

## DEED RESTRICTION

THIS DECLARATION OF DEED RESTRICTIONS FOR CONSERVATION (“Declaration”) made this 1st day of November 2021 by Bellwood Corporation (“Grantor”), having an address at 302 S. Jefferson Street, Roanoke Virginia, 24011;

### WITNESSETH:

**WHEREAS**, Bellwood Corporation is the owner of certain real property known as Stoney Brook Plantation and located in the Union District of Monroe County, West Virginia (hereinafter “the Property”), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, of Monroe County, West Virginia at Deed Book 275 Page 576, and

**WHEREAS**, Grantor, having the authority to do so, intends to record this Declaration in order to restrict subsequent disturbance and/or development of that certain portion of the surface of the Property described on Exhibit A attached hereto (the “Conserved Area”) in perpetuity;

**WHEREAS**, it is not the intent of this Declaration to restrict disturbance and/or development of any portion of the Property located outside the Conserved Area;

**WHEREAS**, the Conserved Area possesses open space and natural values (collectively, “Conservation Values”) of significant importance to Grantor, the people of Monroe County and the people of the State of West Virginia, and all current and future generations of mankind;

**WHEREAS**, preservation of the Conserved Area is consistent with a central objective of a Consent Decree in the matter of United States of America, et al. v. James C. Justice Companies, Inc., et al., Civil Action No. 1:15-cv-16018 (S.D. W. Va.) (“Justice Companies CD”), attached hereto as Exhibit B. Grantor agrees that the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the West Virginia Department of Environmental Protection, and their successor agencies (collectively “Third Parties”), are third-party beneficiaries under this Declaration, except that nothing herein creates a property interest in the Federal Government or the State of West Virginia with regard to the Conserved Area;

**NOW THEREFORE**, Grantor hereby agrees that the Conserved Area shall be subject in perpetuity to the following conveyances, covenants, and restrictions:

1. This Declaration shall be a burden upon and shall run with the Conserved Area, and shall bind Grantor, its successors, and assigns, in perpetuity. Grantor shall record this Declaration in the Land Records of the county or counties where the Property is located within sixty (60) days of the effective date of this Declaration. Grantor shall provide the Third Parties with proof of recordation and give notice of this Declaration to current record title holders of easements in the Conserved Area within thirty (30) days of recording by the County Clerk.
2. The following activities are prohibited in the Conserved Area, except as necessary for the control of alien invasive or noxious plant or animal species or as necessary to accomplish

restoration and/or mitigation described in Paragraph 7:

- a. Removal, excavation, dredging, or disturbance of the surface;
  - b. Dumping of, storage of, or filling with soil, rock, biological material, trash, ashes, garbage, waste, or other materials;
  - c. Draining, impounding, or impairing the flow or circulation, or reducing the reach of waters, including wetlands; or any other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended;
  - d. Installation of structures;
  - e. Placement of pavement or other impervious materials;
  - f. Alteration of the existing (post-restoration pursuant to Paragraphs 23-26 of the Justice Companies CD) pattern of vegetation through removal, destruction, or planting of vegetation;
  - g. Conversion of, or expansion into, any portion of the Conserved Area for use of agricultural, horticultural, aquacultural, silvicultural, livestock production, or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agricultural to silvicultural);
  - h. The use of fertilizers, herbicides, or pesticides;
  - i. Removal, clearing, pruning, or mowing of live vegetation, including trees, unless Grantor demonstrates that such removal will result in habitat enhancement or to prevent a safety hazard, and Grantor has received written approval of the West Virginia Department of Environmental Protection;
  - j. The use of the Conserved Area to provide required open space for the development or subdivision of another property or to determine any other permissible residential, commercial, or agricultural uses of another property; or any legal or de facto division, subdivision or portioning of the Conserved Area;
  - k. Any other use of or activity in the Conserved Area that is inconsistent with the purpose of this Declaration.
3. It is the purpose of the Declaration to assure that the Conserved Area will be maintained as such and to prevent any unauthorized disturbance and/or development to the Conserved Area.
  4. Notwithstanding any provisions to the contrary, this Declaration is subject to and subordinate to any existing and duly recorded rights with respect to the Conserved Area. All structures, infrastructure, as well as all pre-existing easements or other duly recorded rights in the Conserved Area identifiable through a title search extending to documents placed of record

within twenty (20) years prior to the date of this Declaration, shall be indicated on Exhibit A, which is attached to this instrument and includes a copy of the most recent property deed for the Property. A description sufficient to identify the boundaries of the Conserved Area. Grantor certifies that to Grantor's actual knowledge, there are no previously granted easements existing in the Conserved Area that interfere or conflict with the purpose of this Declaration.

5. All mortgages and deeds of trust granted or entered into after the date hereof affecting the Conserved Area will be subordinate to this Declaration.
6. The Conserved Area is subject to the Justice Companies CD. Each deed, title or other instrument conveying an interest in the Conserved Area shall contain a notice stating that the Property is subject to the Justice Companies CD and shall reference the recorded location of the Justice Companies CD and any restrictions applicable to the Property under the Justice Companies CD.
7. The James C. Justice Companies, Inc., Mr. James Justice, II, and the Third Parties shall have the right to:
  - a. enter upon the Conserved Area for the purpose of inspecting the Conserved Area to determine compliance with the purposes and terms of this Declaration, or for any other purpose authorized by this Declaration or by the Justice Companies CD. When practicable, such entry shall be upon prior reasonable notice to the property owner. This right of entry is in addition to and does not limit any right of entry otherwise granted by Federal or State law;
  - b. take any and all action within the Conserved Area necessary to address a situation that poses an immediate risk to health, life, property, or the environment; and
  - c. take any and all action within the Conserved Area required by Federal or State law or approved by the Third Parties.
8. Grantor grants to the Third Parties a discretionary right to enforce this Declaration. In the event of a breach of this Declaration by Grantor or another party, the Third Parties shall notify Grantor of the breach. If Grantor fails to take corrective action within 60 days of such notice, the Third Parties may undertake actions to effect such corrective action, including bringing a judicial action against any person(s) or entity(ies) violating or attempting to violate this Declaration: provided, however, that no violation of this Declaration shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing party shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. The costs of breach, correction and/or restoration, including the Third Parties' expenses, court costs, and attorney's fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of the Third Parties, and no omissions or delay in acting shall constitute a waiver of any enforcement right. These rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, under any applicable permit or certification, or under the

Justice Companies CD.

9. The James C. Justice Companies, Inc., Mr. James Justice, II, and/or their contractors shall have the right to enter upon the Conserved Area for the purpose of performing any work required by a restoration or mitigation plan approved under the Justice Companies CD, including construction, planting, maintenance, monitoring, long-term management, or any other restoration, enhancement, or mitigation work specified therein, provided such work is conducted in accordance with such approved plan.
10. Grantor reserves to itself, its successors or assigns, all rights as owners of the Property, including the right to engage in all uses of the Conserved Area not inconsistent with the purpose and terms of this Declaration.
11. Grantor reserves to itself, its successors or assigns, all rights as owners of the portion of the Property outside the Conserved Area to engage in all uses authorized by law.
12. Grantor shall provide the Third Parties written notice of any transfer or change in ownership of, or of the execution of any subsequent easement affecting, any portion of the Conserved Area, including but not limited to the name and address of the new owner at least thirty (30) days prior to the transfer or change in ownership, or execution of such easement.
13. Grantor agrees that the terms, conditions, restrictions, and purposes of this Declaration will be inserted in any subsequent deed, subdivision deed, lease, sub-lease or other legal instrument by which Grantor divests itself of any interest in any portion of the Conserved Area. Notwithstanding the failure of Grantor to include the terms and restrictions of this instrument, it shall run with the land and be binding on all heirs, successors, and assigns.
14. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of the Third Parties. Amendments to this Declaration must be in writing, and must be consistent with the conservation purposes of this Declaration. Grantor shall record any modification or termination of this Declaration in the Land Records of the county or counties where the Conserved Area is located within sixty (60) days of executing such a modification or termination. Grantor shall provide the Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk.

15. For any modification, transfer, conveyance, or assignment accomplished under paragraphs 12, 13, or 14, Grantor shall amend this instrument by preparing and submitting:
  - a. A revised plan and metes and bounds description for the area to be preserved under the Declaration (hereinafter the "Modification Documents"); and
  - b. An Amended Declaration of Deed Restrictions that reflects the modifications to the original Declaration, the justification for the modification, and that also includes the deed book and page of the title deed for the property or properties subject to the modified Declaration set forth in the Modification Documents.
16. Grantor shall record the documents listed in paragraphs 5, 6, or 15, above, in the same manner and place as this original Declaration was recorded.
17. Miscellaneous.
  - a. The laws of the State of West Virginia shall govern the interpretation and performance of this Declaration.
  - b. If any provision of this Declaration or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
  - c. Should there be more than one Grantor, the obligations imposed by this Declaration upon each Grantor shall be joint and several.
  - d. The covenants, terms, conditions, and restrictions of this Declaration shall continue as a servitude running in perpetuity with the Conserved Area.
  - e. The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon construction or interpretation.
  - f. The covenants, terms, conditions, restrictions, and purposes imposed with this Declaration shall not only be binding upon Grantor but also upon its agents, personal representatives, executors, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Conserved Area.

18. Any notice, demand, request, consent, approval, or communication under this Declaration shall be sent by certified mail, return receipt requested or dependable overnight courier, addressed as follows:

To Grantor:

Bellwood Corporation  
Attn: Stephen W. Ball  
302 S. Jefferson Street  
Roanoke, Virginia 24011

To Third Parties:

TO EPA:

- (1) Stefania D. Shamet  
Senior Assistant Regional Counsel  
Water and General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region III  
MC 3RC20  
1650 Arch St.  
Philadelphia, PA 19103-2029
- (2) Associate Director, Office of Environmental Programs  
Environmental Assessment and Innovation Division  
United States Environmental Protection Agency  
Region III  
MC 3EA30  
1650 Arch St.  
Philadelphia, PA 19103-2029

TO THE CORPS:

Debra R. Tabor  
Deputy District Counsel  
Huntington District  
U.S. Army Corps of Engineers  
502 8<sup>th</sup> Street  
Huntington, WV 25701

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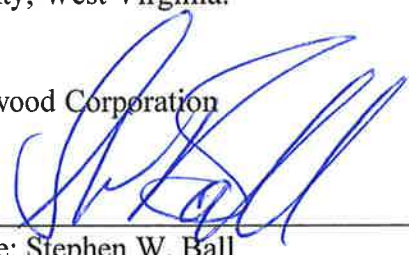
TO WVDEP:

Chief Inspector  
Environmental Enforcement  
West Virginia Department of Environmental Protection  
601 57th St.  
Charleston, WV 25304

19. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.


**IN WITNESS WHEREOF**, Grantor has set its hand and seal on the day and year firstabove written, and directs that this instrument be recorded in the office of the County Clerk of Monroe County, West Virginia.

Bellwood Corporation

By:   
Name: Stephen W. Ball  
Title: Executive Vice President

STATE OF Virginia  
COUNTY OF Roanoke

Be it remembered that on this 11<sup>th</sup> day of November, 2021, before me, the subscriber, a Notary Public, personally appeared: Stephen W. Ball and he thereupon acknowledged that he signed the foregoing instrument in such capacity, and that said instrument is the voluntary act of deed of said Bellwood Corporation.

  
Printed Name: Polly Hansen  
A Notary Public of Virginia

My Commission Expires: 3-31-22



Prepared by: Ronald H. Hatfield, Esq.  
General Counsel, Litigation  
James C. Justice Companies, Inc.  
302 S. Jefferson Street  
Roanoke, VA 24011

## **EXHIBIT A CONSERVED AREA**

The Conserved Area is located within the area known as Stoney Brook Plantation and located in the Union District of Monroe County (hereinafter “the Property”), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, Monroe County at Deed Book 275, Page 576.

The Conserved Area shall consist solely of that portion of Turkey Creek and the Unnamed Tributary to Turkey Creek located between the point 100 feet upstream of Dam 1 on the Unnamed Tributary to Turkey Creek depicted on Figure 1 to the confluence of Unnamed Tributary to Turkey Creek and Turkey Creek and between the point on Turkey Creek 100 feet upstream of Dam 3 to the point on Turkey Creek 100 feet downstream of Dam 20 as depicted on Figure 1 attached hereto, together with a lateral area along the length of the Conserved Area as described herein consisting of a buffer extending fifty (50) feet from the ordinary high water mark on either side of Turkey Creek and the Unnamed Tributary to Turkey Creek as restored pursuant to Paragraphs 23-26 of the Consent Decree entered in *United States of America and State of West Virginia v. James C. Justice Companies, et al.*, Dkt. No. 3.



# **EXHIBIT**

## **B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BLUEFIELD**

	)	
UNITED STATES OF AMERICA and	)	
The STATE OF WEST VIRGINIA, by	)	
and through the WEST VIRGINIA	)	
DEPARTMENT OF ENVIRONMENTAL	)	
PROTECTION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
JAMES C. JUSTICE COMPANIES, INC.,	)	
JAMES C. JUSTICE, II, and HIGH	)	
MOUNTAIN LIVING, LLC,	)	
	)	
Defendants.	)	
	)	

Civil Action No. 1:15-cv-16018

**CONSENT DECREE BETWEEN PLAINTIFFS AND DEFENDANTS JAMES C.  
JUSTICE COMPANIES, INC., AND JAMES C. JUSTICE, II**

WHEREAS, Plaintiffs the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the State of West Virginia (“the State”), by and through the West Virginia Department of Environmental Protection (“WVDEP”), filed the Complaint herein against the James C. Justice Companies, Inc., and James C. Justice, II (“Justice Defendants”) and High Mountain Living, LLC (collectively, “Defendants”), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), and the West Virginia Water Pollution Control Act (“West Virginia WPCA”), W. Va. Code Chapter 22, Article 11;

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) and Section 8 of the West Virginia WPCA, § 22-11-8, and applicable regulations by discharging

pollutants, including dredged or fill material, and/or controlling and directing the discharge of pollutants, including dredged or fill material, into waters of the United States and/or the State, without authorization, at certain locations along Turkey Creek and an unnamed tributary of Turkey Creek in Monroe County, West Virginia (“Sites”), as further depicted in Exhibit A to this Consent Decree;

WHEREAS, the Complaint seeks, *inter alia*: (1) to enjoin the discharge of pollutants into waters of the United States and the State at or from the Sites in violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and Section 8 of the West Virginia WPCA, § 22-11-8, and applicable regulations; (2) to require the Justice Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the impacts caused by their allegedly unlawful activities; and (3) to require the Justice Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d) and W. Va. Code § 22-11-22;

WHEREAS, Defendants deny any liability for the claims set forth in the Complaint;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States’ civil claims against the Justice Defendants under the CWA set forth in the Complaint regarding the Sites, and the State’s claims under the West Virginia WPCA set forth in the Complaint regarding the Sites;

WHEREAS, the Plaintiffs and the Justice Defendants agree that settlement of this case is in the public interest, that settlement of this matter will avoid the costs and uncertainties of litigation, and that entry of this Consent Decree is the most appropriate means of resolving the claims against the Justice Defendants in this case;

WHEREAS, Plaintiffs and the Justice Defendants agree that the restoration of the Sites by the Justice Defendants is a central objective of this Consent Decree; and

WHEREAS, the Plaintiffs and the Justice Defendants agree that this Consent Decree is a reasonable and fair settlement of the claims against the Justice Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and the West Virginia WPCA,

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Southern District of West Virginia pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because Defendants conduct business in this District, the subject Sites are located in this District, and the causes of action alleged herein arose primarily in this District.

3. For the purposes of this Consent Decree, the Justice Defendants agree that the Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344, and Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon the Justice Defendants, their officers, directors, agents, employees and servants, and their successors and assigns, and Plaintiffs and their respective officers, agents, and employees. In any action to enforce this Consent Decree against the Justice Defendants, the Justice Defendants shall not raise as a defense the failure of any of their officers, directors, agents, employees, successors or assigns or any person, firm or corporation (including, but not limited to, contractors of the Justice Defendants) acting in concert or participation with the Justice Defendants, to take any actions necessary to comply with the provisions hereof.

5. The Justice Defendants are responsible for compliance with the CWA, the West Virginia WPCA, and this Consent Decree at the Sites, and at any stream or wetland mitigation project to be completed or funded by the Justice Defendants in accordance with Paragraph 23 of this Consent Decree. In the event that the Justice Defendants hire contractors to perform any work at the Sites or at any stream or wetland mitigation project to be completed or funded by the Justice Defendants in accordance with Paragraph 23 of this Consent Decree that may involve land disturbance, the Justice Defendants shall provide a copy of this Consent Decree to such contractor(s) and ensure that the contractor complies with the Consent Decree. The transfer of ownership or other interest in the Sites or any stream or wetland mitigation project to be completed or funded by the Justice Defendants in accordance with Paragraph 23 of this Consent Decree shall not alter or relieve the Justice Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in any Sites or any stream or wetland mitigation project to be completed or funded by the Justice Defendants in accordance with Paragraph 23 of this Consent Decree by the Justice

Defendants, the Justice Defendants shall provide written notice and a true copy of this Consent Decree to their successors in interest to such Sites or such project and shall contemporaneously notify the United States Department of Justice, EPA, the United States Army Corps of Engineers (“the Corps”), and the State at the addresses specified in Section XI, below, that such notice has been given. As a condition to any such transfer by the Justice Defendants, the Justice Defendants shall reserve all rights necessary to comply with the terms of this Consent Decree.

### III. DEFINITIONS

Terms used in this Consent Decree that are defined in the CWA, the West Virginia WPCA or in regulations promulgated pursuant to the CWA or the West Virginia WPCA shall have the meanings assigned to them in the statute or such regulations, unless otherwise provided in this Consent Decree.

### IV. SCOPE AND EFFECT OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil and administrative claims for injunctive relief and penalties for the matters alleged in the Complaint against the Justice Defendants under CWA Section 301 and under Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22, concerning the Sites. Accordingly, Plaintiffs hereby release the Justice Defendants from, and covenant not to sue the Justice Defendants again with respect to, the civil claims for injunctive relief and civil penalties alleged in the Complaint against the Justice Defendants under CWA Section 301 and under Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22, concerning the Sites.

7. It is the express purpose of Plaintiffs and the Justice Defendants in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251, and Section 2 of the West Virginia WPCA, W. Va. Code § 22-11-2. All plans, studies, construction, remedial maintenance, compliance programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing the Justice Defendants to achieve and maintain compliance with, and to further the purposes of, the CWA and the West Virginia WPCA.

8. The Justice Defendants and their agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States at or from the Sites, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. Plaintiffs and the Justice Defendants acknowledge that Nationwide Permit 32, found at 77 Fed. Reg. 10,184 (Feb. 21, 2012), authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required pursuant to this Consent Decree shall be subject to and the Justice Defendants agree that they shall comply with all terms and conditions of Nationwide Permit 32, West Virginia's Standard Conditions for CWA Section 401 certification of Nationwide Permit 32, and this Consent Decree.

10. Plaintiffs and the Justice Defendants acknowledge that the State of West Virginia's General National Pollutant Discharge Elimination System/Water Pollution Control Permit No. WV0115924 ("General Permit"), effective January 4, 2013, provides that "any establishment with discharges composed entirely of stormwater associated with construction activities disturbing one acre or greater of land area," and agreeing to be regulated under the terms of the General Permit,

is granted coverage under the General Permit to “allow stormwater discharges into the surface waters of the State of West Virginia.” For any such stormwater discharges associated with the work required to be performed pursuant to this Consent Decree, the Justice Defendants agree to be bound by and comply with the terms of the aforementioned General Permit.

11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA’s ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

12. This Consent Decree in no way relieves the Justice Defendants of, or affects their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

13. This Consent Decree in no way affects the rights of the United States or the State as against any person not a party to this Consent Decree. This Consent Decree shall not be construed to create rights in, or to grant any cause of action to, any party that is not a party to this Consent Decree.

14. The United States and the State reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

15. Nothing in this Consent Decree shall constitute an admission of fact or law by the Justice Defendants.

16. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Justice



Defendants, the Justice Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved as specified in Paragraph 6 of this Consent Decree.

17. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Plaintiffs and the Justice Defendants with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein.

#### V. SPECIFIC PROVISIONS

##### CIVIL PENALTIES

18. Defendants James C. Justice Companies, Inc. and James C. Justice II shall jointly pay a civil penalty to the United States in the amount of \$110,000, and to the State in the amount of \$110,000, within 30 days of entry of this Consent Decree.

19. The Justice Defendants shall make the above-referenced payments to the United States by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2015V00107, EPA Region 3, and the DOJ case number 90-5-1-1-20019. Payment shall be made in accordance with instructions provided to the Justice Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of West

Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

20. At the time of the making the payments as set forth in Paragraph 18, the Justice Defendants shall send by mail a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for the civil penalty owed pursuant to this Consent Decree in United States of America, et al. v. James C. Justice Companies, et al., and referencing the DOJ case number 90-5-1-1-20019, to the Department of Justice and EPA at the addresses set forth in Section XI of this Decree. The Justice Defendants shall also send a copy of the EFT form, transaction record, and transmittal letter by electronic mail to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov), and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

21. The Justice Defendants shall make the payment to the State, as required by Paragraph 18, above, by certified or cashier's check to the WVDEP for deposit in the WVDEP's Water Quality Management Fund. The payment shall be mailed to:

Chief Inspector  
Environmental Enforcement  
West Virginia Department of Environmental Protection  
601 57th Street, SE  
Charleston, WV 25304

22. The Justice Defendants shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal, state, or local income tax.

RESTORATION, MITIGATION AND PRESERVATION

BY THE JUSTICE DEFENDANTS

23. Within 120 days of entry of this Consent Decree, the Justice Defendants shall submit to EPA at the addresses in Paragraph 56, below, a detailed Restoration Plan for the Sites. The Restoration Plan must: (a) be designed to restore the Sites to approximate pre-disturbance original conditions consistent with the definition of restoration found in 40 C.F.R. § 230.92; (b) include a schedule for implementation; (c) include compensation for impacts to streams and wetlands using the West Virginia Stream and Wetland Valuation Metric (“WVSWVM”) to determine the appropriate amount of mitigation needed to offset permanent and temporal losses to aquatic resources; (d) ensure that restored areas are stabilized so as to maintain channel and floodplain configuration and to avoid excessive erosion and sedimentation, landslides or slips; (e) utilize only native West Virginia species for planting; (f) incorporate quantitative performance measures; (g) establish a calculation of surplus credits, if any; and (h) include a post-restoration monitoring plan for a period of ten years.

24. After review of the Restoration Plan, EPA, in consultation with WVDEP, will: a) approve the Plan, in whole or in part; b) approve the Plan upon specified conditions; c) disapprove the Plan, in whole or in part; or d) any combination of the above. EPA may disapprove the Restoration Plan, in whole or in part, based on EPA’s determination that the Plan is not in accordance with the objectives of the Consent Decree and the CWA (and the West Virginia WPCA, as applicable).

25. If EPA disapproves all or part of a Restoration Plan, the Justice Defendants shall, within 60 days of receipt of EPA’s disapproval, address the reasons for disapproval and resubmit the Restoration Plan for approval. If a Restoration Plan submitted pursuant to this provision is

disapproved in whole or in part three times or more, EPA, in consultation with the Corps and the State, may itself correct the deficiencies in the Plan and require restoration in accordance with the plan developed by EPA, subject to the Justice Defendants' right to invoke Dispute Resolution pursuant to Section VIII of the Consent Decree.

26. Upon approval of a Restoration Plan (either with or without conditions or modifications by EPA), the Restoration Plan will be deemed incorporated into this Consent Decree, and the Justice Defendants shall implement the Plan as approved or modified by EPA. Restoration and mitigation work at each Restoration Site shall be executed in accordance with the approved schedule.

27. All other correspondence related to this Work Plan should be submitted to the EPA representatives to whom communications are to be made pursuant to Paragraph 56 of the Consent Decree.

28. Upon completion of the terms and conditions of Paragraphs 23–27, the Justice Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise similarly disturb soils, vegetation, and/or water resources in any manner whatsoever at any such Site, except as approved by EPA (in consultation with the Corps) and the State, or except as consistent with a Deed Restriction obtained pursuant to Paragraph 29.

29. To ensure that all reasonable steps are taken to prevent disturbance at the Sites, the Justice Defendants shall, within 180 days after entry of this Consent Decree, make and record deed restrictions (“Deed Restrictions”) for the Sites with the deed recording office for the county where the applicable parcel or parcels are located. The Deed Restrictions shall be substantially

similar to the sample attached as Appendix B, and shall provide that each deed, title, or other instrument conveying an interest in the subject parcel shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree. Upon recording of the Deed Restrictions the Justice Defendants shall give notice to the United States, EPA, the Corps, and the State at the addresses in Section XI.

30. If the Deed Restrictions described in Paragraph 29 are found to be defective or unlawful at any time, the United States and/or the State may: (1) require the Justice Defendants or their successors or assigns, to obtain the granting of a conservation easement or deed restriction for the subject parcel that applies with applicable law; or (2) require additional compensatory mitigation to off-set the loss of permanent protection of a specific site in accordance with Paragraph 23.

#### VI. NOTICES AND OTHER SUBMISSIONS

31. Within 5 days of March 30 and September 30 of each year until this Consent Decree is terminated, the Justice Defendants shall provide the United States and the State with a written status report detailing the Justice Defendants' progress toward completing all tasks required by Section V of this Consent Decree. The status report shall be sent to the addresses specified in Section XI of this Consent Decree.

32. If a required task has been completed, the notice shall specify the date when it was completed. If the required task was completed after the scheduled time for such completion required by the Consent Decree, the notice shall explain the reasons for such delay.

33. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Justice Defendants shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

34. During the term of this Consent Decree, and until five years after the termination of this Consent Decree, the Justice Defendants shall preserve and retain all records, documents, and information of any kind now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in this Consent Decree (including all Appendices), regardless of any corporate or other retention policy or practice to the contrary. The Justice Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this Consent Decree (including Appendices) for a period through five years following the termination of this Consent Decree.

35. At the conclusion of the document retention period, the Justice Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, the Justice Defendants shall deliver any such records or documents to EPA or the State, as applicable. The Justice Defendants

may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Justice Defendants assert such a privilege, they shall provide the United States or the State, as applicable, with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Justice Defendant. However, no final documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

36. Inspections.

a. Until termination of this Consent Decree, the United States, WVDEP, and their authorized representatives and contractors shall have authority at all reasonable times to enter the Sites to:

- (i) Monitor the activities required by this Consent Decree;
- (ii) Verify any data or information submitted to the United States or WVDEP;
- (iii) Obtain samples;
- (iv) Inspect and evaluate restoration, mitigation and/or preservation activities conducted pursuant to this Consent Decree; and
- (v) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

b. This Paragraph 36 of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States or WVDEP to conduct inspections, to require monitoring and to obtain information from the Justice Defendants as authorized by law.

#### VIII. DISPUTE RESOLUTION

37. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section VIII shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. If the Justice Defendants are aware, or reasonably should have been aware, of a dispute with respect to the meaning or requirements of this Consent Decree prior to an action by the United States and/or the State to enforce any obligation of this Consent Decree, but fail to seek resolution of such dispute under this Section VIII prior to such action by the United States and/or the State, then the Justice Defendants shall be precluded from raising the disputed issue as a defense to such action by the United States and/or the State.

38. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the parties to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and/or the State, on the one hand, and the Justice Defendants, on the other, cannot be resolved by informal negotiations, then the written position advanced by the United States following consultation with the State shall be considered binding unless, within fourteen (14)



days after the end of the informal negotiations period, the Justice Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States, in consultation with the State, shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Justice Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable), and that the position of the Justice Defendants will achieve compliance with the terms and conditions of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable).

39. If the United States and/or the State believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, the United States and/or the State may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Justice Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Justice Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that the position of the Justice Defendants will achieve compliance with the terms and conditions of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable).

40. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of any Defendant under this Consent Decree, except as provided in Section X, below, regarding payment of stipulated penalties.

#### IX. FORCE MAJEURE

41. The Justice Defendants shall perform all actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event or series of related events arising from causes beyond the control of the Justice Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits, unless the Justice Defendants have timely applied for such federal, state or local permits and have provided all information required by the federal, state, or local authority in connection with such permit(s).

42. If the Justice Defendants believe that a Force Majeure event has affected or will affect their ability to perform any action required under this Consent Decree, the Justice Defendants shall notify the United States and the State in writing within ten (10) calendar days after the Force Majeure event begins at the addresses listed in Section XI. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and

- D. any measures taken or planned by the Justice Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

The Justice Defendants may also provide to the United States and the State any additional information that the Justice Defendants deem appropriate to support a conclusion that a Force Majeure event has affected the ability of the Justice Defendants to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States and the State shall constitute a waiver of any claim of Force Majeure as to the event in question.

43. If the United States, after a reasonable opportunity for consultation with the State, determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. The Justice Defendants shall coordinate with the United States and the State to determine when to begin or resume the operations that had been affected by any Force Majeure event.

44. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, the Justice Defendants or the United States (in consultation with the State) may seek a resolution of the dispute under the procedures in Section VIII of this Consent Decree.

45. The Justice Defendants shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of the Justice Defendants and any entity controlled by the Justice Defendants, including their contractors and consultants; (2) that the Justice Defendants or any entity controlled by the Justice Defendants

could not have avoided or prevented noncompliance by due diligence; and (3) the number of days of noncompliance that were caused by such circumstances.

X. STIPULATED PENALTIES

46. After entry of this Consent Decree, if the Justice Defendants fail to timely fulfill any requirement of the Consent Decree, then the Justice Defendants shall pay a stipulated penalty to the United States and the State for each violation of each requirement of this Consent Decree as follows:

- |    |  |                    |
|----|--|--------------------|
| A. | For Day 1 up to and including Day 30 of non-compliance | \$1,000.00 per day |
| B. | For Day 31 up to and including 60 of non-compliance    | \$2,000.00 per day |
| C. | For Day 61 and beyond of non-compliance                | \$3,000.00 per day |

A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree. Stipulated penalties under this Section X shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases.

Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

47. The Justice Defendants shall pay any stipulated penalty within forty-five (45) days of the date the Justice Defendants receive a demand by either Plaintiff. The Plaintiff making the demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the

other Plaintiff by electronic or first-class mail. The Justice Defendants shall pay 50 percent of the total stipulated penalty amount to the United States and 50 percent to the State.

48. Either the United States or the State may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties that would otherwise be due to it under this Consent Decree.

49. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VIII and/or the Force Majeure provisions in Section IX shall be resolved upon motion to this Court as provided in Paragraphs 44 and 45 (Dispute Resolution).

50. The filing of a motion requesting that the Court resolve a dispute shall stay the Justice Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that the Justice Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by the Justice Defendants as provided in this Section.

51. To the extent the Justice Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Section IX, above) or otherwise prevails on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

52. In the event that a stipulated penalty payment is applicable and not made on time, the Justice Defendants shall be liable for interest on such penalties in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually. Nothing in this Paragraph shall be construed to limit the right of the United States or the State to seek any remedy otherwise provided by law for the Justice Defendants' failure to pay any stipulated penalties.

53. Any payment of a stipulated penalty shall be paid to the United States by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2015V00107, EPA Region 3, and the DOJ case number 90-5-1-1-20019. Payment shall be made in accordance with instructions provided to the Justice Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of West Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, at the time of the making the payment as set forth in this Paragraph, the Justice Defendants shall send by mail a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for stipulated penalties owed pursuant to this Consent Decree in United States of America, et al. v. James C. Justice Companies, Inc., et al., and referencing the DOJ case number 90-5-1-1-20019, to the Department of Justice and EPA at the addresses set forth in Section XI of this Decree. The Justice Defendants shall also send a copy of the EFT form, transaction record, and transmittal letter by electronic mail to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov), and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

54. Any payment of a stipulated penalty to the State shall be made by certified or cashier's check to the WVDEP for deposit in the WVDEP's Water Quality Management Fund.

The payment shall be mailed to:

Chief Inspector  
Environmental Enforcement  
West Virginia Department of Environmental Protection  
601 57th Street, SE  
Charleston, WV 25304

55. Subject to Paragraph 6 of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for the Justice Defendants' violation of this Consent Decree or applicable law.

#### XI. ADDRESSES

56. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

- (1) Stefania D. Shamet  
Senior Assistant Regional Counsel  
Water and General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region III  
MC 3RC20  
1650 Arch St.  
Philadelphia, PA 19103-2029
- (2) Associate Director, Office of Environmental Programs

Environmental Assessment and Innovation Division  
United States Environmental Protection Agency  
Region III  
MC 3EA40  
1650 Arch St.  
Philadelphia, PA 19103-2029

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Austin Saylor  
Trial Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

C. TO THE CORPS:

Debra R. Tabor  
Deputy District Counsel  
Huntington District  
U.S. Army Corps of Engineers  
502 8<sup>th</sup> Street  
Huntington, WV 25701

D. TO THE STATE/WVDEP:

Chief Inspector  
Environmental Enforcement  
West Virginia Department of Environmental Protection  
601 57th St.  
Charleston, WV 25304

E. TO THE JUSTICE DEFENDANTS:

Dustin M. Deane  
Associate General Counsel  
James C. Justice Companies, Inc.  
302 South Jefferson St.  
Roanoke, VA 24011



XII. COSTS OF SUIT

57. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action, except that the United States and/or the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by the Justice Defendants.

XIII. PUBLIC COMMENT

58. Plaintiffs and the Justice Defendants acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States and the State is subject to the requirements of 28 C.F.R. § 50.7, and the W. Va. Code R. § 47-10-16.2.c, which provide for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Justice Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Justice Defendants in writing that it no longer supports entry of the Consent Decree.

XIV. CONTINUING JURISDICTION OF THE COURT

59. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the

pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

#### XV. MODIFICATION

60. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by the United States, the State, and the Justice Defendants and approved by the Court; provided, however, that schedules for the completion of tasks required by Paragraphs 23, 25, and 29 may be modified by written agreement of the United States, the State, and the Justice Defendants.

#### XVI. TERMINATION

61. Except for Paragraph 8, this Consent Decree may be terminated by either of the following:

- a. The Justice Defendants, the United States, and the State may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or
- b. After the Justice Defendants have paid the civil penalties and fulfilled all of the obligations in Section V, and have paid any accrued stipulated penalties as required by this Consent Decree, the Justice Defendants may serve a Request for Termination on the United States, EPA and the State. The Request for Termination shall state that the Justice Defendants have satisfied all requirements of this Consent Decree, except for the requirement in Paragraph 23 for ten years' post-construction monitoring. The Request for Termination shall also include supporting documentation sufficient to demonstrate that the Justice Defendants have satisfied the

foregoing criteria. Following service of the Justice Defendants' Request for Termination, the Parties may confer informally concerning the Request.

(i) If the United States and the State agree that the Consent Decree may be terminated, the parties shall submit, for the Court's approval, a joint stipulation to terminate the Consent Decree.

(ii) If the United States or the State does not agree that the Consent Decree may be terminated, then the Justice Defendants may submit a motion to the Court asking for termination of the Consent Decree without invoking Dispute Resolution under Section VIII of this Consent Decree; provided, however, that the Justice Defendants shall not submit such motion until 90 days after service of its Request for Termination on the United States and the State, and the Justice Defendants shall bear the burden of proving by a preponderance of the evidence that their position is in accordance with the terms and conditions of this Consent Decree and the requirements of the CWA (and the West Virginia WPCA, as applicable).

#### XVII. SIGNATORIES/SERVICE

62. Each of the Justice Defendants' signatories certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

63. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The Justice Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XVIII. APPENDICES

64. The following appendices are attached to and part of this Consent Decree:

Appendix A; Appendix B.

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IT IS SO ORDERED.


Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

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United States District Judge


ON BEHALF OF THE UNITED STATES:

JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division

  
Austin Saylor  
Trial Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-1880


Dated: December 10, 2015

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

  
\_\_\_\_\_  
**Mark Pollins, Director**  
**Water Enforcement Division**  
**Office of Civil Enforcement**  
**Office of Enforcement and Compliance Assurance**  
**U.S. Environmental Protection Agency**

Dated: 11-19-15

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Shawn M. Garvin  
Regional Administrator  
U.S. Environmental Protection Agency  
Region III

Dated: 12/7/15

ON BEHALF OF THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

  
\_\_\_\_\_

Scott Mandriola

Director

Division of Water and Waste Management

West Virginia Department of Environmental Protection

601 57th Street Southeast

Charleston WV 25304

(304) 926-0499

Dated: 11/20/15

  
\_\_\_\_\_

Scott Driver

Associate Attorney

West Virginia Department of Environmental Protection

601 57th Street Southeast

Charleston WV 25304

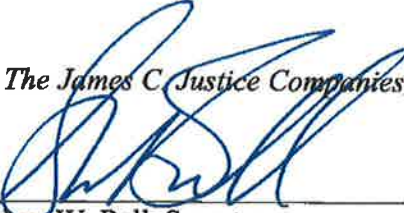
(304) 926-0499

Dated: 11/23/15



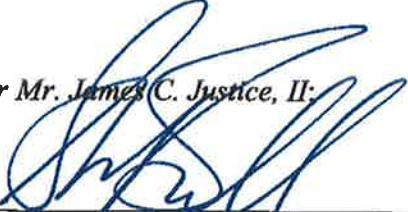
ON BEHALF OF JUSTICE DEFENDANTS:

*For The James C. Justice Companies, Inc.:*

  
\_\_\_\_\_  
Stephen W. Ball, Secretary

Dated: November 11, 2015

*For Mr. James C. Justice, II:*

  
\_\_\_\_\_  
Stephen W. Ball, Attorney-in-fact

Dated: November 11, 2015

**Appendix A: Map of Sites**



**Appendix B: Model Deed Restriction**

Prepared by: [AUTHOR]

**DEED RESTRICTION**

THIS DECLARATION OF DEED RESTRICTIONS FOR CONSERVATION (“Declaration”) made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by [*Name of Landowner*] (“Grantor”), having an address at \_\_\_\_\_;

WITNESSETH:

**WHEREAS**, [GRANTOR] is the owner of certain real property known as Stoney Brook Plantation and located in the [PROPERTY TITLE] (hereinafter “the Property”), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, [COUNTY] at Deed Book [BOOK], Page [PAGE]; and

**WHEREAS**, Grantor, having the authority to do so, intends to record this Declaration in order to restrict subsequent disturbance and/or development of that certain portion of the surface of the Property described on Exhibit A attached hereto (the “Conserved Area”) in perpetuity;

**WHEREAS**, it is not the intent of this Declaration to restrict disturbance and/or development of any portion of the Property located outside the Conserved Area;

**WHEREAS**, the Conserved Area possesses open space and natural values (collectively, “Conservation Values”) of great importance to Grantor, the people of [COUNTY], and the people of the State of West Virginia, and all current and future generations of mankind;

**WHEREAS**, preservation of the Conserved Area is consistent with a central objective of a Consent Decree in the matter of United States of America, et al. v. James C. Justice Companies, Inc., et al., Civil Action No. \_\_\_\_\_ (S.D. W. Va.) (“Justice Companies CD”), Grantor agrees that the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the West Virginia Department of Environmental Protection, and their successor agencies (collectively “Third Parties”), are third-party beneficiaries under this Declaration, except that nothing herein creates a property interest in the Federal Government or the State of West Virginia with regard to the Conserved Area;

**NOW THEREFORE**, Grantor hereby agrees that the Conserved Area shall be subject in perpetuity to the following conveyances, covenants and restrictions:

- I. This Declaration shall be a burden upon and shall run with the Conserved Area, and shall bind Grantor, its successors and assigns, in perpetuity. Grantor shall record this Declaration in the Land Records of the county or counties where the Property is located within sixty (60) days of the effective date of this Declaration. Grantor shall provide the Third Parties with proof of recordation and give notice of this Declaration to current

record title holders of easements in the Conserved Area within thirty (30) days of recording by the County Clerk.

2. The following activities are prohibited in the Conserved Area, except as necessary for the control of alien invasive or noxious plant or animal species or as necessary to accomplish restoration and/or mitigation described in Paragraph 7:
  - a. Removal, excavation, dredging, or disturbance of the surface;
  - b. Dumping of, storage of, or filling with soil, rock, biological material, trash, ashes, garbage, waste, or other materials;
  - c. Draining, impounding, or impairing the flow or circulation, or reducing the reach of waters, including wetlands; or any other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended;
  - d. Installation of structures;
  - e. Placement of pavement or other impervious materials;
  - f. Alteration of the existing (post-restoration pursuant to Paragraphs 23-26 of the Justice Companies CD) pattern of vegetation through removal, destruction, or planting of vegetation;
  - g. Conversion of, or expansion into, any portion of the Conserved Area for use of agricultural, horticultural, aquacultural, silvicultural, livestock production, or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agricultural to silvicultural);
  - h. The use of fertilizers, herbicides or pesticides;
  - i. Removal, clearing, pruning, or mowing of live vegetation, including trees, unless Grantor demonstrates that such removal will result in habitat enhancement or to prevent a safety hazard, and Grantor has received written approval of the West Virginia Department of Environmental Protection;
  - j. The use of the Conserved Area to provide required open space for the development or subdivision of another property or to determine any other permissible residential, commercial or agricultural uses of another property; or any legal or de facto division, subdivision or portioning of the Conserved Area;
  - k. Any other use of or activity in the Conserved Area that is inconsistent with the purpose of this Declaration.

3. It is the purpose of the Declaration to assure that the Conserved Area will be maintained as such and to prevent any unauthorized disturbance and/or development to the Conserved Area.
4. Notwithstanding any provisions to the contrary, this Declaration is subject to and subordinate to any existing and duly recorded rights with respect to the Conserved Area. All structures, infrastructure, as well as all pre-existing easements or other duly recorded rights in the Conserved Area identifiable through a title search extending to documents placed of record within twenty (20) years prior to the date of this Declaration, shall be indicated on Exhibit A, which is attached to this instrument and includes a copy of the most recent property deed for the Property and a description sufficient to identify the boundaries of the Conserved Area. Grantor certifies that to Grantor's actual knowledge, there are no previously granted easements existing in the Conserved Area that interfere or conflict with the purpose of this Declaration.
5. All mortgages and deeds of trust granted or entered into after the date hereof affecting the Conserved Area will be subordinate to this Declaration.
6. The Conserved Area is subject to the Justice Companies CD. Each deed, title or other instrument conveying an interest in the Conserved Area shall contain a notice stating that the Property is subject to the Justice Companies CD and shall reference the recorded location of the Justice Companies CD and any restrictions applicable to the Property under the Justice Companies CD.
7. The James C. Justice Companies, Inc., Mr. James Justice, II, and the Third Parties shall have the right to:
  - a. enter upon the Conserved Area for the purpose of inspecting the Conserved Area to determine compliance with the purposes and terms of this Declaration, or for any other purpose authorized by this Declaration or by the Justice Companies CD. When practicable, such entry shall be upon prior reasonable notice to the property owner. This right of entry is in addition to and does not limit any right of entry otherwise granted by Federal or State law;
  - b. take any and all action within the Conserved Area necessary to address a situation that poses an immediate risk to health, life, property or the environment; and
  - c. take any and all action within the Conserved Area required by Federal or State law or approved by the Third Parties.
8. Grantor grants to the Third Parties a discretionary right to enforce this Declaration. In the event of a breach of this Declaration by Grantor or another party, the Third Parties shall notify Grantor of the breach. If Grantor fails to take corrective action within 60 days of such notice, the Third Parties may undertake actions to effect such corrective action, including bringing a judicial action against any person(s) or entity(ies) violating or attempting to violate this Declaration: provided, however, that no violation of this

Declaration shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing party shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. The costs of breach, correction and/or restoration, including the Third Parties' expenses, court costs, and attorney's fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of the Third Parties, and no omissions or delay in acting shall constitute a waiver of any enforcement right. These rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, under any applicable permit or certification, or under the Justice Companies CD.

9. The James C. Justice Companies, Inc., Mr. James Justice, II, and/or their contractors shall have the right to enter upon the Conserved Area for the purpose of performing any work required by a restoration or mitigation plan approved under the Justice Companies CD, including construction, planting, maintenance, monitoring, long-term management, or any other restoration, enhancement, or mitigation work specified therein, provided such work is conducted in accordance with such approved plan.
10. Grantor reserves to itself, its successors or assigns, all rights as owners of the Property, including the right to engage in all uses of the Conserved Area not inconsistent with the purpose and terms of this Declaration.
11. Grantor reserves to itself, its successors or assigns, all rights as owners of the portion of the Property outside the Conserved Area to engage in all uses authorized by law.
12. Grantor shall provide the the Third Parties written notice of any transfer or change in ownership of, or of the execution of any subsequent easement affecting, any portion of the Conserved Area, including but not limited to the name and address of the new owner at least thirty (30) days prior to the transfer or change in ownership, or execution of such easement.
13. Grantor agrees that the terms, conditions, restrictions and purposes of this Declaration will be inserted in any subsequent deed, subdivision deed, lease, sub-lease or other legal instrument by which Grantor divests itself of any interest in any portion of the Conserved Area. Notwithstanding the failure of Grantor to include the terms and restrictions of this instrument, it shall run with the land and be binding on all heirs, successors and assigns.
14. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of the Third Parties. Amendments to this Declaration must be in writing, and must be consistent with the conservation purposes of this Declaration. Grantor shall record any modification or termination of this Declaration in the Land Records of the county or counties where the Conserved Area is located within sixty (60) days of executing such a modification or termination. Grantor shall provide the Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk.

15. For any modification, transfer, conveyance, or assignment accomplished under paragraphs 12, 13, or 14, Grantor shall amend this instrument by preparing and submitting:
  - a. A revised plan and metes and bounds description for the area to be preserved under the Declaration (hereinafter the "Modification Documents"); and
  - b. An Amended Declaration of Deed Restrictions that reflects the modifications to the original Declaration, the justification for the modification, and that also includes the deed book and page of the title deed for the property or properties subject to the modified Declaration set forth in the Modification Documents.
16. Grantor shall record the documents listed in paragraphs 5,6, or 15, above, in the same manner and place as this original Declaration was recorded.
17. Miscellaneous.
  - a. The laws of the State of West Virginia shall govern the interpretation and performance of this Declaration.
  - b. If any provision of this Declaration or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
  - c. Should there be more than one Grantor, the obligations imposed by this Declaration upon each Grantor shall be joint and several.
  - d. The covenants, terms, conditions and restrictions of this Declaration shall continue as a servitude running in perpetuity with the Conserved Area.
  - e. The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon construction or interpretation.
  - f. The covenants, terms, conditions, restrictions and purposes imposed with this Declaration shall not only be binding upon Grantor but also upon its agents, personal representatives, executors, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Conserved Area.



18. Any notice, demand, request, consent, approval or communication under this Declaration shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Third Parties:

TO EPA:

- (1) Stefania D. Shamet  
Senior Assistant Regional Counsel  
Water and General Law Branch  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region III  
MC 3RC20  
1650 Arch St.  
Philadelphia, PA 19103-2029
  
- (2) Associate Director, Office of Environmental Programs  
Environmental Assessment and Innovation Division  
United States Environmental Protection Agency  
Region III  
MC 3EA30  
1650 Arch St.  
Philadelphia, PA 19103-2029

TO THE CORPS:

Debra R. Tabor  
Deputy District Counsel  
Huntington District  
U.S. Army Corps of Engineers  
502 8<sup>th</sup> Street  
Huntington, WV 25701

TO WVDEP:

Chief Inspector  
Environmental Enforcement  
West Virginia Department of Environmental Protection  
601 57th St.  
Charleston, WV 25304

19. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.

**IN WITNESS WHEREOF**, Grantor has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the [RELEVANT COUNTY].

[GRANTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Be it remembered that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the subscriber, a Notary Public, personally appeared: [NAME] and he thereupon acknowledged that he signed the foregoing instrument in such capacity, and that said instrument is the voluntary act of deed of said [NAME].

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
A Notary Public of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### CONSERVED AREA

The Conserved Area is located within the area known as Stoney Brook Plantation and located in the [PROPERTY TITLE] (hereinafter “the Property”), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, [COUNTY] at Deed Book [BOOK], Page [PAGE].

The Conserved Area shall consist solely of that portion of Turkey Creek and the Unnamed Tributary to Turkey Creek located between the point 100 feet upstream of Dam 1 on the Unnamed Tributary to Turkey Creek depicted on Figure 1 to the confluence of Unnamed Tributary to Turkey Creek and Turkey Creek and between the point on Turkey Creek 100 feet upstream of Dam 3 to the point on Turkey Creek 100 feet downstream of Dam 20 as depicted on Figure 1 attached hereto, together with a lateral area along the length of the Conserved Area as described herein consisting of a buffer extending fifty (50) feet from the ordinary high water mark on either side of Turkey Creek and the Unnamed Tributary to Turkey Creek as restored pursuant to Paragraphs 23-26 of the Consent Decree entered in *United States of America and State of West Virginia v. James C. Justice Companies, et al.*, Dkt. No. \_\_\_\_\_.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BLUEFIELD**

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UNITED STATES OF AMERICA, and )  
the STATE OF WEST VIRGINIA, by )  
and through the WEST VIRGINIA )  
DEPARTMENT OF ENVIRONMENTAL )  
PROTECTION, )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
JAMES C. JUSTICE COMPANIES, INC., )  
JAMES C. JUSTICE, II, and HIGH )  
MOUNTAIN LIVING, LLC, )  
) )  
Defendants. )

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Civil Action No. 1:15-cv-16018

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of December, 2015, I mailed the foregoing [Proposed] Consent Decree Between Plaintiffs and Defendants James C. Justice, II, and James C. Justice Companies, Inc., by United States Postal Service, first-class, to the following non-CM/ECF participants:

Michael Callaghan (counsel for James C. Justice, II and James C. Justice Companies, Inc.)  
Law Offices of Neely & Callaghan  
159 Summers Street  
Charleston, WV 25301  
(304) 343-6500

Robert L. Hogan (counsel for High Mountain Living, LLC)  
Bowles Rice  
600 Quarrier Street  
Charleston, WV 25301  
(304) 347-1114

/s/ Austin D. Saylor  
AUSTIN D. SAYLOR  
U.S. Department of Justice

Environment and Natural Resources Division  
Environmental Defense Section  
601 D Street, N.W., Suite 8000  
Washington, DC 20004  
Phone: (202) 514-1880  
Fax: (202) 514-8865  
[saylor.austin@usdoj.gov](mailto:saylor.austin@usdoj.gov)