

## **TEMPORARY ACCESS AGREEMENT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ 2021, by and between David C. DeMerchant, Sr. & Phillis G. DeMerchant (“Owners”) and Thaddeus Bysiewicz, Ameritage, LLC, 15 Meriden Road, Middlefield, CT 06455 (Contractor).

### **RECITALS**

WHEREAS, Owners are the owners of certain real property located at 97 Poplar Road, Middletown, Connecticut (“Property”).

WHEREAS, Contractor requires access to the Property in order to perform work in accordance with a City of Middletown Inland Wetlands and Watercourses Agency (Middletown IWWA) Application for Inland Wetlands and Watercourses Activity and IWWA Order; specifically, the remediation of a pond and wetlands located on the Property (“Project”).

### **AGREEMENT**

NOW THEREFORE, for the agreements set forth below and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owners and Contractor agree as follows:

A. Use of Property

1. Owners permit Contractor, the right, privilege and authority for Contractor, its agents, employees, and contractors, to pass and repass with vehicles and equipment over and across the Property as more particularly shown in the attached Exhibit A to provide Contractor access to the pond and wetlands for Contractor to complete the Project. The width while varied shall be no greater than fifty (50) feet across from point of beginning onto the Property running through the Property and to the adjacent property.
2. Said Temporary Access Area being a portion of that tract described in a deed recorded in Volume 07, Page 348 of the Middletown CT land records.
3. This Agreement shall automatically terminate and be of no further force or effect at such time that the Project is completed and for a reasonable time thereafter for Contractor to return and/or restore Owner’s Property as set forth below.

B. Restoration

1. At Contractor's own cost and expense, Contractor shall return and/or restore Owners' Property to substantially the same condition it was in prior to the commencement of use for the Project or such other condition as the parties may mutually agree upon and do so promptly at the expiration or termination of the Agreement. Such restoration work shall include, without limitation, the repair or replacement of any structures, fences or other improvements that are removed, damaged, or destroyed by Contractor, its agents, employees and contractors, the replanting or replacement of any removed or destroyed trees, the removal of any materials or resources of any kind brought onto the Property, and shall include final grading and seeding where necessary.

C. Risk, Indemnification, and Insurance

1. Contractor shall bear all risk associated with the use of the Property for the Project, and waives any and all claims, liabilities, damages, injuries and other claims of any nature whatsoever relating to the use of the Property by Contractor, its agents, employees and contractors.
2. Contractor agrees to indemnify, defend, and hold harmless, Owners from and against all costs, claims, actions, liabilities, damages, expenses, medical expenses, causes of actions, suits, or judgments by or on behalf of any person or persons, firm or firms, corporation or corporations, or any other business entity, or any governmental authority arising from any loss, injury or damage of any kind, to persons or property, arising out of Contractor's use of the Property, or any act or omission of Contractor, its agents, employees, contractors or invitees to the Property while on the Property or while entering onto or exiting from the Property and arising from, incident to or connected in any way with the use of the Property for the purposes of the Project. These obligations shall survive the expiration or termination of this Agreement.
3. At all times during the term of this Agreement, Contractor, at its sole cost and expense, shall procure and maintain in effect insurance policies with financially responsible insurance companies in amounts sufficiently covering (i) the activities of Contractor on Owner's Property, and (ii) the indemnity obligations of Contractor set forth in this Agreement. Such policies shall name Owners as additional insureds, shall be primary and noncontributing with any other insurance available to Owners.
4. Before use of the Property, Contractor shall have provided a performance bond in the amount of \$60,000, or a lesser amount as agreed to in writing by

Owners, as being sufficient to assure proper restoration of the Property and completion of the Project.

D. General Provisions

1. This Agreement constitutes the entire understanding and agreement among Owners and Contractor relative to the matters contained herein and supersedes all prior understandings or agreements in regard thereto. This Agreement may be amended or altered only by written instrument executed by Owners and Contractor.
2. The exhibit attached to this Agreement and referred to herein shall for all purposes be deemed to be incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, the Parties have hereunto caused this Agreement to be executed the day and year above first written.

Owners,

\_\_\_\_\_  
Witness to both

\_\_\_\_\_  
David C. DeMerchant, Sr.  
Date:

\_\_\_\_\_  
Phyllis G. DeMerchant  
Date:

Thaddeus Bysiewicz, Ameritage, LLC

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Thaddeus Bysiewicz  
Date:

**EXHIBIT A**

