injunctive relief, and/or such other relief as the Court may deem appropriate.

6.4. Right to Restore.

- a. Subject to the provisions of this Section 6 hereof, Grantor may be required to restore the Protected Property to its Natural State, in the event of a breach of the terms of this Conservation Easement, and Grantee, DEC, or USFWS may enforce this right by any action or proceeding necessary.
- b. In the event that Grantor fails to cure in accordance with the provisions of Sections 6.2 and 6.3, Grantee and/or Third Party Enforcers, at their sole discretion, and after fifteen (15) days advance written notice to Grantor, may enter the Protected Property for the purpose of restoring same to its Natural State. Such notice shall not be required in the event of an emergency provided that Grantee and/or Third Party Enforcers provide notice to Grantor within twenty-four (24) hours of entry onto the Protected Property in order to take emergency action to mitigate the consequences of a breach.
- c. Grantee and/or Third Party Enforcers may resort to the following in order to restore the Protected Property to its Natural State:
 - 1. Remove items and materials not permitted by this Conservation Easement;
 - 2. Close, fill, grade and plant with appropriate vegetative cover areas affected by a breach;
 - 3. Correct, through reasonably practicable measures, conditions that harm any Natural Resource Value on the Protected Property, such as native flora and fauna and the Ecological Processes that support them; Biological Diversity; diverse forest types and conditions; Soil

Productivity; water quality; and Wetland, Riparian, and aquatic habitats and systems;

4. Take any other appropriate action reasonably necessary to remedy any breach of this Conservation Easement.
- 6.5. Force Majeure/Acts of Third Parties. Grantor shall not be liable for any changes to the Protected Property caused by:
- a. Any natural disaster or act of God, or governmental action not related to enforcement;
 - b. Acts of Grantee and/or Third Party Enforcers, their employees and contractors; or
 - c. Acts of the public while on the Protected Property.
- 6.6. Failure to Act. The failure of any party to enforce any of the terms of this Conservation Easement shall not be deemed a waiver of any such term nor shall any such failure in any way bar any enforcement rights hereunder in the event of any subsequent breach of, or noncompliance with, or fault in observance of, any of the terms of this Conservation Easement.
- 6.7. Third Party Enforcement Rights. Grantor and Grantee agree that as between Grantee and Third Party Enforcers, the Third Party Enforcers shall be primarily responsible for undertaking any and all necessary actions to enforce the terms, conditions and restrictions in this Conservation Easement and shall have the same rights as Grantee to enforce the terms, conditions and restrictions in this Conservation Easement as provided under Section 6 herein. Third Party Enforcers may periodically inspect the Protected Property as contemplated by the terms of this Easement. Upon ten (10) calendar day advance written notice to Grantor and Grantee, Third Party Enforcers shall have the right to enter upon and inspect the Protected Property for the purpose of reporting to Grantor and Grantee any violations with the terms, conditions and restrictions of this Conservation Easement. Third Party Enforcers shall have the same rights as Grantee to enforce the terms, conditions and restrictions in this Conservation Easement as provided under Section 6 herein.
7. **STEWARDSHIP FEES:** Within forty five (45) calendar days of the recording of this Conservation Easement at the Erie County Clerk's office, Third Party Enforcers, consistent with the terms of the Consent Decree, shall pay to Grantee a one-time payment in the amount of two thousand four hundred and ninety five dollars (\$2,495.00), per acre multiplied by the acreage of the Protected Property. Grantee shall provide Third Party Enforcers with payment instructions at, or prior to, the recording of this Conservation Easement at the Erie County Clerk's office. Grantor is not obligated to fund Grantee or to provide other compensation to Grantee.

8. OTHER TERMS AND CONDITIONS:

8.1. Construction of Terms and Interpretation.

- a. This instrument conveys a Conservation Easement which shall consist of the covenants, restrictions, rights, terms, and conditions recited herein. Reference to this "Conservation Easement" or its "provisions" shall include any and all of those covenants, restrictions, rights, terms and conditions.
- b. Notwithstanding any term or condition of this Conservation Easement, this Conservation Easement shall be construed to affect the Purposes for which the Conservation Easement was acquired and the Purposes of Article 49 of the ECL. In interpreting the terms of the Conservation Easement, there shall be no presumption favoring Grantee or Grantor.
- c. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- d. The captions herein have been inserted solely for convenience of reference and are not part of this Conservation Easement and shall have no effect upon construction or interpretation.
- e. Any reference in this Conservation Easement to a statute, regulation or ordinance shall include any amendment or successor thereto adopted after the date of this Conservation Easement. Any reference in this Conservation Easement to a published document, treatise, or guide shall include any successor or replacement thereto published after the date of this Conservation Easement.

8.2. Effect. This Conservation Easement shall run with the Protected Property as an incorporeal interest in the Protected Property, and shall extend to and be binding upon Grantor, Grantor's agent, tenants, occupants, lessees, heirs, personal representatives, successors, assigns, and all other individuals and entities; the word "Grantor" when used herein shall include all of those persons or entities. Any rights, obligations, and interests herein granted to Grantee and/or Third Party Enforcers shall also be deemed granted to their subsequent agents, successors, and assigns; the terms "Grantee" and "Third Party Enforcers" when used herein shall include all of those persons or entities. This Conservation Easement shall be a burden upon and run with the Protected Property in perpetuity.

8.3. Baseline Documentation.

- a. Third Party Enforcers, Grantor and Grantee agree that a physical inspection of the Protected Property will be made and a report of the

physical inspection of the Protected Property, known as the Baseline Documentation (the "Baseline Documentation"), will be prepared by Grantee, with the approval of Third Party Enforcers, at no expense to Grantor.

- b. The Baseline Documentation shall be completed and certified by the Parties as an accurate reflection of the condition of the Protected Property prior to the property interest transaction closing, consisting of the execution of the Conservation Easement and the recordation of this Conservation Easement in the Erie County Clerk's office, to be potentially factually supplemented as agreed by Third Party Enforcers and Grantee upon completion of the Restoration Plan and, as may be appropriate from time to time.
 - c. The Parties shall agree and acknowledge that the Baseline Documentation, and any subsequent updates, revisions and amendments, if any, shall consist of, at a minimum, descriptions, maps, photographs, surveys, the Biological Assessment of the Protected Property and or other related documentation which shows or depicts significant aspects of the Protected Property as of the date it is signed and acknowledged by the Parties. The Baseline Documentation is intended to serve as an objective, although not exclusive, informational baseline for monitoring compliance with the terms of this Conservation Easement. The Parties agree that, in the event a controversy arises with respect to the nature and extent of uses or the condition of the Protected Property, the Parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.
 - d. Grantor and Grantee will make available to each other and to Third Party Enforcers, other existing documentation in their possession relating to the condition of the Protected Property. Either Party may at their own expense cause to be prepared such additional documentation deemed appropriate by them, including a survey of the Protected Property, showing its relationship to adjacent features and properties and on-site photographs.
 - e. Copies of the Baseline Documentation, signed and acknowledged by all Parties to the Conservation Easement, shall be provided to Grantor, Grantee, and Third Party Enforcers, and maintained in each of their respective offices. One counterpart shall be maintained in DEC's Central Office in Albany.
- 8.4. Grantee Monitoring and Reporting Requirements. Grantee shall monitor the property for compliance with this Conservation Easement on a semi-annual basis as set forth in Grantee Work Plan. Grantee shall send an annual report on compliance with the terms of this Conservation Easement in the format specified

by Grantee Work Plan to Third Party Enforcers and Grantor shall be provided a copy.

8.5. Notice, Review and Approval Process.

- a. Whenever written notice or an approval is required from any Party, the Party that must provide notice or that is seeking the approval shall deliver a written notice or request for such approval in accordance with the notification directions herein.
- b. Requests shall be either approved, approved with conditions, or denied. Approvals shall be made in electronic or written form and shall be based upon whether the proposed action complies with the terms and/or Purposes of this Conservation Easement. If denied, the reasons for denial and criteria applied, with specific reference to the terms of this Conservation Easement, shall be specifically set forth in the written response to the request.
- c. The Parties shall not unreasonably delay, or deny a request for approval.

8.6. Reserved

8.7. Notices, Notification.

- a. Any notice required to be sent to Grantor herein shall be addressed to:

Commissioner of the City of Buffalo's Department of Public Works, Parks and Streets
65 Niagara Square, Room 502
Buffalo, New York, 14202

with a copy to Corporation Counsel for the City of Buffalo at 65 Niagara Square, Room 1100, Buffalo, NY 14202 with a copy to Assistant Corporation Counsel John Heffron at the same address and email jheffron@city-buffalo.com and with a copy to the Executive Director of the City of Buffalo's Office of Strategic Planning, 65 Niagara Square, Room 920, Buffalo, New York 14202.

Or such other designees of Grantor upon written notice to Grantee.

- b. Any notice required to be sent to Grantee herein shall be addressed to:

Buffalo Niagara River Land Trust
c/o President of the Board of Directors
1902 Niagara Street
Buffalo New York 14207
makedron@icloud.com

with a copy to Adam Walters, Esq., Phillips Lytle LLP, One
Canal Side, 125 Main Street, Buffalo, New York 14203.

Or such other designees of Grantee upon written notice to Grantor.

With a copy sent DEC at:

New York State Department of Environmental Conservation
Regional Forester, Region 9
270 Michigan Avenue
Buffalo, NY 14203

With a copy sent USFWS at:

U.S. Fish & Wildlife Service
New York Field Office
3817 Luker Rd.
Cortland, NY 13045

- c. All notices and requests for approval required or permitted to be given under this Conservation Easement shall be made by electronic mail and delivered by hand or sent by registered or certified mail, return receipt requested, or by overnight mail, to the address of the other Party as provided herein. Notice shall be deemed to have been given on the earlier of: (1) when delivered by hand, or (2) if mailed, three (3) business days after mailing. The Party receiving a request for approval shall respond to the request within sixty (60) days of its receipt, unless otherwise specified herein.
 - d. Any Party may change the individual or address to which notices are to be sent by giving written notice thereof to the other Parties in accordance with paragraph (c) above.
 - e. Upon mutual written agreement, the Parties may provide for other means of receiving and communicating notices and responses to requests for approval.
- 8.8. Regulatory Authorities, Compliance with Law. This Conservation Easement shall not remove the necessity of Grantor or Grantee to obtain any permit and/or

approval from any governmental agency having jurisdiction over any activity conducted or to be conducted on the Protected Property.

- 8.9. Assignment of Grantee's Interest. Grantee may assign this Conservation Easement only to a governmental agency or a "qualified organization" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended. Such assignee should have among its purposes the conservation and preservation of land and water areas and should be capable of complying with its obligations under the terms of this Conservation Easement. Grantee shall require as a condition of assignment that the assignee assume all obligations of Grantee under this Conservation Easement and continue to carry out the conservation purposes of this Conservation Easement.
- 8.10. Cessation of Grantee's Existence. If Grantee ceases to exist or fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if Grantee is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity which is a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or another governmental entity. Grantee's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the cypres doctrine.
- 8.11. Reconveyance If Void. In the event a court of competent jurisdiction determines that this Easement is "void ab initio" in accordance with the provisions of Section 49-0311 of the ECL, Grantor shall, upon request by Grantee, reconvey without change or modification and for no consideration, this Easement to a qualified governmental agency or qualified organization/not-for-profit conservation organization nominee selected by Grantee, in consultation with the United States, State of New York, and The Tuscarora Nation; said reconveyance to be made after such declaration that the Easement is "void ab initio" regardless of the fact that Grantee may pursue its right of appeal, or otherwise. In furtherance of this provision:
- a. Grantee, DEC, and USFWS shall have the right of enforcement of the reconveyance by Grantor to the nominee by any legal means;
 - b. The form of reconveyance shall be satisfactory to Grantee;
 - c. Grantee shall pay any costs and expenses, including but not limited to taxes, filing fees and reasonable attorney's fees that Grantor may incur as a result of the reconveyance of the Easement pursuant to the terms of this section.
- 8.12. Severability. The Parties agree that the provisions of this Conservation Easement are severable and that if any court of competent jurisdiction shall render a judgment voiding or nullifying any provision(s) hereof, the effect of said judgment

shall be limited to the nullified or voided portion of this Conservation Easement and the remaining provisions hereof shall continue in full force and effect.

8.13. Modification(s) (Amendments). Grantor and Grantee may modify this Conservation Easement by mutual agreement in writing, executed by both Parties, in accordance with the provisions of Section 49-0307 of the ECL and recorded in the appropriate County Clerk's Office, provided, however, that no modification shall be made that will adversely affect the status of this Conservation Easement under applicable laws. Any modification shall be consistent with the Purposes of this Conservation Easement and shall not affect its perpetual duration. The party requesting a modification shall be responsible for all related costs, including, but not limited to pertinent appraisals, surveys, abstracts, and recording fees, as may be relevant.

8.14. Grantor's Negligence.

- a. Grantor agrees to indemnify and hold Grantee and/or Third Party Enforcers harmless against all claims, loss, damage and expense Grantee and/or Third Party Enforcers may suffer as a result of Grantor's negligence in the course of exercising any rights reserved under this Conservation Easement or as the fee owner.
- b. Grantor's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to Grantor by Grantee and/or Third Party Enforcers of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after Grantee and/or Third Party Enforcers its served with such document.

8.15. Grantee's Negligence.

- a. Grantee agrees to indemnify and hold Grantor and/or Third Party Enforcers harmless against all claims, loss, damage and expense Grantor may suffer as a result of Grantee's negligence in the course of exercising any rights granted under this Conservation Easement.
- b. Grantee's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to Grantee by Grantor and/or Third Party Enforcers of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after Grantor and/or Third Party Enforcers is served with such document.

8.16. Third Party Liability; Protections from Liability; Access to Protected Property and Grantor's Reasonable Risk Management.

- a. Nothing contained in this Conservation Easement shall create any liability on behalf of Grantor to any third party or create any right, claim or cause of action on behalf of any party other than Grantor, Grantee, their successors and assigns, DEC, and USFWS.
- b. Nothing in this Conservation Easement shall be interpreted as an assumption of responsibility by, or basis for liability on the part of, Grantor for any injury to person or damage to property or loss of life that may be sustained by any person while on the Protected Property in the exercise of any of the rights afforded to the public by this Conservation Easement or sustained by any person as a result of any entry on or use of the Protected Property. This provision is not intended to release Grantor from any liability for damages to the person or property of its invitees, employees or agents while on the Protected Property under the authority or by the permission of Grantor.
- c. Grantor specifically retains all protections from liability provided under New York law to private owners of land, including, but not limited to, the protections contained in Section 9-103 of the General Obligations Law (or any successor or other statutory or regulatory provision then applicable).
- d. Third Party Enforcers shall have no liability or other obligations for costs, taxes, assessments, insurance, maintenance, or other liabilities of any kind related to the Protected Property except to the extent that such liability(ies) arise from the negligent acts of either or both of Third Party Enforcers respectively or their respective agents, contractors or consultants. Third Party Enforcers' rights do not include the right, in absence of a judicial decree, to enter the Protected Property for the purpose of becoming an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, or any similar statute or regulation. Third Party Enforcers employees, and agents have no liability arising from injury or death to any person or physical damage on the Protected Property, except to the extent that such liability(ies) arise from the negligent acts of either or both of Third Party Enforcers respectively or their respective agents, contractors or consultants.
- e. Grantee shall, at its own expense, procure commercial general liability insurance in which Grantor shall be an additional insured, and keep the same in force for the duration of this Conservation Easement. Such insurance shall defend and pay on behalf of both Grantee and Grantor against claims, including claims for bodily injuries and property damage, occurring on the Protected Property arising out of the negligence of Grantee with a per occurrence limit of not less than one million dollars

(\$1,000,000). Grantee shall increase the minimum per occurrence limit by not less than ten percent (10%) cumulatively every five years on the anniversary date of the recording of this Conservation Easement. Grantee shall require that every contractor and/or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall have commercial general liability insurance with the same per occurrence limit as Grantee and shall name Grantor as an additional insured prior to performing such work or services on, at, over or under the Protected Property. Grantee shall also require that every contractor and/or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall indemnify Grantee and Grantor for any damages arising from any negligent acts or omissions on the part of such contractor and/or consultant. Grantee shall directly oversee and manage all volunteers it allows on to the Protected Property and shall require that any volunteers it brings onto the Protected Property sign a waiver releasing Grantor and holding Grantor harmless for bodily injuries and property damage occurring on the Protected Property except to the extent such bodily injuries or property damage are the result of Grantor's negligence.

- f. Each Third Party Enforcer shall require that every contractor and or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall have commercial general liability insurance with at least the same minimum per occurrence limits as Grantee and shall name the Grantor as an additional insured prior to performing such work or services on, at, over or under the Protected Property. Prior to commencing such work or services, such contractor and or consultant shall provide the Grantor evidence of effectuation of additional insured status for the Grantor. Third Party Enforcer will also request, but not require, that a contractor of a Third Party Enforcer, at the contractor's own expense, indemnify the Grantor for any claims or causes of action arising from the negligent acts or omissions of the contractor in carrying out its activities on the Protected Property.

8.17. Additional Covenants. Grantor does further covenant to the Grantee as follows:

- a. That Grantor is seized of the Protected Property in fee simple and has good right to convey this Conservation Easement and the rights hereunder.
- b. That the Grantee shall quietly enjoy said rights granted to the Grantee under this Conservation Easement, provided, however, that Grantee's enjoyment of such rights shall not interfere with Grantor's quiet enjoyment of, and exercise of, its Reserved Rights.
- c. That the Protected Property is free from encumbrances, except as provided on Schedule B attached hereto and made a part hereof.

- d. That Grantor will execute any further necessary assurances of Grantor's title to the Protected Property, but Grantor shall not be obligated to expend funds in connection therewith and or to undertake title curative measures.
 - e. That, as of the date of this grant, Grantor has not done or suffered anything whereby the Protected Property has been encumbered in any way whatsoever, except for those encumbrances imposed by Grantor set forth on Schedule B.
 - f. That this conveyance is made subject to the trust fund provisions of Section 13 of the Lien Law.
- 8.18. Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds from such actions shall be payable to Grantor and Grantee to reimburse any reasonable expenses incurred by Grantor and Grantee in such actions, with the remaining balance payable to Grantee or Third Party Enforcers, at the sole discretion of Third Party Enforcers. Such remaining balance shall only be used to restore, replace, or acquire the equivalent of, injured natural resources having an ecological nexus to the Site.
- 8.19. Recitation. In consideration of the previously recited facts, mutual promises, undertakings and forbearances contained in this Conservation Easement, the Parties agree upon its terms, conditions, provisions, and Purposes, intending to be bound by it. This Conservation Easement contains the entire understanding between its Parties concerning its subject matter. Any prior agreement between the Parties concerning its subject matter shall be merged into this Conservation Easement and superseded by it.

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IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first written above.

GRANTOR: City of Buffalo

By: _____

Its: _____

GRANTEE: Buffalo Niagara River Land Trust Inc.

By: _____

Its: _____

THIRD PARTY ENFORCER RIGHTS AND OBLIGATIONS ACCEPTED BY:

PEOPLE OF THE STATE OF NEW YORK
Acting By and Through Their Commissioner of Environmental Conservation

By: _____
NANCY LUSSIER, Director
Division of Management and Budget

DEC's Acknowledgment:

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared, NANCY LUSSIER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same and that by her signature on the instrument, she, or the person upon behalf of whom she acted, executed the instrument.

Notary Public, State of New York

USFWS's Acknowledgment:

COMMONWEALTH OF MASSACHUSETTS)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared, WENDI WEBER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same and that by her signature on the instrument, she, or the person upon behalf of whom she acted, executed the instrument.

Notary Public, Commonwealth of
Massachusetts

LIST OF SCHEDULES AND EXHIBITS

SCHEDULE A – DESCRIPTION OF THE PROTECTED PROPERTY, including reference to a survey of the Protected Property (Exhibit 1).

DR

SCHEDULE B – EXCEPTED ENCUMBRANCES

Unimproved Portions of Houghton Park CER -> Permitted Exceptions and Encumbrances -> 08/24/2020 draft - Subject to title search completion and finalization of the surveys, and subject to possible further review and comment by City personnel:

1. Rights and claims of parties in possession not shown of record.
2. Any state of facts an inspection of premises would disclose, whether or not shown on premises survey. Premises are densely vegetated much of the year and these conditions might prevent accurate inspection.
3. Findings upon a full and accurate title search and updated final survey
4. Variations between the lines of fences and or guardrails and the lines of record title and variations between lines of fences and or guardrails and surveyed boundary lines.
5. Variations between record and measured distances.
6. To the extent present on the premises and or upon an inspection of the premises, various utility poles, overhead wires, wells, valves, hydrants, fire hydrants, drop inlets, storm line(s) and or outfall(s), railroad encroachment(s), railroad related encroachments, vaults, manholes, sanitary manholes and or all associated piping and or other relevant and or appurtenant infrastructure and all other physical presences on, over and or under the premises including also but not limited to petroleum pipelines located within, upon, and or throughout the premises.
7. Rights of the public in and to the premises by virtue of the premises being a municipal park.
8. Municipal vehicle, emergency vehicle, utility vehicle, railroad vehicle, and or any type of maintenance/repair vehicle access, turnaround areas and or other access rights and turnaround rights of members of the public.
9. Public rights and rights of others in and to the bed and waters of the Buffalo River including but not limited to any regulatory statutes affecting the same.
10. Riparian rights and easements of others to and or over Buffalo River.
11. Terms, conditions and provisions of documents of record regarding the petroleum pipelines and or other pipelines crossing the premises including but not limited to those set forth in that certain Agreement dated July 17, 1940 between the City of Buffalo and Socony-Vacuum Oil Company, Inc. recorded in the Erie County Clerk's Office on July 18, 1940 in Liber 3012 of Deeds at page 333.
12. Terms, conditions and provisions whether or not of record and or written protocols provided and or to be provided and or supplemented, revised and updated from time to time by each of the pipeline company(ies) as to activities and or utilization of those portions of the premises on or near the pipelines. Reference as example but not by way of limitation is made to "Buckeye Partners, L.P. and Affiliates Right-of-Way Use Restrictions Specification Revision 5" as revised or amended from time to time and any

similar protocols issued by Enbridge Energy United Partnership in connection with their respective pipeline easement/right of way rights.

DR

SCHEDULE C – DEFINITIONS

EXHIBIT 1 –SURVEY OF THE PROTECTED PROPERTY

(indicating subdivision limitations; Building Envelopes; access roads or utility corridors; and/or other special designations).

DR

SCHEDULE C DEFINITIONS

All-Terrain Vehicle(s) ("ATV(s)"): Any self-propelled vehicle that is designed and intended to be operated primarily on off-highway trails, and only incidentally operated on public highways, provided that such vehicle does not exceed seventy (70) inches in width or one thousand (1000) pounds dry weight or as otherwise defined in New York State law, rules or regulations. This definition shall not include a motorcycle or other two-wheeled vehicle, or a Snowmobile or other such self-propelled vehicle manufactured for off highway use on snow or ice and which uses an endless belt tread.

Baseline Documentation: A compilation of information that documents the current condition and conservation values of the property at the time a conservation easement is closed, unless otherwise agreed by Grantor, Grantee and Third Party Enforcers, generally including maps, photographs and a description of significant features. The report is used to monitor and enforce the easement and is signed by Grantor and the Grantee at time of transfer. The Baseline Documentation may be updated, revised and amended by written agreement and documentation of Third Party Enforcers, Grantor and Grantee to reflect work undertaken under the Restoration Plan.

Consent Decree: Shall mean the Consent Decree between United States of America, State of New York, and Tuscarora Nation as Plaintiffs and Honeywell International Inc., and CSX Transportation, Inc. as Settling Defendants. Grantor is required to place a Conservation Easement on the Protected Property in order to be eligible for the benefits conferred by or as a result of such Consent Decree. Restoration of the Protected Property will be pursuant to the Consent Decree, the Restoration Plan, and the Restoration Work Plan.

Department: The New York State Department of Environmental Conservation.

Grantee: The Party identified as Grantee in the preamble, its officials, employees, contractors, successors, assigns, authorized agents, personal representatives, tenants, and occupants, and where specifically set forth herein licensees and lessees of Grantee. DEC and USFWS shall have the same rights of enforcement under this Conservation Easement as the Grantee.

Grantee Work Plan: A work plan to be developed by Third Party Enforcers with the concurrence of Grantee and Grantor to direct Grantee to conduct bi-annual monitoring of the Protected Property; and to direct Grantee to provide an annual report on compliance with this Conservation Easement annually to Third Party Enforcers. Grantor and Grantee shall provide reasonable comments on the proposed Grantee Work Plan within 30 days of receipt of such Plan. Grantor and Grantee shall not unreasonably withhold concurrence on the proposed Grantee Work Plan.

Grantor: The owner(s) in fee simple of the real property that is subject to this Conservation Easement. The term "Grantor" shall include Grantor, its successors, heirs and assigns, and its authorized agents, personal representatives, tenants, occupants, contractors, and employees, and where specifically set forth herein, licensees and lessees of Grantor.

Motor Vehicle: Passenger vehicles limited to passenger cars, motorcycles intended for highway use, Snowmobiles or trucks, powered by any means. For the purposes of this Conservation Easement, this definition specifically excludes All-Terrain Vehicles ("ATVs"), mobile homes, offroad motorbikes and motocross cycles.

Motorized Equipment: Tractors, groomers, ATVs, Snowmobiles, motorboats, aircraft and other means of facilitating motorized access, as well as machines not designed for transporting people or for moving earth but incorporating a motor, engine, or other non-living power source to accomplish a task, such as but not limited to, saws, mowers, pumps, drills, and generators.

Natural Resource Values: Natural Resource Values shall mean the natural habitat located on the Protected Property for birds, fish, and wildlife, including wetlands, uplands, and stream habitat, the ecological value of the Protected Property, and the open space, and scenic and natural features on the Protected Property.

Natural State: The approximate general condition of the Protected Property existing immediately prior to a breach of any term or condition of this Conservation Easement, giving due consideration to the impact of the normal effects of the passage of time; the results of natural forces such as wind, fire, earthquakes, landslides, lightning, floods, ice storms, or other acts of God; and the Passive Recreational Use of the Protected Property.

Non-Native Species: Species of organisms that are not native to the Adirondack region of New York State, including living organisms introduced from outside their natural ranges. This definition shall also include genetically modified or genetically engineered organisms.

Party/Parties: As defined in the preamble.

Passive Recreational Use of the Protected Property: Reasonable use and enjoyment of the Protected Property without disturbing the ecology, land, water or environs.

Protected Property: The lands subject to this Conservation Easement, more particularly described in Schedule A, including reference to a survey of the Protected Property as set forth in Exhibit 1.

Restoration Plan: The Buffalo River Natural Resource Damage Assessment Restoration Plan and Environmental Assessment, consistent with 43 C.F.R. §11. 93,

and as it may be amended by the USFWS, DEC and Tuscarora Nation, in their discretion. The Restoration Plan is attached as Appendix A to the Consent Decree.

Restoration Work Plan: A work plan to be developed by Third Party Enforcers, with the concurrence of the Grantee and Grantor, to specify work to be completed on the Protected Property to restore, maintain, and otherwise prepare the Property for the uses specified in this agreement as set forth in the Restoration Plan. Grantor and Grantee shall provide reasonable comments on the proposed Restoration Work Plan within 30 days of receipt of such Plan. Grantor and Grantee shall not unreasonably withhold concurrence on the proposed Restoration Work Plan.

Site: For the purposes of this Conservation Easement, the term "Site" shall mean the Buffalo River from the confluence of Cazenovia Creek to the mouth of the River at Lake Erie (approximately the lower 6.2 miles of the main stem of the River including the City Ship Canal that runs 1.4 miles south from the mouth of the River parallel to Lake Erie), as well as the Times Beach Nature Preserve.

State: The State of New York

Structure(s): For the purposes of this Conservation Easement, the term "Structure" shall be defined as broadly as possible, and shall include, but not be limited to, any building, facility, edifice, or man-made development of any kind or nature, whether permanent or temporary, including, but not limited to, buildings, Camps, cabins, lean-tos, towers, wind turbines, tanks, antennas, mobile homes, bridges, docks, utilities, fences, billboards, signs, sanitary facilities, or other man-made facilities or improvements.

Third Party Enforcers: The State of New York acting through DEC and the United States Department of the Interior acting through the USFWS.

Tract(s): Specific parcels of the Protected Property.

Trail: A hardened path located, with maintained clearances of 1.5' to 8' width and 10' to 12' height.

APPENDIX E 2

Form of CER for Upstream Parcels

City of Buffalo, County of Erie, State of New York

CONSERVATION EASEMENT FOR UPSTREAM PARCELS.

THIS CONSERVATION EASEMENT (hereinafter the “Conservation Easement”), is made this ___ day of _____, 202_, between City of Buffalo having its office at 65 Niagara Square, Buffalo City Hall, Buffalo, New York 14202 (hereinafter “Grantor”), and the Buffalo Niagara River Land Trust Inc., having an office at 2475 Niagara Street Buffalo, New York 14207 (hereinafter “Grantee”). The People of the State of New York, acting through the Department of Environmental Conservation (“DEC”), having an office at 625 Broadway, Albany, NY 12233, while not a party to this Conservation Easement, has third party enforcement rights, as set forth in New York State Environmental Conservation Law (ECL), Title 3 of Article 49 and this Conservation Easement. The United States Fish and Wildlife Service (“USFWS”), having an office at 3817 Luker Rd., Cortland, NY 13045, while also not a party to this Conservation Easement, has third party enforcement rights, as set forth in ECL, Title 3 of Article 49 and this Conservation Easement.

W I T N E S S E T H

WHEREAS, Grantor, without making representations and or warranties with respect to title, is the purported owner, in fee simple, of certain real property located along the northerly side of the Buffalo River in the City of Buffalo in Erie County, State of New York, described in Schedule A, subject to those encumbrances and exceptions set forth in Schedule B, both to be attached hereto and made a part hereof (hereinafter referred to as the “Protected Property”); and

WHEREAS, capitalized terms are defined in Schedule C; and

WHEREAS, under the Consent Decree between United States of America, State of New York, and Tuscarora Nation as Plaintiffs and Honeywell International Inc., and CSX Transportation, Inc. as Settling Defendants, Grantor is required to place a Conservation Easement on the Protected Property in order to be eligible for the benefits conferred by or as a result of such Consent Decree. Restoration of the Protected Property will be pursuant to the Consent Decree, the Restoration Plan, and the Restoration Work Plan; and

WHEREAS, work will be performed on the Protected Property pursuant to the Restoration Plan, Restoration Work Plan, and the Grantee Work Plan in order to restore and protect habitat for birds, fish, and wildlife, promote the ecological value of the land, provide open space protection, and protect scenic and natural features; and

WHEREAS, by the granting of this Conservation Easement, Grantor intends to preserve and limit the uses and development of the Protected Property in perpetuity as specified herein including preserving the work specified in the Restoration Plan, the Restoration Work Plan, and the Grantee Work Plan; and

WHEREAS, Grantee is a not-for-profit conservation organization created for, among other purposes, to promote, restore, and enhance the natural, ecological, environmental, scenic and recreational values of the Buffalo and Niagara Rivers, Lake Erie, Lake Ontario and their tributaries; and

WHEREAS, Grantee is eligible to accept and hold conservation easements to protect property important to the conservation of natural resources under the provisions of ECL, Title 3 of Article 49; and

WHEREAS, Grantee is a tax-exempt organization described in Sections 501(c)(3) of the Internal Revenue Code, is a qualified organization as described in Section 170(h) of the Internal Revenue Code, is a not-for-profit conservation organization as described at ECL § 49-0303, and is eligible to hold conservation easements thereunder.

NOW, THEREFORE, Grantor, in consideration of the Consent Decree and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, grants, conveys, and releases to Grantee this Conservation Easement in perpetuity, pursuant to and consistent with Article 49, Title 3 of the ECL in, on, over, under and upon the Protected Property on the terms and conditions set forth herein:

1. **DEFINITIONS:** Capitalized words or terms used in this Conservation Easement, or in documents associated with this Conservation Easement (such as the Baseline Documentation), shall have the definition and interpretation as set forth in Schedule C attached hereto and incorporated herein, unless such word or term is otherwise specifically and intentionally defined elsewhere in this Conservation Easement or associated document(s).
2. **PURPOSES:** This Conservation Easement is hereby granted to effect the following purposes (hereinafter, the "Purposes") in perpetuity:
 - 2.1. **Intended Uses.** Provide appropriate land uses to assure that the Protected Property will be retained forever predominantly in its open and natural condition, to protect the natural habitat located on the Protected Property in perpetuity for birds, fish, and wildlife, including protecting wetlands, uplands, and stream habitat, protecting fish and wildlife habitat and the ecological value of the land, providing open space protection, and protecting scenic and natural features and to confine the use of the Protected Property to the activities permitted by this Conservation Easement;
 - 2.2. **Limit Development.** To limit the development of the Protected Property and prevent residential, commercial, industrial and extensive agricultural uses of the Protected Property, except as permitted by this Conservation Easement;
 - 2.3. **Prohibit Subdivision.** To prohibit Subdivision of the Protected Property, except as permitted by this Conservation Easement, in order to protect existing habitat and habitat improvements at the Protected Property;
 - 2.4. **Protect Natural Resource Values.** To conserve and protect the Natural Resource Values of the Protected Property in perpetuity and to prevent any use of the

Protected Property that will interfere with the Natural Resource Values of the Protected Property.

3. **RESTRICTED USES AND PRACTICES:** Except as expressly provided hereunder or in the Consent Decree and/or Restoration Plan, the Parties agree that the following restrictions shall apply to the Protected Property in perpetuity:
 - 3.1. **Certain Prohibited Uses.** Residential, commercial, agricultural or industrial activities of any kind shall not be permitted on the Protected Property, nor any other use of, or activity upon, the Protected Property that will interfere with or diminish the Natural Resource Values of the Protected Property, except as specifically permitted, or reserved, by the terms of this Conservation Easement, the Restoration Plan, Restoration Work Plan and/or Grantee Work Plan.
 - 3.2. **Conveyance of Portions of Protected Property; Subdivision.** The transfer, conveyance or sale of less than the entire Protected Property described in Schedule A and the Subdivision of the Protected Property, or any portion thereof, or any subdivision of specific rights, including easements of any kind, are prohibited, except as follows:
 - a. The following actions shall not be considered a division or Subdivision as defined in this Conservation Easement and are permitted under this Conservation Easement. Grantor shall provide Grantee with copies of any recorded documents upon completion of a transfer permitted herein and notice of the name and address of such transferee.
 1. Conveyance to Grantee, or to a third party solely for the purpose of facilitating ultimate conveyance to Grantee, of a fee interest in any portion of the Protected Property or of any rights retained by Grantor in this Conservation Easement with respect to any portion of the Protected Property;
 2. Conveyance of portions of the Protected Property to abutters to the extent necessary to resolve a bona fide boundary dispute provided that:
 - i. Any conveyance for the purpose of resolving a bona fide boundary dispute requires the prior approval of Grantee, which shall not be unreasonably withheld;
 - ii. The portion of the Protected Property conveyed to a third-party to resolve a boundary dispute shall not remain subject to the terms of this Conservation Easement; and
 - iii. Any real property received by Grantor in exchange for such conveyance to resolve a boundary dispute shall become subject to this Conservation Easement unless Grantee

agrees/consents otherwise, such agreement/consent not to be unreasonably withheld or delayed.

3. Subject to ten (10) calendar day advance written notice and prior written approval of Grantee, which shall not be unreasonably withheld, conveyance of the Protected Property or any portion thereof to a governmental agency or a “qualified organization” whose purpose is consistent with the Purposes of this Conservation Easement and who would qualify as an assignee under Section 8.9 hereof.
- 3.3. Structures. Except as specifically permitted by the terms of this Conservation Easement and/or the Restoration Work Plan, no Structure shall be constructed or placed in, on, over or upon the Protected Property. For the purposes of this Conservation Easement, the term “Structure” shall be defined as broadly as possible, and shall include, but not be limited to, any building, facility, edifice, or man-made development of any kind or nature, whether of a permanent or temporary nature, including but not limited to: any residence, commercial or industrial building, tower, antenna, mobile home, dock, utility, pavilion, fence, sign, billboard or other advertising material, outhouse and other sanitary facility, bunkhouse, lean-to, camp, cabin, recreational facilities, roads, bridges or other man-made improvements.
 - 3.4. Impervious Surfaces. Except as specifically permitted by the terms of this Conservation Easement, roads, trails, parking lots, and other such areas on the Protected Property shall not be paved or covered with impervious surface materials.
 - 3.5. Utilities. No new telephone, cellular, fiber optic, cable television, electric, gas, water, sewer or other utilities, Structures and towers shall be located over, under, in, on, upon or above the Protected Property, except as follows:
 - a. As provided for in Section 5.1;
 - b. Pursuant to the provisions of Section 49-0305 of the ECL when no reasonable alternative exists and only to the minimum extent necessary to accommodate the new utility;
 - c. Pursuant to the provisions of Section 49-0307 of the ECL;
 - d. Municipal or publicly regulated utilities located within, or within 30 feet of, any public right of way easements which run through the Protected Property;
 - e. Any utility corridors, structures or towers that are proposed to be built in the future and specifically permitted by the terms of this Conservation

Easement, or with the prior approval of Grantee, such prior approval not to be unreasonably withheld or delayed; or

- f. Repairs and/or replacements, upgrades, enhancements, inspections, maintenance, operation and practical objectives involved in the continued operation of the petroleum pipeline(s) and any other utilities currently running through, across, on or above and or adjoining the Protected Property.

3.6. Waste Disposal.

- a. The dumping or storage of ashes , trash, waste, non-composted organic waste, sewage, scrap material, sediment discharges, oil and its by-products, leached compounds, toxic fumes, or garbage, on any portion of the Protected Property is prohibited.
- b. No waste water or sewage, chemical wastes or other hazardous waste materials may be dumped or stored on the Protected Property except as provided for herein.
- c. Consistent with its current obligations, Grantor shall ensure the removal of any trash or debris (except for organic vegetation restoration debris) from the Protected Property caused by its own activities or the activities of its lessees, contractors or guests. Grantor shall not be obligated under this Conservation Easement in connection with unauthorized dumping which may occur at the Protected Property.
- d. Grantee shall, to the best of their efforts, ensure the removal of any trash or debris from the Protected Property caused by its own activities or use of the Protected Property.

3.7. Mining; Sand and Gravel Use. The mining or extraction of soil (including topsoil), sand, rock, fuel or any other mineral substance or other material present on or under the Protected Property is prohibited. In no case shall surface or subsurface mining or removal of subsurface oil, gas or other minerals or materials be permitted.

3.8. Chemical Treatments. The use of herbicides, pesticides, fungicides, rodenticides, fertilizer and pH control or other chemicals on the Protected Property is prohibited, except as permitted below:

- a. To control a pest or disease outbreak that threatens the health of the Protected Property;
- b. To control insect pests for human health and safety purposes; or
- c. To control non-native plant or animal species.

3.9. Exterior Lighting.

- a. No permanent exterior artificial illumination shall be employed on any Tract, other than the type or function that is employed as of the date hereof and/or as otherwise identified in the Baseline Documentation and/or Restoration Plan.
- b. Notwithstanding this restriction, Grantor may use permanent exterior artificial illumination if necessary for the enjoyment of the Reserved Rights by Grantor and upon prior approval of Grantee, such prior approval not to be unreasonably withheld or delayed.

3.10. Dams and Water Impoundments. The construction of new dams or impoundments, or manipulation and alteration of Watercourses, Water bodies or Wetlands, but not including necessary structures for storm water management as part of an allowable construction activity, on the Protected Property is prohibited, except for the following:

- a. Grantor may use, operate, maintain, and replace in-kind any existing dam or impoundment; manipulated or altered Watercourse, Water body, or Wetland Structure on the Protected Property, in a manner consistent with their historical use, purposes and impacts, as identified in the Baseline Documentation. Grantor shall, unless Grantor determines that an emergency exists or is imminent or that public safety is an issue, give ten (10) calendar day advance written notice to Grantee prior to undertaking any dam or impoundment maintenance or replacement activities that require the use of heavy machinery or soil movement;
- b. Grantor shall not be required to notify Grantee in advance of taking actions in response to an emergency situation relating to dams, impoundments, or Watercourses; however, Grantor shall provide written notice to Grantee within forty-eight (48) hours of taking any such emergency action;
- c. Grantor shall not be required to notify or seek approval of Grantee in advance of conducting routine maintenance activities for the purpose of protecting and maintaining roads, trails, culverts, bridges and other improvements on the Protected Property, including but not limited to the lawful removal or breaching of beaver dams or lodges, and the lawful control of beaver or other animal populations.

3.11. Non-native Species. Grantor shall not plant or intentionally introduce, release or broadcast any non-native, hybrid, or genetically-modified species on the Protected Property, unless such action provides a forest ecosystem benefit, significantly improves forest productivity, prevents soil erosion, or enhances native wildlife populations or habitats and such action is taken in accordance with

the Restoration Plan and/or the Restoration Work Plan or Grantor obtains the prior written consent of Grantee, such consent not to be unreasonably withheld or delayed.

- 3.12. Clearing or Cutting Vegetation. Grantor shall not cut or remove vegetation except as consistent with the Restoration Plan and Restoration Work Plan.
- 3.13. Development and Building Rights. Except as provided for by the terms of this Conservation Easement, the development and building rights associated with the Protected Property are hereby extinguished and as a result of such extinguishment, shall not be available for transfer to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
- 3.14. Use of Motorized Vehicles. Use of trucks, all-terrain vehicles, trail bikes, and other motorized off-road vehicles and equipment are not allowed, except: 1) vehicles, machinery, and equipment used on the Protected Property for maintenance and cultivation of lawns and gardens and open areas and to fulfill the objectives of the Restoration Plan; 2) use of vehicles on existing or permitted roads and driveways; 3) use of vehicles and equipment for emergency purposes and/or to carry out required management actions on the Property; and (4) to monitor compliance with the Conservation Easement pursuant to Grantee Work Plan.
- 3.15. Ditching, Diking and Draining. Subject to the provisions of Section 5.3 herein, there shall be no ditching, diking, draining, or filling on or at the Protected Property.

4. GRANTEE'S AFFIRMATIVE RIGHTS: Grantor grants to Grantee the following affirmative rights which shall run in perpetuity with the Protected Property.

- 4.1. Right to Enter. Grantee, its agents, employees or other representatives shall have access to, on, over and across the Protected Property at all times to monitor and assure compliance with terms and conditions of this Conservation Easement, and to exercise and administer Grantee's Affirmative Rights set forth in this Conservation Easement, and the Grantee Work Plan. Grantee's right to enter the Protected Property expressly includes but is not limited to access to, on, over and across the Protected Property for the purposes of:
 - a. Inspecting the Protected Property to determine compliance with the covenants and purposes of this Conservation Easement;
 - b. Working with Third Party Enforcers to take any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations of this Conservation Easement after ten (10) calendar days advance written notice to, but not approval of Grantor;

- c. Necessary maintenance of the Protected Property consistent with and pursuant to the Grantee Work Plan after ten (10) calendar days advance written notice to, but not approval of, Grantor.
- 4.2. Right to Erect Signs, Gates and Fences. Grantee, only with the prior written consent of Grantor and Third Party Enforcers, may erect signs, gates, fences or other barriers necessary to carry out its rights and obligations hereunder. Such consent shall be given, denied and or conditioned in the sole discretion of Grantor and Third Party Enforcers respectively.
 - 4.3. Right to Protect Natural Resource Values. Grantee, its agents, employees or other representatives shall have the right after ten (10) calendar day advance written notice to, but not approval of Grantor, to take such actions as are reasonably necessary to protect the Natural Resource Values of the Protected Property.
 - 4.4. Emergency Actions.
 - a. Grantee may take emergency action necessary to respond to natural disaster, environmental hazard, public nuisance or threats to human safety in order to preserve the Protected Property and protect the public from such disaster, hazard, or threat.
 - b. To the extent practicable, Grantee shall notify Grantor of its entry under this Section and shall consult with Grantor regarding such emergency action. Nothing contained in this Section shall relieve Grantor from any liability for or duty under this Conservation Easement or under applicable law to repair, remediate, dispose or otherwise remedy any condition which is my have caused and which is the proximate cause of Grantee's entry pursuant to this Section.
5. **GRANTOR'S RESERVED RIGHTS:** Notwithstanding anything to the contrary in this Conservation Easement, Grantor specifically reserves all rights as fee owner of the Protected Property not otherwise conveyed or limited by this Conservation Easement including but not limited to the following rights with respect to the Protected Property (hereinafter, "Grantor's Reserved Rights"):
- 5.1. Utilities. Grantor may lease, maintain, replace, remove and with the permission of Grantee (such permission not to be unreasonably withheld or delayed), relocate telephone, fiber optic, cellular, cable television, electric, gas, water, sewer, or other utility lines, service, and Structures, including maintaining an adequate width of the utility corridors identified as "existing" in the Baseline Documentation and Grantor may lease, install, construct, and maintain new utilities subject to the provisions of Section 3.5 of this Conservation Easement.
 - 5.2. Future Sales; Transfers & Conveyances.

- a. Grantor reserves the right to sell, transfer, or otherwise convey the entire Protected Property, or any in-common and undivided interest in the Protected Property, subject to the terms and limitations of this Conservation Easement.
 - b. Grantor agrees to give written notice to Grantee of the transfer of any interest in the Protected Property at least twenty (20) calendar days prior to the date of such transfer, except for the grant of a mortgage on all or a portion of the Protected Property or the transfer or sale of stock in Grantor or any other corporation which may hereafter own all or part of the Protected Property or transfer or sale of membership interests in any limited liability company which may hereafter own all or part of the Protected Property.
 - c. Any grant of a mortgage or any other interest in the Protected Property after the date of the grant of this Conservation Easement is expressly subject to the terms of this Conservation Easement.
 - d. Any grant of less than a fee interest in the Protected Property shall comply with the terms and conditions of this Conservation Easement.
 - e. Grantor covenants and agrees that any instrument evidencing any subsequent conveyance, lease, mortgage, security interest, encumbrance, or any other transfer of the Protected Property shall contain the following statement: "This (grant, lease, mortgage, easement, etc.) is subject to a certain Conservation Easement entered into between The City of Buffalo and _____, dated _____ and recorded in the office of the Erie County Clerk on _____, in Book _____ of Deeds and Page _____". Both the People of the State of New York acting through the Department of Environmental Conservation and the United States Department of the Interior acting through the United States Fish and Wildlife Service have third party enforcement rights under this Conservation Easement.
 - f. Grantor shall provide Grantee with copies of any recorded documents upon completion of a transfer under this Section and written notice to Grantee of the name and address of transferee.
 - g. Failure of Grantor to comply with the provisions of this Section 5.2 shall not affect the validity of the provisions of this Conservation Easement and Grantee's Affirmative Rights hereunder.
- 5.3. Emergency Actions. Grantor may take emergency action, including but not limited to closure of the affected area of the Protected Property to the public, in response to natural disaster, environmental hazards, or threats to human safety

but shall promptly notify Grantee and Third Party Enforcers of any such actions taken.

5.4. Gates, Barriers, Fences; Keys, Combinations; Marking Boundaries.

- a. Grantor, after ten (10) calendar days advance written notice to, but not approval of, Grantee and Third Party Enforcers, may install and maintain signs, gates, fences or other barriers necessary to carry out its rights and obligations generally and or hereunder including but not limited to those necessary to prohibit access to any road, trail, parking area, landing, staging area, or related areas to discourage unauthorized dumping and or other unauthorized activities.
- b. The Parties shall provide one another with keys or combinations necessary to open gates and to allow access through such barriers consistent with public safety.
- c. The Parties acknowledge that Grantor may, but is under no obligation whatsoever, to identify, maintain, and mark the boundaries of the Protected Property. The Parties also agree that Grantee may, but is under no obligation whatsoever, and only upon prior written approval of Grantor, to mark the boundaries of the Protected Property and will provide notification to Grantor prior to marking them, Grantor's written approval shall not be unreasonably withheld or delayed.

5.5. Dams and Water Impoundments; Preserving Water Quality.

- a. Grantor may maintain or replace existing dams or impoundments identified in the Baseline Documentation.
- b. Grantor may undertake actions to preserve water levels and water quality, or to prevent the erosion of any slope or shoreline, provided that such actions shall be subject to the prior written approval by Grantee.

5.6. Deteriorated Structures. Should any structure on the Protected Property that is legally owned by Grantor, including any building, deteriorate to such a condition that it is dangerous to occupy or be around, Grantor, at its sole cost and expense, shall either correct the hazard, contain the hazard, or demolish such structure.

5.7. Licenses and Temporary Access Easements

- a. After ten (10) calendar day advance written notice to but not approval of Grantee, Grantor may grant licenses and temporary and permanent easements over any Tract and accept compensation therefor; any such grant shall be made by written instrument, recorded in the County Clerk's

Office and such grant shall be subject to this Easement and contain the language provided in Section 5.2.e.

- b. Grantor may use roads and trails on the Protected Property to access lands that Grantor owns or desires to access but that are not encumbered by this Easement, or for any lawful purpose.

6. **ENFORCEMENT:** Grantee, and/or Third Party Enforcers shall have the right to enforce terms of this Conservation Easement as follows:

6.1. Inspections. In accordance with Grantee's Right to Enter the Protected Property, as provided in Section 4.1 herein, Grantee shall have the right to undertake periodic inspections of the Protected Property to determine compliance with the terms of this Conservation Easement. Grantor shall have the right to accompany Grantee on said inspections.

6.2. Notice to Cure.

a. Any party to this Conservation Easement, including Third Party Enforcers (the "Aggrieved Party") shall notify the other party (the "Noticed Party") of a breach of any of the terms or conditions of this Conservation Easement including the portion of the Protected Property affected thereby (the "Notice to Cure"). The Notice to Cure shall set forth how the Noticed Party can cure such breach or suspected breach and shall give the Noticed Party sixty (60) days from the date of receipt of the Notice to Cure, or such longer period of time as may be necessary to cure, provided that actions to cure are commenced within such sixty (60) day period and diligently pursued. Such time periods may be extended in the event of severe weather or if other conditions are experienced that cause a reasonable delay in the Noticed Party's efforts to cure.

b. At the expiration of such period of time to cure, or any extensions thereof granted, the Aggrieved Party shall notify the Noticed Party of any failure to adequately cure the breach or suspected breach. The Noticed Party shall then have an additional thirty (30) days from receipt of such notice to cure. At the expiration of said thirty (30) day period, the Aggrieved Party may commence any legal or equitable action or proceedings in accordance with any applicable law to require compliance with the terms of this Conservation Easement as set forth below.

6.3. Dispute Resolution.

a. In the event the Parties cannot resolve a dispute arising under this Conservation Easement through the Notice to Cure process outlined above, then either party may by written notice (the "Mediation Notice") require that the parties attempt to resolve the dispute through mediation using a mediator agreed upon by the Parties. Mediation shall be held in

Buffalo, New York. If the Parties cannot agree upon a mediator within ninety (90) days of delivery of the Mediation Notice, a mediator from the Buffalo New York area will be appointed by the American Arbitration Association pursuant to their procedures. The mediation shall be held in Buffalo, New York within ninety (90) days of delivery of the Mediation Notice. The mediator's recommendations are advisory to the Parties.

- b. Any disputes remaining unresolved after mediation may be pursued through initiation of any appropriate action or proceeding in a court of competent jurisdiction. Notwithstanding the foregoing or anything in this Conservation Easement that could be construed to the contrary, the venue and place for all disputes and or meetings and or proceedings hereunder shall be in Buffalo, New York in all events.
- c. Notwithstanding the forgoing dispute resolution provisions, and the forgoing Notice to Cure provisions (Section 6.2), in the event of non-compliance with this Conservation Easement resulting in immediate injury to, destruction of, or loss of natural resources on the Protected Property, Grantee and/or Third Party Enforcers may take immediate action in Federal District Court in Buffalo to enforce the terms of this Conservation Easement through injunctive relief, and/or such other relief as the Court may deem appropriate.

6.4. Right to Restore.

- a. Subject to the provisions of this Section 6 hereof, Grantor may be required to restore the Protected Property to its Natural State, in the event of a breach of the terms of this Conservation Easement, and Grantee, DEC, or USFWS may enforce this right by any action or proceeding necessary.
- b. In the event that Grantor fails to cure in accordance with the provisions of Sections 6.2 and 6.3, Grantee and/or Third Party Enforcers, at their sole discretion, and after fifteen (15) days advance written notice to Grantor, may enter the Protected Property for the purpose of restoring same to its Natural State. Such notice shall not be required in the event of an emergency provided that Grantee and/or Third Party Enforcers provide notice to Grantor within twenty-four (24) hours of entry onto the Protected Property in order to take emergency action to mitigate the consequences of a breach.
- c. Grantee and/or Third Party Enforcers may resort to the following in order to restore the Protected Property to its Natural State:
 - 1. Remove items and materials not permitted by this Conservation Easement;

2. Close, fill, grade and plant with appropriate vegetative cover areas affected by a breach;
 3. Correct, through reasonably practicable measures, conditions that harm any Natural Resource Value on the Protected Property, such as native flora and fauna and the Ecological Processes that support them; Biological Diversity; diverse forest types and conditions; Soil Productivity; water quality; and Wetland, Riparian, and aquatic habitats and systems;
 4. Take any other appropriate action reasonably necessary to remedy any breach of this Conservation Easement.
- 6.5. Force Majeure/Acts of Third Parties. Grantor shall not be liable for any changes to the Protected Property caused by:
- a. Any natural disaster or act of God, or governmental action not related to enforcement;
 - b. Acts of Grantee and/or Third Party Enforcers, their employees and contractors; or
 - c. Acts of the public while on the Protected Property.
- 6.6. Failure to Act. The failure of any party to enforce any of the terms of this Conservation Easement shall not be deemed a waiver of any such term nor shall any such failure in any way bar any enforcement rights hereunder in the event of any subsequent breach of, or noncompliance with, or fault in observance of, any of the terms of this Conservation Easement.
- 6.7. Third Party Enforcement Rights. Grantor and Grantee agree that as between Grantee and Third Party Enforcers, the Third Party Enforcers shall be primarily responsible for undertaking any and all necessary actions to enforce the terms, conditions and restrictions in this Conservation Easement and shall have the same rights as Grantee to enforce the terms, conditions and restrictions in this Conservation Easement as provided under Section 6 herein. Third Party Enforcers may periodically inspect the Protected Property as contemplated by the terms of this Easement. Upon ten (10) calendar day advance written notice to Grantor and Grantee in writing, Third Party Enforcers shall have the right to enter upon and inspect the Protected Property for the purpose of reporting to Grantor and Grantee any violations with the terms, conditions and restrictions of this Conservation Easement. Third Party Enforcers shall have the same rights as Grantee to enforce the terms, conditions and restrictions in this Conservation Easement as provided under Section 6 herein.

7. **STEWARDSHIP FEES:** Within forty five (45) calendar days of the recording of this Conservation Easement at the Erie County Clerk's office, Third Party Enforcers, consistent with the terms of the Consent Decree, shall pay to Grantee a one-time payment in the amount of two thousand four hundred and ninety five dollars (\$2,495.00), per acre multiplied by the acreage of the Protected Property. Grantee shall provide Third Party Enforcers with payment instructions at or prior to the recording of this Conservation Easement at the Erie County Clerk's office. Grantor is not obligated to fund Grantee or to provide other compensation to Grantee.

8. **OTHER TERMS AND CONDITIONS:**

8.1. **Construction of Terms and Interpretation.**

- a. This instrument conveys a Conservation Easement which shall consist of the covenants, restrictions, rights, terms, and conditions recited herein. Reference to this "Conservation Easement" or its "provisions" shall include any and all of those covenants, restrictions, rights, terms and conditions.
- b. Notwithstanding any term or condition of this Conservation Easement, this Conservation Easement shall be construed to affect the Purposes for which the Conservation Easement was acquired and the Purposes of Article 49 of the ECL. In interpreting the terms of the Conservation Easement, there shall be no presumption favoring Grantee or Grantor.
- c. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- d. The captions herein have been inserted solely for convenience of reference and are not part of this Conservation Easement and shall have no effect upon construction or interpretation.
- e. Any reference in this Conservation Easement to a statute, regulation or ordinance shall include any amendment or successor thereto adopted after the date of this Conservation Easement. Any reference in this Conservation Easement to a published document, treatise, or guide shall include any successor or replacement thereto published after the date of this Conservation Easement.

8.2. **Effect.** This Conservation Easement shall run with the Protected Property as an incorporeal interest in the Protected Property, and shall extend to and be binding upon Grantor, Grantor's agent, tenants, occupants, lessees, heirs, personal representatives, successors, assigns, and all other individuals and entities; the word "Grantor" when used herein shall include all of those persons or entities. Any rights, obligations, and interests herein granted to Grantee and/or Third

Party Enforcers shall also be deemed granted to their subsequent agents, successors, and assigns; the terms “Grantee” and “Third Party Enforcers” when used herein shall include all of those persons or entities. This Conservation Easement shall be a burden upon and run with the Protected Property in perpetuity.

8.3. Baseline Documentation.

- a. Third Party Enforcers, Grantor and Grantee agree that a physical inspection of the Protected Property will be made and a report of the physical inspection of the Protected Property, known as the Baseline Documentation (the “Baseline Documentation”), will be prepared by Grantee, with the approval of Third Party Enforcers, at no expense to Grantor.
- b. The Baseline Documentation shall be completed and certified by the Parties as an accurate reflection of the condition of the Protected Property prior to the property interest transaction closing, consisting of the execution of the Conservation Easement and the recordation of this Conservation Easement in the Erie County Clerk’s office, to be potentially factually supplemented as agreed by Third Party Enforcers and Grantee upon completion of the Restoration Plan and, as may be appropriate from time to time.
- c. The Parties shall agree and acknowledge that the Baseline Documentation, and any subsequent updates, revisions and amendments, if any, shall consist of, at a minimum, descriptions, maps, photographs, surveys, the Biological Assessment of the Protected Property and or other related documentation which shows or depicts significant aspects of the Protected Property as of the date it is signed and acknowledged by the Parties. The Baseline Documentation is intended to serve as an objective, although not exclusive, informational baseline for monitoring compliance with the terms of this Conservation Easement. The Parties agree that, in the event a controversy arises with respect to the nature and extent of uses or the condition of the Protected Property, the Parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.
- d. Grantor and Grantee will make available to each other and to Third Party Enforcers, other existing documentation in their possession relating to the condition of the Protected Property. Either Party may at their own expense cause to be prepared such additional documentation deemed appropriate by them, including a survey of the Protected Property, showing its relationship to adjacent features and properties and on-site photographs.
- e. Copies of the Baseline Documentation, signed and acknowledged by all Parties to the Conservation Easement, shall be provided to Grantor,

Grantee, and Third Party Enforcers, and maintained in each of their respective offices. One counterpart shall be maintained in DEC's Central Office in Albany.

8.4. Grantee Monitoring and Reporting Requirements. Grantee shall monitor the property for compliance with this Conservation Easement on a semi-annual basis as set forth in Grantee Work Plan. Grantee shall send an annual report on compliance with the terms of this Conservation Easement in the format specified by Grantee Work Plan to Third Party Enforcers and Grantor shall be provided a copy.

8.5. Notice, Review and Approval Process.

- a. Whenever written notice or an approval is required from any Party, the Party that must provide notice or that is seeking the approval shall deliver a written notice or request for such approval in accordance with the notification directions herein.
- b. Requests shall be either approved, approved with conditions, or denied. Approvals shall be made in electronic or written form and shall be based upon whether the proposed action complies with the terms and/or Purposes of this Conservation Easement. If denied, the reasons for denial and criteria applied, with specific reference to the terms of this Conservation Easement, shall be specifically set forth in the written response to the request.
- c. The Parties shall not unreasonably delay, or deny a request for approval.

8.6. Reserved

8.7. Notices, Notification.

- a. Any notice required to be sent to Grantor herein shall be addressed to:

Executive Director, Office of Strategic Planning
65 Niagara Square, Room 920
Buffalo, New York, 14202

with a copy to Corporation Counsel for the City of Buffalo at 65 Niagara Square, Room 1100, Buffalo, NY 14202 with a copy to Assistant Corporation Counsel John Heffron at the same address and email jheffron@city-buffalo.com and with a copy to the Commissioner of the City of Buffalo's Department of Public Works, Parks & Streets, 65 Niagara Square, Room 502, Buffalo, New York 14202.

Or such other designees of Grantor upon written notice to Grantee.

- b. Any notice required to be sent to Grantee herein shall be addressed to:

Buffalo Niagara River Land Trust
c/o President of the Board of Directors
1902 Niagara Street
Buffalo New York 14207
makedron@icloud.com

with a copy to Adam Walters, Esq., Phillips Lytle LLP, One
Canal Side, 125 Main Street, Buffalo, New York 14203.

Or such other designees of Grantee upon written notice to Grantor.

With a copy sent DEC at:

New York State Department of Environmental Conservation
Regional Forester, Region 9
270 Michigan Avenue
Buffalo, NY 14203

With a copy sent USFWS at:

U.S. Fish & Wildlife Service
New York Field Office
3817 Luker Rd.
Cortland, NY 13045

- c. All notices and requests for approval required or permitted to be given under this Conservation Easement shall be made by electronic mail and delivered by hand or sent by registered or certified mail, return receipt requested, or by overnight mail, to the address of the other Party as provided herein. Notice shall be deemed to have been given on the earlier of: (1) when delivered by hand, or (2) if mailed, three (3) business days after mailing. The Party receiving a request for approval shall respond to the request within sixty (60) days of its receipt, unless otherwise specified herein.
- d. Any Party may change the individual or address to which notices are to be sent by giving written notice thereof to the other Parties in accordance with paragraph (c) above.
- e. Upon mutual written agreement, the Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

- 8.8. Regulatory Authorities, Compliance with Law. This Conservation Easement shall not remove the necessity of Grantor or Grantee to obtain any permit and/or approval from any governmental agency having jurisdiction over any activity conducted or to be conducted on the Protected Property.
- 8.9. Assignment of Grantee's Interest. Grantee may assign this Conservation Easement only to a governmental agency or a "qualified organization" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended. Such assignee should have among its purposes the conservation and preservation of land and water areas and should be capable of complying with its obligations under the terms of this Conservation Easement. Grantee shall require as a condition of assignment that the assignee assume all obligations of Grantee under this Conservation Easement and continue to carry out the conservation purposes of this Conservation Easement.
- 8.10. Cessation of Grantee's Existence. If Grantee ceases to exist or fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if Grantee is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity which is a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or another governmental entity. Grantee's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the cy-pres doctrine.
- 8.11. Reconveyance If Void. In the event a court of competent jurisdiction determines that this Easement is "void ab initio" in accordance with the provisions of Section 49-0311 of the ECL, Grantor shall, upon request by Grantee, reconvey without change or modification and for no consideration, this Easement to a qualified governmental agency or qualified organization/not-for-profit conservation organization nominee selected by Grantee, in consultation with the United States, State of New York, and The Tuscarora Nation; said reconveyance to be made after such declaration that the Easement is "void ab initio" regardless of the fact that Grantee may pursue its right of appeal, or otherwise. In furtherance of this provision:
- a. Grantee, DEC, and USFWS shall have the right of enforcement of the reconveyance by Grantor to the nominee by any legal means;
 - b. The form of reconveyance shall be satisfactory to Grantee;
 - c. Grantee shall pay any costs and expenses, including but not limited to taxes, filing fees and reasonable attorney's fees that Grantor may incur as a result of the reconveyance of the Easement pursuant to the terms of this section.
- 8.12. Severability. The Parties agree that the provisions of this Conservation Easement are severable and that if any court of competent jurisdiction shall render a

judgment voiding or nullifying any provision(s) hereof, the effect of said judgment shall be limited to the nullified or voided portion of this Conservation Easement and the remaining provisions hereof shall continue in full force and effect.

8.13. Modification(s) (Amendments). Grantor and Grantee may modify this Conservation Easement by mutual agreement in writing, executed by both Parties, in accordance with the provisions of Section 49-0307 of the ECL and recorded in the appropriate County Clerk's Office, provided, however, that no modification shall be made that will adversely affect the status of this Conservation Easement under applicable laws. Any modification shall be consistent with the Purposes of this Conservation Easement and shall not affect its perpetual duration. The party requesting a modification shall be responsible for all related costs, including, but not limited to pertinent appraisals, surveys, abstracts, and recording fees, as may be relevant.

8.14. Grantor's Negligence.

- a. Grantor agrees to indemnify and hold Grantee and/or Third Party Enforcers harmless against all claims, loss, damage and expense Grantee and/or Third Party Enforcers may suffer as a result of Grantor's negligence in the course of exercising any rights reserved under this Conservation Easement or as the fee owner.
- b. Grantor's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to Grantor by Grantee and/or Third Party Enforcers of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after Grantee and/or Third Party Enforcers its served with such document.

8.15. Grantee's Negligence.

- a. Grantee agrees to indemnify and hold Grantor and/or Third Party Enforcers harmless against all claims, loss, damage and expense Grantor may suffer as a result of Grantee's negligence in the course of exercising any rights granted under this Conservation Easement.
- b. Grantee's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to Grantee by Grantor and/or Third Party Enforcers of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after Grantor and/or Third Party Enforcers is served with such document.

8.16. Third Party Liability; Protections from Liability; Access to Protected Property and Grantor's Reasonable Risk Management.

- a. Nothing contained in this Conservation Easement shall create any liability on behalf of Grantor to any third party or create any right, claim or cause of action on behalf of any party other than Grantor, Grantee, their successors and assigns, DEC, and USFWS.
- b. Nothing in this Conservation Easement shall be interpreted as an assumption of responsibility by, or basis for liability on the part of, Grantor for any injury to person or damage to property or loss of life that may be sustained by any person while on the Protected Property in the exercise of any of the rights afforded to the public by this Conservation Easement or sustained by any person as a result of any entry on or use of the Protected Property. This provision is not intended to release Grantor from any liability for damages to the person or property of its invitees, employees or agents while on the Protected Property under the authority or by the permission of Grantor.
- c. Grantor specifically retains all protections from liability provided under New York law to private owners of land, including, but not limited to, the protections contained in Section 9-103 of the General Obligations Law (or any successor or other statutory or regulatory provision then applicable).
- d. Third Party Enforcers shall have no liability or other obligations for costs, taxes, assessments, insurance, maintenance, or other liabilities of any kind related to the Protected Property except to the extent that such liability(ies) arise from the negligent acts of either or both of Third Party Enforcers respectively or their respective agents, contractors or consultants. Third Party Enforcers' rights do not include the right, in absence of a judicial decree, to enter the Protected Property for the purpose of becoming an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, or any similar statute or regulation. Third Party Enforcers employees, and agents have no liability arising from injury or death to any person or physical damage on the Protected Property, except to the extent that such liability(ies) arise from the negligent acts of either or both of Third Party Enforcers respectively or their respective agents, contractors or consultants.
- e. Grantee shall, at its own expense, procure commercial general liability insurance in which Grantor shall be an additional insured, and keep the same in force for the duration of this Conservation Easement. Such insurance shall defend and pay on behalf of both Grantee and Grantor against claims, including claims for bodily injuries and property damage, occurring on the Protected Property arising out of the negligence of

Grantee with a per occurrence limit of not less than one million dollars (\$1,000,000). Grantee shall increase the minimum per occurrence limit by not less than ten percent (10%) cumulatively every five years on the anniversary date of the recording of this Conservation Easement. Grantee shall require that every contractor and/or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall have commercial general liability insurance with the same per occurrence limit as Grantee and shall name Grantor as an additional insured prior to performing such work or services on, at, over or under the Protected Property. Grantee shall also require that every contractor and/or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall indemnify Grantee and Grantor for any damages arising from any negligent acts or omissions on the part of such contractor and/or consultant. Grantee shall directly oversee and manage all volunteers it allows on to the Protected Property and shall require that any volunteers it brings onto the Protected Property sign a waiver releasing Grantor and holding Grantor harmless for bodily injuries and property damage occurring on the Protected Property except to the extent such bodily injuries or property damage are the result of Grantor's negligence.

- f. Each Third Party Enforcer shall require that every contractor and or consultant that it retains to perform any work or services on, at, over or under the Protected Property shall have commercial general liability insurance with at least the same minimum per occurrence limits as Grantee and shall name the Grantor as an additional insured prior to performing such work or services on, at, over or under the Protected Property. Prior to commencing such work or services, such contractor and or consultant shall provide the Grantor evidence of effectuation of additional insured status for the Grantor. Third Party Enforcer will also request, but not require, that a contractor of a Third Party Enforcer, at the contractor's own expense, indemnify the Grantor for any claims or causes of action arising from the negligent acts or omissions of the contractor in carrying out its activities on the Protected Property.

8.17. Additional Covenants. Grantor does further covenant to the Grantee as follows:

- a. That Grantor is seized of the Protected Property in fee simple and has good right to convey this Conservation Easement and the rights hereunder.
- b. That the Grantee shall quietly enjoy said rights granted to the Grantee under this Conservation Easement, provided, however, that Grantee's enjoyment of such rights shall not interfere with Grantor's quiet enjoyment of, and exercise of, its Reserved Rights.

- c. That the Protected Property is free from encumbrances, except as provided on Schedule B attached hereto and made a part hereof.
 - d. That Grantor will execute any further necessary assurances of Grantor's title to the Protected Property, but Grantor shall not be obligated to expend funds in connection therewith and or to undertake title curative measures.
 - e. That, as of the date of this grant, Grantor has not done or suffered anything whereby the Protected Property has been encumbered in any way whatsoever, except for those encumbrances imposed by Grantor set forth on Schedule B.
 - f. That this conveyance is made subject to the trust fund provisions of Section 13 of the Lien Law.
- 8.18. Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds from such actions shall be payable to Grantor and Grantee to reimburse any reasonable expenses incurred by Grantor and Grantee in such actions, with the remaining balance payable to Grantee or Third Party Enforcers, at the sole discretion of Third Party Enforcers. Such remaining balance shall only be used to restore, replace, or acquire the equivalent of, injured natural resources having an ecological nexus to the Site.
- 8.19. Recitation. In consideration of the previously recited facts, mutual promises, undertakings and forbearances contained in this Conservation Easement, the Parties agree upon its terms, conditions, provisions, and Purposes, intending to be bound by it. This Conservation Easement contains the entire understanding between its Parties concerning its subject matter. Any prior agreement between the Parties concerning its subject matter shall be merged into this Conservation Easement and superseded by it.

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IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first written above.

GRANTOR: City of Buffalo

By: _____

Its: _____

GRANTEE: Buffalo Niagara River Land Trust Inc.

By: _____

Its: _____

THIRD PARTY ENFORCER RIGHTS AND OBLIGATIONS ACCEPTED BY:

PEOPLE OF THE STATE OF NEW YORK
Acting By and Through Their Commissioner of Environmental Conservation

By: _____
NANCY LUSSIER, Director
Division of Management and Budget

THIRD PARTY ENFORCER RIGHTS AND OBLIGATIONS ACCEPTED BY:
THE UNITED STATE DEPARTMENT OF THE INTERIOR
Acting By and Through its Authorized Official

By: _____
WENDI WEBER, Regional Director
U.S. Fish and Wildlife Service, Region 5

Grantor's Acknowledgement.

STATE OF New York)
) ss:
COUNTY OF Erie)

On the _____ day of _____ in the year 20__, before me, the undersigned, to personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to me that he executed the same and that by his signature on the instrument, he, or the person upon behalf of whom he acted, executed the instrument.

Notary Public, State of New York

Grantee's Acknowledgement.

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

On the _____ day of _____ in the year 20__, before me, the undersigned, to personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledges to me that he executed the same and that by his signature on the instrument, he, or the person upon behalf of whom he acted, executed the instrument.

Notary Public, State of New York

DEC's Acknowledgment:

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared, NANCY LUSSIER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same and that by her signature on the instrument, she, or the person upon behalf of whom she acted, executed the instrument.

Notary Public, State of New York

USFWS's Acknowledgment:

COMMONWEALTH OF MASSACHUSETTS)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared, WENDI WEBER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same and that by her signature on the instrument, she, or the person upon behalf of whom she acted, executed the instrument.

Notary Public, Commonwealth of
Massachusetts

LIST OF SCHEDULES AND EXHIBITS

SCHEDULE A – DESCRIPTION OF THE PROTECTED PROPERTY, including reference to the survey set forth in Exhibit 1.

SCHEDULE B – EXCEPTED ENCUMBRANCES

Upstream Parcels -> Permitted Exceptions and Encumbrances -> 8/24/2020 draft - Subject to title search completion and finalization of the surveys, and subject to possible further review and comment by City personnel:

1. Rights and claims of parties in possession not shown of record.
2. Any state of facts an inspection of premises would disclose, whether or not shown on premises surveys. Premises are densely vegetated much of the year and these conditions might prevent accurate inspection.
3. Findings upon full and accurate title searches and updated final surveys.
4. Variations between the lines of fences and or guardrails and the lines of record title and variations between lines of fences and or guardrails and surveyed boundary lines.
5. Variations between record and measured distances.
6. To the extent present on the premises and or upon an inspection of the premises, various utility poles, overhead wires, wells, valves, hydrants, fire hydrants, drop inlets, storm line(s) and or outfall(s), railroad encroachment(s), railroad related encroachments, vaults, manholes, sanitary manholes and or all associated piping and or other relevant and or appurtenant infrastructure and all other physical presences on, over and or under the premises including also but not limited to petroleum pipelines located within, upon, under and or throughout the premises.
7. Rights of the public in and to the premises and in and to those portions of the premises which are public streets and or public rights of way such as but not limited to Cable Street, Barnard Street, Fenton Street, Willett Street, S. Pontiac Street, and S. Pierce Street.
8. Municipal vehicle, emergency vehicle, utility vehicle, and or any type of maintenance/repair vehicle access, turnaround areas and or other access rights and turnaround rights of members of the public.
9. Public rights and rights of others in and to the bed and waters of the Buffalo River including but not limited to any regulatory statutes affecting the same.
10. Riparian rights and easements of others to and or over Buffalo River.

11. Terms, conditions and provisions of documents of record regarding the petroleum pipelines and or other pipelines crossing the premises including but not limited to those set forth in that certain Agreement dated July 17, 1940 between the City of Buffalo and Socony-Vacuum Oil Company Inc. recorded in the Erie County Clerk's Office on July 18, 1940 in Liber 3102 of Deeds at page 333.

12. Terms, conditions and provisions whether or not of record and or written protocols provided and or to be provided and or supplemented, revised and updated from time to time by each of the pipeline company(ies) as to utilization of those portions of the premises on or near the pipelines. Reference as example but not by way of limitation is made to "Buckeye Partners, L.P. and Affiliates Right-of-Way Use Restrictions Specification Revision 5" as revised or amended from time to time and any similar protocols issued by Enbridge Energy United Partnership in connection with their respective pipeline easement/right of way rights.

SCHEDULE C

EXHIBIT 1 –SURVEY OF THE PROTECTED PROPERTY
(indicating subdivision limitations; Building Envelopes; access roads or utility corridors;
or other special designations).

SCHEDULE C DEFINITIONS

All-Terrain Vehicle(s) ("ATV(s)"): Any self-propelled vehicle that is designed and intended to be operated primarily on off-highway trails, and only incidentally operated on public highways, provided that such vehicle does not exceed seventy (70) inches in width or one thousand (1000) pounds dry weight or as otherwise defined in New York State law, rules or regulations. This definition shall not include a motorcycle or other two-wheeled vehicle, or a Snowmobile or other such self-propelled vehicle manufactured for off highway use on snow or ice and which uses an endless belt tread.

Baseline Documentation: A compilation of information that documents the current condition and conservation values of the property at the time a conservation easement is closed, unless otherwise agreed by Grantor, Grantee and Third Party Enforcers, generally including maps, photographs and a description of significant features. The report is used to monitor and enforce the easement and is signed by Grantor and the Grantee at time of transfer. The Baseline Documentation may be updated, revised and amended by written agreement and documentation of Third Party Enforcers, Grantor and Grantee to reflect work undertaken under the Restoration Plan.

Consent Decree: Shall mean the Consent Decree between United States of America, State of New York, and Tuscarora Nation as Plaintiffs and Honeywell International Inc., and CSX Transportation, Inc. as Settling Defendants. Grantor is required to place a Conservation Easement on the Protected Property in order to be eligible for the benefits conferred by or as a result of such Consent Decree. Restoration of the Protected Property will be pursuant to the Consent Decree, the Restoration Plan, and the Restoration Work Plan.

Department: The New York State Department of Environmental Conservation.

Grantee: The Party identified as Grantee in the preamble, its officials, employees, contractors, successors, assigns, authorized agents, personal representatives, tenants, and occupants, and where specifically set forth herein licensees and lessees of Grantee. DEC and USFWS shall have the same rights of enforcement under this Conservation Easement as the Grantee.

Grantee Work Plan: A work plan to be developed by Third Party Enforcers with the concurrence of Grantee and Grantor to direct Grantee to conduct bi-annual monitoring of the Protected Property; and to direct Grantee to provide an annual report on compliance with this Conservation Easement annually to Third Party Enforcers. Grantor and Grantee shall provide reasonable comments on the proposed Grantee Work Plan within 30 days of receipt of such Plan. Grantor and Grantee shall not unreasonably withhold concurrence on the proposed Grantee Work Plan.

Grantor: The owner(s) in fee simple of the real property that is subject to this Conservation Easement. The term "Grantor" shall include Grantor, its successors, heirs and assigns, and its authorized agents, personal representatives, tenants, occupants, contractors, and employees, and where specifically set forth herein, licensees and lessees of Grantor.

Motor Vehicle: Passenger vehicles limited to passenger cars, motorcycles intended for highway use, Snowmobiles or trucks, powered by any means. For the purposes of this Conservation Easement, this definition specifically excludes All-Terrain Vehicles ("ATVs"), mobile homes, offroad motorbikes and motocross cycles.

Motorized Equipment: Tractors, groomers, ATVs, Snowmobiles, motorboats, aircraft and other means of facilitating motorized access, as well as machines not designed for transporting people or for moving earth but incorporating a motor, engine, or other non-living power source to accomplish a task, such as but not limited to, saws, mowers, pumps, drills, and generators.

Natural Resource Values: Shall mean and include the natural habitat located on the Protected Property for birds, fish, and wildlife, including wetlands, uplands, and stream habitat, the ecological value of the Protected Property, and the open space, and scenic and natural features on the Protected Property.

Natural State: The approximate general condition of the Protected Property existing immediately prior to a breach of any term or condition of this Conservation Easement, giving due consideration to the impact of the normal effects of the passage of time; the results of natural forces such as wind, fire, earthquakes, landslides, lightning, floods, ice storms, or other acts of God; prior Forest Management Activities; and the Public Recreational Uses of the Protected Property.

Non-Native Species: Species of organisms that are not native to the Adirondack region of New York State, including living organisms introduced from outside their natural ranges. This definition shall also include genetically modified or genetically engineered organisms.

Party/Parties: As defined in the preamble.

Protected Property: The lands subject to this Conservation Easement, more particularly described in Schedule A.

Restoration Plan: The Buffalo River Natural Resource Damage Assessment Restoration Plan and Environmental Assessment, consistent with 43 C.F.R. §11. 93, and as it may be amended by the USFWS, DEC and Tuscarora Nation, in their discretion. The Restoration Plan is or will be attached as Appendix A to the Consent Decree.

Restoration Work Plan: A work plan to be developed by Third Party Enforcers, with the concurrence of the Grantee and Grantor, to specify work to be completed on the Protected Property to restore, maintain, and otherwise prepare the Property for the uses specified in this agreement as set forth in the Restoration Plan. Grantor and Grantee shall provide reasonable comments on the proposed Restoration Work Plan within 30 days of receipt of such Plan. Grantor and Grantee shall not unreasonably withhold concurrence on the proposed Restoration Work Plan.

Site: For the purposes of this Conservation Easement, the term "Site" shall mean the Buffalo River from the confluence of Cazenovia Creek to the mouth of the River at Lake Erie (approximately the lower 6.2 miles of the main stem of the River including the City Ship Canal that runs 1.4 miles south from the mouth of the River parallel to Lake Erie), as well as the Times Beach Nature Preserve.

State: The State of New York

Structure(s): For the purposes of this Conservation Easement, the term "Structure" shall be defined as broadly as possible, and shall include, but not be limited to, any building, facility, edifice, or man-made development of any kind or nature, whether permanent or temporary, including, but not limited to, buildings, Camps, cabins, lean-tos, towers, wind turbines, tanks, antennas, mobile homes, bridges, docks, utilities, fences, billboards, signs, sanitary facilities, or other man-made facilities or improvements.

Third Party Enforcers: The State of New York acting through DEC and the United States Department of the Interior acting through the USFWS.

Tract(s): Specific parcels of the Protected Property identified by name and described in Schedule herein.

Trail: A hardened path located solely within a delineated Linear Recreation Corridor, or Public Access Corridor, with maintained clearances of 1.5 'to 8 'width and 10 'to 12 ' height.

APPENDIX F

Map of Concrete Central Owned by CSXT and Subject to the CER

EXHIBIT A

GIS #
57855-001

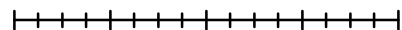
INTEL #
V82/7

PIN #
36029 0185
36029 0186



1" = 400'

0 100 200 400 600 800 Feet



Site Boundary is 100' ± from Nearest Centerline

435' ±

1,500' ±

Site Boundary is 250' ± from Nearest CSX Centerline for 100' ±

Site Boundary Transitions from 250' ± from Nearest CSX Centerline to 150' ± over 435' ± Long Segment

Site Boundary is 150' ± from Nearest CSX Centerline for 300' ±




Site Boundary is 50' ± from Nearest Centerline

QD 2

COUNTY OF BUFFALO
 TOWNSHIP OF BRISBEN
 TOWN OF BRISBEN

CSX TRANSPORTATION, INC.
 BUFFALO, NY
 SITE: NY-029-1021952
 ERIE COUNTY - BUFFALO, NY
 MILEPOST: QD 1.76 - QD 2.14

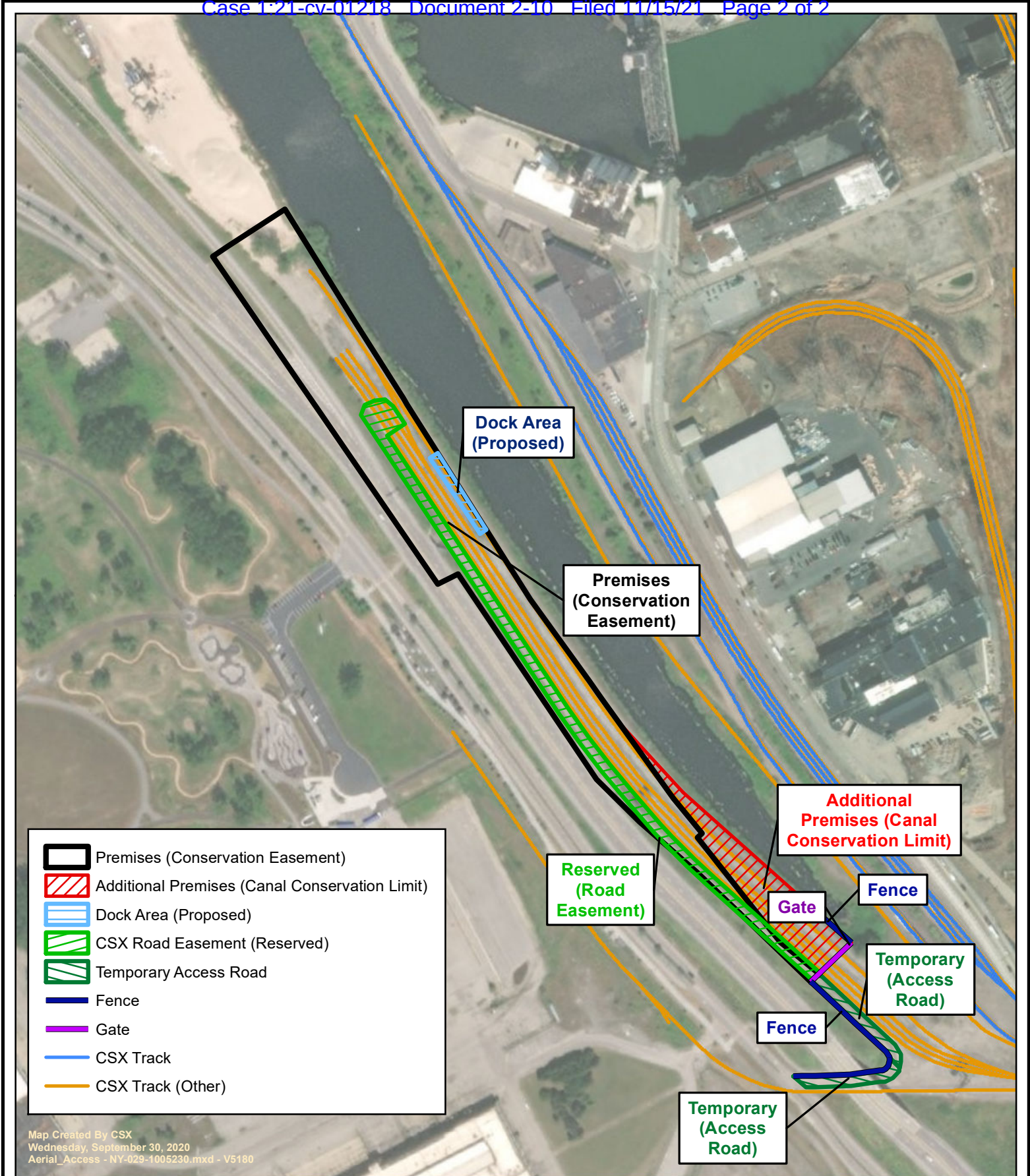
REGION: N ZONE: NORTHERN
 SUBDIVISION: BUFFALO TERMINAL
 DATE: 03/13/2020
 REVISED: 08/21/2020
 DRAWN BY: o7525

-  Engineering Milepost
-  Protected Property 39.07 ± Acres
-  Reserved Access Roads - 30' ± Wide

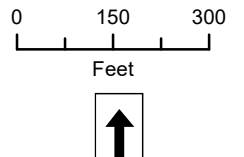
THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.

APPENDIX G

Map of Ship Canal Property Owned by CSXT, and Subject to the CER



PROP SALE - CITY SHIPPING CANAL SITE
SITE: NY-029-1005230
ERIE COUNTY - BUFFALO, NY
N - NORTHERN - BUFFALO TERMINAL
MILEPOST: QDA 1.20 - QDA 1.73



APPENDIX H

**Form of Right of Entry Agreement for the Ship Canal West
Property Owned by CSXT**

**TEMPORARY RIGHT OF ENTRY AGREEMENT
ON AND TO "WESTERN SHIP CANAL PROPERTY"**

THIS AGREEMENT, Made and effective as of _____, 20____, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, (hereinafter called "CSXT"), and the Trustees of Natural Resources, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service, the Commissioner of Environmental Conservation acting through the New York State Department of Environmental Conservations, and the Tuscarora Nation (collectively referred to as the "Licensee"), WITNESSETH:

WHEREAS, under a Consent Decree between the Licensee and Honeywell Corporation (W.D.N.Y. 2021) and a proposed conservation easement and restriction ("CER") to be granted to the Buffalo Niagara River Land Trust, Inc., Licensee will be been granted third party enforcement rights by CSXT on land that it owns, on the west side of the City Ship Canal in Buffalo, New York, as shown on Exhibit A, attached hereto and made a part hereof, (the "Ship Canal Easement Property"); and

WHEREAS, Licensee seeks authorization for its employees, agents, contractors, personnel (collectively, "Agents") and equipment to access the Ship Canal Easement Property from the south, across other property owned by CSXT, designated as "Access Area" on Exhibit "A", attached hereto and made a part hereof, ("Other CSXT Property"), and permission to enter onto the Ship Canal Easement Property, shown on Exhibit A for CSX Site NY-029-1005230, for visual inspection of the Ship Canal Easement Property for planning purposes; and

WHEREAS, CSXT is willing to grant to Licensee and its personnel, contractors and equipment the limited right and permission to enter and cross the Other CSXT Property and permission to enter onto the Ship Canal Easement Property for visual inspection of the Ship Canal Easement Property for planning purposes (the "Access") defined areas identified herein; and

NOW THEREFORE, CSXT hereby grants to Licensee and its Agents the Access, subject to the terms and conditions set forth below:

1. ACCESS: The Access shall be undertaken in the specific locations identified in Figure A, and by methods approved in advance by John White, Real Estate Specialist - CSXT, or his duly authorized representative (CSXT's Representative) and in a manner to avoid accidents, damages, unnecessary delays to or interference with train traffic or infrastructure of CSXT as identified by CSXT's Representative. Prior to entry, Licensee shall notify CSXT's Representative of the scope, nature, and extent of the requested access. Licensee and Licensee's employees, agents, contractors and other representatives (collectively, "Agents") shall maintain in their possession a copy of this Agreement at all times during their Access of the Other CSXT Property . This Agreement is not required for access to the Ship Canal Easement Property by Licensees or its Agents from the public right of way adjacent to the northern portion of the Ship Canal Easement Property.

2. RELEASE:

2.1 The Licensee and its Agents recognize that they will be accessing industrial property with both obvious and latent dangers, including the presence of rail infrastructure and active rail activity, and hereby assume risk of and agree to release CSXT from all liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) incurred as a result of such Access, for:

2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

2.1.3 any and all other losses or damages;

arising directly or indirectly from the presence of Licensee or its Agents on or about the Other CSXT Property, provided, however, such release shall not apply to the extent it is found in a final judgment by a court of competent jurisdiction to have resulted primarily and directly from the negligence, gross negligence, or willful misconduct of CSXT.

2.2 CSXT shall request that before any of Licensee's contractors and subcontractors access the Other CSXT Property that they sign a rider to this Agreement agreeing to indemnify and defend CSXT from liability associated with their access to and work on CSXT's property, and abide by the insurance requirements identified herein. CSXT may refrain from signing this Agreement or terminate this Agreement if Licensee's contractors or subcontractors decline to sign the requested rider.

2.3 The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

2.3.1 Licensee shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity during its Access on the Other CSXT Property and the Ship Canal Easement Property.

2.3.2 For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees, lessees and agents and including such officers, directors, employees, lessees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates.

2.3.3 The provisions of this Section shall survive the termination or expiration of this Agreement.

3. GENERAL LIABILITY INSURANCE:

3.1 Licensee is self-insured. Before performing any Access on the Other CSXT Property, Licensee's contractors and/or subcontractors shall procure and maintain, at its expense: (i) statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which insurance must contain a waiver of subrogation against CSXT and its Affiliates, if permitted by state law; (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement; (iii) business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence; and (iv) such other insurance as CSXT may reasonably require. Upon request, Licensee shall ensure that its contractors and/or subcontractors shall provide CSXT with a copy of the aforementioned insurance policies. A policy endorsement naming CSXT, and/or its designee, as an additional insured and specifying such coverage shall be furnished to CSXT prior to the execution of this Agreement, and the required coverage will be kept in force until all of Licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT. The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited by Licensee's self-insurance or the required insurance coverage for Licensee's contractors

4. RAILROAD PROTECTIVE LIABILITY INSURANCE:

In the event Licensee, or its contractors, find it necessary to perform surveying, construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee or its contractors shall: (a) notify CSXT; and (b) in the case of Licensee, notify CSX of its status as self-insured, and in the case of Licensee's contractors, procure and maintain during the period of construction or demolition operations, at no cost to CSXT, Railroad Protective Liability (RPL) Insurance, naming CSXT, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by CSXT prior to commencement of such survey, construction or demolition. CSXT reserves the right to demand higher limits.

At CSXT's option following a request, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee's contractors may pay CSXT, at CSXT's current rate at time of request, the cost of adding any surveying, construction or demolition activities, to CSXT's blanket Railroad Protective Liability (RPL) Policy for the period of actual surveying, construction or demolition activities. This coverage is offered at CSXT's discretion and may not be available under all circumstances.

5. **PRIOR NOTIFICATION:** Licensee or Licensee's Agents shall notify CSXT at least 30 days prior to requiring entry on the Other CSXT Property and shall abide by the instructions of the CSXT Representative. Notice will be made to John White, CSXT Real Estate Specialist at John_C_White@CSX.com ("CSXT Representative"), but further approval by CSXT is not required once granted under Paragraph 1, unless Licensee or Licensee's contractor requests changes to the approved scope of work.

6. **CLEARANCES:** Neither Licensee nor Agents shall place or operate any equipment of Licensee or Agents at a distance closer than fifty (50) feet from the center of any track, without the prior approval of the CSXT Representative. The CSXT Representative may require protective services or such other services as deemed necessary or appropriate. Equipment shall be moved across CSXT's track(s) only at a public crossing unless prior arrangements have been made with the CSXT Representative and if the CSXT Representative determines necessary, a Private Crossing Agreement is fully executed and in place. Licensee and Agents shall take all precautions necessary to avoid interference with or damage to CSXT's property and signal and communication facilities during their Access.

7. **PROTECTIVE SERVICES:** If protective services, such as flagging protection, are required by CSXT, Licensee shall make arrangements with the CSXT Representative to furnish such personnel, flagman or watchman, that in the CSXT Representative's opinion may be necessary to protect the facilities and traffic of CSXT during the performance of the Project. CSXT will make such services available according to its standard publicly available rates for such services.

8. **PAYMENT FOR PROTECTIVE SERVICES:** Payment shall be made by Licensee in accordance with the following designated option:

() **Option 1:** Licensee shall make an advance deposit of funds based on an estimate of the cost of protective or other services as determined by CSXT. The cost for CSXT's services shall then be assessed by CSXT against this advance deposit. Upon completion of the Project, any unused funding will be returned to Licensee. If CSXT's costs exceed the advance deposit(s), a request will be made to Licensee for additional funds or an invoice will be issued to Licensee for final payment. Licensee shall remit payment to CSXT within thirty (30) days of receipt of either a request for additional funds or an invoice; or

(X) **Option 2:** Licensee shall promptly reimburse CSXT for the cost of protective or other services on an as-incurred basis, including all applicable surcharges, upon receipt of bill(s) therefore.

9. **ENVIRONMENTAL:** This Agreement does not include and expressly excludes the performance of any site investigation activities designed to determine environmental conditions on, about or beneath the Other CSXT Property. Precluded activities include performing soil borings for purposes other than geotechnical investigation, obtaining soil, sediment, groundwater and surface water samples, and conducting field or laboratory analyses of any soil, sediment, groundwater or surface water samples obtained from the Other CSXT Property to identify chemical composition or environmental condition. If any type of environmental investigation is desired, a separate right of entry agreement issued through CSXT's Environmental Department must be secured.

10. **CLAIMS:** Licensee shall, or shall require Agents, to promptly notify the CSXT Representative of any loss, damage, injury or death arising out of or in connection with the Project.

11. **REMEDICATION:** It is understood and agreed that, upon completion of each Access by Licensee and/or its Agents, the Other CSXT Property shall be left in a condition similar to its condition prior to the Access by the Licensee. 1.

12. **SAFETY:**

All personnel entering the Other CSXT Property with or without equipment must comply with CSXT safety rules and requirements, meaning, without exception, the wearing of hard hats and approved safety shoes and safety glasses with side shields. Anyone not in compliance with these rules and regulations will be asked to leave the Other CSXT Property

13. **TERM:** This Right-of-Entry Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement. It shall terminate within one year from the date of this Agreement, however, such Agreement may be renewed for additional successive periods of one year upon written request by Licensee and subsequent written approval by CSXT. Such extension shall be subject to CSXT's discretion, but shall not be unreasonably withheld and may require additional terms it deems necessary based upon prior incidents or concerns relating to such Access. Upon termination of Agreement, Licensee shall ensure that the Other CSXT Property is restored to original condition, if it has been modified or damaged in any way as a result of repeated Access.

14. **SEVERABILITY:** The parties agree that if any part, term or provision of the Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable. If any provision or any part of a provision of the Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

15. **MODIFICATIONS:** This Agreement may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter.

16. **NOTICES:** All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered; upon personal delivery, upon confirmation of email receipt, if confirmation is provided by return email; upon the expiration of three (3) business days following mailing by U.S. first class mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Licensee at the address above, and to Licensors at the address shown on Page 1, c/o CSXT Contract Administration, J180; or at such other addresses as either party may designate by delivery of prior notice to the other party.

17. **TERMINATION:** CSXT shall have the right at any time and at its sole discretion to terminate this Agreement based upon Licensee's failure to comply with the safety provisions of this Agreement or if the Other CSXT Property is needed for railroad purposes, upon reasonable notice to Licensee, unless such termination is for breach of CSXT's safety rules, in which case termination is effective immediately.

18. **WAIVER:** If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

19. **GOVERNING LAW; VENUE:** This Agreement shall be governed by and construed under the laws of the State of New York, without regard to the choice of law provisions thereof. Venue for any action arising from, or brought to enforce, this Agreement, shall vest exclusively in the state or federal courts located in the State of New York, and the parties agree to submit to the personal jurisdiction of any state or federal court located in Erie County, New York.

20. **NO ASSIGNMENT:** Notwithstanding anything to the contrary contained in this Agreement, Licensee shall not permit Agents to enter the Ship Canal Property from the south and the Other CSXT Property without first requiring Agents to agree in writing to comply with all of the terms of this Agreement. Assignment of this Agreement to any party other than Agents in accordance with this Section shall not be permitted except upon the prior written consent of CSXT, which consent may be granted or withheld at CSXT's sole discretion. This Agreement shall be binding upon the parties and their respective successors and assigns.

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the effective date of this Agreement.

Witness for CSXT:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: Senior Manager of Environmental & Property Management

Witness for Licensee:

TRUSTEES OF NATURAL RESOURCES,
consisting of the United States Department of the
Interior acting through the United States Fish and
Wildlife Service

By: _____

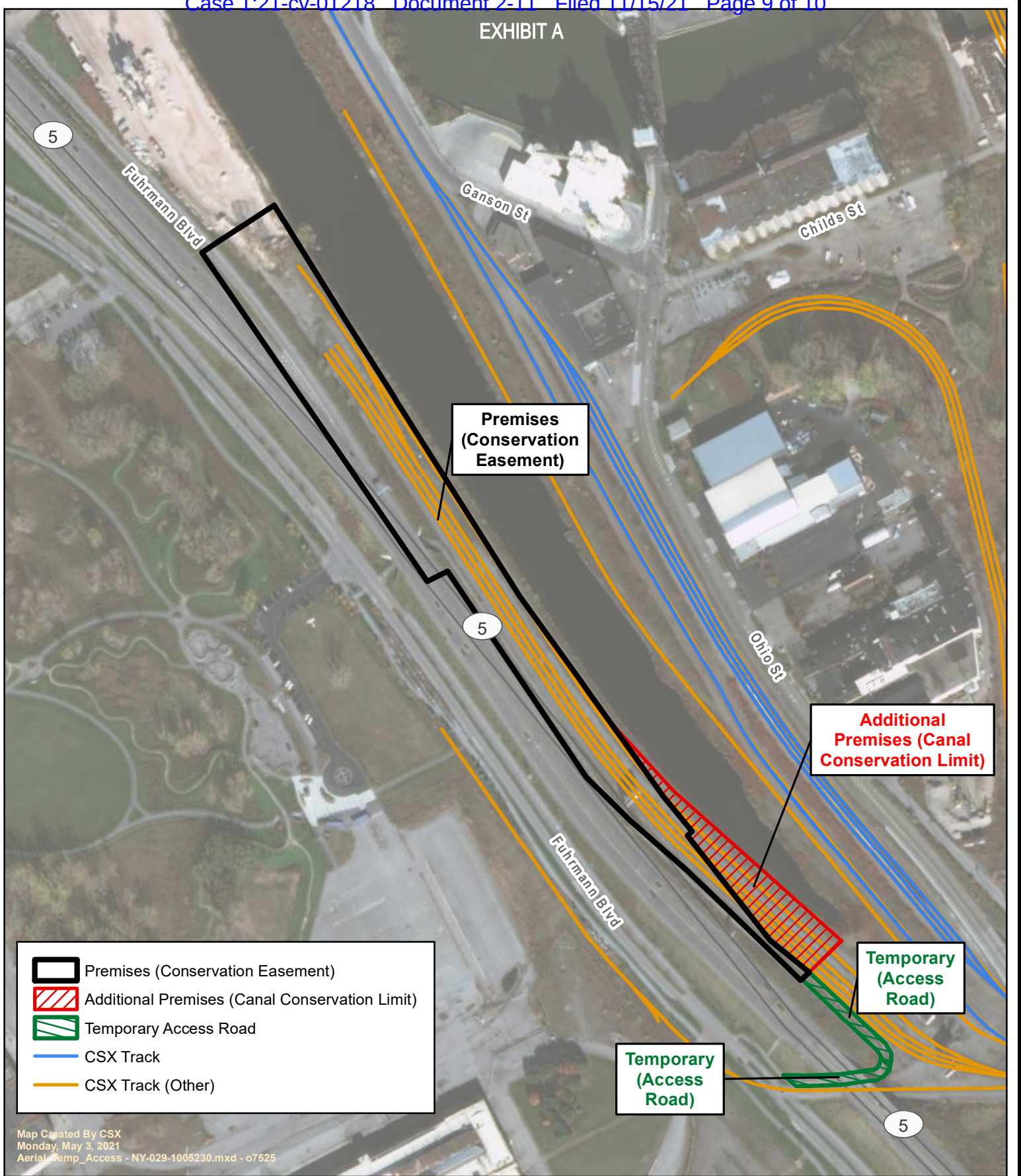
Who, by the execution hereof, affirms that he/she has
the authority to do so and to bind the Licensee or
Licensee contractor to the terms and conditions of this
Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

EXHIBIT A



Map Created By CSX
Monday, May 3, 2021
Aerial_Temp_Access - NY-029-1005230.mxd - o7525



PROP SALE - CITY SHIPPING CANAL SITE
SITE: NY-029-1005230
ERIE COUNTY - BUFFALO, NY
N - NORTHERN - BUFFALO TERMINAL
MILEPOST: QDA 1.20 - QDA 1.73

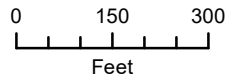


EXHIBIT A

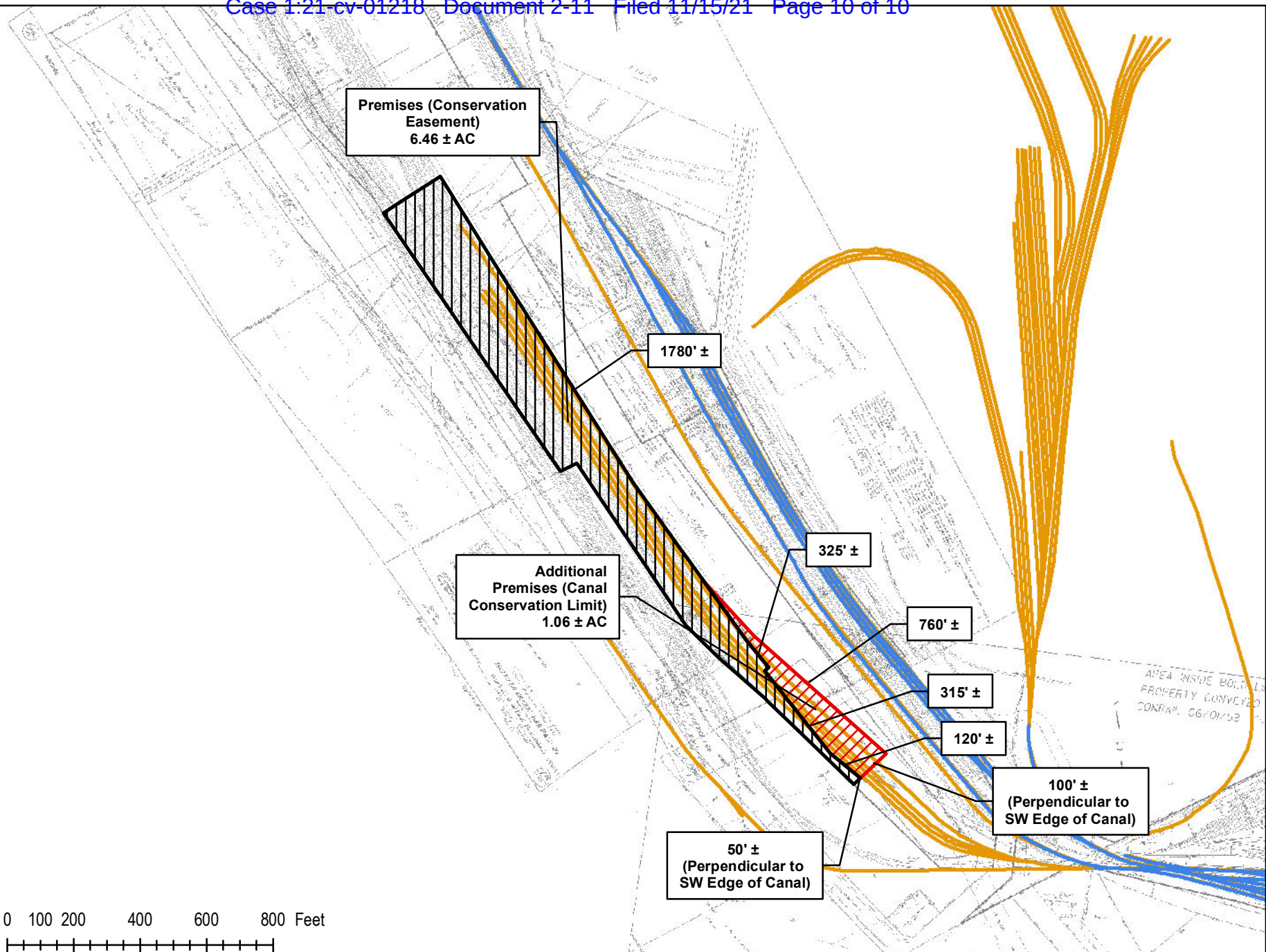
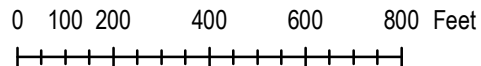
GIS #
 59653-001
 59659-001
 59661-001
 59662-001

INTEL #
 V24/10
 V24/6
 V24/7
 V24/8

PIN #
 36029 0175
 36029 0176
 36029 0177
 36029 0178








1" = 400'



CSX TRANSPORTATION, INC.
 PROP SALE - CITY SHIPPING CANAL SITE
 SITE: NY-029-1005230
 ERIE COUNTY - BUFFALO, NY
 MILEPOST: QDA 1.20 - QDA 1.73

REGION: N ZONE: NORTHERN
 SUBDIVISION: BUFFALO TERMINAL
 DATE: 03/09/2020
 REVISED: 07/31/2020
 DRAWN BY: V5180

 Premises (Conservation Easement) - 6.46 ± AC
 Additional Premises (Canal Conservation Limit) - 1.05 ± AC

 Engineering Milepost
 CSX Track
 CSX Track (Other)

THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.

APPENDIX I 1

**Form of Right of Entry Agreement for Concrete Central
Property Owned by CSXT**

TEMPORARY RIGHT OF ENTRY AGREEMENT
FOR ACCESS TO CONCRETE CENTRAL

THIS AGREEMENT, Made and effective as of _____, 20____, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, (hereinafter called "CSXT"), and the Trustees of Natural Resources, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service, the Commissioner of Environmental Conservation acting through the New York State Department of Environmental Conservations, and the Tuscarora Nation (collectively referred to as the "Licensee"), WITNESSETH:

WHEREAS, under a Consent Decree between the Licensee and Honeywell Corporation (W.D.N.Y. 2021) and under a proposed conservation easement and restriction ("CER") to be granted to the Buffalo Niagara River Land Trust, Inc., Licensee will be granted third party enforcement rights by CSXT on land that it owns, known as Concrete Central in Buffalo, New York, as shown on Exhibit A, attached hereto and made a part hereof, (the "Concrete Central Property"); and

WHEREAS, Licensee seeks access across other property owned by CSXT, designated as Access Area on Exhibit A for CSX Site NY-029-1095646, attached hereto and made a part hereof, ("Other CSXT Property"), and permission to enter onto the Concrete Central Property, shown on Exhibit A for CSX Site NY-029-1021952, for visual inspection of the Concrete Central Property for planning purposes; and

WHEREAS, CSXT is willing to grant to Licensee and its personnel, contractors and equipment the limited right and permission to enter and cross the Other CSXT Property and permission to enter onto the Concrete Central Property for visual inspection of the Concrete Central Property for planning purposes (the "Access") defined areas identified herein; and

WHEREAS the parties have executed CSXT's Private Crossing Agreement No. DOT874190U01 effective as of _____;

NOW THEREFORE, CSXT hereby grants to Licensee the Access, subject to the terms and conditions set forth below:

1. **ACCESS:** Licensee shall submit to CSXT the scope, nature, and extent of the requested access, as indicated within the Public Project Manual available on the CSXT web page at <https://www.csx.com/index.cfm/library/files/about-us/property/public-project-manual/> provided that Licensee shall not be obligated to reimburse CSXT for its review of such proposal. The Access shall be undertaken in the specific locations identified in Figure A, and by methods approved by CSXT and in a manner to avoid accidents, damages, unnecessary delays to or interference with train traffic or infrastructure of CSXT as identified by CSXT's Representative. Prior to entry, Licensee must have received a fully executed Agreement, and Licensee and Licensee's employees, agents, contractors and other representatives (collectively, "Agents") shall maintain in their possession a copy of this Agreement at all times during their Access of the Other CSXT Property

2. RELEASE:

2.1 The Licensee and its Agents recognize that they will be accessing industrial property with both obvious and latent dangers, including the presence of rail infrastructure and active rail activity, and hereby assume risk of and agree to release CSXT from all liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) incurred as a result of such Access, for:

2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

2.1.3 any and all other losses or damages;

arising directly or indirectly from the presence of Licensee or its Agents on or about the Other CSXT Property, provided, however, such release shall not apply to the extent it is found in a final judgment by a court of competent jurisdiction to have resulted solely and directly from the negligence, gross negligence, or willful misconduct of CSXT.

2.2 CSXT shall request that before any of Licensee's contractors or subcontractors access the Other CSXT Property that they sign a rider to this Agreement agreeing to indemnify and defend CSXT from liability associated with their access on CSXT's property, and abide by the insurance requirements identified herein. CSXT may refrain from signing this Agreement or terminate this Agreement if Licensee's contractors or subcontractors decline to sign the requested rider.

2.3 The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law.

2.3.1 Licensee shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity during its Access on the Other CSXT Property.

2.3.2 For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees, lessees and agents and including such officers, directors, employees, lessees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates.

2.3.3 The provisions of this Section shall survive the termination or expiration of this Agreement.

3. GENERAL LIABILITY INSURANCE:

3.1 Licensee is self-insured. Before performing any Access on the Other CSXT Property, Licensee's contractors and/or subcontractors shall procure and maintain, at its expense: (i) statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which insurance must contain a waiver of subrogation against CSXT and its Affiliates, if permitted by state law; (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement; (iii) business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence; and (iv) such other insurance as CSXT may reasonably require. Upon request, Licensee shall ensure that its contractors and/or subcontractors shall provide CSXT with a copy of the aforementioned insurance policies. A policy endorsement naming CSXT, and/or its designee, as an additional insured and specifying such coverage shall be furnished to CSXT prior to the execution of this Agreement, and the required coverage will be kept in force until all of Licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT. The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited by Licensee's self-insurance or the required insurance coverage for Licensee's contractors

4. RAILROAD PROTECTIVE LIABILITY INSURANCE:

Licensee or its contractors shall: (a) notify CSXT; and (b) in the case of Licensee, notify CSX of its status as self-insured, and in the case of Licensee's contractors, procure and maintain during the period of construction or demolition operations, at no cost to CSXT, Railroad Protective Liability (RPL) Insurance, naming CSXT, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by CSXT prior to commencement of such survey, construction or demolition. CSXT reserves the right to demand higher limits.

5. **PRIOR NOTIFICATION:** Licensee or Licensee's Agents shall notify CSXT at least 30 days prior to requiring entry on the Other CSXT Property and shall abide by the instructions of the CSXT Representative. Notice Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:

https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces, but further approval by CSXT is not required once granted under Paragraph 1, unless Licensee or Licensee's contractor requests changes to the approved scope of work.

6. **CLEARANCES:** Neither Licensee nor Agents shall place or operate any equipment of Licensee or Agents on the CSX Other Property without the prior approval of CSXT. CSXT may require protective services or such other services as deemed necessary or appropriate.

7. **PROTECTIVE SERVICES:** If protective services, such as flagging protection, are required by CSXT, Licensee shall make arrangements with the CSXT to furnish such personnel, flagman or watchman, that in CSXT's opinion may be necessary to protect the facilities and traffic of CSXT during the performance of the Project. CSXT will make such services available according to its standard publicly available rates for such services.

8. **PAYMENT FOR PROTECTIVE SERVICES:** Payment shall be made by Licensee in accordance with the following designated option:

() **Option 1:** Licensee shall make an advance deposit of funds based on an estimate of the cost of protective or other services as determined by CSXT. The cost for CSXT's services shall then be assessed by CSXT against this advance deposit. Upon completion of the Project, any unused funding will be returned to Licensee. If CSXT's costs exceed the advance deposit(s), a request will be made to Licensee for additional funds or an invoice will be issued to Licensee for final payment. Licensee shall remit payment to CSXT within thirty (30) days of receipt of either a request for additional funds or an invoice; or

(X) **Option 2:** Licensee shall promptly reimburse CSXT for the cost of protective or other services on an as-incurred basis, including all applicable surcharges, upon receipt of bill(s) therefore.

9. **ENVIRONMENTAL:** This Agreement does not include and expressly excludes the performance of any site investigation activities designed to determine environmental conditions on, about or beneath the Other CSXT Property. Precluded activities include performing soil borings for purposes other than geotechnical investigation, obtaining soil, sediment, groundwater and surface water samples, and conducting field or laboratory analyses of any soil, sediment, groundwater or surface water samples obtained from the Other CSXT Property to identify chemical composition or environmental condition. If any type of environmental investigation is desired, a separate right of entry agreement issued through CSXT's Environmental Department must be secured.

10. **CLAIMS:** Licensee shall, or shall require Agents, to promptly notify the CSXT Representative of any loss, damage, injury or death arising out of or in connection with the Project.

11. **REMEDICATION:** It is understood and agreed that, upon completion of each Access by Licensee, the Other CSXT Property shall be left in a condition similar to its condition prior to the Access by the Licensee.

12. **SAFETY:**

All personnel entering the Other CSXT Property with equipment must comply with CSXT safety rules and requirements, meaning, without exception, the wearing of hard hats and approved safety shoes and safety glasses with side shields. Anyone not in compliance with these rules and regulations will be asked to leave the Other CSXT Property

13. **TERM:** This Right-of-Entry Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement. It shall terminate within one year from the date of this Agreement, however, such Agreement may be renewed for additional successive periods of one year upon written request by Licensee and subsequent written approval by CSXT. Such extension shall be subject to CSXT's discretion, but shall not be unreasonably withheld and may require additional terms it deems necessary based upon prior incidents or concerns relating to such Access. Upon termination of Agreement, Licensee shall ensure that the Other CSXT Property if it has been modified or damaged in any way as a result of repeated Access.

14. **SEVERABILITY:** The parties agree that if any part, term or provision of the Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable. If any provision or any part of a provision of the Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

15. **MODIFICATIONS:** This Agreement may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter.

16. **NOTICES:** All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered; upon personal delivery, upon confirmation of email receipt, if confirmation is provided by return email; upon the expiration of three (3) business days following mailing by U.S. first class mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Administration, J180; or at such other addresses as either party may designate by delivery of prior notice to the other party.

17. **TERMINATION:** CSXT shall have the right at any time and at its sole discretion to terminate this Agreement based upon Licensee's failure to comply with the safety provisions of this Agreement or if the Other CSXT Property is needed for railroad purposes, upon reasonable notice to Licensee, unless such termination is for breach of CSXT's safety rules, in which case termination is effective immediately.

18. **WAIVER:** If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

19. **GOVERNING LAW; VENUE:** This Agreement shall be governed by and construed under the laws of the State of New York, without regard to the choice of law provisions thereof. Venue for any action arising from, or brought to enforce, this Agreement, shall vest exclusively in the state or federal courts located in the State of New York, and the parties agree to submit to the personal jurisdiction of any state or federal court located in Erie County, New York.

20. **NO ASSIGNMENT:** Notwithstanding anything to the contrary contained in this Agreement, Licensee shall not permit Agents to enter the Concrete Central Property through the Other CSXT Property without first requiring Agents to agree in writing to comply with all of the terms of this Agreement. Assignment of this Agreement to any party other than Agents in accordance with this Section shall not be permitted except upon the prior written consent of CSXT, which consent may be granted or withheld at CSXT's sole discretion. This Agreement shall be binding upon the parties and their respective successors and assigns.

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the effective date of this Agreement.

Witness for CSXT:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: Senior Manager of Environmental & Property Management

Witness for Licensee:

TRUSTEES OF NATURAL RESOURCES,
consisting of the United States Department of the
Interior acting through the United States Fish and
Wildlife Service

By: _____

Who, by the execution hereof, affirms that he/she has
the authority to do so and to bind the Licensee or
Licensee contractor to the terms and conditions of this
Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

EXHIBIT A

GIS #
 57552-001
 57855-001
 59657-001
 59659-001

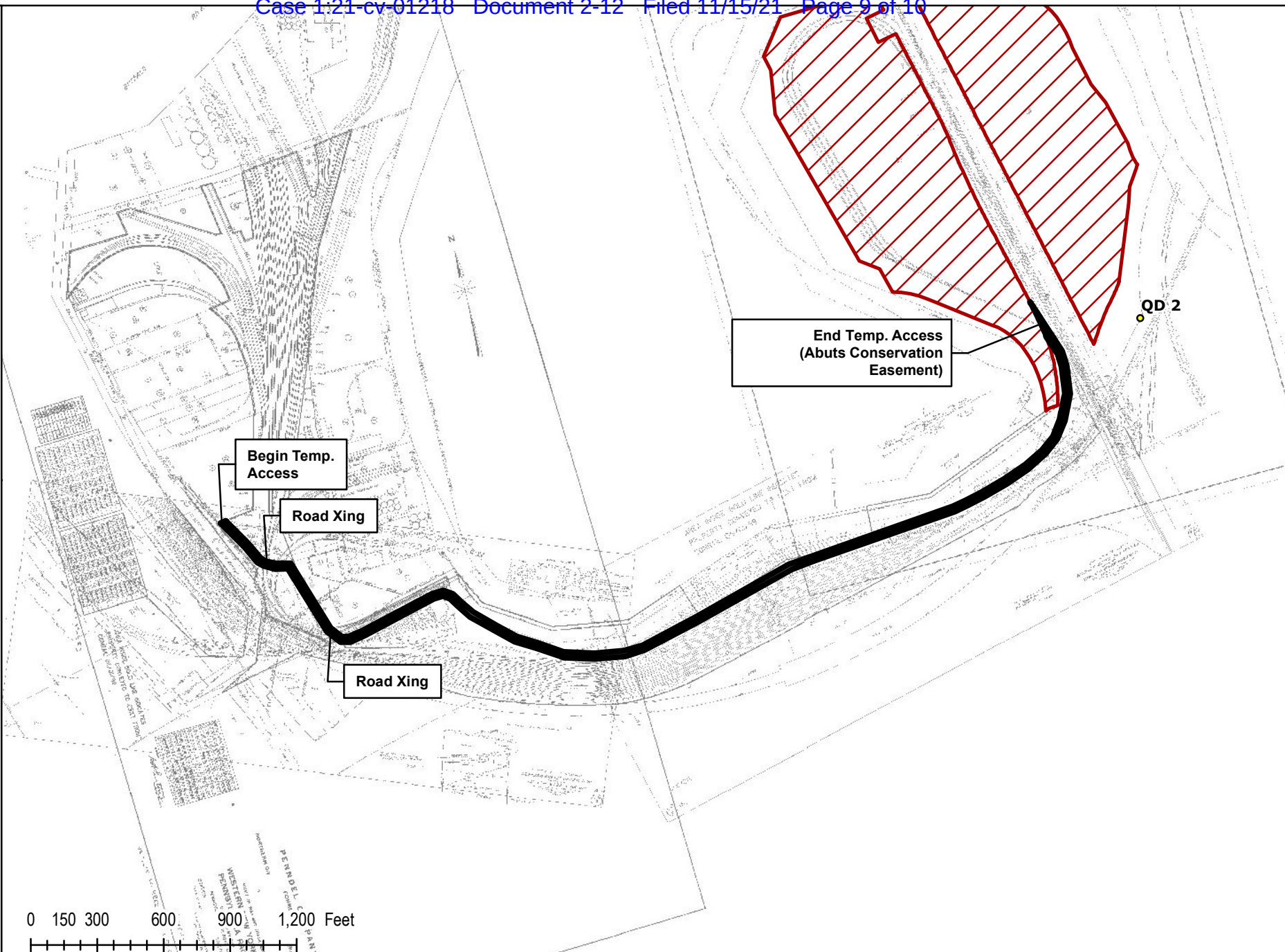
INTEL #
 V24/5
 V24/6
 V36.4/5
 V82/7

PIN #
 36029 0132
 36029 0178
 36029 0180
 36029 0185



1" = 600'

0 150 300 600 900 1,200 Feet



CSX TRANSPORTATION, INC.
 BUFFALO NY - TEMP ACCESS LICENSE - CER
 SITE: NY-029-1095646
 ERIE COUNTY - BUFFALO, NY
 MILEPOST: QDA 0 - QDA 1.2

REGION: N ZONE: NORTHERN
 SUBDIVISION: BUFFALO TERMINAL
 DATE: 09/29/2020
 REVISED: 09/29/2020
 DRAWN BY: V5180

-  Temp. Access - 2.84 ± AC
-  Conservation Easement

-  Engineering Milepost

THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.

EXHIBIT A

GIS #
57855-001

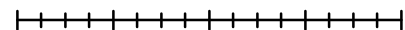
INTEL #
V82/7

PIN #
36029 0185
36029 0186



1" = 400'

0 100 200 400 600 800 Feet



Site Boundary is 100' ± from Nearest Centerline

435' ±

1,500' ±

Site Boundary is 250' ± from Nearest CSX Centerline for 100' ±

Site Boundary Transitions from 250' ± from Nearest CSX Centerline to 150' ± over 435' ± Long Segment




QD 2

Site Boundary is 150' ± from Nearest CSX Centerline for 300' ±

Site Boundary is 50' ± from Nearest Centerline

CSX TRANSPORTATION, INC.
BUFFALO, NY
SITE: NY-029-1021952
ERIE COUNTY - BUFFALO, NY
MILEPOST: QD 1.76 - QD 2.14

REGION: N ZONE: NORTHERN
SUBDIVISION: BUFFALO TERMINAL
DATE: 03/13/2020
REVISED: 08/21/2020
DRAWN BY: o7525

-  Engineering Milepost
-  Protected Property 39.07 ± Acres
-  Reserved Access Roads - 30' ± Wide

THIS RAILROAD MAP EXHIBIT GRAPHICALLY REPRESENTS A PROPOSED REAL ESTATE TRANSACTION. IT MAY NOT REFLECT CURRENT "ON THE GROUND" CONDITIONS AND/OR ACTUAL LOCATIONS OF FEATURES. ALL DIMENSIONS, OFFSET DISTANCES, AREA CALCULATIONS AND MEASUREMENT NOTATIONS SHOWN ON THIS EXHIBIT ARE APPROXIMATE.

APPENDIX I 2

**Form of Private Crossing Agreement for Concrete Central
Property Owned by CSXT**

TEMPORARY PRIVATE CROSSING AGREEMENT

This Temporary Private Crossing Agreement (“Agreement”), made this _____ day of _____, 2021 (hereinafter "Effective Date") between CSX TRANSPORTATION, INC., a Virginia corporation whose mailing address is 500 Water Street, Jacksonville, Florida 32202, (hereinafter called "Licensor"), its successors and assigns, and the Trustees of Natural Resources, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service, the Commissioner of Environmental Conservation acting through the New York State Department of Environmental Conservation, and the Tuscarora Nation (hereinafter collectively referred to as “Licensee”).

RECITALS

WHEREAS, under a Consent Decree between the Licensee and Honeywell Corporation (W.D.N.Y. 2021) and under a proposed conservation easement and restriction (“CER”) to be granted to the Buffalo Niagara River Land Trust, Inc., Licensee will be granted third party enforcement rights by CSXT on land that it owns, known as Concrete Central in Buffalo, New York, as shown on Exhibit A, attached hereto and made a part hereof, (the “Concrete Central Property”).

WHEREAS, LICENSOR and LICENSEE entered into that certain Temporary Right of Entry Agreement dated _____, 2021, identified as CSX Agreement Number _____ (the “ROE Agreement”) detailing the terms and conditions associated with Licensee’s limited right and permission to enter and cross adjacent property owned by CSXT (the “Other CSXT Property”) in defined areas identified therein and permission to enter onto Concrete Central Property for visual inspection of the Concrete Central Property for planning purposes (the “Access”); and

WHEREAS, in connection with the Access granted by the ROE Agreement, Licensee desires authorization for the use and maintenance of two existing private at-grade crossings on, over and across the tracks and property owned or controlled by Licensor located at or near Buffalo, Erie County, New York, Northern Zone, Buffalo Terminal Subdivision, at 1) DOT No.874190U, approximate Latitude 42.85633, Longitude -78.86494 (“Crossing 1”) and 2) DOT _____, approximate Latitude 42.85541, Longitude -78.86401 (“Crossing 2”) , as shown in Exhibit A, attached hereto and made a part hereof (hereinafter collectively referred to as the “Crossing” or “Crossings”) solely for access by Licensee’s contractors, personnel and equipment on the CSX Other Property.

Licensee does not have a current legal or other right to use the Crossing beyond the permissive use which Licensor may have previously permitted Licensee.

Licensor is willing to permit Licensee to use the Crossings subject to the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions and agreements herein to be kept and performed, the parties agree as follows:

1. Purpose. The sole purpose of this Agreement is to provide Licensee authorization and authority to utilize the Crossings identified in this Agreement in order to access the west side of the Concrete Central Property for the purpose of visual inspection of the Concrete Central Property for planning purposes. This Agreement does not authorize crossing of any other rail and does not authorize access to the east side of the Concrete Central Property.

2. Definitions. For purposes of this Agreement, the following terms shall be defined as set forth

below:

2.1 The term "Licensee" herein shall include the undersigned corporation, association, partnership, governmental body or individual, as the case may be. The term "Licensee" shall also include Licensee's agents, employees, servants, lessees, sublicensees and invitees, but shall not include members of the public. All words herein referring to Licensee shall be taken to be of such number and gender as the context may require.

2.2 The term "Licensor" herein shall include CSX Transportation, Inc. ("CSXT") and any other company or companies whose property at the aforesaid location may be leased or operated by the undersigned Licensor, and any parent, subsidiary or affiliated companies of Licensor and any of their respective employees, agents, representatives, servants, successors and assigns. .

2.3 The term "License" as used herein, shall mean with regard to any portion of the rail corridor where the applicable law of the State where the Crossing is located permits Licensor to make such grants to Licensee, a "permission to use" Licensor's property at the location of the Crossing for access, with dominion and control over such portion of Licensor's property and rail corridor remaining at all times in and with Licensor. No property or other interest in or exclusive right to possess Licensor's property is granted to Licensee other than that specifically delineated in this Agreement.

3. License.

3.1 Licensor, for and in consideration of the mutual covenants, terms, conditions and agreements herein to be kept and performed, hereby grants to Licensee the non-exclusive right or license to use Crossing shown on Exhibit A.

3.2 Licensee understands and acknowledges that this Agreement is a personal license to Licensee for the use and convenience of Licensee, its invitees, lessee, agents or employees, to access the adjacent conservation easement property only and the Crossing shall not be used nor permitted to become a roadway for the use of the public.

3.3 In the event Licensee contracts for the performance of any Crossing use or work, Licensee shall require its contractor(s) and/or subcontractor(s) ("Contractors") to comply with all the terms of this Agreement to observe and abide by the terms, conditions and provisions of this Agreement. Licensee further agrees that, prior to the commencement of any such Crossing use or work by any third party Contractor, such Contractor shall execute and deliver to CSXT Exhibit A-1 to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

3.4 This License and rights granted to Licensee are subject and subordinate to the prior and continuing right and obligation of Licensor and its permittees to use, construct and maintain the entire rail corridor.

4. Improvements; Maintenance.

4.1 Licensor shall be responsible for the costs and expenses related to maintaining the Crossing if the crossing is temporarily removed or otherwise in disrepair as a result of CSXT's use and/or maintenance of the tracks, rails or corridor where the Crossing is located.

4.2 Licensee shall be responsible for maintenance required at the Crossing resulting from his use or any enhancements requested by him and approved by CSXT.

5. Fences; Gates. If Licensee and Licensor agree that Licensee's authorized activities herein create unintended increased public access at the Crossing, or if a public authority having jurisdiction over rail crossings so requires of Licensee, Licensor may request and Licensee shall construct, install and maintain, at its sole expense, a gate or fence with locking capabilities which shall be of a design and in a place approved by Licensor and which is further sufficient to prevent any unauthorized persons from using or accessing the Crossing. Licensee shall lock any such gates or fences after use of the Crossing by Licensee or its authorized parties.

6. Term, Termination; Removal. This Agreement shall run conterminous with the aforementioned ROE Agreement unless and until terminated by Licensee in accordance with Section 13 of the ROE Agreement. Upon termination of this Agreement, the Crossing may be removed, blocked or barricaded as determined by and within the sole discretion of Licensor.

7. Indemnity. Licensee acknowledges and recognizes that Licensor's operations and any use of Licensor's property, tracks and right-of-way involves increased risks to users of the Crossing. Accordingly, Licensee expressly agrees to assume all risks associated with use of the Crossing by Licensee, Licensee's invitees, and any other users of the Crossing (other than Licensor and its permittees). Licensee further agrees to release, defend and save harmless Licensor from and against all liability, claims, loss, damage, expense (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever, occurring or arising in any manner from the existence, use, maintenance, reconstruction, repair, relocation, or removal of the Crossing by Licensee, Licensee's invitees, and/or any other users of the Crossing (other than Licensor and its permittees). This release imposed upon the Licensee by this provision shall be absolute and shall not be affected by the negligence, either primary or contributory, of the Licensor or its officers, agents and employees. Licensor shall request that before any of Licensee's contractors and/or subcontractors access the Crossing that they sign a rider to this Agreement agreeing to indemnify and defend CSXT from liability associated with their access to the Crossing, and abide by the insurance requirements identified herein. Licensor may refrain from signing this Agreement or terminate this Agreement if Licensee's contractors or subcontractors decline to sign the requested rider.

8. Safety. Licensee shall use and shall cause its invitees, agents, lessee or employees to use the highest degree of care in the operation and use of said Crossing so as to avoid collisions and/or interference with operations of Licensor. Should a safety, maintenance, or other concern arise concerning the Crossing or its use, Licensee will notify Licensor of such issues or concerns by calling 1-877-TELLCSX.

9. Protective Services. Licensor has sole authority to determine the need for flagging required to protect its operations and property during certain activities occurring at the Crossing, including but not limited to semi-truck or oversize vehicles or equipment traversing the Crossing. Licensee shall reimburse Licensor directly for all costs of flagging that is required. Licensor will make such services available according to its standard publicly available rates for such services.

10. Insurance.

10.1 As a condition of Licensor's permission to Licensee for the use of the Crossing, Licensee, at its sole cost and expense, shall procure and maintain during the life of this Agreement, at its sole cost and expense, policies of:

- (i) Commercial General Liability Insurance (CGL) covering liability assumed by Licensee under this Agreement naming Licensor, and/or its designee, as additional insured. Coverage of at least FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00)

CSX Agreement Number: DOT874190U01

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Combined Single Limit per occurrence for bodily injury and property damage is required as a minimum. If said CGL policy is written on a "Claims Made" basis rather than "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to arrange adequate reporting time shall be Licensee's sole risk.

- (ii) Automobile Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;

10.2 The CGL Policy shall be endorsed to provide for thirty (30) days' notice in writing to Licensor's Insurance Department, at the address shown on Page 1, or its designee, prior to termination of or change in the coverage provided. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, email renewal certificate to RenewalCOI@CSX.com. In the event the CGL or Homeowner's Liability Policy is canceled or is allowed to lapse, the Crossing shall be subject to immediate closure and removal by Licensor upon notice to Licensee, at Licensee's sole cost and expense.

10.3 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), or the Federal Torts Claims Act, may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. Title.

11.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular right-of-way or rail corridor where the Crossing is occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to the property, and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the right-of-way, rail corridor and Crossing, and all leases, licenses and easements or other interests previously granted to others herein.

11.2 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right, to any claim against Licensor for damages on account of any deficiencies in title to the Crossing in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

11.3 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property or Crossing, nor shall the exercise of this Agreement for any length of time give rise to any right title or interest in Licensee to said property other than the license herein created.

12. Notice. Any notice to be given to Licensor, shall be deemed to be properly served and the same be deposited in the United States mail, postage prepaid, addressed to Licensee at _____. Any notice to be given by the Licensee to Licensor, shall be deemed to be properly served if it be deposited in the United States mail, postage prepaid, addressed to: CSX Transportation, Inc. 500 Water Street [J-180], Jacksonville, Florida 32202.

13. Intentionally omitted.

{H4325399.1}

14. Breach, Waiver.

14.1 Any waiver by either party at any time of its rights as to anything herein contained shall not be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or breach is waived in writing by said party.

14.2 The proper and complete performance of the terms and conditions of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform as provided herein or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately terminating this Agreement and the privileges and powers hereby conferred, regardless of Fees having been paid in advance for any annual or other period. Upon such termination, Licensee shall make removal in accordance with Article 6.

15. General Provisions.

15.1 All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State where the Crossing is situated.

15.2 Licensee shall comply with all federal, state, local and all environmental laws and regulations in its use, maintenance, and removal of the Crossing.

15.3 To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

15.4 This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of Licensor, and the heirs, legal representatives, successors or assigns of Licensee, as the case may be, but, this license is a personal privilege granted to Licensee and therefore no assignment sublease or sublicense hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of Licensor..

15.5 This Agreement is the full and complete agreement between Licensor and Licensee with respect to all matters relating to use of the Crossing, and supersedes any and all other agreements between the parties hereto relating to use of the Crossing. Neither this Agreement or any provision contained in this Agreement shall operate or be construed as being for the benefit of any third person.

[Signature Page Immediately Follows]

CSX Agreement Number: DOT874190U01

Page 6 of 7

IN WITNESS WHEREOF, the parties hereto have executed all originals of this Agreement, each of which shall be evidence of this Agreement but which shall constitute but one agreement, as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

TRUSTEES OF NATURAL RESOURCES, consisting of the United States Department of the Interior acting through the United States Fish and Wildlife Service [Other Trustees may also sign if interested in obtaining access]

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee or Licensee contractor to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

EXHIBIT A

