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Receipt#: 2018-00006758  
Fee Amt: \$136.00 Page 1 of 13  
Ashtabula County, Ohio  
Barbara Schaab Recorder  
File# 2018-00008641  
BK **666** PG **1624-1636**

No Transfer Necessary  
Auditor, Ashtabula County, Ohio

AUG 31 2018

*Roger A. Carlett, CPA*

MARY CHURCH  
CITY OF ASHTABULA  
CALL FOR PICKUP 440-992-7118

*WM*

To be recorded with  
Deed Records -  
ORC 317.08

### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the City of Ashtabula (Owner), the United States Fish and Wildlife Service (FWS) and the Ohio Environmental Protection Agency (Ohio EPA) pursuant to Ohio Revised Code (ORC) §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Background. Walnut Beach Park, owned by and located within the City of Ashtabula in Ashtabula County, Ohio, is a 28-acre public park situated along the Lake Erie shoreline and within the Ashtabula River Area of Concern. Walnut Beach is part of a beach dune complex located just west of the Ashtabula River mouth and encompasses both public and private land. The Ohio Department of Natural Resources Natural Heritage Program has identified Walnut Beach as one of the largest beach dune communities along Lake Erie, with a highly significant coastal plant community that merits protection.

Through a partnership between The Nature Conservancy and the City of Ashtabula, and with support and participation from other stakeholders and interested parties, Walnut Beach Park has been renovated in a manner that has allowed for the restoration of the six acre natural beach and dune community. Funds for the acquisition and planting of native beach and indigenous dune plants and protection of the beach and dune area have been provided by the Fields Brook Natural Resource Trustees (Ohio EPA and FWS).

Fields Brook, a 3-mile tributary of the Ashtabula River, was remediated under the Superfund. This remediation consisted of the dredging of contaminated sediment in the Brook, contaminated soil removal in the floodplain/wetland area (FWA) and source control cleanups at several facilities along the Brook to prevent future recontamination of the Brook and the Ashtabula River.

In addition to the remediation, a cash settlement was reached among the Natural Resource

Trustees and the Fields Brook Action Group to be used for natural resource restoration within the Ashtabula River and Harbor Area of Concern (Gencorp, Inc. et. al., Case No. 5:89-CV-1866, dated July 7, 1999). The money for the Walnut Beach restoration project is provided by this fund.

Now therefore, the Owner, the FWS and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns an approximately 6 acre tract of real property, located at Walnut Beach Park in the City of Ashtabula, Ashtabula County, Ohio, and identified as part of the 14 acre Parcel No. 68-406-00-080-00 owned by the City of Ashtabula. The Property is a designated area within this permanent parcel, and is more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein (Property).
3. Owner. City of Ashtabula (Owner), located at 4717 Main Avenue, Ashtabula, OH 44004, currently owns the Property.
4. Holder. City of Ashtabula.
5. Activity and Use Limitations. As part of the Restoration Plan approved by the Trustees pursuant to the settlement filed in the United States District Court, Northern District of Ohio, Eastern Division, captioned United States v. GenCorp, Inc. et. al., Case No. 5:89-CV1866, dated July 7, 1999, Owner hereby imposes the following activity and use limitations on the Property and agrees to comply with such limitations:
  - A. The Property shall be kept in its natural state, i.e., no building, billboards or other structures of any kind, either temporary or permanent, shall be placed or erected on the Property, unless otherwise expressly provided hereunder.
  - B. There shall be no filling, excavating, or removal of top soil, sand, gravel, or rock, minerals or other materials on or at the Property, nor any building of roads or change in topography of the land in any manner, other than that caused by the forces of nature, except in accordance with the Walnut Beach Park Revitalization Statement of Work.

- C. The control, management and eradication of animal or plant species on the Property must be pursuant to a Non-Native, Noxious or Nuisance Species Control Plan approved by the FWS, Columbus, Ohio Field Office. Methods must comply with the State and Federal requirements and manufacturer guidelines.
- D. No energy generation equipment or transmission lines may be constructed, nor shall any other interests in the Property be granted for this purpose. However, the Owner reserves the right to maintain and repair telephone, electric, water, wells, or other utility lines or mains on existing easements needed to provide for the needs of the Owner, successors or assigns. The area affected by the repair work shall be the minimum necessary to accomplish the task. Upon completion of all construction for such utilities, the area shall be restored to its previous state.
- E. No towers for communication or otherwise shall be constructed on the Property.
- F. No trees, ground cover or other vegetation shall be removed from the Property, except that which is necessary to: maintain foot paths and trails; restore natural habitat areas; promote natural vegetation; protect life and property; or comply with the Walnut Beach Park Revitalization Statement of Work.
- G. The Property shall at all times be kept free of garbage, trash, and machinery; and no other unsightly material shall be allowed to accumulate or be stored thereon.
- H. Use of vehicles for recreation, including snow mobiles, all-terrain vehicles or other motorized vehicles, shall not be permitted on the Property.
- I. Hunting and trapping on the Property are prohibited without prior written consent of the FWS and Ohio EPA.
- J. Each and every other activity or construction that is inconsistent with the purpose of this Environmental Covenant or which may endanger, affect or impair the natural or scenic state of the Property is prohibited.
- K. The Property shall not be subdivided. The Owner, its successors or assigns shall notify the Trustees of any proposed transfer of the Property, or any portion thereof, at least ninety (90) days prior to any such proposed transfer.

The Owner, its successors or assigns shall not transfer the Property, or any portion thereof, without the prior written consent of the Trustees.

6. Breach. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, or any other person constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the FWS and Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action.

7. Running with the Land. This Environmental Covenant, including the activity and use limitations set forth in paragraph 5 herein, shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

8. Compliance Enforcement. In the event of a violation of this Environmental Covenant, a civil action for injunctive and/or other equitable relief may be maintained by the United States on behalf of the FWS or the Ohio Attorney General on behalf of Ohio EPA, or other parties authorized by law pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to enforce this Environmental Covenant. Nothing in this Environmental Covenant shall restrict the Trustees from exercising their authority under applicable law.

9. Rights of Access. Owner hereby grants to the FWS, Ohio EPA, the Ohio Department of Natural Resources, their agents, contractors, and employees, the County of Ashtabula and the City of Ashtabula the right of access to the Property for implementation or enforcement of this Environmental Covenant.

10. Compliance Reporting. Owner or any Transferee shall submit to the FWS, Ohio EPA, [and] the County of Ashtabula [and the City of Ashtabula], on an annual basis, by July 1, written documentation verifying compliance with this Environmental Covenant.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the

Property, or any portion thereof, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED\_\_\_\_\_, 20 , RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE ASHTABULA COUNTY RECORDER ON\_\_\_\_\_, 20 , IN [DOCUMENT , or BOOK , PAGE ,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS (LIST):

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

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

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property which is subject to the following interests or encumbrances;
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and,
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

13. Amendment. This Environmental Covenant may be amended by consent of all of the following: the Owner or a Transferee; the FWS; and the Ohio EPA, pursuant to ORC § 301.90 and other applicable law. The term, "Amendment" as used in this Environmental



Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one activity and use limitation remaining.

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

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

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

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

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

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the FWS; Ohio EPA; the County of Ashtabula ; and the City of Ashtabula.

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

Regional Director  
U.S. Fish and Wildlife Service  
Region 3  
1 Federal Drive  
Fort Snelling, Minnesota 55111

Fields Brook Site Coordinator  
DERR  
Ohio EPA  
2110 East Aurora Road  
Twinsburg, Ohio 44087

The undersigned representative of Owner represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

CITY OF ASHTABULA. [Owner]

[signature] City Manager  
[signature] [title]

James M. Timonere, City Manager

6-7-2018  
Date

[signature]  
[signature] [title]

Michael Franklin, City Solicitor

June 7, 2018  
Date

State of Ohio )  
County of Ashtabula )

ss:

Before me, a notary public, in and for said county and state, personally appeared Michael Franklin and James Timonere, duly authorized representatives of the City of Ashtabula, who acknowledged to me that they did execute the foregoing instrument on behalf of the City of Ashtabula.


IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal, this 7th day of June, 2018.

[signature]  
Notary Public

January 29, 2023  
Date of My Commission Expiration



U.S. FISH & WILDLIFE SERVICE

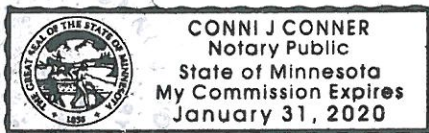
  
Regional Director

6/21/18  
Date

State of Minnesota            )  
  )  
County of Hennepin         )       ss:

Before me, a notary public, in and for said county and state, personally appeared Tom Melius, a duly authorized representative of the FWS, who acknowledged to me that he did execute the foregoing instrument on behalf of the FWS.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 21<sup>st</sup> day of June, 2018.



  
Notary Public

January 31, 2020  
Date of My Commission Expiration

Prepared by Ohio EPA



OHIO ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Craig W. Butler, Director

7/2/2018  
\_\_\_\_\_  
Date


State of Ohio            )  
                                  )  
County of Franklin )    ss:

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

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal  
this 2nd day of July, 2018.



**SUSAN C. KROEGER**  
Attorney at Law  
Notary Public  
State of Ohio  
Lifetime Commission

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

N/A  
\_\_\_\_\_  
Date of My Commission Expiration

## **EXHIBIT A**

**Walnut Beach Park, City of Ashtabula  
Natural Resource Restoration Funded Area  
Description**

The area to be restored at Walnut Beach using Natural Resources Restoration (NRR) funds is only a fraction of the total acreage of the park owned by The City of Ashtabula. As visible on the corresponding map, the NRR funded restoration area is bounded by very obvious landmarks as follows:

- Western boundary is the natural edge of the dune along its entire western side
- Northern boundary is the natural edge of the dune along its entire northern side
- Eastern boundary is the parking area and north/west driveway along the eastern side
- Southern boundary is the east/west entrance driveway along the south side

Longitude and latitude for select points along the boundary are as follows:

- Label #1  
80°48'29.586  
"W  
41°54'5.729"  
N
- Label #2  
80°48'27.002  
"W  
41°54'10.25"  
N
- Label #3  
80°48'22.414  
"W  
41°54'9.097"  
N
- Label #4  
80°48'19.966

"W  
41°54'4.541"  
N

- Label #5  
80°48'26.265  
"W  
41°54'2.313"  
N

## Walnut Beach Park\_NRR Funded Restoration Area

