

STATE OF NEW YORK  
 SUPREME COURT      ERIE COUNTY

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PEOPLE OF THE STATE OF NEW YORK, the  
 NEW YORK STATE DEPARTMENT OF  
 ENVIRONMENTAL CONSERVATION, and  
 BASIL SEGGOS, as COMMISSIONER OF THE  
 NEW YORK STATE DEPARTMENT OF  
 ENVIRONMENTAL CONSERVATION by ERIC  
 T. SCHNEIDERMAN,  
 Attorney General for the State of New York

Petitioners,

- against -

PETER J. BATTAGLIA JR.,  
 as an Individual and Corporate Officer of  
 BATTAGLIA DEMOLITION INC.,  
 BUFFALO RECYCLED AGGREGATE LLC, and  
 BATTAGLIA TRUCKING INC., and CLEAN  
 AIR COALITION OF WESTERN NEW YORK,  
 INC.,

Respondents.

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**CONSENT DECREE  
 AND JUDGMENT**

Index No. 2016/805668

**WHEREAS:**

1. This Consent Decree and Judgment (“Consent Decree”) is entered at the request of the State of New York and the New York State Department of Environmental Conservation (DEC) (collectively, the “State”); and Peter J. Battaglia, Jr., as an Individual and Corporate Officer of Battaglia Demolition, Inc., Buffalo Recycled Aggregate LLC, and Battaglia Trucking, Inc. (collectively, “Battaglia”).
2. Battaglia owns property located at 1037-1055 Seneca Street, Buffalo, New York (the “Property”). From approximately 2009 to April 2, 2018, Battaglia

operated a construction and demolition debris processing facility (“the Facility”) at the Property. In 2011, Battaglia installed an Eagle One 1400 Ultra Max concrete crusher (the “Crusher”) as part of the Facility’s operation.

3. On May 31, 2016, the State commenced the present special proceeding by filing a Verified Petition against Battaglia (the “Petition”). In its Petition, the State alleged, among other things, that Battaglia operated the Facility without solid waste and air permits, as required by 6 NYCRR § 360-1.7(a)(1)(i) [solid waste management] and 6 NYCRR 201 [air permit] and that the Facility’s operation constituted a regulatory and public nuisance, resulting from the Facility’s dust and air contaminants.

4. On July 26, 2016 Battaglia responded to the State’s Petition by filing a Notice of Cross-Motion seeking, among other things, dismissal of and summary judgment against the Petition.

5. On April 2, 2018, Hon. Deborah A. Chimes, JSC, issued a Decision in which she ruled, among other things, that:

- a. The Facility operated without a valid solid waste management permit required by 6 NYCRR 360 and the State is entitled to penalties pursuant to ECL § 71-2703 for such violations;
- b. The Facility operated without a valid air permit required by 6 NYCRR 201 and the State is entitled to penalties pursuant to ECL § 71-2103 for such violations;

c. Peter J. Battaglia, Jr., is the president and principal owner of the corporate Battaglia respondents and is personally liable for any penalties assessed against the corporate respondents.

6. Battaglia is liable for penalties for operating without a valid solid waste management permit required by 6 NYCRR 360 from June 1, 2013 through April 2, 2018. Pursuant to the April 2018 Decision, Battaglia is liable for penalties for operating without a valid air permit required by 6 NYCRR 201 from June 1, 2013 through April 2, 2018, a total of 1,767 days.

7. Pursuant to ECL § 71-2103, any person who violates any provision of ECL Article 19 or its implementing regulations shall be liable for a penalty of up to \$18,000 for a first violation and an additional penalty not to exceed \$15,000 for each day during which such violation continues. In the case of a second or any further violation, ECL § 71-2103 provides for a penalty of up to \$26,000, and an additional penalty not to exceed \$22,500 for each day during which such violation continues. Pursuant to ECL § 71-2103, Battaglia is subject to a maximum penalty of up to \$26,493,000 for operating from June 1, 2013 through April 2, 2018 without an air permit.

8. Pursuant to ECL § 71-2703, any person who violates any provision of Title 7 of ECL Article 27 or its implementing regulations shall be liable for a penalty of up to \$7,500 for a first violation and an additional penalty not to exceed \$1,500 for each day during which such violation continues. Pursuant to ECL § 71-

2703, Battaglia is subject to a maximum penalty of up to \$2,656,500 for operating from June 1, 2013 through April 2, 2018 without a solid waste permit.

9. On January 25, 2021, the Clean Air Coalition was granted permission to intervene in the present proceeding as a Respondent, in order to assert a public nuisance claim against Battaglia. On January 26, 2021, the Clean Air Coalition filed its Answer with Cross-Claim against Battaglia.

10. Battaglia filed its Answer to the Cross-Claim on April 14, 2021.

11. The Clean Air Coalition is presently preparing to discontinue its claims and is not a party to this Consent Decree.

12. The State and Battaglia have agreed to enter into a settlement agreement in which the State has agreed to discontinue all of its claims asserted in this proceeding against Battaglia and Battaglia has agreed to undertake certain remedial measures and other actions as set forth in this Consent Decree.

**NOW**, therefore, in consideration of the foregoing and upon payment in full of the consideration set forth herein, the State and Battaglia do hereby agree as follows:

1. **JURISDICTION AND VENUE.** The Court has jurisdiction of this matter pursuant to ECL §§ 71-1927, 71-1929, and 71-1931, and this Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or

modification. Venue is proper in Erie County pursuant to CPLR §§ 503 and 507 because it is the place of business of Battaglia and location of the Facility.

**2. CIVIL PENALTY PAYABLE UPON ENTERING.** Peter J.

Battaglia, Jr., Battaglia Demolition, Inc., Buffalo Recycled Aggregate LLC, and Battaglia Trucking, Inc. shall pay to the State a penalty in the total amount of fifty thousand dollars and no cents (\$50,000.00). Battaglia shall remit to the Office of Attorney General of the State of New York a certified check in the amount of \$50,000 payable to the “The State of New York” and shall deliver it to Patrick B. Omilian, Assistant Attorney General, Environmental Protection Bureau, 350 Main Street, Suite 300A, Buffalo, New York 14202. Such certified check shall be remitted by Battaglia to the Attorney General within 30 days of the Court’s entering of the Consent Decree.

**3. SUSPENDED PENALTIES.** Peter J. Battaglia, Jr., Battaglia

Demolition, Inc., Buffalo Recycled Aggregate LLC, and Battaglia Trucking, Inc. shall be jointly and severally liable for a penalty of one million dollars and no cents (\$1,000,000), accruing interest at the rate of 4.5% from the date of notice of entry of this Consent Decree, all of which shall be stayed contingent on Battaglia’s full compliance with the terms of this Consent Decree. Upon Battaglia’s satisfactory completion of each of the “Settlement Action Items” in the Consent Decree, the Suspended Penalty shall be released by the State. In the event the Suspended Penalty becomes due, Battaglia shall remit to the Office of Attorney General of the State of New York a certified check payable to the “The State of New York” and

shall deliver it to Patrick B. Omilian, Assistant Attorney General, Environmental Protection Bureau, 350 Main Street, Suite 300A, Buffalo, New York, 14202. Such certified check shall be remitted by Battaglia to the Attorney General within 10 days of receiving written notice and demand from the State for such Suspended Penalty.

4. **SETTLEMENT ACTION ITEMS.**

a. **INJUNCTIVE RELIEF.** Battaglia shall immediately cease and desist from any and all future violations of the ECL and the rules and regulations enacted pursuant thereto. Battaglia shall strictly and timely comply with the terms and conditions of this Consent Decree.

b. **PROPERTY CLEANUP.** Battaglia shall be solely responsible for removing all solid waste and concrete debris from the Property in accordance with the following parameters:

- 1) **Solid Waste.** Battaglia will cause to be removed, for proper management and disposal, all solid waste (exclusive of concrete debris, which is addressed separately below) currently on the Property. All solid waste shall be removed from the Property within one hundred twenty (120) days of the Court's entering of the Consent Decree. All solid waste that is removed shall be transported in compliance with 6 NYCRR Part 364 regulations and disposed of at a lawful waste management facility such as a permitted landfill, incinerator or transfer facility. Battaglia shall provide the State with all receipts and

documentation of all solid waste removal within 30 days of completion of removal of all solid waste from the Property or, if the State requests Battaglia to do so sooner, within five (5) days of such request.

- 2) **Concrete Debris**. Battaglia will cause to be removed all concrete debris that is on the Property. To the extent additional crushing is necessary for removal of concrete, such concrete may be crushed on site by a crusher, subject to approval by the DEC. All concrete debris shall be removed from the Property within one hundred twenty (120) days of the Court's entering of this Consent Decree. Battaglia shall provide DEC with documentation of the disposition of all concrete debris removed from the Property.
- 3) **Authorized Work Hours**. All solid waste removal, concrete crushing work, and concrete debris removal to be completed in accordance with this Consent Decree shall be conducted only between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday. Battaglia shall take all reasonable efforts to minimize the creation and spreading of dust from all work required by this Consent Decree, as set forth in 6 NYCRR § 211.1 and 6 NYCRR § 360-1.14(k). Battaglia shall notify the State at least five (5) days prior to the date it intends to begin cleanup of the Property.
- 4) **Cleanup Certification**. After Battaglia has completed all solid waste and concrete debris removal required by this Consent Decree,

Battaglia shall inform the State and the Court that it has completed removal. DEC shall then inspect the Property and if Battaglia has performed all solid waste and concrete debris removal in accordance with this Consent Decree, DEC will confirm this in writing. DEC shall have sole authority for determining whether Battaglia has met its obligations for solid waste and concrete debris removal. DEC shall not be unreasonable, arbitrary or capricious in determining whether Battaglia has met its obligations for solid waste and concrete debris removal. In the event that DEC determines Battaglia has not completed its removal obligations, DEC shall inform Battaglia and the Court in writing and identify any additional solid waste or concrete debris removal that remains to be completed. In the event that Battaglia disputes such a determination by DEC, Battaglia has the burden of proving its compliance with this Consent Decree.

- 5) **Site Survey**. Within thirty (30) days of entering of this Consent Decree, Battaglia shall have a survey of the property performed by a licensed surveyor. Such survey shall be used, among other things, for the parties to finalize the details, boundaries and description of the Natural Area and Deed Restrictions described below. Battaglia shall provide a copy of the survey to the State once it has been prepared by the surveyor.



c. **NATURAL AREA**. After all solid waste and concrete debris removal has been completed in accordance with this Consent Decree, Battaglia shall create a Natural Area on the Property. The Natural Area shall be created, and thereafter maintained, in conformance with the minimum specifications set forth in Appendix I to this Consent Decree. Battaglia shall complete construction of the Natural Area by or before ~~November 15, 2022~~ *May 15, 2023*.

5. **FUTURE USE RESTRICTIONS**. The parties agree that future use of the Property shall be restricted and limited to a use that is more appropriate for and consistent with the Property's proximity to the Seneca-Babcock neighborhood than the historic industrial-type uses to which the Property has been put. The parties agree that future use of the Property shall be restricted and it shall be used and maintained consistent with the Deed Restrictions set forth in Appendix II to this Consent Decree. The parties agree that such Deed Restrictions shall be put in place, carry with the chain of title, and be recorded with the Erie County Clerk. Such deed restrictions shall be drafted in a manner and form consistent with Appendix II of this Consent Decree and shall be finalized and agreed upon after the survey required by this Consent Decree has been performed and circulated.

6. **CONFESSION OF JUDGMENT AS SECURITY FOR PERFORMANCE**. In consideration for the State agreeing to suspend penalties as provided in paragraph 2. above, and as security for Battaglia's full compliance with the provisions of this Consent Decree, Peter J. Battaglia, Jr. shall provide security at the time of execution of this Consent Decree, by executing an Affidavit for

Confession of Judgment in the amount of \$1,000,000, for suspended penalties and all other obligations under this Consent Decree, in favor of the State, accruing interest at the rate of 4.5% per annum. The State agrees to take such action as is necessary to void the Confession of Judgment, to include filing a Satisfaction of Judgment with the Clerk of Erie County, upon full payment of the \$50,000 civil penalty and satisfaction of the Settlement Action Items required by this Consent Decree as described above, provided that there are no outstanding violations of this Consent Decree by Battaglia.

7. **COMPLIANCE DEADLINES.** Unless stated otherwise, all deadlines for compliance as set forth in this Consent Decree shall be measured from the date the Court signs and enters this Consent Decree.

8. **FORCE MAJEURE.** To the extent that any party to this Consent Decree shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, epidemic or pandemic, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. If Battaglia cannot perform any obligations required by this Consent Decree due to Force Majeure, it shall (A) give notice of suspension of its obligations as soon as reasonably practicable stating the date and extent of such suspension and the cause thereof, (B) use its best efforts to remedy or remove

such Force Majeure with the least practicable delay, and (C) resume the performance of its obligations as soon as reasonably practicable after the remediation or removal of the cause. If Battaglia's performance is impacted by Force Majeure, Battaglia has the burden to establish Force Majeure and shall timely provide proof of same to the State.

9. **NOTICES**. All inquiries, reports, and submissions (unless noted otherwise) required under this Consent Decree shall be made via 1) regular mail, return receipt requested, or overnight delivery; and 2) email, as follows:

For the State:

Patrick B. Omilian, Esq.  
Assistant Attorney General  
Office of the Attorney General  
Environmental Protection Bureau  
350 Main Street, Suite 300A  
Buffalo, NY 14202  
Patrick.omilian@ag.ny.gov

Maureen Brady, Esq.  
Regional Attorney  
NYSDEC Region 9  
700 Delaware Ave.  
Buffalo, NY 14209  
maureen.brady@dec.ny.gov

For Battaglia Respondents:

Jack M. Sanchez, Esq.  
LoTempio P.C. Law Group  
181 Franklin Street  
Buffalo, NY 14202  
jsanchez@lotempiopc.com

11. **DEFAULT**. In the event that Battaglia defaults or fails to timely and properly perform all obligations as required by the terms of this Consent Decree, the State shall provide Battaglia and his attorney, Jack M. Sanchez, Esq., written notice, with a copy to the Court, by regular mail, to cure such default or failure (notice to cure), and upon the failure of Battaglia to cure such default or failure within twenty (20) days of the date of mailing of the notice to cure, or contest that a default or failure has occurred, the suspended penalty in paragraph 2. shall become immediately due and payable.

Battaglia may, within ten (10) business days of the date of receipt of the notice to cure, contest in writing to the State the basis for such notice to cure. To constitute a valid contest to a notice to cure a lack of timely payment of any penalties, Battaglia must simultaneously provide with the contest the following proof: the identity of the carrier that accepted the envelope containing the payment by regular mail; a copy of everything in the envelope; and the routing number of the delivery, if applicable.

If Battaglia contests to the notice to cure, Battaglia and the State shall discuss the basis for such notice. Thereafter, the State shall provide Battaglia with written notice of its intention to maintain, withdraw, or modify the notice to cure (notice of decision). If Battaglia wishes to challenge the notice of decision, they must then seek relief from the Court in the present proceeding, within thirty (30) days of such notice of decision. Otherwise, the Attorney General (on behalf of the State) may record and enforce the Confession of Judgment referred to in paragraph 6,

less any payments made by Battaglia, as a civil judgment without the need for further proceedings, such amount to include the amount of penalties that had been suspended. This provision shall not limit the State's right to seek other remedies provided by law and the applicable regulations for violations of this Consent Decree.

12. **MODIFICATIONS OF CONSENT DECREE.** No terms, conditions, understandings, or agreements purporting to modify the terms of this Consent Decree shall be binding unless approved in writing by the Court. No informal advice, guidance, suggestions, or comments by the State regarding reports, proposals, plans, specifications, schedules, or any other writing submitted by Battaglia shall be constructed as relieving Battaglia of their obligation to obtain such formal approval as required by this Consent Decree.

13. **INDEMNIFICATION.** Battaglia shall indemnify and hold the State, its representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description brought, claimed or sought by a third party and arising out of or resulting from the fulfillment or attempted fulfillment of this Consent Decree by Battaglia, their trustee, officers, employees, agents, successors or assigns.

14. **RESERVATION OF RIGHTS.** Battaglia hereby expressly agrees that this Consent Decree does not relate to or encompass any legal or equitable rights or claims, actions, proceedings, suits, cause of action or demands whatsoever that the State may have against Battaglia or their heirs, distributees, representatives, predecessors, successors and assigns, with respect to any matter

not addressed in this Consent Decree. Nothing contained in this Consent Decree shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, proceedings, suits, cause of action or demands whatsoever that the State may have against Battaglia or their heirs, distributees, representatives, predecessors, successors and assigns, for any future violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder, except as set forth above.

15. **SITE ACCESS.** DEC shall be provided unimpeded access to the Property at all times to monitor all cleanup operations and compliance with this Consent Decree. This access provision shall terminate five years after entry of the Consent Decree.

16. **BINDING NATURE OF DECREE.** This Consent Decree shall inure to the benefit of and be binding upon each of the Battaglia Respondents, their heirs, distributees, representatives, predecessors, successors, and assigns, and in the event of a conveyance described in paragraph 17 below, the successors, assigns, or other persons in interest shall be similarly bound. Until completion of the actions set forth in this Consent Decree and payment of all penalties required by this Consent Decree, Battaglia shall provide a copy of this entire Consent Decree with attachments to any such successor, assign, or person-of-interest. Battaglia shall remain liable for performance of the corrective actions set forth in this Consent Decree regardless of any transfer of interest in the Property or Facility. Battaglia shall further use their best efforts to ensure that their agents, successors, assigns,

and all persons, firms, and corporations acting under or for them comply with the terms of this Consent Decree.

17. **CONVEYANCE**. Battaglia shall be prohibited from selling, transferring title to, or otherwise disposing of the Property until it has satisfactorily completed all Settlement Action Items set forth in paragraph 4. of this Consent Decree. In the event Battaglia sells the Property, Battaglia shall secure agreement that such purchaser is obligated to maintain the Natural Area and comply with the Deed Restrictions created and imposed in accordance with this Consent Decree. Battaglia agrees that the State shall be considered a third party beneficiary of such agreement.

18. **SITE CHARACTERIZATION**. In the event that a site characterization is performed at the Property, at any time, by Battaglia, or by a potential buyer of the Property, Battaglia shall obtain and provide the State with a copy of any site characterization results and/or report.

19. **ENTIRE AGREEMENT**. This Consent Decree memorializes and construes the entire, final, full, and exclusive agreement and understanding between the State and Battaglia with respect to the matters covered herein, and supersedes and replaces all prior negotiations, proposed agreements, consent orders, and agreements, whether written or unwritten. Nothing herein shall constitute a settlement or release of any claims the State may have against Battaglia other than those expressly alleged in the Petition, or as set forth herein.

20. **EFFECTIVE DATE.** The Effective Date of this Consent Decree shall be the date that it is entered by the Court.

21. **COUNTERPARTS.** The State and the Battaglia-related Respondents agree that this Consent Decree may be executed in counterparts, and that the separate execution of the attached signature pages shall not affect their validity.

22. **AUTHORITY.** By signing this Consent Decree, the parties attest that the signatory on each party's behalf is vested with the authority of the party to sign for and bind that party or entity to this Consent Decree.


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**CONSENTED AND AGREED TO:**

For Peter J. Battaglia, Jr.,  
Battaglia Demolition, Inc., Buffalo  
Recycled Aggregate LLC, and  
Battaglia Trucking, Inc.:

Date: August 23, 2022

  
Peter J. Battaglia, Jr.

State of New York            )  
  ) ss.  
County of Erie                )

On the 23rd day of August, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared Peter J. Battaglia, personally know 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 who acknowledged that he was authorized to sign this Consent Decree for each listed entity.

  
\_\_\_\_\_  
NOTARY PUBLIC

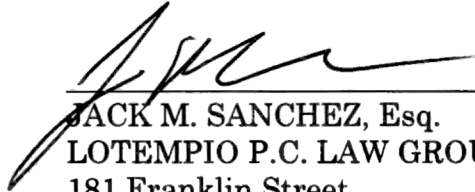
Commission Expires: 1/26/2026

John M. Sanchez

**CONSENTED AND AGREED TO:**

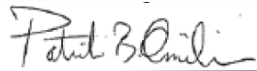
Counsel Peter J. Battaglia, Jr.,  
Battaglia Demolition, Inc., Buffalo  
Recycled Aggregate LLC, and  
Battaglia Trucking, Inc.:

Date: 8/27/22

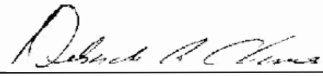
  
\_\_\_\_\_  
JACK M. SANCHEZ, Esq.  
LOTEMPIO P.C. LAW GROUP  
181 Franklin Street  
Buffalo, NY 14202  
(716) 855-3761

Date: 8/23/2022

LETITIA JAMES  
Attorney General of the  
State of New York  
Counsel for Petitioners

By:   
PATRICK B. OMILIAN  
Assistant Attorney General  
Environmental Protection Bureau  
Office of the Attorney General  
350 Main Street, Ste. 300A  
Buffalo, NY 14202  
(716) 853-8579

SO ORDERED this 24 day of August, 2022

  
Justice of the Supreme Court

## **Appendix I**

### **Natural Area Specifications**

The parties agree that the Natural Area required by the Consent Decree shall consist of the following minimum specifications. Additional modification of these specifications may occur after the site survey has been completed. Precise dimensions will be reduced to writing based upon and after completion of the site survey to be completed in accordance with the Consent Decree.

#### **Location and Dimensions:**

A natural area shall be created that will extend in a generally north-south direction from the property line closest to the I-190 to the property line closest to Seneca Street and along the easterly property line parallel to Peabody Street. Such natural area shall have a depth of 100 feet that extends from the property line closest to the I-190 to the current, southern edge of the driveway at Scatchard Place. The Natural Area shall have a depth of 75 feet that extends from the northern property line closest to Seneca Street to the current northern boundary of the driveway at Scatchard Place.

#### **Removal of Existing Berm:**

In constructing the Natural Area, the elevated berm that is currently in place along and adjacent to the easterly property line parallel to Peabody Street shall be completely removed, leveled, and the area revegetated. Soil that the berm currently consists of may be used on site for grading purposes. Reasonable dust control measures shall be employed during removal of the berm. In addition, berm removal shall be done in a manner that complies with all local, state and federal laws.

#### **Plantings:**

Battaglia shall plant an additional line of trees of the same number and species as those already in existence in the Natural Area adjacent to the property line in the northeast area of the Property. Battaglia shall plant a minimum of 20 trees in the Natural Area south of the driveway at Scatchard Place. The trees may be of a variety of species, selected by Battaglia. The trees shall be distributed throughout the Natural Area with precise locations determined by Battaglia. Battaglia shall be allowed to plant additional trees, shrubs, or vegetation within the Natural Area in its discretion.

**Future Maintenance:**

The trees described above to be planted by Battaglia in the northeast area of the Property (north of the Scatchard Place driveway) shall be planted with an average spacing of ten feet (10'). The trees must be a minimum of four feet (4') tall.

The trees planted by Battaglia south of the driveway at Scatchard Place may be sized and spaced at Battaglia's discretion.

Battaglia is responsible for maintaining an 85% survival rate of such trees for 5 years from time of planting.

In the event that Battaglia sells or otherwise disposes the Property within five years, Battaglia shall continue to be obligated to assure compliance with the obligation for maintaining an 85% survival rate of such trees for five years from the date of planting. Any grass planted within the Natural Area shall be mowed at least two times annually, in perpetuity. This ongoing maintenance obligation shall be included in the Deed Restrictions required by this Consent Decree.

**Future Modification of Natural Area:**

The parties understand that future efforts may be undertaken to create and/or construct an entrance to the Property closer to Seneca Street that is less intrusive to the Seneca Babcock Neighborhood than the current entrance through Scatchard Place. To this end, the parties agree that future property owners may seek, from the State, approval for modification of the dimensions and location of the Natural Area so as to enable use of the Property that is more beneficial to the Seneca Babcock neighborhood. The State agrees to consider any such written requests for the purpose of providing additional positive impacts for the Seneca Babcock neighborhood.

**Appendix II**

**Deed Restrictions**

[Append final, agreed Deed Restrictions]

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**THIS COVENANT** is made the 23<sup>rd</sup> day of August 2022, by Battaglia Demolition, Inc. ("Owner"), having an address 611 Bullis Road, Elma, NY 14059.

**WHEREAS**, the Owner owns a parcel of real property located at 1035-1055 Seneca Street in the City of Buffalo, County of Erie, State of New York (the "Property") said Property being the same as that property conveyed by The Erie County Industrial Development Agency to Battaglia Demolition, Inc. by deed dated June 15, 2012 and recorded in the Erie County Clerk's Office in Liber 11224 and Page 7652, and said Property being more particularly described in Appendix A, attached to this declaration and made a part hereof; and

**WHEREAS**, on May 31, 2016, the State of New York commenced a special proceeding by filing, in New York Supreme Court, Erie County, a Verified Petition against Peter J. Battaglia, Jr., Battaglia Demolition, Inc., Buffalo Recycled Aggregate, LLC, and Battaglia Trucking, Inc. (collectively, "Battaglia") under Index Number 2016/805668 (the "Petition"). In its Petition, the State alleged, among other things, that Battaglia operated a construction and demolition debris processing facility without solid waste and air permits, as required by 6 NYCRR § 360-1.7(a)(1)(i) [solid waste management] and 6 NYCRR 201 [air permit] and that the facility's operation constituted a regulatory and public nuisance, resulting from the facility's dust and air contaminants; and

**WHEREAS**, on or about August 23, 2022, the State and Battaglia reached a settlement of all allegations, claims, and liability arising out of the Petition. Such settlement was reduced to a Consent Decree and Judgment, approved by the Court on 8/23, 2022 (the "Consent Decree"), attached to this declaration as Appendix "B" and made a part hereof; and

**WHEREAS**, among other things, the Consent Decree requires the Owner to remove solid waste and concrete debris from the Property, install and maintain an agreed-upon natural area on the Property, and agree to covenants and future use restrictions in relation to the Property; and

**WHEREAS**, the Owner has submitted a Natural Area Plan in accordance with the Consent Decree that was approved by the State; and said Plan has described and identified the location on the Property and manner in which certain vegetation will be planted and maintained, by or on behalf of the Owner, on the Property, which is acceptable to the State under the terms of the Consent Decree. A copy of the Natural Area Plan is included in the Consent Decree attached hereto as Appendix "B" and made a part hereof; and

**WHEREAS**, the Consent Decree requires that after Owner has completed initial construction of the Natural Area, the Property, including but not limited to the Natural Area, be and remain subject to restrictive covenants contained herein.

**NOW, THEREFORE**, Battaglia Demolition, Inc., by its President and owner, Peter J. Battaglia, Jr., for itself and its successors and/or assigns, covenants that:

First, unless prior written approval by the New York State Department of Environmental Conservation (the “Department”) or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State’s citizens, hereinafter referred to as “the Relevant Agency,” is first obtained, the Property shall be subject to the following use restrictions:

1. **General Uses.** The Property, exclusive of the Natural Area, may be used for “commercial use” as described within 6 NYCRR Part 375-1.8(g)(2)(iii), which means, land used for the primary purpose of buying, selling or trading of merchandise or services. Commercial use includes passive recreational uses, which are public uses, with limited potential or soil contact.
2. **Plumbing, heating, cooling, and other mechanical trades and operations.** The Property is expressly authorized to be used to operate a commercial plumbing, heating, cooling, and other mechanical business and operations that provide plumbing, heating, cooling, and other mechanical trades and services to businesses and residences in and around Western New York, and any use incidental to such operations. The Commercial use of the Property also contemplates the loading, unloading, and transport of limited quantities of off-site soil that is generated incidental to a commercial plumbing operation and/or other mechanical business and operations. Any such unloading and storage of off-site soil must be conducted in full compliance with all applicable local, state and federal laws. Notwithstanding this provision, any Commercial use of the Property must comply with all applicable local, state and federal laws.
3. **Dog Rescue.** The Commercial use of the Property also contemplates operating a dog rescue facility on the Property. Such use would include walking and exercising dogs in the Natural Area. The Natural Area may be used for walking and exercising of dogs, provided no significant impairment of the Natural Area is involved, and such use is limited so as not to be considered recreational, which is prohibited under Item 4 below. In addition, the Natural Area may not be used to board or kennel dogs. Notwithstanding this provision, any use of the Property as a dog rescue must comply with all applicable local, state and federal laws.
4. **Restricted Uses.** The Property shall not be used for any of the following:
  - a. Any use that requires a permit issued by the Department under the following permit programs, with the exception that use that requires a stormwater construction permit is authorized, and with the understanding that these restrictions do not conflict with or restrict any uses or contemplation of uses, as set forth in Paragraph 1. “General Uses” of this Covenant:
    - i) 6 NYCRR § 360 [solid waste management facilities]
    - ii) 6 NYCRR 201 [air permit]
    - iii) Article 17 Environmental Conservation Law [SPDES]
    - iv) 6 NYCRR Part 613 [petroleum bulk storage].



- v) 6 NYCRR Subpart 374-2 [used oil]
    - b. Any “industrial use” as described within 6 NYCRR Part 375-1.8(g)(2)(iv), which means land used for the primary purpose of manufacturing, production, fabrication or assembly processes and ancillary services. Industrial use does not include any recreational component.
    - c. Use of the Natural Area shall be restricted as further described below.
5. **Access.** Access to the Property must be provided to agents, employees or other representatives of the State of New York, during reasonable hours, with reasonable prior notice to the Property owner to assure compliance with the covenants and restrictions identified by this Declaration of Covenants and Restrictions. This provision shall automatically terminate as of December 31, 2027.

Second, the Natural Area subject to this Declaration of Covenants and Restrictions is as depicted and described in Appendix “B” hereto and made a part hereof.

Third, except as set forth in Paragraph 3. “Dog Rescue” of this Covenant, unless prior written approval by the Department or, the Relevant Agency is first obtained, use of the Natural Area shall be subject to the following covenants and restrictions:

1. **General.** After construction of the Natural Area is complete, there shall be no future fillings, flooding, excavating, mining, or drilling; no removal of natural materials (soil, sand, gravel, rock, minerals, etc.); no dumping of materials; and no alteration of the topography which would materially affect the Natural Area in any manner, except as authorized by the Plan.
2. **Waters and Wetlands.** In addition to the general restrictions above, within the Natural Area there shall be no draining, dredging, damming, or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, or reducing the reach of waters; and no other discharges or activity requiring a permit under applicable water pollution control laws and regulations, except as authorized by the Plan.
3. **Trees/Vegetation.** On the Natural Area there shall be no clearing, burning, cutting, or destroying of trees, except as authorized in writing by the Department or Relevant Agency; there shall be no planting or introduction of non-native or exotic species of trees or vegetation.
4. **Uses.** No agricultural, animal husbandry, industrial, residential development, mining, logging, or commercial activity shall be undertaken or allowed on the Natural Area.
5. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, to include fences, parking lots, trailers, mobile homes,

camping accommodations, or recreational vehicles, or additions to existing structures, on the Natural Area.

6. **Waste.** There shall be no dumping, placing or storing of trash, discarded equipment, appliances, automobiles or household items, garbage, grass clippings and other landscape waste, solid waste, construction or demolition debris, or any other waste material on the Natural Area.

7. **New Roads.** There shall be no construction of new roads, trails, or walkways on the Natural Area, except as specified in the Plan.

8. **Utilities.** There shall be no construction or placement of utilities or related facilities (including telecommunications towers and antennas) on the Natural Area.

9. **Maintenance.** The record owner of the Property shall be responsible for performing maintenance of the Natural Area, in perpetuity, as follows: 1) any grass planted on the Natural Area shall be mowed at least two times per year; 2) the Natural Area shall be maintained at least annually to avoid overgrowth of unsightly weeds and vegetation.

Fourth, the record owner of the Property shall prohibit the Natural Area from ever being used for purposes other than vacant land without the express written waiver of such prohibition by the Department or Relevant Agency.

Fifth, the record owner of the Property shall provide a periodic certification, prepared and submitted by an environmental professional acceptable to the Department or Relevant Agency to the Department or Relevant Agency, which will certify that the condition of the Property is unchanged from the previous certification.

Sixth, the record owner of the Property shall continue in full force and effect any of the restrictions listed herein, unless the record owner first obtains permission to discontinue such controls from the Department or Relevant Agency, in compliance with the approved Plan, which is incorporated and made enforceable hereto, subject to modifications as approved by the Department or Relevant Agency.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and the Owner and its successors and assigns consent to enforcement by the Department or Relevant Agency of the prohibitions and restrictions herein, and hereby agree not to contest the authority of the Department or Relevant Agency to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Department or Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

Ninth, Owner shall record this instrument, within thirty (30) days of the execution of this instrument, in the office of the recording officer for Erie County, New York in the manner prescribed by Article 9 of the Real Property Law.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

Battaglia Demolition, Inc.

By: 

Print Name: Peter J. Battaglia Jr.

Title: President Date: 8/23/2022

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF ERIE )

On the 23<sup>rd</sup> day of August, in the year 2022, before me, the undersigned, personally appeared Peter J. Battaglia, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public - State of New York

My Comm. Exp 1/26/2026  
John M. Sanchez

## Appendix A

### Property Description:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being all of Lot No. 85, Township 10, Range 8 of the Buffalo Creek Reservation Lovejoy & Emslie's Survey, containing 8.05 acres be the same more or less.

EXCEPTING AND RESERVING THEREFROM lands appropriated for the NYS Thruway Niagara Section Map No. 388 Parcel No. 403 by Notice of Appropriation recorded in the Erie County Clerk's Office in Liber 6300 of Deeds at page 35.

FURTHER EXCEPTING AND RESERVING THEREFROM lands appropriated for the Smith/Seneca Viaduct Map No. 44, Parcel No. 35 by Notice of Appropriation recorded in Erie County Clerk's Office in Liber 9637 of Deeds at page 133.

**Appendix B**  
**[Attach Consent Decree]**