

THIS DEED AND RESERVATION OF CONSERVATION EASEMENT

Dated: April 29, 2019

**From THE WEST VIRGINIA LAND TRUST, INC.,
a non-profit corporation ("Grantor")**

**To the CITY OF OAK HILL, WEST VIRGINIA,
a West Virginia municipal corporation ("Grantee")**

NOW, THEREFORE, for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, and in consideration of the terms, conditions, restrictions, and mutual covenants contained herein, the receipt of all of which is hereby acknowledged, Grantor hereby does grant and convey, with covenants of special warranty, unto Grantee all that certain lot or parcel of real estate together with any improvements or buildings thereon, situate in Oak Hill District, Fayette County, West Virginia (hereinafter "the Property"), being all of the same property conveyed to the Grantor herein by Berwind Land Company, a corporation organized and existing under and by virtue of the laws of the state of West Virginia, by deed dated December 7, 2017, of record in the Office of the Clerk of the County Commission of Fayette County, West Virginia in Deed Book 756, at Page 223, and further being the real estate described and depicted in the attached Exhibit A. This conveyance is made along with and subject to any and all rights, privileges, benefits, reservations, restrictions, conditions, covenants, agreements, exceptions, rights of way and/or easements set forth in the chain of title to said real estate

Grantor reserves and excepts from this conveyance the following rights and interests:

1. All development rights on the Property, except those rights as Grantee shall reasonably require to carry out the uses hereinafter permitted on the Property.
2. A perpetual conservation easement ("Easement") and restrictions as more particularly set forth below. The Easement and restrictions consist of covenants on the part of Grantee to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and shall run with the land. Grantor reserves such covenants in order to protect and enhance water quality, conserve wildlife habitats, provide publicly accessible recreational opportunities and activities, and protect other natural resource and scenic values of the Property for present and future generations.

RECITALS FOR RESERVED CONSERVATION EASEMENT

WHEREAS, Grantor is the sole owner of the surface of the Property situate in Fayette County, West Virginia which it is conveying to the Grantee by operation of this instrument; and

WHEREAS, the Property contains significant values for the conservation of public recreation, protection of water quality, wildlife habitat, open space, and natural beauty (collectively "Conservation Values," specifically documented by the Baseline Documentation Report, defined herein and hereby incorporated by reference) of great importance to the Grantor and Grantee, the people of Fayette County, the people of the State of West Virginia, and all current and future generations; and

WHEREAS, Grantor and Grantee have a common purpose in conserving the Property for the aforementioned Conservation Values and, except as hereinafter provided, preventing development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property for this purpose; and

WHEREAS, Grantor desires to retain a perpetual conservation easement over the Property, thereby restricting and limiting the use of the Property on the terms and conditions set forth herein and for the purposes hereinafter set forth, and Grantee is willing to accept title to the Property per the terms of such conservation easement; and

WHEREAS, the West Virginia Conservation and Preservation Easements Act of 1995 (West Virginia Code § 20-12-1 *et seq.*) specifically recognizes the importance and public benefit of protecting the natural, historic, agricultural, open space, wildlife, and scenic resources of West Virginia, and Grantor and Grantee wish to avail themselves of the provisions of that law; and

WHEREAS, Grantor is a non-profit corporation incorporated under the laws of the State of West Virginia, is a tax-exempt public charity under Section 501(c) (3) of the Internal Revenue Code, and is qualified under Section 170(h) of the Internal Revenue Code to receive qualified conservation contributions; and

WHEREAS, Grantor's mission and general purpose is to preserve land for natural, historic, open space, scenic, recreational, environmental, agricultural, scientific, charitable, educational and aesthetic purposes; and

WHEREAS, Grantor affirms that the Easement represents a unique and valuable asset to the quality of life in Fayette County, West Virginia, and that by the reservation and retention of the Easement, the Grantor accepts and will act in good faith to uphold the Easement and will not seek to benefit from the Easement's conversion or elimination, and that the Grantor will preserve and protect, in perpetuity, the Conservation Values of the Property for the benefit of this generation and future generations;

WHEREAS, the West Virginia Outdoor Heritage Conservation Fund ("OHCF") was created by the West Virginia Legislature in order to invest in the conservation of unique and important wildlife habitat, natural areas, forest lands, farmland and lands for hunting, fishing and recreation; and

WHEREAS, the OHCF by and through action of its Board of Trustees and in accordance with chapter 5B, article 2G of the West Virginia Code, has provided \$190,064.04 in grant funding for this transaction.

The terms, conditions, and restrictions of the Easement are hereinafter set forth.

1. DEFINITIONS.

1.1 As used in the Easement, the following terms have these definitions:

A. "**Agriculture**" — The practice of farming, including the production and storage of crops for human and/or animal use or consumption, the production and storage of livestock and fowl, and/or the management and disposal of livestock and animal waste.

B. "**Baseline Documentation Report**" - An inventory of relevant features of the Property, a copy of which has been provided to Grantee and which is on file at the offices of Grantor, consisting of reports, maps, photographs, and other documentation that the parties agree provides an accurate representation of the Property as of the Effective Date and which is intended to serve as an objective information baseline for monitoring compliance with the terms of the Easement. The Baseline Documentation Report is incorporated by reference herein but is not attached hereto.

C. "**Commercial Timber Harvest**"— The harvesting, marketing, and selling of raw wood products from the forest including, but not limited to, the removal of forest products such as trees, logs, poles, posts, ties, chips, and pulpwood, and the attendant operation of cutting, forwarding, skidding and hauling machinery or equipment, and the creation and use of skid trails, skid roads, haul roads, temporary stream crossings and associated bridges, culverts, landings and log yards.

D. "**De minimis**" — Lacking importance or significance; so minor as to merit disregard.

E. "**Effective Date**" — The date on which this instrument is executed by the parties hereto, or if executed by the parties on different dates, the later/latest of those dates.

F. "**Forest Area**" — Those forested or wooded areas of the Property that are to be maintained as forested, which are comprised of all areas of the Property, except areas of the Property where Roads, Trails, Utilities and Improvements are permitted after the Effective Date and are not restored as forest.

G. **"Forest Management"** — The practice of forestry for the management of the forest and wildlife habitats on the Property including, but not limited to, the following: removal of forest products such as trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pinestraw, stumps, seed cones, shrubs, lesser vegetation, and all sugar maple products; reforesting non-forested areas; planting, growing, and harvesting forest products and other vegetation; clearing or restoring forest cover damaged or destroyed by fire, water, or natural disaster, selectively pruning or trimming trees, foliage, and other vegetation; harvesting forest products with mechanical equipment and/or with domestic animals; maintaining woodland, existing fields, meadows, roads, trails, and landings, including the use of culverts, fences, and barriers; and the application of herbicides, pesticides, fungicides, rodenticides, insecticides, fertilizer, and pH control. "Forest Management" also includes Commercial Timber Harvest operations as defined above.

H. **"Forest Management Plan"** — A plan developed by a Professional Forester with a private company, or state or federal conservation agency, to address natural resource concerns of forest management, such as soil fertility, water quality protection, and weed and pest control, for period of at least ten (10) years, and that includes (but is not limited to) the forest or wildlife habitat management or restoration goals and objectives for the Forest Area, a description of the forest and wildlife resources (including High Conservation Value Species and Communities), recommended actions and activities, and guidance on installation of Forestry BMP's to guard against soil erosion and water quality degradation.

I. **"Forestry Best Management Practices" or "Forestry BMPs"** — Silvicultural practices which prevent or reduce the erosion of soil so as to prevent adverse effects to surface and ground waters and which are established by the West Virginia Division of Forestry (or its successor or other agency(ies) subsequently empowered or authorized to develop or promulgate the same or similar standards).

J. **"Harvest Plan"** — A plan to be developed prior to harvest and removal of timber products from the Property, subject to Grantor's review and approval, which includes at a minimum all of the following:

(I) A statement signed by the Professional Forester preparing the Harvest Plan acknowledging that activities to be undertaken pursuant to the Harvest Plan are in compliance and consistent with this Easement and the Forest Management Plan;

(II) Descriptive map(s) of pertinent property boundaries and management (harvest) area boundaries, including legal access, logging deck(s) or landings, skid trails, roads, streams, wetlands, Stream Buffer Areas, stream crossings, and areas of special concern of which on-the-ground loggers should be aware and from which harvest equipment should be buffered;

(III) Explanation of harvest activities by management area, including silvicultural goals and prescriptions by stand, with forest type and stocking levels, and an inventory of cut and residual timber by species;

(IV) If the harvest operation is a regeneration or salvage harvest, description of silvicultural methods, by forest type;

(V) Description of how harvest activities will be marked in the field, including how areas and trees to be cut will be marked and identified to on-the-ground loggers, and how access, stream buffer and other special areas will be designated;

(VI) An inventory and description of protection methods for threatened and endangered species, other species or communities of high conservation value according to the State Wildlife Action Plan prepared by the West Virginia Division of Natural Resources (or, if the State Wildlife Action Plan *per se* ceases to exist, by like plan or survey prepared by WVDNR or its successor or other agency(ies) subsequently empowered or authorized to develop or promulgate the same), and other unique natural, geological, historic, aesthetic or recreational resources which may require special treatment or buffering as defined by local, state or federal regulations including local zoning ordinances.

(VII) Plan for timber harvesting including selection and use of qualified licensed logging operators, description of equipment and harvesting techniques for each stand, description of Forestry BMPs to be employed including erosion and sediment control measures, and measures to monitor logging operators' performance.

(VIII) Plan for post-cutting treatments, including re-vegetation with non-invasive seed mixes on sites with disturbed soils, and decommissioning of haul roads, log landings and skid trails as appropriate to maintain water quality.

K. **"High Conservation Value Species or Communities"** — Plant or animal species or plant communities determined to be of high conservation value in West Virginia, according to the State Wildlife Action Plan prepared by the West Virginia Division of Natural Resources (or, if the State Wildlife Action Plan *per se* ceases to exist, by like plan or survey prepared by WVDNR or its successor or other agency(ies) subsequently empowered or authorized to develop or promulgate the same or similar plan), identified through surveys and/or archived data (or that of WVDNR's successor agency(ies)) in conjunction with a field survey by a Professional Forester engaged to develop the Forest Management Plan.

L. **"Improvements"** — Picnic areas and shelters; a single playground; park benches; Trails; trash receptacles; water service; restrooms with customary associated sewage and/or septic tanks, fields, or connections; fencing; signage, lighting and other enhancements necessary for passive recreational use; and parking facilities with customary and necessary appurtenances.

M. **"Intermittent Stream"** — A stream that carries water for at least six months of a year or that is so designated on a United States Geological Survey quadrangle topographic map.

N. **"Invasive Species"** — Plants, animals, pests and pathogens included on the most current lists maintained by the University of Georgia, Center for Invasive Species and Ecosystem Health; provided however, if an agency of the State of West Virginia commences publication of similar lists of Invasive Species, then plants, animals, pests and pathogens included on the then-most current version of such State of West Virginia list; and further provided that if the University of Georgia ceases to publish such lists, then a similar list promulgated by the federal government, which the Grantor in its sole discretion shall select and of which will give notice to the Grantee.

O. **"Non-Timber Forest Products"** — Tree parts (including but not limited to cones, seeds, pinestraw, nuts, acorns, burls, stumps); other forest vegetation and its parts, such as grape vines, ramps, berries, ginseng and other medicinal herbaceous plants; fungus; maple syrup and sap; and other forest products used for crafting and creating art, medicine, food, and personal health products.

P. **"Perennial Stream"** — A stream containing water year-round during a year with normal rainfall or labeled as such on a United States Geological Survey quadrangle topographic map.

Q. **"Professional Forester"** — A licensed, registered professional forester in good standing with the West Virginia State Board of Registration for Foresters or its successor or other agency(ies) subsequently empowered or authorized to license, register, and/or sanction in like or similar manner.

R. **"Residence"** — A single- or multi-family dwelling containing, at a minimum, permanently installed cooking and/or indoor sanitary facilities.

S. **"Roads"** — Those access roads, driveways, or improved paths having a hardened or gravel surface, used to provide access to and within the Property by motorized and/or non-motorized means, but does not include temporary access roads for Forest Management. Roads are depicted on the Map of Land Use Designations, Man-made and Ecological Features in Exhibit B attached hereto and incorporated here by reference, and are described and depicted in the Baseline Documentation Report.

T. **"Stream Buffer Areas"** — Those areas of the Property located within fifteen (15) feet from any and all edges of a bank of a Perennial Stream or Intermittent Stream and which are depicted on the Map of Land Use Designations, Man-made and Ecological Features in Exhibit B attached hereto and incorporated herein by reference, and are described and depicted in the Baseline Documentation Report.

U. **"Trails"** — Those trails used to provide access to and within the Property by ATV, UTV, farm equipment (e.g. tractor), and non-motorized means only.

V. **"Utilities"** — Those structures or facilities necessary to supply the Property's Improvements with power, water, sewage disposal, and other amenities, including, but not limited to, power lines, poles, wind turbines (used solely to generate power for use on the Property); solar panels/photovoltaic cells, and associated electrical hardware (used solely to generate power for use on the Property); water wells, cisterns, and associated distribution lines; septic tanks, septic fields, and distribution boxes; antennas, satellite dishes, and cable lines.

1.2 Definitions herein, whether set forth in Section 1.1 or elsewhere herein, are applicable to the singular as well as to the plural forms of such terms, and to the masculine, feminine and neutral forms of such terms.

2. PURPOSES.

2.1 The purposes of the Easement are as follows:

A. To create a publicly accessible, non-motorized outdoor recreation and open space property, as well as a nature preserve and refuge for wildlife on the Property, by retaining it forever predominantly in its natural, forested, and undeveloped condition (except as otherwise specifically provided herein), and preventing any use of the Property that will significantly impair or interfere with the Conservation Values of the Property.

B. To promote the application of excellent forest management practices to conserve, maintain, and/or restore the native ecosystem and its ecological processes, soil productivity, water quality, biological diversity and natural wildlife and plant habitat, scenic and open space values, and for timber and non-timber forest production.

C. To preserve and increase the protections for water quality within the Arbuckle Creek and New River watersheds.

2.2 Protecting Conservation Values: Acts of God

A. Grantee will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of the Easement or detrimental to the Conservation Values of the Property. Nothing in the Easement relieves Grantee of any obligation or restriction on the use of the Property imposed by law.

B. Nothing in the Easement requires the Grantee to take any action to restore the condition of the Property after any act of God or other event over which Grantee had no control, except in those cases when an act of God damages or destroys Improvements and/or Utilities resulting in continuing deleterious impacts to the Conservation Values of the Property. In the event of such an act of God that damages or destroys Improvements and/or Utilities resulting in continuing deleterious impacts to the Conservation Values of the Property, the Grantor shall take steps in good faith to remedy the situation through appropriate corrective action, namely, restoration, reconstruction, or outright elimination and removal of such Improvements and/or Utilities.

3. **PROPERTY USES.** Any activity on or use of the Property inconsistent with the purposes of the Easement is prohibited. Without limiting the generality of the foregoing, the following is a list of activities and uses which are expressly prohibited or which are expressly permitted. Grantor and Grantee have determined that the permitted activities do not impair the Conservation Values of the Property. Additional rights of the Grantee are set forth in Section 4.

3.1 General Requirements. The following requirements apply to all activities and uses of the Property, unless an exception is specifically provided.

A. *Subdivision.* The Property shall not be divided, subdivided, partitioned, conveyed, or pledged for a debt, except in a configuration as a single piece of real estate.

B. *Construction, Improvements, Roads, Trails, and Utilities.*

(I) No Residences are permitted on the Property.

(II) The activities contemplated in this subsection must be consistent with the Purposes of the Easement and not destructive of the Conservation Values of the Property.

(III) No Roads exist on the Property as of the Effective Date. Roads may be built to accommodate the construction and maintenance of Improvements. Grantee is permitted to use motorized vehicles on Roads but only for construction, maintenance, law enforcement, and emergency purposes. Roads shall be no more than twenty (20) feet in width. Land cleared in the construction of such Roads (excluding the Road itself) shall be re-vegetated by Grantee as soon as possible following construction. Said re-vegetation shall be with native, non-Invasive Species.

(IV) Grantee may construct or permit to be constructed Improvements and/or Roads, and may install or permit to be installed utilities. However, Improvements must be located outside of the Stream Buffer Areas. Prior to the construction of Improvements and/or Roads, and prior to the installation of Utilities, Grantee must obtain Grantor's permission to locate the same.

(V) Grantee may not construct or permit to be constructed tennis courts or other similar courts, swimming pools, golf courses, racetracks, campgrounds or other camping facilities, ball fields, or play pads. However, Grantee may develop or permit to be developed disc golf facilities so long as Grantee presents a written plan for construction and development of the same to the Grantor, to be approved or disapproved in Grantor's sole discretion.

(VI) Grantee may construct Trails or allow them to be constructed. Trails shall be no more than four (4) feet in width. Grantee may construct associated benches, exercise stations, bicycle parking structures, and picnic tables. Grantee may construct Trails wider than four (4) feet that are handicapped-accessible so long as Grantee presents a written plan for construction and development of the same to the Grantor, to be approved or disapproved in Grantor's sole discretion. Grantee is permitted to use motorized vehicles on Trails, but only for construction, maintenance, law enforcement, and emergency purposes. Trails shall be maintained by Grantee in such a way that the existence and maintenance of the Trails do not compromise the Conservation Values.

(VII) Grantee may install necessary Utilities to accommodate the Improvements permissible on the Property.

(VIII) Unless such Utilities are placed on or over the Property under eminent domain proceedings, the Grantee may not, without the prior written consent of the Grantor, consent to the construction or placement of Utilities on the Property that serve entities or users located off the Property. Such consent by Grantor may be granted only if the construction or placement of such Utilities would not deleteriously impact the Conservation Values of the Property.

(IX) If any Roads, Trails, Utilities, or Improvements show signs of erosion into any Perennial Stream or Intermittent Stream, then the Grantor shall have the right to require the Grantee's remediation of the eroded area.

(X) No telecommunications towers or other towers or similar infrastructure are permitted to be constructed on the Property.

C. Agriculture. No Agriculture on the Property is permitted.

D. Streams and Stream Buffer Areas.

(I) Stream Buffer Areas are established on all Intermittent Streams and Perennial Streams on the Property. Stream Buffer Areas shall be maintained by the Grantee with such maintenance as to be substantially dominated by or covered with native forest vegetation.

(II) Any disturbance of soils except to remediate and restore stream channels from negative impacts of extreme storm events and acts of God is prohibited in Stream

Buffer Areas and in all Intermittent Streams and Perennial Streams. Notwithstanding the foregoing, Grantee has the right to install, maintain, and utilize Roads, Trails, bridges, culverts, and Utilities within Stream Buffer Areas so long as in so doing, Grantee is in compliance with all federal, state, and local laws, regulations, and other requirements and so long as Roads and Trails therein are constructed with culverts or bridges. Further, the use of motorized vehicles unless on otherwise permissible Roads and Trails, stream crossings, and/or bridges is prohibited.

(III) Grantee has the right to manage vegetation in the Stream Buffer Areas in order to maintain the dominance of native forest vegetation.

(IV) Grantee has the right to engage in and/or permit recreational activities that do not cause material damage to or destruction of the trees or other vegetation from the Stream Buffer Areas or that otherwise harm riparian and aquatic habitats associated therewith.

F. Water Management.

(I) All permitted activities on the Property shall be conducted in such a fashion so as to not degrade surface water and groundwater quality.

(II) Except development of on-site drinking water supplies, there shall be no alteration or pollution of surface water, natural water courses, subsurface water or springs on the Property and no activities shall be conducted on the Property that could alter the natural water level or flow in or over the Property.

G. Hunting and Trapping. No hunting or trapping is permitted on the Property except to facilitate improvement of ecological integrity (including but not limited to control of Invasive Species) of the Property and/or public health. Such activities shall be guided by a management plan prepared by the Grantee, to be approved by the Grantor in its sole discretion.

H. Invasive Species. The Grantee shall not introduce Invasive Species to the Property. The Grantee shall have the right to manage and control populations of Invasive Species on the Property by following a professionally-developed Invasive Species management and control plan, so long as such plan is approved by the Grantor in writing.

I. Biocides. There shall be no use of biocides on the Property, including, but not limited to, pesticides, fungicides, rodenticides, and herbicides, except however to manage non-native species, Invasive Species, pests, and pathogens. If Grantee desires to use biocides, it may do so only after presenting a written request and management plan for use of the same to Grantor, which Grantor may approve or decline in its sole discretion.

J. Motorized Vehicle and Equipment Uses. Motorized vehicles are permitted on Roads to access and service Improvements, Trails, and Utilities on the Property.

K. Recreational Uses.

(i) The Grantee has the right to engage in and permit others to engage in non-motorized recreational uses of the Property, including, but not limited to, hiking, bicycling, and rock climbing/bouldering activities and public use of recreation-oriented Improvements. However, handicapped access involving motorized wheelchairs and similar equipment is permissible.

(ii) Any operation of dune buggies, motorcycles, ATVs or UTVs, hang gliders, aircrafts, jet skis, motorized boats, or any other types of mechanized vehicles, whether or not considered to foster any permitted activity, is prohibited except for permissible uses of Roads and Trails as otherwise set forth herein. Equestrian use is prohibited. Use of drones is not prohibited.

M. Commercial Development and Industrial Use. Commercial development of the Property is prohibited. Industrial use of, or activity on, the Property is prohibited.

N. Excavation.

- (i) Except as necessary to accommodate the activities expressly permitted under the Easement, there shall be:
 - (a) No ditching, draining, diking, filling, excavating, dredging, or removal of topsoil, sand, gravel, rock, minerals or other materials.
 - (b) No change in the topography of the Property or disturbance of the soil in any manner without the prior written permission of the Grantor, unless otherwise expressly permitted herein or retained by the Grantor, and,
 - (c) No new human cemeteries established or permitted on the Property.

O. *Dumping.* There shall be no dumping of trash, garbage, or other unsightly or offensive material, hazardous substances, or toxic waste on the Property.

P. *Mineral Extraction.* The Grantee's exploration, development, mining, extraction or removal of minerals or hydrocarbons including coal, oil, gas, and other qualified mineral interest (as that term is defined in the Internal Revenue Code Section 170(h) (6) is strictly prohibited regardless of the method of extraction or whether such extraction may be accomplished from sites other than on the Property itself. All pipeline, pumping, and conveyance associated with such mining or extraction methods are prohibited on the surface and subsurface of the Property. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Property is prohibited, except when such activities are conducted in order to carry out activities permitted under the Easement, are in accordance with a conservation plan approved by the Grantor, and are restored within a reasonable time period.

Q. *Fuel Storage.* No placement of any above-ground or underground fuel storage tanks on or under the Property is permitted, except that above-ground heating and cooking fuel tanks are permitted for Improvements.

R. *Rights of Way.* Grantee may not grant a right of way across the Property without the prior written approval of the Grantor.

S. *Signage.* No signs or billboards or other advertising displays are permitted on the Property, except that signs which do not significantly diminish the scenic character of the Property may be displayed to state the name and address of the Property, to advertise or regulate permitted on-site activities, to denote that the Property is the subject of a conservation easement held or otherwise supported by the Grantor and/or the OHCF, to post the Property to control unauthorized entry or use, to display directional or way-finding information, to display educational and/or historical information, and/or to mark Trails and boundaries. Further, the Grantee shall permit the erection of signage on the Property recognizing the contribution and role of the OHCF and the WVLT in effectuating the Easement.

3.3 Forest Area/Forest Management.

A. *Forest Management Goals and Objectives.* All Forest Management activities undertaken on the Property shall be guided by the following goals and objectives:

- (i) Protecting the Property's forest as a refuge for wildlife and as a nature preserve to conserve its biological diversity, forest legacy features (snags, den trees, large woody debris, legacy/ancient trees), and High Conservation Value Species or Communities, and to permit natural processes and disturbances to regulate and alter the character of the forest over time.
- (ii) Protecting and enhancing the ecosystem services values of the Property, such as its watershed values for producing clean water, by employing silvicultural best management practices as set forth in the Forestry BMPs, to maintain soil productivity, prevent erosion, protect or enhance water quality, and conserve wetlands and riparian zones.
- (iii) Conducting Forest Management in accordance with applicable local, state, and federal laws and regulations at the time such activities occur.

B. *Forest Uses:* Except as otherwise provided herein where Improvements are permitted, the Forest Area, which otherwise comprises the entirety of the Property, shall be maintained in native forest vegetation. Harvesting of Non-Timber Forest Products is not permitted on the Property. Notwithstanding the foregoing, the Grantee shall have the right, for non-commercial purposes only,

and if permitted by the Grantor in writing, to perform the following vegetation management and harvesting activities:

- (i) To steward native trees, shrubs, and other forest plants, including planting and tending seeds, root and seedling stock, and controlling non-native Invasive Species as described in Section 3.1, *Invasive Species*.
- (ii) To harvest trees for the purposes of maintaining forest health and integrity, primarily to remediate forest effects resulting from the outbreak of a pest or pathogen or Invasive Species.
- (iii) To conduct harvesting for the purposes of construction and maintenance of Trails, Roads, Utilities, and Improvements and for public safety purposes, provided that such management practices are performed in compliance with the terms of the Easement and in accordance with sound and generally acceptable forestry standards and Forestry BMPs. For all Forest Management except for the construction and maintenance of Trails, Roads, and Utilities and other Improvements and for public safety purposes, the Grantee first must acquire and implement a Forest Management Plan, prepared by a Professional Forester and approved by the Grantor prior to any Forest Management activities occurring on the Property, at the Grantee's expense and for 10-year increments. Prior to any forest harvest for the purposes of forest and ecosystem health, a Harvest Plan shall be submitted to the Grantor for approval, and the Grantor shall have the right to approve or amend the Harvest Plan at its sole discretion.

C. Restrictions for Forest Management Activities.

- (i) Construction of new forest access roads is permitted in the event of a timber harvest. Such roads not subsequently used for recreational purposes shall be restored to native forest vegetation and the restoration shall be addressed in the Forest Management Plan and the Harvest Plan.
- (ii) Livestock pasturing within the Forest Area is not permitted.
- (iii) Activities that cause erosion of soil, sedimentation of streams, destruction of Stream Buffer Areas and aquatic habitats, and otherwise degrade land or pollute waters are not permitted.
- (iv) The harvest of all Non-Timber Forest Products is prohibited.

3.4 Density. Neither the Property nor any portion of it shall be included as part of the gross area of any property not subject to the Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by the Easement shall be transferred to any other lands pursuant to a transfer of development rights scheme, cluster development arrangement or otherwise, provided that with prior written permission of the Grantor, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

4. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** The Grantee is conveyed all rights not reserved by creation of and established by operation of the Easement. The Grantee otherwise has the right to sell, give, mortgage, lease, devise, or otherwise convey the Property subject to the terms of the Easement.

5. **GRANTOR'S RIGHTS.** In addition to any other rights retained by the Grantor herein, to accomplish the purpose of the Easement, the following rights are retained by the Grantor as to the Easement:

5.1 Right to Enforce. The right to preserve and protect the Conservation Values of the Property and enforce the terms of the Easement.

5.2 Right of Entry.

A. The right of Grantor's staff, contractors, agents, and associated natural resource management professionals to enter the Property, after prior notice to the Grantee, for the purposes of:

- (i) inspecting the Property to determine if the Grantee complying with the covenants, provisions, and the purposes of the Easement;
- (ii) enforcing the terms of the Easement;
- (iii) surveying, monitoring and research as described below in Section 5.3;
- (iv) forest restoration and Invasive Species management as described below in Section 5.4.

B. Prior notice to Grantee is not required if Grantor is entering upon the Property because of an ongoing or imminent violation that could, in the sole discretion of Grantor, substantially diminish or impair the Conservation Values of the Property. Such right of entry shall include the permanent right to cross other lands of the Grantee for access to the Property.

5.3 Surveying, Monitoring and Research. The Grantor has a right, but not an obligation, to survey and monitor the plant and wildlife populations, plant communities, and natural habitats on the Property. If the Grantor determines there is a need to conduct surveying, monitoring and research on the Property, the Grantee shall cooperate with the Grantor in establishing, at no expense to the Grantee, a written plan to direct the surveying or monitoring of, or research on, plant and wildlife populations, plant communities and natural habitats on the Property. The Grantor shall report all surveying and monitoring activity, natural resource inventory and assessment work or other natural resource research, conducted by the Grantor or others, to Grantee.

5.4 Forest Restoration and Invasive Species Management. The Grantor has a right, but not an obligation, to conduct forest restoration activities and to manage Invasive Species in order to maintain the Conservation Values of the Property. If the Grantor determines that forest restoration and Invasive Species management activities are consistent with the purposes of the Easement, then Grantor may, subject to Grantee's prior written consent, not to be unreasonably withheld, engage, and permit others to engage, in restoration activities pertaining to, but not limited to, the restoration of plant and wildlife populations, stream banks, and Stream Buffer Areas, and the control of Invasive Species populations. Prior to commencement of any restoration or management activities, Grantor shall establish a written restoration or Invasive Species management plan for such activities, and shall obtain all permits necessary for engaging in such activities from all local, state and federal authorities with jurisdiction over such activities. The Grantor shall report all restoration activities conducted by the Grantor, or others, to Grantee.

6. RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED. Other than as specified herein, the Easement is not intended to impose any legal or other responsibility on the Grantor or Grantee, or in any way to affect any existing obligation of the Grantee as owner of the Property. Among others, the responsibilities not to be affected shall include:

6.1 Taxes. The Grantee shall be solely responsible for payment of all taxes and assessments levied against the Property.

6.2 Upkeep and Maintenance. The Grantee shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantor shall have no obligation for the upkeep or maintenance of the Property.

8. ENFORCEMENT.

8.1 General Provisions. If Grantor determines that Grantee is in violation of the terms of this Easement or that a violation is threatened, Grantor may proceed according to its then-effective Stewardship and Enforcement Policy, or may seek any other legal or equitable remedy which may include written notice to Grantee of such violation and a demand for corrective action within a time sufficient to cure the violation. Further, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of the Easement, Grantor may require that Grantee restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantor.

8.2 Injunctive Relief. The Grantor, its successors or assigns, jointly or severally, shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require the Grantee to restore the Property to the condition existing at the time of the Easement in order to correct any violation(s) of the Easement. Grantor's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of the Easement. Grantee agrees that Grantor shall be entitled to the injunctive relief in addition to such other relief to which Grantor

may be entitled, including specific performance of the terms of the Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

8.3 Costs of Enforcement. Any costs incurred by Grantor in enforcing the terms of the Easement against Grantee, including without limitation costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantee's violation of the terms of the Easement, shall be borne by Grantee. If Grantee prevails in any action to enforce the terms of the Easement, then the Grantor and Grantee shall bear their own respective costs of suit, including, without limitation, attorneys' fees.

8.4 Right to Proceed Against Third Parties. The Grantor has the right to proceed against any third party or parties whose actions threaten or damage the Conservation Values, including the right to pursue all remedies and damages provided herein and any other remedies available in law or equity. The Grantee shall cooperate with the Grantor in such proceedings. If requested by the Grantor, the Grantee shall assign to the Grantor any cause of action for trespass resulting in damage to the Conservation Values which may be available to the Grantee. The Grantee may condition such assignment to provide for the (i) diligent prosecution of any such action by the Grantor and (ii) division according to the proportionate values determined in the same manner as set forth in Section 12 below, between the Grantor and the Grantee of any recovery, over and above the attorney's fees and expenses incurred and the costs of restoration of the Property, resulting from such action.

8.5 Emergency Enforcement. If the Grantor, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Grantor may pursue its remedies under this section without prior notice to the Grantee and without waiting for the period to cure to expire.

8.6 Failure to Act or Delay. The Grantor does not waive or forfeit the right to take action as may be necessary to ensure compliance with the Easement by any prior failure to act. The Grantee hereby waives any defenses of waiver, estoppel, or laches with respect to any failure to act or delay by the Grantor in acting to enforce any restriction or exercise any rights under the Easement.

8.7 Violations Due to Causes Beyond Grantee's Control. Nothing herein shall be construed to entitle the Grantor to institute any enforcement proceedings against the Grantee for any changes to the Property due to causes beyond the Grantee's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons.

8.8 Standing. By virtue of Grantor's acquisition of rights under the Easement, Grantor shall be entitled, at Grantee's option, to standing before a court of competent jurisdiction to pursue remedies or other matters which are necessary or incidental to the protection of the Property which is subject to the Easement.

9. **TRANSFER OF EASEMENT.** The Grantor and Grantee recognize and agree that the benefits of the Easement are in gross and assignable. The Grantor shall have the right to transfer or assign the Easement to an organization that, at the time of transfer, is a "qualified organization" under IRC Section 170(h), and that expressly agrees to assume the responsibilities imposed on the Grantee by the Easement. If the Grantor ever ceases to exist, or no longer qualifies under IRC Sec. 170(h) or applicable state law, the parties hereto agree that a court of competent jurisdiction shall be authorized to transfer the Easement to another qualified organization having similar purposes as the Grantor which agrees to assume Grantor's rights and responsibilities hereunder.

10. **TRANSFER OF PROPERTY.** Any time the Property, or any interest therein, is transferred by the Grantee to any third party, the Grantee shall notify the Grantor in writing at least forty-five (45) days prior to the transfer of the Property, and the instrument of conveyance shall expressly refer to, account for, and be subject to the Easement.

11. **AMENDMENT OF EASEMENT.** The Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Purposes of the Easement, shall enhance, or at least not diminish, the Conservation Values of the Property, and shall comply with the limitations of IRC Section 170(h) and any other regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the West Virginia Conservation and Preservation Easements Act and any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of the Easement or change the nature of the restrictions imposed on the Property under the Easement.

12. **TERMINATION OF EASEMENT.** The Grantee hereby agrees that at the time of the establishment of the Easement, the Easement gives rise to a real property right, immediately vested in the Grantor, with

a fair market value of the Easement as of the date of the conveyance that is at least equal to the proportionate value that the Easement at the time of the conveyance bears to the fair market value of the Property as a whole at that time. That proportionate value of the Grantor's property rights shall remain constant.

The Easement is of perpetual duration, and binding upon the Grantor and Grantee hereto and their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear, including all future owners of the Property. If a change in conditions takes place which makes any continued protection of the Property impossible or impractical for the Purposes of the Easement, and the restrictions contained herein are extinguished by judicial proceeding in compliance with IRC Section 170(h) (being the only means for extinguishment hereof), the Grantor, upon a subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Easement. The Grantor shall use its share of the proceeds in a manner consistent with the purposes of the Easement or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(Aii), as amended and in regulations promulgated thereunder.

If any interest in real property, acquired in whole or in part with OHCF grant funds, is extinguished or condemned, the OHCF shall be entitled to a portion of any net proceeds determined by multiplying the amount of such proceeds (after payment of customary closing expenses) by a fraction, the numerator of which shall be the amount of all grant monies used for the acquisition of the Property (or portion thereof extinguished or condemned) and the denominator of which shall be the appraised fair market value of the Property (or the portion thereof extinguished or condemned) at the time of Grantee's acquisition thereof. After payment to OHCF of its portion of any such sale proceeds, the remaining balance of such proceeds shall be retained by the Grantee (but with the Grantor nevertheless to recover its proportionate share as set forth in the preceding paragraph). In this regard, subsequent instruments by which the Property is conveyed shall include the amount of OHCF grant monies used for the acquisition of the Property, the appraised value of the Property at the time of this award, and the foregoing provision.

13. **EMINENT DOMAIN.** Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by the Easement, the 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, which proceeds shall be divided in accordance with the proportionate value of the Grantor's and Grantee's interests, and Grantor's proceeds shall be used as specified above. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

14. **INTERPRETATION.** The Easement shall be interpreted under the laws of the State of West Virginia, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to the purposes of the Easement.

15. **TITLE.** The Grantee covenants and represents that the Grantee will be, upon delivery of this instrument, the sole owner and is seized of the Property in fee simple and have good right and title to assent to the Easement; that the Property is free and clear of any and all encumbrances, including, but not limited to, any deeds of trust or mortgages not subordinated to the Easement, and that the Grantor shall have the use of and enjoy all of the benefits derived from and arising out of the Easement.

16. **APPROVALS.** Before doing anything that requires the Grantor's approval under the Easement, the Grantee shall seek such approval from the Grantor in writing. Any approval by the Grantor permitted or required by the Easement for uses or acts that are conditional or not expressly granted to Grantee may be granted only if the Grantor has determined in its reasonable discretion, that the proposed use or act conforms to the intent of the Easement, meets any applicable conditions stated in the Easement, and is consistent with and not to the detriment of the Conservation Values. Unless a different timeframe is provided herein as to particular approval(s), the Grantor shall strive to grant or withhold its approval in writing within thirty (30) days of receipt of the Grantee's written request for such approval together with such supporting maps, documentation, and other information as is necessary for or requested by the Grantor to properly review the request.

17. **NOTICES.**

17.1 *Generally.* Any notices permitted or required by the Easement, including notice of any change of the address(es) shown below, shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested.

17.2 *Current Addresses.* As of the date of the Easement, the addresses for the Grantee and the Grantor are as follows:

To the Grantee: City of Oak Hill
100 Kelly Ave.
P.O. Box 1245
Oak Hill, WV 25901

To the Grantor: The West Virginia Land Trust, Inc.
P.O. Box 11823
Charleston, WV 25338-1823

17.3 *Permanent Addresses.* In addition to the foregoing, the address of the Property shall always be a valid address for notices to the Grantee, and the address of the Grantee's registered agent (on file with the State of West Virginia) shall always be a valid address for notices to the Grantee; or to such other address as either party from time to time shall designate by written notice to the other.

18. **ENVIRONMENTAL CONDITION.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, Grantee agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required. Nothing in the Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability of Grantor to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantee's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and any corresponding state statute.

19. **HOLD HARMLESS.** Grantee shall hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with:

19.1 injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection;

19.2 the result of a violation or alleged violation of, the enforcement of an/or any contribution action relating to any state or federal environmental statute or regulation and statutes or regulation concerning the storage or disposal of hazardous or toxic chemicals or materials; and

19.3 the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

20. **SEVERABILITY.** If any provision of the Easement or its application to any person, entity, or circumstance is found to be illegal, invalid, or unenforceable, the remainder of the provisions of the Easement shall not be affected.

21. **PARTIES.** Every provision of the Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

22. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Easement, the Grantor is authorized to re-record this instrument or any other appropriate notice or instrument.

23. **MERGER.** The parties agree that the terms of the Easement shall survive any merger of the fee and easement rights and interests in the Property.

24. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of the Easement should be construed as impairing the ability of Grantee to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to the Easement, and that any such use of the Property as collateral must be of the entirety of the Property and not a portion thereof.
25. **ACCEPTANCE.** As attested by the signature of the authorized representative of Grantor affixed hereto, the Grantor hereby accepts without reservation the rights and responsibilities conveyed by the Easement
26. **TAX BENEFIT.** Grantor makes no express or implied warranties, promises, or guarantees regarding whether any tax benefits will be available to Grantee from donation or bargain sale of the Easement
27. **ESTOPPEL CERTIFICATES.** Upon request by Grantee, Grantor shall within thirty (30) days execute and deliver to Grantee any document, including an estoppel certificate, which certifies Grantee's compliance with any obligation of Grantee contained in the Easement and otherwise evidences the status of the Easement as may be requested by Grantee.

TO HAVE AND TO HOLD, this Easement unto the Grantor, its successors and assigns, forever.

DECLARATION OF CONSIDERATION

Under penalties of fine and imprisonment as provided by law, Grantor hereby declares that Ten Dollars (\$10.00) cash in hand paid is the only monetary consideration given for the real estate conveyed by the instrument to which this certificate is appended, as the same is a conveyance by gift to a political subdivision of the State of West Virginia. As such, per W.Va. Code § 11-22-1(4), such conveyance is not subject to excise tax and the requirements set forth at W.Va. Code § 1122-6.