



**JOURNAL of the PROCEEDINGS  
of the  
CITY COUNCIL**

CITY OF CHARLESTON, WEST VIRGINIA

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Regular Meeting – Monday, March 6, 2017

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

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**OFFICIAL RECORD**

**Danny Jones  
Mayor**

**JB Akers  
City Clerk**

***CALL TO ORDER***

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The Council met in the Chambers of the City Building at 7:00 P.M., for the first meeting in the month of March on the 6<sup>th</sup> day, in the year 2017, and was called to order by the Honorable Mayor, Danny Jones. The invocation was delivered by Councilmember Harrison and the Pledge of Allegiance was led by Councilmember Faegre. The Honorable Clerk, JB Akers, called the roll of members and it was found that there were present at the time:

**BURKA  
CHESTNUT  
EALY  
HARRISON  
LANE  
PERSINGER  
SALISBURY  
SNODGRASS  
WARE**

**BURTON  
CLOWSER  
FAEGRE  
HOOVER  
MINARDI  
REISHMAN  
  
STEELE  
WEBB**

**CEPERLEY  
DAVIS  
HAAS  
IRELAND  
OVERSTREET  
RICHARDSON  
  
TALKINGTON  
MAYOR JONES**

With twenty-five members being present, the Mayor declared a quorum present.

Pending the reading of the Journal of the previous meeting, the reading thereof was dispensed with and the same duly approved.

***PUBLIC SPEAKERS***

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None

***CLAIMS***

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1. A claim of Mary Collins, 6537 Roosevelt Avenue SE, Charleston, WV; alleges damage to property.  
Refer to City Solicitor.

***PUBLIC HEARINGS***

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1. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Resolution No. 864-17. No person from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.
2. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Resolution No. 869-17. No person from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.

**REPORTS OF COMMITTEES**

**COMMITTEE ON PARKING**

Councilmember Reishman, Chair of the Council Committee on Parking, submitted the following reports:

1. Your committee on Parking has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 859-17 do pass.

Resolution No. 859-17 – Authorizing the Finance Director to amend the FY 2016-2017 Parking System Fund budget as indicated on the attached list of accounts.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to amend the FY 2015-2016 Parking System Fund budget as indicated on the attached list of accounts.

Will be voted on under Finance.

## **COMMITTEE ON STREETS AND TRAFFIC**

Councilmember Hoover, Chair of the Council Committee on Streets and Traffic, submitted the following reports:

1. Your committee on Streets and Traffic has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7728 do pass.

Bill No. 7728 – A Bill to establish a no parking zone on the North Side of Grace Avenue between Mathews Avenue and Somerset Drive and amending the Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Be it Ordained by the Council of the City of Charleston, West Virginia:

Section 1. A no parking zone on the North Side of Grace Avenue between Mathews Avenue and Somerset Drive .

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

Councilmember Hoover moved to approve the Bill. Councilmember Lane seconded the motion.

A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Richardson, Salisbury, Snodgrass, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: NONE

ABSENT: Slater, Smith

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7728 passed.

2. Your committee on Streets and Traffic has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7730 do pass.

Bill No. 7730 – A Bill to establish a handicapped parking zone at 1530 1st Avenue and amending the Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith

Be it Ordained by the Council of the City of Charleston, West Virginia:

Section 1. A handicapped parking zone at 1530 1st Avenue is hereby established.

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. It shall be unlawful for any vehicle not displaying the insignia provided for in Section 2 to park in those spaces for the disabled provided for in Section 1. Any vehicle in violation of this section may be ticketed and impounded as provided for in Chapter 114, Vehicles and Traffic Law, Code of the City of Charleston, West Virginia.

Section 4. All prior Ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

Councilmember Hoover moved to approve the Bill. Councilmember Lane seconded the motion. A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Richardson, Salisbury, Snodgrass, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: NONE

ABSENT: Slater, Smith,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7730 passed.

**COMMITTEE ON FINANCE**

Councilmember Reishman, Chair of the Council Committee on Finance, submitted the following reports:

1. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 859-17 do pass.

Resolution No. 859-17 - Authorizing the Finance Director to amend the FY 2016-2017 Parking System Fund budget as indicated on the attached list of accounts.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to amend the FY 2015-2016 Parking System Fund budget as indicated on the attached list of accounts.

**Parking System FY 2016-2017 Budget Amendment No. 2 - March 6, 2017**

<b>Account No.</b>	<b>Department</b>	<b>Account Description</b>	<b>Amount</b>
406 571 00 000 1 103	Parking System	Wages & Salaries	(24,272)
406 571 00 000 1 104	" "	FICA	(1,857)
406 571 00 000 1 105	" "	Medical/Life Insurance	(2,948)
406 571 00 000 1 106	" "	Retirement - PERS	(2,913)
406 571 00 000 1 111	" "	Dental/Optical Insurance	(168)
406 571 00 000 1 112	" "	Insurance - Employee Contribution	718
406 571 00 000 2 226	" "	Insurance - WC/UC	(508)
406 571 00 000 2 230	" "	Contract Services	31,948

To remove the position of Parking Director and remove the budgetary funds.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Richardson, Salisbury, Snodgrass, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: NONE

ABSENT: Slater, Smith,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 859-17 adopted.

2. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 860-17 do pass.

Resolution No. 860-17 – Authorizing the Finance Director to amend the FY 2016-2017 General Fund budget as indicated on the attached list of accounts.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to amend the FY 2015-2016 General Fund budget as indicated on the attached list of accounts.

**General Fund FY 2016-2017 Budget Amendment No. 10 - March 6, 2017**

Account No.	Department	Account Description	Amount
001 416 00 000 2 230	Building Commission	Contract Services	80,000
001 409 00 000 5 568	Mayor's Office	Contributions - Other Entities	20,000
001 699 00 000 5 598	Contingency		(100,000)

To provide budgetary funds for (1) additional demolitions of vacant property and (2) a contribution for a spay and neuter center.

001 712 00 000 1 103	Traffic, Parking & Transportation	Wages & Salaries	24,272
001 712 00 000 1 104	" " "	FICA	1,857
001 712 00 000 1 105	" " "	Medical/Life Insurance	2,948
001 712 00 000 1 106	" " "	Retirement - PERS	2,913
001 712 00 000 1 111	" " "	Dental/Optical Insurance	168
001 712 00 000 1 112	" " "	Insurance - Employee Contribution	(718)
001 712 00 000 2 226	" " "	Insurance - WC/UC	508
001 370 01 0000	Revenue	Charges to Other Funds - Parking System	(31,948)

To establish a new position, Director - Traffic, Parking and Transportation Planning Department (Pay Grade 125). Additionally, this amendment changes the title of the existing Traffic Engineer (PG 123) to Assistant Director - Traffic, Parking and Transportation Planning (PG 121) and changes the title of the existing Traffic Technician (PG 116) to Deputy Director Traffic Operations (PG 119).

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 860-17 adopted.



3. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 861-17 do pass.

Resolution No. 861-17 – Authorizing the Mayor or City Manager, subject to final review by the City Attorney, to enter into contracts through Commercial Insurance Services and Arthur J. Gallagher Risk Management Services, Inc., at a price of \$916,362.00, for the City’s Risk Management and Property and Casualty Insurance coverage for the period March 31, 2017 through March 31, 2018, in accordance with the costs attached, and specifically by rejecting all underinsured motorists coverage and accepting uninsured motorists coverage with statutory minimum limits of \$25,000/\$50,000/\$25,000 only; and further authorizing the Mayor or City Manager to sign the appropriate forms rejecting the underinsured motorists coverage and accepting the uninsured motorists coverage.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed, subject to final review by the City Attorney, to enter into contracts through Commercial Insurance Services and Arthur J. Gallagher Risk Management Services, Inc., at a price of \$916,362.00, for the City’s Risk Management and Property and Casualty Insurance coverage for the period March 31, 2017 through March 31, 2018, in accordance with the costs attached, and specifically by rejecting all underinsured motorists coverage and accepting uninsured motorists coverage with statutory minimum limits of \$25,000/\$50,000/\$25,000 only; and further authorizing the Mayor or City Manager to sign the appropriate forms rejecting the underinsured motorists coverage and accepting the uninsured motorists coverage.

**City of Charleston  
Historical Coverage and Pricing Summary**

**2017-2018 Cost Summary:**

<b>Subject</b>	<b>15/16 Expiring Cost</b>	<b>16/17 Renewal</b>	<b>17/18</b>
BRIT All Lines Aggregate (ALA) – Primary property and liability coverages	\$765,000	\$740,000	\$703,427
Terrorism (Property)	Included	Included	Included
Terrorism (Liability)	Included	Included	Included
Excess Property (Hartford)	\$93,111	\$93,111	\$93,038
Boiler and Machinery (Hartford Steam Boiler)	15,327	\$15,366	\$15,306
Premium Taxes (WVDOI)	\$34,892	\$33,755	\$32,091
Loss Control Consulting Fee (CIS)	\$25,000	\$35,000	\$35,000
AJG Placement Fee	\$37,500	\$37,500	\$37,500
Subtotal Cost	\$970,830	\$954,732	\$916,362
Loss Control Reimbursement (from BRIT)	-\$25,000	-\$25,000	-\$25,000
Net Cost to The City of Charleston after reimbursement of Loss Control Fee	\$945,830	\$929,732	\$891,362

**STAND-ALONE TPA FEES**

	15/16	16/17	17/18
TPA Workers' Compensation and Property/Casualty Claims Handling Contract Fee (RMSC)	\$97,140	\$97,140	\$103,720

BRIT – ALA renewal pricing reflects a 5% rate reduction.

**Premium History for The City of Charleston  
(Total Cost Including TPA Claims Service):**

2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
\$1,207,619	\$1,138,600	\$1,004,742.44	\$1,005,544.70	\$1,042,562	\$1,042,970	\$1,026,872	\$995,082

DISCLAIMER: Coverage outlines used on this spreadsheet are only visuals to a basic understanding of coverages. If there is any conflict between the coverage statements and the actual insurance policy, the policy provisions will prevail.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. Councilmember Burton abstained from voting. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 861-17 adopted.

4. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 862-17 do pass.

Resolution No. 862-17 – Authorizing the Mayor or City Manager, subject to final review by the City Attorney, to enter into contracts through Commercial Insurance Services and Risk Management Services Co. (RMSC) for Third Party Administration of Workers Compensation and Property/Casualty claims for the period of April 1, 2017 through March 31, 2018, in accordance with the costs attached and a fee advance of \$103,720.00.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed, subject to final review by the City Attorney, to enter into contracts through Commercial Insurance Services and Risk Management Services Co. (RMSC) for Third Party Administration of Workers Compensation and Property/Casualty claims for the period of April 1, 2017 through March 31, 2018, in accordance with the costs attached and a fee advance of \$103,720.00.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. Councilmember Burton abstained from voting. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 862-17 adopted.

5. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 863-17 do pass.

Resolution No. 863-17 – Authorizing the Mayor or City Manager to execute Change Order No. 2 with Southern Playground, attached hereto as Exhibit A, in the amount of \$3,129.90, providing for a reimbursement of 50% of the expenses incurred to clean up the Splash Pad and associated equipment following the June 23, 2016 flood. The change order increases the contract price from \$378,503.00 to \$ 381,632.90.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to execute Change Order No. 2 with Southern Playground, in the amount of \$3,129.90, providing for a reimbursement of 50% of the expenses incurred to clean up the Splash Pad and associated equipment following the June 23, 2016 flood. The change order increases the contract price from \$378,503.00 to \$ 381,632.90

**MAGIC ISLAND SPLASH PAD PROJECT**

**Exhibit  
it A**



**CHANGE ORDER NO. 2**

**Council Approval of Contract:** September 8, 2015

**Council Approval of Change Order No. 1:** May 2, 2016

**Contractor:** Southern Playground, Inc.  
Attn: Scott DuBois  
P. O. Box 4505  
Virginia Beach, VA 23454

Change Order No. 2 provides for a reimbursement of 50% of the expenses incurred to clean up the Splash Pad and associated equipment following the June 23, 2016 flood, and increases the contract price from \$378,503.00 to \$381,632.90.

<b>Original Contract Price:</b>	<b>\$ 369,650.00</b>
<b>Total of Change Order No. 2:</b>	<b>\$ 3,129.90</b>
<b>New Contract Price:</b>	<b>\$ 381,632.90</b>

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 863-17 adopted.

6. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 864-17 do pass.

Resolution No. 864-17 – A Resolution authorizing the City Manager or his designee to enter into a ground lease for a parcel of real estate located at the southern corner of the intersection of Morris Street and Smith Street, with Centurion Development Group, LLC, for the purpose of construction of a hotel, for a term of fifty (50) years at a monthly rental amount of \$7,350.00, for the first five years, with the monthly rental amount increasing every five years thereafter by the average percentage increase in the Consumer Price Index, and subject to such additional terms as set forth in the proposed lease agreement attached as Exhibit A hereto.

Now Therefore, Be it Resolved by the Council of the City of Charleston, West Virginia:

That, upon final review and approval of the lease by legal counsel, the City Manager or his designee is hereby authorized to enter into a ground lease for a parcel of real estate located at the southern corner of the intersection of Morris Street and Smith Street, with Centurion Development Group, LLC, for the purpose of construction of a hotel, for a term of fifty (50) years at a monthly rental amount of \$7,350.00, for the first five years, with the monthly rental amount increasing every five years by the average percentage increase in the Consumer Price Index, and subject to such additional terms as set forth in the proposed lease agreement attached as Exhibit A hereto.

#### GROUND LEASE

This GROUND LEASE ("Lease"), made as of the day of 2016 and effective as of the Lease Commencement Date (as hereinafter defined), by and between THE CITY OF CHARLESTON, a West Virginia municipal corporation, having an address of 501 Virginia Street East, Charleston, West Virginia 25301 ("Lessor") and CENTURION DEVELOPMENT GROUP, LLC, a West Virginia limited liability company, having an address of 1241 Pineview Drive, Morgantown, West Virginia 26505 ("Lessee").

#### RECITALS

WHEREAS, Lessee intends to lease that certain tract or parcel of real estate located at the southern corner of the intersection of Morris Street and Smith Street, situate in the City of Charleston, Kanawha County, West Virginia, more particularly described on Exhibit A ("Premises");

WHEREAS, Lessor, subject to the terms of this Lease, intends to lease the Premises to Lessee.

#### AGREEMENT

NOW THEREFORE WITNESSETH, that for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Premises. Lessor does hereby let, lease, and demise unto Lessee, and Lessee hereby takes and leases the Premises from Lessor.

2. Term and Development Period.

- 2.1 Lease Commencement. This Lease shall be for a term of fifty (50)

- years ("Term") from the date of the last signature required for full execution of this Lease by

Lessor or Lessee, which shall not occur until passage of Lessor resolution approving the execution and delivery of this Ground Lease ("Lease Commencement Date").

2.2 Due Diligence Period. On the Lease Commencement Date a one hundred fifty (150) calendar day period of due diligence shall also commence, during which Lessee shall have access to and have the opportunity to conduct any due diligence with respect to the Premises ("Due Diligence Period"). Should Lessee determine during the Due Diligence Period that any of the contingencies set forth below not be satisfactory to Lessee, in the reasonable discretion of Lessee, Lessee shall have the option of (i) terminating this Lease with no further liability to Lessor, (ii) requesting from the Lessor a one-time extension of the Due Diligence Period not to exceed ninety (90) days while Lessee and Lessor diligently pursue satisfaction of the contingencies, which extension shall be granted at the discretion of the Lessor and shall not be unreasonably withheld, or (iii) waiving the contingency and continuing the Lease. During the due Diligence Period Lessee shall communicate:

7209498.1

2.2.1 Approval of the plans and specifications, site plan and construction materials and methods for the proposed improvements;

2.2.2 Receipt of an acceptable owners title insurance policy (at Lessee's expense) insuring title to the Premises subject to exceptions reasonably acceptable to Lessee.

2.2.3 Receipt of a survey of the Premises prepared by a licensed West Virginia surveyor mutually acceptable to Lessor and Lessee. Lessee shall be solely responsible for the costs of obtaining the survey.

2.2.4 Receipt of all necessary permits, approvals and licenses necessary to construct and occupy the proposed improvements on the Premises, including, but not limited to zoning and land use approvals, building permits, West Virginia Department of Transportation permits, and West Virginia Division of Natural Resources. Lessor shall assist Lessee in obtaining necessary governmental approvals throughout the Due Diligence Period.

2.2.5 Availability of conventional construction and term loan financing for the Premises and the improvements to be constructed thereon pursuant to terms and conditions reasonably acceptable to Lessee.

2.2.6 The availability of utilities at the Premises in capacities sufficient to support the contemplated improvements.

Upon the completion of due diligence by the Lessee or the end of the Due Diligence Period, whichever comes first, Lessee shall deliver written notice to the Lessor of the date of completion, and its election to proceed under the Lease or terminate the Lease. Said notice shall be in the form of that Notice of Completion of Due Diligence as set forth in Exhibit B. Upon Lessor's receipt of Notice of Completion of Due Diligence from Lessee and Lessee's election to continue the Lease, Lessor shall, within forty-five (45) days, vacate the Premises.

2.3 Rental Commencement. The Rental Commencement Date shall be the date of receipt by Lessee of the Certificate of Occupancy permit for the Hotel or twelve (12) months after the Lease Commencement Date, whichever occurs first. Said Rental Commencement Date shall be memorialized by that certain Notice of Rental Commencement Date in form as set forth as Exhibit C hereto.

### 3. Rent.

3.1 Base Rent. Beginning on the Rental Commencement Date, Lessee shall pay to Lessor rent for the Premises during the first five (5) years of the Term in the amount of Seven Thousand, Three Hundred Fifty dollars (\$7,350.00) per month ("Base Rent"). Lessee shall pay all rent in advance, without notice or demand, on or before the first day of each calendar month. Rental payments shall be made payable to Lessor at the address set forth in section 28 of this Lease, or to such other address as Lessor specifies to Lessee in writing. In the event rent is not received by the 51 day of any month, Lessee shall pay Lessor a late payment equal to five percent (5%) of the amount due.

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3.2 CPI Adjustment. Upon expiration of the first five years of the Term, Lessee shall pay Lessor annual rent for the Premises in accordance with sub-section 3.1, adjusted as provided for herein below. For each period of five calendar years (each a "Five-Year Period"), annual rental payments are to be determined as provided for below. Annual rental payments for the first Five-Year Period (i.e., the sixth (6th) through tenth (10th) years of the Term of this Lease, inclusive) are to increase as of the first day of said first Five-Year Period by the average percentage increase (if any) in the Consumer Price Index (Current Series) for All Urban Consumers in the South Region (All Items) as published by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI"), during the sixty (60) month period immediately preceding the effective date of such adjustment. Annual rental payments for each subsequent Five-Year Period are to increase as of the first day of the each successive Five-Year Period by the average percentage increase (if any) in the Consumer Price Index (Current Series) for All Urban Consumers in the South Region (All Items) as published by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI"), during the sixty (60) month period immediately preceding the effective date of such adjustment. The rental payment is to remain the same for the duration of all five years of each Five-Year Period and is to adjust for each successive Five-Year Period, effective as of the first day of each Five-Year Period for the duration of the Five-Year Period. In no event is such adjustment to be a negative amount. The recalculated rent for the preceding Five-Year period is the basis for the adjustment for each following Five-Year Period's rent. Each Five-Year Period's annual rent is to be recalculated as soon as the CPI is published. The increase is to be effective as of the first day of the first year of a Five-Year Period. If the rental rate for a new Five-Year Period increases, Lessee shall, within thirty (30) days of receipt of notice from Lessor, pay to Lessor any additional annual rent caused by the increase in CPI, divided by twelve (12), multiplied by the number of monthly rental payments made by Lessee since the effective date of rental adjustment.

#### 4. Use of the Premises.

4.1 Lessee's Use of the Premises. Lessee shall use the Premises for the sole purpose of the development, operation, use, repair and maintenance of a hotel, and all reasonable appurtenant uses thereto and such use shall be in accordance with all applicable federal, state, and local laws, regulations, ordinances, rules, and requirements.

4.2. Lessor's Use of Premises Prior to Lessee Development. Lessor expressly excepts and reserves the right to continue to use and occupy the Premises for its present purposes at no cost to Lessor, until forty five (45) days after Lessor's receipt of the Notice of Completion of Due Diligence from Lessee and Lessee's election to continue the Lease.

#### 5. Improvements.

5.1 Condition of Property: Lessee shall accept the Premises "as is" in its existing condition. Lessor shall not be responsible for any claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the release or disposal of hazardous substances on the Premises during construction or operation of the hotel and the responsibility for the same shall remain with Lessee.

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5.2 Construction Standards: Lessee shall perform all construction on the Premises in a good and workmanlike manner according to the customary standards of the trade and in compliance with the laws and regulations of any governmental authority having jurisdiction thereof, all at Lessee's sole expense. Once construction on the Premises has begun, such construction shall be promptly and diligently pursued to completion. Lessee and Lessor shall work cooperatively to obtain all necessary permits, approvals, and licenses for such work and construction. Lessee shall provide to Lessor copies of all plans and specifications for any improvements on the Premises where Lessee is required to provide plans and specifications to local zoning and planning officials in order to obtain building permits for the improvements.

5.3 End of Term/Reversion To Lessor: All improvements upon the Premises shall belong to the Lessee during the entirety of the Term. Upon the latter of the expiration or

termination of the Term of this Lease, all improvements located on the Premises are to be and become the sole and exclusive property of Lessor, without the requirement of Lessee executing any documents transferring title thereto; provided, however, that at the election of Lessor, Lessee shall be required by Lessor to obtain the release of all outstanding bonds and environmental and other permits. At the expiration or termination of this Lease for any reason, Lessee shall provide to Lessor all certifications and clearances reasonably necessary to assure Lessor that the Premises have been restored to their original condition (subject to any improvements which remain on the property).

5.4 Infrastructure Relocation: In the event that any public infrastructure is determined to be located on the Premises and shall require relocation, which shall be determined at the sole discretion of the Lessor, said relocation shall be the responsibility and at the expense of the Lessee and shall be completed in compliance with all specifications and requirements set forth by the Lessor or its related municipal entities, including but not limited to the Charleston Sanitary Board, and shall be consistent with the requirements of the applicable City Code. Said public infrastructure may include, but shall not be limited to stormwater detention and sanitation pipes. Lessor shall provide Lessee any documents in its possession or control related to the locations of utilities on the Premises, but is not obligated to perform or provide specific surveys or title examinations of the Premises.

6. Lessor's Representation of Quiet Enjoyment. Lessor covenants that Lessee, its successors and/or assigns may quietly enjoy the Premises without hindrance by Lessor or any party claiming under Lessor, so long as Lessee is not in default in the performance of any of its obligations under this Lease.

7. Lessee's Maintenance. Lessee shall, at its sole cost and expense, keep and maintain the Premises, including, without limitation, all improvements constructed on the Premises, in a good and tenantable condition and shall make and pay for all maintenance and repairs thereto during the Term. Lessee shall be responsible for all snow and ice removal on the entirety of the Premises. Lessee shall not be permitted to defer or delay maintenance or repairs of the Premises or such improvements, it being understood and acknowledged that Lessee shall continue to maintain and repair the Premises in a good order and condition until the date of termination of this Lease.

7209498.1

8. Utilities. Lessee shall be solely responsible and shall make all arrangements for utilities and services including, but not limited to, public water, public sewer, stormwater, gas, and electric, to and for the Premises. Lessee acknowledges and agrees that this responsibility shall extend to the corners and/or boundaries of the Premises. Lessee shall pay all fees and costs for all utilities and services, including without limitation security, gas, electricity, water, telephone, internet, sewer, garbage and fire service, as well as any other utility or service used on or supplied to the Premises, including the cost of installation, maintenance or replacement thereof. Lessee shall secure and maintain all utilities and services, and Lessor shall cooperate with Lessee in securing and maintaining such utilities and services at Lessee's expense.

9. Taxes. Lessee shall pay, or cause to be paid, as and when they become due (before delinquency), all taxes, assessments, and fees relating to the Premises, and the improvements constructed thereon, whether federal, state, county, or municipal, assessed against real estate, as levied or imposed from time to time on the Premises (collectively, "Real Estate Taxes"). Lessee shall provide Lessor with written proof of payment of Taxes within thirty (30) days of Lessor's request thereof. Lessee shall also timely pay all taxes, assessments and fees related to the operation of its business, including but not limited to any user fees, business and occupation tax, and hotel occupancy tax imposed by any federal, state, county, or municipal entity.

10. Estoppel Certificates.

10.1 At any time and from time-to-time during any term of this Lease, within fifteen (15) business days after request by Lessor, Lessee shall deliver to Lessor (or its Lender or



its assigns) a written statement, in recordable form, certifying the following: Lessee has accepted possession of the Premises; this Lease is unmodified and in full force and effect (or if there have been modifications, this Lease is in full force and effect as modified and stating the modifications); the dates to which the rent and other charges have been paid in advance, if any; there are no defenses or offsets thereto (or, if there are, stating those claimed by Lessee); and such other certifications as Lessor may reasonably request.

10.2 At any time and from time to time during any term of this Lease, within fifteen (15) business days after request by Lessee, Lessor shall deliver to Lessee (or its Lender or its assigns) a written statement, in recordable form, certifying the following: Lessee is in possession of the Premises; this Lease is unmodified and in full force and effect (or if there have been modifications; that the Lease is in full force and effect as modified and stating the modifications); the date to which rent and other charges have been paid in advance, if any, certifying that there are no defense or offsets thereto, or stating those claimed by Lessee; and Lessor is not aware of any Event of Default of this Lease, is not aware of any event that with the giving of notice or passage of time would constitute an Event of Default, or if any such event exists, the nature of the event; and such other certifications as Lessee may reasonably request.

#### 11. Subordination and Attornment.

11.1 For the purposes of this Lease, the following terms have the meanings as set forth below:

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"Encumbrance" means any lien, security interest, or encumbrance on or against the Premises that is evidenced or perfected by a Security Instrument, judgment lien, writ of execution, mechanic's liens, tax lien, or notice of lis pendens.

"Leasehold Mortgagee" means the holder of any debt instrument, the payment of which is secured by a Security Instrument that encumbers or places a lien upon Lessee's interest in and to the Premises.

"Mortgagee" means the holder of any debt instrument, the payment of which is secured by a Security Instrument that encumbers or places a lien upon Lessor's interest in and to the Premises.

"Security Instrument" means any deed of trust, leasehold deed of trust, credit line deed of trust, leasehold credit line deed of trust, mortgage, leasehold mortgage, UCC fixture filing, security agreement, UCC financing statement, assignment of leases and rents, collateral assignment of lease, or similar security instrument which secures the payment of any indebtedness or any other obligations and all renewals, modifications, amendments, supplements, consolidations, replacements, and extensions thereof, to the full extent of the amounts secured thereby.

11.2 Lessee hereby acknowledges and agrees that the Lease is and is to be subject and subordinate to, at all times, the encumbrance of any Security Instrument securing any Mortgagee, whether dated, executed, acknowledged, delivered, or recorded prior to, concurrently with, or subsequent to this Lease, or a memorandum thereof, to the end and effect that any and all such Security Instruments are to be deemed to have been executed, acknowledged, delivered, and recorded prior to this Lease or a memorandum thereof, without knowledge of this Lease, actual, constructive, or otherwise, on the part of such Mortgagee; provided, however, that any such Mortgagee is to be deemed to have (i) acknowledged and recognized the validity of this Lease, and the rights of Lessee, its successors, assigns, and sub-lessees, to quiet use, enjoyment, and possession of the Premises, and (ii) covenanted and agreed not to disturb or otherwise foreclose or terminate this Lease or the rights of Lessee, its successors, assigns, and sub-lessees, to quiet use, enjoyment, and possession of the Premises absent the occurrence of an unremedied or uncured Event of Default.

11.3 Lessee hereby attorns to and recognizes (i) any and all Mortgagees; (ii) any purchaser, including any Mortgagee, at a foreclosure sale, whether judicial or non-judicial in nature, under a Security Instrument; (iii) any transferee, including any Mortgagee, that acquires the Premises by way of a deed or deeds in lieu of foreclosure; and (iv) any transferee, successor,

or assign that succeeds to such Mortgagee's, purchaser's or transferee's interest in the Premises, as its Lessor for the unexpired balance of the Term under the same terms, provisions, and conditions as set forth in this Lease, which attornment is and is to be effective and self-operative upon the acquisition or any interest in or title to the Premises by any such Mortgagee, purchaser, transferee, successor, or assigns, without the execution, acknowledgment, delivery, or recording of any other instruments, documents, or agreements by Lessor, Lessee or any Mortgagee, purchaser, transferee, successor, or assign.

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11.4 Lessee is to have the right and authority to encumber Lessee's interest in and to the Premises pursuant to a Security Instrument, Leasehold Mortgage or otherwise; provided, however, that Lessee is to neither have the power, right, nor authority to encumber Lessor's interest in and to the Premises, and that any attempted encumbrance by Lessee of all or any part of Lessor's interest in and to the Premises shall be entirely void and of no effect whatsoever.

11.5 In the event Lessee executes, acknowledges, and delivers any Security Instrument or Leasehold Mortgage that places an Encumbrance on Lessee's interest in and to the Premises, in whole or in part, or subjects the Lessee's interest in and to the Premises, in whole or in part, to any Encumbrance, Lessee shall, within thirty (30) days of the encumbrance, notify Lessor, in writing, of the existence of such Security Instrument and the address of the Leasehold Mortgagee to which notices under this Lease are to be sent. Furthermore, in the event any such Security Instrument is assigned, Lessee and such Leasehold Mortgagee shall notify Lessor, in writing, of such assignment and the address of such assignee. So long as such a Security Instrument is in effect and Lessor has been given notice in accordance with the provisions of this section, and provided that no Event of Default has occurred which has not been cured within the applicable grace period, if any, Lessor covenants and agrees that no surrender amendment, alteration, enlargement, modification, or change of this Lease is to be made or effected without the prior written consent of such Leasehold Mortgagee or its assigns.

11.6 In the event Lessor gives notice to Lessee with respect to or in connection with any Event of Default, Lessor shall also serve a copy of such notice upon each Leasehold Mortgagee and the assignee, if any, of any such Leasehold Mortgagee with respect to which Lessor has received notice in accordance with of this Lease. Subject to such condition precedent, Lessor covenants and agrees that no such notice to Lessee is to be effective unless and until a copy of such notice is duly served upon such Leasehold Mortgagee or its assignee, if any, in accordance with the provisions of this section. Upon the receipt of such notice by such Leasehold Mortgagee or its assigns, the same is to have the right and opportunity to cure or remedy or cause to be cured or remedied any breach or default within the same time period provided to Lessee, and Lessor shall accept such performance by the same as if the same had been done or performed by Lessee.

11.7 In the event any Leasehold Mortgagee exercises its rights of foreclosure, Assignment or otherwise, and such Leasehold Mortgagee, its successors or assigns, becomes the holder of the leasehold estate of Lessee, Lessor agrees to recognize such Leasehold Mortgagee, its successors or assigns, as Lessee hereunder, subject to all terms and conditions of this Lease and subject to all uncured Lessee Events of Default. Lessor acknowledges that, in the event of foreclosure by the Leasehold Mortgagee, the Leasehold Mortgagee shall not have liability after its sale or assignment of its interest in the Premises to an unaffiliated third party.

11.8 Lessor agrees to execute and deliver any reasonable Subordination, Non-Disturbance and Attornment Agreement presented by a Leasehold Mortgagee. Lessor acknowledges that Leasehold Mortgagee's request for reasonable additional time for the

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Leasehold Mortgagee to cure an Event of Default before the termination of the Lease is acceptable to Lessor, not to exceed thirty (30) days without Lessor's express written consent.

11.9 Lessee agrees to execute and deliver any reasonable Subordination, Non-Disturbance and Attornment Agreement presented by a Mortgagee. Lessee acknowledges that

Mortgagee's request for reasonable additional time for the Mortgagee to cure an Event of Default before the termination of the Lease is acceptable to Lessee, not to exceed thirty (30) days without Lessee's express written consent.

#### 12. Insurance.

12.1 Public Liability Insurance. During the Term, Lessee shall, at its sole cost and expense, keep in full force and effect public liability insurance, underwritten on an occurrences basis, in respect to the use and occupation by Lessee and its sublessees, successors and permitted assigns of the Premises, with respect to the negligent acts or omissions of Lessee or its sublessees, successors or permitted assigns and its employees, agents, servants, invitees, and licensees, and excluding losses caused by Lessor, other Lessees, or other third parties, in an amount of not less than \$1,000,000.00 per person, not less than \$1,000,000.00 per occurrence on account of personal injury to or death of one or more persons, not less than \$1,000,000.00 on account of damage to property, and not less than \$5,000,000.00 in aggregate. Lessee shall also maintain, at its sole expense, builder's risk insurance during periods when improvements are being constructed at the Premises. Lessee shall ensure the insurance is underwritten by an insurance company licensed to do business in the State of West Virginia and acceptable to Lessor, names Lessor as an additional insured, and contains a clause or endorsement providing that such policy or policies may not be canceled, modified or terminated without thirty (30) days prior written notice to Lessor.

12.2 Lessee's Personal Property. Lessor and its heirs, administrators, successors, assigns, employees, and agents are not to be liable for loss of or damage to Lessee's or any sublessee's equipment, trade fixtures, furnishings, and items of personal property placed in or upon the Premises from accidents, conditions, or casualty occurring in, on, or about the Premises unless due to Lessor's, its heirs', administrators', successors', assigns', employees', or agents' negligence or willful misconduct. Any insurance upon such equipment, trade fixtures, furnishings and items of personal property is to be kept and maintained at Lessee's sole cost and expense.

12.3 Fire and Casualty Insurance. During the Term, Lessee shall, at its sole cost and expense, keep in full force and effect such fire and extended coverage insurance in respect to the Premises, for the full replacement cost of all improvements and fixtures.

13. Damage or Destruction of Premises. If any improvements on the Premises are wholly damaged or destroyed during the Term by fire or other insurable casualty, Lessee is to be entitled to all insurance proceeds relating to such damage or destruction, Lessee is to have no obligation to reconstruct improvements, and Lessee is to be entitled to terminate this Lease upon giving Lessor thirty (30) days prior written notice; provided, however, that if Lessee does not reconstruct the improvements, it shall restore the Premises to its original condition. If any

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improvements on the Premises are partially damaged or destroyed during the Term by fire or other insurable casualty, Lessee shall be entitled to all insurance proceeds for the purpose of reconstructing the damaged portion of the Premises.

#### 14. Eminent Domain.

14.1 If all or any part of the Premises is appropriated or condemned by any public or quasi-public authority in the exercise of its right of condemnation or eminent domain, both Lessor and Lessee are to have the right to prosecute a claim for an award and to share in the proceeds of any and all awards based upon their respective interests as hereafter set forth.

14.2 If all the Premises is appropriated or condemned, this Lease is to terminate as of the time when possession is required by such public or quasi-public authority. In the event all or any part of the Premises is taken or condemned, Lessor is to be entitled to receive that portion of any and all awards necessary to compensate it for the present value of the rents that it would have received in the future and for the present value of its reversionary interest in the Premises and all improvements thereon, and the damage to its residual estate, and, notwithstanding the termination of this Lease, Lessee is to be entitled to that portion of any and all awards necessary to compensate it for the leasehold value of its improvements to the Premises, the value of its

leasehold estate, and the damages that it may sustain as a result of termination of the Lease prior to the end of the Term and the present value of any sublessee rents it would have received in the future.

14.3 In the event that a part of the Premises is taken or condemned and that (a) the part so taken includes buildings on the Premises or any part thereof, or (b) the part so taken makes it impracticable for Lessee to continue operation at the Premises in Lessee's sole discretion, Lessee may, at any time either prior to or within a period of sixty (60) days after the date when the condemning authority requires possession of the part of the Premises taken or condemned, elect to terminate this Lease.

14.4 In the event Lessee elects to terminate this Lease, Lessor is to be entitled to receive that portion of any and all awards necessary to compensate it for the present value of the rents that it would have received in the future and for the present value of its reversionary interest in the Premises and all improvements thereon, and the damage to its residual estate, and notwithstanding the termination of this Lease, Lessee is to be entitled to that portion of any and all awards necessary to compensate it for the leasehold value of its improvements to the Premises, the value of its leasehold estate and the damages that it may sustain as a result of termination of the Lease prior to the end of the Term and the present value of the sublessee's rents Lessee would have received in the future.

14.5 In the event that Lessee does not elect to terminate this Lease or in the event that a part of the Leased Premises is taken or condemned under circumstances under which Lessee will have no such election, then and in either event, Lessee is to receive so much of any and all awards as is necessary to pay for repairs to and alterations of the improvements on the Premises for the purpose of restoring the same to an economic architectural unit, susceptible to 7209498.1 the same use as that which was in effect immediately prior to such taking and Lessor shall receive the balance, if any, of any awards.

14.6 In the event that this Lease does not terminate after any part of the Premises is taken or condemned, there is to be a reduction in rent equal to the percentage to the ground area of the Premises that is taken or condemned, unless the portion taken is not material to the Lessee's use of the Premises in which event no adjustment shall occur.

#### 15. Hazardous Substances.

15.1 Definition: For purposes of this Lease, "Hazardous Substances" means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; and (b) any chemicals, materials, or substances defined as or included in the definitions of "hazardous substances," "hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants," "pollutants," or words of similar import, under all federal, state, and local environmental, safety or health laws and ordinances and rules of common law, including but not limited to, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. § 651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 960 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1081 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6091 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. § 2601 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j), and the Federal Water Pollution Control Act, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive addressing environmental, health, or safety issues of or by any governmental entity.

15.2 Lessee Representations and Warranties: Lessee and its directors, officers, contractors, agents, employees, and invitees shall not install, store, recycle, dispose of, release or otherwise locate in or upon the Premises any Hazardous Substances, in violation of laws or regulations governing the use, storage, or disposal of the same. Lessee shall indemnify and hold Lessor, its successors, assigns, employees, agents, and contractors harmless for any future

liability arising out of or connected with any claims, judgments, damages, penalties, fines, assessments, fees, and other expenses related in any matter to the actual improper storage or discharge of Hazardous Substances on the Premises caused by the acts or omissions of Lessee and its directors, officers, contractors, agents, employees or invitees, and Lessee shall further indemnify and hold Lessor, its heirs, administrators, assigns, employees, agents, and contractors harmless from any violation of such applicable environmental laws or any breach of the foregoing representations and warranties. Lessee shall pay any and all fines, charges, assessments, fees, damages, losses, claims, liabilities, or response costs arising out of or in any way connected with a violation by Lessee and its directors, officers, contractors, agents, employees or invitees of such applicable environmental laws, which indemnifications is to survive the expiration or termination of this Lease. Without limiting the generality of the foregoing, in the event that any Hazardous Substances are stored or discharged upon or under the Premises during the term of this Lease, then upon the expiration or termination of this Lease, Lessee shall remove all such Hazardous Substances from the Premises at its expense.

15.3 Property "As-Is" Without Lessor's Representation or Warranty: Lessee acknowledges its acceptance of the Premises "as is" and that Lessor makes no representation or warranty with regard to Hazardous Substances. Lessor does not warrant that the Premises are free of environmental hazards or Hazardous Substances.

#### 16. Waiver/Release/Indemnity.

16.1 Waiver. Lessee hereby releases Lessor from and waives any and all liability or responsibility to anyone claiming through or under them by way of subrogation or otherwise for any loss or damage specifically insured against or required by the terms hereof to be insured against, by such party, or anyone, for whom such party may be responsible. Lessee hereby releases Lessor from and waives any claims respecting any property damage to the Premises and all personal property located therein or thereon to the extent such property damage is required to be insured against under the terms of this Lease and regardless of the cause of such property damage including negligence. All policies of insurance pertaining to the Premises and/or its contents are to be endorsed to provide that the insurance company may not be subrogated with respect to insurance carried by one party against the other. Neither Lessee nor Lessee's insurance company or companies are to have any right of action or recovery against Lessor, for any loss or damage to the Premises, or to Lessee's property in or about the Premises, when loss or damage is in fact covered by insurance carried by Lessor.

16.2 Lessee Indemnification: Lessee shall indemnify Lessor and save it harmless from and against any and all claims, actions, damages, liability, and expenses in connection with loss of life, personal injury, environmental hazards or violations, criminal acts, and destruction and/or damage to property related to the occupancy or use by Lessee of the Premises, or the operation of Lessee's business or any equipment and machinery situated on the Premises under the control of Lessee, its agents, contractors, customers, employees, or invitees, or occasioned wholly or in part by an act or omission of Lessee, its agents, contractors, customers, employees, or invitees, except for claims or liability arising from the negligent act or omission or willful misconduct of Lessor, or its agents or employees, or solely from Lessor's failure to perform any of its covenants under this Lease. If Lessor is made a party to any litigation for which Lessee owes Lessor a duty to indemnify and save harmless hereunder, Lessee shall protect and hold Lessor harmless and shall pay all costs, expenses, and reasonable attorney's fees incurred or paid by Lessor in connection with such litigation.

17. Lessor's Inspection. Subject to the rights of Lessee or other sublessees to restrict, control or monitor access to the Premises as required for security reasons: Lessor, its agents and employees, are to have the right to enter upon and inspect the Premises and any improvements made thereon at all reasonable times, and at all times in the event of an emergency or imminent danger to the Premises or the improvements thereon.

18. Removal of Personal Property. At any time, including upon the expiration or termination of this Lease, Lessee is to be entitled to remove all personal property that is placed upon the Premises; provided that such items may be removed without any damage to the

Premises and further provided, however, that if Lessee is in default hereunder in the payment of any rentals to Lessor such property is not to be removed until such defaults are corrected. After expiration or termination of this Lease and after thirty (30) days written notice is received by Lessee from Lessor, if any personal property of Lessee remains on the Premises, such personal property is to be deemed to have been abandoned by Lessee and either may be retained by Lessor or disposed of in such manner as Lessor may in its sole discretion deem appropriate.

19. Holding Over. If at the expiration of the Term, Lessee continues to occupy the Premises with or without Lessor's consent, the tenancy under this Lease is to become a month-to-month lease at 125% of the annual rent then payable and be terminable by either party upon thirty (30) days written notice.

20. Lessee Event of Default. "Lessee Event of Default" means and includes any one or more of the following:

20.1 Failure by Lessee to pay when due any rent or monies provided to be paid to Lessor under the provisions of this Lease;

20.2 Execution by Lessee of an assignment for the benefit of creditors;

20.3 The adjudication that Lessee is bankrupt or insolvent, the filing by or against Lessee of a petition to have Lessee adjudged to be bankrupt, or a petition for the reorganization of Lessee under any law relating to bankruptcy and such adjudication or petition is not dismissed within sixty (60) days of filing;

20.4 Appointment of a receiver for Lessee and such receiver is not dismissed within sixty (60) days of appointment;

20.5 Default by Lessee in the performance of any of the other covenants, conditions, obligations, or agreements undertaken by Lessee under the terms of this Lease.

21. Lessee Default - Notice/Cure/Termination. After the occurrence of a Lessee Event of Default, Lessor may give written notice to Lessee that one or more Events of Default have occurred. If a Lessee Event of Default specified in said written notice is a monetary Lessee Event of Default and is not cured or corrected within a period of ten (10) days after the giving of the notice, then Lessor may pursue remedies provided to Lessor herein. If a Lessee Event of Default specified in said written notice is a non-monetary Lessee Event of Default and is not cured or corrected within a period of thirty (30) days after the giving of such notice, then Lessor may pursue remedies provided to Lessor herein, provided; in the event a non-monetary Lessee Event of Default is not capable of correction within such thirty (30) day period, if Lessee has initiated within said period an effort to correct such default, then such period is to be extended until such time as Lessee ceases to diligently pursue its efforts to accomplish such correction. In the event Lessee (or its Lender) cures a Lessee Event of Default within any applicable cure period, Lessor shall have no remedy against Lessee in relationship to such Lessee Event of Default.

22. Lessor Remedies Cumulative. Upon the expiration of any applicable cure period and failure of Lessee to cure the Lessee Event of Default, in addition to the remedies provided in this Lease, Lessor is entitled to exercise all remedies available to Lessor in law or at equity. Lessor's remedies shall be cumulative, including, but not limited to, the right to terminate the lease, or without termination, the right to re-enter and take possession of the Premises with or without process of law, subject to the provisions of Section 20 above, and expel the Lessee without prejudice to any remedies which might otherwise be used by Lessor for the collection of default rentals. Lessor also has the option to cure such breach or default for the account and at the expense of Lessee, and all damages incurred by Lessor in curing such breach or default shall be deemed additional rental due from Lessee to Lessor on the first day of the month following the payment of same by Lessor. Lessor shall have the right to recover its legal fees and costs from Lessee if Lessor prevails in any action for the collection of money or enforcement of a duty owed by Lessee pursuant to this Lease, without prejudice to any remedies which might otherwise be used by Lessor for the collection of the default rentals.

23. Lessor Default. "Lessor Event of Default" means and includes either one or both of the following:

24.1 Failure of Lessor to abide by any terms or conditions of this Lease; or

24.2 Breach by Lessor of any representation or warranty of this Lease;

24. Lessor Default - Notice/Cure/Termination: Upon receipt of written notice from Lessee of the occurrence of a Lessor Event of Default, Lessor is to have thirty (30) days to correct the same, provided, if such matter is of the nature that cannot be cured within said thirty (30) day period and Lessor has initiated within said period an effort to cure such default, then such period is to be extended until such time as Lessor ceases to pursue diligently its efforts to accomplish such correction.

25. Lessee Remedies Cumulative. In the event Lessor fails to cure a Lessor Event of Default within any applicable cure period in addition to the remedies provided in this Lease, Lessee shall be entitled to exercise any and all rights available to Lessee at law or in equity. Lessee's remedies shall be cumulative, including, but not limited to, termination of the Lease and the right to take all actions necessary to cure the Lessor Event of Default and to deduct the expense of such action from succeeding monthly rental payments without prejudice to any remedies that might otherwise be used by Lessee in enforcing this Lease.

26. Permits and Licenses. Lessor shall cooperate and assist Lessee with obtaining any permit, license, or governmental authorization necessary to permit the development of the Premises by Lessee.

27. Waiver. Failure of Lessor to enforce the breach or any violation of the terms of this Lease is not to be considered as a waiver of any subsequent breach or violation.

28. Notice. All notices to be given hereunder by either party are to be in writing and are to be sent by U. S. Mail, Certified, Return Receipt Requested, to Lessor and Lessee at the addresses stated below:

Lessor: The City of Charleston, West Virginia  
City Manager

501 Virginia Street East, Room 101

Charleston, West Virginia 25301

Attn: David Molgaard

Lessee: Centurion Development Group, LLC

1241 Pineview Drive

Morgantown, WV 26505

Attn: Randy W. Miller

29. Costs. Lessor and Lessee shall each pay all of their own costs and expenses incurred in connection with the negotiation, drafting, and execution of the Lease and all related documents, including, but not limited to, reasonable attorney's fees.

30. Successors. The terms, conditions, covenants, and agreements herein contained are to extend to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, administrators, successors, and permitted assigns. Until such time as construction of improvements upon the Premises is complete, Lessee shall not be entitled to assign, sublease, transfer or convey all or any part of the Premises. Thereafter, Lessee shall be entitled to assign, sublease, transfer, or convey all or any part of its interest in this Lease only with the prior written consent of Lessor, which shall be granted in its sole discretion.

Notwithstanding the foregoing provisions, Lessee shall be permitted to transfer or assign its interests hereto to an affiliated single purpose, single asset entity, provided that any such assignment shall be solely at the cost and expense of the Lessee. Any party that transfers all or a portion of its interest in the Premises or this Lease by sale, assignment, or sublease shall notify the other parties of the transfer and shall provide the name, address, and telephone number of the purchaser, assignee, or sub-lessee.

31. Memorandum of Lease. This Lease is not to be recorded, but either party may record a memorandum of lease executed by both parties. The party intending to record a memorandum of lease shall prepare it and pay all costs of preparation and recording the memorandum of lease.

32. Applicable Law. This Lease is to be construed in accordance with the laws of the

State of West Virginia.

33. Dispute Resolution. The parties shall agree to participate in good faith negotiations to resolve any dispute that shall arise based on this Lease or the subject matter hereto. In the event that such good faith negotiations do not result in a resolution, the parties shall agree to submit to non-binding mediation, with a mediator to be selected jointly by the parties. The parties shall participate in said non-binding mediations in good-faith and attempt to resolve any disputes. The parties agree that payment defaults shall not be subject to non-binding mediation and Lessor shall be able to avail itself of any and all remedies available to it at all immediately upon default, pursuant to the default and curative terms set forth herein.

34. Severability. The unenforceability, invalidity, or illegality of any provision of this Lease is not to render any of the other provisions of this Lease unenforceable, invalid, or illegal.

35. Confidentiality. The parties shall keep this Lease, and its terms and conditions, confidential and, except for lenders, attorneys, and accountants of the parties, not disclosed to any third person without the prior written consent of the other party unless required by a valid subpoena or order issued by a court of applicable jurisdiction.

36. Counterparts. This Lease may be executed in two or more counterparts, each of which is to be deemed an original, but all of which together are to constitute one and the same lease.

37. Captions. The captions appearing in this Lease are for the purposes of identification only and are not to be considered or construed as affecting, in any way, the meaning of the provisions of this Lease.

38. Entire Agreement. This Lease and the Exhibits attached hereto contain the entire agreement between Lessor and Lessee concerning the Premises and there are no other agreements, either oral or written.

39. Time is of The Essence. Time is of the essence in regard to performance of the covenants and agreements stated herein.

40. No Joint Venture or Agency. Nothing contained in this Lease shall be construed nor is it the intent of the parties, to create a joint venture or partnership between Lessor and Lessee, nor is either party the agent or representative of the other, and nothing in this Lease shall be construed to create such an agency relationship. C//iA

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Richardson, Salisbury, Snodgrass, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: NONE

ABSENT: Slater, Smith,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 864-17 adopted.



7. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 865-17 do pass.

Resolution No. 865-17 – A Resolution granting the United States Department of Labor, Division of Job Corps Procurement (“DOL”) a Deed of Easement, attached hereto as Exhibit A, permitting the use of city right-of-way adjacent to 1000 Curtis Price Way for the purpose of constructing and maintaining a steel pile and concrete lagging wall to correct an existing slope failure in front of the DOL’s Job Corps Center. Said easement shall be subject to the terms of an agreement between the DOL and the City attached hereto as Exhibit B. Authorization is permitted by Resolution pursuant to the Municipal Code of the City of Charleston Chapter 3, Article II, Section 3-12.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

That, subject to final review and approval by the City Attorney and the City Engineer, the Mayor is hereby authorized to execute a Deed of Easement to the United States Department of Labor, Division of Job Corps Procurement, and is further authorized to enter into an agreement with the United States Department of Labor, Division of Job Corps Procurement specifying the terms and conditions for the use of the easement hereby granted.

DEED OF EASEMENT

THIS DEED OF EASEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between THE CITY OF CHARLESTON, a West Virginia municipal corporation, party of the first part, hereinafter referred to as the “City”, and THE U.S. DEPARTMENT OF LABOR, DIVISION OF JOB CORPS PROCUREMENT, an agency of the United States Federal Government, party of the second part; hereinafter referred to as “DOL”;

WHEREAS, Resolution No. , attached hereto as Exhibit A was duly passed by the City Council of the City of Charleston, West Virginia, on , 2017, granting an easement for use of the City’s right-of-way adjacent to 1000 Curtis Price Way in the City of Charleston for the public purpose of constructing and maintaining a steel pile and concrete lagging retaining wall to correct an existing slope failure in front of the DOL’s Job Corps Center (the “Wall”), subject to certain restrictions; and

WHEREAS, WVDOC has executed an Agreement, attached hereto as Exhibit B, in exchange for the City granting an easement; and

WHEREAS, the easement for the Wall is granted for the purposes of constructing and maintaining a steel pile and concrete lagging retaining wall adjacent to 1000 Curtis Price Way in front of the DOL’s Job Corps Center; and

WHEREAS, Resolution No. authorized and directed the Mayor of the City of Charleston to execute and acknowledge a proper deed granting an easement for the Wall, subject to certain conditions, and including an easement to use so much of the City’s property as reasonably necessary to construct and maintain the Wall; and

WHEREAS, pursuant to the requirements of W. VA. Code § 1-5-3, the City has determined that the granting of this easement will benefit the citizens of the City of Charleston and the State of West Virginia by protecting the Curtis Price Way roadway and preventing de-stabilization the DOL’s Job Corps facility;

NOW THEREFORE, WITNESSETH: that the City of Charleston, does hereby GRANT and CONVEY unto the U.S. Department of Labor, Division of Job Corps Procurement, its successors and assigns, a perpetual easement to use of the City’s right-of-way adjacent to 1000 Curtis Price Way in the City of Charleston for the public purpose of constructing and maintaining a steel pile and concrete lagging retaining wall abutting Curtis Price Way in front of

the DOL's Job Corps Center. The location of the easement is depicted in Exhibit C, attached hereto and incorporated herein.

The easement for the use granted herein is subject to the following conditions: 1) that the Wall constructed within the easement will be subject to inspection and approval by the City Engineer; 2) that the Wall shall conform to all applicable Federal, State and City laws; 3) that as between City and the DOL, the DOL shall be solely responsible for any damages to any person or property by reason of construction, operation, use, maintenance, repair or replacement of the Wall; 4) that, except in the case of replacement or repairs, in the event that such Wall ceases to comply with all applicable Federal, State and City laws and regulations, or the Wall constructed in the easement otherwise become unsafe and DOL or any successor owner fails after notice to make all necessary repairs, the easement shall cease, terminate and be of no further effect, and the DOL shall, upon receiving written notice from the City, immediately and at their expense, remove the Wall from the City's property; and 5) in the event that the City should have a substantial and compelling public need for the City property affected by the easement, the City may, upon reasonable notice to the DOL, terminate the easement and at the City's expense, remove the Wall from the City's property.

DECLARATION OF CONSIDERATION OF VALUE: The City of Charleston declares that this conveyance is not subject to the West Virginia State Excise Tax on the privilege of transferring real estate for the reason that this is a conveyance from a political subdivision of the State of West Virginia to an agency of the United States Federal Government.

WITNESSETH the following signatures:  
THE CITY OF CHARLESTON,

#### EASEMENT AGREEMENT

In exchange for the City of Charleston, West Virginia (“City”) granting an easement for the use of the public right-of-way on Curtis Price Way in the City of Charleston for the public purpose of constructing and maintaining a steel pile and concrete lagging retaining wall abutting 1000 Curtis Price Way in front of the DOL’s Job Corps Center (the “Easement”), the U.S. Department of Labor, Division of Job Corps Procurement (the “DOL”) does hereby agree to the following:

- (1) That the construction and maintenance of a steel pile and concrete lagging retaining wall abutting the DOL’s facility at 1000 Curtis Price Way shall conform to all applicable Federal, State and City laws;
  - (3) As between City and DOL, DOL shall be solely responsible for any damages to any person or property by reason of construction, maintenance, repair, or replacement of said wall, and in the event of damage to any property of City, shall promptly repair said damage at DOL’s expense to City’s reasonable satisfaction.
  - (4) DOL shall maintain liability insurance, which may include a self-insured retention, in an amount reasonable to satisfy the obligations of the DOL set forth herein.
  - (5) DOL agrees that the Easement shall be upon the expressed condition and limitation that, except in the case of replacement or repairs, in the event that such wall ceases to comply with all applicable Federal, State and City laws and regulations, or the wall constructed in the Easement otherwise becomes unsafe and DOL or any successor owner fails after reasonable notice to make all necessary repairs, the Easement shall cease, terminate, and be of no further effect, and DOL, or its successor, shall, upon receiving written notice from the City, remove the wall at its expense.
  - (6) DOL agrees that in the event the City of Charleston should have a substantial and compelling public need for the Easement conveyed or the property affected by the Easement, the City may terminate the Easement and at, the City’s expense, remove the wall from the City’s property.
  - (7) DOL agrees that the City of Charleston has made no representations as to the quality of title of the Easement.
- City of Charleston, West Virginia U.S. Department of Labor  
Division of Job Corps Procurement

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 865-17 adopted.

8. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 866-17 do pass.

Resolution No. 866-17 – Approving settlement of pending litigation, captioned *Louis and Joyce Farris v. City of Charleston*, Civil Action No. 16-C-559, Kanawha County Circuit Court, Judge Tod J. Kaufman, in the amount of \$75,000.00 and further authorizing the Mayor, City Manager, or their designee to execute any documents, subject to final review and approval of documents by the City Attorney, necessary to consummate the full settlement and dismissal of the pending civil action in exchange for a full release by Plaintiff of all claims stemming from a September 17, 2014, traffic accident involving a city fire truck.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the settlement of pending litigation, captioned *Louis and Joyce Farris v. City of Charleston*, Civil Action No. 16-C-559, Kanawha County Circuit Court, Judge Tod J. Kaufman, in the amount of \$75,000.00 is hereby approved and the Mayor, City Manager, or their designee is hereby authorized to execute any documents, subject to final review and approval of documents by the City Attorney, necessary to consummate the full settlement and dismissal of the pending civil action in exchange for a full release by Plaintiff of all claims stemming from a September 17, 2014, traffic accident involving a city fire truck.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 866-17 adopted.

9. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 867-17 do pass.

Resolution No. 867-17 – Approving settlement of pending litigation, captioned *Judith King v. City of Charleston*, Civil Action No. 15-C-17, Kanawha County Circuit Court, Judge Carrie Webster, in the amount of \$78,795.08, making City retiree health benefits available to Plaintiff subject to payment of premiums, and further authorizing the Mayor, City Manager, or their designee to execute any documents, subject to final review and approval of documents by the City Attorney, necessary to consummate the full settlement and dismissal of the pending civil action in exchange for a full release by Plaintiff.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the settlement of pending litigation, captioned *Judith King v. City of Charleston*, Civil Action No. 15-C-17, Kanawha County Circuit Court, Judge Carrie Webster, in the amount of \$78,795.08 is hereby approved, City retiree health benefits for Plaintiff, subject to payment of premiums are hereby authorized, and the Mayor, City Manager, or their designee is hereby authorized to execute any documents, subject to final review and approval of documents by the City Attorney, necessary to consummate the full settlement and dismissal of the pending civil action in exchange for a full release by Plaintiff.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 867-17 adopted.

10. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 868-17 do pass.

Resolution No. 868-17 – A Resolution authorizing the Mayor, City Manager, or their designee, on behalf of the City, to execute a Lease Termination and Asset Transfer Agreement, and a Settlement Agreement and Mutual Release, with Charleston Clean Energy, LLC, and Thomas Loehr, consistent with the terms set forth in Exhibits A and B hereto, and any other documents deemed necessary or appropriate to finalize the termination and asset transfer.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

That, the Mayor, City Manager, or their designee is hereby authorized to execute a Lease Termination and Asset Transfer Agreement, and a Settlement Agreement and Mutual Release,

with Charleston Clean Energy, LLC, and Thomas Loehr, consistent with the terms set forth in Exhibits A and B hereto, along with any other documents deemed necessary or appropriate to finalize the termination and asset transfer, subject to final review and approval by the City Attorney.

#### LEASE TERMINATION AND ASSET TRANSFER AGREEMENT

Charleston Clean Energy, LLC and Thomas Loehr ("hereinafter collectively referred to as CCE") and the City of Charleston ("City"), in order to arrive at a mutually agreed termination of that Landfill Gas Lease ("Lease") dated August 5, 2008 between CCE and the City, and the transfer to the City of all of CCE's interests at or related to the City's solid waste landfill ("Landfill"), this 28 day of February 2017 hereby agree upon the following terms:

1. CCE shall transfer to the City, all of its rights, title, and interest in and to any and all tangible and intangible assets related in any way to the Lease, CCE's ownership of landfill gases, facilities, and equipment at the Landfill, and to its operations at the Landfill associated with the operation of the gas production and collection system, the sale of such gases, the interconnection to the electric grid for sale of electricity produced at the Landfill, and all associated environmental attributes (collectively the "Assets"); the term environmental attributes shall include, but not be limited to: RECs, carbon credits, or any other value associated with the production, ownership and use of landfill gases and shall include environmental attributes for the time period beginning January 1, 2016 and thereafter; and all rights to any revenues or other benefits associated with landfill gases at the Landfill; it being understood that all tangible assets are being transferred in "as is" condition. It is expressly agreed that CCE makes no representations or warranties of any kind regarding environmental attributes or the assets.
2. For the acquisition of all of CCE's Assets referred to above and in consideration of the terms set forth herein, the City shall arrange for and deliver the payment of \$90,000.00 to CCE to be paid in two (2) equal installments of \$45,000.00, with the first payment to be made upon execution by CCE and final review and execution by the City Manager and City Council ratification of this Agreement ("Council Approval"), and the second payment to be paid on or before June 30, 2017. Provided, notwithstanding any other provisions herein, if the first installment is not made on or before March 20, 2017, this Agreement shall be null void and of no effect.
3. CCE shall cooperate with the City to jointly obtain the transfer of regulatory approvals related to its siting certificate from the Public Service Commission of West Virginia, its authority from PJM and FERC to sell electricity to the grid, and any registrations and certifications necessary to sell environmental attributes and any other benefit associated with CCE's ownership of landfill gases at the Landfill; it being understood that the City shall be responsible for the preparation of necessary documents related to such transfer approvals and CCE shall be responsible for providing City with any and all information in its possession or to which it has access necessary to prepare documents related to such transfer approvals and that such cooperation by CCE shall include the provision of information and documentation related to such regulatory approvals, registrations

and certifications. Provided, this Agreement is not contingent on any such approvals being obtained.

4. CCE shall transfer to the City all agreements with third parties, including Waste Management, relating to access to the Landfill, operation of the landfill gas collection system, access to the electric grid and any other agreement related to and necessary for operation of the landfill gas collection system and the sale of gases and electricity.
5. CCE and the City; CCE and Waste Management; and, CCE and Tallarico Energy shall execute mutual releases of all claims they may now have, or hereafter claim, known and unknown, arising out of or related to the Lease or to operations at the Landfill, against the other, including, but not limited to, all owners, members, officers, employees, and agents.
6. CCE and the City recognize and agree that from the date of execution of this Agreement, they shall be bound by the terms of this Agreement subject only to Council Approval.
7. The Lease shall be deemed by the Parties to be terminated as of the time of Council Approval and payment of the first payment referenced in paragraph 2.

#### SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into this \_\_\_\_ day March, 2017, by and between Charleston Clean Energy, LLC and Thomas Loehr (collectively "CCE"), the City of Charleston ("City"), Landfill Services of Charleston, Inc. ("Waste Management") and Tallarico Energy LLC ("TE").

WHEREAS, the City is the owner of the Charleston Landfill ("Landfill"); and

WHEREAS, Waste Management is the operator of the Landfill pursuant to an Operating Agreement entered into with the City of Charleston on February 15, 1994; and

WHEREAS, the City and CCE entered into a Landfill Gas Lease ("Lease") dated August 5, 2008 in which the City leased the landfill gases produced at the Landfill to CCE to construct an electric power generation facility on the leased premises ("Facility"); and

WHEREAS, CCE and Waste Management entered into an initial Access Agreement on October 13, 2008, and a subsequent Access Agreement on March 4, 2009 (collectively referred to as the "Access Agreements") through which WM granted CCE access to the Landfill, subject to the conditions set forth in such Access Agreements;

WHEREAS, on November 8, 2013, CCE and TE entered into a Purchase and Sale Agreement through which CCE sold all of its rights, title and interests in all of the electric production facilities and associated equipment at the Landfill to TE; and

WHEREAS, on February 28, 2017, the City and CCE entered into a Lease Termination and Asset Transfer Agreement (“Termination Agreement”) mutually agreeing to termination of the Lease upon terms set forth in the Termination Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, it is agreed as follows:

1. That for and in consideration of the sum of Ninety Thousand Dollars, the first Forty-Five Thousand Dollars (\$45,000) installment of which is to be paid to CCE on the date of the approval of the Termination Agreement by City Council of the City of Charleston and the second Forty-Five Thousand Dollars (\$45,000) payment to be made on or before June 30, 2017, the sufficiency of which is hereby acknowledged, CCE does hereby waive, release, acquit and forever discharge the City, Waste Management and TE (“Released Parties”), and their predecessors, successors, related and affiliated companies, parent companies, owners, members, subsidiaries, officers, directors, agents, servants, employees, representatives and assigns, from any and all complaints, claims, suits, causes of action and demands of every kind and character whatsoever, whether known or unknown, either currently pending or to be brought in the future, arising out of or related to, directly or indirectly, the Landfill Gas Lease dated August 5, 2008 (“Lease”) entered into by the City and CCE, and including those agreements between CCE and TE and CCE and Waste Management, or to operations at the Charleston Landfill.

2. As a further material consideration herein, the Released Parties do also waive, release, acquit and forever discharge CCE and its predecessors, successors, related and affiliated companies, parent companies, owners, members, subsidiaries,



officers, directors, agents, servants, employees, representatives and assigns, from any and all complaints, claims, suits, causes of action and demands of every kind and character whatsoever, whether known or unknown, either currently pending or to be brought in the future, arising out of or related to, directly or indirectly, the Lease, and including those agreements between CCE and TE and CCE and Waste Management, or to operations at the Charleston Landfill.

3. In further consideration for this Settlement Agreement and Mutual Release, CCE agrees to execute the following documents:

Confirmatory Bill of Sale of Tangible Assets and Assignment of Intangible Assets;

Confirmatory Assignment of Agreements with Third Parties;

Confirmatory Assignment of Regulatory Permits;

Confirmatory Assignment of Rights of Way; and

Confirmatory Assignment of Agreements with Third Parties for Sale of Environmental Attributes

4. It is specifically understood, acknowledged and agreed by CCE that the payment as set forth herein is received in full settlement and in satisfaction of all claims of whatever design or character that CCE may now have or may thereafter have against the Released Parties.

5. CCE agrees that it will not in the future assert mutual mistake of fact regarding the basis of this settlement, as it is its understanding that any and all claims, including those which may be discovered or known in the future, are compromised and settled and forever barred, by the payment of the settlement monies recited herein.

6. The City, Waste Management and TE agree that they will not in the future assert mutual mistake of fact regarding the basis of this settlement and that all claims against CCE, whether known or unknown, arising out of or related to the Lease or to operations at the Landfill are also compromised and settled and are forever barred.

7. The parties agree that the construction, interpretation and performance of this Settlement Agreement and Mutual Release shall be governed by the laws of the State of West Virginia.

8. The parties warrant that the terms of this Settlement Agreement and Mutual Release are contractual in nature, and not a mere recital.

The person executing this Settlement Agreement and Mutual Release on behalf of each party hereto, represents and warrants that he is fully empowered and authorized to do so.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 868-17 adopted.

11. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 869-17 do pass.

Resolution No. 869-17 – A Resolution authorizing the Mayor, City Manager or their designee, on behalf of the City, to enter into a Landfill Gas Lease Agreement with Tallarico Energy LLC (“TE”), for a five (5) year term and an option to renew for an additional five (5) year period, consistent with the terms set forth in Exhibit A hereto, including payment, subject to terms of reimbursement, by TE to City for purchase of a landfill gas collection system and related assets from Charleston Clean Energy, LLC, and payment by TE to City of a Seventeen and One-Half percent (17 1/2%) royalty on landfill gas produced, or four thousand dollars per month, whichever is greater, beginning the month of July 2017, and continuing for the term of the Lease Agreement.

#### TERM SHEET

Upon receipt of a fully executed copy of the CCE Lease Termination/Asset Transfer Agreement, and Council ratification thereof (“Council Ratification”), together with executed releases between CCE, the City, Waste Management and Tallarico Energy (“TE”) as required therein, the City will enter into a Landfill Gas Lease (“Lease”) with TE, subject to City Council approval, that provides for the following:

- 1) Term. Initial term of five (5) years with the right to renew for an additional term of five (5) years upon mutually agreeable terms reflecting the performance under the Lease during the initial term and the possible expansion of the TE operations to additional territory at the Landfill. The terms of such renewal shall be negotiated in good faith upon six (6) months’ notice in writing by either party prior to the expiration of the initial term.
- 2) Royalty payments to the City. TE shall pay monthly to the City a royalty on each decatherm (dth) of Landfill Gas produced from the Leasehold during such month, a sum equal to seventeen and one-half percent (17 1/2%) of the Appalachian TCO Index Price. The Appalachian TCO Index Price shall mean the first of the month gas index price as published by Platt’s Inside FERC’s Gas Market Report for Columbia Gas Transmission Corp. Appalachia Index.
- 3) Minimum Royalty payment. TE shall agree to pay a minimum of \$4,000 per month, regardless of the amount of gas actually produced.
- 4) Advance royalty payments. In order to facilitate the City’s acquisition of all title and interest to the landfill gases, gas collection system, and interconnection to the electric grid, TE shall advance the amount of \$90,000 as a credit against future royalty payments to the City. Such advance payments shall be made in two equal payments of \$45,000.00 with the first payment to be delivered to City on or before the date of Council Ratification and the second payment to be delivered on or before June 20, 2017. Provided, however, if Council Ratification occurs but the Lease, or a mutually agreeable modification thereof, is not approved by City Council, City will return all payments to TE.
- 5) Credits against royalties for advances. TE shall be reimbursed a total amount of \$125,000 (“Reimbursement Amount”), reflecting the \$90,000 advance set forth paragraph 4 herein and an additional \$35,000 related to unreimbursed expenses for work, equipment and supplies that TE has provided toward operation of the landfill gas collection system and flare over the past eighteen (18) months to assist in maintaining compliance with federal and state law. The application of the reimbursement credits shall commence upon the payment of royalty payments by TE to the City, which payments shall begin starting with the month of July 2017 (“Commencement Date”). TE shall deduct from such royalty payments an amount equal to 50% of the royalty amount owed to the City until the earlier of the following:

- the amount of reimbursement has been recovered by TE; (b) thirty (30) months from the Commencement Date, or, (c) TE has terminated the lease prior to the end of thirty (30) months from the Commencement Date. If the reimbursement has not been completed within thirty (30) months of the Commencement Date and TE has not terminated the Lease, the Reimbursement Amount shall be deemed extinguished and thereafter the City will be paid in accordance with the terms of the Lease with no further reimbursement obligation to TE. If TE terminates the Lease prior to the end of thirty (30) months from the Commencement Date, the Reimbursement Amount shall be deemed extinguished and thereafter the City shall have no further reimbursement obligation to TE.
- 6) Leasehold. The leasehold shall consist of all landfill gas produced at the City's landfill within the footprint of such landfill as exists on the date of Council approval of the Lease. If the City expands the footprint of the Landfill during the Term, and provided it is necessary and appropriate for the City to retain an entity other than City or its landfill operator to construct or maintain a gas collection system within such expanded footprint, TE shall have the right of first refusal for negotiation for the expansion of its rights to include such expanded area within the Lease. If applicable, such option shall be exercised within six (6) months of the approval of such expansion by the PSC. Any expansion of the Leasehold shall be subject to approval by City Council.
  - 7) TE obligations. As part of the Lease, TE shall be responsible for:
    - Operation, maintenance and expansion of the wellfield and gas collection system at the City's landfill including the active gas flare. TE shall not be responsible for the condition of, damage to, or other issues regarding the wellfield or gas collection system that occurred prior to execution of the Lease. However, TE will in good faith exercise best efforts to repair and improve the wellfield and gas collection system to restore, increase, and maintain proper function.
    - Compliance with environmental regulations related to the production of gas and the operation of the gas collection system including, but not limited to, air, noise, odor and discharge obligations arising out of TE's activities.
    - Compliance with all regulatory requirements related to the production and sale of electricity produced at the Landfill.
    - Transfer of the electric account for operation of the landfill gas collection system into TE's name and payment of such account.
    - During the term of the Lease, TE will make quarterly reports to the City concerning progress and the sale of landfill gas and payment of Royalties to the City, and shall make and timely remit any and all reports related to the Lease or TE's operations at the Landfill required by federal and state regulatory agencies.
  - 8) It is understood and agreed that TE shall cooperate with Waste Management ("WM") regarding reports necessary for regulatory compliance of operations at the Landfill and shall arrange for the responsibility for leachate control.
  - 9) TE shall indemnify, defend and hold harmless City from and against all claims, liabilities and damages arising from or related to TE's obligations under the Lease or TE's operations at the Landfill. During the term of the Lease, TE shall maintain commercial liability and any other required insurance with such terms and in such amount(s) to be mutually agreed upon by the Parties. TE shall name City as an additional insured.
8. City obligations. The City agrees that, in addition to obtaining title to the gas, it will acquire and transfer to TE during the pendency of the Lease, all of CCE's assets related to CCE's interests at the Landfill, including but not limited to:
    - a. The gas production and collection system including all active and passive flares.
    - b. All of CCE's assets related to the interconnection to the electric grid, including rights of way, electric lines and appurtenances, poles, etc. not currently owned by TE.
    - c. All structures currently owned by CCE.
- In addition, the City shall cooperate with and assist TE to have the PSC siting certificate currently held in the name of CCE transferred to TE.
9. Termination. Upon termination of the Lease, TE shall transfer ownership to the City the gas production and collection system, including the flare(s) and associated facilities required to effectively operate the flare(s),

all assets related to the interconnection to the electric grid, and all buildings not owned by TE at the commencement of the Lease.

10. Assignments. TE shall not assign any interest in the Lease or gas production and collection facilities without written approval of the City, which shall not be unreasonably withheld.
11. Disputes. In the event that a dispute should arise between TE and the City concerning matters related to operations under the Lease, TE and the City agree to negotiate in good faith and engage in non-binding mediation prior to initiating litigation.
12. Abandonment. If TE shall fail to make royalty payments to the City for more than two (2) consecutive months or otherwise fails to materially perform as required by the terms of the Lease, without the prior written approval of the City, the City shall consider TE to have abandoned the Lease and it shall have the right to consider the Lease terminated.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Richardson, Salisbury, Snodgrass, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: NONE

ABSENT: Slater, Smith,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 869-17 adopted.

12. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 870-17 do pass.

Resolution No. 870-17 – A RESOLUTION AUTHORIZING AND APPROVING THE EXECUTION OF A SUPPLEMENTAL AND AMENDATORY LOAN AGREEMENT; AND TAKING ALL OTHER ACTIONS RELATING TO SUCH TRANSACTION.

WHEREAS, pursuant to Ordinance No. 7132 enacted by the Council (the “Council”) of The City of Charleston, West Virginia (the “City”) on March 7, 2005, as supplemented by a Supplemental Resolution adopted by the Council of the City on April 18, 2005, the City issued its Sewerage System Revenue Bonds, Series 2005 A (the “City Bonds”);

WHEREAS, the City Bonds were purchased by the West Virginia Water Development Authority (the “Authority”) with a portion of the proceeds of its West Virginia Water Development Authority Water Development Revenue Bonds (Loan Program IV), Series 2005 A (the “WDA Bonds”) pursuant a Loan Agreement between the City and the Authority dated April 28, 2005 (the “Loan Agreement”);

WHEREAS, the Authority proposes to refund the WDA Bonds for a debt service savings and to rebate a portion of the annual savings to the Charleston Sanitary Board (the “Sanitary Board”) on behalf of the City;

WHEREAS, the Loan Agreement must be amended to provide for the refunding provisions and the terms of the rebate;

WHEREAS, the Sanitary Board has requested the Council to approve a supplemental and amendatory loan agreement with the Authority the form of which is attached as Exhibit A and incorporated herein by reference (the “Supplemental and Amendatory Loan Agreement”) and authorize the execution thereof; and

WHEREAS, the City hereby determines that it is in the best interest of the Sanitary Board on behalf of City to approve the Supplemental and Amendatory Loan Agreement and authorize its execution.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

1. The form of the Supplemental and Amendatory Loan Agreement is hereby approved.
2. The Mayor and City Clerk are hereby authorized to execute the Supplemental and Amendatory Loan Agreement and all documents necessary to facilitate the refunding of the WDA Bonds and the rebate to the Sanitary Board.
3. This resolution shall be effective immediately upon adoption.

**EXHIBIT A**  
**FORM OF THE**  
**SUPPLEMENTAL AND AMENDATORY LOAN AGREEMENT**

WDA-LP IV  
(2/17)

SUPPLEMENTAL AND AMENDATORY TO LOAN  
AGREEMENT DATED APRIL 28, 2005

THIS SUPPLEMENTAL AND AMENDATORY LOAN AGREEMENT (the “Supplemental Agreement”), made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the “Authority”), and the governmental agency designated below (the “Governmental Agency”).

THE CITY OF CHARLESTON (Series 2005 A)  
(Governmental Agency)

WITNESSETH:

WHEREAS, the Authority and the Governmental Agency entered into a loan agreement (the “Loan Agreement”) dated April 28, 2005. The Loan Agreement evidenced the Authority’s purchase of \$36,617,310 Sewerage System Revenue Bonds, Series 2005 A (the “Local Bonds”) from the Governmental Agency;

WHEREAS, the Authority purchased the Local Bonds with proceeds of its \$37,775,000 West Virginia Water Development Authority Water Development Revenue Bonds (Loan Program IV), Series 2005 A (the “WDA Bonds”);

WHEREAS, the Authority has been notified that it can refund the WDA Bonds at a substantial debt service savings;

WHEREAS, Sections 4.1(b)(xv) and 4.8 of the Loan Agreement must be amended to allow for the refunding;

WHEREAS, the Authority has offered to rebate the savings associated with the Local Bonds, over the 105% coverage requirement, to the Governmental Agency;

WHEREAS, the Authority and the Governmental Agency find it is in their best interest to supplement and amend the Loan Agreement to allow for the refunding of the WDA Bonds and the rebate of savings to the Governmental Agency as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and their mutual agreements hereinafter contained the Governmental Agency and the Authority hereby agrees as follows:

1.1. Section 4.1 (b)(xv) of the Loan Agreement is hereby amended and restated to read as follows:

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may prepay its Local Bonds at par plus interest payable to the call date on the Authority's first available call date; provided that the Governmental Agency and Authority may extend the call period to match the call provision on bonds issued by the Authority if the Authority refunds its bonds for savings.

1.2. Section 4.8 of the Loan Agreement is hereby amended and restated to read as follows:

4.8. As long as the Authority is the owner of any of the Local Bonds outstanding, the Governmental Agency may redeem its Local Bonds in accordance with the conditions set forth in Section 4.1 (b)(xv), as amended. The Authority hereby agrees that it will not refund the water development revenue bonds which provided the funds for the Local Bonds without the prior written consent of each of the affected Governmental Agencies.

1.3. Article IV is hereby supplemented to add a new Section 4.9 to read as follows:

4.9. Upon the execution of the Supplemental and Amendatory Agreement and the refunding of the WDA Bonds, the Authority agrees to rebate to the Governmental Agency by December 1 of each year the amount of annual debt service savings attributed to the Local Bonds in excess of the 105% coverage requirement for the Authority's refunding bonds; provided if there exists a deficiency in the Governmental Agency's debt service reserve account held at the Commission, the Authority shall first deposit the rebate with the Commission to the extent necessary to replenish the debt service reserve account to the reserve requirement and then rebate any excess to the Governmental Agency.

1.4 Capitalized terms not defined here shall have the meaning set forth in the Loan Agreement.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 870-17 adopted.



13. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 871-17 do pass.

Resolution No. 871-17 – Authorizing the Finance Director to amend the 2015 and 2016 Community Development Block Grant budget as indicated on the accounts listed below.”

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to amend the 2015 and 2016 Community Development Block Grant budget as indicated on the accounts listed below:

<u>Account Number</u>	<u>Description</u>	<u>Increase/(Decrease)</u>
009-015-00-199-0-999	Unprogrammed Funds	(31,692.00) Decrease
009-016-00-054-0-999	Chas-Kan Housing Authority	31,692.00 Increase

MOECD proposes funding to Charleston Kanawha Housing Authority for community gardens and fencing at Orchard Manor and Littlepage Terrace on Charleston’s westside.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 871-17 adopted.

14. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 872-17 do pass.

Resolution No. 872-17 – Authorizing the Mayor or City Manager to enter into an Agreement with Williamson Shriver Architects in the amount up to \$ 84,328.00 plus reimbursable expenses for Planning and Design Services related to the construction of Fire Station #3. Any additional services will be based upon the architect’s hourly rate schedule attached in Exhibit A.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to enter into an Agreement with Williamson Shriver Architects in the amount up to \$ 84,328.00 plus reimbursable expenses for Planning and Design Services related to the construction of Fire Station #3. Any additional services will be based upon the architect’s hourly rate schedule attached in Exhibit A.

Exhibit A

Principal	\$150/hr
Construction Administrator	\$135/hr
Structural Engineer	\$125/hr
Architect	\$110/hr
Intern Architect	\$85/hr
Production Staff	\$70/hr
Clerical	\$60/hr

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 872-17 adopted.

15. Your committee on Finance has had under consideration the following committee report, and reports the same to Council with the recommendation that committee report pass.

Your Committee on Finance has had under consideration:

A proposal submitted by Matheny Motors, in the total amount of \$118,138.00 for purchase of 2 (two) – 2017 Ford 550 to be used as Stake Body Dump Trucks for the Refuse Department.

*To be charged to Account No. 001-978-00-000-4-459 – Refuse, Capital Outlay*

**Dump Trucks - Refuse & Recycling**

Bid Opening: March 6, 2017 @ 11:00 a.m.

		<b>Matheny Motors</b> 4125 1st Ave. Nitro, WV 25143 P: (304) 769-5860 x. 3601 <a href="mailto:jcummings@mathenymotors.com">jcummings@mathenymotors.com</a>		
	<b>Quantity</b>	<b>Make/Model</b>	<b>Unit Cost</b>	<b>Total Cost</b>
1.5 Ton, Stake Body Dump Trucks	2	2017 Ford F550	\$59,069.00	\$118,138.00
Shipping, if applicable			Included	Included
Delivery			110 days	
<b>Total Base Bid</b>			<b>\$118,138.00</b>	

Councilman Reishman moved to approve the Committee Report. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report adopted.

16. Your committee on Finance has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7733 do pass.

Bill No. 7733 – A BILL to amend and reenact §2-161(b) of the code of the City of Charleston and to enact §2-161(c) of the code of the City of Charleston for the purpose of increasing the compensation of the City Council for future terms.

Now, Therefore, Be it Ordained by the Council of the City of Charleston, West Virginia:

That §2-161(b) of the code of the City of Charleston is hereby amended and reenacted, and that § 2-161(c) of the code of the City of Charleston is hereby enacted, all to read as follows:

Sec. 2-161. - Compensation of city officers and employees.

- (a) Officers and employees of the city shall receive as compensation for their services such salaries, wages and other emoluments as may be provided in the annual budget or other action, order, resolution or ordinance of the city council. Fees paid to the city officers and employees for documents or services rendered in the performance of official duty shall be paid over by them to the city and shall not be deemed to constitute compensation to them personally.
- (b) Commencing with the third Monday in June 2007, the mayor of the city shall receive as compensation for his services the sum of \$100,000.00 per annum; the judge of the municipal court of the city shall receive the sum of \$35,000.00 per annum; the treasurer of the city shall receive the sum of \$18,000.00 per annum; and each member of the city council shall receive the sum of \$115.00 per meeting, with a maximum yearly compensation of \$3,450.00, with payments conditioned upon the councilmember's being present; and commencing with the third Monday in June 2011, each member of the city council shall receive the sum of \$200.00 per meeting, with a maximum yearly compensation of \$5,600.00, with payments conditioned upon the councilmember's being present. [Notwithstanding the compensation set forth in this subsection \(b\) for the members of city council, beginning on the first Monday in January 2019, the compensation for members of city council shall increase as set forth in subsection \(c\) herein.](#)

- (c) Commencing with the first Monday in January 2019, each member of the city council shall receive the sum of \$250.00 per City Council meeting attended, with a maximum yearly compensation of \$7,000.00 per member.

All prior inconsistent ordinances, rules and resolutions are hereby repealed.

Councilmember Reishman moved to approve the resolution. Councilmember Lane seconded the motion.

Councilmember Ceperley spoke in favor of the bill. Councilmember Talkington spoke in favor of the bill. Councilmember Snodgrass spoke against the bill. Councilmember Lane spoke in favor of the bill. Councilmember Faegre spoke against the bill. Councilmember Ealy spoke in favor of the bill.

A roll call was taken:

YEAS: Ceperley, Chestnut, Clowser, Davis, Ealy, Haas, Harrison, Ireland, Lane, Reishman, Salisbury, Talkington, Webb, Mayor Jones

NAYS: Burka, Burton, Faegre, Hoover, Minardi, Overstreet, Persinger, Richardson, Snodgrass, Steele, Ware

ABSENT: Slater, Smith

With fourteen yeas and eleven nays recorded thereon the Mayor declared Bill No. 7733 passed.

17. Your committee on Finance has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7734 do pass.

Bill No. 7734 – A BILL to amend and reenact §2-161(b) of the code of the City of Charleston and to enact §2-161(c) of the code of the City of Charleston for the purpose of increasing the compensation of the Mayor for future terms.

Councilmember Reishman moved to approve the bill. Councilmember Lane seconded the motion.

Councilmember Overstreet proposed the following amendment to Bill No. 7734

At line 40, beginning with the word “Notwithstanding”, deletion of the remainder of line 40 and the deletion of lines 41, 42, and 43 in their entirety.

Councilmember Lane spoke against the amendment.

A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Davis, Ealy, Faegre, Haas, Hoover, Ireland, Overstreet, Persinger, Richardson, Snodgrass, Steele, Ware

NAYS: Clowser, Harrison, Lane, Minardi, Reishman, Salisbury, Talkington, Webb, Mayor Jones

ABSENT: Slater, Smith

With sixteen yeas and nine nays the Mayor declared the amendment to Bill No. 7734 passed.

The Clerk then read the bill, as amended.

Bill No. 7734 Amended – A BILL to amend and reenact §2-161(b) of the code of the City of Charleston and to enact §2-161(c) of the code of the City of Charleston for the purpose of increasing the compensation of the Mayor for future terms.

Now, Therefore, Be it Ordained by the Council of the City of Charleston, West Virginia:

That §2-161(b) of the code of the City of Charleston is hereby amended and reenacted, and that § 2-161(c) of the code of the City of Charleston is hereby enacted, all to read as follows:

Sec. 2-161. - Compensation of city officers and employees.

- (a) Officers and employees of the city shall receive as compensation for their services such salaries, wages and other emoluments as may be provided in the annual budget or other action, order, resolution or ordinance of the city council. Fees paid to the city officers and employees for documents or services rendered in the performance of official duty shall be paid over by them to the city and shall not be deemed to constitute compensation to them personally.
- (b) Commencing with the third Monday in June 2007, the mayor of the city shall receive as compensation for his services the sum of \$100,000.00 per annum; the judge of the municipal court of the city shall receive the sum of \$35,000.00 per annum; the treasurer of the city shall receive the sum of \$18,000.00 per annum; and each member of the city council shall receive the sum of \$115.00 per meeting, with a maximum yearly compensation of \$3,450.00, with payments conditioned upon the councilmember's being present; and commencing with the third Monday in June 2011, each member of the city council shall receive the sum of \$200.00 per meeting, with a maximum yearly compensation of \$5,600.00, with payments conditioned upon the councilmember's being present. Notwithstanding the compensation set forth in this subsection (b) for the mayor, beginning on the first Monday in January 2019, the compensation for the mayor shall increase as set forth in subsection (c) herein.
- (c) Commencing with the first Monday in January 2019, the mayor of the city shall receive as compensation for services the sum of \$125,000.00 per annum, Notwithstanding the compensation set forth in this subsection (c) for the mayor, commencing with the first Monday in January 2023, the mayor of the city shall receive as compensation for services the sum of \$150,000.00 per annum.

All prior inconsistent ordinances, rules and resolutions are hereby repealed.

Councilmember Reishman moved to approve the bill as amended. Councilmember Lane seconded the motion.

Councilmember Snodgrass spoke against the bill. Councilmember Ware spoke in favor of the bill. Councilmember Ealy spoke in favor of the bill. The Mayor asked the Council President pro tem to take the chair so that he could address Council. The Mayor spoke in favor of the bill. The Mayor then presided over Council.

A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Salisbury, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: Faegre, Richardson, Snodgrass

ABSENT: Slater, Smith

With twenty two yeas and three nays, elected recorded thereon the Mayor declared Bill No. 7734 as amended passed.



18. Your committee on Finance has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7735 do pass.

Bill No. 7735 – A BILL to amend and reenact §2-161(b) of the code of the City of Charleston and to enact §2-161(c) of the code of the City of Charleston for the purpose of increasing the compensation of the Judge of the Municipal Court for future terms.

Now, Therefore, Be it Ordained by the Council of the City of Charleston, West Virginia:

That §2-161(b) of the code of the City of Charleston is hereby amended and reenacted, and that § 2-161(c) of the code of the City of Charleston is hereby enacted, all to read as follows:

Sec. 2-161. - Compensation of city officers and employees.

- (a) Officers and employees of the city shall receive as compensation for their services such salaries, wages and other emoluments as may be provided in the annual budget or other action, order, resolution or ordinance of the city council. Fees paid to the city officers and employees for documents or services rendered in the performance of official duty shall be paid over by them to the city and shall not be deemed to constitute compensation to them personally.
- (b) Commencing with the third Monday in June 2007, the mayor of the city shall receive as compensation for his services the sum of \$100,000.00 per annum; the judge of the municipal court of the city shall receive the sum of \$35,000.00 per annum; the treasurer of the city shall receive the sum of \$18,000.00 per annum; and each member of the city council shall receive the sum of \$115.00 per meeting, with a maximum yearly compensation of \$3,450.00, with payments conditioned upon the councilmember's being present; and commencing with the third Monday in June 2011, each member of the city council shall receive the sum of \$200.00 per meeting, with a maximum yearly compensation of \$5,600.00, with payments conditioned upon the councilmember's being present. [Notwithstanding the compensation set forth in this subsection \(b\) for the judge of the municipal court, beginning on the first Monday in January 2019, the compensation for the judge of the municipal court shall increase as set forth in subsection \(c\) herein.](#)

- (c) Commencing with the first Monday in January 2019, the judge of the municipal court shall receive as compensation for services the sum of \$40,000.00 per annum.

All prior inconsistent ordinances, rules and resolutions are hereby repealed.

A roll call was taken:

YEAS: Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Salisbury, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: Burka, Richardson, Snodgrass

ABSENT: Slater, Smith,

With twenty two yeas and three nays, elected recorded thereon the Mayor declared Bill No. 7735 as passed.

***REPORTS OF OFFICERS***

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1. City of Charleston, WV – Financial Statements, for the seven-month period ending January 31, 2017.  
Received and Filed.
2. Municipal Court Report to City Council Month Ending February 2017.  
Received and Filed.

***ADJOURNMENT***

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*The Clerk, JB Akers, called the closing roll call:*

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Richardson, Salisbury, Snodgrass, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: NONE

ABSENT: Slater, Smith

At 8:06 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, March 20, 2017, at 7:00 p.m., in the Council Chamber in City Hall.

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Danny Jones, Honorable Mayor

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JB Akers, City Clerk