



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

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, September 18, 2017

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

OFFICIAL RECORD

**Danny Jones
Mayor**

**JB Akers
City Clerk**

CALL TO ORDER

The Council met in the Chambers of the City Building at 7:00 P.M., for the second meeting in the month of September on the 18th 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 Ethan Akers. 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
JONES
MINARDI
REISHMAN
SMITH
TALKINGTON**

**BURTON
CLOWSER
FAEGRE
HOOVER
KING
OVERSTREET
RICHARDSON

WARE**

**DAVIS
HAAS
IRELAND
LANE
PERSINGER
SALISBURY
STEELE
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

1. Pastor Tia Welch – of Job Corps Centers. Invited Council to attend their walk for International Day of Peace.

CLAIMS

1. A claim of American Electric Power, 1 Riverside Plaza, Columbus, OH;
Alleges damage to property.
Refer to City Solicitor.
2. A claim of Francis Lester, 795 Pacific Street, Charleston, WV;
Alleges damage to personal property.
Refer to City Solicitor.

PROCLAMATIONS

1.

EXECUTIVE DEPARTMENT
CITY OF CHARLESTON
PROCLAMATION
By the Mayor

- WHEREAS: On September 27, 1917, Betty Jane Frank was born in Dayton, Ohio; and
- WHEREAS: She was graduated from Ohio State University, where she had met a young man from West Virginia named Alex Schoenbaum, who had become a star football player; and
- WHEREAS: During their 56 years of marriage, Alex and Betty Schoenbaum launched a drive-in restaurant on Charleston's west side and expanded that success into what became the Shoney's Restaurant chain and other enterprises in the nation's hospitality industry; and
- WHEREAS: Their success in restaurants and hotels led to lives of philanthropy, adding long-lasting benefits for their college alma mater, the communities where they lived and many more organizations and institutions promoting arts, recreation, education, young people, health care and social services; and
- WHEREAS: Mrs. Schoenbaum's generosity made several projects possible to improve well-used facilities owned by the City of Charleston, including the iconic Schoenbaum Stage, which hosts dozens of performances (including the Moses Auto Group Live on the Levee during the summer), and the Schoenbaum Tennis Courts, which play host to college, high school and community tournaments every year; and
- WHEREAS: Her personal mantra, "The joy of living is the joy of giving," has had a positive impact in and around Charleston for decades past and decades to come through her consistent support of the Schoenbaum Family Enrichment Center and agencies housed there, Charleston Light Opera Guild, FestivALL Charleston, B'Nai Jacob Synagogue, University of Charleston, the Schoenbaum Soccer Field and many, many more ways through which her giving has improved living throughout our community; and
- WHEREAS: As Mrs. Schoenbaum celebrates 100 years of life this month, people throughout our greater community should take special note of how one wonderful person has had a major, positive impact on the lives of so many of us in Charleston – and beyond.

NOW THEREFORE, I, Danny Jones, Mayor of the City of Charleston, West Virginia, with the support of the elected leaders of our City, do hereby proclaim September 27, 2017 as

BETTY SCHOENBAUM DAY

in Charleston, West Virginia, in honor of her tremendous contributions to our greater community and in celebration of her 100 years of a life well lived and her generosity so freely given.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 18th day of September 2017.

Danny Jones, Mayor

PUBLIC HEARINGS

1. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Resolution No. 948-17. 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. 949-17. No person from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.
3. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Resolution No. 950-17. No person from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.
4. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Resolution No. 951-17. No person from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.
5. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Bill No. 7757. No person from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.

COMMUNICATIONS

1.

CITY OF CHARLESTON
OFFICE OF THE MAYOR



**TO: J. B. AKERS
CITY CLERK**

**FROM: DANNY JONES
MAYOR**

RE: MUNICIPAL BEAUTIFICATION COMMISSION

DATE: SEPTEMBER 18, 2017

I recommend that Sara DeBarr Jones, 504 Linden Road, Charleston, WV 25314, be reappointed to the Municipal Beautification Commission, with a said term to expire September 19, 2020. I respectfully request City Council's approval of this recommendation.

DJ/dmp

Councilmember Harrison moved to approve the appointment. Councilmember Lane seconded that motion. By unanimous vote, the appointment was confirmed.

2.

CITY OF CHARLESTON
OFFICE OF THE MAYOR



TO: J. B. AKERS
CITY CLERK

FROM: DANNY JONES
MAYOR

RE: MUNICIPAL BEAUTIFICATION COMMISSION

DATE: SEPTEMBER 18, 2017

I recommend that Donna Graham, 4403 Kanawha Avenue, S.E., Charleston, WV 25304 be appointed to the Municipal Beautification Commission, with an initial term to expire September 19, 2020. She is replacing Pauline Lester.

I respectfully request City Council's approval of this recommendation.

DJ/p

Councilmember Harrison moved to approve the appointment. Councilmember Lane seconded that motion. By unanimous vote, the appointment was confirmed.

3.

CITY OF CHARLESTON
OFFICE OF THE MAYOR



TO: J. B. AKERS
CITY CLERK

FROM: DANNY JONES
MAYOR

RE: MUNICIPAL BEAUTIFICATION COMMISSION

DATE: SEPTEMBER 18, 2017

I recommend that Otis Laury, 501 Woodcliff Road, Charleston, WV 25314 be reappointed to the Municipal Beautification Commission, with a said term to expire September 19, 2020.

I respectfully request City Council's approval of this recommendation.

DJ/dmp

Councilmember Harrison moved to approve the appointment. Councilmember Lane seconded that motion. By unanimous vote, the appointment was confirmed.

4.

CITY OF CHARLESTON
OFFICE OF THE MAYOR



**TO: J. B. AKERS
CITY CLERK**

**FROM: DANNY JONES
MAYOR**

RE: MUNICIPAL PLANNING COMMISSION

DATE: SEPTEMBER 18, 2017

I recommend that Deanna McKinney, 801 6th Street, Charleston, WV 25302, be appointed to the Municipal Planning Commission, with an initial term to expire July 1, 2019. She is replacing Andrew Gunnoe.

I respectfully request City Council's approval of this recommendation.

DJ/dmp

Councilmember Harrison moved to approve the appointment. Councilmember Lane seconded that motion. By unanimous vote, the appointment was confirmed.

5.

CITY OF CHARLESTON
OFFICE OF THE MAYOR



TO: J. B. AKERS
CITY CLERK

FROM: DANNY JONES
MAYOR

RE: MUNICIPAL BEAUTIFICATION COMMISSION

DATE: SEPTEMBER 18, 2017

I recommend that Amy McLaughlin, 7 Arlington Court, Charleston, WV 25301 be reappointed to the Municipal Beautification Commission, with a said term to expire September 19, 2020.

I respectfully request City Council's approval of this recommendation.

DJ/dmp

Councilmember Harrison moved to approve the appointment. Councilmember Lane seconded that motion. By unanimous vote, the appointment was confirmed.

REPORTS OF COMMITTEES

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. 948-17 do pass.

Resolution No. 948-17 - Authorizing the renewal of a Lease with the Kanawha County Board of Education for continued use of space in the Martin Luther King Community Center to conduct Head Start programs, pursuant to the authority granted the City of Charleston under West Virginia State Code Section 8-12-18.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA that upon final review and approval of the Agreement by legal counsel for the City, the Mayor or City Manager is hereby authorized to execute a renewal Lease with the Kanawha County Board of Education for continued use of space in the Martin Luther King Community Center to conduct Head Start programs.”

LEASE AGREEMENT

This Lease Agreement (the “Lease”) is dated as of the 1st day of July, 2017, by and between the CITY OF CHARLESTON, a West Virginia municipal corporation (the “City”) and the KANAWHA COUNTY BOARD OF EDUCATION (the “Tenant”):

RECITALS

WHEREAS, the City has power and authority to lease its property pursuant to Chapter 8, Article 12, Section 18 of the West Virginia Code of 1931, as amended;

WHEREAS, Tenant, a county board of education, is authorized to lease property for school purposes pursuant to West Virginia Code § 18-5-9;

WHEREAS, the Tenant has requested that the city lease to it the Premises (as defined in Article 1, Section A of this Lease Agreement) duly authorized by proper action, and the Tenant is not prohibited under the terms of any outstanding deed of trust, mortgage, loan agreement or other instrument or evidence of indebtedness of whatever nature from entering into this Lease and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Lease and affirmatively so represents to City;

WHEREAS, the parties acknowledge and agree that the Tenant will utilize the Premises for its school sponsored Head Start program and that throughout the term of this Lease, or any tenancy thereunder, the Premises shall constitute a primary or secondary education building, structure, facility and grounds, as well as the full time location of a school sponsored function, as contemplated by West Virginia Code § 61-7-11a.

NOW THEREFORE, in consideration of the mutual agreements set forth herein, City and Tenant hereby agree as follows:

ARTICLE 1. THE LEASE

A. Lease

City hereby lets, leases and demises unto Tenant, and Tenant hereby takes and hires from City certain exclusive and multiple use areas located in the Martin Luther King Community Center, located at 314 Donnally Street, Charleston, West Virginia (the “Premises”), further defined as follows:

Exclusive Use Areas. Subject to the terms and limitations contained herein, the City leases to Tenant license to use and occupy the Head Start Facility, hereinafter referred to and known as the “Exclusive Use Areas.” Tenant shall be solely responsible for contracting with the City for cleaning of Tenant’s Exclusive Use Areas on a daily basis, and shall keep the same in a clean and sanitary condition.

Multiple Use Areas. City does hereby agree to also permit Tenant and program participants to use the following spaces at the Martin Luther King Community Center, hereinafter referred to as “Multiple Use Areas”, for educational purposes and recreational program purposes, during normal hours of operation and with prior arrangement with the Director of Parks & Recreation (the “Director”) or his designated representative:

- a. classrooms;
- b. kitchen;
- c. all outdoor play areas and recreational facilities.

Common Areas. Tenant and its program participants shall also be permitted reasonable use of all common areas necessary and appurtenant to use and enjoyment of the Exclusive Use Areas and Multiple Use Areas, which shall include, but not necessarily be limited to stairways, elevator, hallways and restrooms.

B. Term

The term of this Lease shall be for a period of (1) year, commencing on the date as stated in the initial paragraph of this Lease, and expiring at midnight of its first anniversary (the “Expiration Date”).

Any holding over by Tenant or retention of the Premises beyond the Expiration Date shall not be construed as renewing or extending this Lease in any manner whatsoever; but it may, at the sole option of City, be construed as creating a tenancy from month to month, terminable without cause by either party upon thirty (30) days written notice. Under any holding over or retention of the Premises beyond the Expiration Date, Tenant shall be subject to all the conditions of this Lease excepting the term.

C. Consideration

City and Tenant, a public body pursuant to W.Va. Code Section 1-5-2, Agree that Tenant’s use of the leasehold interest granted by this Lease shall be for a public purpose and further agree that there is adequate consideration for this Lease pursuant to W. Va. Code section 8-12-18(a).

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

Tenant represents, acknowledges and warrants to City that as of the date of execution of this Lease:

A. Premises As Is

Tenant hereby acknowledges that it or its agents have inspected the Premises, and Tenant hereby agrees to accept the Premises “AS IS” in its present condition.

B. Corporate Authority

Tenant represents that it is a political subdivision of the State of West Virginia, has full legal right, power, and authority to enter into this Lease and to carry out and consummate all transactions contemplated hereby, and by proper action has duly authorized the execution, delivery and performance of this Lease.

C. Executor’s Authority

The officer of the Tenant executing this Lease is duly and properly in office and fully authorized to execute the same.

D. Delivery

This Lease has been duly authorized, executed and delivered by the Tenant.

E. Binding

This Lease will constitute the legal, valid and binding agreement of Tenant enforceable against Tenant in accordance with its terms; except as enforcement of such agreement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally and by the application of equitable principles if equitable remedies are sought.

F. No Conflict with Other Agreements

The execution and delivery of this Lease and the fulfillment of or compliance with its terms and conditions will not conflict with or constitute a violation or breach of or default under any applicable law or administrative rule or

regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which Tenant is a party or by which any of it or its properties are otherwise subject or bound.

G. No Litigation or Default

There is no action, suit, proceeding, inquiry or investigation, before or by any court or Federal, state, municipal or other governmental entity, pending, or to the knowledge of Tenant, after reasonable investigation, threatened, against or affecting Tenant or the assets, properties or operations of Tenant which, if determined adversely to Tenant or its interests, would have a material adverse effect upon this Lease. Tenant is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental entity, which default might have consequences that would materially and adversely affect the consummation of this Lease.

ARTICLE 3. COVENANTS

A. Compliance with Law; Application of West Virginia Code § 61-7-11a

Tenant shall comply with all federal, state and local laws, regulations and ordinances relating to its business and the premises through the term of this Lease.

Tenant shall be familiar with all federal, state and local laws, regulations and ordinances relating to the supervision and provision of services to children, youth and senior citizens, and shall maintain compliance with such laws throughout the term of the Lease. This shall include, but not be limited to, any regulations promulgated by the Department of Health and Human Services, the Kanawha-Charleston Health Department and any fire/life safety regulations. Tenant shall make all commercially reasonable efforts to cooperate and comply with any and all inspections of the Premises required and/or performed by any City, State or Federal agency and, to the extent within the control of Tenant, shall immediately remedy any deficiencies identified by those agencies.

Tenant hereby acknowledges that Federal funds may be used on the Premises, and if used, Tenant shall comply with all additional Federal laws and regulations applicable to the use and occupancy of the Premises, including, but not limited to, such laws and regulations governing non-discrimination in the providing of services.

The parties acknowledge and agree that Tenant's use of the Premises requires application of and adherence to West Virginia Code § 61-7-11a, along with Tenant's own similar policies and regulations, which make it unlawful for a person to possess a firearm or other deadly weapon on the Premises. As a result, firearms and other deadly weapons are prohibited on the Premises.

B. Prohibitions

Tenant shall not use or occupy the Premises or permit the same to be used or occupied for any purpose or in any manner that:

1. Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule, or violates any provision of this Lease;
2. May be dangerous to persons or property;
3. May create a nuisance, disturb any the occupants of neighboring properties or injure the reputation of the Premises;
4. Violates any restrictions, rules, or regulations promulgated by City with respect to the Premises or imposed by any covenant or servitude of record;

5. May be deemed hazardous by City due to risk of fire or other event or due to the nature of materials used or stored in or upon the Premises;

6. May cause damage to any of the improvements upon the Premises, ordinary wear and tear excepted;

7. May invalidate any policy or policies of insurance now or hereinafter carried on the Premises by City or that may increase the rate of insurance thereon;

C. Liens; Encumbrances

Tenant shall not mortgage, assign offer as collateral or otherwise encumber its rights under this lease without express, written consent from City for each and every assignment, sublease or encumbrance to each and every party. Consent by City for an encumbrance does not waive City's right to object to any and all subsequent assignments, subleases or encumbrances. City disclaims any claim by a third party to any right, title or interest not in accordance with this Lease.

D. Alterations

1. Prohibited. Tenant shall not, without the prior written consent of City, make or cause to be made any alterations, improvements, additions or installations in or to the Premises.

2. Hold Harmless. To the fullest extent permitted by law, Tenant shall indemnify and save City harmless from any and all mechanics, materialmen's and laborers' liens associated with any work performed on the Premises. Before the commencement of any such work, Tenant shall pay the amount of any increases in premiums on insurance policies for which this Lease provides because of policy endorsements necessary to cover the risk during the course of the work. In addition, if the estimated cost of work shall exceed Five Thousand Dollars (\$5,000.00), Tenant shall on its own or via its building contractor, without cost to City, furnish City, unless City waives the same in writing, a performance bond written by a surety acceptable to City in an amount equal to the estimated cost of the work, guaranteeing the completion of work, free and clear of all liens, encumbrances and security interests according to plans and specifications approved in writing by City before the commencement of the work. Tenant agrees to reimburse City for materials and labor required for vandalism repairs and building and equipment repair and replacement for classrooms and kitchen.

E. Use of Premises

The permitted public use for which the Premises are leased is for Tenant's educational program purposes only. Tenant shall have access to Premises from the hours of 6:30 a.m. until 6:00 p.m., Monday through Friday. Access to the Premises at any other times shall be restricted to those hours as may be agreed upon by the Director, for which additional rents, consideration, or other compensation may be required.

Any new programs which require additional space or which change the use of space after execution of this Lease shall be presented to the Director for approval determination at least 30 days prior to the commencement of the program. Tenant further agrees and covenants that it shall provide adult supervision to all of Tenant's program participants during the time that any Tenant programs are in session.

F. Utilities

City shall pay all utilities at the Premises. Tenant understands and is aware that all utilities and services shall be furnished to the Premises by third parties and Tenant covenants and agrees that City shall not be liable or responsible for any damage on account of the failure at any time of the third parties to supply such utilities and services due to strikes, lockouts, boycotts, labor disturbances, accidents, inclement weather or any other causes beyond City's control, or by virtue of any direction, order or regulation of any Federal, State, County, City, or local

authority.

G. Insurance

Tenant covenants and agrees that (i) from and after the commencement date of this Lease, Tenant shall carry and maintain at Tenant's sole cost and expense insurance in the amounts and in the forms as specified herein, (ii) Tenant shall provide primary coverage for all such policies, and all such policies shall reflect that Tenant is responsible for all deductibles, and (iii) Tenant shall name the City of Charleston as an additional insured on all its policies for purposes of this Lease and the Insurance and Indemnity provisions herein.

Public Liability Insurance. Tenant shall keep in full force and effect public liability insurance in respect to the use and occupation of the Premises and the indemnity provisions contain herein, naming City as an additional insured, in the amount of One Million Dollars (\$1,000,000.00) per person, One Million Dollars (\$1,000,000) per occurrence on account of personal injury to or death of one or more persons, and Five Hundred Thousand Dollars (\$500,000.00) for each occurrence of Property Damage on the Premises. To accommodate inflation and increases in costs, at the request of City, Tenant shall obtain increased amounts of public liability coverage based on amounts ordinarily obtained by organizations providing similar services.

Tenant's Personal Property. Tenant shall have in full force and effect all risk coverage for the full value of all of Tenant's equipment, trade fixtures, furnishings and all items of personal property which may be in or upon the Premises. City, its employees and agents, shall not be liable for loss of or damage to Tenant's equipment, trade fixtures, goods, furnishings and items of personal property placed in or upon the Premises from accidents, conditions, fire or casualty occurring in, on or about the Premises whether or not due to City negligence.

City's Right to Approve Policies of Insurance. All policies of insurance referred to hereinabove shall be written in such form and by such insurance company or companies satisfactory to City. Tenant shall pay all of the premiums therefor and shall deliver such insurance policies or certificates thereof to City. Each insurer mentioned herein above shall agree, by endorsement on the policy or policies issued to Tenant, or by independent instrument furnished to City, that it will give City thirty (30) days written notice before any policy or policies of insurance are altered or canceled. City shall not unreasonably withhold approval as to the form of such insurance or the insurance company or companies selected by Tenant. The cost of insurance required to be carried by Tenant herein above shall be deemed to be an additional rental hereunder.

H. Taxes

In the event the Premises incur taxes for personal property owned or leased by Tenant, Tenant shall pay all taxes on personal property as the same become due and payable.

I. Assignment; Sublease

Tenant shall not assign or sublet this Lease or any right or privileges hereunder, in whole or in part, without first obtaining the express written consent of City. If Tenant assigns or sublets this Lease without first obtaining the express written consent of City, it shall be considered a breach of this Lease, but shall not relieve Tenant in any way of Tenant's obligations under this Lease.

J. City's Right to inspection

Tenant shall allow City or its employees, agents or representatives free access to the Premises including, but not limited to, the portions of the Premises occupied and used by Tenant, and any improvements thereon, during reasonable hours for the purpose of examining the same to ascertain if the same are in good repair and condition. Moreover, at City's sole will and discretion, City shall have access to the Premises including, but not limited to, the portions of the Premises occupied and used by Tenant to make repairs or alterations to the Premises provided that City does not unreasonably interfere with Tenant's use of the Premises. Such inspection, however, shall in no way obligate City to make any such repairs under this Lease. City shall have the further right to show the Premises including, but not limited to, the portions of the Premises occupied and used by Tenant, and any improvements thereon, to prospective occupants during the period of ninety (90) days before the expiration of the term of this

lease.

K. Waiver of Claims and Liability

Assumption of Risk. Tenant hereby assumes all responsibility and legal liability for bodily injury to, and loss of use or destruction of any property of Tenant or any third party, including, but not limited to agents, employees, guests, students, clients, licensees, program participants, invitees, or customers of Tenant caused by or arising out of any defects in or conditions of the Premises or improvements on the Premises now existing or hereinafter existing, including, without limitation, all sidewalks, walkways or parking areas adjacent or appurtenant to the Premises. This paragraph is intended to encompass all defects to or conditions of the Premises or improvements on the Premises and adjacent ways including, but not limited to, those conditions caused by fire, water, explosion, wind, snow, ice or other casualty.

Waiver and Liability. To the full extent permitted by law, Tenant hereby releases and waives all claims against City and its officers, employees and agents, for injury, death or damage to persons, property or business sustained for any reason in and about the Premises by Tenant, its agents, employees, program participants, guests, students, clients, licensees, invitees or customers, other than injury, death, or damage caused by the sole negligence of City, its officers, employees or agents. To the full extent permitted by law and as between Tenant and City, Tenant shall be solely responsible for any and all claims, demands, or actions, together with all costs, expenses and liabilities incurred or in connection with each such claim, demand or action, including without limitation, all reasonable attorneys' fees and expenses, with respect to damage, injury or death made by or on behalf of any person or entity, arising from any act or omission, negligence or willful misconduct of Tenant or of Tenant's principals, officers, agents, contractors, servants, employees, licensees, program participants, and invitees, or arising from or in connection with: (i) the conduct on or management of the Premises or of any business therein by Tenant, or any work or thing whatsoever done by Tenant, or any condition created or caused by the negligence or willful misconduct of Tenant, in or about the Premises, during the term of this Lease; (ii) the willful misconduct or negligence of Tenant or any of its subleasees or licensees or its partners, directors, officers, agents, affiliated entities, employees, program participants, invitees or contractors; (iii) any accident, injury or damage occurring in, at, or upon the Premises resulting from the negligence or willful misconduct of Tenant, regardless of the location in which such damage, injury, or death occurs, including, but not limited to, slips, trips, falls, or other accidents, personal injury or property damage of any kind; and (iv) any breach or default by Tenant in the full and prompt payment and/or performance of any and all Tenant's obligations under this Lease. The obligations of Tenant under this paragraph shall survive termination of this Lease.

L. Nondiscrimination

Tenant shall assure that use of the Premises occupied by Tenant will be open to all, in accordance with federal laws and regulations, state laws and regulations, and Codes and Ordinances of the City (collectively the "Nondiscrimination Laws"), and that all contractors and subcontractors engaged in the construction of any Tenant-owned improvements shall provide an equal opportunity for employment under the Nondiscrimination Laws.

M. Confidentiality

As some space is shared by City, Tenant agrees that, if it may come into contact with any papers or other information relating to City's business, the papers or other information is the property of the City and is to be treated as confidential. Said documents shall neither be copied nor shared with any party.

ARTICLE 4. TERMINATION

A. Termination

City or Tenant may terminate this Lease without cause by giving thirty (30) days written notice of termination to the other party.

This Lease may be earlier terminated for cause by City for any of the following reasons:

1. Upon the breach by Tenant of any covenant or other term or condition of this Lease; provided that City shall provide Tenant with written notice of such breach, and provide Tenant ten (10) days to remedy said breach to the satisfaction of City. No notice of breach by City shall be required for a recurring breach for which Tenant has received a previous notice and period to remedy; or
2. If any warranty or representation made by Tenant is untrue in any material respect ; or
3. Upon Tenant's becoming insolvent or upon commencement under the Bankruptcy Act of any similar proceeding either voluntarily or involuntarily; or
4. If Tenant fails to maintain General Liability insurance as required herein, with the City and its agents as additional insureds, with limits of at least \$1 million.
5. If Tenant fails to use the leased Premises for a public purpose consistent with this Lease.

Upon termination for cause, City may, in addition to its other rights and remedies hereunder, institute a civil action for damages or specific performance and exercise such other rights and remedies as it may have under applicable law.

B. Discontinuance or Abandonment of Proceedings

If any proceeding taken by the City on account of any breach shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the City, then, and in every case, the City and Tenant shall be restored to their former position and rights hereunder, respectively, including any rights and limitations assigned to third parties, and all rights, remedies and powers of the City shall continue as though no such proceeding had taken place.

C. Remedies Cumulative; No Ongoing Waiver

No remedy conferred upon or reserved to the City hereby or now or hereafter existing at law or in equity or by statute, shall be exclusive but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any breach shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the City. In the event of any express waiver of a breach hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent breach or impair any right arising as a result thereof.

D. Attorneys' Fees and Other Expenses

If, as a result of the breach by Tenant of any covenant or other term or condition of this Lease, City incurs expenses for the enforcement of performance or observance of any obligation or agreement on the part of Tenant, including, but not limited to, reasonable attorney's fees, Tenant will, on demand, reimburse City such reasonable expenses so incurred.

ARTICLE 5. MISCELLANEOUS

A. Personal Property Lien

City hereby reserves to City, a lien against all personal property and improvements brought upon the Premises by

Tenant to secure payments of all monetary sums which may become payable under this Lease or incident thereto. Upon Tenant's breach of this Lease, Tenant's personal property shall not be removed by Tenant until such breach is corrected.

B. Force Majeure

City shall not be deemed in default with respect to any of the terms, covenants and conditions of this Lease if City fails to timely perform the same due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, fuel shortages, accidents, casualties, acts of law, acts of God, acts caused directly or indirectly by the other party to this Lease, or their agents, employees or invitees, or any other cause beyond the reasonable control of the City.

C. Damage or Destruction of Premises

If the Premises shall be damaged or destroyed during the term of this Lease by fire or other insurable casualty, City may, at its sole discretion, initiate repairs to restore the same to substantially the condition it was in upon commencement of this Lease. City shall be entitled to collect and receive all insurance proceeds payable by reason of such damage or destruction to the Premises excluding any personality or removable fixtures of Tenant. If, however, the Premises should be damaged or destroyed by any cause so that City shall decide to demolish or to completely rebuild the Premises, City may, within sixty (60) days after such damage or destruction, give Tenant written notice of such decision and thereupon this Lease shall be deemed to have terminated as of the date of such damage or destruction and Tenant shall immediately quit and surrender the Premises to City.

D. Eminent Domain

In the event a taking of the Premises by eminent domain occurs that renders the Premises unusable for Tenant, Tenant shall have the right within ten (10) days after receiving notice of the taking to terminate this Lease by written notice to City of Tenant's intention to terminate.

E. Successors

The terms, conditions, covenants and agreements herein contained shall extend to, inure to the benefit of, and be binding upon the parties hereto and their respective personnel, representatives, successors and assigns.

F. No Brokerage Commission

City and Tenant mutually warrant with one another that no real estate broker is entitled to a commission as a result of producing this Lease and that neither party employed or engaged a real estate broker or agent to effectuate this Lease.

G. Notice

All notices to be given hereunder by either party shall be in writing and shall be sent by Certified Mail, Return Receipt Requested, to City and to Tenant at the addresses below:

CITY: Office of the City Manager
Attn: City Manager
City of Charleston
P.O. Box 2749
Charleston, WV 26330

TENANT: Kanawha County Board of Education
200 Elizabeth Street

Charleston, WV 25311

ARTICLE 6. INTERPRETATION

A. Governing Law and Consent to Jurisdiction and Venue

This Lease shall be deemed to be executed in The City of Charleston, State of West Virginia, regardless of the domicile of Tenant, and shall be governed by and construed in accordance with the laws of the State of West Virginia.

The parties agree that any and all claims asserted by or against City arising under this Lease, or related thereto, shall be heard and determined either in the United States District Court for the Southern District of West Virginia or in the Circuit Court of Kanawha County, West Virginia.

B. Construction

1. Severability

If any provision of this Lease is held invalid, the remainder of the Lease shall not be affected thereby and all other parts of this Lease shall remain in full force or effect.

2. Entire Agreement

This Lease, together with all agreements and documents incorporated by reference herein, constitutes the entire agreement of the parties and is not subject to modification, amendment, qualification or limitation except as expressly provided herein.

3. Amendments and Supplements

This Lease may be amended, changed or modified only by the written agreement of the parties.

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 948-17 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. 949-17 do pass.

Resolution No. 949-17 - Authorizing the Mayor or City Manager to enter into a five year lease, with an option for an additional five years subject to Council approval, with the non-profit Young Women's Christian Association of Charleston, West Virginia, for the purpose of providing State-licensed childcare services to families through the operation of the YWCA Child Enrichment Center at 201 Donnally Street (a copy of the lease attached hereto as Exhibit A).

WHEREAS, City Council finds that the YWCA Child Enrichment Center provides valuable services to families that benefit the public and that the City could provide; and

WHEREAS, City Council finds that the benefit to the City of leasing the property at 201 Donnally Street for the purpose of operating the YWCA Child Enrichment Center exceeds its need for the property; and

WHEREAS, City Council finds that the non-profit Young Women's Christian Association of Charleston, West Virginia, has need of the property in order to continue to provide the services benefiting the public;

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

That, the Mayor or City Manager is hereby authorized to enter into a five year lease, with an option for an additional five years subject to Council approval, with the Young Women's Christian Association of Charleston, West Virginia, for the purpose of operation of the YWCA Child Enrichment Center at 201 Donnally Street, for the consideration of providing services that benefit the public pursuant to City Code Section 3-13.

LEASE AGREEMENT

This Lease Agreement (the “Lease”), dated as of the ____ day of _____ 2017, by and between the CITY OF CHARLESTON, a West Virginia municipal corporation (the “City”) and the YOUNG WOMEN’S CHRISTIAN ASSOCIATION OF CHARLESTON, WEST VIRGINIA, INC., a West Virginia nonprofit corporation (the “Tenant”);

RECITALS

WHEREAS, the City has power and authority to lease any of its property pursuant to Chapter 8, Article 12, Section 18 of the West Virginia Code of 1931, as amended;

WHEREAS, pursuant to Chapter 8 of the West Virginia Code of 1931, as amended, the City has power and authority to provide children services and lease its property to an independent entity for the purpose of operating a facility to provide children services in consideration for the provision of services for which the City otherwise would make direct expenditures;

WHEREAS, the City Council by Resolution has authorized this Lease Agreement after notice and a hearing;

WHEREAS, the Tenant has requested that the City lease to it the Premises (as defined in Article 6, Section A of this Lease Agreement) duly authorized by proper corporate action, and the Tenant is not prohibited under the terms of any outstanding deed of trust, mortgage, loan agreement or other instrument or evidence of indebtedness of whatever nature from entering into this Lease Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement and affirmatively so represents to Issuer;

WHEREAS, the Tenant operates the YWCA Child Enrichment Center (as defined in Article 6, Section A of this Lease Agreement) to provide State-licensed childcare services to families;

NOW THEREFORE, in consideration of the rents and mutual agreements set forth herein, City and Tenant hereby agree as follows:

ARTICLE 1. THE LEASE

A. Lease

City hereby lets, leases and demises unto Tenant, and Tenant hereby takes and hires from City, the Premises, as defined in Article 6, Section A herein.

B. Term

The term of this Lease Agreement shall be for a period of five (5) years (the “Initial Term”), commencing on the date as stated in the initial paragraph of this Lease Agreement, and expiring at midnight of its fifth anniversary (the “Expiration Date”). Tenant may request an extension of the term of this Lease for one (1) consecutive five (5) year period (the “Extension Term”), upon the same terms and conditions as contained in this Lease. To request the extension, Tenant shall give City written notice (“Tenant’s Extension Request”) at least ninety (90) days prior to the expiration date of the Initial Term. Tenant’s Extension Request shall be effective to extend the Term of the Lease subject to approval of the Request by Resolution of the City Council and without any further documentation other than such approved Resolution. Passage of the Resolution and Tenant’s Extension Request shall evidence intent by both parties to renew the Lease.

Any holding over by Tenant or retention of the Premises shall not be construed as renewing or extending this Lease Agreement in any manner whatsoever; but it may, at the option of City, be construed as creating a tenancy from month to month and on the same other provisions and conditions herein contained insofar as applicable, terminable by either party on thirty (30) days written notice. Tenant shall be subject to all the conditions of this Lease excepting the term.

If Tenant has met all its obligations under this lease and is not in breach, Tenant may, at Tenant’s option, terminate this Lease prior to the expiration hereof if City defaults in the performance of any of City’s covenants, conditions or

obligations hereunder and such default by City continues unremedied for a period of ninety (90) days from and after the date on which Tenant has mailed to City a written notice of such default; Notwithstanding, Tenant agrees and understands Tenant shall remain liable for any amounts owed to third parties and secured by this Leasehold.

C. Consideration

In exchange for the leasehold interest granted by this Lease, Tenant covenants and agrees to provide to the City the following fair and adequate consideration:

Agreement to Provide Essential Services for City Residents/City Budget Reduction. Pursuant to Charleston City Code Section 3013, the YWCA Child Enrichment Center provides social services and educational activities within the City of Charleston that the City could provide. Tenant's covenants, enumerated in Article 3 of this Lease, to operate and manage the services and activities and to manage, maintain and insure the Premises reduce significantly the City's budgeted expenditures and resources in providing essential services for its infant and child population during the term of this Lease.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

Tenant represents and warrants to City that as of the date of execution of this Lease Agreement:

A. Premises As Is

Tenant hereby acknowledges that it or its agents have inspected the Premises, and Tenant hereby agrees to accept the Premises "AS IS, WHERE IS" in its present condition.

B. Corporate Authority

Tenant is a non-profit corporation organized and existing under the laws of the State of West Virginia; and Tenant has full legal right, power and authority to enter into this Lease Agreement and to carry out and consummate all transactions contemplated hereby; and by proper corporate action has duly authorized the execution, delivery and performance of this Lease Agreement.

C. Executor's Authority

The officer of the Tenant executing this Lease Agreement is duly and properly in office and fully authorized to execute the same.

D. Delivery

This Lease Agreement has been duly authorized, executed and delivered by the Tenant.

E. Binding

This Lease Agreement will constitute the legal, valid and binding agreement of Tenant enforceable against Tenant in accordance with its terms; except as enforcement of such agreement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

F. No Conflict with Other Agreements

The execution and delivery of this Lease Agreement and the fulfillment of or compliance with its terms and conditions will not conflict with or constitute a violation or breach of or default under Tenant's Articles of Incorporation, its Bylaws or any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which Tenant is a party or by which any of its properties are otherwise subject or bound.

G. No Litigation or Default

There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental Issuer, pending, or to the knowledge of Tenant, after reasonable investigation, threatened, against or affecting Tenant or the assets, properties or operations of Tenant which, if determined adversely to Tenant

or its interests, would have a material adverse effect upon this Lease Agreement. Tenant is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental Issuer, which default might have consequences that would materially and adversely affect the consummation of this Lease Agreement. All tax returns (federal, state and local) required to be filed by or on behalf of Tenant have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by Tenant, in good faith, have been paid or adequate reserves have been made for the payment thereof.

H. Compliance with Law

Tenant currently complies in all material respects, with all federal, state and local laws, regulations and ordinances relating to its business.

I. Charitable Organization

Tenant, (1) is an organization described in Section 501(c)(3) of the Code; (2) has received a letter or letters from the Internal Revenue Service to that effect; (3) such letter or letters have not been modified, limited or revoked; (4) is in compliance with all terms, conditions and limitations, if any, continued in such letters; (5) the facts and circumstances which form the basis of such letters continue substantially to exist as represented to the Internal Revenue Service; (6) is not aware of any facts or circumstances that could cause a revocation of such letters; and (7) is exempt from federal income taxes under Section 501(a) of the Code. To the extent consistent with its status as a non-profit entity described in Section 501(c)(3) of the Code, Tenant agrees that it will not take any action or omit to take any action, nor allow Tenant to take or omit any action if such action or omission would cause any revocation or adverse modification of such federal income tax status of Tenant.

ARTICLE 3. COVENANTS

A. Charity

Premises Shall Remain Charitable Facility. Tenant shall occupy and use the Premises only for the charitable purpose of providing childcare services such as, but not limited to, infant and toddler development, preschool, after-school and summer camp, and providing other services for the infant and child population of the City of Charleston, and other uses incidental thereto. Tenant's occupancy and use of the Premises shall be in compliance with all applicable laws, statutes, ordinances and rules.

Tenant Shall Remain Charity. Tenant will maintain its corporate existence and charitable status with the State of West Virginia and United States Internal Revenue Service. For purposes of this Lease Agreement, Tenant will not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

B. Prohibitions

Tenant shall not use or occupy the Premises or permit the same to be used or occupied for any purpose or in any manner that:

1. Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule;
2. May be dangerous to persons or properties;
3. May create a nuisance, disturb any the occupants of neighboring properties or injure the reputation of the Premises;
4. Violates any restrictions, rules or regulations with respect to the Premises promulgated by City or imposed by any covenant or servitude of record;
5. May be deemed hazardous by City due to risk of fire or other event or due to the nature of materials used or stored in or upon the Premises;
6. May cause damage to any of the improvements upon the Premises, ordinary wear and tear excepted;

7. May invalidate any policy or policies of insurance now or hereinafter carried on the Premises by City or that may increase the rate of insurance thereon;

C. Liens; Encumbrances

Tenant shall not mortgage, assign offer as collateral or otherwise encumber its rights under this Lease Agreement without express, written consent from City for each and every assignment, sublease or encumbrance to each and every party. Consent by City for an encumbrance does not waive City's right to object to any and all subsequent assignments, subleases or encumbrances. City disclaims any claim by a third party to any right, title or interest not in accordance with this Lease Agreement.

D. Federal Laws and Regulations

Tenant hereby acknowledges that Federal funds may be used on the Premises, and Tenant hereby covenants and agrees to comply with all Federal laws and regulations applicable to the use and occupancy of the Premises, including, without limitation, such laws and regulations governing non-discrimination in the providing of services.

E. Alterations

1. Prohibited. Tenant shall not, without the prior written consent of City, make or cause to be made any alterations, improvements, additions or installations in or to the Premises. If City so consents in writing, all such alterations, improvements, additions or installations in and to the Premises shall become part of the Premises at the time of their installation and shall remain in the Premises at the expiration or possession of the Premises without compensation or credit to Tenant. Notwithstanding, Tenant may remove trade fixtures used by Tenant in connection with Tenant's business provided that Tenant repairs any damage to the Premises arising from such removals; any such trade fixtures not so removed prior to the end of the Term of this Lease shall become the sole property of City and no accounting or reimbursement thereof will be made to Tenant or to Tenant's account. City shall be responsible for any alterations and improvements to only the roof and exterior of the Premises, but only as so long as such alteration or improvement is not necessitated in any way by Tenant's fault or negligence.

2. Hold Harmless. Tenant shall indemnify and save City harmless from any and all mechanics', materialmen's and laborers' liens associated with any such work performed on the Premises. Before the commencement of any such work, Tenant shall pay the amount of any increases in premiums on insurance policies for which this Lease provides because of policy endorsements necessary to cover the risk during the course of the work. In addition, if the estimated cost of work shall exceed Five Thousand Dollars (\$5,000.00), Tenant shall on its own or via its building contractor, without cost to City, furnish City, unless City waives the same in writing, a performance bond written by a surety acceptable to City in an amount equal to the estimated cost of the work, guaranteeing the completion of work, free and clear of all liens, encumbrances and security interests according to plans and specifications approved in writing by City before the commencement of the work.

F. Maintenance of the Premises

Common Areas. City shall be responsible for maintenance of parking areas, sidewalks and steps, except that Tenant shall be responsible for snow and ice removal. Tenant shall be responsible for maintaining the landscaping on the Premises at Tenant's expense, including but not limited to cutting grass and shrubs.

The YWCA Child Enrichment Center. Responsibility for the maintenance and repair of the YWCA Child Enrichment Center is as follows:

City is responsible for repair of structural problems or capital improvements, except that the cost of performing any of such repairs caused by the negligence of Tenant, Tenant's employees, agents, servants, licensees, contractors or invitees or due to the failure of Tenant to perform Tenant's obligations under this Lease shall be paid by the Tenant except to the extent of insurance proceeds, if any, actually collected by City with regard to the damage necessitating such repairs. As approved by its City Manager, the City will repair electric receptacles, light fixtures, distribution panels, city-owned alarm systems, city-owned heating, ventilation and air conditioning (HVAC) equipment, plumbing fixtures and valves, exterior doors and windows, and surfaces (that is, brick, block and siding), roof, gutters, flashings, parking lots and driveways. Tenant agrees to notify City immediately of any repairs required to be made by City hereunder.

Tenant, at Tenant's expense, shall keep and maintain the YWCA Child Enrichment Center and fixtures in good order and repair, and in a clean, healthful, sanitary condition and repair and in accordance with all applicable legal, governmental and quasi-governmental requirements, ordinances and rules, including providing customary janitorial services in the YWCA Child Enrichment Center. Tenant must fix routine plumbing problems including without limitation clogged toilets and drains. Tenant must fix water and wastewater stoppages, misuse and breakage of any and all fixtures and plumbing equipment including traps and faucet replacement. Tenant must replace light bulbs, globes, lighting shields. Tenant must maintain in working order all tenant-owned alarm systems and tenant-owned HVAC equipment and replace all filters. Tenant must maintain interior walls and ceilings, is responsible for painting, floor coverings, stair treads, hand rails, interior doors and windows, and any repairs necessary to comply with city, state and fire marshal codes. Tenant is responsible for all appliances, including refrigerators, freezers, dishwashers, washers and dryers including without limitation removal of dryer lint.

Resolution of Ambiguity. In the event responsibility for resolution of a physical problem relating to the Real Estate or improvements thereon is ambiguous, Tenant shall be responsible.

G. Utilities

To the extent necessary, Tenant can and shall pay all utilities including without limitation water, wastewater, sewer, electricity, natural gas, fire service, incinerator, trash collection, cable television, telephone, and subscription security 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. Tenant shall make all arrangements directly with the companies servicing a building on the Premises for utilities and services in the Premises desired by Tenant. Tenant understands and is aware that all utilities and services shall be furnished to the Premises by third parties and Tenant covenants and agrees that City shall not be liable or responsible for any damage on account of the failure at any time of the third parties to supply such utilities and services due to strikes, lockouts, boycotts, labor disturbances, accidents, or any other cause beyond City's control, or by virtue of any direction, order or regulation of any Federal, State, County, City, or local authority. City agrees to fully cooperate with Tenant in securing and maintaining all utilities and services.

H. Insurance

Tenant covenants and agrees that (i) from and after the Commencement Date of this Lease, Tenant shall carry and maintain at Tenant's sole cost and expense insurance in the amounts and in the forms as specified in this Subsection 3(H), (ii) Tenant shall provide primary coverage for all such policies, and all such policies shall reflect that Tenant is responsible for all deductibles, and (iii) Tenant shall name the City of Charleston as an additional insured on all its policies for purposes of this Lease Agreement and the Insurance and Indemnity provisions herein.

Casualty Insurance. Tenant shall not be required to obtain casualty insurance on the Premises or improvements thereon, unless otherwise agreed in writing by City and Tenant.

Public Liability Insurance. Tenant shall keep in full force and effect public liability insurance in respect to the use and occupation of the Premises, naming both City and Tenant as insureds, in the amount of One Million Dollars (\$1,000,000.00) per person, One Million Dollars (\$1,000,000.00) per occurrence on account of personal injury to or death of one or more persons, and Five Hundred Dollars (\$500,000.00) on account of damage to property. To accommodate inflation and increases in costs, at the request of City, Tenant shall obtain increased amounts of public liability coverage based on amounts ordinarily obtained by organizations providing similar services.

Tenant's Personal Property. Tenant shall have in full force and effect all risk coverage for the full value of all of Tenant's equipment, trade fixtures, furnishings and all items of personal property which may be in or upon the Premises. City, its employees and agents, shall not be liable for loss of or damage to Tenant's equipment, trade fixtures, goods, furnishings and items of personal property placed in or upon the Premises from accidents, conditions, or casualty occurring in, on or about the Premises whether or not due to City's negligence.

City's Right to Approve Policies of Insurance. All policies of insurance referred to hereinabove shall be written in such form and by such insurance company or companies satisfactory to City. Tenant shall pay all of the premiums therefor and shall deliver such insurance policies or certificates thereof to City. Each insurer mentioned hereinabove shall agree, by endorsement on the policy or policies issued to Tenant, or by independent instrument furnished to

City, that it will give City thirty (30) days' written notice before any policy or policies of insurance are altered or canceled. City shall not unreasonably withhold their approval as to the form of such insurance or the insurance company or companies selected by Tenant. The cost of insurance required to be carried by Tenant hereinabove shall be deemed to be an additional rental hereunder.

City's Right to Pay Premiums on Behalf of Tenant. In the event Tenant fails to either effect such insurance in the amounts herein called for, or to pay the policy premiums, or to deliver such policy or certificate thereof to City, City shall be entitled, but shall have not the obligation, to effect such insurance and pay the premiums therefor, which premiums shall be payable to City upon written demand to Tenant therefor. Each insurer mentioned hereinabove shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to City, that it will give City thirty (30) days written notice before the policy or policies in question shall be altered or cancelled.

I. Taxes

In the event the Premises incur taxes whether for real or personal property, Tenant shall pay all taxes on real property and personal property as the same become due and payable.

J. Assignment; Sublease

Tenant shall not assign this Lease Agreement in whole or in part without first obtaining the express written consent of City. Any such attempted assignment without express written consent shall be considered a breach of this Lease Agreement, but shall not relieve Tenant in any way of Tenant's obligations hereunder. Pursuant to Article 5, Section H, recordation of this Lease Agreement or Memorandum of Lease in the records of the County Clerk shall serve as notice to any third party that any attempted assignment, sublease or encumbrance by Tenant without express written consent of City is void; this provision is controlling over any other provision in this Lease Agreement. For purposes of this Lease Agreement, Tenant shall not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

K. City's Right to Inspection

Tenant shall allow City or its employees, agents or representatives free access to the Premises and any improvements thereon during reasonable hours for the purpose of examining the same to ascertain if the same are in good repair and condition. Moreover, at City's sole will and discretion, City shall have access to the Premises to make repairs or alterations to the Premises; provided, that City does not unreasonably interfere with Tenant's use of the Premises. Such inspection, however, shall in no way oblige City to make any such repairs not their obligation under this Lease Agreement. City shall have the further right to show the Premises and any improvements thereon to prospective occupants during the period of ninety (90) days before the expiration of the term of this Lease.

L. Waiver of Claims and Indemnity

1. Assumption of Risk. Tenant hereby assumes all responsibility and legal liability for bodily injury to, loss of use or destruction of any property of Tenant or any third party, including, but not limited to agents, employees, guests, students, clients, licensees, invitees or customers of Tenant caused by or arising out of any defects in or conditions of the Premises or improvements on the Premises now existing or hereinafter existing, including, without limitation, all sidewalks, walkways or parking areas adjacent or appurtenant to the Premises. This paragraph is intended to encompass all defects to or conditions of the Premises or improvements on the Premises and adjacent ways including, but not limited to, those conditions caused by fire, water, explosion, wind, snow, ice or other casualty.

2. Waiver and Indemnification. Tenant will pay and will indemnify, defend and hold the City, including any person at any time serving as a director, officer, employee, agent or consultant of the City, harmless from and against all claims, liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), suits and judgments of any kind arising out of injury to or death of any person or damage to property in or upon the Premises or any violation of any law, ordinance or regulation affecting the Premises. To the full extent permitted by law, Tenant hereby releases and waives all claims against City and its employees and agents, for injury, death or damage to persons, property or business sustained for any reason in and about the Premises by Tenant, its agents, employees, guests, students, clients, licensees, invitees or customers, other than injury, death or damage caused by the gross negligence of City, its employees or agents. Tenant agrees to indemnify and hold harmless City, its employees and

agents, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature, including reasonable attorney's fees, arising from injury, death or damage of any person, property or business sustained for any reason in or about the Premises, provided, however, Tenant's obligations hereunder shall not apply to death, injury or damage resulting from the gross negligence of City, its employees or agents. If any such proceeding is brought against City, its employees or agents, Tenant covenants, if requested by City, to defend such proceeding at Tenant's sole cost by legal counsel reasonably satisfactory to City. No covenant or agreement contained in this Lease Agreement will be deemed to be the covenant or agreement of any board member, officer, attorney, agent or employee of the City or Tenant in an individual capacity. No recourse will be had for any payment or any claim against any officer, board member, agent, attorney or employee of the City or Tenant past, present, or future, or its successors or assigns, or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all liability of such board members, officers, agents, attorneys or employees being released as a condition of and as a consideration for the execution and delivery of this Lease Agreement. The indemnifications set forth herein shall survive the termination of the Lease Agreement.

M. Nondiscrimination

Tenant shall assure that that the Premises will be open to all, in accordance with federal laws and regulations, state laws and regulations, and Codes and Ordinances of the City.

N. Survey of Tenant's Improvements

Tenant shall not be required to have a licensed surveyor survey the Premises as a condition precedent to this Lease Agreement.

ARTICLE 4. EVENTS OF DEFAULT AND REMEDIES

A. Events of Default

Each of the following events shall constitute and be referred to herein as an "Event of Default."

1. **Materially Incorrect Representation or Warranty.** If any material representation or warranty made by Tenant herein shall at any time prove to have been incorrect in any respect as of the time made.
2. **Failure to Perform Covenant.** If Tenant shall fail to observe or perform any other covenant, condition, agreement or provision in this Lease Agreement on its part to be observed or performed, or shall breach any warranty by Tenant herein contained, for a period of thirty (30) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to Tenant by the City; except that, if such failure or breach cannot be remedied within such thirty-day period and if Tenant has taken all action reasonably possible to remedy such failure or breach within such thirty-day period, such failure or breach shall not become an Event of Default for so long as Tenant shall diligently proceed to remedy such failure or breach in accordance with and subject to any directions or limitations of time established by the City.
3. **Cessation of Services.** In the event Tenant should permanently cease to provide services to the public, the Lease shall automatically terminate and control and possession of the property shall revert to and vest in the city, and such nonprofit organization shall thereafter have no right, title, or interest therein or thereto.

B. Remedies on Event of Default

If an Event of Default shall occur, then, and in each and every such case during the continuance of such Event of Default, the City may take such action as it deems necessary or appropriate to enforce performance and observance of any obligation or agreement of Tenant hereunder or to protect the interests securing the same, and may, without limiting the generality of the foregoing:

1. **Terminate this Lease** without further notice to or demand upon Tenant, and City may, at its option, reenter and repossess the Premises with or without force, and re-rent the same for the whole or any part of the unexpired portion of the term of the Lease;
2. **Exercise any or all rights and remedies** given hereby or available hereunder or given by or available under any other instrument of any kind securing Tenant's performance hereunder;

3. Take other acts or steps as may be available at law or in equity to collect the payment required hereunder then due, whether on the stated due date or by declaration of acceleration or otherwise, for damages or for specific performance or otherwise to enforce performance and observance of any obligation, agreement or covenant of Tenant hereunder; and

4. Tenant shall remain personally liable for any amounts owed to third parties and secured by this Leasehold.

C. Discontinuance or Abandonment of Default Proceedings

If any proceeding taken by the City on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the City, then and in every case the City and Tenant shall be restored to their former position and rights hereunder, respectively, and all rights, remedies and powers of the City shall continue as though no such proceeding had taken place. The rights and limitations of the Parties to this Lease Agreement would be restored against each other, including any rights and limitations that had been assigned to third parties.

D. Remedies Cumulative; No Ongoing Waiver

No remedy conferred upon or reserved to the City hereby or now or hereafter existing at law or in equity or by statute, shall be exclusive but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the City. In the event of any waiver of a Event of Default hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent Event of Default or impair any right arising as a result thereof.

E. Attorneys' Fees and Other Expenses

If, as a result of the occurrence of an Event of Default, the City employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligation or agreement on the part of Tenant, Tenant will, on demand, reimburse the City for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

F. Notice of Default

Tenant agrees that, as soon as is practicable, and in any event within five (5) days, Tenant will furnish the City notice of any event which is an Event of Default pursuant to Section A of this Article which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Tenant proposes to take with respect thereto.

G. Mediation

If, within 30 days after written notice of termination by one party and before or after institution of legal proceedings, both parties have not succeeded in resolving all disputed issues between them, each party has the right to commence mediation at its cost by providing to the other party written notice of a request for mediation. The parties shall choose a mediator within 15 days after such request for mediation, and the mediation process shall be concluded no later than 30 days after the selection of the mediator. The parties agree that there is no right to arbitration under this Lease Agreement.

ARTICLE 5. MISCELLANEOUS

A. Personal Property Lien

City hereby reserves to City, a lien against all personal property and improvements brought upon the Real Estate (including without limitation the YWCA Child Enrichment Center) by Tenant to secure payments of all monetary sums which may become payable under this Lease Agreement or incident thereto. If Tenant is in default hereunder, Tenant's personal property shall not be removed until such defaults are corrected.

B. Force Majeure

City shall not be deemed in default with respect to any of the terms, covenants and conditions of this Lease if City fails to timely perform the same due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, or fuel shortages, accidents, casualties, acts of law, acts of God, acts caused directly or indirectly by the other party to this Lease, or their agents, employees or invitees, or any other cause beyond the commercially reasonable control of the City.

C. Damage or Destruction of Premises

If the Premises shall be damaged or destroyed during the term of this Lease by fire or other insurable casualty, City may, at its option initiate repairs to restore the same to substantially the condition it was in upon commencement of the Initial Term of this Lease. City shall be entitled to collect and receive all insurance proceeds payable by reason of such damage or destruction to the Premises, excluding any personalty or removable fixtures of Tenant. If, however, the Premises should be damaged or destroyed by any cause so that City shall decide to demolish or to completely rebuild the Premises, City may, within sixty (60) days after such damage or destruction, give Tenant written notice of such decision and thereupon this Lease shall be deemed to have terminated as of the date of such damage or destruction and Tenant shall immediately quit and surrender the Premises to City.

D. Eminent Domain

In the event a taking of the Premises by eminent domain occur that renders the Premises unusable for Tenant, Tenant shall have the right within ten (10) days after receiving notice of the taking to terminate this Lease by written notice to City of Tenant's intention to terminate.

E. Successors

The terms, conditions, covenants and agreements herein contained shall extend to, inure to the benefit of and be binding upon the parties hereto and their respective personnel, representatives, successors and assigns.

F. No Brokerage Commission

City and Tenant mutually warrant with one another that no real estate brokers are entitled to a commission as a result of producing this Lease and that neither party employed or engaged a real estate broker or agent to effectuate this Lease.

G. Notice

All notices to be given hereunder by either party shall be in writing and shall be sent by Certified Mail, Return Receipt Requested, to City and to Tenant at the addresses stated below:

CITY:

Director

Mayor's Office of Economic and Community Development

City of Charleston

P.O. Box 2749

Charleston, WV 26330

With a copy to:

City Attorney

City of Charleston

P.O. Box 2749

Charleston, WV 26330

With an optional facsimile copy to (304) 348-0770

TENANT:

Executive Director

Young Women's Christian Association of Charleston, West Virginia, Inc.

1114 Quarrier Street

Charleston, WV 25301

With an optional facsimile copy to (304) 340-3614

H. Recordation of Lease Agreement; Memorandum of Lease

Either party may record this Lease Agreement or a Memorandum of Lease. The party requesting that the Lease or Memorandum of Lease be recorded shall prepare and pay all costs of preparation and recording.

ARTICLE 6. INTERPRETATION

A. Definitions

"Premises" means the Real Estate, the YWCA Child Enrichment Center improvements and all fixtures of the YWCA Child Enrichment Center.

"Real Estate" means the real estate more particularly described in APPENDIX A – REAL ESTATE DESCRIPTION of this Lease Agreement.

"YWCA Child Enrichment Center" means all the improvements existing as of August 1, 2007 on the Real Estate, that is, the child facility including classrooms and playground for children between the ages of approximately 6 weeks through 12 years.

B. Governing Law

This Lease Agreement shall be governed by and construed according to the laws of the State of West Virginia applicable to contracts made and performed within such State.

C. Construction

1. General

Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

2. Captions

Headings of articles and sections herein and any table of contents are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

3. Time of the Essence; Non-Business Days

Time shall be of the essence of this Lease Agreement and the performance of all obligations hereunder. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

4. Severability

If any covenant, agreement or provision, or any portion thereof contained in this Lease Agreement, where the

application thereof to any Person or circumstance is held to be unconstitutional, invalid or unenforceable, it shall be limited only to the extent required to hold it constitutional, valid or enforceable, and the remainder of this Lease Agreement and the application of such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Lease Agreement shall remain valid and enforceable.

5. Counterparts

This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

6. Entire Agreement

This Lease Agreement, together with all agreements and documents incorporated by reference herein, constitutes the entire agreement of the parties and is not subject to modification, amendment, qualification or limitation except as expressly provided herein.

7. Amendments and Supplements

This Lease Agreement may be amended, changed or modified only by the written agreement of the parties.

8. Binding Effect on Successors and Assigns

This instrument shall inure to the benefit of and shall be binding upon the City and Tenant and their respective successors and assigns, subject to the limitations contained herein.

Appendix A. REAL ESTATE DESCRIPTION

201 Donnally Street

By Deed dated the 17th day of August 1981 conveyed to the CITY OF CHARLESTON by the CHARLESTON URBAN RENEWAL AUTHORITY, a public body corporate established pursuant to Chapter 16, Article 18, Section 4, Code of West Virginia, of 1931, as amended, and recorded in the Office of the Clerk of the County Commission, Kanawha County, West Virginia, in Deed Book 1984 at Page 546, the City of Charleston has all of that certain parcel of land, together with the appurtenances thereunto belonging, situate in the City of Charleston, Kanawha County, West Virginia, bounded and described as follows:

BEGINNING at an old concrete nail in the westerly line of Donnally Street at the north-easterly corner of the parcel of land containing 20,751.55 square feet heretofore conveyed by deed dated March 10, 1975, by Charleston Urban Renewal Authority to Trustees of Metropolitan Baptist Church recorded in the office of the Clerk of the Kanawha County Commission in Deed Book 1753, page 708, said beginning corner also being located N. 6° 59' W. a distance of 158.00 feet from the intersection of the said westerly line of Donnally Street with the northerly line of McCormick Street, and running thence from said beginning point with the northerly line of said Church parcel N. 86° 54' 27" W. a distance of 133.47 feet to an iron pin in an easterly line of a tract of land presently owned by The Housing Authority of the City of Charleston; thence running with a part of said line, N. 8° 46' W. a distance of 190.39 feet to an old iron pin (found) at fence angle; thence running with said fence, S. 85° 13' E. a distance of 64.07 feet to an iron pin at fence angle; thence running with said fence, N. 6° 43' W. a distance of 76.59 feet to an old concrete monument (found) in the southerly line of Clendenin Street located at a corner of said tract of said Housing Authority; thence leaving said tract and running with the southerly line of said Clendenin Street, S. 85° 31' E. a distance of 77.01 feet to an iron pin at the intersection of the said southerly line of Clendenin Street with the westerly line of Donnally Street; thence running with said westerly line of said Donnally Street, S. 6° 43' E. a distance of 261.89 feet to the place of beginning, containing Thirty-one Thousand Twenty-two Square Feet and Six One-hundredth of another Square Foot, (31,022.06 Square Feet), more or less, according to a survey made on the ground by Field Engineering Company of Charleston, West Virginia, and a map prepared therefrom entitled, "MAP SHOWING DISPOSITION PARCEL NO. 21 TRIANGLE URBAN RENEWAL PROJECT W. VA. R-21 LOCATED IN THE CITY OF CHARLESTON, W. VA.

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 949-17 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. 950-17 do pass.

Resolution No. 950-17 - Authorizing the Mayor or City Manager to enter into a five year lease, with an option for an additional five years subject to Council approval, with the non-profit Religious Coalition for Community Renewal, Inc., for the purpose of providing affordable housing for low and moderate income residents through the operation of the Smith Street Station at 801 Smith Street (a copy of the lease attached hereto as Exhibit A)., for the fair and adequate consideration of providing services that the city could lawfully provide and that benefit the public, consistent with City Code Section 3-13.

WHEREAS, City Council finds that Smith Street Station provides valuable services to the low and moderate income residents that benefit the public and that the City could provide; and

WHEREAS, City Council finds that the benefit to the City of leasing the property at 801 Smith Street for the purpose of operating the Smith Street Station exceeds its need for the property; and

WHEREAS, City Council finds that the non-profit Religious Coalition for Community Renewal, Inc. has need of the property in order to continue to provide the services benefiting the public;

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

That, the Mayor or City Manager is hereby authorized to enter into a five year lease, with an option for an additional five years subject to Council approval, with the Religious Coalition for Community Renewal, Inc., for the purpose of operation of the Smith Street Station, at 801 Smith Street for the consideration of providing services that benefit the public pursuant to City Code Section 3-13.

LEASE AGREEMENT

This Lease Agreement (the “Lease”), dated as of the ____ day of _____ 2017, by and between the CITY OF CHARLESTON, a West Virginia municipal corporation (the “City”) and the RELIGIOUS COALITION FOR COMMUNITY RENEWAL, INC., a West Virginia nonprofit corporation (the “Tenant”);

RECITALS

WHEREAS, the City has power and authority to lease any of its property pursuant to Chapter 8, Article 12, Section 18 of the West Virginia Code of 1931, as amended;

WHEREAS, pursuant to Chapter 8 of the West Virginia Code of 1931, as amended, the City has all powers necessary or appropriate in order to provide low and moderate cost housing development and therefore may lease its property to an affiliate for the purpose of operating such facilities in consideration for the provision of services for which the City otherwise would make direct expenditures;

WHEREAS, the City Council by Resolution has authorized this Lease Agreement after notice and a hearing;

WHEREAS, the Tenant has requested that the City lease to it the Premises (as defined in Article 6, Section A of this Lease Agreement) duly authorized by proper corporate action, and the Tenant is not prohibited under the terms of any outstanding deed of trust, mortgage, loan agreement or other instrument or evidence of indebtedness of whatever nature from entering into this Lease Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement and affirmatively so represents to Issuer;

WHEREAS, the Tenant operates Smith Street Station (as defined in Article 6, Section A of this Lease Agreement), an affordable housing facility for residents with low and moderate incomes;

NOW THEREFORE, in consideration of the rents and mutual agreements set forth herein, City and Tenant hereby agree as follows:

ARTICLE 1. THE LEASE

A. Lease

City hereby lets, leases and demises unto Tenant, and Tenant hereby takes and hires from City, the Premises, as defined in Article 6, Section A herein.

B. Term

The term of this Lease Agreement shall be for a period of five (5) years (the “Initial Term”), commencing on the date as stated in the initial paragraph of this Lease Agreement, and expiring at midnight of its fifth anniversary (the “Expiration Date”). Tenant may request an extension of the term of this Lease for one (1) consecutive five (5) year period (the “Extension Term”), upon the same terms and conditions as contained in this Lease. To request the extension, Tenant shall give City written notice (“Tenant’s Extension Request”) at least ninety (90) days prior to the expiration date of the Initial Term. Tenant’s Extension Request shall be effective to extend the Term of the Lease subject to approval of the Request by Resolution of the City Council and without any further documentation other than such approved Resolution. Passage of the Resolution and Tenant’s Extension Request shall evidence intent by both parties to renew the Lease.

Any holding over by Tenant or retention of the Premises shall not be construed as renewing or extending this Lease Agreement in any manner whatsoever; but it may, at the option of City, be construed as creating a tenancy from month to month and on the same other provisions and conditions herein contained insofar as applicable, terminable by either party on thirty (30) days written notice. Tenant shall be subject to all the conditions of this Lease excepting the term.

If Tenant has met all its obligations under this lease and is not in breach, Tenant may, at Tenant’s option, terminate this Lease prior to the expiration hereof if City defaults in the performance of any of City’s covenants, conditions or obligations hereunder and such default by City continues unremedied for a period of ninety (90) days from and after the date on which Tenant has mailed to City a written notice of such default; Notwithstanding, Tenant agrees and

understands Tenant shall remain liable for any amounts owed to third parties and secured by this Leasehold.

C. Consideration

In exchange for the leasehold interest granted by this Lease, Tenant covenants and agrees to provide to the City the following fair and adequate consideration:

Agreement to Provide Essential Services for City Residents/City Budget Reduction. Pursuant to Charleston City Code Section 3-13, Smith Street Station provides affordable housing within the City of Charleston that the City could provide. Tenant's covenants, enumerated in Article 3 of this Lease, to operate and manage the services and manage, maintain and insure the property reduce significantly the City's budgeted expenditures and resources in providing essential services for its low and moderate income residents during the term of this Lease.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

Tenant represents and warrants to City that as of the date of execution of this Lease Agreement:

A. Premises As Is

Tenant hereby acknowledges that it or its agents have inspected the Premises, and Tenant hereby agrees to accept the Premises "AS IS, WHERE IS" in its present condition.

B. Corporate Authority

Tenant is a non-profit corporation organized and existing under the laws of the State of West Virginia; and Tenant has full legal right, power and authority to enter into this Lease Agreement and to carry out and consummate all transactions contemplated hereby; and by proper corporate action has duly authorized the execution, delivery and performance of this Lease Agreement.

C. Executor's Authority

The officer of the Tenant executing this Lease Agreement is duly and properly in office and fully authorized to execute the same.

D. Delivery

This Lease Agreement has been duly authorized, executed and delivered by the Tenant.

E. Binding

This Lease Agreement will constitute the legal, valid and binding agreement of Tenant enforceable against Tenant in accordance with its terms; except as enforcement of such agreement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

F. No Conflict with Other Agreements

The execution and delivery of this Lease Agreement and the fulfillment of or compliance with its terms and conditions will not conflict with or constitute a violation or breach of or default under Tenant's Articles of Incorporation, its Bylaws or any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which Tenant is a party or by which any of it or its properties are otherwise subject or bound.

G. No Litigation or Default

There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental Issuer, pending, or to the knowledge of Tenant, after reasonable investigation, threatened, against or affecting Tenant or the assets, properties or operations of Tenant which, if determined adversely to Tenant or its interests, would have a material adverse effect upon this Lease Agreement. Tenant is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental Issuer, which default might have consequences that would materially and adversely affect the

consummation of this Lease Agreement. All tax returns (federal, state and local) required to be filed by or on behalf of Tenant have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by Tenant, in good faith, have been paid or adequate reserves have been made for the payment thereof.

H. Compliance with Law

Tenant currently complies in all material respects, with all federal, state and local laws, regulations and ordinances relating to its business.

I. Charitable Organization

Tenant, (1) is an organization described in Section 501(c)(3) of the Code; (2) has received a letter or letters from the Internal Revenue Service to that effect; (3) such letter or letters have not been modified, limited or revoked; (4) is in compliance with all terms, conditions and limitations, if any, continued in such letters; (5) the facts and circumstances which form the basis of such letters continue substantially to exist as represented to the Internal Revenue Service; (6) is not aware of any facts or circumstances that could cause a revocation of such letters; and (7) is exempt from federal income taxes under Section 501(a) of the Code. To the extent consistent with its status as a non-profit entity described in Section 501(c)(3) of the Code, Tenant agrees that it will not take any action or omit to take any action, nor allow Tenant to take or omit any action if such action or omission would cause any revocation or adverse modification of such federal income tax status of Tenant.

ARTICLE 3. COVENANTS

A. Charity

Premises Shall Remain Charitable Facility. Tenant shall occupy and use the Premises only for the charitable purpose of operating an affordable housing facility and providing other services for the residents with low and moderate incomes in the City of Charleston, and other uses incidental thereto. Tenant's occupancy and use of the Premises shall be in compliance with all applicable laws, statutes, ordinances and rules.

Tenant Shall Remain Charity. Tenant will maintain its corporate existence and charitable status with the State of West Virginia and United States Internal Revenue Service. For purposes of this Lease Agreement, Tenant will not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

B. Prohibitions

Tenant shall not use or occupy the Premises or permit the same to be used or occupied for any purpose or in any manner that:

1. Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule;
2. May be dangerous to persons or properties;
3. May create a nuisance, disturb any the occupants of neighboring properties or injure the reputation of the Premises;
4. Violates any restrictions, rules or regulations with respect to the Premises promulgated by City or imposed by any covenant or servitude of record;
5. May be deemed hazardous by City due to risk of fire or other event or due to the nature of materials used or stored in or upon the Premises;
6. May cause damage to any of the improvements upon the Premises, ordinary wear and tear excepted;
7. May invalidate any policy or policies of insurance now or hereinafter carried on the Premises by City or that may increase the rate of insurance thereon;

C. Liens; Encumbrances

Tenant shall not mortgage, assign offer as collateral or otherwise encumber its rights under this Lease Agreement without express, written consent from City for each and every assignment, sublease or encumbrance to each and every party. Consent by City for an encumbrance does not waive City's right to object to any and all subsequent assignments, subleases or encumbrances. City disclaims any claim by a third party to any right, title or interest not in accordance with this Lease Agreement.

D. Federal Laws and Regulations

Tenant hereby acknowledges that Federal funds may be used on the Premises, and Tenant hereby covenants and agrees to comply with all Federal laws and regulations applicable to the use and occupancy of the Premises, including, without limitation, such laws and regulations governing non-discrimination in the providing of services.

E. Alterations

1. Prohibited. Tenant shall not, without the prior written consent of City, make or cause to be made any alterations, improvements, additions or installations in or to the Premises. If City so consents in writing, all such alterations, improvements, additions or installations in and to the Premises shall become part of the Premises at the time of their installation and shall remain in the Premises at the expiration or possession of the Premises without compensation or credit to Tenant. Notwithstanding, Tenant may remove trade fixtures used by Tenant in connection with Tenant's business provided that Tenant repairs any damage to the Premises arising from such removals; any such trade fixtures not so removed prior to the end of the Term of this Lease shall become the sole property of City and no accounting or reimbursement thereof will be made to Tenant or to Tenant's account. City shall be responsible for any alterations and improvements to only the roof and exterior of the Premises, but only as so long as such alteration or improvement is not necessitated in any way by Tenant's fault or negligence.

2. Hold Harmless. Tenant shall indemnify and save City harmless from any and all mechanics', materialmen's and laborers' liens associated with any such work performed on the Premises. Before the commencement of any such work, Tenant shall pay the amount of any increases in premiums on insurance policies for which this Lease provides because of policy endorsements necessary to cover the risk during the course of the work. In addition, if the estimated cost of work shall exceed Five Thousand Dollars (\$5,000.00), Tenant shall on its own or via its building contractor, without cost to City, furnish City, unless City waives the same in writing, a performance bond written by a surety acceptable to City in an amount equal to the estimated cost of the work, guaranteeing the completion of work, free and clear of all liens, encumbrances and security interests according to plans and specifications approved in writing by City before the commencement of the work.

F. Maintenance of the Premises

Common Areas. City shall be responsible for maintenance of parking areas, sidewalks and steps, except that Tenant shall be responsible for snow and ice removal. Tenant shall be responsible for maintaining the landscaping on the Premises at Tenant's expense, including but not limited to cutting grass and shrubs.

Smith Street Station. Responsibility for the maintenance and repair of Smith Street Station is as follows:

City is responsible for repair of structural problems or capital improvements, except that the cost of performing any of such repairs caused by the negligence of Tenant, Tenant's employees, agents, servants, licensees, contractors or invitees or due to the failure of Tenant to perform Tenant's obligations under this Lease shall be paid by the Tenant except to the extent of insurance proceeds, if any, actually collected by City with regard to the damage necessitating such repairs. As approved by its City Manager, the City will repair electric receptacles, light fixtures, distribution panels, city-owned alarm systems, city-owned heating, ventilation and air conditioning (HVAC) equipment, plumbing fixtures and valves, exterior doors and windows, and surfaces (that is, brick, block and siding), roof, gutters, flashings, parking lots and driveways. Tenant agrees to notify City immediately of any repairs required to be made by City hereunder.

Tenant, at Tenant's expense, shall keep and maintain Smith Street Station and fixtures in good order and repair, and in a clean, healthful, sanitary condition and repair and in accordance with all applicable legal, governmental and quasi-governmental requirements, ordinances and rules, including providing customary janitorial services in Smith Street Station. Tenant must fix routine plumbing problems including without limitation clogged toilets and drains. Tenant must fix water and wastewater stoppages, misuse and breakage of any and all fixtures and plumbing

equipment including traps and faucet replacement. Tenant must replace light bulbs, globes, lighting shields. Tenant must maintain in working order all tenant-owned alarm systems and tenant-owned HVAC equipment and replace all filters. Tenant must maintain interior walls and ceilings, is responsible for painting, floor coverings, stair treads, hand rails, interior doors and windows, and any repairs necessary to comply with city, state and fire marshal codes. Tenant is responsible for all appliances, including refrigerators, freezers, dishwashers, washers and dryers including without limitation removal of dryer lint.

Resolution of Ambiguity. In the event responsibility for resolution of a physical problem relating to the Real Estate or improvements thereon is ambiguous, Tenant shall be responsible.

G. Utilities

To the extent necessary, Tenant can and shall pay all utilities including without limitation water, wastewater, sewer, electricity, natural gas, fire service, incinerator, trash collection, cable television, telephone, and subscription security 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. Tenant shall make all arrangements directly with the companies servicing a building on the Premises for utilities and services in the Premises desired by Tenant. Tenant understands and is aware that all utilities and services shall be furnished to the Premises by third parties and Tenant covenants and agrees that City shall not be liable or responsible for any damage on account of the failure at any time of the third parties to supply such utilities and services due to strikes, lockouts, boycotts, labor disturbances, accidents, or any other cause beyond City's control, or by virtue of any direction, order or regulation of any Federal, State, County, City, or local authority. City agrees to fully cooperate with Tenant in securing and maintaining all utilities and services.

H. Insurance

Tenant covenants and agrees that (i) from and after the Commencement Date of this Lease, Tenant shall carry and maintain at Tenant's sole cost and expense insurance in the amounts and in the forms as specified in this Subsection 3(H), (ii) Tenant shall provide primary coverage for all such policies, and all such policies shall reflect that Tenant is responsible for all deductibles, and (iii) Tenant shall name the City of Charleston as an additional insured on all its policies for purposes of this Lease Agreement and the Insurance and Indemnity provisions herein.

Casualty Insurance. Tenant shall not be required to obtain casualty insurance on the Premises or improvements thereon, unless otherwise agreed in writing by City and Tenant.

Public Liability Insurance. Tenant shall keep in full force and effect public liability insurance in respect to the use and occupation of the Premises, naming both City and Tenant as insureds, in the amount of One Million Dollars (\$1,000,000.00) per person, One Million Dollars (\$1,000,000.00) per occurrence on account of personal injury to or death of one or more persons, and Five Hundred Dollars (\$500,000.00) on account of damage to property. To accommodate inflation and increases in costs, at the request of City, Tenant shall obtain increased amounts of public liability coverage based on amounts ordinarily obtained by organizations providing similar services.

Tenant's Personal Property. Tenant shall have in full force and effect all risk coverage for the full value of all of Tenant's equipment, trade fixtures, furnishings and all items of personal property which may be in or upon the Premises. City, its employees and agents, shall not be liable for loss of or damage to Tenant's equipment, trade fixtures, goods, furnishings and items of personal property placed in or upon the Premises from accidents, conditions, or casualty occurring in, on or about the Premises whether or not due to City's negligence.

City's Right to Approve Policies of Insurance. All policies of insurance referred to hereinabove shall be written in such form and by such insurance company or companies satisfactory to City. Tenant shall pay all of the premiums therefor and shall deliver such insurance policies or certificates thereof to City. Each insurer mentioned hereinabove shall agree, by endorsement on the policy or policies issued to Tenant, or by independent instrument furnished to City, that it will give City thirty (30) days' written notice before any policy or policies of insurance are altered or canceled. City shall not unreasonably withhold their approval as to the form of such insurance or the insurance company or companies selected by Tenant. The cost of insurance required to be carried by Tenant hereinabove shall be deemed to be an additional rental hereunder.

City's Right to Pay Premiums on Behalf of Tenant. In the event Tenant fails to either effect such insurance in the

amounts herein called for, or to pay the policy premiums, or to deliver such policy or certificate thereof to City, City shall be entitled, but shall have not the obligation, to effect such insurance and pay the premiums therefor, which premiums shall be payable to City upon written demand to Tenant therefor. Each insurer mentioned hereinabove shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to City, that it will give City thirty (30) days written notice before the policy or policies in question shall be altered or cancelled.

I. Taxes

In the event the Premises incur taxes whether for real or personal property, Tenant shall pay all taxes on real property and personal property as the same become due and payable.

J. Assignment; Sublease

Tenant shall not assign this Lease Agreement in whole or in part without first obtaining the express written consent of City. Any such attempted assignment without express written consent shall be considered a breach of this Lease Agreement, but shall not relieve Tenant in any way of Tenant's obligations hereunder. Pursuant to Article 5, Section H, recordation of this Lease Agreement or Memorandum of Lease in the records of the County Clerk shall serve as notice to any third party that any attempted assignment, sublease or encumbrance by Tenant without express written consent of City is void; this provision is controlling over any other provision in this Lease Agreement. For purposes of this Loan Agreement, Tenant shall not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

K. City's Right to Inspection

Tenant shall allow City or its employees, agents or representatives free access to the Premises and any improvements thereon during reasonable hours for the purpose of examining the same to ascertain if the same are in good repair and condition. Moreover, at City's sole will and discretion, City shall have access to the Premises to make repairs or alterations to the Premises; provided, that City does not unreasonably interfere with Tenant's use of the Premises. Such inspection, however, shall in no way oblige City to make any such repairs not their obligation under this Lease Agreement. City shall have the further right to show the Premises and any improvements thereon to prospective occupants during the period of ninety (90) days before the expiration of the term of this Lease.

L. Waiver of Claims and Indemnity

1. Assumption of Risk. Tenant hereby assumes all responsibility and legal liability for bodily injury to, loss of use or destruction of any property of Tenant or any third party, including, but not limited to agents, employees, guests, students, clients, licensees, invitees or customers of Tenant caused by or arising out of any defects in or conditions of the Premises or improvements on the Premises now existing or hereinafter existing, including, without limitation, all sidewalks, walkways or parking areas adjacent or appurtenant to the Premises. This paragraph is intended to encompass all defects to or conditions of the Premises or improvements on the Premises and adjacent ways including, but not limited to, those conditions caused by fire, water, explosion, wind, snow, ice or other casualty.

2. Waiver and Indemnification. Tenant will pay and will indemnify, defend and hold the City, including any person at any time serving as a director, officer, employee, agent or consultant of the City, harmless from and against all claims, liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), suits and judgments of any kind arising out of injury to or death of any person or damage to property in or upon the Premises or any violation of any law, ordinance or regulation affecting the Premises. To the full extent permitted by law, Tenant hereby releases and waives all claims against City and its employees and agents, for injury, death or damage to persons, property or business sustained for any reason in and about the Premises by Tenant, its agents, employees, guests, students, clients, licensees, invitees or customers, other than injury, death or damage caused by the gross negligence of City, its employees or agents. Tenant agrees to indemnify and hold harmless City, its employees and agents, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature, including reasonable attorney's fees, arising from injury, death or damage of any person, property or business sustained for any reason in or about the Premises, provided, however, Tenant's obligations hereunder shall not apply to death, injury or damage resulting from the gross negligence of City, its employees or agents. If any such proceeding is brought against City, its employees or agents, Tenant covenants, if requested by City, to defend such

proceeding at Tenant's sole cost by legal counsel reasonably satisfactory to City. No covenant or agreement contained in this Lease Agreement will be deemed to be the covenant or agreement of any board member, officer, attorney, agent or employee of the City or Tenant in an individual capacity. No recourse will be had for any payment or any claim against any officer, board member, agent, attorney or employee of the City or Tenant past, present, or future, or its successors or assigns, or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all liability of such board members, officers, agents, attorneys or employees being released as a condition of and as a consideration for the execution and delivery of this Lease Agreement. The indemnifications set forth herein shall survive the termination of the Lease Agreement.

M. Nondiscrimination

Tenant shall assure that that the Premises will be open to all, in accordance with federal laws and regulations, state laws and regulations, and Codes and Ordinances of the City.

N. Survey of Tenant's Improvements

Tenant shall not be required to have a licensed surveyor survey the Premises as a condition precedent to this Lease Agreement.

ARTICLE 4. EVENTS OF DEFAULT AND REMEDIES

A. Events of Default

Each of the following events shall constitute and be referred to herein as an "Event of Default."

1. **Materially Incorrect Representation or Warranty.** If any material representation or warranty made by Tenant herein shall at any time prove to have been incorrect in any respect as of the time made.
2. **Failure to Perform Covenant.** If Tenant shall fail to observe or perform any other covenant, condition, agreement or provision in this Lease Agreement on its part to be observed or performed, or shall breach any warranty by Tenant herein contained, for a period of thirty (30) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to Tenant by the City; except that, if such failure or breach cannot be remedied within such thirty-day period and if Tenant has taken all action reasonably possible to remedy such failure or breach within such thirty-day period, such failure or breach shall not become an Event of Default for so long as Tenant shall diligently proceed to remedy such failure or breach in accordance with and subject to any directions or limitations of time established by the City.
3. **Cessation of Services.** In the event Tenant should permanently cease to provide services to the public, the Lease shall automatically terminate and control and possession of the property shall revert to and vest in the city, and such nonprofit organization shall thereafter have no right, title, or interest therein or thereto.

B. Remedies on Event of Default

If an Event of Default shall occur, then, and in each and every such case during the continuance of such Event of Default, the City may take such action as it deems necessary or appropriate to enforce performance and observance of any obligation or agreement of Tenant hereunder or to protect the interests securing the same, and may, without limiting the generality of the foregoing:

1. Terminate this Lease without further notice to or demand upon Tenant, and City may, at its option, reenter and repossess the Premises with or without force, and re-rent the same for the whole or any part of the unexpired portion of the term of the Lease;
2. Exercise any or all rights and remedies given hereby or available hereunder or given by or available under any other instrument of any kind securing Tenant's performance hereunder;
3. Take other acts or steps as may be available at law or in equity to collect the payment required hereunder then due, whether on the stated due date or by declaration of acceleration or otherwise, for damages or for specific performance or otherwise to enforce performance and observance of any obligation, agreement or covenant of Tenant hereunder; and

4. Tenant shall remain personally liable for any amounts owed to third parties and secured by this Leasehold.

C. Discontinuance or Abandonment of Default Proceedings

If any proceeding taken by the City on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the City, then and in every case the City and Tenant shall be restored to their former position and rights hereunder, respectively, and all rights, remedies and powers of the City shall continue as though no such proceeding had taken place. The rights and limitations of the Parties to this Lease Agreement would be restored against each other, including any rights and limitations that had been assigned to third parties.

D. Remedies Cumulative; No Ongoing Waiver

No remedy conferred upon or reserved to the City hereby or now or hereafter existing at law or in equity or by statute, shall be exclusive but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the City. In the event of any waiver of a Event of Default hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent Event of Default or impair any right arising as a result thereof.

E. Attorneys' Fees and Other Expenses

If, as a result of the occurrence of an Event of Default, the City employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligation or agreement on the part of Tenant, Tenant will, on demand, reimburse the City for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

F. Notice of Default

Tenant agrees that, as soon as is practicable, and in any event within five (5) days, Tenant will furnish the City notice of any event which is an Event of Default pursuant to Section A of this Article which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Tenant proposes to take with respect thereto.

G. Mediation

If, within 30 days after written notice of termination by one party and before or after institution of legal proceedings, both parties have not succeeded in resolving all disputed issues between them, each party has the right to commence mediation at its cost by providing to the other party written notice of a request for mediation. The parties shall choose a mediator within 15 days after such request for mediation, and the mediation process shall be concluded no later than 30 days after the selection of the mediator. The parties agree that there is no right to arbitration under this Lease Agreement.

ARTICLE 5. MISCELLANEOUS

A. Personal Property Lien

City hereby reserves to City, a lien against all personal property and improvements brought upon the Real Estate (including without limitation Smith Street Station) by Tenant to secure payments of all monetary sums which may become payable under this Lease Agreement or incident thereto. If Tenant is in default hereunder, Tenant's personal property shall not be removed until such defaults are corrected.

B. Force Majeure

City shall not be deemed in default with respect to any of the terms, covenants and conditions of this Lease if City fails to timely perform the same due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, or fuel shortages,

accidents, casualties, acts of law, acts of God, acts caused directly or indirectly by the other party to this Lease, or their agents, employees or invitees, or any other cause beyond the commercially reasonable control of the City.

C. Damage or Destruction of Premises

If the Premises shall be damaged or destroyed during the term of this Lease by fire or other insurable casualty, City may, at its option initiate repairs to restore the same to substantially the condition it was in upon commencement of the Initial Term of this Lease. City shall be entitled to collect and receive all insurance proceeds payable by reason of such damage or destruction to the Premises, excluding any personalty or removable fixtures of Tenant. If, however, the Premises should be damaged or destroyed by any cause so that City shall decide to demolish or to completely rebuild the Premises, City may, within sixty (60) days after such damage or destruction, give Tenant written notice of such decision and thereupon this Lease shall be deemed to have terminated as of the date of such damage or destruction and Tenant shall immediately quit and surrender the Premises to City.

D. Eminent Domain

In the event a taking of the Premises by eminent domain occur that renders the Premises unusable for Tenant, Tenant shall have the right within ten (10) days after receiving notice of the taking to terminate this Lease by written notice to City of Tenant's intention to terminate.

E. Successors

The terms, conditions, covenants and agreements herein contained shall extend to, inure to the benefit of and be binding upon the parties hereto and their respective personnel, representatives, successors and assigns.

F. No Brokerage Commission

City and Tenant mutually warrant with one another that no real estate brokers are entitled to a commission as a result of producing this Lease and that neither party employed or engaged a real estate broker or agent to effectuate this Lease.

G. Notice

All notices to be given hereunder by either party shall be in writing and shall be sent by Certified Mail, Return Receipt Requested, to City and to Tenant at the addresses stated below:

CITY:

Director

Mayor's Office of Economic and Community Development

City of Charleston

P.O. Box 2749

Charleston, WV 26330

With a copy to:

City Attorney

City of Charleston

P.O. Box 2749

Charleston, WV 26330

With an optional facsimile copy to (304) 348-0770

TENANT:

Executive Director

Religious Coalition for Community Renewal, Inc.

1516 Washington Street East

Charleston, West Virginia 25311

With an optional facsimile copy to (304) 346-6417

H. Recordation of Lease Agreement; Memorandum of Lease

Either party may record this Lease Agreement or a Memorandum of Lease. The party requesting that the Lease or Memorandum of Lease be recorded shall prepare and pay all costs of preparation and recording.

ARTICLE 6. INTERPRETATION

A. Definitions

“Premises” means the Real Estate, Smith Street Station improvements and all fixtures of Smith Street Station.

“Smith Street Station” means all the improvements existing as of August 1, 2017 on the Real Estate, that is, the 29 unit furnished apartment facility for one and two-person families with low to moderate incomes.

“Real Estate” means the real estate more particularly described in APPENDIX A – REAL ESTATE DESCRIPTION of this Lease Agreement.

B. Governing Law

This Lease Agreement shall be governed by and construed according to the laws of the State of West Virginia applicable to contracts made and performed within such State.

C. Construction

1. General

Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

2. Captions

Headings of articles and sections herein and any table of contents are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

3. Time of the Essence; Non-Business Days

Time shall be of the essence of this Lease Agreement and the performance of all obligations hereunder. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

4. Severability

If any covenant, agreement or provision, or any portion thereof contained in this Lease Agreement, where the application thereof to any Person or circumstance is held to be unconstitutional, invalid or unenforceable, it shall be limited only to the extent required to hold it constitutional, valid or enforceable, and the remainder of this Lease Agreement and the application of such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Lease Agreement shall remain valid and enforceable.

5. Counterparts

This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

6. Entire Agreement

This Lease Agreement, together with all agreements and documents incorporated by reference herein, constitutes the entire agreement of the parties and is not subject to modification, amendment, qualification or limitation except as expressly provided herein.

7. Amendments and Supplements

This Lease Agreement may be amended, changed or modified only by the written agreement of the parties.

8. Binding Effect on Successors and Assigns

This instrument shall inure to the benefit of and shall be binding upon the City and Tenant and their respective successors and assigns, subject to the limitations contained herein.

Appendix A. REAL ESTATE DESCRIPTION

801 Smith Street

PARCEL ONE:

By Deed conveyed unto the CITY OF CHARLESTON by THE CHARLESTON HUB, INC., a West Virginia corporation, dated the 19th day of October 1988 and of record in the Office of the Clerk of the County Commission, Kanawha County, West Virginia, in Deed Book 2215 at Page 90, the City of Charleston has all of that certain lot or parcel of land fronting 25 feet on the southeasterly side of Capitol Street, and extending back thereon between parallel sidelines 110 feet, more or less, to the line of a 10 foot alley in the City of Charleston (Charleston East Tax District), Kanawha County, West Virginia, with the improvements thereon and the appurtenances thereunto belonging, and more particularly bounded and described as follows:

Beginning, at a point on the southeasterly side of Capitol Street, which is S. 61°, 31' W. 25 feet from the intersection of the said southeasterly line of Capitol Street, with the southerly line of Smith Street, thence continuing with the southeasterly line of Capitol Street, S. 61°, 30' W. 25 feet to a point at the outer front corner of the three-story brick building upon the property herein described conveyed; thence with the outer wall of said building, S. 44° E. 110 1/2 feet to a point in the line of the aforesaid 10 foot alley; thence with said alley, N. 60°, 37' E. 25 feet to the rear corner of the three-story brick building, upon the property adjoining the property hereby conveyed on its northeasterly side; thence N. 44° W. 110 1/4 feet to the place of beginning;

And subject to the terms of a party wall agreement between Margaret J. Clark and James Patrick Clark, her husband, and John Baker White, dated December 29, 1904 and recorded in said Clerk's Office in Deed Book 95 at Page 562; and customary easements of record in the chain of title, or visible from the ground.

PARCEL TWO:

By Deed conveyed unto the CITY OF CHARLESTON by the ANN McKINLEY BROWN and NORMAN W. BROWN, her husband, dated the 19th day of October 1988 and of record in the Office of the Clerk of the County Commission, Kanawha County, West Virginia, in Deed Book 2215 at Page 90, the City of Charleston has all that certain lot or parcel of land, together with the improvements thereon, and appurtenances thereunto belonging, situate on the east side of Capitol Street, City of Charleston, Kanawha County, West Virginia, and being more particularly bounded and described as follows:

BEGINNING on Capitol Street at the corner of Capitol and Smith Streets and running thence with Capitol Street towards the Kanawha River 25 feet to a stake; thence, at right angles to Capitol Street and parallel to and 25 feet from Smith Street 110 feet to an alley; thence, with said alley 25 feet to Smith Street; thence, with Smith Street to the place of beginning;

And subject to that certain party wall agreement between Margaret J. Clark and James Patrick Clark, her husband,

and John Baker White, dated December 29, 1904 and of record in said Clerk's Office in Deed Book 95 at Page 562; and customary easements of record in the chain of title, or visible from the ground.

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 950-17 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. 951-17 do pass.

Resolution No. 951-17 - Authorizing the Mayor or City Manager to enter into a five year lease, with an option for an additional five years subject to Council approval, with the non-profit Young Women's Christian Association of Charleston, West Virginia, for the purpose of the operation of the Sojourner's Shelter for Homeless Women and Families, at 1418 Washington Street East (a copy of the lease attached hereto as Exhibit A).

WHEREAS, City Council finds that Sojourner's Shelter for Homeless Women and Families provides valuable services to the homeless population that benefit the public and that the City could provide; and

WHEREAS, City Council finds that the benefit to the City of leasing the property at 1418 Washington Street East for the purpose of operating the Sojourner's Shelter for Homeless Women and Families exceeds its need for the property; and

WHEREAS, City Council finds that the non-profit Young Women's Christian Association of Charleston, West Virginia, has need of the property in order to continue to provide the services benefiting the public;

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

That, the Mayor or City Manager is hereby authorized to enter into a five year lease, with an option for an additional five years subject to Council approval, with the Young Women's Christian Association of Charleston, West Virginia, for the purpose of operation of the Sojourner's Shelter for Homeless Women and Families, at 1418 Washington Street East for the consideration of providing services that benefit the public pursuant to City Code Section 3-13.

LEASE AGREEMENT

This Lease Agreement (the “Lease”), dated as of the ____ day of _____ 2017, by and between the CITY OF CHARLESTON, a West Virginia municipal corporation (the “City”) and the YOUNG WOMEN’S CHRISTIAN ASSOCIATION OF CHARLESTON, WEST VIRGINIA, INC., a West Virginia nonprofit corporation (the “Tenant”);

RECITALS

WHEREAS, the City has power and authority to lease any of its property pursuant to Chapter 8, Article 12, Section 18 of the West Virginia Code of 1931, as amended;

WHEREAS, pursuant to Chapter 8 of the West Virginia Code of 1931, as amended, the City has power and authority to provide homeless services and lease its property to an independent entity for the purpose of operating a facility to provide homeless services in consideration for the provision of services for which the City otherwise would make direct expenditures;

WHEREAS, the City Council by Resolution has authorized this Lease Agreement after notice and a hearing;

WHEREAS, the Tenant has requested that the City lease to it the Premises (as defined in Article 6, Section A of this Lease Agreement) duly authorized by proper corporate action, and the Tenant is not prohibited under the terms of any outstanding deed of trust, mortgage, loan agreement or other instrument or evidence of indebtedness of whatever nature from entering into this Lease Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement and affirmatively so represents to Issuer;

WHEREAS, the Tenant operates Sojourner’s Shelter (as defined in Article 6, Section A of this Lease Agreement) for homeless women and families and provides safe refuge to homeless single women, women with children, men with custody of their children and intact families offering comprehensive services to address short and long-term needs and promote self-sufficiency to eliminate homelessness through case management, crisis intervention, counseling, education, outreach, employment training, follow-up services and other support services with shelter services 24 hours a day, 365 days a year with an ultimate goal of ensuring that individuals achieve long-term self sufficiency so that they will never be homeless again;

NOW THEREFORE, in consideration of the rents and mutual agreements set forth herein, City and Tenant hereby agree as follows:

ARTICLE 1. THE LEASE

A. Lease

City hereby lets, leases and demises unto Tenant, and Tenant hereby takes and hires from City, the Premises, as defined in Article 6, Section A herein.

B. Term

The term of this Lease Agreement shall be for a period of five (5) years (the “Initial Term”), commencing on the date as stated in the initial paragraph of this Lease Agreement, and expiring at midnight of its fifth anniversary (the “Expiration Date”). Tenant may request an extension of the term of this Lease for one (1) consecutive five (5) year period (the “Extension Term”), upon the same terms and conditions as contained in this Lease. To request the extension, Tenant shall give City written notice (“Tenant’s Extension Request”) at least ninety (90) days prior to the expiration date of the Initial Term. Tenant’s Extension Request shall be effective to extend the Term of the Lease subject to approval of the Request by Resolution of the City Council and without any further documentation other than such approved Resolution. Passage of the Resolution and Tenant’s Extension Request shall evidence intent by both parties to renew the Lease.

Any holding over by Tenant or retention of the Premises shall not be construed as renewing or extending this Lease Agreement in any manner whatsoever; but it may, at the option of City, be construed as creating a tenancy from month to month and on the same other provisions and conditions herein contained insofar as applicable, terminable by either party on thirty (30) days written notice. Tenant shall be subject to all the conditions of this Lease

excepting the term.

If Tenant has met all its obligations under this lease and is not in breach, Tenant may, at Tenant's option, terminate this Lease prior to the expiration hereof if City defaults in the performance of any of City's covenants, conditions or obligations hereunder and such default by City continues unremedied for a period of ninety (90) days from and after the date on which Tenant has mailed to City a written notice of such default; Notwithstanding, Tenant agrees and understands Tenant shall remain liable for any amounts owed to third parties and secured by this Leasehold.

C. Consideration

In exchange for the leasehold interest granted by this Lease, Tenant covenants and agrees to provide to the City the following fair and adequate consideration:

Agreement to Provide Essential Services for City Residents/City Budget Reduction. Pursuant to Charleston City Code Section 3-13, Sojourner's Shelter provides social services within the City of Charleston that the City could provide. Tenant's covenants, enumerated in Article 3 of this Lease, to operate and manage the services and manage, maintain and insure the property significantly reduce the City's budgeted expenditures and resources in providing essential services for its homeless population during the term of this Lease.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

Tenant represents and warrants to City that as of the date of execution of this Lease Agreement:

A. Premises As Is

Tenant hereby acknowledges that it or its agents have inspected the Premises, and Tenant hereby agrees to accept the Premises "AS IS, WHERE IS" in its present condition.

B. Corporate Authority

Tenant is a non-profit corporation organized and existing under the laws of the State of West Virginia; and Tenant has full legal right, power and authority to enter into this Lease Agreement and to carry out and consummate all transactions contemplated hereby; and by proper corporate action has duly authorized the execution, delivery and performance of this Lease Agreement.

C. Executor's Authority

The officer of the Tenant executing this Lease Agreement is duly and properly in office and fully authorized to execute the same.

D. Delivery

This Lease Agreement has been duly authorized, executed and delivered by the Tenant.

E. Binding

This Lease Agreement will constitute the legal, valid and binding agreement of Tenant enforceable against Tenant in accordance with its terms; except as enforcement of such agreement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

F. No Conflict with Other Agreements

The execution and delivery of this Lease Agreement and the fulfillment of or compliance with its terms and conditions will not conflict with or constitute a violation or breach of or default under Tenant's Articles of Incorporation, its Bylaws or any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which Tenant is a party or by which any of it or its properties are otherwise subject or bound.

G. No Litigation or Default

There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental Issuer, pending, or to the knowledge of Tenant, after reasonable investigation, threatened, against or affecting Tenant or the assets, properties or operations of Tenant which, if determined adversely to Tenant or its interests, would have a material adverse effect upon this Lease Agreement. Tenant is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental Issuer, which default might have consequences that would materially and adversely affect the consummation of this Lease Agreement. All tax returns (federal, state and local) required to be filed by or on behalf of Tenant have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by Tenant, in good faith, have been paid or adequate reserves have been made for the payment thereof.

H. Compliance with Law

Tenant currently complies in all material respects, with all federal, state and local laws, regulations and ordinances relating to its business.

I. Charitable Organization

Tenant, (1) is an organization described in Section 501(c)(3) of the Code; (2) has received a letter or letters from the Internal Revenue Service to that effect; (3) such letter or letters have not been modified, limited or revoked; (4) is in compliance with all terms, conditions and limitations, if any, continued in such letters; (5) the facts and circumstances which form the basis of such letters continue substantially to exist as represented to the Internal Revenue Service; (6) is not aware of any facts or circumstances that could cause a revocation of such letters; and (7) is exempt from federal income taxes under Section 501(a) of the Code. To the extent consistent with its status as a non-profit entity described in Section 501(c)(3) of the Code, Tenant agrees that it will not take any action or omit to take any action, nor allow Tenant to take or omit any action if such action or omission would cause any revocation or adverse modification of such federal income tax status of Tenant.

ARTICLE 3. COVENANTS

A. Charity

Premises Shall Remain Charitable Facility. Tenant shall occupy and use the Premises only for the charitable purpose of operating a homeless shelter and providing other services for the homeless population of the City of Charleston, and other uses incidental thereto. Tenant's occupancy and use of the Premises shall be in compliance with all applicable laws, statutes, ordinances and rules.

Tenant Shall Remain Charity. Tenant will maintain its corporate existence and charitable status with the State of West Virginia and United States Internal Revenue Service. For purposes of this Lease Agreement, Tenant will not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

B. Prohibitions

Tenant shall not use or occupy the Premises or permit the same to be used or occupied for any purpose or in any manner that:

1. Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule;
2. May be dangerous to persons or properties;
3. May create a nuisance, disturb any the occupants of neighboring properties or injure the reputation of the Premises;
4. Violates any restrictions, rules or regulations with respect to the Premises promulgated by City or imposed by any covenant or servitude of record;
5. May be deemed hazardous by City due to risk of fire or other event or due to the nature of materials used or stored in or upon the Premises;

6. May cause damage to any of the improvements upon the Premises, ordinary wear and tear excepted;
7. May invalidate any policy or policies of insurance now or hereinafter carried on the Premises by City or that may increase the rate of insurance thereon;

C. Liens; Encumbrances

Tenant shall not mortgage, assign offer as collateral or otherwise encumber its rights under this Lease Agreement without express, written consent from City for each and every assignment, sublease or encumbrance to each and every party. Consent by City for an encumbrance does not waive City's right to object to any and all subsequent assignments, subleases or encumbrances. City disclaims any claim by a third party to any right, title or interest not in accordance with this Lease Agreement.

D. Federal Laws and Regulations

Tenant hereby acknowledges that Federal funds may be used on the Premises, and Tenant hereby covenants and agrees to comply with all Federal laws and regulations applicable to the use and occupancy of the Premises, including, without limitation, such laws and regulations governing non-discrimination in the providing of services.

E. Alterations

1. Prohibited. Tenant shall not, without the prior written consent of City, make or cause to be made any alterations, improvements, additions or installations in or to the Premises. If City so consents in writing, all such alterations, improvements, additions or installations in and to the Premises shall become part of the Premises at the time of their installation and shall remain in the Premises at the expiration or possession of the Premises without compensation or credit to Tenant. Notwithstanding, Tenant may remove trade fixtures used by Tenant in connection with Tenant's business provided that Tenant repairs any damage to the Premises arising from such removals; any such trade fixtures not so removed prior to the end of the Term of this Lease shall become the sole property of City and no accounting or reimbursement thereof will be made to Tenant or to Tenant's account. City shall be responsible for any alterations and improvements to only the roof and exterior of the Premises, but only as so long as such alteration or improvement is not necessitated in any way by Tenant's fault or negligence.

2. Hold Harmless. Tenant shall indemnify and save City harmless from any and all mechanics', materialmen's and laborers' liens associated with any such work performed on the Premises. Before the commencement of any such work, Tenant shall pay the amount of any increases in premiums on insurance policies for which this Lease provides because of policy endorsements necessary to cover the risk during the course of the work. In addition, if the estimated cost of work shall exceed Five Thousand Dollars (\$5,000.00), Tenant shall on its own or via its building contractor, without cost to City, furnish City, unless City waives the same in writing, a performance bond written by a surety acceptable to City in an amount equal to the estimated cost of the work, guaranteeing the completion of work, free and clear of all liens, encumbrances and security interests according to plans and specifications approved in writing by City before the commencement of the work.

F. Maintenance of the Premises

Common Areas. City shall be responsible for maintenance of parking areas, sidewalks and steps, except that Tenant shall be responsible for snow and ice removal. Tenant shall be responsible for maintaining the landscaping on the Premises at Tenant's expense, including but not limited to cutting grass and shrubs.

Sojourner's Shelter. Responsibility for the maintenance and repair of Sojourner's Shelter is as follows:

City is responsible for repair of structural problems or capital improvements, except that the cost of performing any of such repairs caused by the negligence of Tenant, Tenant's employees, agents, servants, licensees, contractors or invitees or due to the failure of Tenant to perform Tenant's obligations under this Lease shall be paid by the Tenant except to the extent of insurance proceeds, if any, actually collected by City with regard to the damage necessitating such repairs. As approved by its City Manager, the City will repair electric receptacles, light fixtures, distribution panels, city-owned alarm systems, city-owned heating, ventilation and air conditioning (HVAC) equipment, plumbing fixtures and valves, exterior doors and windows, and surfaces (that is, brick, block and siding), roof, gutters, flashings, parking lots and driveways. Tenant agrees to notify City immediately of any repairs required to be made by City hereunder.

Tenant, at Tenant's expense, shall keep and maintain Sojourner's Shelter and fixtures in good order and repair, and in a clean, healthful, sanitary condition and repair and in accordance with all applicable legal, governmental and quasi-governmental requirements, ordinances and rules, including providing customary janitorial services in Sojourner's Shelter. Tenant must fix routine plumbing problems including without limitation clogged toilets and drains. Tenant must fix water and wastewater stoppages, misuse and breakage of any and all fixtures and plumbing equipment including traps and faucet replacement. Tenant must replace light bulbs, globes, lighting shields. Tenant must maintain in working order all tenant-owned alarm systems and tenant-owned HVAC equipment and replace all filters. Tenant must maintain interior walls and ceilings, is responsible for painting, floor coverings, stair treads, hand rails, interior doors and windows, and any repairs necessary to comply with city, state and fire marshal codes. Tenant is responsible for all appliances, including refrigerators, freezers, dishwashers, washers and dryers including without limitation removal of dryer lint.

Resolution of Ambiguity. In the event responsibility for resolution of a physical problem relating to the Real Estate or improvements thereon is ambiguous, Tenant shall be responsible.

G. Utilities

To the extent necessary, Tenant can and shall pay all utilities including without limitation water, wastewater, sewer, electricity, natural gas, fire service, incinerator, trash collection, cable television, telephone, and subscription security 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. Tenant shall make all arrangements directly with the companies servicing a building on the Premises for utilities and services in the Premises desired by Tenant. Tenant understands and is aware that all utilities and services shall be furnished to the Premises by third parties and Tenant covenants and agrees that City shall not be liable or responsible for any damage on account of the failure at any time of the third parties to supply such utilities and services due to strikes, lockouts, boycotts, labor disturbances, accidents, or any other cause beyond City's control, or by virtue of any direction, order or regulation of any Federal, State, County, City, or local authority. City agrees to fully cooperate with Tenant in securing and maintaining all utilities and services.

H. Insurance

Tenant covenants and agrees that (i) from and after the Commencement Date of this Lease, Tenant shall carry and maintain at Tenant's sole cost and expense insurance in the amounts and in the forms as specified in this Subsection 3(H), (ii) Tenant shall provide primary coverage for all such policies, and all such policies shall reflect that Tenant is responsible for all deductibles, and (iii) Tenant shall name the City of Charleston as an additional insured on all its policies for purposes of this Lease Agreement and the Insurance and Indemnity provisions herein.

Casualty Insurance. Tenant shall not be required to obtain casualty insurance on the Premises or improvements thereon, unless otherwise agreed in writing by City and Tenant.

Public Liability Insurance. Tenant shall keep in full force and effect public liability insurance in respect to the use and occupation of the Premises, naming both City and Tenant as insureds, in the amount of One Million Dollars (\$1,000,000.00) per person, One Million Dollars (\$1,000,000.00) per occurrence on account of personal injury to or death of one or more persons, and Five Hundred Dollars (\$500,000.00) on account of damage to property. To accommodate inflation and increases in costs, at the request of City, Tenant shall obtain increased amounts of public liability coverage based on amounts ordinarily obtained by organizations providing similar services.

Tenant's Personal Property. Tenant shall have in full force and effect all risk coverage for the full value of all of Tenant's equipment, trade fixtures, furnishings and all items of personal property which may be in or upon the Premises. City, its employees and agents, shall not be liable for loss of or damage to Tenant's equipment, trade fixtures, goods, furnishings and items of personal property placed in or upon the Premises from accidents, conditions, or casualty occurring in, on or about the Premises whether or not due to City's negligence.

City's Right to Approve Policies of Insurance. All policies of insurance referred to hereinabove shall be written in such form and by such insurance company or companies satisfactory to City. Tenant shall pay all of the premiums therefor and shall deliver such insurance policies or certificates thereof to City. Each insurer mentioned hereinabove shall agree, by endorsement on the policy or policies issued to Tenant, or by independent instrument furnished to

City, that it will give City thirty (30) days' written notice before any policy or policies of insurance are altered or canceled. City shall not unreasonably withhold their approval as to the form of such insurance or the insurance company or companies selected by Tenant. The cost of insurance required to be carried by Tenant hereinabove shall be deemed to be an additional rental hereunder.

City's Right to Pay Premiums on Behalf of Tenant. In the event Tenant fails to either effect such insurance in the amounts herein called for, or to pay the policy premiums, or to deliver such policy or certificate thereof to City, City shall be entitled, but shall have not the obligation, to effect such insurance and pay the premiums therefor, which premiums shall be payable to City upon written demand to Tenant therefor. Each insurer mentioned hereinabove shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to City, that it will give City thirty (30) days written notice before the policy or policies in question shall be altered or cancelled.

I. Taxes

In the event the Premises incur taxes whether for real or personal property, Tenant shall pay all taxes on real property and personal property as the same become due and payable.

J. Assignment; Sublease

Tenant shall not assign this Lease Agreement in whole or in part without first obtaining the express written consent of City. Any such attempted assignment without express written consent shall be considered a breach of this Lease Agreement, but shall not relieve Tenant in any way of Tenant's obligations hereunder. Pursuant to Article 5, Section H, recordation of this Lease Agreement or Memorandum of Lease in the records of the County Clerk shall serve as notice to any third party that any attempted assignment, sublease or encumbrance by Tenant without express written consent of City is void; this provision is controlling over any other provision in this Lease Agreement. For purposes of this Loan Agreement, Tenant shall not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

K. City's Right to Inspection

Tenant shall allow City or its employees, agents or representatives free access to the Premises and any improvements thereon during reasonable hours for the purpose of examining the same to ascertain if the same are in good repair and condition. Moreover, at City's sole will and discretion, City shall have access to the Premises to make repairs or alterations to the Premises; provided, that City does not unreasonably interfere with Tenant's use of the Premises. Such inspection, however, shall in no way oblige City to make any such repairs not their obligation under this Lease Agreement. City shall have the further right to show the Premises and any improvements thereon to prospective occupants during the period of ninety (90) days before the expiration of the term of this Lease.

L. Waiver of Claims and Indemnity

1. Assumption of Risk. Tenant hereby assumes all responsibility and legal liability for bodily injury to, loss of use or destruction of any property of Tenant or any third party, including, but not limited to agents, employees, guests, students, clients, licensees, invitees or customers of Tenant caused by or arising out of any defects in or conditions of the Premises or improvements on the Premises now existing or hereinafter existing, including, without limitation, all sidewalks, walkways or parking areas adjacent or appurtenant to the Premises. This paragraph is intended to encompass all defects to or conditions of the Premises or improvements on the Premises and adjacent ways including, but not limited to, those conditions caused by fire, water, explosion, wind, snow, ice or other casualty.

2. Waiver and Indemnification. Tenant will pay and will indemnify, defend and hold the City, including any person at any time serving as a director, officer, employee, agent or consultant of the City, harmless from and against all claims, liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), suits and judgments of any kind arising out of injury to or death of any person or damage to property in or upon the Premises or any violation of any law, ordinance or regulation affecting the Premises. To the full extent permitted by law, Tenant hereby releases and waives all claims against City and its employees and agents, for injury, death or damage to persons, property or business sustained for any reason in and about the Premises by Tenant, its agents, employees, guests, students, clients, licensees, invitees or customers, other than injury, death or damage caused by the gross negligence of City, its employees or agents. Tenant agrees to indemnify and hold harmless City, its employees and

agents, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature, including reasonable attorney's fees, arising from injury, death or damage of any person, property or business sustained for any reason in or about the Premises, provided, however, Tenant's obligations hereunder shall not apply to death, injury or damage resulting from the gross negligence of City, its employees or agents. If any such proceeding is brought against City, its employees or agents, Tenant covenants, if requested by City, to defend such proceeding at Tenant's sole cost by legal counsel reasonably satisfactory to City. No covenant or agreement contained in this Lease Agreement will be deemed to be the covenant or agreement of any board member, officer, attorney, agent or employee of the City or Tenant in an individual capacity. No recourse will be had for any payment or any claim against any officer, board member, agent, attorney or employee of the City or Tenant past, present, or future, or its successors or assigns, or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all liability of such board members, officers, agents, attorneys or employees being released as a condition of and as a consideration for the execution and delivery of this Lease Agreement. The indemnifications set forth herein shall survive the termination of the Lease Agreement.

M. Nondiscrimination

Tenant shall assure that that the Premises will be open to all, in accordance with federal laws and regulations, state laws and regulations, and Codes and Ordinances of the City.

N. Survey of Tenant's Improvements

Tenant shall not be required to have a licensed surveyor survey the Premises as a condition precedent to this Lease Agreement.

ARTICLE 4. EVENTS OF DEFAULT AND REMEDIES

A. Events of Default

Each of the following events shall constitute and be referred to herein as an "Event of Default."

1. **Materially Incorrect Representation or Warranty.** If any material representation or warranty made by Tenant herein shall at any time prove to have been incorrect in any respect as of the time made.
2. **Failure to Perform Covenant.** If Tenant shall fail to observe or perform any other covenant, condition, agreement or provision in this Lease Agreement on its part to be observed or performed, or shall breach any warranty by Tenant herein contained, for a period of thirty (30) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to Tenant by the City; except that, if such failure or breach cannot be remedied within such thirty-day period and if Tenant has taken all action reasonably possible to remedy such failure or breach within such thirty-day period, such failure or breach shall not become an Event of Default for so long as Tenant shall diligently proceed to remedy such failure or breach in accordance with and subject to any directions or limitations of time established by the City.
3. **Cessation of Services.** In the event Tenant should permanently cease to provide services to the public, the Lease shall automatically terminate and control and possession of the property shall revert to and vest in the city, and such nonprofit organization shall thereafter have no right, title, or interest therein or thereto.

B. Remedies on Event of Default

If an Event of Default shall occur, then, and in each and every such case during the continuance of such Event of Default, the City may take such action as it deems necessary or appropriate to enforce performance and observance of any obligation or agreement of Tenant hereunder or to protect the interests securing the same, and may, without limiting the generality of the foregoing:

1. **Terminate this Lease** without further notice to or demand upon Tenant, and City may, at its option, reenter and repossess the Premises with or without force, and re-rent the same for the whole or any part of the unexpired portion of the term of the Lease;
2. **Exercise any or all rights and remedies** given hereby or available hereunder or given by or available under any other instrument of any kind securing Tenant's performance hereunder;

3. Take other acts or steps as may be available at law or in equity to collect the payment required hereunder then due, whether on the stated due date or by declaration of acceleration or otherwise, for damages or for specific performance or otherwise to enforce performance and observance of any obligation, agreement or covenant of Tenant hereunder; and

4. Tenant shall remain personally liable for any amounts owed to third parties and secured by this Leasehold.

C. Discontinuance or Abandonment of Default Proceedings

If any proceeding taken by the City on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the City, then and in every case the City and Tenant shall be restored to their former position and rights hereunder, respectively, and all rights, remedies and powers of the City shall continue as though no such proceeding had taken place. The rights and limitations of the Parties to this Lease Agreement would be restored against each other, including any rights and limitations that had been assigned to third parties.

D. Remedies Cumulative; No Ongoing Waiver

No remedy conferred upon or reserved to the City hereby or now or hereafter existing at law or in equity or by statute, shall be exclusive but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the City. In the event of any waiver of a Event of Default hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent Event of Default or impair any right arising as a result thereof.

E. Attorneys' Fees and Other Expenses

If, as a result of the occurrence of an Event of Default, the City employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligation or agreement on the part of Tenant, Tenant will, on demand, reimburse the City for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

F. Notice of Default

Tenant agrees that, as soon as is practicable, and in any event within five (5) days, Tenant will furnish the City notice of any event which is an Event of Default pursuant to Section A of this Article which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Tenant proposes to take with respect thereto.

G. Mediation

If, within 30 days after written notice of termination by one party and before or after institution of legal proceedings, both parties have not succeeded in resolving all disputed issues between them, each party has the right to commence mediation at its cost by providing to the other party written notice of a request for mediation. The parties shall choose a mediator within 15 days after such request for mediation, and the mediation process shall be concluded no later than 30 days after the selection of the mediator. The parties agree that there is no right to arbitration under this Lease Agreement.

ARTICLE 5. MISCELLANEOUS

A. Personal Property Lien

City hereby reserves to City, a lien against all personal property and improvements brought upon the Real Estate (including without limitation Sojourner's Shelter) by Tenant to secure payments of all monetary sums which may become payable under this Lease Agreement or incident thereto. If Tenant is in default hereunder, Tenant's personal property shall not be removed until such defaults are corrected.

B. Force Majeure

City shall not be deemed in default with respect to any of the terms, covenants and conditions of this Lease if City fails to timely perform the same due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, or fuel shortages, accidents, casualties, acts of law, acts of God, acts caused directly or indirectly by the other party to this Lease, or their agents, employees or invitees, or any other cause beyond the commercially reasonable control of the City.

C. Damage or Destruction of Premises

If the Premises shall be damaged or destroyed during the term of this Lease by fire or other insurable casualty, City may, at its option initiate repairs to restore the same to substantially the condition it was in upon commencement of the Initial Term of this Lease. City shall be entitled to collect and receive all insurance proceeds payable by reason of such damage or destruction to the Premises, excluding any personalty or removable fixtures of Tenant. If, however, the Premises should be damaged or destroyed by any cause so that City shall decide to demolish or to completely rebuild the Premises, City may, within sixty (60) days after such damage or destruction, give Tenant written notice of such decision and thereupon this Lease shall be deemed to have terminated as of the date of such damage or destruction and Tenant shall immediately quit and surrender the Premises to City.

D. Eminent Domain

In the event a taking of the Premises by eminent domain occur that renders the Premises unusable for Tenant, Tenant shall have the right within ten (10) days after receiving notice of the taking to terminate this Lease by written notice to City of Tenant's intention to terminate.

E. Successors

The terms, conditions, covenants and agreements herein contained shall extend to, inure to the benefit of and be binding upon the parties hereto and their respective personnel, representatives, successors and assigns.

F. No Brokerage Commission

City and Tenant mutually warrant with one another that no real estate brokers are entitled to a commission as a result of producing this Lease and that neither party employed or engaged a real estate broker or agent to effectuate this Lease.

G. Notice

All notices to be given hereunder by either party shall be in writing and shall be sent by Certified Mail, Return Receipt Requested, to City and to Tenant at the addresses stated below:

CITY:

Director

Mayor's Office of Economic and Community Development

City of Charleston

P.O. Box 2749

Charleston, WV 26330

With a copy to:

City Attorney

City of Charleston

P.O. Box 2749

Charleston, WV 26330

With an optional facsimile copy to (304) 348-0770

TENANT:

Executive Director

Young Women’s Christian Association of Charleston, West Virginia, Inc.

1114 Quarrier Street

Charleston, WV 25301

With an optional facsimile copy to (304) 340-3614

H. Recordation of Lease Agreement; Memorandum of Lease

Either party may record this Lease Agreement or a Memorandum of Lease. The party requesting that the Lease or Memorandum of Lease be recorded shall prepare and pay all costs of preparation and recording.

ARTICLE 6. INTERPRETATION

A. Definitions

“Premises” means the Real Estate, Sojourner’s Shelter improvements and all fixtures of Sojourner’s Shelter.

“Sojourner’s Shelter” means all the improvements existing as of September 10, 2017, on the Real Estate, that is, the seventy-five-bed, more or less, shelter for homeless women and families, and that also may provide safe refuge to homeless single women, women with children, men with custody of their children and intact families .

“Real Estate” means the real estate more particularly described in APPENDIX A – REAL ESTATE DESCRIPTION of this Lease Agreement.

B. Governing Law

This Lease Agreement shall be governed by and construed according to the laws of the State of West Virginia applicable to contracts made and performed within such State.

C. Construction

1. General

Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

2. Captions

Headings of articles and sections herein and any table of contents are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

3. Time of the Essence; Non-Business Days

Time shall be of the essence of this Lease Agreement and the performance of all obligations hereunder. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

4. Severability

If any covenant, agreement or provision, or any portion thereof contained in this Lease Agreement, where the

application thereof to any Person or circumstance is held to be unconstitutional, invalid or unenforceable, it shall be limited only to the extent required to hold it constitutional, valid or enforceable, and the remainder of this Lease Agreement and the application of such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Lease Agreement shall remain valid and enforceable.

5. Counterparts

This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

6. Entire Agreement

This Lease Agreement, together with all agreements and documents incorporated by reference herein, constitutes the entire agreement of the parties and is not subject to modification, amendment, qualification or limitation except as expressly provided herein.

7. Amendments and Supplements

This Lease Agreement may be amended, changed or modified only by the written agreement of the parties.

8. Binding Effect on Successors and Assigns

This instrument shall inure to the benefit of and shall be binding upon the City and Tenant and their respective successors and assigns, subject to the limitations contained herein.

Appendix A. REAL ESTATE DESCRIPTION

1418 Washington Street East

By Deed conveyed unto the CITY OF CHARLESTON by W. T. BROTHERTON, JR. and ANN C. BROTHERTON, his wife, and JOHN R. BROTHERTON, dated the 4th day of October 1990 and of record in the City of Charleston (Charleston East Tax District), Kanawha County, West Virginia in Deed Book 2257 at Page 830, the City of Charleston has all of those certain lots, pieces, or parcels of land, together with the improvements thereon and the appurtenances thereunto belonging and known as the 1418 Washington Street, East property, the 1420 Washington Street, East property, the 402 Beauregard Street property, and the 404 Beauregard Street property, all being situate in the City of Charleston, Charleston East District, Kanawha County, West Virginia, and being more particularly bounded and described as follows:

PARCEL NUMBER ONE (1418 -- 1420 Washington Street, East):

All of that certain lot or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging, fronting eighty (80) feet on the northeasterly side of Washington Street, East, in the City of Charleston, Kanawha County, West Virginia, and extending back with the southeasterly side of Beauregard Street, a distance of sixty-nine (69) feet, being part of Lot No. 1, of Block "K" of the First Ruffner Addition to said City of Charleston, and being more particularly bounded and described as follows:

BEGINNING at a point on the northeasterly side of said Washington Street, East, at the southeasterly intersection thereof with Beauregard Street, which is also the lower front corner of said Lot No. 1 of Block "K"; thence with the southeasterly side of said Beauregard Street, in 'a direction toward the hills, N. 43° E. 69 feet to a point; thence running across said Lot No. 1, S. 47° E. 80 feet to a point in the dividing line between Lots Nos. 1 and 2, of said Block "K"; thence with the dividing line between said Lots Nos. 1 and 2, S. 43° W. 69 feet to a point in the northeasterly side of said Washington Street, East; thence with the northeasterly line of said Washington Street, East, N. 47° W. 80 feet to the place of beginning, as shown upon a map attached to the hereinafter referred to deed made by W. D. Sell, Civil Engineer, dated March 24, 1939, entitled "Lot of W. T. Brotherton."

PARCEL NUMBER TWO (402 Beauregard Street):

All of that certain lot, piece, or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging, situate in the City of Charleston, East, Kanawha County, West Virginia, and being more particularly bounded and described as follows:

Being that certain lot of land which fronts 30 feet along the easterly line of Beauregard Street and beginning at a stake which is the common northerly front corner of this Tilton lot and the southerly front corner of the adjacent property formerly known as the Zua Mayer lot; thence with the easterly line of Beauregard Street in a southerly direction a distance of 30 feet to a stake, thence in an easterly direction and parallel with the southerly side line of the said Zua Mayer lot, and about parallel with Washington Street, a distance of 80 feet to a stake; thence in a line parallel with Beauregard Street and in a northerly direction a distance of 30 feet to a stake located at the common rear corner with the Zua Mayer lot; thence with the southerly side line of the Zua Mayer lot a distance of 80 feet to the place of beginning, being a part of Lot 1 of Block “K” of the First Ruffner Addition.

PARCEL NUMBER THREE (404 Beauregard Street):

All of the following parcel of real estate, together with the improvements thereon and the appurtenances thereunto belonging, situate in the City of Charleston, Kanawha County, West Virginia, and being more particularly bounded and described as follows:

BEGINNING on the easterly line of Beauregard Street on the southerly line of a fifteen (15) foot alley, which alley is between and parallel with Washington and Jackson Streets, thence running with the said southerly line of the fifteen (15) foot alley in an easterly direction Eighty (80) feet to a stake; thence running in a southerly direction towards Washington Street and parallel with Beauregard Street thirty-five (35) feet to a stake; thence running in a westerly direction parallel with the said Beauregard Street; thence running in a northerly direction with the easterly line of Beauregard Street thirty-five (35) feet to the place of beginning, and being a part of Lot #1 of Bk. “K” of the First Ruffner Addition to the City of Charleston, as shown and designated on a Map filed with the partition deed of H. D. Ruffner and other dated December 11, 1895, and recorded in the Office of the Clerk of The County Commission of Kanawha County, in Deed Book 70, at Page 83.

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 951-17 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. 952-17 do pass.

Resolution No. 952-17 - Ratifying the conveyance of property located at 739 Central Avenue, known as the Park Place Bar, to the City by quitclaim deed in consideration for the City's agreement to forgo legal action to recover costs and expenses incurred by the City for the provision of excessive emergency and other public services to the property and the surrounding area related to the operations of the Park Place Bar and the nuisance created thereby;

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

That the conveyance of property located at 739 Central Avenue, known as the Park Place Bar, to the City by quitclaim deed in consideration for the City's agreement to forgo legal action to recover costs and expenses incurred by the City for the provision of excessive emergency and other public services to the property and the surrounding area related to the operations of the Park Place Bar and the nuisance created thereby, is hereby ratified.

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 952-17 adopted.

6. Your committee on Finance has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7757 do pass.

Bill No. 7757 - A Bill to amend and reenact Sections 2-734, 2-737, and 2-738 of the City Code of the City of Charleston, as amended, amending the effective date for an increase in the City's Service Fee previously approved by Bill Number 7661 on July 20, 2015.

WHEREAS, the City Council now finds that it is necessary, reasonable, not excessive, and warranted based upon the cost of, need for, and reasonable allocation of the fee payor's usage of the municipal services contemplated by the Code, that the previously approved fee increase from \$2.50 to \$3.00 commence on January 1, 2018; now therefore,

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

That the Council for the City of Charleston hereby amends and reenacts Sections 2-734, 2-737, and 2-738 of the City Code of the City of Charleston, as amended, to read as follows:

Sec. 2-734. - Findings.

- (a) The city council of the city finds that the city provides to all individuals within its borders certain services, whether they are residents employed within the city, or individuals living outside the city and employed within the corporate boundaries of the city.
- (b) The city council of the city finds that such services include police protection and traffic and street maintenance.
- (c) The city council of the city finds that such services are within the authority and are the responsibility of the Municipal Government of the City of Charleston as provided under the general laws of the State of West Virginia.
- (d) The city council of the city finds that since such services are essential to the creation and maintenance of those jobs which provide livelihood to all individuals employed within the city, as well as to the property interests of residents and visitors to the city, it is therefore reasonable to derive a portion of the cost of providing and maintaining such services from said individuals.
- (e) The city council of the city finds that W. Va. Code § 8-13-13 provides that every municipality has the plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such services, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such services reasonable rates, fees and charges to be collected in the manner prescribed in the ordinance.
- (f) The city council of the city finds that all of those individuals, who use, enjoy and benefit from these services, should bear an equitable share of the costs thereof.
- (g) The city council of the city finds that the imposition of the city service fee established herein is a reasonable system of distributing the costs to all of the users that the city can reach through reasonable and prudent means and legislation.

(h) The city council of the city finds that the legislature of the State of West Virginia has conferred upon municipalities the plenary power to enact reasonable administrative provisions to ensure the efficient, orderly and equitable implementation and collection of the service fees from all users.

(i) The city council of the city finds that it is in the best interests of the citizens of the city and the users of city services to enact this article to impose a city service fee.

(j) The city council of the city finds that there are tens of thousands of individuals who benefit from municipal services who are not owners of property or residents of the city, but who are employed within the city.

(k) The city council of the city finds that employers located within the city possess important employment information necessary to properly enforce certain aspects and provisions of this article and that, therefore, reasonable regulations concerning obtaining certain information from such employers shall be a necessary and important part of the administration of the city service fee.

(l) The city council of the city finds that raising the fee from \$2.00 to \$2.50 beginning the calendar week of January 3, 2016, and continuing through December 31, 2017 January 4, 2020, and from \$2.50 to \$3.00 beginning the calendar week of January 15, 201820, and continuing thereafter, is reasonable, not excessive, and warranted based upon a reasonable allocation of the fee payers' usage of the municipal services contemplated herein.

Sec. 2-737. - Imposition of fee; rate.

Beginning January 3, 2017, and continuing through December 31, 2017, There is hereby imposed a city service fee upon each employee and self-employed individual at the rate of \$2.5000 per calendar week of employment within the city. Beginning January 3, 2016, and continuing through January 4, 2020, the fee rate imposed shall be \$2.50 per calendar week of employment within the city. Beginning January 15, 201820, and continuing thereafter, the fee rate imposed shall be \$3.00 per calendar week of employment within the city. No individual shall pay the fee more than once for the same week of employment regardless of multiple employment. The fee imposed by this article is in addition to all other fees imposed by the city.

Sec. 2-738. - Effective date.

The imposition of the city service fee of \$2.50 per calendar week of employment within the city shall take effect beginning January 3, 2016, and shall remain in effect until up to and including December 31, 2017 January 4, 2020. The imposition of the city service fee of \$3.00 per calendar week of employment within the city, representing an increase from \$2.50 to \$3.00 as set forth in Sec. 2-737 herein, shall take effect beginning January 15, 201820, and continue thereafter. The previous city service fee of \$2.00 per calendar week of employment within the city imposed upon each employee and self-employed individual will continue to be imposed up to and including January 2, 2016.

Councilmember Richardson spoke against the bill, saying the City should be “cutting and reallocating before a user fee.”

Councilmember Ware spoke against the bill, saying “We cannot continue to use the user fee... as a balancing tool to the budget.”

Councilmember Overstreet spoke in favor of the bill, for the sake of “public safety,” expecting “due diligence” on the part of the City.

Councilmember Ealy spoke in favor of the bill, saying he wants “whatever it’s going to take to move forward” to continue to see results.

Councilmember Talkington spoke in favor of the bill, saying “All this bill does is move up the effective date.” He also added it was the “only realistic way to put cops on the street.”

Councilmember Smith spoke against the bill, saying he is not convinced “that putting an additional eight or nine police on the force will solve our problem.”

Councilmember Persinger spoke against the bill, saying, “The user fee is... an unfair burden on the working poor.”

Mayor Jones spoke in favor of the bill, saying “We do need these police officers.” He added, “This is necessary to do this now.”

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

YEAS: Burka, Burton, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Jones, King, Lane, Minardi, Overstreet, Reishman, Salisbury, Steele, Talkington, Mayor Jones

NAYS: Persinger, Richardson, Smith, Ware

ABSENT: Ceperley, Snodgrass

With a majority of members elected recorded thereon as voting 21 Yeas and 4 Nays, the Mayor declared Bill No. 7757 passed.

REPORTS OF OFFICERS

1. City Treasurer's Report to City Council Month Ending August 31 2017.
Received and Filed.

NEW BILLS

Introduced by Councilmembers Bobby Haas and Richard Burka on September 18, 2017:
Bill No. 7761 - A Bill to establish a 15 Mile Per Hour speed limit on Wood Road.
Refer to Streets and Traffic Committee.

MISCELLANEOUS BUSINESS

1. Councilmember Minardi asked what the City could do to help resolve the traffic problem in South Hills.

ADJOURNMENT

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

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

NAYS:

ABSENT: Ceperley, Snodgrass

At 7:44 p.m., by a motion from Councilmember Lane, Council adjourned until Monday, October 2, 2017, at 7:00 p.m., in the Council Chamber in City Hall.

Danny Jones, Honorable Mayor

JB Akers, City Clerk