# CITY OF CHARLES TOWN
## CITY COUNCIL
## AGENDA • NOVEMBER 20, 2023

**Regular Session** **COUNCIL CHAMBERS** **7:00 PM**
**101 E Washington Street, Charles Town, WV 25414**

**CALL TO ORDER**

**1. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF MINUTES**

: **2023-1055:** City Council Meeting Minutes - November 6, 2023
Nov 6th Council meeting minutes.docx

**3. PUBLIC COMMENT**

**4. WARD REPORTS**

**5. MAYOR'S REPORT**

: **2023-1046:** Draft Traffic Control Service Agreement with West Virginia Division of Highway (WVDOH) at the intersection of Augustine Avenue and Washington Patriots Drive
DRAFT Traffic_Control_Service_Agreement_rmt.docx

**6. COMMITTEE REPORTS**

: **2023-1026:** Ordinance Committe Report - November 7, 2023, meeting
Ordinance Meeting Minutes 11_7_23.pdf

: **2023-1027:** Finance Committee Report - November 8, 2023, meeting
FinanceCommitteeReport_8Nov2023.pdf

**7. CITY MANAGER REPORT**

**8. POLICE CHIEF REPORT**

**9. UNFINISHED BUSINESS**

: **2023-1030:** Council Meeting Time Discussion

**10. NEW BUSINESS**

: **2023-1024:** Opioid Fund Account - opening of a new bank account (#367 Other Grants)
Final MOU and Exhibits.pdf

: **2023-1043:** Budget Revision #2 - COLA Distribution
Budget Revision and Budget Revision Supplement FY24 GF REV #2.xls
FY24 COLA Distribution.pdf
FY2024 General Fund Budget Rev#2 v1.0.pdf

: **2023-1044:** Augustine Avenue Trail Phase 3 - Design Options
Augustine Trail Packet for Council 11_20_2023.pdf

: **2023-1045:** Charles Washington Hall - Historic Tax Credit Investor Eligible for Exit
[Executable] CWH Assignment and Assumption Agreement 10-11-23 (002) (18310020.3 SJDOCS).pdf
CW.Manager.OA.executed.pdf
First.Amendment.CW.Landlord.OA.pdf
Executed Option Agreement.PDF
Executed Ground Lease.PDF
Executed Development Services Agreement.PDF
Executed Guaranty.PDF
Executed First Amendment to Lease.PDF
Executed Contribution Agreement.PDF
Executed Landlord Operating Agreement.PDF

: **2023-1047:** B&O Tax Waiver Request - Alvarez
Alvarez BO Tax Summary.pdf

: **2023-1053:** Sidewalk Repair Discussion
Possible referral to Finance or Infrastructure, RFP from staff, seeking ADA grants

## 11. REFERRALS TO COMMITTEES/COMMISSIONS

: **2023-1025:** Light Pollution as a nuisance - Refer to Ordinance Committee per Councilmember Rodd

: **2023-1042:** Article 365 - Charles Town Parking District - refer to Ordinance Committee

: **2023-1052:** Article 361 - Parking Generally - Refer to Ordinance Committee
Letter about Article 361.pdf

## 12. APPROVAL OF BILLS

: **2023-1056:** Payment of Bills - November 20, 2023
CAPITAL RESERVE COUNCIL REPORT 2023 11 20.pdf
GENERAL FUND COUNCIL REPORT 2023 11 20.pdf
PARKS & REC COUNCIL REPORT 2023 11 20.pdf

## 13. ADJOURNMENT

## 14. INFORMATION ONLY - NEXT MEETING December 4, 2023

: **2023-1028:** Infrastructure Committee Report - October 23, 2023, meeting
Report_ Infrastructure Committee 10_23_23.pdf

: **2023-1029:** Board of Parks and Recreation Report - October 26, 2023, meeting
P&R Report_ October 26, 2023.pdf

: **2023-1048:** Resolution in Support of Charels Town for a Land & Water Conservation Fund Grant Application for the "Jefferson Memorial Pool Upgrade" Project
2023-012 - Resolution in Support of Charls Town for a Land & Water Conservation Fund Grant Application.pdf

: **2023-1054:** Charles Town Utility Board Meeting Minutes - October 26, 2023

2023.10.26 UB MINUTES.pdf

**15. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at:**

**https://www.charlestownwv.us/government/agendas-and-minutes/**

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Report
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1055: City Council Meeting Minutes - November 6, 2023

**ATTACHMENTS:**

- Nov 6th Council meeting minutes.docx

# CITY OF CHARLES TOWN

**CITY COUNCIL**

**MINUTES • November 6, 2023**

**Regular Meeting** **Council Chambers** **7:00 PM**

**101 East Washington Street, Charles Town, WV 25414**

## CALL TO ORDER

| Attendee Name | Title | Status | Arrived |
|---|---|---|---|
| Bob Trainor | Mayor | Present | |
| James Kratovil | Councilmember | Present | |
| Elizabeth Ricketts | Councilmember | Present | |
| Jeff Hynes | Councilmember | Present | |
| Kevin Tester | Councilmember | Present | |
| Julie Philabaum | Councilmember | Present | |
| Priscilla Rodd | Councilmember | Present | |
| Rikki Twyford | Councilmember | Present | |
| Micheal George | Councilmember | Present | |

Ms. Alissa Meeks, Community Development Director; Mr. James Newman, City Planner; Ms. Liz Cook, Business Development/Downtown Coordinator; Ms. Cindy Rezmer, Operations Manager; Ms. Kristen Stolipher, Charles Town Utility Board Manager; and Chief Chris Kutcher, Charles Town Police Department, were also in attendance.

## 1. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

## 2. APPROVAL OF MINUTES

2023-1011: City Council Meeting Minutes - October 16, 2023

The following changes were made to the October 16, 2023, City Council meeting minutes:

Packet page 8 - 2023-022: Tree Board: replace "**Capon Institute**" with "**Cacapon Institute**".

Packet page 8 - City Manager Report: remove the "s" from "**Corner Connection**".

## 3. PUBLIC COMMENT

Three people signed up for public comment.

Laverne Bishop expressed her support for an Interpretative Plaque for the Charles Town Racetrack placement on the African American History Tour route.

Fiona Harris, representing the Charles Town Farmers Market, presented a summary of the 2023 Farmer's Market season.

Robin Huyett Thomas expressed her concern and opposition to the rezoning request for the “Hayes Property”.

## 4. WARD REPORTS

Ward #1

Mr. Kratovil had nothing to report.

Ms. Ricketts reported that she attended the West Virginia Farmland Round Table facilitated by Senator Patricia Rucker. The discussion included the preservation of farmland and farming in Jefferson County and the Eastern Panhandle.

Ward #2

Mr. Hynes had nothing to report.

Mr. Tester had nothing to report.

Ward #3

Ms. Philabaum had nothing to report.

Ms. Rodd thanked Councilmembers Philabaum and Twyford for organizing the downtown liter clean-up on Saturday, November 4, 2023.

Ward #4

Mr. George had nothing to report.

Ms. Twyford congratulated the Old Opera House and Councilmember George on the successful production of The Adams Family.

## 5. MAYOR'S REPORT

- Historic Landmark Commission Appointment

  Mayor Trainor administered the oath of office to Mr. Anthony Troxel for the open seat on the Historic Landmark Commission; term ending Dec 31, 2025.

- Letter to Governor Jim Justice - Safety Concern/Traffic Light at Sheetz Gas Station

  Mayor Trainor reported that he spoke with the West Virginia Secretary of the Department of Transportation (DOT) Mr. Jimmy Wriston, who informed him that due to contracting issues, the new traffic signal at the intersection of Augustine Avenue and Washington Patriots Drive will likely not be installed until early summer of 2024. In the interim, Sheetz will be responsible for establishing a four-way stop at the intersection on or about November 15, 2023. The City will also be engaged in contract negotiations with DOT to have Charles Town Police Department (CTPD) presence during traffic peak hours at the intersection.

- Letter to County Commission

  Mayor Trainor reiterated that the letter to the County Commission, unanimously passed by the Council on October 16, 2023, had been sent to the County Administrator and Commission.

- Be Kind Proclamation

  Mayor Trainor read into record the “Be Kind November” Proclamation.

## 6. COMMITTEE REPORTS

2023-973: Infrastructure Committee Report - October 23, 2023

Ms. Ricketts reported the following from the Infrastructure Meeting:

- The Committee discussed the G3 Grant recently received by the City for the Liberty Street Stormwater Project. The grant funds must be used by September 2024. They also discussed the Augustine Avenue Trail project and possible traffic calming measures for Liberty Street.
- The City has submitted the grant application, sponsored by the Hagerstown Eastern Panhandle Metropolitan Planning Organization (HEPMPO), for the intersection of Lawrence and Congress Streets. The grant has an 80/20 grant match requirement.
- The City Maintenance Department presented options for repairing the damaged light pole on Washington Street
- That the Committee began discussions on the placement of wayfinding signage. A workshop on the subject is planned for the next Infrastructure Committee meeting.

2023-974: Board of Parks and Recreation Report - October 26, 2023

Ms. Ricketts reported the following from the Board of Parks and Recreation meeting:

- Thrasher Engineering gave a presentation concerning the Jefferson Memorial Park Pool refurbishment.
- A $500,000 Land and Water Conservation Fund Grant application has been submitted for the Jefferson Memorial Park pool project. The grant has a 50/50 match requirement
- The Board approved the Charles Town Tree Board's pursuit of a grant opportunity with Potomac Edison to install a pollinator's garden at the Skate Park.

2023-975: Ordinance Committee Report - October 24, 2023

Ms. Twyford reported that the Ordinance Committee is working on Section 22 Sidewalks of the Charles Town charter.

## 7. CITY MANAGER REPORT

Ms. Meeks reported that the Charles Town Tree Board has been awarded the Division of Forestry Grant in the amount of $25,000. She also reviewed the numerous events scheduled for Charles Town during November and December; City staff will be very busy during this time. She also reported:

- Building Code Appeals Board Rules and Regulations of Procedure

  That the Contractor's Appeal Board has been established and the first appeal hearing is scheduled for December 7, 2023. The "Rules and Regulations of Procedure", included in the agenda packet, have been adopted by the Board.
- That the City Manager submitted a letter to the County Commission requesting a delay in the issuance of the occupancy permit for the Sheetz gas station until the planned traffic light and signalized crosswalk have been installed.

## 8. POLICE CHIEF REPORT

Chief Kutcher reported that the CTPD has one officer applicant who is working through the hiring process. The CTPD is still trying to fill three officer vacancies.

He also reported that CTPD officer enrolled in the Municipal Police and Firefighters Pension System (MPFRS) will hold a vote on the first of February 2024 on a measure to begin paying into the Social Security program. If the majority are in favor of the measure, then those officers will likely begin Social Security as early as February 5, 2024.

## 9. UNFINISHED BUSINESS

2023-972: Placement of Interpretative Plaque for Charles Town Racetrack

Ms. Philabaum moved to table this agenda item until the Council receives a more finalized design. Ms. Twyford seconded the motion, and it failed by a 1-7 vote.

| | |
|---|---|
| **RESULT:** | **FAILED [1-7]** |
| **MOVER:** | Julie Philabaum |
| **SECONDER:** | Rikki Twyford |
| **AYES:** | Julie Philabaum |
| **NAYS:** | Kratovil, Ricketts, Hynes, Tester, Rodd, George, Twyford |

Ms. Twyford moved to refer to the Historic Landmark Commission for recommendation to the design and location of the plaque within the historic overlay district. Mr. George seconded the motion. *The motion was superseded by the successful motion to table.*

Mr. Kratovil moved to table this agenda item until a design is available for Council to review. Mr. George seconded the motion, and it passed with a 5-3 vote.

| | |
|---|---|
| **RESULT:** | **TABLED [5-3]** |
| **MOVER:** | James Kratovil |
| **SECONDER:** | Micheal George |
| **AYES:** | Kratovil, Tester, Hynes, Philabaum, George |
| **NAYS:** | Ricketts, Rodd, Twyford |

2023-976: Volunteer/Takeaway Parking at Wright Denny Elementary School

Mr. George moved to direct staff to follow Councilman Hynes' outline to move forward with a volunteer parking program and the four parking spaces [in front of Wright Denny Intermediate School] for drop-offs and pickup.

The program outline includes:

> The designation of four (4) parking spaces located nearest to the front steps of the Wright Denny Intermediate School as 10 minute drop-off and pickup parking spaces. The City will be responsible for effecting the required infrastructure changes, to include;

removing parking meters at the four spaces, appropriate signage installation, and curb identification

Wright Denny Intermediate School volunteers will be afforded an opportunity to obtain a temporary school-generated parking pass for school related activities good only for available parking spaces at the City's parking lot located at W Congress and S Lawrence streets.

Wright Denny Intermediate School officials will be responsible for administering the volunteer parking pass program, including production of the one-time temporary passes and parking program education for school volunteers. Mayor Trainor

Mr. Tester seconded the motion, and it passed by unanimous vote.

Mayor Trainor stated that Article 365 – Charles Town Parking District will be on the next scheduled Council meeting agenda as a referral to the Ordinance Committee to reflect the Wright Denny Intermediate School changes; there were no objections.

| | |
|---|---|
| **ESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Micheal George |
| **SECONDER:** | Kevin Tester |
| **AYES:** | Kratovil, Ricketts, Hynes, Tester, Philabaum, Rodd, George, Twyford |

2023-984: Class Cost of Service Study and Rate Adjustment Recommendations from the Charles Town Utility Board (CTUB)

Mr. Tester moved to remove this agenda item from the table. Mr. George seconded the motion; there was no objection to the motion and Mayor Trainor declared the agenda item removed from the table.

Mr. George moved to send the revised Option A1 Rate Equalization of Water to the Ordinance Committee as presented. Ms. Rodd seconded the motion.

Ms. Ricketts moved to table this agenda item until the Charles Town Utility Board Chairman was present. Mr. Kratovil seconded the motion, and it failed by a 2-6 vote.

| | |
|---|---|
| **RESULT:** | **FAILED [2-6]** |
| **MOVER:** | Elizabeth Ricketts |
| **SECONDER:** | James Kratovil |
| **AYES:** | Kratovil, Ricketts |
| **NAYS:** | Tester, Hynes, Philabaum, Rodd, George, Twyford |

Mr. George's motion passed by a 6-2 vote.

| | |
|---|---|
| **RESULT:** | **APPROVED [6-2]** |
| **MOVER:** | Micheal George |
| **SECONDER:** | Priscilla Rodd |
| **AYES:** | Tester, Hynes, Philabaum, Rodd, George, Twyford |
| **NAYS** | Kratovil, Ricketts |

2023-985: Private Outdoor Designated Area (PODA) Discussion

Mr. Kratovil moved to refer the Private Outdoor Designated Area (PODA) to the Ordinance Committee. Ms. Philabaum seconded the motion, and it failed by a 2-6 vote.

| | |
|---|---|
| **RESULT:** | **FAILED [2-6]** |
| **MOVER:** | James Kratovil |
| **SECONDER:** | Julie Philabaum |
| **AYES:** | Kratovil, Philabaum |
| **NAYS:** | Ricketts, Tester, Hynes, Rodd, George Twyford |

After discussion Mr. George moved to table this agenda item until City Staff can provide more information regarding how other West Virginia municipalities are implementing their PODA programs. Mr. Tester seconded the motion, and it passed by a 7-1 vote.

| | |
|---|---|
| **RESULT:** | **TABLED [7-1]** |
| **MOVER:** | Micheal George |
| **SECONDER:** | Kevin Tester |
| **AYES:** | Kratovil, Ricketts, Hynes, Tester, Philabaum, Rodd, George |
| **NAYS:** | Twyford |

2023-1009: Public Hearing on Second Reading and Final Consideration of an Amendment to the Codified Ordinances of the City of Charles Town, West Virginia with Regard to Part 1 Administrative Code, Article 171 Municipal Court.

Ms. Ricketts moved to open the public hearing. Mr. Testers seconded the motion, and there were no objections. Mayor Trainor declared the public hearing open.

No one had signed up for the public hearing.

Mr. Tester moved to close the public hearing. Ms. Ricketts seconded the motion, and there were no objections. Mayor Trainor declared the public hearing closed.

2023-988: Second Reading and Final Consideration of an Amendment to the Codified Ordinances of the City of Charles Town, West Virginia with Regard to Part 1 Administrative Code, Article 171 Municipal Court.

Mr. Tester moved to approve the seconded reading of Article 171 Municipal Court. Mr. Hynes seconded the motion, and it passed by unanimous vote.

| | |
|---|---|
| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Kevin Tester |
| **SECONDER:** | Jeff Hynes |
| **AYES:** | Kratovil, Ricketts, Hynes, Tester, Philabaum, Rodd, George, Twyford |

2023-954: Staff Update: Draft Mobile Food Truck Ordinance

Mr. Tester moved to remove from the table this agenda item. Ms. Philabaum seconded the motion; there were no objections and Mayor Trainor declared the item removed from the table.

Ms. Philabaum moved to refer the Draft Mobile Food Truck Ordinance to the Planning Commission. Ms. Twyford seconded the motion, and it passed by unanimous vote.

| | |
|---|---|
| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Julie Philabaum |
| **SECONDER:** | Rikki Twyford |
| **AYES:** | Kratovil, Ricketts, Hynes, Tester, Philabaum, Rodd, George, Twyford |

## 10. NEW BUSINESS

2023-953: Rezoning Request: ZMA2023-01 Vinton-Hayes. Request to rezone property to Residential Medium-High Density (R15)

Ms. Philabaum moved to open the public hearing. Mr. Hynes seconded the motion and there were no objections. Mayor Trainor declared the public hearing open.

Two people spoke during the public hearing. One in support of the request and one objected to the request.

Mr. Hynes moved to close the public hearing. Mr. Tester seconded the motion, and there were no objections. Mayor Trainor declared the public hearing closed.

Mr. Hynes moved to accept and follow the Planning Commission's recommendation to deny the request of rezoning the property to Residential Medium High Density (R15). Mr. Tester seconded the motion, and it passed by unanimous vote.

| | |
|---|---|
| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Jeff Hynes |
| **SECONDER:** | Kevin Tester |
| **AYES:** | Kratovil, Ricketts, Hynes, Tester, Philabaum, Rodd, George, Twyford |

2023-981: Commercial Pad Site Preparation Clarification

Mr. Tester moved to amend the Council's prior referral recommendation to the City Planning Commission by removing the 40% requirement [regarding completion of commercial pad sites for those residential developments with a required commercial component. Council agenda item 2023-666]. Mr. George seconded the motion, and it passed by unanimous vote.

| | |
|---|---|
| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Kevin Tester |
| **SECONDER:** | Micheal George |
| **AYES:** | Kratovil, Ricketts, Hynes, Tester, Philabaum, Rodd, George, Twyford |

2023-983: Land Water Conservation Fund (LWCF) Resolution - 2nd

Ms. Philabaum moved to approve the Land Water Conservation Fund (LWCR) Resolution with the agreed upon edits. Mr. Tester seconded the motion and it passed by unanimous vote.

| | |
|---|---|
| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Julie Philabaum |
| **SECONDER:** | Kevin Tester |
| **AYES:** | Kratovil, Ricketts, Hynes, Tester, Philabaum, Rodd, George, Twyford |

2023-989: Council Meeting Time Discussion

After discussion there was no action taken on the agenda item.

Councilmember Rodd requested that this agenda item be included on the agenda for the next scheduled Council meeting.

## 11. REFERRALS TO COMMITTEES/COMMISSIONS

2023-1010: Light Pollution Mitigation Efforts refer to Planning Commission

Mr. Hynes moved to refer for review and possible update to the lighting standards of the Zoning and Subdivision Ordinance. Mr. George seconded the motion, and it passed by unanimous vote.

| | |
|---|---|
| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Jeff Hynes |
| **SECONDER:** | Micheal George |
| **AYES:** | Kratovil, Ricketts, Hynes, Tester, Philabaum, Rodd, George, Twyford |

## 12. APPROVAL OF BILLS

Payment of Bills - November 6, 2023

Mr. Kratovil moved to approve the payment of the bills. Hearing no objections, Mayor Trainor declared the bills approved for payment.

## 13. ADJOURNMENT

Mayor Trainor asked if there was any other business to come before the Council. Hearing none, Mayor Trainor adjourned the meeting at 10:00PM.

## 14. INFORMATION ONLY - NEXT MEETING November 20, 2023

2023-968: Deputy Clerk Designation Letter

2023-969: Charles Town Police Department Statistical Report for September 2023

2023-970: Charles Town Utility Board Meeting Minutes - September 27, 2023, and October 11, 2023

2023-967: Board of Parks and Recreation September 26, 2023, Meeting Report

2023-977: Hagerstown Eastern Panhandle Metropolitan Planning Organization (HEPMPO) Matching Grant Letter

**15. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at: https://www.charlestownwv.us/government/agendas-and-minutes/**

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Contract
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1046: Draft Traffic Control Service Agreement with West Virginia Division of Highway (WVDOH) at the intersection of Augustine Avenue and Washington Patriots Drive

**ATTACHMENTS:**

- DRAFT Traffic_Control_Service_Agreement_rmt.docx

# TRAFFIC CONTROL SERVICES AGREEMENT

This AGREEMENT between the WEST VIRGINIA DIVISION OF HIGHWAYS (WVDOH) and the CITY OF CHARLES TOWN (City) as the Traffic Control Service provider.

WHEREAS, Due to the delay in the installation of a permanent traffic signal at the intersection of Augustine Avenue, Washington Patriots Drive, and the soon to be opened Sheetz Augustine Avenue entrance/exit access (WPAS), which will include a signalized crosswalk; and

WHEREAS, the additional traffic expected at the aforementioned intersection will result in a denigrated safety margin at WPAS intersection for vehicular and pedestrian traffic, particularly during student arrival and departure times at Washington High School, which is accessed via Washington Patriots Drive; and

WHEREAS, the Charles Town Police Department (CTPD) is empowered to provide for the safety, security, and order in the City of Charles Town; and

WHEREAS, the WPAS intersection falls within the CTPD jurisdiction; and

WHEREAS, as a temporary solution, WVDOH intends to create a four-way stop at the WPAS intersection and has requested the CTPD provide traffic services there.

NOW THEREFORE, THE PARTIES HERETO AGREE TO THE FOLLOWING:

1. Engagement

1.1 CTPD shall provide a police presence to perform traffic control duties for a mutually agreed upon duration at the WPAS intersection.

1.2 CTPD police officers performing traffic control services are under the general supervision of the CTPD and shall abide by, all CTPD rules and regulations as well as complying with all local, state, and federal laws.

1.3 WVDOH agrees that all law enforcement decisions encountered by police officers of CTPD during the period covered by the AGREEMENT shall be made by CTPD personnel.

1.4 WVDOH agrees that a Charles Town police officer engaged in duties pertaining to this AGREEMENT may, in their sole discretion, interrupt their provision of services to discharge their public duties as law enforcement officers and attend to emergencies and other exigent circumstances outside the scope of this AGREEMENT. Such an interruption or termination of services shall not be considered a breach of this AGREEMENT. WVDOH will not be obligated to pay for and CTPD will not charge fees for activities performed after the officer interrupts or terminates the provision of services.

DRAFT

2. Terms

2.1 This AGREEMENT shall be effective on November 16, 2023 at 6:00AM, and shall remain in force until December 15, 2023 at 5:00PM. At the end of the AGREEMENT term, the necessity of the AGREEMENT will be reassessed by both parties to determine if the term will be extended. If the parties agree to extend term beyond December 15, 2023, the parties may elect to extend the services as appropriate.

3. Hours of Operation

3.1 CTPD will perform traffic control services on weekdays (Monday – Friday) for the duration of the AGREEMENT. Traffic control duties shall not be conducted on holidays or weekends unless otherwise agreed upon by the parties.

3.2 CTPD agrees to provide traffic control services within the following mutually agreed to following time periods whenever Washington High School is in session:

- 6:30 AM to 9:30 AM
- 2:00 PM to 5:00 PM

3.4 The Chief of Police (CTPD) and appropriate WVDOH personnel may adjust or modify the aforementioned time periods if deemed appropriate to improve the effectiveness of the traffic control duties and safety of the WPAS intersection.

4. Dress Code and Equipment

4.1 CTPD Police officers shall use their assigned police cruiser and wear their CTPD issued uniform while performing traffic control services.

5. Compensation

5.1 In consideration for traffic control services performed by the CTPD, WVDOH agrees to reimburse the City at a rate of $65.00 per hour, at a minimum of two hours for services rendered, not to exceed 6 hours per day during the terms of the AGREEMENT.

5.2 The WVDOH agrees to submit payment of undisputed fees to the City within 30 calendar days from the date of the statement. WVDOH is not obligated to pay disputed fees until such time as the parties resolve the dispute to their mutual satisfaction.

6. Indemnification

6.1 Neither party hereto shall be liable for any damages resulting from the negligent or wrongful acts or omissions of the other party or the other party's employees or agents in the performance of this AGREEMENT.

DRAFT

7. Termination

7.1 The CTPD Chief of Police has sole authority to terminate this AGREEMENT on behalf of City. In the event of a material breach by a party, the non-breaching party shall have the right to terminate this AGREEMENT immediately. In the event this AGREEMENT is terminated, compensation will be made to the City for all services performed to date of termination.

IN WITNESS WHEREOF, the parties hereto have caused this Traffic Control Services AGREEMENT to be executed the day and year first written above.

CITY OF CHARLES TOWN

_____ _____

Robert M. Trainor, Mayor Date

CHARLES TOWN POLICE DEPARTMENT

_____ _____

Christopher A. Kutcher, Chief of Police Date

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

_____ _____

Jimmy Riston, P.E. Date
Secretary of Transportation/
Commissioner of Highways

DRAFT

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Report
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1026: Ordinance Committe Report - November 7, 2023, meeting

**ATTACHMENTS:**

- Ordinance Meeting Minutes 11_7_23.pdf

# City of Charles Town Ordinance Committee Report - November 7, 2023

**Call to Order:**
18:00

**Committee Members In Attendance:** Rikki Twyford, Julie Philabaum, Kevin Tester, Priscilla Rodd

**Agenda / Discussions:**

**Resident letter regarding parking ticket**

The City Manager asked staff to include a letter from a resident on the Ordinance agenda. We had some discussion regarding the letter, but no action was taken, as no article had been referred to us by Council.

- ***Recommendation to City Council:***
  - *Refer Article 361 to Ordinance if changes are requested*

**Charles Town City Charter - Section 22 Sidewalks**

Continued topside discussion about the Charter's purview on sidewalk installation and repair. This included discussion surrounding:

- ☐ The current street improvement fee / should it become an infrastructure improvement fee
- ☐ The need for an updated and more encompassing sidewalk assessment in the City
- ☐ Stormwater collection impact
- ☐ The need for a Capital Improvement Plan
- ☐ The current sidewalk grant program - could it be changed
- ☐ City liability concerns
- ☐ A program that allows for repairs to be done on behalf of an address, that adds a "repayment fee" to that address for a specified period of time
- ☐ Potential structure of an ordinance that allows for installation and repair, before a Charter rewrite
- ☐ Grants available, including an ADA grant

- ***Recommendation to City Council:***
  - *Take steps (RFPs, Referral to Finance and/or Infrastructure committees, etc) to initiate a newer and more comprehensive sidewalk assessment*
  - *Work with Matt Ward to explore the possibility of an ADA grant for sidewalks*
  - *Encourage staff to advertise the City's sidewalk program and potentially change the parameters to make it more accessible*

*Note: We thank Charles Town resident, Mr. Doug Curtis, for attending the Ordinance Meeting and offering personal feedback.*

**Adjournment:**
18:56

**Next meeting:**
Tuesday, November 28, 2023 at 6 pm

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Report
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1027: Finance Committee Report - November 8, 2023, meeting

**ATTACHMENTS:**

- FinanceCommitteeReport_8Nov2023.pdf

Drafted by: Bob Trainor - Chairman

## Call to Order ooa 11:00AM

1. **Persons present:** Finance Committee Members Ms. Julie Philabaum, Mr. Jeff Hynes, and Mr. Bob Trainor; City Finance Director, Ms. Krista Davis; and City Operations Director, Ms. Cindy Rezmer

2. **Unfinished Business**

**2023-993: Utility Fee**

This agenda item was **tabled** to allow the Committee to study the City's street data that was provided earlier in the week.

***Recommendations to the City Council:*** None at this time, information only.

**2023-1021: B&O Tax Waiver Request – Alverez**

**Background:**

At the October 17, 2022 City Council meeting, Ms. Kristen Stolipher, Charles Town Utility Board (CTUB) General Manager, presented a request on behalf of Alvarez Contractors Inc., the prime contractor awarded the Charles Town Utility Board Sewage Plant Renewal and Replacement (R&R) project, to reduce or eliminate the City's 2.0% Business and Occupation (B&O) tax requirement. Alverez's B&O tax liability for the project is estimated at $203K. Ms. Stolipher explained that Alverez did not include the tax liability in their bid, which was the low bid by approximately $500K. Ms. Stolipher also stated that the B&O tax requirement was clearly stated in the project bid documents, which Alverez management agrees.

This issue was tabled at the 6 December 2022 Finance Committee meeting pending approval of a City policy to govern consideration of B&O tax reduction or elimination for projects that have widespread benefit to the City and/or its residents. The City Council has since passed a revision to Charles Town Code Article 745 – Business and Occupation Tax, section 745.16A – Optional Exempt Activities at the September 5, 2023 Council meeting, which states:

> "The City Council, by vote of 2/3 majority of the Council, reserves the right to apply, reduce, or eliminate for a specified time period and/or for a specific project, the Business and Occupation tax per the following provision(s): Any activity associated with a municipality-initiated/taxpayer-funded project that directly benefits Charles Town's residents, and in which the taxes rendered under this article could result in higher rates to those residents for existing services and/or higher project costs for the municipality."

The Committee agreed that since Alvarez did not include B&O taxes in their bid package for the R&R project that was subsequently awarded, waiving them would not directly benefit the Charles Town [sewer] rate payers. Nor would Alvarez's B&O tax liability for the project alone result in higher rates for Charles Town [sewer] rate payers.

Therefore, the Committee agreed to recommend to the Council to deny Alvarez's B&O tax waiver request. The Committee also recognizes that Alvarez may include B&O tax calculations in negotiated project change orders

***Recommendations to the City Council:*** Deny Alvarez's B&O tax waiver request.

## 3. New Business

**2023-994: FY2024 General Fund Revision #2**

Ms. Krista Davis explained that the recommended fund revision was needed to distribute the 8.7% FY2024 COLA increase and 457b Retirement Match from the Contingencies (699) Line item to the appropriate City departments.

***Recommendations to the City Council:*** Review and approve General Fund revision 2

**2023-995: Grant Match Source(s) – Congress and Lawrence Street HEPMPO Grant**

The Committee engaged in a general discussion regarding the City's grant match obligations and agreed to develop a separate tracking mechanism for grant match obligations.

***Recommendations to the City Council:*** None at this time, information only.

**2023-999: Charles Washington Hall – Historical Tax Credit Investor Eligible for Exit**

The Committee agreed to **table** this agenda item to provide staff with an opportunity to provide additional information, including a legal opinion from the City's contracted attorney.

***Recommendations to the City Council:*** None at this time, information only.

## 4. Finance Director's Report

**2023-996: Statement of Accounts through September 30, 2023**

The Committee reviewed the City's September 30, 2023 statement of accounts, which is included as attachment (1).

***2023-997: ARPA Funds Status***

The Committee agreed that since these funds have been designated as "Revenue Replacement" they should no longer be referred as "ARPA" funds. The Committee also agreed that an internal method needs to be developed to better track how these funds are allocated.

***2023-998: Charles Washington Hall Water Heater Replacement***

The hot water heater in Charles Washington Hall was replaced on October 29, 2023 at a cost of $9,170.00. The Committee agreed to seek payment/reimbursement from the Charles Town Building Commission (receipt is included as attachment (2)).

***Recommendations to the City Council:*** None at this time, information only.

## 5. Tabled Items

2023-993: Utility Fee
2023-999: Charles Washington Hall – Historical Tax Credit Investor Eligible for Exit

## 6. Pending Items

There were no pending items

## 7. The meeting was adjourned ooa 12:20PM

## 8. Next Scheduled Finance Committee meeting is scheduled for 10:00AM, 6 December 2023.

City of Charles Town
Bank and Investment Accounts
As of September 30, 2023

Revised: November 7, 2023

| Account | Fund | June 30, 2023 Account Balance | Sep 30, 2023 Account Balance | Near-Term Expenditures | UNRESTRICTED FUNDS Unencumbered Balance | RESTRICTED FUNDS Unencumbered Balance | Comments |
|---|---|---|---|---|---|---|---|
| General Fund-BCT | General | $ 4,712,111 | $ 5,524,661 | $ 4,024,661 | $ - | $ 1,500,000 | General fund for operations; assumes complete draw down in near-term. $1.5 million ARPA funding held in General Fund for grant matching. |
| Coal Severance Tax Revenue Fund-BCT | Coal Severance | 126,373 | 134,183 | | - | 134,183 | Special revenue fund used for select projects; saving for longer-term park project. |
| Charles Town Building Commission-Truist | Bldg Commission | 229,830 | 221,634 | | - | 221,634 | Near-term expenditures (i.e. debt service) are paid from the BC fund and directly reimbursed through monthly lease payments from General Fund. Other funds restricted to BC purposes. |
| Residual Fund-Summit | Residual | 677,514 | 684,181 | | 684,181 | - | Savings account/emergency fund for the city. No planned expenditures. |
| Sales Tax-BCT | Sales Tax | 3,138,925 | 2,826,735 | 1,600,000 | 1,226,735 | - | $1 million committed to debt service (CWH and Annex reimb) and general operating costs for fiscal year 2023 - $700k already transferred. |
| Federal Equitable Fund-BCT | Investigative | 99,629 | 84,953 | | - | 84,953 | Funds restricted for limited police activities per DOJ guidelines. |
| CWH Landlord, LLC-BCT | CWH Landlord | 632,645 | 632,082 | 25,000 | 607,082 | - | Unrestricted revenues from the sale of federal historic tax credits; near-term expenditures are to begin design of city hall renovations. $25K allocated for possible option buy out. |
| American Rescue Plan Account-BCT | ARPA Fund | 8,895 | 8,907 | | - | 8,907 | 2nd tranche transferred on 1/6/2023 - $1.332 million to General Fund. |
| Housing Rehab Program-United | CDBG | 63,548 | 63,755 | | - | 63,755 | Funds restricted to housing rehab services. |
| Investigation Account - CTPD-BCT | Investigative | 31,096 | 35,248 | | - | 35,248 | Funds for police use-Federal Equitable recorded under separate bank account. |
| Employees Fund CTPD-BCT | Employees Fund | 964 | 965 | | - | 965 | Funds for police use |
| Capital Reserve Fund-BCT | Capital Reserve | 2,726,939 | 2,478,938 | | 2,478,938 | - | Near term funding for capital projects approved in FY24 CIP budget (minus capital expenses already paid, and repaving expenses paid from other account). |
| Summit Broker Buster - Repaving | Capital Reserve | 954,034 | 967,855 | | - | 967,855 | Savings account for future road resurfacing projects; near term expenses includes street improvements budgeted for FY2024. |
| EPA/RLF Fund-BCT | Capital Reserve | 182,084 | 190,581 | | 190,581 | - | EPA project completed but account remains open because it is a depository for federal overtime funds for drug task force (those funds later transferred to GRF) and is used to manage cash flow for reimbursable grants. |
| Board of Park & Recreation-BCT | Parks & Rec | 81,803 | 28,484 | 28,484 | 0 | - | Operating account for the city's parks programs |
| Board of Park & Recreation - CIP-BCT | Parks & Rec | 5,145 | 5,549 | | - | 5,549 | Account dedicated to Parks & Rec Donations/Contributions for future Parks CIP (tennis courts, pool, etc.) |
| Debt Service Reserve (B.C.)-Truist | Bldg Commission | 47,730 | 47,736 | | 47,736 | - | Established in 2010 at the same time the Building Commission established the Sinking Fund for a 1999 bond issuance. Bond has been repaid, funds to be consolidated with Repaving fund. |
| 1999 Series Revenue Bond Interest & Sinking Fund (B.C)-Truist | Bldg Commission | 304,928 | 304,966 | | 304,966 | - | Account includes original deposit of $52k to establish fund and additional deposits from street fees and interest earnings. Now that bond is paid, funds are "unrestricted" and can be combined with the Repaving fund. |
| Board of Trustees Police Pension Relief Fund-United | Police Pension | 50,905 | 42,568 | 42,568 | - | 0 | Funds used to support pension beneficiaries (includes regular contributions from the general fund to this account). |
| Bond Escrow Fund-BCT | Bond Escrow | 183,063 | 183,409 | | - | 183,409 | Account is used to deposit funds from developers and held until projects are completed. Current funds are for the Samuel Street Station and Tate Manor projects. |
| Total Bank Accounts | | *$ 14,258,161* | *$ 14,467,390* | $ 5,720,713 | $ 5,540,219 | $ 3,206,458 | |
| | | | | | - | | |
| Fidelity Police Pension Fund #6846 | Police Pension | *479,414* | *473,562* | - | - | 473,562 | Investment fund for restricted use; future pension payments |
| Fidelity City Residual Fund #9959 | Residual | *687,509* | *673,102* | - | 673,102 | - | Investment fund for budget stabilization. |
| | | | | | - | | |
| Total Bank Accounts plus two Investment Accounts | | *$ 15,425,084* | *$ 15,614,054* | $ 5,720,713 | $ 6,213,322 | $ 3,680,020 | |

Attachment (1)

# INVOICE

**Charles Town plumbing LLC**
49 Hite Rd
Kearneysville, WV 25430

ctownplumb@gmail.com
+1 (304) 725-9751

## City of Charles town

**Bill to**
100 west washington st
charles town, wv 25414

**Ship to**
City of Charles town
100 west washington st
charles town, wv 25414

**Invoice details**
Invoice no.: 1199
Terms: Due on receipt
Invoice date: 10/29/2023
Due date: 10/29/2023

| # | Date | Product or service | SKU | Qty | Rate | Amount |
|---|---|---|---|---|---|---|
| 1. | | **Services**<br>Remove, dispose of existing, and Install New 50 gallon, 100k btu heater, with new shut off valve, expansion tank. adding drip leg to gas line before entering gas valve, and correcting flu pipe issues if needed. | | | | $9,170.00 |

**Total** **$9,170.00**

**Overdue** 10/29/2023

### Note to customer

Thank you for your business and continued support! My team and I really appreciate the opportunity to work with you.

Attachment (2)

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Information Only
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1030: Council Meeting Time Discussion

**ATTACHMENTS:**

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1024: Opioid Fund Account - opening of a new bank account (#367 Other Grants)

**ATTACHMENTS:**

- Final MOU and Exhibits.pdf

## WEST VIRGINIA FIRST
## MEMORANDUM OF UNDERSTANDING

### General Principles

Whereas, the people of the State of West Virginia, its Local Governments and communities, have been harmed by misfeasance, nonfeasance and malfeasance committed by certain entities within the Pharmaceutical Supply Chain; and,

Whereas, certain Local Governments, through their elected representatives and counsel, and the State, through its Attorney General, are separately engaged in litigation seeking to hold Pharmaceutical Supply Chain Participants accountable for the public harms caused by their misfeasance, nonfeasance, and malfeasance; and

Whereas, the State, through its Attorney General, and its Local Governments share a common desire to abate and alleviate the impacts of that misfeasance, nonfeasance, and malfeasance throughout the State of West Virginia;

### Terms

The State and its Local Governments and communities, subject to the completion of formal documents effectuating the Parties' agreements, enter into this Memorandum of Understanding ("MOU") relating to the allocation and use of the proceeds of Settlements and Judgments described herein.

### A. Definitions

As used in this Memorandum of Understanding:

1. "Approved Purpose(s)" shall mean evidence-based strategies, programming and/or services used to expand the availability of treatment for individuals affected by substance use disorders and/or addiction, to develop, promote and provide evidence-based substance use prevention strategies, to provide substance use avoidance and awareness education, to engage in enforcement to curtail the sale, distribution, promotion or use of opioids and other drugs, to decrease the oversupply of licit and illicit opioids and to support recovery from addiction to be performed by qualified providers as is further set forth in Exhibit A and Paragraph B(3) below.

2. "Court" is the West Virginia Mass Litigation Panel.

3. "Foundation Share" shall mean Opioid Funds allocated to the Foundation from any settlement or judgment.

4. "Judgment" shall mean a final judgment or verdict in favor of any of the Parties in a judicial proceeding pending in either state or federal court (including Bankruptcy Court) which resolves legal or equitable claims regarding opioids against a Pharmaceutical Supply Chain Participant. Judgment shall not include any judgment on the claims of Cabell County and the City of Huntington which were previously tried in the United States District Court for the Southern District of West Virginia, or any judgment on any claims asserted by the State against a Pharmaceutical Supply Chain Participant arising under federal or state antitrust laws, state criminal laws, or claims asserted pursuant to W. Va. Code § 9-7-6(c) or for Medicaid reimbursement.

5. "Local Government(s)" shall mean all counties, cities, villages, and towns located within the geographic boundaries of the State.

6. "Local Government Share" or "LG Share" shall mean Opioid Funds allocated directly to Local Governments from any settlement or judgment.

7. "Regional Share Calculation" shall mean each Region's share of Opioid Funds which shall be calculated by summing the individual percentage shares of the Local Governments set forth in Exhibit C for all of the subdivisions in the entire Region as defined in Exhibit B.

8. "Net Opioid Fund" is the Opioid Fund less the Opioid Seed Fund payment.

9. "Opioid Funds" shall mean monetary amounts obtained through a Settlement or Judgment as defined in this Memorandum of Understanding.

10. "Pharmaceutical Supply Chain" shall mean the process and channels through which opioids are manufactured, marketed, promoted, distributed, or dispensed.

11. "Pharmaceutical Supply Chain Participant" shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution or dispensing of an opioid analgesic, including but not limited to those persons or entities identified as Defendants in the matter captioned In re: Opioid Litigation, MDL 2804 pending in the United States District Court for the Northern District of Ohio, the proceedings before the West Virginia Mass Litigation Panel, styled In Re: Opioid Litigation, Civil Action No. 19-C-9000, and relates to conduct occurring prior to the date of this agreement. For the avoidance of doubt, the term Pharmaceutical Supply Chain Participant includes any parent or subsidiary company of any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution or dispensing of an opioid analgesic, and any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution or dispensing of an opioid analgesic, that seeks or has sought protection under the United States Bankruptcy Code.

12. "Settlement" shall mean the negotiated resolution by any of the Parties, of legal or equitable claims regarding opioids against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the Parties. It does not include the Settlements the State and/or the West Virginia Attorney General entered into with any Pharmaceutical Supply Chain Participant prior to December 1, 2021. For the avoidance of doubt McKinsey is included. Settlement shall not include the claims of Cabell County and the City of Huntington, which were previously tried in the United States District Court for the Southern District of West Virginia or settlement of any claims asserted by the State and/or the West Virginia Attorney General against a Pharmaceutical Supply Chain Participant arising under federal or state antitrust laws, state criminal laws, or claims asserted pursuant to W. Va. Code, § 9-7-6(c) or for Medicaid reimbursement.

13. "State Share" shall mean Opioid Funds allocated to the State from any settlement or judgment.

14. "The Parties" shall mean the State and the Local Governments.

15. "Regions" shall mean the division of the Local Governments into six (6) separate areas as set forth in Exhibit B.

16. "The State" shall mean the State of West Virginia acting through its Attorney General.

17. "West Virginia Seed Fund" shall be funded as set forth in Paragraph B(2)(a). The funds are available for use in proper creation and documentation of the West Virginia Opioid Foundation and to fund their start-up work, and subsequent operation.

**B. Settlement and Judgment Proceeds**

1. The Parties shall organize a private, nonstock, nonprofit corporation for the purposes of receiving and distributing West Virginia Opioid Funds as set forth in Section C. of this MOU ("Opioid Foundation").

2. The Parties shall allocate all Opioid Funds as follows:

   a. Subject to relevant approvals, the State shall pay into the West Virginia Seed Fund the $10,000,000 received from McKinsey & Company as a result of the February 3, 2021, consent judgment with the State.

   b. All other Opioid Funds covered by the agreement shall be allocated as set forth below:

i. 24.5% of the Net Opioid Funds shall be allocated as LG Shares. These LG Shares shall be allocated amongst the Local Governments using the default percentages set forth in Exhibit C. Each county and its inclusive municipalities must either: (a) ratify the default allocation; (b) reach an agreement altering the default allocation; or (c) submit to binding arbitration before Judge Christopher Wilkes (WVMLP Special Master) whose decision will be final and non-app ealabl e.

ii. The Foundation will receive 72.5% of the Net Opioid Funds ("Foundation Share").

iii. The State shall receive 3% of the Net Opioid Funds ("State Share"), by and through the Attorney General, to be held in escrow for expenses incurred related to opioid litigation. If the 3% is not spent by December 31, 2026, then 1% goes to Local Governments and 2% goes to the Opioid Foundation.

3. All Net Opioid Funds, regardless of allocation, shall be used in a manner consistent with the Approved Purposes definition. The LG Share may be used as restitution for past expenditures so long as the past expenditures were made for purposes that would have qualified or were consistent with the categories of Approved Purposes listed in Exhibit A. Prior to using any portion of the LG Share as restitution for past expenditures, a Local Government shall pass a resolution or take equivalent governmental action detailing and explaining its use of the funds for restitution. Moreover, up to one-half of the LG Share may be used to provide restitution for monies that were previously expended on opioid abatement activities, including law enforcement and regional jail fees.

4. In the event a Local Government merges, dissolves, or ceases to exist, the relevant shares for that Local Government shall be redistributed equitably based on the composition of the successor Local Government. If a Local Government for any reason is excluded from a specific Settlement or Judgment, the allocation percentage for that Local Government shall be redistributed among the participating Local Governments for that Settlement or Judgment.

5. If the LG Share is less than $500, then that amount will instead be distributed to the county in which the Local Government lies to allow practical application of the abatement remedy.

6. Funds obtained that are unrelated to any Settlement or Judgment with a Pharmaceutical Supply Chain Participant, including those received via grant, bequest, gift, or the like, may be directed to the Opioid Foundation and disbursed as set forth below.

7. The Foundation Share shall be used for the benefit of the people of West Virginia consistent with the by-laws of the Foundation documents and this MOU.

8. Nothing in this MOU alters or changes the Parties' rights to pursue their own claims in litigation, subject to Paragraph E. Rather, the intent of this MOU is to join the Parties together regarding the distribution of the proceeds of settlements with or judgements against Pharmaceutical Supply Chain Participants for the benefit of all West Virginians and ensure that settlement monies are spent consistent with the Approved Purposes set forth in Exhibit A.

9. Any settlement, judgment and/or other remedy arising out of *City of Huntington v. AmerisourceBergen Drug Corporation, et al.* (Civil Action No. 3:17-01362) and/or *Cabell County Commission v. AmerisourceBergen Drug Corporation, et al.* (Civil Action No. 3:17-01665) pending in the United States District Court for the Southern District of West Virginia (Faber, J.) ("CT2") is specifically excluded from this MOU.

## C. The Opioid Foundation

1. The Parties shall create a private section 501(c)(3) Opioid Foundation ("Foundation") with a governing board ("Board"), a panel of experts ("Expert Panel"), and such other regional entities as may be necessary for the purpose of receiving and disbursing Opioid Funds and other purposes as set forth both herein and in the documents establishing the Foundation. The Foundation will allow Local Governments to take advantage of economies of scale and will partner with the State to increase revenue streams.

2. Each Region shall create their own governance structure, ensuring that all Local Governments have input and equitable representation regarding regional decisions including representation on the board and selection of projects to be funded from the Regional Share Calculation. The Expert Panel may consult with and may make recommendations to Regions on projects, services and/or expenses to be funded. Regions shall have the responsibility to make decisions that will allocate funds to projects, services and/or expenses that will equitably serve the needs of the entire Region.

3. Board Composition

The Board will consist of 11 members comprising representation as follows:

a. To represent the interests of the State, five appointees of the governor, subject to confirmation by the Senate. The five appointees are intended to be limited to one from any given Region. If special circumstances are shown, this provision may be waived by a vote of four of the six Local Government members.

b. To represent the interests of the Local Governments, six members, with one member selected from each Region. The Local Governments in each Region shall make the selection of the board member to represent their region.

4. Board terms will be staggered three-year terms. Board members may be reappointed.

5. Board members shall serve as fiduciaries of the Foundation separate and distinct from any representational capacity of the entity appointing the Board Member. Members of any regional governing structure shall likewise serve as fiduciaries of their Region separate and distinct from any representational capacity of the entity appointing the member.

6. Members of the board should have expertise in a variety of disciplines, such as substance abuse treatment, mental health, law enforcement, pharmacology, finance, and healthcare policy and management. Drawing Board members from these disciplines will help to ensure that the Board will make appropriate and prudent investments in order to meet short-term and long-term goals.

7. Six members of the Board shall constitute a quorum. Members of the Board may participate in meetings by telephone or video conference or may select a designee to attend and vote if the Board member is unavailable to attend a board meeting.

8. The Foundation shall have an Executive Director appointed by the Attorney General after consultation with the Board. The Board may reject the Attorney General's selection of the Executive Director only on the affirmative vote of eight members of the board. The Executive Director shall have at least six years' experience in healthcare, finance and management and will be responsible for the management, organization, and preservation of the public/private partnership's records. The Executive Director may be removed by the Board upon the concurrence of the votes of three-fourths of the members of the Board. The Executive Director shall have the right to attend all Board meetings unless otherwise excused but shall vote only in the event of a tie.

9. The Board shall appoint the Expert Panel. The Expert Panel should include experts in the fields of substance abuse treatment, mental health, law enforcement, pharmacology, finance, and healthcare policy and management. The purpose of the Expert Panel is to assist the Board in making decisions about strategies for abating the opioid epidemic in local communities around the state. The Executive Director and any member of the Board shall have the right to attend all meetings of the Expert Panel.

10. The governance of the Board and the criteria to be established for disbursement of funds shall be guided by the recognition that expenditures should insure the efficient and effective abatement of the opioid epidemic, the enforcement of laws to curb the use of opioids, and the prevention of future addiction and substance misuse based upon an intensity and needs basis. All expenditures must be consistent with the categories of Approved Purposes as set forth in Exhibit A hereto.

11. Disbursement of Foundation Share by the Board

a. The Foundation Board shall develop and approve procedures for the disbursement of Opioid Funds of the Foundation consistent with this Memorandum of Understanding.

b. Funds for statewide programs, innovation, research, and education may also be expended by the Foundation from the Foundation Share, from the State Share (as directed by the State), or from sources other than Opioid Funds as provided below.

c. The Foundation shall spend 20% of its annual budget in the six regions during the Foundation's first seven years of funding to be divided according to each Region's fixed Regional Share Calculation. After seven years, all regional spending will be as set forth in Section 11(d), below. Regions may, after consulting with the Expert Panel, expend the sums received under this Section 11(c) for any Approved Purposes.

d. After the Regional Shares are distributed as set forth in Section 11(c), the Disbursement of Funds from the Foundation Share approved for disbursement by the Board for Approved Purposes shall be disbursed based on an evidence-based evaluation of need after consultation with the Expert Panel. The Parties do not intend to require any specific regional allocation of the Foundation Share other than those distributed pursuant to Paragraph 11(c).

e. Regions may collaborate with other Regions to submit joint proposals.

f. The proposed procedures shall set forth the role of the Expert Panel in advising the Regions and the Board concerning disbursements of Opioid Funds of the Foundation as set forth in this MOU.

g. Within 90 days of the first receipt of any Opioid Funds and annually thereafter, the Board, after receiving counsel from its investment advisors and Expert Panel, shall determine the amount and timing of Foundation funds to be distributed annually. In making this determination, the Board shall consider: (a) Pending requests for Opioid Funds from communities, entities, or regions; (b) the total Opioid Funds available; (c) the timing of anticipated receipts of future Opioid Funds; (d) non-Opioid funds received by the Foundation; (e) investment income; and (f) long-term financial viability of the Foundation. The Foundation may disburse its principal and interest with the aim towards an efficient, expeditious abatement of the Opioid crisis considering long term and short-term strategies.

12. The Foundation, Expert Panel, and any other entities under the supervision of the Foundation, including the Regions, shall operate in a transparent manner. Meetings

should be open. All operations of the Foundation and all Foundation supervised entities, including the Regions, shall be subject to audit and review by the Attorney General and/or other appropriate State officials.

13. Each Local Government shall submit an annual financial report to the Foundation no later than April 30 of each year specifying the amounts spent on Approved Purposes within the Region during the previous fiscal year. A report for each Region shall be prepared no later than thirty days thereafter. Each Region's report shall incorporate the information disclosed in each Local Government's annual report generated pursuant to Section B(4), above. Each Region's report shall specify (i) the amount of Opioid Funds received, (ii) the amount of Opioid Funds disbursed or applied during the previous fiscal year, broken down by categories of Approved Uses (indicating the name of the recipient, the amount awarded, a description of the use of the award, and disbursement terms), and (iii) impact information measuring or describing the progress of the Approved Use strategies.

14. The Foundation shall publish a consolidated report detailing annual financial expenditures within 15 days of the last day of the state fiscal year covered by the report.

15. The Foundation shall consult with a professional investment advisor to adopt a Foundation investment policy that will seek to assure that the Foundation's investments are appropriate, prudent, and consistent with best practices for investments of public funds. The investment policy shall be designed to meet the Foundation's long and short-term goals.

16. The Foundation and any Foundation supervised entity may receive funds including stocks, bonds, real property, government grants, private-sector donations, and cash in addition to the proceeds of the Litigation. These Non-Opioid additional funds shall be subject only to the limitations, if any, contained in the individual award, grant, donation, gift, bequest, or deposit consistent with the mission of the Foundation.

**D. Payment of Attorneys' Fees and Litigation Expenses**

Payment of all Attorneys' Fees and Litigation Expenses shall be awarded consistent with the orders of the Court and upon recommendation of Judge Christopher Wilkes (WVMLP Special Master). Such award shall be final and non-appealable.

**E. Authority to Negotiate and Announcing Resolution of Claims**

1. The Court has established three case tracks.

    a. Manufacturers and Pharmacy claims are to be coordinated by the office of Attorney General Morrisey and his designated counsel. The Attorney General shall retain the authority over resolution of those claims after

consultation and coordination with Local Governments subject to Court approval.

b. The Distributor Claims are to be coordinated by Co-Lead Counsel Paul Farrell, Jr. and Robert Fitzsimmons. The Co-Leads shall retain the authority over resolution of those claims after consultation and coordination with Local Governments and their counsel and the Attorney General and his designated counsel.

2. If there is any resolution of any claim before the Court, it will be announced and presented to the Court jointly by the Attorney General and the Local Governments for Approval.

**F. Amendments**

The Parties agree to make such amendments as necessary to implement the general principles of this MOU.

## EXHIBIT A

## SCHEDULE A - CORE STRATEGIES

The Parties shall choose from among the abatement strategies listed in Schedule B. However, priority shall be given to the following core abatement strategies **("Core Strategies).**[1]

### A. NALOXONE OR OTHER FDA-APPROVED DRUG TO REVERSE OPIOID OVERDOSES

1. Expand training for first responders, schools, community support groups and families; and

2. Increase distribution to individuals who are uninsured or whose insurance does not cover the needed services.

### B. MEDICATION-ASSISTED TREATMENT ("MAT") DISTRIBUTION AND OTHER OPIOID-RELATED TREATMENT

1. Increase distribution of MAT to individuals who are uninsured or whose insurance does not cover the needed service;

2. Provide education to school-based and youth-focused programs that discourage or prevent misuse;

3. Provide MAT education and awareness training to healthcare providers, EMTs, law enforcement, and other first responders; and

4. Treatment and Recovery Support Services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allow or integrate medication and with other support services.

### C. PREGNANT & POSTPARTUM WOMEN

1. Expand Screening, Brief Intervention, and Referral to Treatment ("SBIRT") services to non-Medicaid eligible or uninsured pregnant women;

2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for women and co-occurring Opioid Use Disorder ("OUD") and other substance Use Disorder ("SUD")/Mental Health disorders for uninsured individuals for up to 12 months postpartum; and

---

As used in this Schedule A, words like "expand," "fund," "provide" or the like shall not indicate a preference for new or existing programs. Priorities will be established by the Opioid Abatement Foundation.

3. Provide comprehensive wrap-around services to individuals with Opioid Use Disorder (OUD) including housing, transportation, job placement/training, and childcare.

## D. EXPANDING TREATMENT FOR NEONATAL ABSTINENCE SYNDROME

1. Expand comprehensive evidence-based treatment and recovery support for NAS babies;

2. Expand services for better continuation of care with infant-need dyad; and

3. Expand long-term treatment and services for medical monitoring of NAS babies and their families.

## E. EXPANSION OF WARM HAND-OFF PROGRAMS AND RECOVERY SERVICES

1. Expand services such as on-call teams to begin MAT in hospital emergency departments;

2. Expand warm hand-off services to transition to recovery services;

3. Broaden scope of recovery services to include co-occurring SUD or mental health conditions;

4. Provide comprehensive wrap-around services to individuals in recovery including housing, transportation, job placement/training, and childcare; and

5. Hire additional social workers or other behavioral health workers to facilitate expansion above.

## F. TREATMENT FOR INCARCERATED POPULATION

1. Provide evidence-based treatment and recovery support including MAT for persons with OUD and co-occurring SUD/MH disorders within and transitioning out of the criminal justice system; and

2. Increase funding for jails to provide treatment to inmates with OUD.

## G. PREVENTION PROGRAMS

1. Funding for media campaigns to prevent opioid use (similar to the FDA's "Real Cost" campaign to prevent youth from misusing tobacco);

2. Funding for evidence-based prevention programs in schools;

3. Funding for medical provider education and outreach regarding best prescribing practices for opioids consistent with the 2016 CDC guidelines, including providers at hospitals (academic detailing);

4. Funding for community drug disposal programs; and

5. Funding and training for first responders to participate in pre-arrest diversion programs, post-overdose response teams, or similar strategies that connect at-risk individuals to behavioral health services and supports.

## H. EVIDENCE-BASED DATA COLLECTION AND RESEARCH ANALYZING THE EFFECTIVENESS OF THE ABATEMENT STRATEGIES WITHIN THE STATE.

## I. LAW ENFORCEMENT

1. Funding for law enforcement efforts to curtail the sale, distribution, promotion or use of opioids and other drugs to reduce the oversupply of licit and illicit opioids, including regional jail fees.

## J. RESEARCH

Research to ameliorate the opioid epidemic and to identify new tools to reduce and address opioid addiction. Holistically seek to address the problem from a supply, demand, and educational perspective. Ensure tools exist to provide law enforcement with appropriate enforcement to address needs.

## SCHEDULE B - APPROVED USES

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:[2]

PART ONE: TREATMENT

### A. TREAT OPIOID USE DISORDER (OUD)

1. Support treatment of Opioid Use Disorder (OUD) and any co-occurring SUD/MH conditions, including all forms of Medication-Assisted Treatment (MAT) approved by the U.S. Food and Drug Administration.

2. Support and reimburse evidence-based services that adhere to the American Society of Addiction Medicine (ASAM) continuum of care for OUD and any co-occurring SUB/MH conditions.

3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.

4. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.

5. Support intervention, treatment, and recovery services, offered by qualified professionals and service providers, including but not limited to faith-based organizations or peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.

6. Treatment of trauma for individuals with OUD (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.

7. Support evidence-based withdrawal management services for people with OUD and any co-occurring mental health conditions.

8. Training on MAT for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach

[2] As used in this Schedule B, words like "expand," "fund," "provide" or the like shall not indicate a preference for new or existing programs. Priorities will be established by the Opioid Abatement Foundation.

specialists, including telementoring to assist community-based providers in rural or underserved areas.

9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions.

10. Fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.

Scholarships and supports for behavioral health practitioners or workers involved in addressing OUD and any co-occurring SLTD or mental health conditions, including but not limited to training, scholarships, fellowships, loan repayment programs, or other incentives for providers to work in rural or underserved areas.

11. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (DATA 2000) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.

12. Dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.

13. Development and dissemination of new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication-Assisted Treatment.

## B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.

2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support services and counseling, case management, and connections to community-based services.

3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.

4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA-approved mediation with other support services.

5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.

6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.

7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.

8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.

9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.

10. Engage and support non-profits, faith-based communities, and community coalitions to support, house, and train people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.

11. Training and development of procedures for government staff to appropriately interact with and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.

12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions.

14. Create and/or support recovery high schools.

15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

## C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED (CONNECTIONS TO CARE)

Provide connections to care for people who have - or are at risk of developing - OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OLTI treatment.

2. Fund Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.

3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.

5. Expand services such as on-call teams to begin MAT in hospital emergency departments.

6. Training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.

7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically appropriate follow-up care through a bridge clinic or similar approach.

8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.

9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.

10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions or to persons who have experienced an opioid overdose.

11. Expand warm hand-off services to transition to recovery services.

12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.

13. Develop and support best practices on addressing OUD in the workplace.

14. Support assistance programs for health care providers with OUD.

15. Engage and support non-profits and the faith-based community as a system to support outreach for treatment.

16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

## D. ADDRESS THE NEEDS OF CRIMINAL-JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:

    a. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);

    b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;

    c. "Naloxone Plus" strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;

    d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model;

    e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or

f. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.

2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MAT, and related services.

3. Support treatment and recovery courts that provide evidence-based options for persons with OLTD and any co-occurring SUD/MH conditions.

4. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.

5. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison, have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.

6. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.

7. Provide training on best practices for addressing the needs of criminal-justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, case management, or other services offered in connection with any of the strategies described in this section.

## E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal abstinence syndrome (NAS), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Support evidence-based or evidence-informed treatment, including MAT, recovery services and supports, and prevention services for pregnant women — or women who could become pregnant — who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.

2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for uninsured women with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.

3. Training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.

4. Expand comprehensive evidence-based treatment and recovery support for NAS babies; expand services for better continuum of care with infant-need dyad; expand long-term treatment and services for medical monitoring of NAS babies and their families.

5. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of safe care.

6. Child and family supports for parenting women with OUD and any co-occurring SUD/MH conditions.

7. Enhanced family supports and childcare services for parents with OUD and any co-occurring SUD/MH conditions.

8. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.

9. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including but not limited to parent skills training.

10. Support for Children's Services — Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

## F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Fund medical provider education and outreach regarding best prescribing practices for opioids consistent with the Guidelines for Prescribing Opioids for Chronic Pain

from the U.S. Centers for Disease Control and Prevention, or other recognized Best Practice guidelines, including providers at hospitals (academic detailing).

2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.

3. Continuing Medical Education (CME) on appropriate prescribing of opioids.

4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.

5. Support enhancements or improvements to Prescription Drug Monitoring Programs (PDMPs), including but not limited to improvements that:

   a. Increase the number of prescribers using PDMPs;

   b. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or

   c. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.

6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database in a manner that complies with all relevant privacy and security laws and rules.

7. Increase electronic prescribing to prevent diversion or forgery.

8. Educate Dispensers on appropriate opioid dispensing.

## G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Fund media campaigns to prevent opioid misuse.

2. Corrective advertising or affirmative public education campaigns based on evidence.

3. Public education relating to drug disposal.

4. Drug take-back disposal or destruction programs.

5. Fund community anti-drug coalitions that engage in drug prevention efforts.

6. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction — including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).

7. Engage and support non-profits and faith-based communities as systems to support prevention.

8. Fund evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.

9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.

10. Create or support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.

11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.

12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or another drug misuse.

## H. PREVENT OVERDOSE DEATHS AND OTHER OPIOID-RELATED INJURIES

Support efforts to prevent or reduce overdose deaths or other opioid-related injuries through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increase availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, schools, and community outreach workers, persons being released from jail or prison, or other members of the general public.

2. Public health entities providing free naloxone to anyone in the community.

3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.

4. Enable school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.

5. Expand, improve, or develop data tracking software and applications for overdoses/naloxone revivals.

6. Public education relating to emergency responses to overdoses.

7. Public education relating to immunity and Good Samaritan laws.

8. Educate first responders regarding the existence and operation of immunity and Good Samaritan laws.

9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.

10. Support mobile units that offer or provide referrals to treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.

11. Support screening for fentanyl in routine clinical toxicology testing.

## PART THREE: OTHER STRATEGIES

### I. FIRST RESPONDERS

In addition to items in Section C, D and H relating to first responders, support the following:

1. Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

2. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

### J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing negative outcomes related to the opioid epidemic, and areas and populations with the greatest needs for treatment intervention services, and to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

2. A dashboard to (a) share reports, recommendations, or plans to spend opioid settlement funds; (b) to show how opioid settlement funds have been spent; (c) to report program or strategy outcomes; or (d) to track, share or visualize key opioid- or health-related indicators and supports as identified through collaborative statewide, regional, local or community processes.

3. Invest in infrastructure or staffing at government, law enforcement, or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of reducing the oversupply of opioids, preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

4. Provide resources to staff government oversight and management of opioid abatement programs.

## K. TRAINING

In addition to the training referred to throughout this document, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Provide funding for staff training or networking programs and services to improve the capability of government, law enforcement, community, and not-for-profit entities to abate the opioid crisis.

2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (e.g., health care, primary care, pharmacies, PDMPs, etc.).

## L. RESEARCH

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection and evaluation of programs and strategies described in this opioid abatement strategy list.

2. Research non-opioid treatment of chronic pain.

3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.

4. Research on novel prevention efforts such as the provision of fentanyl test strips.

5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.

6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).

7. Epidemiological surveillance of OUD-related behaviors in critical populations including individuals entering the criminal justice system, including but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring (ADAM) system.

8. Qualitative and quantitative research regarding public health risks within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.

9. Geospatial analysis of access barriers to MAT and their association with treatment engagement and treatment outcomes.

## M. LAW ENFORCEMENT

Ensure appropriate resources for law enforcement to engage in enforcement and possess adequate equipment, tools, and manpower to address complexity of the opioid problem.

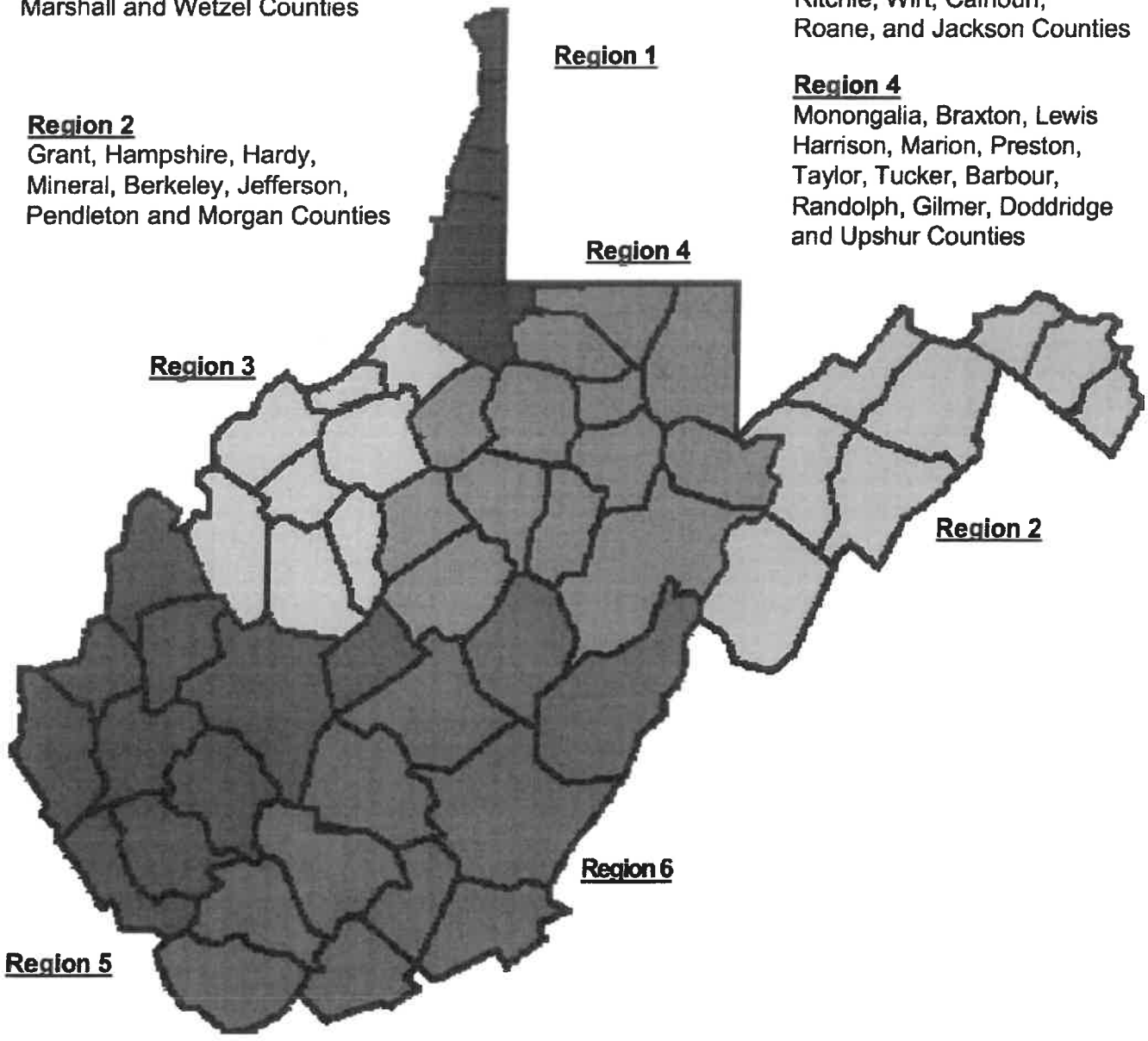
# EXHIBIT B.
# OPIOID REGIONAL MAP

**Region 1**
Brooke, Hancock, Ohio
Marshall and Wetzel Counties

**Region 2**
Grant, Hampshire, Hardy,
Mineral, Berkeley, Jefferson,
Pendleton and Morgan Counties

**Region 3**
Wood, Tyler, Pleasants,
Ritchie, Wirt, Calhoun,
Roane, and Jackson Counties

**Region 4**
Monongalia, Braxton, Lewis
Harrison, Marion, Preston,
Taylor, Tucker, Barbour,
Randolph, Gilmer, Doddridge
and Upshur Counties




**Region 5**
Cabell, Clay, Boone, Kanawha,
Lincoln, Logan, Putnam, Mason,
Mingo, and Wayne Counties

**Region 6**
Fayette, Monroe, Raleigh, Summers,
Nicholas, Webster, Greenbrier,
Pocahontas, Mercer, Wyoming, and
McDowell Counties

**Exhibit C (Allocations to Subdivisions)**

**Allocation to West Virginia Counties and Municipalities (NOT Including Cabell County and Huntington)**

| Government Name | County | WV Share (%) |
|---|---|---|
| ADDISON TOWN | WEBSTER | 0.0191% |
| ALBRIGHT TOWN | PRESTON | 0.0001% |
| ALDERSON TOWN | GREENBRIER/MONROE | 0.0037% |
| ANAWALT TOWN | MCDOWELL | 0.0008% |
| ANMOORE TOWN | HARRISON | 0.0083% |
| ANSTED TOWN | FAYETTE | 0.0024% |
| ATHENS TOWN | MERCER | 0.0003% |
| AUBURN TOWN | RITCHIE | 0.0001% |
| BANCROFT TOWN | PUTNAM | 0.0002% |
| BARBOUR COUNTY | BARBOUR | 0.3900% |
| BARBOURSVILLE VILLAGE | CABELL | 0.4372% |
| BARRACKVILLE TOWN | MARION | 0.0016% |
| BATH (BERKELEY SPRINGS) TOWN | MORGAN | 0.0068% |
| BAYARD TOWN | GRANT | 0.0000% |
| BECKLEY CITY | RALEIGH | 3.7259% |
| BEECH BOTTOM VILLAGE | BROOKE | 0.0003% |
| BELINGTON TOWN | BARBOUR | 0.0355% |
| BELLE TOWN | KANAWHA | 0.0411% |
| BELMONT CITY | PLEASANTS | 0.0002% |
| BENWOOD CITY | MARSHALL | 0.0076% |
| BERKELEY COUNTY | BERKELEY | 3.5839% |
| BETHANY TOWN | BROOKE | 0.0005% |
| BETHLEHEM VILLAGE | OHIO | 0.0020% |
| BEVERLY TOWN | RANDOLPH | 0.0008% |
| BLACKSVI LLE TOWN | MONONGALIA | 0.0003% |
| BLUEFIELD CITY | MERCER | 0.1794% |
| BOLIVAR TOWN | JEFFERSON | 0.0058% |
| BOONE COUNTY | BOONE | 3.1744% |
| BRADSHAW TOWN | MCDOWELL | 0.0012% |
| BRAMWELL TOWN | MERCER | 0.0003% |
| BRANDONVILLE TOWN | PRESTON | 0.0001% |
| BRAXTON COUNTY | BRAXTON | 0.5244% |
| BRIDGEPORT CITY | HARRISON | 0.0761% |
| BROOKE COUNTY | BROOKE | 1.0924% |
| BRUCETON MILLS TOWN | PRESTON | 0.0002% |
| BUCKHANNON CITY | UPSHUR | 0.1667% |
| BUFFALO TOWN | PUTNAM | 0.0009% |
| BURNSVILLE TOWN | BRAXTON | 0.0029% |
| CABELL COUNTY | CABELL | 0.0000% |

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| Government Name | County | WV Share (%) |
|---|---|---|
| CAIRO TOWN | RITCHIE | 0.0002% |
| CALHOUN COUNTY | CALHOUN | 0.1767% |
| CAMDEN-ON-GAULEY TOWN | WEBSTER | 0.0003% |
| CAMERON CITY | MARSHALL | 0.0021% |
| CAPON BRIDGE TOWN | HAMPSHIRE | 0.0024% |
| CARPENDALE TOWN | MINERAL | 0.0002% |
| CEDAR GROVE TOWN | KANAWHA | 0.0008% |
| CEREDO CITY | WAYNE | 0.1678% |
| CHAPMANVI LLE TOWN | LOGAN | 0.1592% |
| CHARLES TOWN CITY | JEFFERSON | 0.2924% |
| CHARLESTON CITY | KANAWHA | 6.7218% |
| CHESAPEAKE TOWN | KANAWHA | 0.0180% |
| CHESTER CITY | HANCOCK | 0.0077% |
| CLARKSBURG CITY | HARRISON | 1.1365% |
| CLAY COUNTY | CLAY | 0.3373% |
| CLAY TOWN | CLAY | 0.0001% |
| CLEARVIEW VILLAGE | OHIO | 0.0001% |
| CLENDENIN TOWN | KANAWHA | 0.0257% |
| COWEN TOWN | WEBSTER | 0.0012% |
| DANVILLE TOWN | BOONE | 0.0012% |
| DAVIS TOWN | TUCKER | 0.0002% |
| DAVY TOWN | MCDOWELL | 0.0006% |
| DELBARTON TOWN | MINGO | 0.0517% |
| DODDRIDGE COUNTY | DODDRIDGE | 0.2312% |
| DUNBAR CITY | KANAWHA | 0.2917% |
| DURBIN TOWN | POCAHONTAS | 0.0001% |
| EAST BANK TOWN | KANAWHA | 0.0008% |
| ELEANOR TOWN | PUTNAM | 0.0144% |
| ELIZABETH TOWN | WIRT | 0.0048% |
| ELK GARDEN TOWN | MINERAL | 0.0007% |
| ELKINS CITY | RANDOLPH | 0.0321% |
| ELLENBORO TOWN | RITCHIE | 0.0003% |
| FAI RMONT CITY | MARION | 0.6852% |
| FAIRVIEW TOWN | MARION | 0.0007% |
| FALLING SPRING TOWN | GREENBRIER | 0.0000% |
| FARMINGTON TOWN | MARION | 0.0002% |
| FAYETTE COUNTY | FAYETTE | 1.6411% |
| FAYETTEVILLE TOWN | FAYETTE | 0.1828% |
| FLATWOODS TOWN | BRAXTON | 0.0007% |
| FLEMINGTON TOWN | TAYLOR | 0.0000% |
| FOLLANSBEE CITY | BROOKE | 0.0123% |
| FORT GAY TOWN | WAYNE | 0.0324% |
| FRANKLIN TOWN | PENDLETON | 0.0014% |
| FRIENDLY TOWN | TYLER | 0.0000% |
| GARY CITY | MCDOWELL | 0.0012% |

| Government Name | County | WV Share (%) |
|---|---|---|
| GASSAWAY TOWN | BRAXTON | 0.0024% |
| GAULEY BRIDGE TOWN | FAYETTE | 0.0531% |
| GILBERT TOWN | MINGO | 0.0728% |
| GILMER COUNTY | GILMER | 0.1919% |
| GLASGOW TOWN | KANAWHA | 0.0016% |
| GLEN DALE CITY | MARSHALL | 0.0050% |
| GLENVILLE TOWN | GILMER | 0.0169% |
| GRAFTON CITY | TAYLOR | 0.4640% |
| GRANT COUNTY | GRANT | 0.3394% |
| GRANT TOWN TOWN | MARION | 0.0109% |
| GRANTSVILLE TOWN | CALHOUN | 0.0012% |
| GRANVILLE TOWN | MONONGALIA | 0.1649% |
| GREENBRIER COUNTY | GREENBRIER | 1.4386% |
| HAMBLETON TOWN | TUCKER | 0.0001% |
| HAMLIN TOWN | LINCOLN | 0.0703% |
| HAMPSHIRE COUNTY | HAMPSHIRE | 0.0869% |
| HANCOCK COUNTY | HANCOCK | 1.6106% |
| HANDLEY TOWN | KANAWHA | 0.0007% |
| HARDY COUNTY | HARDY | 0.2815% |
| HARMAN TOWN | RANDOLPH | 0.0002% |
| HARPERS FERRY TOWN | JEFFERSON | 0.0095% |
| HARRISON COUNTY | HARRISON | 1.3251% |
| HARRISVILLE TOWN | RITCHIE | 0.0045% |
| HARTFORD CITY TOWN | MASON | 0.0001% |
| HEDGESVILLE TOWN | BERKELEY | 0.0001% |
| HENDERSON TOWN | MASON | 0.0002% |
| HENDRICKS TOWN | TUCKER | 0.0001% |
| HILLSBORO TOWN | POCAHONTAS | 0.0001% |
| HINTON CITY | SUMMERS | 0.4106% |
| HUNDRED TOWN | WETZEL | 0.0001% |
| HUNTINGTON CITY | CABELL/WAYNE | 0.0000% |
| HURRICANE CITY | PUTNAM | 0.2140% |
| HUTTONSVILLE TOWN | RANDOLPH | 0.0000% |
| IAEGER TOWN | MCDOWELL | 0.0006% |
| JACKSON COUNTY | JACKSON | 0.8319% |
| JANE LEW TOWN | LEWIS | 0.0010% |
| JEFFERSON COUNTY | JEFFERSON | 1.7496% |
| JUNIOR TOWN | BARBOUR | 0.0036% |
| KANAWHA COUNTY | KANAWHA | 3.6016% |
| KENOVA CITY | WAYNE | 0.2064% |
| KERMIT TOWN | MINGO | 0.0294% |
| KEYSER CITY | MINERAL | 0.0078% |
| KEYSTONE CITY | MCDOWELL | 0.0018% |
| KIMBALL TOWN | MCDOWELL | 0.0020% |
| KINGWOOD CITY | PRESTON | 0.0046% |

| Government Name | County | WV Share (%) |
|---|---|---|
| LEON TOWN | MASON | 0.0000% |
| LESTER TOWN | RALEIGH | 0.0310% |
| LEWIS COUNTY | LEWIS | 0.4053% |
| LEWISBURG CITY | GREENBRIER | 0.3917% |
| LINCOLN COUNTY | LINCOLN | 1.3818% |
| LOGAN CITY | LOGAN | 0.4429% |
| LOGAN COUNTY | LOGAN | 3.7315% |
| LOST CREEK TOWN | HARRISON | 0.0001% |
| LUMBERPORT TOWN | HARRISON | 0.0027% |
| MABSCOTT TOWN | RALEIGH | 0.0512% |
| MADISON CITY | BOONE | 0.0578% |
| MAN TOWN | LOGAN | 0.0025% |
| MANNINGTON CITY | MARION | 0.0030% |
| MARION COUNTY | MARION | 1.0540% |
| MARLINTON TOWN | POCAHONTAS | 0.0009% |
| MARMET CITY | KANAWHA | 0.0061% |
| MARSHALL COUNTY | MARSHALL | 0.8648% |
| MARTINSBURG CITY | BERKELEY | 3.5343% |
| MASON COUNTY | MASON | 1.3496% |
| MASON TOWN | MASON | 0.0028% |
| MASONTOWN TOWN | PRESTON | 0.0008% |
| MATEWAN TOWN | MINGO | 0.0718% |
| MATOAKA TOWN | MERCER | 0.0002% |
| MCDOWELL COUNTY | MCDOWELL | 3.2036% |
| MCMECHEN CITY | MARSHALL | 0.0079% |
| MEADOW BRIDGE TOWN | FAYETTE | 0.0005% |
| MERCER COUNTY | MERCER | 0.3738% |
| MIDDLEBOURNE TOWN | TYLER | 0.0003% |
| MILL CREEK TOWN | RANDOLPH | 0.0000% |
| MILTON TOWN | CABELL | 0.1485% |
| MINERAL COUNTY | MINERAL | 0.8526% |
| MINGO COUNTY | MINGO | 2.9452% |
| MITCHELL HEIGHTS TOWN | LOGAN | 0.0010% |
| MONONGAH TOWN | MARION | 0.0028% |
| MONONGALIA COUNTY | MONONGALIA | 1.4987% |
| MONROE COUNTY | MONROE | 0.5766% |
| MONTGOMERY CITY | FAYETTE/KANAWHA | 0.1004% |
| MONTROSE TOWN | RANDOLPH | 0.0001% |
| MOOREFIELD TOWN | HARDY | 0.0092% |
| MORGAN COUNTY | MORGAN | 0.7095% |
| MORGANTOWN CITY | MONONGALIA | 0.1330% |
| MOUNDSVI LLE CITY | MARSHALL | 0.3175% |
| MOUNT HOPE CITY | FAYETTE | 0.0918% |
| MULLENS CITY | WYOMING | 0.3675% |
| NEW CUMBERLAND CITY | HANCOCK | 0.0034% |

| Government Name | County | WV Share (%) |
|---|---|---|
| NEW HAVEN TOWN | MASON | 0.0057% |
| NEW MARTINSVILLE CITY | WETZEL | 0.0019% |
| NEWBURG TOWN | PRESTON | 0.0012% |
| NICHOLAS COUNTY | NICHOLAS | 0.2115% |
| NITRO CITY | KANAWHA/PUTNAM | 0.2710% |
| NORTH HILLS TOWN | WOOD | 0.0016% |
| NORTHFORK TOWN | MCDOWELL | 0.0006% |
| NUTTER FORT TOWN | HARRISON | 0.1025% |
| OAK HILL CITY | FAYETTE | 0.3993% |
| OAKVALE TOWN | MERCER | 0.0001% |
| OCEANA TOWN | WYOMING | 0.3269% |
| OHIO COUNTY | OHIO | 0.5595% |
| PADEN CITY CITY | WETZEL/TYLER | 0.0073% |
| PARKERSBURG CITY | WOOD | 1.7126% |
| PARSONS CITY | TUCKER | 0.0005% |
| PAW PAW TOWN | MORGAN | 0.0019% |
| PAX TOWN | FAYETTE | 0.0083% |
| PENDLETON COUNTY | PENDLETON | 0.1789% |
| PENNSBORO CITY | RITCHIE | 0.0004% |
| PETERSBURG CITY | GRANT | 0.0012% |
| PETERSTOWN TOWN | MONROE | 0.0014% |
| PHILIPPI CITY | BARBOUR | 0.0919% |
| PIEDMONT TOWN | MINERAL | 0.0007% |
| PINE GROVE TOWN | WETZEL | 0.0002% |
| PINEVILLE TOWN | WYOMING | 0.1284% |
| PLEASANT VALLEY CITY | MARION | 0.0011% |
| PLEASANTS COUNTY | PLEASANTS | 0.1406% |
| POCA TOWN | PUTNAM | 0.0003% |
| POCAHONTAS COUNTY | POCAHONTAS | 0.3759% |
| POINT PLEASANT CITY | MASON | 0.1406% |
| PRATT TOWN | KANAWHA | 0.0014% |
| PRESTON COUNTY | PRESTON | 0.8811% |
| PRINCETON CITY | MERCER | 4.6088% |
| PULLMAN TOWN | RITCHIE | 0.0001% |
| PUTNAM COUNTY | PUTNAM | 1.7741% |
| QUINWOOD TOWN | GREENBRIER | 0.0182% |
| RAINELLE TOWN | GREENBRIER | 0.0266% |
| RALEIGH COUNTY | RALEIGH | 5.5343% |
| RANDOLPH COUNTY | RANDOLPH | 0.7294% |
| RANSON CORPORATION | JEFFERSON | 0.0234% |
| RAVENSWOOD CITY | JACKSON | 0.0959% |
| REEDSVI LLE TOWN | PRESTON | 0.0007% |
| REEDY TOWN | ROANE | 0.0000% |
| RHODELL TOWN | RALEIGH | 0.0014% |
| RICHWOOD CITY | NICHOLAS | 0.0103% |

| Government Name | County | WV Share (%) |
|---|---|---|
| RIDGELEY TOWN | MINERAL | 0.0027% |
| RIPLEY CITY | JACKSON | 0.0921% |
| RITCHIE COUNTY | RITCHIE | 0.2018% |
| RIVESVILLE TOWN | MARION | 0.0010% |
| ROANE COUNTY | ROANE | 0.5653% |
| ROMNEY CITY | HAMPSHIRE | 0.0614% |
| RONCEVERTE CITY | GREENBRIER | 0.0960% |
| ROWLESBURG TOWN | PRESTON | 0.0024% |
| RUPERT TOWN | GREENBRIER | 0.0073% |
| SALEM CITY | HARRISON | 0.0042% |
| SAND FORK TOWN | GILMER | 0.0003% |
| SHEPHERDSTOWN TOWN | JEFFERSON | 0.0088% |
| SHINNSTON CITY | HARRISON | 0.1066% |
| SISTERSVILLE CITY | TYLER | 0.2085% |
| SMITHERS CITY | FAYETTE/KANAWHA | 0.0383% |
| SMITHFIELD TOWN | WETZEL | 0.0001% |
| SOPHIA TOWN | RALEIGH | 0.0409% |
| SOUTH CHARLESTON CITY | KANAWHA | 0.9750% |
| SPENCER CITY | ROANE | 0.0646% |
| ST. ALBANS CITY | KANAWHA | 0.4843% |
| ST. MARYS CITY | PLEASANTS | 0.0623% |
| STAR CITY TOWN | MONONGALIA | 0.0414% |
| STONEWOOD CITY | HARRISON | 0.0478% |
| SUMMERS COUNTY | SUMMERS | 0.3559% |
| SUMMERSVILLE CITY | NICHOLAS | 1.6957% |
| SUTTON TOWN | BRAXTON | 0.0210% |
| SYLVESTER TOWN | BOONE | 0.0003% |
| TAYLOR COUNTY | TAYLOR | 0.0431% |
| TERRA ALTA TOWN | PRESTON | 0.0015% |
| THOMAS CITY | TUCKER | 0.0002% |
| THURMOND TOWN | FAYETTE | 0.0000% |
| TRIADELPHIA TOWN | OHIO | 0.0003% |
| TUCKER COUNTY | TUCKER | 0.1255% |
| TUNNELTON TOWN | PRESTON | 0.0006% |
| TYLER COUNTY | TYLER | 0.0204% |
| UNION TOWN | MONROE | 0.0006% |
| UPSHUR COUNTY | UPSHUR | 0.5108% |
| VALLEY GROVE VILLAGE | OHIO | 0.0001% |
| VIENNA CITY | WOOD | 0.2838% |
| WAR CITY | MCDOWELL | 0.0020% |
| WARDENSVILLE TOWN | HARDY | 0.0013% |
| WAYNE COUNTY | WAYNE | 2.3586% |
| WAYNE TOWN | WAYNE | 0.0356% |
| WEBSTER COUNTY | WEBSTER | 0.3765% |
| WEIRTON CITY | HANCOCK/BROOKE | 1.3728% |

**Exhibit C (Allocations to Subdivisions)**

| Government Name | County | WV Share (%) |
|---|---|---|
| WELCH CITY | MCDOWELL | 0.1195% |
| WELLSBURG CITY | BROOKE | 0.0069% |
| WEST HAMLIN TOWN | LINCOLN | 0.0380% |
| WEST LIBERTY TOWN | OHIO | 0.0025% |
| WEST LOGAN TOWN | LOGAN | 0.0162% |
| WEST MILFORD TOWN | HARRISON | 0.0015% |
| WEST UNION TOWN | DODDRIDGE | 0.0007% |
| WESTON CITY | LEWIS | 0.0096% |
| WESTOVER CITY | MONONGALIA | 0.0094% |
| WETZEL COUNTY | WETZEL | 0.4889% |
| WHEELING CITY | OHIO/MARSHALL | 1.0692% |
| WHITE HALL TOWN | MARION | 0.0028% |
| WHITE SULPHUR SPRINGS CITY | GREENBRIER | 0.1585% |
| WHITESVILLE TOWN | BOONE | 0.0148% |
| WILLIAMSON CITY | MINGO | 0.3916% |
| WILLIAMSTOWN CITY | WOOD | 0.0567% |
| WINDSOR HEIGHTS VILLAGE | BROOKE | 0.0001% |
| WI NFIELD TOWN | PUTNAM | 0.0307% |
| WIRT COUNTY | WIRT | 0.1075% |
| WOMELSDORF (COALTON) TOWN | RANDOLPH | 0.0010% |
| WOOD COUNTY | WOOD | 1.0924% |
| WORTHINGTON TOWN | MARION | 0.0003% |
| WYOMING COUNTY | WYOMING | 4.0024% |
| **Totals** | | **100.0000%** |

**Exhibit C (Allocations to Subdivisions)**

**Allocation to West Virginia Counties and Municipalities (Including Cabell County and Huntington)**

| Government Name | County | WV Share (%) |
|---|---|---|
| ADDISON TOWN | WEBSTER | 0.0174% |
| ALBRIGHT TOWN | PRESTON | 0.0001% |
| ALDERSON TOWN | GREENBRIER/MONROE | 0.0034% |
| ANAWALT TOWN | MCDOWELL | 0.0007% |
| ANMOORE TOWN | HARRISON | 0.0076% |
| ANSTED TOWN | FAYETTE | 0.0022% |
| ATHENS TOWN | MERCER | 0.0003% |
| AUBURN TOWN | RITCHIE | 0.0001% |
| BANCROFT TOWN | PUTNAM | 0.0001% |
| BARBOUR COUNTY | BARBOUR | 0.3541% |
| BARBOURSVI LLE VILLAGE | CABELL | 0.3969% |
| BARRACKVILLE TOWN | MARION | 0.0015% |
| BATH (BERKELEY SPRINGS) TOWN | MORGAN | 0.0062% |
| BAYARD TOWN | GRANT | 0.0000% |
| BECKLEY CITY | RALEIGH | 3.3824% |
| BEECH BOTTOM VILLAGE | BROOKE | 0.0003% |
| BELINGTON TOWN | BARBOUR | 0.0322% |
| BELLE TOWN | KANAWHA | 0.0373% |
| BELMONT CITY | PLEASANTS | 0.0002% |
| BENWOOD CITY | MARSHALL | 0.0070% |
| BERKELEY COUNTY | BERKELEY | 3.2534% |
| BETHANY TOWN | BROOKE | 0.0005% |
| BETHLEHEM VILLAGE | OHIO | 0.0018% |
| BEVERLY TOWN | RANDOLPH | 0.0008% |
| BLACKSVILLE TOWN | MONONGALIA | 0.0002% |
| BLUEFIELD CITY | MERCER | 0.1629% |
| BOLIVAR TOWN | JEFFERSON | 0.0053% |
| BOONE COUNTY | BOONE | 2.8817% |
| BRADSHAW TOWN | MCDOWELL | 0.0011% |
| BRAMWELL TOWN | MERCER | 0.0003% |
| BRANDONVILLE TOWN | PRESTON | 0.0001% |
| BRAXTON COUNTY | BRAXTON | 0.4761% |
| BRIDGEPORT CITY | HARRISON | 0.0694% |
| BROOKE COUNTY | BROOKE | 0.9916% |
| BRUCETON MILLS TOWN | PRESTON | 0.0002% |
| BUCKHANNON CITY | UPSHUR | 0.1513% |
| BUFFALO TOWN | PUTNAM | 0.0008% |
| BURNSVI LLE TOWN | BRAXTON | 0.0026% |

| Government Name | County | WV Share (%) |
|---|---|---|
| CABELL COUNTY | CABELL | 3.2406% |
| CAIRO TOWN | RITCHIE | 0.0002% |
| CALHOUN COUNTY | CALHOUN | 0.1604% |
| CAMDEN-ON-GAULEY TOWN | WEBSTER | 0.0002% |
| CAMERON CITY | MARSHALL | 0.0019% |
| CAPON BRIDGE TOWN | HAMPSHIRE | 0.0022% |
| CARPENDALE TOWN | MINERAL | 0.0002% |
| CEDAR GROVE TOWN | KANAWHA | 0.0007% |
| CEREDO CITY | WAYNE | 0.1523% |
| CHAPMANVILLE TOWN | LOGAN | 0.1445% |
| CHARLES TOWN CITY | JEFFERSON | 0.2655% |
| CHARLESTON CITY | KANAWHA | 6.1020% |
| CHESAPEAKE TOWN | KANAWHA | 0.0163% |
| CHESTER CITY | HANCOCK | 0.0070% |
| CLARKSBURG CITY | HARRISON | 1.0317% |
| CLAY COUNTY | CLAY | 0.3062% |
| CLAY TOWN | CLAY | 0.0000% |
| CLEARVIEW VILLAGE | OHIO | 0.0001% |
| CLENDENIN TOWN | KANAWHA | 0.0233% |
| COWEN TOWN | WEBSTER | 0.0011% |
| DANVILLE TOWN | BOONE | 0.0011% |
| DAVIS TOWN | TUCKER | 0.0002% |
| DAVY TOWN | MCDOWELL | 0.0005% |
| DELBARTON TOWN | MINGO | 0.0469% |
| DODDRIDGE COUNTY | DODDRIDGE | 0.2099% |
| DUNBAR CITY | KANAWHA | 0.2648% |
| DURBIN TOWN | POCAHONTAS | 0.0001% |
| EAST BANK TOWN | KANAWHA | 0.0008% |
| ELEANOR TOWN | PUTNAM | 0.0131% |
| ELIZABETH TOWN | WIRT | 0.0043% |
| ELK GARDEN TOWN | MINERAL | 0.0006% |
| ELKINS CITY | RANDOLPH | 0.0293% |
| ELLENBORO TOWN | RITCHIE | 0.0003% |
| FAIRMONT CITY | MARION | 0.6220% |
| FAIRVIEW TOWN | MARION | 0.0007% |
| FALLING SPRING TOWN | GREENBRIER | 0.0000% |
| FARMINGTON TOWN | MARION | 0.0002% |
| FAYETTE COUNTY | FAYETTE | 1.4898% |
| FAYETTEVILLE TOWN | FAYETTE | 0.1659% |
| FLATWOODS TOWN | BRAXTON | 0.0006% |
| FLEMINGTON TOWN | TAYLOR | 0.0000% |
| FOLLANSBEE CITY | BROOKE | 0.0112% |
| FORT GAY TOWN | WAYNE | 0.0294% |
| FRANKLIN TOWN | PENDLETON | 0.0013% |

| Government Name | County | WV Share (%) |
|---|---|---|
| FRIENDLY TOWN | TYLER | 0.0000% |
| GARY CITY | MCDOWELL | 0.0011% |
| GASSAWAY TOWN | BRAXTON | 0.0022% |
| GAULEY BRIDGE TOWN | FAYETTE | 0.0482% |
| GILBERT TOWN | MINGO | 0.0661% |
| GILMER COUNTY | GILMER | 0.1742% |
| GLASGOW TOWN | KANAWHA | 0.0015% |
| GLEN DALE CITY | MARSHALL | 0.0045% |
| GLENVILLE TOWN | GILMER | 0.0153% |
| GRAFTON CITY | TAYLOR | 0.4212% |
| GRANT COUNTY | GRANT | 0.3081% |
| GRANT TOWN TOWN | MARION | 0.0099% |
| GRANTSVILLE TOWN | CALHOUN | 0.0011% |
| GRANVI LLE TOWN | MONONGALIA | 0.1497% |
| GREENBRIER COUNTY | GREENBRIER | 1.3059% |
| HAMBLETON TOWN | TUCKER | 0.0001% |
| HAMLIN TOWN | LINCOLN | 0.0638% |
| HAMPSHIRE COUNTY | HAMPSHIRE | 0.0793% |
| HANCOCK COUNTY | HANCOCK | 1.4621% |
| HANDLEY TOWN | KANAWHA | 0.0006% |
| HARDY COUNTY | HARDY | 0.2555% |
| HARMAN TOWN | RANDOLPH | 0.0002% |
| HARPERS FERRY TOWN | JEFFERSON | 0.0086% |
| HARRISON COUNTY | HARRISON | 1.2029% |
| HARRISVI LLE TOWN | RITCHIE | 0.0041% |
| HARTFORD CITY TOWN | MASON | 0.0001% |
| HEDGESVILLE TOWN | BERKELEY | 0.0001% |
| HENDERSON TOWN | MASON | 0.0002% |
| HENDRICKS TOWN | TUCKER | 0.0001% |
| HILLSBORO TOWN | POCAHONTAS | 0.0001% |
| HINTON CITY | SUMMERS | 0.3727% |
| HUNDRED TOWN | WETZEL | 0.0001% |
| HUNTINGTON CITY | CABELL/WAYNE | 5.9777% |
| HURRICANE CITY | PUTNAM | 0.1943% |
| HUTTONSVILLE TOWN | RANDOLPH | 0.0000% |
| IAEGER TOWN | MCDOWELL | 0.0005% |
| JACKSON COUNTY | JACKSON | 0.7552% |
| JANE LEW TOWN | LEWIS | 0.0009% |
| JEFFERSON COUNTY | JEFFERSON | 1.5882% |
| JUNIOR TOWN | BARBOUR | 0.0032% |
| KANAWHA COUNTY | KANAWHA | 3.2694% |
| KENOVA CITY | WAYNE | 0.1874% |
| KERMIT TOWN | MINGO | 0.0267% |
| KEYSER CITY | MINERAL | 0.0072% |

| Government Name | County | WV Share (%) |
|---|---|---|
| KEYSTONE CITY | MCDOWELL | 0.0016% |
| KIMBALL TOWN | MCDOWELL | 0.0019% |
| KINGWOOD CITY | PRESTON | 0.0042% |
| LEON TOWN | MASON | 0.0000% |
| LESTER TOWN | RALEIGH | 0.0281% |
| LEWIS COUNTY | LEWIS | 0.3679% |
| LEWISBURG CITY | GREENBRIER | 0.3556% |
| LINCOLN COUNTY | LINCOLN | 1.2544% |
| LOGAN CITY | LOGAN | 0.4020% |
| LOGAN COUNTY | LOGAN | 3.3874% |
| LOST CREEK TOWN | HARRISON | 0.0000% |
| LUMBERPORT TOWN | HARRISON | 0.0025% |
| MABSCOTT TOWN | RALEIGH | 0.0465% |
| MADISON CITY | BOONE | 0.0525% |
| MAN TOWN | LOGAN | 0.0023% |
| MANNINGTON CITY | MARION | 0.0028% |
| MARION COUNTY | MARION | 0.9568% |
| MARLINTON TOWN | POCAHONTAS | 0.0008% |
| MARMET CITY | KANAWHA | 0.0055% |
| MARSHALL COUNTY | MARSHALL | 0.7851% |
| MARTINSBURG CITY | BERKELEY | 3.2084% |
| MASON COUNTY | MASON | 1.2251% |
| MASON TOWN | MASON | 0.0026% |
| MASONTOWN TOWN | PRESTON | 0.0007% |
| MATEWAN TOWN | MINGO | 0.0652% |
| MATOAKA TOWN | MERCER | 0.0002% |
| MCDOWELL COUNTY | MCDOWELL | 2.9082% |
| MCMECHEN CITY | MARSHALL | 0.0072% |
| MEADOW BRIDGE TOWN | FAYETTE | 0.0004% |
| MERCER COUNTY | MERCER | 0.3393% |
| MIDDLEBOURNE TOWN | TYLER | 0.0002% |
| MILL CREEK TOWN | RANDOLPH | 0.0000% |
| MILTON TOWN | CABELL | 0.1348% |
| MINERAL COUNTY | MINERAL | 0.7740% |
| MINGO COUNTY | MINGO | 2.6736% |
| MITCHELL HEIGHTS TOWN | LOGAN | 0.0010% |
| MONONGAH TOWN | MARION | 0.0026% |
| MONONGALIA COUNTY | MONONGALIA | 1.3605% |
| MONROE COUNTY | MONROE | 0.5234% |
| MONTGOMERY CITY | FAYETTE/KANAWHA | 0.0912% |
| MONTROSE TOWN | RANDOLPH | 0.0001% |
| MOOREFIELD TOWN | HARDY | 0.0084% |
| MORGAN COUNTY | MORGAN | 0.6441% |
| MORGANTOWN CITY | MONONGALIA | 0.1213% |

**Exhibit C (Allocations to Subdivisions)**

| Government Name | County | WV Share (%) |
|---|---|---|
| MOUNDSVILLE CITY | MARSHALL | 0.2882% |
| MOUNT HOPE CITY | FAYETTE | 0.0834% |
| MULLENS CITY | WYOMING | 0.3336% |
| NEW CUMBERLAND CITY | HANCOCK | 0.0031% |
| NEW HAVEN TOWN | MASON | 0.0052% |
| NEW MARTINSVILLE CITY | WETZEL | 0.0018% |
| NEWBURG TOWN | PRESTON | 0.0011% |
| NICHOLAS COUNTY | NICHOLAS | 0.1920% |
| NITRO CITY | KANAWHA/PUTNAM | 0.2460% |
| NORTH HILLS TOWN | WOOD | 0.0015% |
| NORTHFORK TOWN | MCDOWELL | 0.0005% |
| NUTTER FORT TOWN | HARRISON | 0.0930% |
| OAK HILL CITY | FAYETTE | 0.3625% |
| OAKVALE TOWN | MERCER | 0.0001% |
| OCEANA TOWN | WYOMING | 0.2967% |
| OHIO COUNTY | OHIO | 0.5079% |
| PADEN CITY CITY | WETZEL/TYLER | 0.0067% |
| PARKERSBURG CITY | WOOD | 1.5547% |
| PARSONS CITY | TUCKER | 0.0005% |
| PAW PAW TOWN | MORGAN | 0.0017% |
| PAX TOWN | FAYETTE | 0.0076% |
| PENDLETON COUNTY | PENDLETON | 0.1624% |
| PENNSBORO CITY | RITCHIE | 0.0003% |
| PETERSBURG CITY | GRANT | 0.0011% |
| PETERSTOWN TOWN | MONROE | 0.0013% |
| PHILIPPI CITY | BARBOUR | 0.0834% |
| PIEDMONT TOWN | MINERAL | 0.0006% |
| PINE GROVE TOWN | WETZEL | 0.0002% |
| PINEVILLE TOWN | WYOMING | 0.1165% |
| PLEASANT VALLEY CITY | MARION | 0.0010% |
| PLEASANTS COUNTY | PLEASANTS | 0.1276% |
| POCA TOWN | PUTNAM | 0.0002% |
| POCAHONTAS COUNTY | POCAHONTAS | 0.3412% |
| POINT PLEASANT CITY | MASON | 0.1276% |
| PRATT TOWN | KANAWHA | 0.0013% |
| PRESTON COUNTY | PRESTON | 0.7999% |
| PRINCETON CITY | MERCER | 4.1839% |
| PULLMAN TOWN | RITCHIE | 0.0001% |
| PUTNAM COUNTY | PUTNAM | 1.6105% |
| QUI NWOOD TOWN | GREENBRIER | 0.0165% |
| RAINELLE TOWN | GREENBRIER | 0.0241% |
| RALEIGH COUNTY | RALEIGH | 5.0240% |
| RANDOLPH COUNTY | RANDOLPH | 0.6622% |
| RANSON CORPORATION | JEFFERSON | 0.0214% |

| Government Name | County | WV Share (%) |
|---|---|---|
| RAVENSWOOD CITY | JACKSON | 0.0870% |
| REEDSVI LLE TOWN | PRESTON | 0.0006% |
| REEDY TOWN | ROANE | 0.0000% |
| RHODELL TOWN | RALEIGH | 0.0013% |
| RICHWOOD CITY | NICHOLAS | 0.0093% |
| RIDGELEY TOWN | MINERAL | 0.0024% |
| RIPLEY CITY | JACKSON | 0.0836% |
| RITCHIE COUNTY | RITCHIE | 0.1832% |
| RIVESVILLE TOWN | MARION | 0.0009% |
| ROANE COUNTY | ROANE | 0.5132% |
| ROMNEY CITY | HAMPSHIRE | 0.0557% |
| RONCEVERTE CITY | GREENBRIER | 0.0871% |
| ROWLESBURG TOWN | PRESTON | 0.0022% |
| RUPERT TOWN | GREENBRIER | 0.0066% |
| SALEM CITY | HARRISON | 0.0038% |
| SAND FORK TOWN | GILMER | 0.0002% |
| SHEPHERDSTOWN TOWN | JEFFERSON | 0.0080% |
| SHINNSTON CITY | HARRISON | 0.0968% |
| SISTERSVILLE CITY | TYLER | 0.1893% |
| SMITHERS CITY | FAYETTE/KANAWHA | 0.0348% |
| SMITHFIELD TOWN | WETZEL | 0.0001% |
| SOPHIA TOWN | RALEIGH | 0.0371% |
| SOUTH CHARLESTON CITY | KANAWHA | 0.8851% |
| SPENCER CITY | ROANE | 0.0586% |
| ST. ALBANS CITY | KANAWHA | 0.4397% |
| ST. MARYS CITY | PLEASANTS | 0.0565% |
| STAR CITY TOWN | MONONGALIA | 0.0376% |
| STONEWOOD CITY | HARRISON | 0.0434% |
| SUMMERS COUNTY | SUMMERS | 0.3231% |
| SUMMERSVILLE CITY | NICHOLAS | 1.5393% |
| SUTTON TOWN | BRAXTON | 0.0191% |
| SYLVESTER TOWN | BOONE | 0.0003% |
| TAYLOR COUNTY | TAYLOR | 0.0391% |
| TERRA ALTA TOWN | PRESTON | 0.0014% |
| THOMAS CITY | TUCKER | 0.0002% |
| THURMOND TOWN | FAYETTE | 0.0000% |
| TRIADELPHIA TOWN | OHIO | 0.0003% |
| TUCKER COUNTY | TUCKER | 0.1140% |
| TUNNELTON TOWN | PRESTON | 0.0005% |
| TYLER COUNTY | TYLER | 0.0185% |
| UNION TOWN | MONROE | 0.0006% |
| UPSHUR COUNTY | UPSHUR | 0.4637% |
| VALLEY GROVE VILLAGE | OHIO | 0.0001% |
| VIENNA CITY | WOOD | 0.2577% |

| Government Name | County | WV Share (%) |
|---|---|---|
| WAR CITY | MCDOWELL | 0.0018% |
| WARDENSVILLE TOWN | HARDY | 0.0012% |
| WAYNE COUNTY | WAYNE | 2.1411% |
| WAYNE TOWN | WAYNE | 0.0323% |
| WEBSTER COUNTY | WEBSTER | 0.3418% |
| WEIRTON CITY | HANCOCK/BROOKE | 1.2462% |
| WELCH CITY | MCDOWELL | 0.1085% |
| WELLSBURG CITY | BROOKE | 0.0063% |
| WEST HAMLIN TOWN | LINCOLN | 0.0345% |
| WEST LIBERTY TOWN | OHIO | 0.0023% |
| WEST LOGAN TOWN | LOGAN | 0.0147% |
| WEST MILFORD TOWN | HARRISON | 0.0014% |
| WEST UNION TOWN | DODDRIDGE | 0.0006% |
| WESTON CITY | LEWIS | 0.0088% |
| WESTOVER CITY | MONONGALIA | 0.0086% |
| WETZEL COUNTY | WETZEL | 0.4438% |
| WHEELING CITY | OHIO/MARSHALL | 0.9706% |
| WHITE HALL TOWN | MARION | 0.0025% |
| WHITE SULPHUR SPRINGS CITY | GREENBRIER | 0.1439% |
| WHITESVILLE TOWN | BOONE | 0.0134% |
| WILLIAMSON CITY | MINGO | 0.3555% |
| WILLIAMSTOWN CITY | WOOD | 0.0515% |
| WINDSOR HEIGHTS VILLAGE | BROOKE | 0.0001% |
| WINFIELD TOWN | PUTNAM | 0.0279% |
| WIRT COUNTY | WIRT | 0.0976% |
| WOMELSDORF (COALTON) TOWN | RANDOLPH | 0.0009% |
| WOOD COUNTY | WOOD | 0.9917% |
| WORTHINGTON TOWN | MARION | 0.0003% |
| WYOMING COUNTY | WYOMING | 3.6334% |
| **Totals** | | **100.0000%** |

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1043: Budget Revision #2 - COLA Distribution

**ATTACHMENTS:**

- Budget Revision and Budget Revision Supplement FY24 GF REV #2.xls
- FY24 COLA Distribution.pdf
- FY2024 General Fund Budget Rev#2 v1.0.pdf

LGSD BR (Ver. 2020)

Ora Ash, Deputy State Auditor
West Virginia State Auditor's Office
**200 West Main Street**
Clarksburg, WV 26301
Phone: 627-2415 ext. 5114
**Fax: 304-340-5090**
**Email: lgs@wvsao.gov**

# REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER
Fiscal Year Ending: 2024
Fund: 1
Revision Number: 2
Pages: 1 of 2

The City of Charles Town
GOVERNMENT ENTITY

101 E Washington St
STREET OR PO BOX

Charles Town | 25414
CITY | ZIP CODE

**Municipality**
Government Type

Person To Contact Regarding Request:
Name: Krista Davis
Phone: 304-724-3257
Fax: 304-725-1014
Email: kdavis@charlestownwv.us

## REVENUES: (net each acct.)

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|---|---|---|---|---|---|
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |

**NET INCREASE/(DECREASE) Revenues (ALL PAGES)**

**Explanation for Account # 378, Municipal Specific:**

**Explanation for Account # 369, Contributions from Other Funds:**

## EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|---|---|---|---|---|---|
| 699 | Contingencies* | 478,456 | | 313,895 | 164,561 |
| 402 | Economic Development | 99,150 | 6,389 | | 105,539 |
| 412 | City Manager's Office | 255,800 | 23,544 | | 279,344 |
| 413 | Treasurer's Office | 349,220 | 24,089 | | 373,309 |
| 415 | City Clerk | 89,475 | 56,977 | | 146,452 |
| 425 | Enforcement Agency | 133,158 | 5,676 | | 138,834 |
| 436 | Building Inspection | 113,350 | 9,885 | | 123,235 |
| 437 | Planning & Zoning | 400,400 | 21,727 | | 422,127 |
| 440 | City Hall | 655,270 | 9,735 | | 665,005 |
| 571 | Parking | 74,000 | 3,575 | | 77,575 |

**NET INCREASE/(DECREASE) Expenditures**

**APPROVED BY THE STATE AUDITOR**

**BY:**
**Deputy State Auditor, Local Government Services Division** **Date**

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

**REVENUES (CONT)** The City of Charles Town

LGSD: BR The City of Charles Town CONTROL NUMBER: 2024 (FY) 1 (FUND) 2 (REV #)

BUDGET REVISION REQUEST-SUPPLEMENT

| ACCOUNT NUMBER | ACCOUNT CATEGORY | PREVIOUSLY APPROVED AMOUNT | INCREASE | DECREASE | REVISED AMOUNT |
|---|---|---|---|---|---|
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |

**EXPENDITURES (CONT'D)** The City of Charles Town

LGSD: BR The City of Charles Town CONTROL NUMBER: 2024 (FY) 1 (FUND) 2 (REV#)

BUDGET REVISION REQUEST-SUPPLEMENT

| ACCOUNT NUMBER | ACCOUNT CATEGORY | PREVIOUSLY APPROVED AMOUNT | INCREASE | DECREASE | REVISED AMOUNT |
|---|---|---|---|---|---|
| 700 | Police Department | 2,557,146 | 127,417 | | 2,684,563 |
| 750 | Streets and Highways | 596,950 | 24,881 | | 621,831 |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
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| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | | **NET INCREASE/(DECREASE) Expenditures (this page)** | | | 152,298 |

# Instructions for Budget Revision File

The state auditor, by uniform regulations, provides for the revision of the levy estimate - budget of the county commission to permit expenditures for purposes for which no appropriation or an insufficient appropriation was made. **The revision must be made prior to the obligation and expenditure of funds and with the prior written approval of the state auditor**. *WV Code §11-8-26a*

## TOP SECTION

**Person to Contact Regarding Budget Revision**

Add name, phone number and fax number of the person to contact about this revision. This is very important in case of questions, or missing information.

**Government Entity -**

Add name of the County or City submitting the budget revision.

**Street or PO Box**
**City, State, Zip Code -**

This is the mailing address of the County or City. Approved budget revisions will be sent back to this address.

**Control Number**
**FY**

The ending fiscal year that this budget applies. Example for the fiscal year ending on June 30, 2012, the box should show 2012.

**FUND**

The fund number of the fund that this revision applies, either 01 General, or 02 Coal.

**REV. NO.**

The number of this revision for this fiscal year. Revision Number 1 would be the first revision made on or after July 1 of that fiscal year.

**PG. OF NO.**

Number of pages to this revision.

**Government Type**

This line should say County or Municipality. If the form reflects the wrong government type, the account description below will not match your chart of accounts. Therefore, make sure that you have the right type selected in this box.

# Instructions for Budget Revision File

## REVENUES: (net each account category)

**This section of the form is used to enter revisions for fund balance and revenue accounts. If you have two or more entries to be made to one account number, please combine these entries into one 'net change' amount.**

**Column 1 - Account Number**

From the drop down box you can pick the account number or you can type in the account number. This number must be either a fund balance number or a revenue number. If you type in an expenditure number, a error box will appear and say "The value you entered is not valid. A user has restricted values that can be entered into this cell." From the choices, choose retry and enter a correct number or cancel to remove the entry.

**Column 2 - Account Description**

This box will fill in when you enter the account number in column 1, unless it is not a valid number. If you enter a number that is not acceptable, this box will say " not a valid number". This number must be assigned by the State Auditor's Office before the budget revision will be approved.

**Column 3 - Previously Approved Amount**

The amount in this column must be the last approved amount for this account number. At the beginning of the fiscal year, the amount on the approved budget would be used. After the first revision, the amount in this column would be the most recent approved revised amount for the account number.

**Column 4 - Increase**

If you want to increase the amount of the fund balance or revenue account, enter the amount of the increase here.

**Column 5 - Decrease**

If you want to decrease the amount of the fund balance or revenue account, enter the amount of the decrease here.

**Column 6- Revised Amount**

This is the total of Column 3 plus Column 4 minus Column 5. This should be the ending amount for that account number. There is a formula in this box to calculate this amount.

**Net Increase (Decrease) Revenues (All Pages)**

This box is the total of the net increase / decrease of the columns above and the worksheet "ADD REVENUES". This should be the total of the net change to all fund balance and revenues accounts.

# Instructions for Budget Revision File

## EXPENDITURES: (net each account category)

**Column 1 - Account Number**

From the drop down box you can pick the account number or you can type in the account number. This number must be an expenditure number. If you type in a fund balance or revenue number, an error box will appear and say "The value you entered is not valid". A user has restricted values that can be entered into this cell." From the choices, choose retry and enter a correct number or cancel to remove the entry.

**Column 2 - Account Description**

This box will fill in when you enter the account number in column 1, unless it is not a valid number. If you enter a number that is not acceptable, this box will say "not a valid number". This number must be assigned by the State Auditor's Office before the budget revision will be approved.

**Column 3 - Previously Approved Amount**

The amount in this column must be the last approved amount for this account number. At the beginning of the fiscal year, the amount on the approved budget would be used. After the first revision, the amount in this column would be the mosst recent approved revised amount for the account number.

**Column 4 - Increase**

If you want to increase the amount of the expenditure account, enter the amount of the increase here.

**Column 5 - Decrease**

If you want to decrease the amount of the expenditure account, enter the amount of the decrease here.

**Column 6- Revised Amount**

This is the total of Column 3 plus Column 4 minsu Column 5. This should be the ending amount for that account number. There is a formula in this box to calculate this amount.

**Net Increase (Decrease) Expenditures (All Pages)**

This box is the total of the net increase / decrease of the columns above and the worksheet "ADD EXPENDITURES". This should be the total of the net change to all expenditure accounts.

**If this budget revision is OUT OF BALANCE a message will appear beside the net increase boxes and on the signature line, it will say "OUT OF BALANCE!!! DO NOT SUBMIT. Do not send this revision in until it is in balance and these messages disappear.**

**FY24 - 8.7% COLA Distribution**

(Ties to Salaries line) (Ties to FICA line) (Ties to Retirement line)

| | Salaries FY24 Original Budget | COLA (8.7%) | Salaries FY24 Original Budget + COLA | FICA | 457b Def Comp (3%) | PERS/MPERS Retirement (9%) | Grand Total | Total FICA Required | Total PERS/MPERS Required | |
|---|---|---|---|---|---|---|---|---|---|---|
| Economic Development | $ 62,500.00 | $ 5,437.50 | $ 67,937.50 | $ 415.97 | $ 163.13 | $ 37.44 | $ 6,054.03 | $ 5,197.22 | $ 6,114.38 | |
| CMO Salaries | $ 190,600.00 | $ 16,582.20 | $ 207,182.20 | $ 1,268.54 | $ 497.47 | $ 114.17 | $ 18,462.37 | $ 15,849.44 | $ 18,646.40 | |
| Treasurer's Salaries | $ 216,800.00 | $ 18,861.60 | $ 235,661.60 | $ 1,442.91 | $ 565.85 | $ 129.86 | $ 21,000.22 | $ 18,028.11 | $ 21,209.54 | |
| Court Clerk Salaries | $ 57,775.00 | $ 5,026.43 | $ 62,801.43 | $ 384.52 | $ 150.79 | $ 34.61 | $ 5,596.35 | $ 4,804.31 | $ 5,652.13 | |
| Enforcement Agency - Salaries | $ 55,000.00 | $ 4,785.00 | $ 59,785.00 | $ 366.05 | $ 143.55 | $ 32.94 | $ 5,327.55 | $ 4,573.55 | $ 5,380.65 | |
| Building Inspection Salaries | $ 73,800.00 | $ 6,420.60 | $ 80,220.60 | $ 491.18 | $ 192.62 | $ 44.21 | $ 7,148.60 | $ 6,136.88 | $ 7,219.85 | |
| P&Z Salaries | $ 210,000.00 | $ 18,270.00 | $ 228,270.00 | $ 1,397.66 | $ 548.10 | $ 125.79 | $ 20,341.54 | $ 17,462.66 | $ 20,544.30 | |
| City Hall Salaries | $ 96,400.00 | $ 8,386.80 | $ 104,786.80 | $ 641.59 | $ 251.60 | $ 57.74 | $ 9,337.74 | $ 8,016.19 | $ 9,430.81 | |
| Parking Salaries | $ 36,100.00 | $ 3,140.70 | $ 39,240.70 | $ 240.26 | $ 94.22 | $ 21.62 | $ 3,496.81 | $ 3,001.91 | $ 3,531.66 | |
| Police Dept. Salaries | $ 1,377,483.00 | $ 119,841.02 | $ 1,497,324.02 | $ 9,167.84 | $ 3,595.23 | $ 825.11 | $ 133,429.20 | $ 44,512.00 | $ 134,759.16 | $136K in budget-leaving as is |
| Streets Salaries | $ 233,800.00 | $ 20,340.60 | $ 254,140.60 | $ 1,556.06 | $ 610.22 | $ 140.05 | $ 22,646.92 | $ 19,441.76 | $ 22,872.65 | |
| | $ 2,610,258.00 | $ 227,092.45 | $ 2,837,350.45 | $ 17,372.57 | $ 6,812.77 | $ 1,563.53 | $ 252,841.32 | | | |

**457(b) Deferred Compensation Distribution**

(Ties to OPEB line)

| | Salaries FY24 Original Budget + COLA | 3% Def Comp Contribution | Total Already Allocated | Variance to be Allocated |
|---|---|---|---|---|
| Economic Development | $ 67,937.50 | $ 2,038.13 | $ 2,000.00 | $ 38.13 |
| CMO Salaries | $ 207,182.20 | $ 6,215.47 | $ 2,000.00 | $ 4,215.47 |
| Treasurer's Salaries | $ 235,661.60 | $ 7,069.85 | $ 5,000.00 | $ 2,069.85 |
| Court Clerk Salaries | $ 62,801.43 | $ 1,884.04 | $ 1,750.00 | $ 134.04 |
| Enforcement Agency - Salaries | $ 59,785.00 | $ 1,793.55 | $ 1,650.00 | $ 143.55 |
| Building Inspection Salaries | $ 80,220.60 | $ 2,406.62 | $ - | $ 2,406.62 |
| P&Z Salaries | $ 228,270.00 | $ 6,848.10 | $ 6,000.00 | $ 848.10 |
| City Hall Salaries | $ 104,786.80 | $ 3,143.60 | $ 4,000.00 | $ (856.40) |
| Parking Salaries | $ 39,240.70 | $ 1,177.22 | $ 1,500.00 | $ (322.78) |
| Police Dept. Salaries | $ 1,497,324.02 | $ 44,919.72 | $ 35,000.00 | $ 9,919.72 |
| Streets Salaries | $ 254,140.60 | $ 7,624.22 | $ 6,000.00 | $ 1,624.22 |
| | $ 2,837,350.45 | $ 85,120.51 | $ 64,900.00 | $ 20,220.51 |

the city of Charles Town, WV

# FY2024 Proposed Revision #2 General Fund Operating Budget
# City Council - 11/9/2023 Draft (v1.0)

*11-8-2023 v1.0*

| | *REVENUES* | FY22 Actual | FY23 Approved 5-15-2023 | FY23 Thru Jun 30 2023 | FY24 Approved | FY2024 Proposed Revision #1 | FY2024 Proposed Revision #2 | |
|---|---|---|---|---|---|---|---|---|
| 1 | Carryover | $ 419,851 | $ 2,226,685 | $ 2,226,685 | 2,842,544 | 3,542,779 | 3,542,779 | $700K additional carryover based off preliminary balances |
| 2 | Taxes Ad Valorem | $ 1,246,119 | $ 1,305,380 | $ 1,280,360 | 1,509,901 | 1,509,901 | 1,509,901 | Rate of 11.83 for FY24 |
| 3 | Supplemental Taxes | $ 26,060 | $ 28,000 | $ 33,672 | 25,000 | 25,000 | 25,000 | |
| 4 | Tax Loss Restoration | $ 890 | $ - | $ 969 | - | - | - | |
| 5 | Interest as Penalty - Ad Valorem | $ 8,708 | $ 9,500 | $ 9,130 | 10,000 | 10,000 | 10,000 | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 6 | Gas & Oil Severance Tax | $ 37,998 | $ 12,000 | $ - | 12,000 | 12,000 | 12,000 | |
| 7 | Utility Tax | $ 246,464 | $ 200,000 | $ 252,472 | 225,000 | 225,000 | 225,000 | |
| 8 | B&O Tax | $ 1,384,233 | $ 1,100,000 | $ 854,751 | 1,100,000 | 1,100,000 | 1,100,000 | Balance Through 7/11/2023; collections should continue through August 31 and then be accrued to FY23, resulting in another revision to carry over balance |
| 9 | Liquor Tax | $ 23,477 | $ 15,000 | $ 18,146 | 20,000 | 20,000 | 20,000 | Each distribution quarter amount ranges from $5.5K - $7K, and has been steadily rising each year. |
| 10 | Animal Control Tax | $ 1,617 | $ 1,800 | $ 1,642 | 1,600 | 1,600 | 1,600 | |
| 11 | Hotel/Motel Tax | $ 183,960 | $ 155,000 | $ 180,914 | 150,000 | 150,000 | 150,000 | 4 traditional hotels (Turf Motel, Days Inn, TravelLodge, Carriage Inn) and 5 independent rental companies (Homeaway.com, Expedia, AirBnB, Hotel Tonight, Evolve Vacation Rental Network) |
| 12 | Court Cost Fees | $ 244,667 | $ 250,000 | $ 250,521 | 250,000 | 250,000 | 250,000 | |
| 13 | Parking Violations | $ 37,590 | $ 30,000 | $ 38,138 | 29,000 | 29,000 | 29,000 | Revised based on new program details and current year performance. |
| 14 | Business Licenses | $ 21,387 | $ 20,000 | $ 22,038 | 22,000 | 22,000 | 22,000 | |
| 15 | Building Permits | $ 248,671 | $ 450,000 | $ 494,886 | 150,000 | 150,000 | 150,000 | Building activity increasing/expected to remain strong through FY2024 with new development projects on the horizon and increases in the permit fee structure. |
| 16 | Franchise Tax | $ 79,800 | $ 80,000 | $ 56,436 | 80,000 | 80,000 | 80,000 | Two Cable Franchisees; working with Shentel/GloFiber on franchisee compliance |
| 17 | Interstate/International Registration Plan | $ 69,604 | $ 60,000 | $ 59,427 | 60,000 | 60,000 | 60,000 | |
| 18 | Emergency Service Fees | $ 1,672 | $ 1,600 | $ 1,579 | 1,700 | 1,700 | 1,700 | Revenue from utility bills for EMS (5 cents) |
| 19 | Parks & Rec Fees | $ 1,672 | $ 1,600 | $ 1,579 | 1,700 | 1,700 | 1,700 | Revenue from utility bills for parks and recreation (5 cents) |
| 20 | Parking Meters | $ 43,227 | $ 50,000 | $ 60,339 | 50,000 | 50,000 | 50,000 | Based on new program details - including permits |
| 21 | Rent and Concession Revenue | $ 49,111 | $ 50,000 | $ 44,014 | 50,000 | 50,000 | 50,000 | CTUB rental of 661 space ($30k total); CW Hall Revenue is recorded as Due to Building Commission/CWH Landlord, so revising down to reflect true flow of revenues |
| 22 | Zoning Fees | $ 26,410 | $ 30,000 | $ 28,456 | 7,500 | 7,500 | 7,500 | |
| 23 | Street Fees | $ 130,434 | $ 125,000 | $ 123,131 | 130,000 | 130,000 | 130,000 | Revenue from utility bills for street improvements ($4 per month); pending fee decision from Council |
| 24 | State Gov't Grants | $ 5,940 | $ 6,000 | $ 5,940 | 6,000 | 6,000 | 6,000 | Could be substantially higher with aggressive strategy for ARPA funds |
| 26 | Federal Grants | $ - | $ 15,000 | $ - | 56,666 | 56,666 | 56,666 | Could be substantially higher with aggressive strategy for ARPA funds |
| 27 | Contributions from Other Funds (Sales Tax) | $ 1,557,615 | $ 1,000,000 | $ 1,000,000 | 1,600,000 | 1,600,000 | 1,600,000 | Ordinance requires payment of debt first (payments to BC are rent payments in PD and CH budgets); FY23 approved number was $626.3K lower than actual collections due to surplus from other funding sources; FY2024 proposes using full Sales Tax Collection estimates to supplement operational revenues |
| 28 | Contribution from Other Funds (ARPA Revenue Loss Allowance) | $ 1,332,522 | $ 1,332,523 | $ 1,332,523 | - | - | - | |
| 29 | Transfers to the Rainy Day Fund | $ - | $ - | $ - | - | - | - | |
| 30 | Gaming Income | $ 260,183 | $ 225,000 | $ 241,110 | 250,000 | 175,000 | 175,000 | revised down due to status of road/bridge closures that may impact Casino traffic |
| 31 | Interest Income - Operating Acct | $ 10,768 | $ 30,000 | $ 36,192 | 15,000 | 15,000 | 15,000 | |
| 32 | Misc. Reimbursements | $ 111,872 | $ 100,000 | $ 111,897 | 110,000 | 110,000 | 110,000 | SRO reimbursement of $60k; crossing guards; misc. police reimbursements; Fuel Refunds; Pcard Rebate; etc. |
| 33 | Insurance Claims | $ 3,248 | $ 24,000 | $ 23,638 | - | - | - | 2019 Ford CTPD Insurance Claim |
| 34 | Refunds and Rebates | $ 3,844 | $ 100 | $ 100 | - | - | - | |
| 35 | Filing Fees | $ - | 0 | 300 | - | - | - | No fees, as no election in FY24 |
| 36 | Video Lottery | $ 782,893 | $ 700,000 | $ 818,592 | 675,000 | 450,000 | 450,000 | revised down due to status of road/bridge closures that may impact Casino traffic |
| 37 | Miscellaneous Rev | $ 10,930 | $ 37,500 | $ 43,904 | 10,000 | 10,000 | 10,000 | Special permit fees; miscellaneous revenue; sale of assets, etc. - CW Hall Revenue is recorded as Due to Building Commission/CWH Landlord, so revising down to reflect true flow of revenues |
| 38 | Special Events | $ 30,614 | $ - | $ 40,841 | 18,000 | 18,000 | 18,000 | |
| 39 | **Total Revenues** | **$ 8,613,438** | **$ 9,671,688** | **$ 9,694,320** | **9,468,611** | **9,868,846** | **9,868,846** | |
| 40 | | | | | | | | |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 42 | **Economic Development - 402** | **FY 22 Actual** | **FY23 Approved** | **Thru June '23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 43 | Salaries | $ - | $ - | $ - | 62,500 | 62,500 | 67,938 | 8.7% COLA |
| 44 | FICA | $ - | $ - | $ - | 4,800 | 4,800 | 5,200 | Increase in FICA taxes payable due to COLA salary increase |
| 45 | Group Insurance | $ - | $ - | $ - | 8,000 | 8,000 | 8,000 | |
| 46 | Retirement | $ - | $ - | $ - | 5,600 | 5,600 | 6,114 | Increase in Retirement expense due to COLA salary increase |
| 47 | OPEB | $ - | $ - | $ - | 2,000 | 2,000 | 2,038 | 457(b) Deferred Compensation Distribution |
| 48 | Telephone | $ - | $ - | $ - | 750 | 750 | 750 | |
| 49 | Travel | $ - | $ - | $ - | 2,500 | 2,500 | 2,500 | Mainstreet Conference, Economic Devlopment Conference Travel |
| 50 | Advertising/Legal Publications | $ - | $ - | $ - | 500 | 500 | 500 | |
| 51 | Training | $ - | $ - | $ - | 2,500 | 2,500 | 2,500 | Mainstreet Conference, Economic Devlopment Conference |
| 52 | Dues & Subscriptions | $ - | $ - | $ - | 2,000 | 2,000 | 2,000 | Adobe Cloud, Survey Subscription, Apple Music, WVEDC, LightTheCity |
| 53 | Professional Services | $ - | $ - | $ - | 2,000 | 2,000 | 2,000 | |
| 54 | Insurance and Bonds | $ - | $ - | $ - | 4,500 | 4,500 | 4,500 | |
| 55 | Departmental Supplies | $ - | $ - | $ - | 1,000 | 1,000 | 1,000 | |
| 56 | Auto Supplies | $ - | $ - | $ - | 500 | 500 | 500 | |
| 57 | **Total Economic Development** | **$ -** | **$ -** | **$ -** | **$ 99,150** | **$ 99,150** | **$ 105,540** | |
| 58 | | | | | | | | |
| 59 | **Federal Grants - 403** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 60 | Professional Services | $ - | | $ - | - | - | - | Expenses included in city hall budget for grant writing services. |
| 61 | Departmental Supplies | $ - | | $ - | - | - | - | |
| 62 | **Total Federal Grants** | **$ -** | | **$ -** | **-** | **-** | **-** | |
| 63 | | | | | | | | |
| 64 | **Mayor's Office - 409** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | |
| 65 | Salary | $ 12,500 | $ 12,500 | $ 12,500 | 12,500 | 12,500 | 12,500 | |
| 66 | FICA | $ 956 | $ 1,000 | $ 956 | 1,000 | 1,000 | 1,000 | |
| 67 | Telephone | $ - | | $ - | - | - | - | |
| 68 | Travel | $ 1,681 | $ 1,750 | $ 881 | 2,000 | 2,000 | 2,000 | WVML Participation, etc. |
| 69 | Training & Education | $ 270 | $ 750 | $ 284 | 1,000 | 1,000 | 1,000 | WVML Participation, etc. |
| 70 | Advertising/Legal Publications | $ - | $ - | $ - | - | - | - | |
| 71 | Insurance & Bonds | $ 911 | $ 1,000 | $ 871 | 1,000 | 1,000 | 1,000 | |
| 72 | Departmental Supplies | $ 2,109 | $ 200 | $ 65 | 250 | 250 | 250 | |
| 73 | Contracted Services | $ - | $ - | $ - | - | - | - | |
| 74 | Contributions | $ - | $ 2,000 | $ - | 2,000 | 2,000 | 2,000 | Funding for Mayor's Community Sponsorship Program |
| 75 | **Total Mayor's Office** | **$ 18,428** | **$ 19,200** | **$ 15,556** | **19,750** | **19,750** | **19,750** | |
| 76 | | | | | | | | |
| 77 | **Council - 410** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 78 | Salaries | $ 33,967 | $ 34,800 | $ 34,800 | 40,000 | 40,000 | 40,000 | 8 Seats at $5K per member |
| 79 | FICA | $ 2,598 | $ 2,700 | $ 2,662 | 3,100 | 3,100 | 3,100 | |
| 80 | Travel | $ 462 | $ 3,000 | $ 1,956 | 5,000 | 5,000 | 5,000 | More interest in training and travel from current Council |
| 81 | Advertising/Legal Publications | $ - | $ - | $ - | - | - | - | |
| 82 | Training & Education | $ 3,125 | $ 3,000 | $ 2,128 | 3,000 | 3,000 | 3,000 | More interest in training and travel from current Council |
| 83 | Professional Services | $ - | $ - | $ - | - | - | - | |
| 84 | Insurance & Bonds | $ 2,376 | $ 3,200 | $ 2,425 | 3,200 | 3,200 | 3,200 | Travelers insurance; |
| 85 | Departmental Supplies | $ 1,017 | $ 1,000 | $ 549 | 1,000 | 1,000 | 1,000 | |
| 86 | **Total Council** | **$ 43,545** | **$ 47,700** | **$ 44,519** | **55,300** | **55,300** | **55,300** | |
| 87 | | | | | | | | |
| 88 | **City Manager - 412** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 89 | Salaries | $ 141,128 | $ 237,500 | $ 231,201 | 190,600 | 190,600 | 207,183 | Increase due to 8.7% COLA. City Manager, Executive Assistant (40% of time supporting Court Clerk - but full cost reflected in CM account). |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 90 | FICA | $ 10,705 | $ 17,000 | $ 15,848 | 14,600 | 14,600 | 15,900 | Increase in FICA taxes payable due to COLA salary increase |
| 91 | Group Insurance | $ 7,706 | $ 8,000 | $ 5,616 | 10,000 | 10,000 | 10,000 | |
| 92 | Retirement | $ 14,525 | $ 13,000 | $ 12,145 | 17,200 | 17,200 | 18,646 | Increase in Retirement expense due to COLA salary increase |
| 93 | OPEB | $ 731 | $ 2,500 | $ 1,846 | 2,000 | 2,000 | 6,215 | 457(b) Deferred Compensation Distribution |
| 94 | Telephone | $ 330 | $ 500 | $ 205 | 500 | 500 | 500 | |
| 95 | Travel | $ 4,138 | $ 6,000 | $ 5,701 | 1,500 | 1,500 | 1,500 | WVML conferences, etc. |
| 96 | Advertising and Postage | $ 2,244 | $ 2,500 | $ 1,761 | 300 | 300 | 300 | |
| 97 | Training & Education | $ 438 | $ - | $ - | 1,500 | 1,500 | 1,500 | WV Municipal League |
| 98 | Dues & Subscriptions | $ 1,194 | $ 500 | $ 180 | 1,500 | 1,500 | 1,500 | ICMA and WVML fees |
| 99 | Professional Services | $ 524 | $ 250 | $ 1,510 | 250 | 250 | 250 | |
| 100 | Insurance & Bonds | $ 13,722 | $ 15,000 | $ 12,066 | 15,000 | 15,000 | 15,000 | |
| 101 | Contracted Services | $ - | $ - | $ - | - | - | - | |
| 102 | Departmental Supplies | $ 169 | $ 500 | $ 572 | 750 | 750 | 750 | |
| 103 | Auto Supplies | $ 70 | $ - | $ - | 100 | 100 | 100 | |
| 104 | **Total City Manager** | **$ 197,623** | **$ 303,250** | **$ 288,650** | **255,800** | **255,800** | **279,344** | |
| 105 | | | | | | | | |
| 106 | **Treasurer - 413** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 107 | Salaries | $ 138,793 | $ 169,000 | $ 153,747 | 216,800 | 216,800 | 235,700 | Increase due to 8.7% COLA. Finance Director and three (3) Accounting Clerks. |
| 108 | FICA | $ 10,536 | $ 12,000 | $ 12,036 | 16,600 | 16,600 | 18,029 | Increase in FICA taxes payable due to COLA salary increase |
| 109 | Group Insurance | $ 20,522 | $ 20,000 | $ 21,986 | 25,000 | 25,000 | 25,000 | |
| 110 | Retirement | $ 14,208 | $ 13,600 | $ 14,795 | 19,520 | 19,520 | 21,210 | Increase in Retirement expense due to COLA salary increase |
| 111 | OPEB Other | $ 2,207 | $ 6,350 | $ 3,499 | 5,000 | 5,000 | 7,070 | 457(b) Deferred Compensation Distribution |
| 112 | Telephone | $ - | | $ - | 750 | 750 | 750 | |
| 113 | Travel | $ - | $ 100 | $ - | 1,000 | 1,000 | 1,000 | |
| 114 | Postage and Printing | $ - | $ - | $ - | $ 50 | $ 50 | $ 50 | |
| 115 | Advertising/Legal Publications | $ 1,172 | $ 1,500 | $ 1,280 | 1,000 | 1,000 | 1,000 | |
| 116 | Training & Education | $ 288 | $ 2,500 | $ 1,585 | 5,000 | 5,000 | 5,000 | GFOA Conferences and trainings, training for new hire |
| 117 | Dues & Subscriptions | $ 191 | $ 450 | $ 382 | 500 | 500 | 500 | GFOA dues, Adobe Subscription |
| 118 | Professional Services | $ 1,151 | $ 2,000 | $ 1,900 | 2,500 | 2,500 | 2,500 | Police Pension Report, CWH Trial Balance services |
| 119 | Audit Costs | $ 64,200 | $ 42,000 | $ 41,700 | 40,000 | 40,000 | 40,000 | |
| 120 | Insurance & Bonds | $ 10,872 | $ 12,000 | $ 10,555 | 14,000 | 14,000 | 14,000 | |
| 121 | Contracted Services | $ - | $ - | $ - | - | - | - | |
| 122 | Departmental Supplies | $ 1,295 | $ 1,500 | $ 738 | 1,500 | 1,500 | 1,500 | |
| 123 | Auto Supplies | $ - | $ - | $ - | - | - | - | |
| 124 | **Total Treasurer** | **$ 265,434** | **$ 283,000** | **$ 264,204** | **349,220** | **349,220** | **373,309** | |
| 125 | | | | | | | | |
| 126 | **Court Clerk - 415** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 127 | Salaries | $ 51,261 | $ 57,767 | $ 51,579 | 57,775 | 57,775 | 62,802 | Increase due to 8.7% COLA. Court Clerk position. |
| 128 | FICA | $ 3,892 | $ 4,200 | $ 3,946 | 4,450 | 4,450 | 4,805 | Increase in FICA taxes payable due to COLA salary increase |
| 129 | Group Insurance | $ 11,120 | $ 10,700 | $ 10,990 | 12,000 | 12,000 | 12,000 | |
| 130 | Retirement | $ 5,245 | $ 4,900 | $ 4,868 | 5,200 | 5,200 | 56,660 | Increase in Retirement expense due to COLA salary increase |
| 131 | OPEB | $ 894 | $ 3,000 | $ 1,656 | 1,750 | 1,750 | 1,885 | 457(b) Deferred Compensation Distribution |
| 132 | Travel | $ 268 | $ 1,500 | $ - | 1,000 | 1,000 | 1,000 | Court clerk training |
| 133 | Advertising and Postage | $ 440 | $ 700 | $ 465 | 700 | 700 | 700 | |
| 134 | Training & Education | $ 555 | $ 750 | $ 540 | 800 | 800 | 800 | State and National Court Clerk's Association |
| 135 | Dues & Subscriptions | $ - | $ 100 | $ - | 100 | 100 | 100 | Election and Municipal Clerk membership dues |
| 136 | Professional Services | $ - | $ 100 | $ - | 100 | 100 | 100 | |
| 137 | Insurance & Bonds | $ 4,479 | $ 4,000 | $ 3,904 | 4,500 | 4,500 | 4,500 | |
| 138 | Contracted Services | $ 25 | $ - | $ 25 | 100 | 100 | 100 | |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 139 | Departmental Supplies | $ 423 | $ 1,000 | $ 536 | 1,000 | 1,000 | 1,000 | |
| 140 | **Total Court Clerk** | **$ 78,602** | **$ 88,717** | **$ 78,508** | **89,475** | **89,475** | **146,452** | |
| 141 | | | | | | | | |
| 142 | **Police Judges - 416** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 143 | Salaries | $ 18,662 | $ 30,700 | $ 23,542 | 32,000 | 32,000 | 32,000 | Two Municipal Court judges; two magistrates; two prosecuting attorneys; and extra $2k for special judge |
| 144 | FICA | $ 1,428 | $ 2,400 | $ 1,801 | 2,400 | 2,400 | 2,400 | |
| 145 | Travel | $ - | $ 500 | $ - | 500 | 500 | 500 | WV State mandated annual training for magistrates & judges |
| 146 | Training & Education | $ - | $ 500 | $ - | 1,000 | 1,000 | 1,000 | WV State mandated annual training for magistrates & judges |
| 147 | Dues and Subscriptions | $ - | $ 100 | $ - | 100 | 100 | 100 | |
| 148 | Professional Services | $ 1,558 | $ 2,100 | $ - | 1,000 | 1,000 | 1,000 | |
| 149 | Insurance | $ 1,607 | $ 2,500 | $ 2,230 | 2,500 | 2,500 | 2,500 | |
| 150 | Departmental Supplies | $ - | $ - | $ - | - | - | - | |
| 151 | **Total Police Judges** | **$ 23,254** | **$ 38,800** | **$ 27,573** | **39,500** | **39,500** | **39,500** | |
| 152 | | | | | | | | |
| 153 | **City Attorney - 417** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 154 | Professional Services | $ 212,494 | $ 200,000 | $ 200,505 | 175,000 | 200,000 | 200,000 | Cost for outside legal counsel - add $25K |
| 155 | **Total Attorney** | **$ 212,494** | **$ 200,000** | **$ 200,505** | **175,000** | **200,000** | **200,000** | |
| 156 | | | | | | | | |
| 157 | **Enforcement Agency - 425** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | Notes and Explanations |
| 158 | Salaries | $ - | $ - | $ - | 48,755 | 55,000 | 59,785 | Increase due to 8.7% COLA. |
| 159 | FICA | $ - | $ - | $ - | 3,730 | 4,208 | 4,574 | Increase in FICA taxes payable due to COLA salary increase |
| 160 | Group Insurance | $ - | $ - | $ - | 6,000 | 6,000 | 6,000 | |
| 161 | Retirement | $ - | $ - | $ - | 4,388 | 5,000 | 5,381 | Increase in Retirement expense due to COLA salary increase |
| 162 | OPEB | $ - | $ - | $ - | 1,000 | 1,650 | 1,794 | 457(b) Deferred Compensation Distribution |
| 163 | Telephone | $ - | $ - | $ - | - | - | - | |
| 164 | Travel | $ - | $ - | $ - | - | - | - | |
| 165 | Advertising/Legal Publications | $ - | $ - | $ - | 2,000 | 2,000 | 2,000 | Vacant Property notifications/mailings |
| 166 | Training | $ - | $ - | $ - | 2,500 | 2,500 | 2,500 | Cross Training/Certifications in Inspection |
| 167 | Dues & Subscriptions | $ - | $ - | $ - | - | - | - | |
| 168 | Insurance and Bonds | $ - | $ - | $ - | 3,800 | 3,800 | 3,800 | |
| 169 | Contracted Services - Nuisance Property Expenses | $ - | $ - | $ - | 50,000 | 50,000 | 50,000 | Nuisance Property Expenditures historically funded out of CIP, but expense was moved to General Operating budget to reflect ongoing and not capital expenses. |
| 170 | Departmental Supplies | $ - | $ - | $ - | 2,000 | 2,000 | 2,000 | |
| 171 | Auto Supplies | $ - | $ - | $ - | 500 | 1,000 | 1,000 | For code enforcement vehicle |
| 172 | **Total Enforcement Agency** | **$ -** | $ - | **$ -** | **124,673** | **133,158** | **138,833** | |
| 173 | | | | | | | | |
| 174 | **Regional Dev Authority - 435** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 175 | Dues & Subscriptions | $ 1,946 | $ 3,600 | $ 3,524 | 5,500 | 5,500 | 5,500 | Fee increasing in FY23 per Region 9 |
| 176 | **Total Regional Dev. Authority** | **$ 1,946** | **$ 3,600** | **$ 3,524** | **5,500** | **5,500** | **5,500** | |
| 177 | **Total City Administration** | **1,464,852** | **1,598,067** | **1,498,895** | **1,629,815** | **1,669,815** | **1,784,160** | |
| 178 | | | | | | | | |
| 179 | **Building Inspections - 436** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 180 | Salaries | $ 35,086 | $ 23,500 | $ 21,860 | 73,800 | 73,800 | 80,221 | Increase due to 8.7% COLA. Full Time Inspector Englebert. |
| 181 | FICA | $ 2,664 | $ 1,800 | $ 1,672 | 5,650 | 5,650 | 6,137 | Increase in FICA taxes payable due to COLA salary increase |
| 182 | Group Insurance | $ 62 | $ 60 | $ 56 | 500 | 500 | 500 | |
| 183 | Retirement | $ 3,599 | $ 2,100 | $ 2,053 | 6,650 | 6,650 | 7,220 | Increase in Retirement expense due to COLA salary increase |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 162 | OPEB | $ - | $ - | $ - | - | - | 2,407 | 457(b) Deferred Compensation Distribution |
| 184 | Telephone | $ 344 | $ 100 | $ 81 | 750 | 750 | 750 | |
| 185 | Travel | $ - | $ - | $ - | 500 | 500 | 500 | |
| 186 | R&M to Auto | $ - | $ - | $ - | 500 | 500 | 500 | |
| 187 | Advertising | $ - | $ - | $ - | - | - | - | |
| 188 | Training & Education | $ - | $ - | $ - | 1,000 | 1,000 | 1,000 | Training to maintain licensing/accreditation; conference registrations |
| 189 | Dues & Subscriptions | $ - | $ - | $ - | 2,500 | 2,500 | 2,500 | WV Building Officials annual dues; Adobe subscription |
| 190 | Professional Services | $ - | $ - | $ - | 500 | 10,500 | 10,500 | Additional Funding for part time inspector if needed |
| 191 | Insurance & Bonds | $ 2,747 | $ 3,000 | $ 2,432 | 6,000 | 6,000 | 6,000 | |
| 192 | Departmental Supplies | $ - | $ 500 | $ 462 | 4,000 | 4,000 | 4,000 | Inspection Equipment (Current Inspector using personal equipment) |
| 193 | Auto Supplies | $ - | $ - | $ - | 1,000 | 1,000 | 1,000 | Gas, oil, tires |
| 194 | Uniform | $ - | $ - | $ - | - | - | - | |
| 195 | **Total Building Inspections** | **$ 44,502** | **$ 31,060** | **$ 28,617** | **103,350** | **113,350** | **123,235** | |
| 196 | | | | | | | | |
| 197 | **Planning & Zoning - 437** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 198 | Salaries | $ 175,930 | $ 292,475 | $ 257,182 | 210,000 | 210,000 | 228,270 | Increase due to 8.7% COLA. Permits Technician, Community Development Manager, City Planner |
| 199 | FICA | $ 13,220 | $ 21,200 | $ 20,474 | 16,500 | 16,500 | 17,463 | Increase in FICA taxes payable due to COLA salary increase |
| 200 | Group Insurance | $ 26,131 | $ 26,000 | $ 26,391 | 25,000 | 25,000 | 25,000 | |
| 201 | Retirement | $ 17,955 | $ 24,950 | $ 24,203 | 18,900 | 18,900 | 20,545 | Increase in Retirement expense due to COLA salary increase |
| 202 | OPEB | $ 3,397 | $ 10,000 | $ 6,543 | 6,000 | 6,000 | 6,849 | 457(b) Deferred Compensation Distribution |
| 203 | Telephone | $ 290 | $ 700 | $ 106 | 500 | 500 | 500 | |
| 204 | Travel | $ 1,671 | $ 5,000 | $ 4,053 | 2,000 | 2,000 | 2,000 | State planning conferences |
| 205 | Postage | $ 904 | $ 1,250 | $ 856 | 1,000 | 1,000 | 1,000 | |
| 206 | Advertising/Legal Publications | $ 1,026 | $ 4,500 | $ 3,594 | 3,500 | 3,500 | 3,500 | |
| 207 | Training & Education | $ 895 | $ 4,000 | $ 1,899 | 3,000 | 3,000 | 3,000 | State planning conferences |
| 208 | Dues & Subscriptions | $ 2,200 | $ 5,000 | $ 4,908 | 2,000 | 2,000 | 2,000 | APA annual dues; Adobe subscriptions; Property Software; |
| 209 | Professional Services | $ 2,650 | $ 5,000 | $ 2,627 | 5,000 | 5,000 | 5,000 | |
| 210 | Insurance & Bonds | $ 14,989 | $ 21,000 | $ 19,313 | 20,000 | 20,000 | 20,000 | |
| 211 | Contracted Services | $ 29,661 | $ 50,000 | $ 38,156 | 30,000 | 60,000 | 60,000 | Kimley-Horn Engineering Services Support to p&z; etc. |
| 212 | Contracted Services - City Trees | $ 6,152 | $ 12,000 | $ 1,696 | 12,000 | 12,000 | 12,000 | |
| 213 | Departmental Supplies | $ 5,023 | $ 6,000 | $ 4,717 | 4,000 | 4,000 | 4,000 | |
| 214 | Computer Software / Tech | $ - | $ - | $ - | 11,000 | 11,000 | 11,000 | MyPermitNow Monthly Fees (previously paid out of Capital Funding) |
| 215 | **Total Planning and Zoning** | **$ 302,094** | **$ 489,075** | **$ 416,718** | **370,400** | **400,400** | **422,127** | |
| 216 | **Total City Bldg Inspection and P&Z** | **$ 346,596** | **$ 520,135** | **$ 445,335** | **$ 697,573** | **$ 746,058** | **$ 789,734** | |
| 217 | | | | | | | | |
| 218 | **Elections - 438** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 219 | Printing | $ - | $ - | | - | - | - | |
| 220 | Advertising | $ - | $ 750 | $ 199 | - | - | - | Elections in spring of 2021 and 2023; no elections anticipated in FY2024 but subject to change with Charter conversations |
| 221 | Contracted Services | $ - | $ 10,000 | $ 4,340 | - | - | - | |
| 222 | Departmental Supplies | $ - | $ 10,000 | $ 2,158 | - | - | - | |
| 223 | **Total Elections** | **$ -** | **$ 20,750** | **$ 6,697** | **-** | **-** | **-** | |
| 224 | | | | | | | | |
| 225 | **City Hall - 440** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 226 | Salaries | $ 154,525 | $ 115,000 | $ 102,390 | 96,400 | 96,400 | 104,787 | Increase due to 8.7% COLA. Operations Director. |
| 227 | FICA | $ 12,179 | $ 12,300 | $ 8,598 | 7,400 | 7,400 | 8,017 | Increase in FICA taxes payable due to COLA salary increase |
| 228 | Group Insurance | $ 22,361 | $ 15,000 | $ 14,123 | 12,600 | 12,600 | 12,600 | |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 229 | Retirement | $ 15,855 | $ 11,000 | $ 10,101 | 8,700 | 8,700 | 9,431 | Increase in Retirement expense due to COLA salary increase |
| 230 | OPEB | $ 1,788 | $ 5,000 | $ 3,128 | 4,000 | 4,000 | 4,000 | 457(b) Deferred Compensation Distribution |
| 231 | Telephone | $ 21,391 | $ 22,500 | $ 21,708 | 22,000 | 22,000 | 22,000 | Server based phone system |
| 232 | Utilities | $ 20,682 | $ 21,000 | $ 20,038 | 21,000 | 21,000 | 21,000 | Water, sewer, electric, heating oil - Increasing to reflect inflation effects on utility costs |
| 233 | Travel | $ 316 | $ 500 | $ 517 | 750 | 750 | 750 | |
| 234 | R&M Building & Grounds | $ 1,097 | $ 3,000 | $ 9,202 | 10,000 | 10,000 | 10,000 | Exterior Repairs, Security Upgrades (Cameras in lobby), minor interior upgrades to accommodate increased staffing with lack of office space |
| 235 | R&M Equipment | $ 878 | $ 2,000 | $ 137 | 1,000 | 1,000 | 1,000 | Equipment rentals required for city hall maintenance |
| 236 | R&M Auto | $ - | $ 1,000 | $ - | 1,000 | 1,000 | 1,000 | Maintenance of city hall vehicles |
| 237 | Postage | $ 2,982 | $ 3,500 | $ 2,561 | 3,500 | 3,500 | 3,500 | |
| 238 | Building & Equipment Rental | $ 245,810 | $ 250,000 | $ 244,756 | 250,000 | 250,000 | 250,000 | Annual rent for CH ($120); monthly for CW Hall ($200,004 annual); and CTUB portion of 661 S. George ($30,600); another $20k for equipment rental (printers, postage machine). |
| 239 | Training and Education | $ 600 | $ 500 | $ 300 | 500 | 500 | 500 | |
| 240 | Advertising/Legal Publications | $ 4,900 | $ 5,000 | $ 3,820 | 5,000 | 5,000 | 5,000 | |
| 241 | Dues & Subscriptions | $ 6,193 | $ 4,000 | $ 3,010 | 4,000 | 4,000 | 4,000 | Chamber of Commerce, Spirit Jefferson & the Journal; WVML Fees; Home Rule Board Fees; Amazon Fees |
| 242 | Professional Services | $ 3,150 | $ 3,000 | $ 2,813 | 2,000 | 2,000 | 2,000 | |
| 243 | Insurance & Bonds | $ 12,759 | $ 15,000 | $ 11,155 | 12,000 | 12,000 | 12,000 | |
| 244 | Contracted Services | $ 58,942 | $ 70,000 | $ 68,021 | 101,600 | 101,600 | 101,600 | Cleaning; grant/consulting services; Plan-It Payroll; IT Services previously paid from Capital Reserve ($50K); Equipment Maintenance Contract |
| 245 | Bank Charges | $ 15,684 | $ 27,000 | $ 24,530 | 20,000 | 35,000 | 35,000 | Fees related to acceptance of credit cards and online payments; RECOMMEND FUTURE PROJECT OF PASSING FEES ON TO CUSTOMERS FOR CC AND E-CK TRANSACTIONS, AS WELL AS RFP FOR MOST COST EFFECTIVE MERCHANT SERVICE PROVIDER |
| 246 | Other Fees/Taxes | $ 1,224 | $ 1,500 | $ 1,337 | 2,000 | 2,000 | 2,000 | |
| 247 | Departmental Supplies | $ 9,029 | $ 11,000 | $ 8,951 | 11,000 | 11,000 | 11,000 | |
| 248 | Computer Software/Tech | $ - | $ 5,000 | $ 4,680 | 43,320 | 43,320 | 43,320 | **Tyle Tech/Incode Annual Fees; PSI Business License/B&O platform; Granicus Fees; Zoom Fees** |
| 249 | Special Emergency Expense | $ 11,180 | $ 10,000 | $ 9,982 | - | - | - | |
| 250 | Auto Supplies | $ - | $ - | $ - | 500 | 500 | 500 | Oil, Gas for 2 City Vehicles |
| 251 | **Total City Hall** | **$ 623,526** | **$ 613,800** | **$ 575,856** | **640,270** | **655,270** | **665,005** | |
| 252 | | | | | | | | |
| 253 | **Contributions/Transfers - 444** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 254 | Contributions - "But For" Organizations | $ 60,000 | $ 60,000 | $ 60,000 | - | - | - | Annual But-For Contributions issued January/February of each year, budgeted for in Contingencies line until process finalized |
| 255 | Contributions - Revive Grant | $ 10,000 | $ 38,500 | $ 8,500 | 20,000 | 50,000 | 50,000 | Unspent Revive! Funding rolled over to FY24 |
| 256 | Contributions - Façade Improvement Program | $ *11,500* | $ 20,000 | $ 10,377 | 15,000 | 24,622 | 24,622 | Unspent FIP Funding rolled over to FY24 |
| 257 | Contributions - Homeless Solutions | $ - | $ 25,000 | $ - | 25,000 | 50,000 | 50,000 | Rollover FY23 budget alottment to accommodate County Homelessness position funding commitment |
| 258 | Contributions - Nuisance Property Expenses | $ 23,993 | $ 50,000 | $ 16,891 | - | - | - | Nuisance Property Expenditures historically funded out of CIP, but expense was moved to General Operating budget to reflect ongoing and not capital expenses. MOVING EXPENSE TO CODE ENFORCEMENT, HENCE 0 BUDGETED |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 259 | Contribution - Community Awards | $ 322,500 | $ - | $ - | $ - | 842,544 | 842,544 | Council Approved ARPA grant payouts for community grant requests in FY22 - second round of community grant fundings totaling $172,000, this revision provides the funding for those awardees as well as additional funding room for a third round (if other use identified, will need to do another revision) |
| 260 | Contributions - Sidewalk Improvement Program | $ - | $ 20,000 | $ 5,000 | 15,000 | 15,000 | 15,000 | SIP grant historically funded out of CIP, but expense was moved General Operating budget to reflect ongoing and not capital expenses. Reducing by $5k due to lack of public interest |
| 261 | **Total Contributions/Transfers** | **$ 427,993** | **$ 213,500** | **$ 100,768** | **75,000** | **982,166** | **982,166** | |
| 262 | | | | | | | | |
| 263 | **Parking - 571** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 264 | Salaries | $ 33,011 | $ 34,100 | $ 30,110 | 36,100 | 36,100 | 39,241 | Increase due to 8.7% COLA. Permits Technician, Community Development Manager, City Planner |
| 265 | FICA | $ 2,504 | $ 2,600 | $ 2,303 | 2,800 | 2,800 | 3,002 | Increase in FICA taxes payable due to COLA salary increase |
| 266 | Group Insurance | $ 11,026 | $ 11,000 | $ 8,232 | 10,000 | 10,000 | 10,000 | |
| 267 | Retirement | $ 3,349 | $ 3,100 | $ 2,814 | 3,300 | 3,300 | 3,532 | Increase in Retirement expense due to COLA salary increase |
| 268 | OPEB | $ 894 | $ 1,500 | $ 990 | 1,500 | 1,500 | 1,500 | 457(b) Deferred Compensation Distribution |
| 269 | Utilities | $ 1,024 | $ 1,000 | $ 1,099 | 1,100 | 1,100 | 1,100 | |
| 270 | R&M Equipment | $ - | $ 1,500 | $ - | 3,000 | 3,000 | 3,000 | |
| 271 | Advertising/Legal Publication | $ - | $ 1,500 | $ 1,271 | - | - | - | |
| 272 | Postage and Printing | $ 116 | $ 800 | $ 126 | 500 | 500 | 500 | New parking brochure; |
| 273 | Building & Equipment Rental | $ 1,700 | $ 1,700 | $ 1,700 | 1,700 | 1,700 | 1,700 | Rental fee for parking lot at the Legion; confirm final year of payment |
| 274 | Insurance & Bonds | $ 2,614 | $ 3,000 | $ 2,376 | 3,000 | 3,000 | 3,000 | |
| 275 | Contracted Services | $ - | $ 800 | $ - | 500 | 500 | 500 | |
| 276 | Departmental Supplies | $ 1,866 | $ 5,000 | $ 3,515 | 6,000 | 6,000 | 6,000 | |
| 277 | Uniforms | $ - | $ 1,500 | $ 1,906 | 500 | 500 | 500 | |
| 278 | Computer Software/Tech | $ - | $ - | $ - | 4,000 | 4,000 | 4,000 | **United Public Safety Annual Fees** |
| 279 | **Total Parking** | **$ 58,105** | **$ 69,100** | **$ 56,442** | **74,000** | **74,000** | **77,575** | |
| 280 | | | | | | | | |
| 281 | **Contingencies - 699** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 282 | Other Contributions | $ 366,514 | $ 383,433 | $ - | 478,456 | 478,456 | 164,561 | Reduced by $313,895 for 8.7% COLA, FICA, Retirement, and 457(b) Deferred Compensation distribution. Placeholders for 8.7% COLA ($236,228); 3% retirement benefit ($82,921); $50,000 is for emergency snow costs; funding for one COPS grant position in CTPD ($57,452 payroll, taxes, retirement); $60,000 for But-For funding considerations; actual amount for WVSAO reporting is $777,781 |
| 283 | **Total Contingencies** | **$ 366,514** | **$ 383,433** | **$ -** | **478,456** | **478,456** | **164,561** | |
| 284 | | | | | | | | |
| 285 | **Police Department - 700** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 286 | Salaries | $ 1,178,546 | $ 1,336,995 | $ 1,178,123 | 1,377,483 | 1,377,483 | 1,497,325 | Increase due to 8.7% COLA. 17 sworn personnel (15 officers, 1 Chief, 1 SRO); and 2 admin staff; includes shift differential; longevity; uniform; and holiday/overtime (all other overtime is in separate line item) |
| 287 | FICA | $ 29,730 | $ 35,000 | $ 31,053 | 35,345 | 35,345 | 38,000 | Increase in FICA taxes payable due to COLA salary increase |
| 288 | Group Insurance | $ 128,536 | $ 125,000 | $ 115,935 | 135,000 | 135,000 | 135,000 | |
| 289 | Retirement | $ 128,644 | $ 120,000 | $ 119,464 | 136,568 | 136,568 | 136,568 | |
| 290 | Police Pension | $ 57,558 | $ 60,000 | $ 58,937 | 60,000 | 60,000 | 60,000 | |
| 291 | Overtime | $ 93,297 | $ 138,000 | $ 114,410 | 140,000 | 140,000 | 140,000 | Includes court/investigations/events/training/etc; |
| 292 | OPEB | $ 13,444 | $ 40,000 | $ 38,560 | 35,000 | 40,000 | 44,920 | 457(b) Deferred Compensation Distribution |
| 293 | Telephone | $ 45,955 | $ 48,000 | $ 45,307 | 45,000 | 50,000 | 50,000 | 4 cell phones; in car wifi/CAD; internet; fax; office phones |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 294 | Utilities | $ 40,453 | $ 45,000 | $ 32,937 | 42,500 | 42,500 | 42,500 | Electric/power; cable/Comcast; water and sewer, etc. |
| 295 | Travel | $ 4,387 | $ 5,000 | $ 2,712 | 5,000 | 5,000 | 5,000 | CALEA accreditation, in-service training (16 sworn), Perdmin |
| 296 | R&M Building & Grounds | $ 3,650 | $ 2,000 | $ 534 | 2,000 | 2,000 | 2,000 | |
| 297 | R&M Equipment | $ 275 | $ 3,000 | $ - | 3,500 | 3,500 | 3,500 | In-car and body cameras; zebra printers; fire safety; etc. |
| 298 | R&M Auto | $ 32,642 | $ 40,000 | $ 39,438 | 40,000 | 50,000 | 50,000 | 23 +/- vehicles to keep operational; auto service (oil changes, tire rotations, wipers, normal wear and tear), etc. |
| 299 | Postage | $ 925 | $ 1,500 | $ 1,208 | 1,500 | 1,500 | 1,500 | Capias letters, parking late/boot notices, error notirces in traffic tickets, certified mail for evidence submission, etc. |
| 300 | Building & Equipment Rental | $ 97,452 | $ 100,000 | $ 97,488 | 97,500 | 100,000 | 100,000 | Building rent calculated at $7,892 per month (another $2,500 per month is paid by CTUB and accounted for in the city hall budget); balance is for copier, etc. |
| 301 | Advertising/Legal Publications | $ 5,438 | $ 10,000 | $ 5,022 | 7,500 | 7,500 | 7,500 | Legal notices, asset forfeiture notices; possible officer vacancy. |
| 302 | Training & Education | $ 16,490 | $ 12,000 | $ 14,245 | 14,000 | 20,000 | 20,000 | 16 in-service hours (16 sworn = 256 hours)+ 8 hours supervisory (6 sworn = 48 hours); CALEA accreditation manager's training; Defense Tactics instructor, baton instructor, new detective crime scene management; tuition reimbursement |
| 303 | Dues & Subscriptions | $ 3,857 | $ 2,000 | $ 638 | 5,500 | 5,500 | 5,500 | CALEA Accreditation Fee $4595, WVCOP Dues, IACP, SRO, Journel |
| 304 | Professional Services | $ 11,397 | $ 6,300 | $ 750 | 7,500 | 7,500 | 7,500 | Miscellaneous legal services; hiring assistance; etc. |
| 305 | Insurance & Bonds | $ 100,832 | $ 100,000 | $ 90,545 | 110,000 | 110,000 | 110,000 | Travelers |
| 306 | Contracted Services | $ 46,722 | $ 40,000 | $ 42,208 | 92,500 | 92,500 | 92,500 | Alarm monitoring; cleaning; generator; pest control; $50K in IT monthly services |
| 307 | Bank Charges | $ 25 | | | 250 | 250 | 250 | |
| 308 | Departmental Supplies | $ 16,712 | $ 32,500 | $ 18,012 | 30,000 | 30,000 | 30,000 | Office supplies; etc.; additional funds for ammunition (qualification 2 times per year; 9mm, .223, slug, bird shot); etc. |
| 309 | Special Emergency Expense | $ 6,628 | $ 3,200 | $ 3,125 | - | - | - | |
| 310 | Auto Supplies | $ 59,083 | $ 57,500 | $ 53,950 | 60,000 | 65,000 | 65,000 | Gas and tires only; increased by $5K to account for rising costs of auto supplies |
| 311 | Computer Software/Tech | $ - | $ 23,700 | $ 16,074 | 25,000 | 25,000 | 25,000 | CAD maintenace; CALEA and PowerDMS, Guardian, PD website; $2500 for Report Beam (City's share); Police One Academy $1800; $3700 for body camera software licenses(bt) |
| 312 | Uniforms | $ 11,364 | $ 13,500 | $ 11,051 | 15,000 | 15,000 | 15,000 | FY24 2 current officer/ 4 new hires $9000 Bullistic Vest (DOJ Bullet Proof Vest Grant 50% reimbursement), New hire uniforms Class A, Badges, Pins, Leather Gear, boots, Jackets, etc. |
| 313 | **Total Police Dept** | **$ 2,134,042** | **$ 2,400,195** | **$ 2,131,725** | **2,523,646** | **2,557,146** | **2,684,563** | |
| 314 | | | | | | | | |
| 315 | **Police-Special Duty Crossing Guard - 704** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 316 | Salaries | $ 22,209 | $ 25,000 | $ 26,208 | 24,500 | 27,500 | 27,500 | Funding for 6 crossing guards; No COLA ; expenses reimbursed by BOE |
| 317 | FICA | $ 1,699 | $ 2,000 | $ 2,005 | 2,000 | 2,100 | 2,100 | |
| 318 | Advertising/Legal Publications | $ - | $ - | $ - | - | - | - | |
| 319 | Insurance & Bonds | $ 1,735 | $ 1,750 | $ 1,555 | 1,750 | 1,750 | 1,750 | |
| 320 | Departmental Supplies | $ 45 | $ 500 | $ 492 | 200 | 500 | 500 | Stop signs |
| 321 | Uniforms | $ 61 | $ 300 | $ 125 | 300 | 300 | 300 | Reflective jackets and vests |
| 322 | **Total Police - Special Duty Crossing Guard** | **$ 25,749** | **$ 29,550** | **$ 30,386** | **28,750** | **32,150** | **32,150** | |
| 323 | **Total Police and Crossing Guards** | **$ 2,159,790** | **$ 2,429,745** | **$ 2,162,110** | **2,552,396** | **2,589,296** | **2,716,713** | |
| 324 | | | | | | | | |
| 325 | **Dog Warden - 707** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 326 | Contributions | $ 1,617 | $ 1,800 | $ - | 1,600 | 1,600 | 1,600 | City passes along the dog tag fees to the County |
| 327 | **Total Dog Warden** | **$ 1,617** | **$ 1,800** | **$ -** | **1,600** | **1,600** | **1,600** | |
| 328 | | | | | | | | |
| 329 | **Streets - 750** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 330 | Salaries | $ 202,293 | $ 226,000 | $ 213,985 | 233,800 | 233,800 | 254,141 | Increased due to 8.7% COLA. Includes maintenance supervisor and three crew members. |
| 331 | FICA | $ 15,073 | $ 18,000 | $ 16,370 | 17,900 | 17,900 | 19,442 | Increase in FICA taxes payable due to COLA salary increase. |
| 332 | Group Insurance | $ 18,250 | $ 22,500 | $ 17,594 | 25,000 | 25,000 | 25,000 | |
| 333 | Retirement | $ 20,461 | $ 21,050 | $ 20,091 | 21,500 | 21,500 | 22,873 | Increase in Retirement expense due to COLA salary increase |
| 334 | OPEB | $ 1,887 | $ 8,000 | $ 4,644 | 6,000 | 6,000 | 7,625 | 457(b) Deferred Compensation Distribution |
| 335 | Telephone | $ 2,125 | $ 3,500 | $ 1,363 | 3,000 | 3,000 | 3,000 | Field staff equipped with cell phones |
| 336 | Utilities | $ 94,982 | $ 100,000 | $ 100,137 | 100,000 | 110,000 | 110,000 | Electric (street lights), water, sewer, and internet |
| 337 | Travel | $ - | $ 1,500 | $ - | 1,000 | 1,000 | 1,000 | Maintain certifications; other skill enhancement training as required/proposed |
| 338 | R&M Buildings & Grounds | $ 9,353 | $ 13,300 | $ 7,970 | 14,000 | 14,000 | 14,000 | General maintenance of city buildings. |
| 339 | R&M Equipment | $ 16,866 | $ 25,000 | $ 24,217 | 15,000 | 30,000 | 30,000 | Regular maintenance of fleet equipment, primary expense is street sweeper repairs |
| 340 | R&M Auto | $ 4,400 | $ 7,500 | $ 5,406 | 7,500 | 7,500 | 7,500 | Regular maintenance of department vehicles. |
| 341 | Building & Equipment Rental | $ - | $ 250 | $ - | 1,000 | 1,000 | 1,000 | Equipment rented as required to maintain various city buildings. |
| 342 | Advertising/Legal Publications/Postage | $ - | $ 250 | $ - | 250 | 250 | 250 | Spring and Fall Cleanup. Additional city sponsored projects as required. |
| 343 | Training & Education | $ 1,050 | $ 1,000 | $ - | 500 | 500 | 500 | Maintain certifications; other skill enhancement training as required/proposed |
| 344 | Dues & Subscriptions | $ 188 | $ 500 | $ 138 | 500 | 500 | 500 | |
| 345 | Professional Services | $ - | $ 300 | $ 220 | - | - | - | |
| 346 | Insurance & Bonds | $ 16,890 | $ 19,000 | $ 14,891 | 19,000 | 19,000 | 19,000 | |
| 347 | Contracted Services | $ 39,170 | $ 45,000 | $ 36,776 | 50,000 | 50,000 | 50,000 | 4-yr snow average is just over $33,100 (update for last year); recent high of $106,900 in FY14; additional $50k for snow held in reserve in the contingency account (699). |
| 348 | Departmental Supplies | $ 22,272 | $ 15,000 | $ 6,072 | 12,000 | 12,000 | 12,000 | |
| 349 | Computer Software / Tech | $ - | $ - | $ - | 6,000 | 6,000 | 6,000 | **GoGov Work Order Software cost** |
| 350 | Auto Supplies | $ 24,333 | $ 25,000 | $ 22,289 | 23,000 | 25,000 | 25,000 | Other city vehicle maintenance. |
| 351 | Uniforms | $ 8,400 | $ 10,000 | $ 9,862 | 10,000 | 13,000 | 13,000 | Cintas service cost increase |
| 352 | **Total Streets** | **$ 497,991** | **$ 562,650** | **$ 502,026** | **566,950** | **596,950** | **621,831** | |
| 353 | | | | | | | | |
| 354 | **Visitor's Center - 901** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 355 | Utilities | $ 3,659 | $ 4,500 | $ 4,384 | 3,000 | 3,000 | 3,000 | Utilities are for Rouss Hall, where Visitors Center was previously located. |
| 356 | R&M Building & Grounds | $ - | $ - | $ - | - | - | - | |
| 357 | Contracted Services | $ - | $ - | $ - | - | - | - | |
| 358 | Contributions | $ 85,900 | $ 85,000 | $ 93,571 | 75,000 | 75,000 | 75,000 | Includes half of hotel/motel collections. Another $18k in in-kind services provided as rent space in CW hall (non-cash expense). |
| 359 | **Total Visitor's Center** | **$ 89,559** | **$ 89,500** | **$ 97,955** | **78,000** | **78,000** | **78,000** | |
| 360 | | | | | | | | |
| 361 | **Fairs/Festivals - 903** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 362 | Bldg & Equip Rental | $ 986 | $ - | $ 90 | 1,000 | 1,000 | 1,000 | |
| 363 | Advertising/Legal Publications | $ 1,566 | $ - | $ 1,447 | 1,500 | 1,500 | 1,500 | |
| 364 | Contracted Services | $ 10,830 | $ - | $ 18,644 | 13,000 | 13,000 | 13,000 | |
| 365 | Departmental Supplies | $ 13,212 | $ 30,000 | $ 14,558 | 15,000 | 15,000 | 15,000 | |
| 366 | Contributions | $ 2,700 | $ 5,000 | $ 3,300 | 4,500 | 4,500 | 4,500 | Car show contribution |
| 367 | **Total Fairs/Festivals** | **$ 29,295** | **$ 35,000** | **$ 38,038** | **35,000** | **35,000** | **35,000** | |
| 368 | | | | | | | | |
| 369 | **Transfers - 960/698 SAO** | **FY 22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 370 | Transfers to Capital Reserve - Table Games | $ 1,052,463 | $ 617,500 | $ 986,335 | 575,680 | 575,680 | 575,680 | FY21 - gaming/lottery transfer. FY22 - gaming/lottery transfer. FY23 budget transfer includes lottery money (gaming and video); FY2024 proposed is the gaming/lottery estimated amounts less expenses previously paid in Capital Reserve (SIP, FIP, Revive, Nuisance, Homelessness, Software/Tech Operating fees and services). |

| 41 | DEPARTMENT LINE ITEMS | FY 22 | FY 23 | FY23 Thru Dec. | FY24 Approved | FY24 REV#1 | FY24 REV#2 | NOTES AND EXPLANATIONS |
|---|---|---|---|---|---|---|---|---|
| 371 | Transfers to Capital Reserve - ONE TIME FUNDING | $ - | $ - | $ - | - | 1,500,000 | 1,500,000 | One time transfer to Capital Reserve to fund high priority projects and satisfy grant matches |
| 372 | Transfers to Capital Reserve - Repaving | $ 129,567 | $ 125,000 | $ 121,869 | 130,000 | 130,000 | 130,000 | Monthly Street Fee Remittance from CTUB is xfrd to Capital Reserve for future street repaving expenditures |
| 373 | Transfers Out - Primarily Parks & Rec | $ 128,400 | $ 126,500 | $ 135,071 | 112,500 | 112,500 | 112,500 | Beginning in FY20, appropriations includes hotel/motel tax, plus additional money to support parks programming ($37.5K proposed supplemental for FY24). |
| 374 | **Total Transfers** | **$ 1,310,430** | **$ 869,000** | **$ 1,243,275** | **818,180** | **2,318,180** | **2,318,180** | |
| 375 | | | | | | | | |
| 376 | **General Government - 975** | **FY22 Actual** | **FY23 Approved** | **Thru Jun'23** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Notes and Explanations** |
| 377 | Contributions | $ - | $ 2,342,544 | $ - | 2,342,544 | - | - | $1.5 million transfer to Capital Reserve (line item 371), with remaining $842K moved to community contributions to fund round two awardees and placehold until further expenditures identified |
| 378 | **Total General Government** | **$ -** | **$ 2,342,544** | **$ -** | **$ 2,342,544** | **$ -** | **$ -** | |
| 379 | | | | | | | | |
| 380 | | **FY22 Actual** | **FY 23 Approved 5-15-2023** | **FY23 Thru June 30 2023** | **FY24 Approved** | **FY24 REV#1** | **FY24 REV#2** | **Provides for comparable year-over-year comparision of operating costs** |
| 381 | **Total Expenses** | **$ 6,752,740** | **$ 9,135,224** | **$ 6,151,540** | **$ 9,349,514** | **$ 9,569,521** | **$ 9,569,521** | |
| 382 | | | | | | | | |
| 383 | **Surplus or Deficit** | $ 1,860,698 | $ 536,464 | $ 3,542,780 | $ 119,097 | 299,326 | 299,325 | |
| | | | | | | | | |
| | | | | | | | 0 | |

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1044: Augustine Avenue Trail Phase 3 - Design Options

**ATTACHMENTS:**

- Augustine Trail Packet for Council 11_20_2023.pdf

# COUNCIL/COMMUNITY INPUT ON SCOPE FOR "PHASE 3" OF AUGUSTINE TRAIL

**Presentation to Council on 11/20/2024, Matt Ward, Sustainable Strategies DC**

## SCOPE OF 3 PHASES OF AUGUSTINE TRAIL

- Phase 1 is a 10-ft wide asphalt trail (in some places more narrow) on west side of Augustine Avenue, from Perry Drive to Page-Jackson Boulevard
- Phase 2 is 10-foot trail on west side of Augustine from Perry Drive to the existing sidewalk at Hilldale Shopping Center, and from Page-Jackson Boulevard to Washington Patriots Drive at high school
- Phase 3 is to be determined, but must have physical and functional connectivity to Phases 1 & 2

## STATUS OF AUGUSTINE TRAIL

1.) **Funding:**

**Design & Engineering**

- $125,000 in 2017 "Transportation Alternative Program" (TAP) grant from West Virginia Division of Highways (WVDOH) including 20% local match, for **design and engineering of Phases 1 and 2** of Trail
- Phase 3 design will not be funded by this amount – must allocate additional to Alpha Engineering

**Construction of Phase 1**

- $700,0000 ($560,000 TAP Grant plus $140,000 match) for **construction of Phase 1**
- Phase 1 cost estimates have come in at $246,866.27 over the available funding, at $946,866.27. WVDOH says that it is highly likely that it will cover 80% or $197,493 of this cost, with the remaining $49,373.25 to be provided by the City.

**Construction of Phase 2**

- Phase 2 is nearing completion of design/engineering. Cost estimate for construction of Phase 2 = $678,880.75

**Earmark**

- Senators Manchin and Capito provided a $1,400,000 Federal Highway Administration earmark in the FY23 budget. Charles Town must provide a 20% match, or $350,000, for a **total fund of $1,750,000**

**Perry Fields Trail should be considered part of the Augustine Trail**

- The Perry Fields Trail or "CTUB Trail" will connect Augustine Avenue at the Perry Pond bridge, behind the Hilldale Shopping Center through Perry Fields Park, up to W. Washington Street, and should be considered part of the Augustine Trail, for purposes of project management, trail connectivity and consistency, community public relations, and potentially as funding match for required earmark match. This trail segment adds $180,000 in funding and $180,000 in cost to the project.

**Potential Extra Funding**

- Note that cost estimates are not bids of selected construction vendors – we don't know the real cost until bids come in. It is possible, but not guaranteed, that WVDOH will cover 80% of cost excess bid amounts.
- With a total pot of funding of $3,001,866 (TAP grants plus matches, earmark plus match, assumed 80% coverage of the Phase 1 overrun by WVDOH plus local match, and CTUB Trail), and a total estimated cost of $1.930,747 (design and engineering of Phases 1 & 2, Phase 1 construction, Phase 2 construction, CTUB Trail), it is **possible that Charles Town could have an excess of funding as much as $1,071,119.**
  - Design & engineering will need to be included in this budget, assume 12%. WVDOH will likely require addition of 13% for their oversight. That 25% reduction = $803,250 for construction

2.) **Timing:**

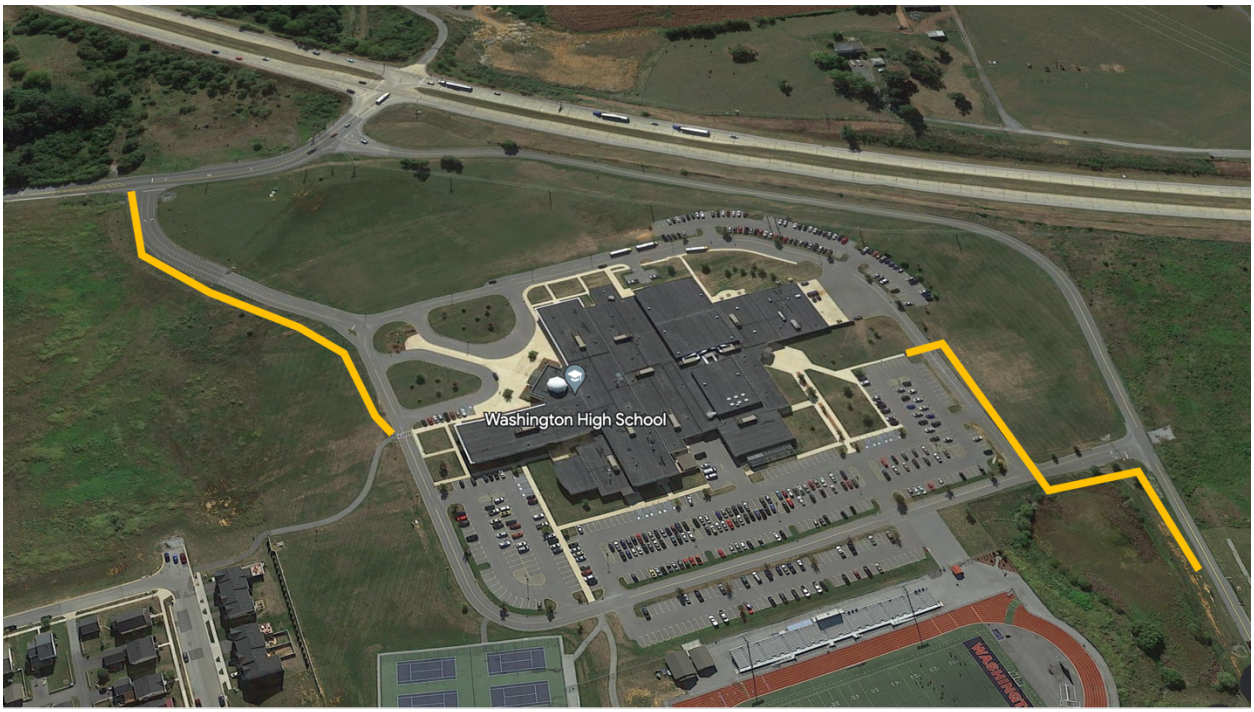
- Phase 1 ready for bidding in February-April 2024 timeframe, and ready for groundbreaking Spring 2024
- Phase 2 could take as long as Fall 2024 for construction
- **Now is the time for the Council to give direction to Alpha Engineering and WVDOH on what it might like to see in the Phase 3 design, with as much as $1.071 million in funding available.**
  - And, you should decide whether and how you will gather input from the community and potentially impacted neighborhoods/businesses, via web surveys, town hall meetings, and direct neighbor engagement

**Requested Action:** Determine Phase 3 priority components (including any process for community input), give task orders to Alpha Engineering for initial design and cost estimation on Phase 3, make decisions based on cost estimation on what to fully design and engineer to get ready for future Phase 3 construction.

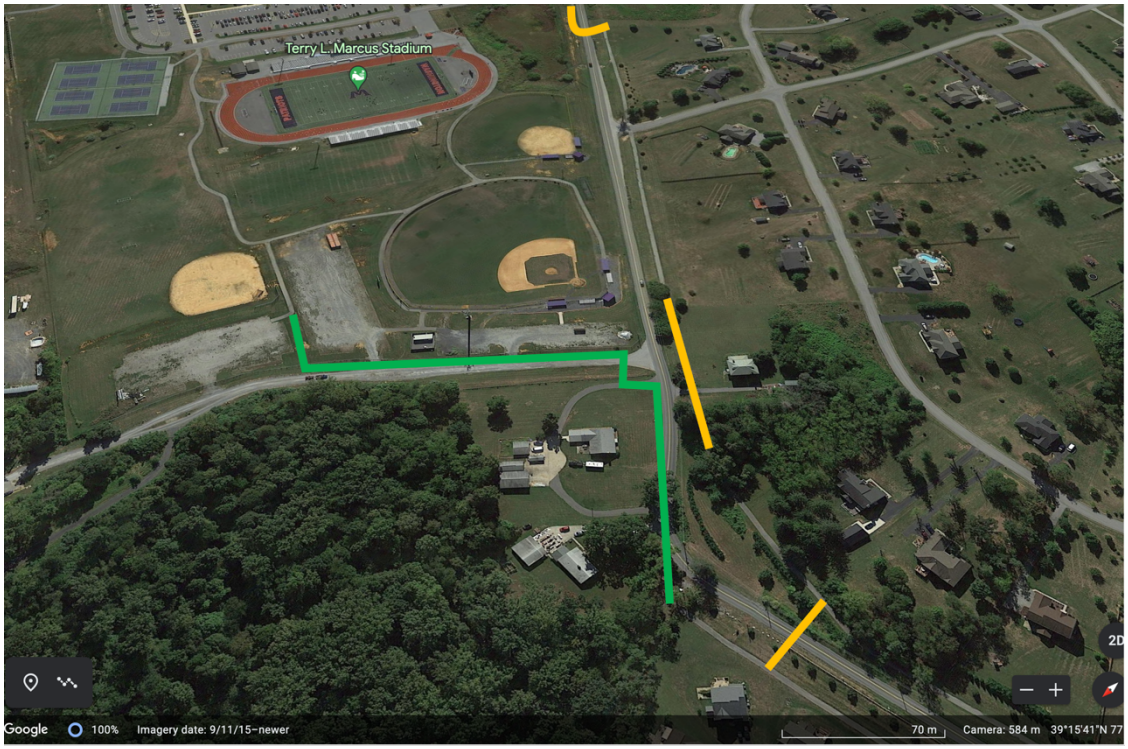
## Potential Options for Phase 3 of Augustine Trail

* Note that all additions in Phase 3 must be physically and functionally connected to the Augustine Trail Phases 1 & 2

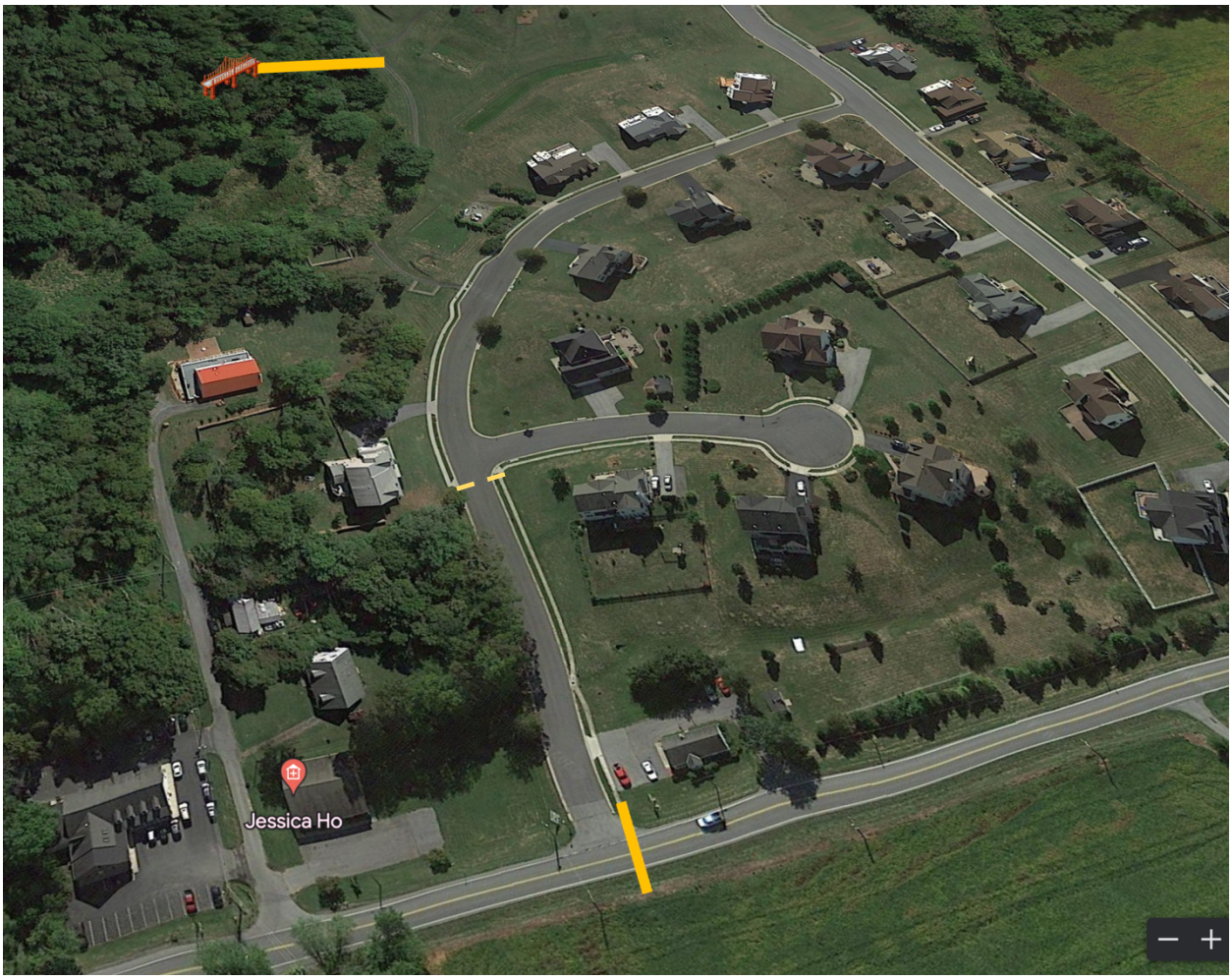
**Option 3-A:** Connect the Phase 2 trail to the existing sidewalk system internal to Washington High, primarily via a new sidewalk or trail up Patriot Way, and then potentially on the back side to Huyett Road:




Also, there are two stubbed off "worm" sidewalk facilities fronting the Spruce Hill and Spruce Hill North neighborhoods, preventing connectivity between Washington High and those neighborhoods, including around a dangerous curve for pedestrians/cyclists on Huyett Road past the baseball field. These worms could be connected up. Two different approaches in two different colors below:



**Option 3-B:** Connect the Augustine Trail to the Happy Retreat park and community center, via a crosswalk across Augustine at Perry Drive (already part of Phase 1) which connects to existing sidewalks within the Craighill Estates development, which connect via an existing trail in the municipal park at the gravesite of Charles and Mildred Washington and family. Near the grave along this existing trail, we would build a short trail spoke (most likely a boardwalk-type structure) to a new pedestrian bridge that crosses the Evitts Run Creek and hooks up to the existing trail system in the 12-acre Happy Retreat city park. See:




Note that Happy Retreat has worked with engineers and experienced pedestrian bridge buildings to identify the best approach to a bridge. We have an engineer and developer who is willing to conduct the project, and has suggested ~$25,000 can accomplish the bridge component of the task. Alpha Engineering provided a cost estimate that was substantially higher. There is merit in deciding now to proceed with City-budgeted funds for this bridge, and not using the earmark.

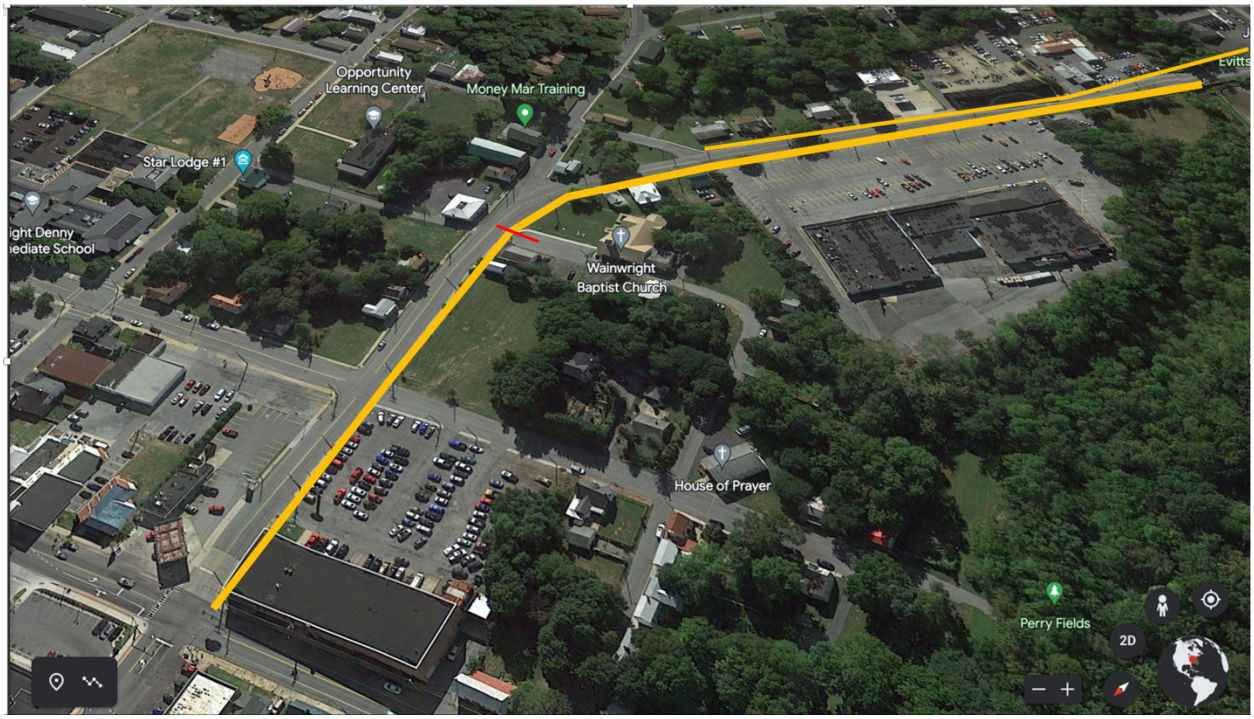
**Option 3-C:** Bridge and Trail connectivity in Evitts Run Park & Skate Park. This could be enhanced through a pedestrian bridge across Evitts Run Creek to the stubbed area on N. West Street, with a trail enhancement into the Skate Park. Another feature could be the improvement of the rail underpass below the tracks, with stairs, rails, lighting or other improvements, to connect the Skate Park to the Ranson Civic Center / Community Gardens. This assumes connectivity to Augustine Avenue after WVDOH builds crosswalk across W. Washington Street to Evitts Run Park as part of that improvement project.






**<u>Option 3-D:</u>** Deal with the degraded sidewalk and streetscape (no street trees, no street furniture, etc.) on the north end of Augustine Avenue from the termination of Phase 2 to some point closer to downtown. The streetscape would include new and upgraded sidewalks, street trees, lighting, crosswalks, or other improvements.

- On the west side of Augustine Avenue from the terminus of Phase 2 to W. Avis Street is 557 feet
- Add in the west side of Augustine Avenue from Avis Street to W. Washington Street is an additional 634 feet
- Add in the east side of Augustine Avenue from Creamery Place to W. Academy Street is an additional 1015 feet
- Add those three stretches together = 2200 linear feet.



**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1045: Charles Washington Hall - Historic Tax Credit Investor Eligible for Exit

**ATTACHMENTS:**

- [Executable] CWH Assignment and Assumption Agreement 10-11-23 (002)(18310020.3 SJDOCS).pdf
- CW.Manager.OA.executed.pdf
- First.Amendment.CW.Landlord.OA.pdf
- Executed Option Agreement.PDF
- Executed Ground Lease.PDF
- Executed Development Services Agreement.PDF
- Executed Guaranty.PDF
- Executed First Amendment to Lease.PDF
- Executed Contribution Agreement.PDF
- Executed Landlord Operating Agreement.PDF

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "***Agreement***"), memorialized on this __ day of November, 2023, is made and entered into by and among CHARLES WASHINGTON HALL LANDLORD, LLC, a West Virginia limited liability company (the "***Company***"), SINCLAIR GILLESPIE, an individual residing in the State of North Carolina ("***Seller***"), and CHARLES WASHINGTON HALL MANAGER, LLC, a West Virginia limited liability company (the "***Purchaser***").

## RECITALS:

A. The Company is governed by its Operating Agreement, dated as of December 21, 2016 and its First Amendment dated as of April 18, 2017 (collectively, the "Operating Agreement"), pursuant to which the Purchaser is the managing member of the Company and the Seller is the investor member of the Company.

B. The Company has rehabilitated that certain real property located in Charles Town, West Virginia ("the Property") in a manner that qualifies for the federal historic rehabilitation tax credit (the "Federal Historic Tax Credit") described in Section 47 of the Internal Revenue Code of 1986, as amended (the "Code").

D. The Purchaser's interest in the Property is encumbered by various mortgage loans ("Mortgage Indebtedness").

E. The Seller has received or been allocated by the Company certain federal historic rehabilitation tax credits under Section 47 of the Internal Revenue Code (the "Tax Credits").

F. The Seller desires to transfer and convey all of its right, title, and interest in and to the Company as an investor member to the Purchaser, and the Purchaser desires to acquire the Company Interests (as defined below). The Purchaser and the Seller would not enter into this Agreement but for the representations, warranties, and covenants of the parties as set forth herein.

G. Certain obligations to Seller are guaranteed pursuant to the Operating Agreement and that certain Unconditional Guaranty of Certain Obligations dated as of December 21, 2016 (the "Guaranty Agreement").

NOW, THEREFORE, in consideration of the foregoing recitals, the undertaking of the parties set forth herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## AGREEMENT

**Section 1. Assignment and Assumption**. Except as otherwise provided in this Agreement, the Seller hereby sells, transfers, conveys, and assigns to the Purchaser, effective upon satisfaction of the conditions set forth in Section 4, all of its right, title, and interest in the Company and all of its rights under the Operating Agreement, including, without limitation, (a) all rights of

the Seller to receive moneys, fees, distributions, and other property or assets due and/or to become due to the Seller under the Operating Agreement and all other agreements or instruments relating to the Property or under which the Company is bound (collectively, "Property Documents") and (b) all rights of the Seller to compel performance, vote, or otherwise exercise all remedies under the Operating Agreement and other Property Documents (collectively, the "Company Interests"). The Purchaser hereby acquires the Company Interests effective as of the Closing Date and assumes all obligations of the Seller under the Operating Agreement and related documents.

**Section 2. Price and Payment**. The Purchaser shall pay or cause to be paid to the Seller the amount of twenty-five thousand and 00/100 dollars ($25,000) (the "Agreed Value") on the Closing Date. Each party shall pay or cause to be paid all of its closing costs and legal fees associated with this Agreement. The Agreed Value, together with other agreements and covenants of the Purchaser and the Company set forth herein, including but not limited to, the agreement to indemnify and hold the Seller harmless from any Mortgage Indebtedness and other liabilities of the Company and/or the Purchaser, and any additional payment should closing occur after the Closing Date, shall constitute payment in full for the Company Interests and the parties agree that Purchaser owes no other obligation to Seller.

**Section 3. Withdrawal**. The Seller hereby withdraws from the Company effective on the Closing Date. Except as provided herein, from and after the Closing Date, neither the Seller nor its affiliates, members, directors, officers, employees, designees, assignees, or beneficiaries shall have any right to any distributions, allocations, or other payments or benefits from the Company or its members nor shall they have the right to the return of any capital contributions or advances. The execution hereof shall constitute the consent of the Company and the Seller to the assignment and withdrawal by the Seller.

**Section 4. Closing Date; Closing Conditions**. Subject to the conditions set forth in this Section 4 and each of the other conditions set forth in this Agreement, the closing shall be effective as of January 1, 2023 (the "Effective Date"). Simultaneously with the execution of this Agreement (such date being the "Closing Date"), Purchaser shall provide Seller with (a) the Agreed Value in immediately available funds and (b) executed signatures by each of the parties to this Agreement.

**Section 5. Mutual Release and Discharge**. Except as otherwise provided herein, (a) the Purchaser and the Company hereby release and forever discharge the Seller and each of its past and future partners (general or limited), shareholders, affiliates, members, directors, officers, employees, designees, assignees, and beneficiaries, and (b) the Seller hereby releases and forever discharges the Purchaser and the Company and each of their respective past and future partners (general or limited), shareholders, affiliates, members, directors, officers, employees, designees, assignees, and beneficiaries from any and all claims, demands, damages, losses, liabilities, actions, causes of action, or suits of any kind or nature whatsoever, arising from or relating in any way to (i) the Company and the operation and activities thereof of the Company, (ii) the Operating Agreement and each of the other documents executed in connection with the Operating Agreement (other than the survival of the Compliance and/or Recapture Provisions of the Operating Agreement described in Section 8 of this Agreement) and (iii) any advances, capital contributions, or loans made to, or to be made to, the Company, including without limitation any future Capital Contributions (as defined in the Operating Agreement); provided, however, that each party

remains responsible for any claims, demands, actions, losses, or damages arising or resulting from the terms and conditions of this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, the Seller will retain all of its rights, indemnities, privileges, and immunities as an investor member that were available to it under the Operating Agreement immediately prior to the Closing Date and, which by their terms, survive the withdrawal of the Seller from the Company. To avoid any doubt, any and all voting or approval rights of an investor member related to the Company's operations shall not survive the withdrawal of the Seller from the Company. Each party represents that it has not assigned or transferred any claim that is the subject of the release in the preceding sentence.

The Guaranty Agreement and all guarantees from the Operating Agreement shall remain in effect with respect to any obligation arising or event occurring prior to the Closing Date, as well as any provisions of the Operating Agreement referred to in Section 8 of this Agreement, and shall not be terminated or extinguished regardless of the date on which such obligation is discovered.

**Section 6. Representations, Warranties, and Covenants of the Purchaser and the Company; Indemnification**.

(a) ***Representations, Warranties, and Covenants***. The Purchaser and the Company, each represent, warrant, and covenant to the Seller, as to itself, as follows:

(i) Each of the Purchaser and Company are each duly organized, validly existing and in good standing under the laws of the State of West Virginia, and each has the right, power, legal capacity, and authority to execute and enter into this Agreement and to execute all other documents and perform all other acts as may be necessary in connection with the performance of this Agreement.

(ii) Each of the Purchaser and Company represent, warrant, and covenant that the execution, delivery, and performance of this Agreement do not and will not contravene or conflict with any law, order, rule, regulation, writ, injunction, or decree now in effect of any government, governmental instrumentality, or court or tribunal having jurisdiction over it or any contractual restriction binding on or affecting it, or there are no facts or circumstances of any kind or nature whatsoever of which it is aware that could in any way impair or prevent it from performing its obligations under this Agreement.

(iii) Each of the Purchaser and Company has made such investigation of the facts pertaining to this Agreement, and all of the matters pertaining thereto, as it deems necessary and has received independent tax and legal advice from attorneys of its choice with respect to the advisability of executing this Agreement.

(iv) Except as expressly provided herein, no person has made any statement or representation to the Purchaser or Company regarding any fact relied upon by it in entering into this Agreement, and none of them specifically does not rely upon any statement, representation or promise of any other person in executing this Agreement.

(v) On or before ninety days (90) days after the Effective Date (subject to extension in the reasonable discretion of the Seller), Purchaser shall have caused to be prepared and delivered to the Seller, at no expense to the Seller, the Company's final 2023 federal, state, and local tax return(s) for the period of Seller's ownership and all accompanying schedules and account work papers. All such tax returns shall be prepared based on a closing of the Company's books as of the Closing Date. At no cost to Seller, Company shall provide Seller, within sixty days after the calendar year end, a final IRS form K-1 for the 2023 tax year, showing no allocation of income, gain or loss for the 2023 tax year.

(vi) The Purchaser represents that it is acquiring the Company Interests for its own account, for investment, and not with a view toward the resale or distribution thereof in violation of applicable securities laws.

(vii) The Purchaser understands that the Company Interests are not registered under the Securities Act of 1933, as amended (the "Securities Act"), or any applicable state securities laws, and may not be resold unless subsequently registered under the Securities Act and such other laws or unless an exemption from such registration is available.

(viii) The Purchaser has the ability to bear the economic risks of the investment in the Company Interests for an indefinite period of time. The Purchaser further acknowledges that it has reviewed the Operating Agreement and has had the opportunity to ask questions of, and receive answers from, Seller with respect to the Company Interests and the business and financial condition of the Company and to obtain additional information necessary to verify such information. Except as expressly provided herein, neither the Seller nor any of its members, partners, employees, officers, or agents have made any statements or representations to the Purchaser, or any of its employees, members, partners, agents, or affiliates, that have been relied upon by the Purchaser in executing this Agreement.

(ix) The Purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the Company Interests.

(x) No state or local transfer tax, excise tax, or similar tax will arise, accrue, or be payable by any party as a result of any of the transactions contemplated by this Agreement, including but not limited to the transfer of the interests of the Seller.

(xi) The Purchaser and Company shall promptly notify the Seller upon learning of any breach or violation of any of the provisions of this Agreement and, as of the Closing Date, it has no knowledge of any Tax Credit Recapture Event (as defined in the Operating Agreement), any existing or threatened IRS audit of the Company or any other violation of or default under the Operating Agreement.

(xii) The Purchaser is not a "foreign person" or a "foreign partnership" or a "foreign corporation," as those terms are defined in Section 7701 of the Code.

(xiii) Notwithstanding anything contained in this Agreement to the contrary, the Purchaser acknowledges and agrees that the Company and/or the Purchaser has or will obtain all approvals and/or consents (the "Approvals"), on their behalf, in such form as may be acceptable to the Seller, that are or may be deemed to be necessary to effectuate the transaction contemplated herein (including any required approval of any lenders). The Purchaser shall use commercially reasonable efforts to obtain the Approvals in a timely manner.

(xiv) On and after the Closing Date, the Seller shall have no further obligations to Purchaser (or any of its members or affiliates) or to the Company or any of its members with respect to any purchase option or right of first refusal or other matter, whether set forth in the Operating Agreement, the Purchase Option Agreement dated as of December 21, 2016, or otherwise.

(b) ***Indemnification***. To the fullest extent permissible under applicable law, the Purchaser and the Company shall jointly and severally indemnify, defend, and hold harmless the Seller and its past and future partners (general or limited), shareholders, affiliates, members, directors, officers, employees, assignees, and beneficiaries (the "Seller Entities") from and against, and shall upon demand reimburse the Seller Entities for, any and all losses, claims, liabilities, damages, injunctive relief, injuries to person, property, or natural resources, costs, actions, or causes of action, fines, penalties, judgments, taxes, charges, assessments, damages (including consequential damages suffered by a third-party claimant), costs, and expenses (including reasonable attorneys' fees and expenses), of every kind and nature whatsoever, whether direct or indirect, whenever arising, realized, suffered, or incurred by or imposed upon the Seller Entities arising in whole or in part from (i) the breach of any of the representations, warranties, or covenants of this Section 6 or any other provision of this Agreement, (ii) the failure, whether by Company or, to the extent Purchaser is otherwise directly liable therefor, by Purchaser, to pay and discharge all obligations and liabilities of the Company, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, or any claim made by any secured or unsecured creditor of the Company or the Purchaser seeking to hold the Seller liable for any amounts owed by the Company or the Purchaser, including but not limited to, any claim that would require the Seller Entities to repay or return all or any part of the Agreed Value, (iii) the development, ownership, operation, or activities of the Property or the Company whether occurring prior to, or on or after the Closing Date, (iv) any act or failure to act of the Purchaser or the Company with respect to the Property or Company, whether occurring prior to, or on or after, the Closing Date, and (v) the failure to obtain the consent of any lender or agency whose consent is required to the assignment and assumption of the Company Interests from the Seller to the Purchaser or to any other provision of this Agreement.

**Section 7. Representations, Warranties, and Covenants of the Seller; Indemnification**.

(a) ***Representations, Warranties, and Covenants***. The Seller represents, warrants, and covenants to the Purchaser and the Company as follows:

(i) The Seller (A) has the right, power, legal capacity, and authority to execute and enter into this Agreement, having received all consents from its affiliates needed in connection with the transaction contemplated by this Agreement, and to execute all other documents and perform all other acts as may be necessary in connection with the performance of this Agreement, and (B) has the full power, capacity, authority, and the unrestricted right to convey, transfer, and assign the Company Interests pursuant hereto, other than restrictions that may be imposed under the Operating Agreement and by any secured or mortgage loan indebtedness encumbering the Property and recorded regulatory or similar agreements.

(ii) The execution, delivery, and performance of this Agreement by the Seller does not and will not contravene or conflict with any law, order, rule, regulation, writ, injunction, or decree now in effect of any government, governmental instrumentality, or court or tribunal having jurisdiction over it or any contractual restriction binding on or affecting it, or there are no facts or circumstances of any kind or nature whatsoever of which it is aware that could in any way impair or prevent it from performing its obligations under this Agreement.

(iii) The Seller owns its Company Interests free and clear of all mortgages, pledges, liens, security interests, claims, rights of first refusal, covenants, or any other restrictions (other than restrictions that may be imposed by any secured or mortgage loan indebtedness encumbering the Property and recorded regulatory or similar agreements), and has the legal capacity to transfer ownership of its Company Interests to Purchaser as contemplated hereby.

(iv) The Seller shall promptly notify the Purchaser of any breach or violation of any of the provisions of this Section 7.

(v) Notwithstanding anything contained in this Agreement to the contrary, the Seller, in its capacity as a member of the Company, hereby approves, agree, and consents to the Company entering this Agreement and performing its obligations herein and otherwise as reasonably necessary to consummate the transaction contemplated herein.

(vi) Except to the extent expressly provided otherwise herein, on and after the Closing Date, the Purchaser shall have no further obligations to the Seller or any of its heirs, successors, or assigns with respect to any purchase option or right of first refusal or other matter, whether set forth in the Operating Agreement, the Purchase Option Agreement dated as of December 21, 2016, or otherwise.

**Section 8. Continuing Tax Credit Recapture Liability**. Notwithstanding (a) the execution of this Agreement, (b) the withdrawal of the Seller from the Company, and/or (c) any future dissolution or termination of the Company, the provisions of the Operating Agreement

relating to a Tax Credit Recapture Event and any ancillary or related provisions of the Operating Agreement or any related guaranty and indemnity that may be necessary to interpret or enforce such provisions of the Operating Agreement (collectively, the "Compliance and/or Recapture Provisions") shall survive and remain fully enforceable by the Seller (its successors and assigns and its members) against the Purchaser and its successors and assigns, for so long as the IRS may be legally permitted to assess tax liability against the Seller (its successors and assigns and its members) in connection with a Tax Credit recapture. The Compliance and/or Recapture Provisions are hereby incorporated as a part of this Agreement.

**Section 9. Reports and Notices; Record Retention and Review**.

(a) ***Reports and Notices***. Each party shall promptly notify the other parties in writing of any event or circumstance which might reasonably result in a Tax Credit recapture and, without limitation, shall promptly deliver to the other parties copies of (i) all notices, reports, inquiries, correspondence, and other documents delivered to or received from the IRS or any other party with respect to matters of Tax Credit compliance; and (ii) any letter or notice of audit, inquiry, or investigation from the IRS or other regulatory or governmental body which pertains to matters of Tax Credit compliance and copies of all subsequent correspondence with respect to such audit, inquiry, or investigation.

(b) ***Record Retention and Review***. The Company, and in the event of the dissolution of the Company, the Purchaser, shall retain all Tax Credit records for at least six years after the due date (with extensions) for filing the federal income tax return for the year of the sale of the Seller's interest. Upon reasonable notice to the Company and the Purchaser, the Seller, at its sole cost and expense, shall have the right to review and obtain copies of all such records, together with any other books and records relating to the operation of the Company or the Property prior to the Closing Date which are in the possession or control of the Company or the Purchaser.

**Section 10. Miscellaneous**.

(a) ***Costs and Attorneys' Fees***. Each party shall be responsible for its own costs and attorneys' fees, regardless of which party is the prevailing party in any dispute. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST EACH OTHER PARTY HERETO, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY OTHER AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(b) ***Notices***. All notices, demands, or other communications hereunder shall be in writing and either (i) delivered by a nationally recognized overnight courier service, service prepaid and with written acknowledgement of receipt required, with notice so delivered deemed given and received on the date indicated on such acknowledgement of receipt or (ii) delivered personally with receipt thereof signed and dated by an authorized

signatory, with notice so delivered deemed given and received on the date indicated on such receipt, in each case addressed to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to other parties:

| | |
|---|---|
| If to the Seller: | Sinclair Gillespie<br>4312 Foxcroft Road<br>Charlotte, NC 28211 |
| With copies to: | Frank T. Ellett<br>3752 Brandon Avenue<br>Roanoke, VA 24018<br><br>Woods Rogers PLC<br>10 South Jefferson Street<br>Roanoke, VA 24011<br>Attn: Neil V. Birkhoff<br>E-mail: Birkhoff@woodsrogers.com |
| If to the Purchaser, Company, or Guarantor: | Charles Washington Hall Manager, LLC<br>P.O. Box 14<br>Charles Town, WV 25414<br>Attn: John Nissel<br>E-mail: jnissel@charlestownwv.us |
| With copies to: | Brian Wishneff & Associates<br>30 W. Franklin Road, Suite 503<br>Roanoke, VA 24011<br>Attn: Erik Wishneff<br>E-mail: erik@wishneff.com<br><br>Spencer Fane, LLP<br>1 N. Brentwood Blvd, Suite 1000<br>St. Louis, MO 63105<br>Attn: Carl Desenberg, Esq.<br>E-mail: cdesenberg@spencerfane.com |

(c) ***Entire Agreement***. This Agreement constitutes the entire agreement among the parties and supersedes any prior agreement or understanding among them respecting the subject matter of this Agreement.

(d) ***Consents and Approvals***. Under any circumstance in which a provision of this Agreement requires or otherwise contemplates the approval, consent, election, requirement, or determination of the Seller with respect to any matter, except as otherwise expressly set forth herein, such approval, consent, election, requirement, or determination shall be at the sole and absolute discretion of the Seller and shall be effective only if given or made in writing, unless otherwise expressly provided to the contrary in this Agreement.

(e) ***Headings***. All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any Article or Section.

(f) ***Saving Clause***. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, neither the remainder of this Agreement nor the application of such provision to persons or circumstances other than those as to which it is held invalid shall be affected thereby.

(g) ***Pronouns and Plurals***. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

(h) ***Binding Agreement***. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, assigns, legal representatives, and personal representatives, except as otherwise provided herein, provided the Purchaser, Guarantor, or the Company shall not be permitted to assign any of its recapture obligations or delegate any of its duties under this Agreement without the prior written consent of the Seller.

(i) ***Counterparts***. This Agreement may be executed in several counterparts, including counterparts delivered in electronic format, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatory to the original or the same counterpart. Any counterpart which has attached to it separate signature pages, which altogether contain the signatures of all parties whose signature thereon are required, shall for all purposes be deemed a fully executed instrument.

(j) ***Defined Terms***. Terms not otherwise defined in this Agreement shall have the meanings set forth in the Operating Agreement.

(k) ***Governing Law***. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia without regard to the conflict of law provisions of West Virginia law. Each of the undersigned irrevocably (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any of the transactions contemplated hereby shall be brought in the courts of the State of West Virginia or the district courts of the United States of America for the State of West Virginia, (ii) consents to the jurisdiction of each such court in any suit, action or proceeding and (iii) waives any objection which he or it may have to the laying of venue of any such suit, action or proceeding in each of such courts.

(l) ***"As Is" Acquisition of the Interest***. Notwithstanding any other terms and conditions of the Agreement, except as set forth in Section 7 of this Agreement, the Seller disclaims the making of any representations or warranties, express or implied, regarding the Company, the Purchaser, Guarantor, the Company Interests, matters affecting the Company, the Company Interests, or the Property, including, without limitation, the physical condition of the Property, title to or boundaries of the Property, pest control matters, soil condition, hazardous waste, toxic substances, or other environmental matters, compliance with building, health, safety, land use and zoning laws, regulations and orders,

structural and other engineering characteristics, traffic patterns, and all other information pertaining to the Property. The Purchaser, moreover, acknowledges, represents, and warrants to the Seller, (i) that it is a sophisticated investor, knowledgeable and experienced in the financial and business risks attendant to an investment in real property of this type and subject to restrictions of Section 47 of the Internal Revenue Code, (ii) it is capable of evaluating the merits and risks of entering into this Agreement and acquiring ownership of a portion of the Property (through the acquisition of the Company Interests), (iii) that it has entered into this Agreement with the intention of making and relying upon its own (or its experts') investigation of the physical, environmental, economic and legal condition of the Property, including, without limitation, the compliance of the Property with laws and governmental regulations and (iv) except as specifically set forth in this Agreement, that it is not relying upon any representations and warranties made by the Seller or anyone acting or claiming to act on its behalf concerning the Company, the Purchaser, the Guarantor, the Company Interests or the Property, except as explicitly provided in this Agreement. The Purchaser further acknowledges that it has not received from the Seller any accounting, tax, legal architectural, engineering, property management, or other advice with respect to this transaction and is relying upon the advice of its own accounting, tax, legal, architectural, engineering, property management, and other advisors. The Purchaser assumes the risk that adverse physical, environmental, economic, or other legal conditions may not have been revealed by its investigations. The Seller is not required to make any disclosure not otherwise required in the Agreement. The Seller shall have no liability for any subsequently discovered defects, whether latent or patent. THE PURCHASER HEREBY ACKNOWLEDGES THAT IT IS PURCHASING A PORTION OF THE PROPERTY (THROUGH THE ACQUISITION OF THE COMPANY INTERESTS) "AS IS," "WITH ALL FAULTS" AND WITH A FULL AND COMPLETE ASSUMPTION OF ANY AND ALL RISKS AND LIABILITIES ARISING OUT OF THE ACQUISITION AND OWNERSHIP OF THE PROPERTY WITH NO RECOURSE WHATSOEVER AGAINST THE SELLER OR ANY OF ITS OFFICERS, EXCEPT AS EXPLICITLY PROVIDED TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT.

(m) ***Additional Assurance***. The Seller and the Purchaser, at the Closing Date, or at any time or from time to time thereafter, upon request of either party, shall execute such additional instruments, documents or certificates as either party deems reasonably necessary to convey, assign, and transfer the interest to the Purchaser hereunder.

(n) ***No Broker or Finder***. The Seller and the Purchaser each hereby represent and warrant to the other that neither has dealt with any broker or finder in connection with the transaction contemplated hereby. The Seller and the Purchaser each hereby agree to indemnify, defend and hold the other harmless from any and all manner of claims, liabilities, loss, damage, attorneys' fees, and expenses, incurred by either party and arising out of, or resulting from, any claim by any broker or finder in contravention of its representation and warranty herein contained.

(o) ***Waiver of Jury Trial***. PURCHASER, COMPANY, GUARANTOR, AND SELLER HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY

JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS HEREIN.

(p) ***Confidentiality***. Purchaser and Seller shall consult with each other regarding any public announcement or statement with respect to this Agreement or the transactions contemplated hereby and no party shall issue any public announcement or other statement with respect to the existence of this Agreement or the transactions contemplated hereby without the prior consent of the other party, which shall not be unreasonably withheld, unless required by applicable law or regulation or order of a court of competent jurisdiction. After the Closing Date, the parties (i) shall maintain the confidentiality of all proprietary information relating to the Company and any assets owned by the Company, (ii) shall not, directly or indirectly, disclose or permit the disclosure of any such information (except as may be required by applicable law, rule, or regulation), (iii) shall not make any use of or permit the use of such information for the benefit of the parties and/or others, and (iv) shall maintain the confidentiality of this Agreement and the transactions hereunder.

(q) ***Time of Essence***. All times, wherever specified herein for the performance by the Seller or the Purchaser of their respective obligations hereunder, are of the essence of this Agreement.

**[SIGNATURES BEGIN ON NEXT PAGE]**

IN WITNESS WHEREOF, the Company has hereunto set its signature to this Assignment and Assumption Agreement as of the date first above written.

COMPANY:

**CHARLES WASHINGTON HALL LANDLORD, LLC**, a West Virginia limited liability company

**By: CHARLES WASHINGTON HALL MANAGER, LLC**, a West Virginia limited liability company, its Managing Member

By: CITY OF CHARLES TOWN, its sole member and manager

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Seller has hereunto set its signature to this Assignment and Assumption Agreement as of the date first above written.

SELLER:

**SINCLAIR GILLESPIE**, an individual residing in the state of North Carolina

_____

IN WITNESS WHEREOF, the Purchaser has hereunto set its signature to this Assignment and Assumption Agreement as of the date first above written.

PURCHASER:

**CHARLES WASHINGTON HALL MANAGER, LLC**
a West Virginia limited liability company

By: CITY OF CHARLES TOWN, its sole member and manager

By: _____

Name: _____

Title: _____

# OPERATING AGREEMENT

# OF

# CHARLES WASHINGTON HALL MANAGER, LLC,
# A WEST VIRGINIA LIMITED LIABILITY COMPANY

**OPERATING AGREEMENT OF**

**CHARLES WASHINGTON HALL MANAGER, LLC,**
**A WEST VIRGINIA LIMITED LIABILITY COMPANY**

THE LLC MEMBERSHIP INTERESTS REPRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF WEST VIRGINIA STATE, OR SIMILAR LAWS OR ACTS OF OTHER STATES IN RELIANCE UPON EXEMPTIONS FROM REGISTRATION UNDER SUCH ACTS. THESE LLC MEMBERSHIP INTERESTS HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE OFFERED FOR RESALE EXCEPT AS PROVIDED BY THE TERMS AND CONDITIONS OF THIS OPERATING AGREEMENT AND IN A TRANSACTION WHICH IS EITHER EXEMPT FROM REGISTRATION UNDER SUCH ACTS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACTS.

THIS OPERATING AGREEMENT ("***Agreement***") of Charles Washington Hall Manager, LLC, a West Virginia limited liability company ("***Company***") formed pursuant to the West Virginia Uniform Limited Liability Company Act, as amended (the "***Act***"), is made and entered into as of December 21, 2016, by and among the Company and the City of Charles Town, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia ("***Member***").

## ARTICLE I
## ORGANIZATION

**Section 1.1. Formation of the Company**. The Company was formed pursuant to Articles of Organization filed on November 10, 2016, with the West Virginia Secretary of State.

**Section 1.2. Name**. The herein defined Business of the Company shall be conducted solely under the name of Charles Washington Hall Manager, LLC, and such name shall be used at all times in connection therewith.

**Section 1.3. Term**. The term of the Company shall commence on the date of filing the Articles of Organization with the West Virginia Secretary of State, and shall expire on the date the Company is terminated, as provided in ARTICLE VII.

**Section 1.4. Purposes**. The character of the business of the Company and the purposes for which the Company is formed (the "***Business***") are:

(a) To hold interest in West Virginia limited liability companies engaged in the operation and management of commercial developments, and other real estate projects, including a market house with related ancillary uses such as a visitors center, a grocery, and a restaurant, and to serve as developer on real property rehabilitation projects;

(b) To conduct such other activities as may be necessary or appropriate to promote the aforesaid purposes and to conduct any other lawful business authorized by the Member and permitted by the Act or the laws of any jurisdiction in which the Company may be doing business.

The Company shall not engage in any activity other than the Business and no Member or Manager (as designated in Section 5.1 hereof) shall have any authority to hold themselves out as an agent of the Company in any activity other than the Business and then only in conformity with the provisions of this Agreement.

**Section 1.5. Principal Place of Business**. The principal place of business of the Company shall be at P.O. Box 14, Charles Town, West Virginia 25414, or such other location as may be hereafter determined by the Manager.

**Section 1.6. Registered Agent and Registered Office**. The Company's initial service of process address shall be Brian Wishneff & Associates, 30 W. Franklin Road, Suite 503, Roanoke, VA 24011. The Manager may change such registered agent and/or registered office, at any time, by making all appropriate filings.

**Section 1.7. Definitions**. As used herein, the following terms have the following meanings:

"***Agreement***" means this Operating Agreement, as amended from time to time as herein provided.

"***Business Property***" means all property, assets, and interests (whether real or personal, tangible or intangible) owned or held from time to time by the Company.

"***Code***" means the Internal Revenue Code of 1986, as amended from time to time.

"***Interest***" means a Member's rights to distributions to which such Member is entitled as provided in ARTICLE III and ARTICLE VII of this Agreement, together with the duties and obligations of such Member to comply with this Agreement.

"***Operating Proceeds***" for the applicable period means all gross cash receipts of the Company during such period less the following (to the extent not paid from reserves): (1) cash operating expenses, (2) interest and principal paid on any indebtedness of the Company, and (3) cash expenditures for capital improvements and other capital items.

"***Person***" means an individual, partnership, corporation, limited liability company, trust, or other association or entity.

**Section 1.8. Additional Definitions**. The definitions in Section 1.7 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The words "herein," "hereof," "hereunder," and similar terms shall refer to this Agreement, unless the context otherwise requires.

## ARTICLE II
## CAPITAL CONTRIBUTIONS

**Section 2.1. Initial Capital Contributions**. The Member shall initially contribute to the capital of the Company, in cash, property or services, the amount shown on **Exhibit A** attached hereto.

**Section 2.2. Additional Capital Contributions**. If the Member determines that the Company requires funds in addition to the initial capital contributions described in Section 2.1 for any

purpose incident to the conduct of the Business, the Member may, but is not required to, contribute such capital.

**Section 2.3. Failure to Contribute**. If the Member fails to make a capital contribution when required, the Company may, in addition to the other rights and remedies the Company may have under this Agreement or applicable law, take such enforcement action (including, the commencement and prosecution of court proceedings) against such Member as the Manager considers appropriate.

**Section 2.4. No Additional Capital Contributions**. Except as provided in the foregoing provisions of this ARTICLE II, the Member shall not be required to make any additional capital contributions or loans to the Company.

## ARTICLE III
## DISTRIBUTIONS

**Section 3.1. Distributions of Operating Proceeds**. All or part of the Company's Operating Proceeds may be distributed to the Member from time to time as determined by the Manager.

**Section 3.2. Distributions of Capital; No Interest on Capital Contributions**. Except as provided in the Act and in this Agreement, the Member shall not be entitled to withdraw or to receive distributions of or against the Member's capital contributions or be paid interest on any capital contribution.

## ARTICLE IV
## ACCOUNTING

**Section 4.1. Accounting Methods; Company Records.**

(a) The Company's books and records shall be prepared in accordance with generally accepted accounting principles, consistently applied. The Company shall be on the same method of accounting as that of the Member.

(b) The Manager shall cause the Company to comply with all record keeping requirements imposed by the Act.

**Section 4.2. Fiscal Year**. The fiscal year of the Company shall be the calendar year unless otherwise determined by the Manager.

**Section 4.3. Bank Accounts; Title to Business Property**. The funds of the Company shall be deposited in such bank accounts, or invested in such interest-bearing or non-interest-bearing investments in the Company's name, as shall be determined by the Manager. The funds of the Company shall not be commingled with the funds of any other Person and the Manager shall not employ, or permit or cause any other Person to employ, such funds in any manner except for the benefit of the Company. Title to the Business Property shall be held, and conveyances thereof shall be made, in the name of the Company.

**Section 4.4. Tax Status**. Any provision of this Agreement to the contrary notwithstanding, solely for federal and state income tax purposes, it is the Member's intention that the Company will be a limited liability company classified as a sole proprietorship for federal income tax purposes. In the event that additional Members are admitted, the classification of the Company shall then be determined by the Members.

## ARTICLE V
## POWERS, RIGHTS, AND DUTIES OF THE MEMBER AND THE MANAGER

**Section 5.1. Manager and Management Authority.**

(a) The business and affairs of the Company shall be managed under the direction and control of the Manager, who shall serve until removed by the Member in accordance with this ARTICLE V or until his, her, or its resignation. The Manager need not be a Member. The following individual shall serve as the initial Manager of the Company:

City of Charles Town

(b) Except as otherwise provided in this Agreement and in the Act, the Manager shall have the exclusive right, power, authority, and responsibility to manage and operate the business and affairs of the Company, to make all decisions with respect thereto and enter into transactions on behalf of the Company for carrying on the Business. The Manager may, in his/her/its discretion, designate the Member or other Person(s) to act alone in respect of any Company matter or determination. Unless otherwise so delegated by the Manager or as otherwise provided in this Agreement, the Member shall not have any right or power to act for or on behalf of the Company or make decisions with respect thereto.

(c) In addition to the limitations set forth elsewhere herein, the Manager shall not undertake or cause the Company to undertake any of the following without the consent of the Member.

(i) Amend this or any other written operating agreement of the Company;

(ii) Do any act in contravention of this Agreement;

(iii) Allow or cause the Member to possess Company property, or assign the Company's rights in specific Company property in trust for creditors, or on the assignee's promise to pay the debts of the Company, or for other purpose;

(iv) Admit additional or substitute Members to the Company;

(v) Change or reorganize the Company into any other legal form;

(vi) Cause the Company to engage in any business other than the Business or extend the scope of the Business, by implication or otherwise; or

(vii) Make any distribution of Business Property other than in accordance with ARTICLE III or ARTICLE VII.

**Section 5.2. Removal and Resignation of Manager.**

(a) The Member may remove the Manager without cause. The removal of the Manager without cause shall not act to bar a later claim that the Manager engaged in misconduct while serving as Manager of the Company.

(b) A Manager may resign for any reason or for no reason upon giving thirty (30) days prior written notice to the Member of such Manager's intent to resign.

(c) Upon the removal or resignation of a Manager, the Member shall elect a replacement for such removed or replaced Manager, who shall serve as Manager until otherwise removed or until such Manager resigns. Until such times as a replacement for such removed or resigned Manager has been elected by the Member, the affairs of the Company shall be managed by the Member of the Company.

**Section 5.3. Meetings and Voting by the Member**. Meetings of the Member shall be held upon the call of the Member at the Company's principal place of business, or at such other location a may be agreed upon by the Member.

**Section 5.4. Conflicts of Interest**.

(a) Neither the Member nor the Manager shall be required to devote its full time to their duties hereunder, but shall devote reasonable time and effort thereto.

(b) The Member and Manager may engage independently or with others in other business ventures of every nature and description. The Company shall have no right by virtue of this Agreement or the relationship created hereby in or to any other ventures or activities in which the Member or Manager is involved or to the income or proceeds derived therefrom. The pursuit of other ventures and activities by the Member or Manager, even if directly competitive with the Business is hereby consented to by the Company and shall not be deemed wrongful or improper. Neither the Member nor the Manager shall be obligated to present any particular business or investment opportunity to the Company even if such opportunity is of a character which, if presented to the Company, could be taken by the Company, and the Member or Manager, as the case may be, shall have the right to take for his/her/its own account, or to recommend to others, any such particular opportunity.

**Section 5.5. Liability and Indemnification of the Member**.

(a) The Member shall not be liable, responsible, or accountable in damages or otherwise to the Company for any action taken or failure to act on behalf of the Company.

(b) The Company shall, to the fullest extent permitted under the Act, indemnify and hold harmless the Member from any loss, damage, liability, or expense incurred or sustained by the Member by reason of any act performed or any omission for or on behalf of the Company or in furtherance of the interests of the Company, including any judgment, award, settlement, reasonable attorneys' fees, and other costs and expenses (which may be advanced by the Company) incurred in connection with the defense of any actual or threatened action, proceeding, or claim.

**Section 5.6. Compensation and Reimbursement of the Manager**. The Manager shall be reimbursed all reasonable expenses incurred in managing the Company and shall be entitled to a reasonable salary or other compensation for any service rendered to the Company.

**Section 5.7. Liability for Company Debts and Obligations**. The Member shall not be personally liable for any of the expenses, liabilities, or obligations of the Company except to the extent expressly provided in a written agreement executed by the Member evidencing the Member's agreement to be personally liable for such expense, liability, or obligation.

**Section 5.8. Transactions with the Member and the Manager**. The Company may enter into agreements with the Member to provide leasing, management, development, technical support, or

other services or to buy, sell, or lease assets to or from the Company. The validity of any transaction, agreement, or payment involving the Company and any Member otherwise permitted hereunder shall not be affected by reason of the relationship between such Person and the Company or any Member of the Company.

**Section 5.9. Liability and Indemnification of the Manager**. The Manager shall discharge his/her/its duties in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Manager reasonably believes to be in the best interests of the Company. The Manager shall be released from liability for damages and other monetary relief to the fullest extent permitted by the Act.

**Section 5.10. Duty to Inform Members of Secretary of State Filings**. In the event of filing of any documents with the West Virginia Secretary of State, such as an amendment of the articles of organization, a notice of winding up, or articles of termination, the Manager or other Person executing the same shall, deliver a copy of the filed document to the Member.

**Section 5.11. Duty to Keep Records at Principal Place of Business and Access Thereto**. The Manager shall cause the records of the Company to be kept at the principal place of business of the Company and shall provide the Member access thereto.

## ARTICLE VI
## TRANSFERS OF INTERESTS

The Member's Interest is transferable either voluntarily or by operation of law. The Member may, at the Member's discretion, dispose of all or a portion of the Member's Interest.

## ARTICLE VII
## DISSOLUTION OF THE COMPANY

**Section 7.1. Liquidation Events**. The Company shall be dissolved upon the earliest to occur of the following events (each a "***Liquidation Event***"):

(a) The Member's decision to dissolve the Company; or

(b) An event set forth in the Act requiring dissolution of the Company.

The death of a member shall NOT be considered a liquidation event.

**Section 7.2. Distribution of Proceeds on Dissolution; Winding Up; Reserves.**

(a) Upon the occurrence of a Liquidation Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and the Member, and neither the Member nor Manager shall take any action that is inconsistent with, or not necessary to or appropriate for, winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as Dissolution Proceeds (as defined below) have been distributed pursuant to this Section 7.2 and the Company has filed articles of dissolution.

(b) The Manager shall be responsible for overseeing the winding up and liquidation of the Company. As soon as reasonably practical after the occurrence of a Liquidation Event, the

Manager shall take such actions as are required under the Act to dispose or make provision for the known and unknown claims against the Company. The Manager shall take full account of the Company's liabilities and the Business Property, cause the Business Property to be liquidated as promptly as is consistent with obtaining the fair value thereof, and shall cause the proceeds therefrom and any other assets and funds of the Company (collectively, the "***Dissolution Proceeds***"), to the extent sufficient therefor, to be applied and distributed in the following order:

(i) First, to the payment of all unpaid secured indebtedness of the Company to the extent of the lesser of the value of the secured property or the amount of the secured indebtedness;

(ii) Second, to the payment of the Company's remaining indebtedness including indebtedness to the Member (excluding liabilities for distributions to the Member) but if the amount available therefor shall be insufficient, then *pro rata* on account thereof; and

(iii) Third, the balance, if any, less such reserves ("***Dissolution Reserves***") as the Manager reasonably determines are necessary or appropriate for anticipated or contingent expenses of the Company, shall be distributed to the Member. To the extent the Manager subsequently determines any Dissolution Reserves to be unnecessary for Company expenses, the Manager shall cause such amounts to be distributed or paid to the Member.

(c) When all of the remaining property and assets of the Company have been applied and distributed as provided in this Section 7.2, the Manager shall file articles of dissolution as provided in the Act.

## ARTICLE VIII
## GENERAL

This Agreement constitutes the entire agreement between the parties with respect to the subject matters hereof. This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of West Virginia. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors, and assigns. Captions contained in this Agreement in no way define, limit, or extend the scope or intent of this Agreement. If any provision of this Agreement, or the application of any such provision to any Person or circumstance shall be held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the remainder of this Agreement, or the application of such provision to any other Persons or circumstances, shall not be affected thereby and shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof. In lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part hereof a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Every exhibit, schedule, and other appendix attached to this Agreement and referred to herein is incorporated in this Agreement by reference. This Agreement may be executed in several counterparts and all so executed shall constitute one Operating Agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatories to the original or same counterpart.

(The remainder of this page is intentionally left blank.)

**IN WITNESS WHEREOF**, the undersigned have executed this Operating Agreement of Charles Washington Hall Manager, LLC, a West Virginia limited liability company, as of the date first above written.

Member: CITY OF CHARLES TOWN

By: _____
Peggy A. Smith, Mayor

Manager: CITY OF CHARLES TOWN

By: _____
Peggy A. Smith, Mayor

**EXHIBIT A**

**Charles Washington Hall Manager, LLC**

**Value of Initial Contributions of the Member**

| | |
|---|---|
| Charles Washington Hall, Inc. | $100 |

**FIRST AMENDMENT TO OPERATING AGREEMENT**
**OF**
**CHARLES WASHINGTON HALL LANDLORD, LLC**

THIS FIRST AMENDMENT TO OPERATING AGREEMENT OF CHARLES WASHINGTON HALL LANDLORD, LLC (the "***First Amendment***"), made and entered into as of APRIL 18, 2017, by and between CHARLES WASHINGTON HALL MANAGER, LLC, a West Virginia limited liability company ("***Managing Member***"), and SINCLAIR GILLESPIE, an individual residing in the State of North Carolina ("***Federal Member***").

WITNESSETH:

WHEREAS, the Managing Member and the Federal Member executed that certain OPERATING AGREEMENT OF CHARLES WASHINGTON HALL LANDLORD, LLC, dated as of December 21, 2016 (the "***Original Agreement***"), upon the terms and conditions therein set forth; and

WHEREAS, the Original Agreement provided for the State Tax Credits (as defined in the Original Agreement) to be allocated to the Managing Member; and

WHEREAS, the Managing Member and the Federal Member desire to enter into this First Amendment for the purpose of correcting the party to whom the State Tax Credits are allocated, clarifying the use of the State Tax Credits, and amending other terms and provisions set forth in the Original Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Managing Member and the Federal Member do hereby covenant and agree as follows:

**ARTICLE I**
**AMENDMENTS**

Section 1.1. **Amendment of Section 2.01**. Section 2.01 of the Original Agreement is hereby amended and supplemented by the amendment or addition of following defined terms:

*Agreement*: The Original Agreement, as amended by this First Amendment, and as may be further amended and supplemented from time to time, in accordance with the terms and provisions of the Original Agreement.

*Original Agreement*: The Operating Agreement of Charles Washington Hall Landlord, LLC, dated as of December 21, 2016, including all of the exhibits attached thereto and made a part hereof, executed by the Managing Member and the Federal Member.

Section 1.2. **Amendment of Section 5.07(bb).** The first paragraph of Section 5.07(bb) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

> (bb) The Company and Managing Member shall take all necessary actions to complete the Project and prevent a recapture of any State Tax Credits that the Company may become subject to for any reason, including, but not limited to, failure of the Project to be designated as a "certified rehabilitation".

Section 1.3. **Amendment of Section 5.08.** Clause (xi) of Section 5.08 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

> any other documentation reasonably required by the Credit Agency or any other Agency in order for the Company to be eligible to claim and utilize the State Historic Tax Credits; provided that the utilization and disposition of such State Historic Tax Credits shall be entirely at the discretion of the Managing Member.

Section 1.4. **Amendment of Section 7.02.** The second sentence of Section 7.02 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

> Notwithstanding anything contained herein to the contrary, in no event shall the Managing Member hold more than a 1.00% interest in any Gains or Losses from dispositions of Company property, the Net Profits, Net Losses and Credits of the Company.

Section 1.5. **Amendment of Section 7.07(a).** Section 7.07(a) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

> One hundred percent (100%) of the State Tax Credits shall be contributed by the Company to The City of Charles Town Building Commission, a public corporation and municipal building commission organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia (the "***Commission***") pursuant to the Contribution Agreement (State Tax Credits) by and between the Commission and the Company (the "***Contribution Agreement***").

Section 1.6. **Amendment of Section 14.01(g).** Section 14.01(g) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

> One hundred percent (100%) of the State Tax Credits shall be contributed by the Company to the Commission pursuant to the Contribution Agreement.

Section 1.7. **Amendment of Exhibit A-2.** Exhibit A-2 of the Original Agreement is hereby deleted in its entirety and replaced with Exhibit A-2 attached hereto.

## ARTICLE II
## MISCELLANEOUS

Section 2.1. **Effect on Original Agreement.** Except as expressly set forth herein, all of the terms and conditions of the Original Agreement shall remain unmodified and in full force and effect.

Section 2.2. **Binding Effect**. The Agreement shall inure to the benefit of and shall be binding upon the Managing Member and the Federal Member and their respective successors and assigns.

Section 2.3. **Severability**. In the event any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

Section 2.4. **Applicable Law.** This First Amendment shall be governed by and construed in accordance with the laws of the State of West Virginia.

Section 2.5. **Execution in Counterparts**. This First Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(The remainder of this page is intentionally left blank.)

**FIRST AMENDMENT TO OPERATING AGREEMENT**
**OF**
**CHARLES WASHINGTON HALL LANDLORD, LLC**

**Signature Page**

**MANAGING MEMBER**: CHARLES WASHINGTON HALL MANAGER, LLC, a West Virginia limited liability company

By: _____
_____, _____

STATE OF WEST VIRGINIA )
) §
COUNTY OF Jefferson )

On this 18th day of April member, 2017, before me personally appeared Paul Dennis Mills, the Managing Member of CHARLES WASHINGTON HALL MANAGER, LLC, a West Virginia limited liability company, who provided satisfactory evidence of his or her identification to the person whose name is subscribed to this instrument and he or she acknowledged that he or she executed the foregoing instrument by his or her signature here.

Sworn to (or affirmed) and subscribed before me this the 18th day of April, 2017.

Deborah F. Wilson
*Official Signature of Notary*

(Official Seal)

Deborah F. Wilson, Notary Public
*Notary's printed or typed name*

Jefferson County, West Virginia

My commission expires: March 11, 2021

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Deborah F. Wilson
City of Charles Town
PO Box 14
Charles Town, WV 25414
My Commission Expires March 11, 2021

**FIRST AMENDMENT TO OPERATING AGREEMENT**
**OF**
**CHARLES WASHINGTON HALL LANDLORD, LLC**

**Signature Page**

**FEDERAL MEMBER:**

By: _____
SINCLAIR GILLESPIE, an individual residing in the State of North Carolina, by and through her attorney-in-fact, Frank T. Ellett

STATE OF NORTH CAROLINA )
)§
COUNTY OF _____ )

This foregoing instrument was acknowledged before me this _____, 2017, by Frank T. Ellet, in his capacity as attorney-in-fact for Sinclair Gillespie.

Sworn to (or affirmed) and subscribed before me this the ____ day of _____, 2017.

_____
*Official Signature of Notary*

(Official Seal)

_____, Notary Public
*Notary's printed or typed name*

_____ County, North Carolina

My commission expires: _____

## EXHIBIT A-2

**Dollar Amounts**

**Dollar Amounts**

| Reference Term | Section Reference | Amount |
|---|---|---|
| Projected Historic Tax Credit Amount | 3.03(a) | $875,000 of Federal Historic Credits in 2016 |
| Price per Projected Historic Tax Credit: | | $0.87 per $1.00 of Federal Historic Credit for all Capital Installments |
| State Tax Credits | 3.03(a) | 100% claimed by Company |
| Price per Projected State Tax Credit: | | N/A |
| Title Policy Amount | 2.01 | The lessor of the fair market value of the Project or the sum of debt secured against the Project plus the capital contributions of all Members |
| Percentage Interest** | Exhibit A | 99.00% for the Federal Member<br>1.00% for the Managing Member |
| Cash Flow Percentages** | Exhibit A-3 | 99.00% for the Federal Member<br>1.00% for the Managing Member |
| Capital Percentages** | 2.01 | 99.00% for the Federal Member<br>1.00% for the Managing Member |

** Upon and after the Interest Shift Date, the Percentage Interests and Capital Percentages of Managing Member and Investor Member(s) shall be revised to:

| | |
|---|---|
| Managing Member: | 95.00% |
| Federal Member: | 5.00% |

**PURCHASE OPTION AGREEMENT**

THIS PURCHASE OPTION AGREEMENT is made effective as of December 21, 2016 by and between CHARLES WASHINGTON HALL MANAGER, LLC, a West Virginia limited liability company (the "Managing Member"), and SINCLAIR GILLESPIE, an individual residing in the State of North Carolina (the "Investor").

**R E C I T A L S :**

A. In accordance with the provisions of the Operating Agreement of CHARLES WASHINGTON HALL LANDLORD, LLC, a West Virginia Limited Liability Company (the "Landlord"), dated as of the date hereof (the "Operating Agreement"), the Investor is the 99.00% member of the Landlord (such 99.00% interest, the "Interest").

B. Landlord is rehabilitating that certain real property located in Charleston, West Virginia (the "Project") in a manner that will qualify for the federal historic rehabilitation tax credit (the "Federal Historic Tax Credit") described in Section 47 of the Internal Revenue Code of 1986, as amended (the "Code").

C. The Investor desires to give, grant, bargain, sell and convey to the Managing Member (or its designee) certain rights to purchase the Interest on the terms and subject to the conditions set forth herein.

D. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Operating Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Put Option. The Investor shall have the right and option but not the obligation ("Put Option") to require the Managing Member or its designee to purchase the entire, and only the entire Interest of the Investor by written notice to the Managing Member (a "Put Option Notice") upon the following terms:

(a) If the Project fails to obtain Part 2 Approval (as that term is defined in the Operating Agreement) by June 30, 2017, Investor may exercise its Put Option by delivering a Put Option Notice and upon receipt of the Put Option Notice, the Managing Member shall purchase the Interest from Investor at a price equal to the amount of Investor's Capital Contributions to Landlord.

(b) For a six (6) month period commencing on the Interest Shift Date (as defined in the Operating Agreement), the Investor may exercise its Put Option by delivering the Put Option Notice and upon receipt of the Put Option Notice, the Managing Member shall purchase the Interest from Investor for a purchase price equal to the lesser of (i) Twenty-five Thousand Dollars ($25,000.00) or (ii) the Fair Market Value of the Interest of the Investor determined as provided in Section 2 below.

(c) The Managing Member shall purchase the Interest from Investor without recourse, representation or warranty, free and clear of any liens, charges, encumbrances or interests of any third party.

(d) The price required to be paid by the Managing Member for the purchase of the Interest set forth in subparagraphs (a) and (b) above are referred to hereafter as the "Put Option Price".

2. Determination of the Fair Market Value.

(a) The Fair Market Value of the Interest of the Investor shall, unless otherwise agreed between the Investor and the Managing Member, be determined by an Independent Appraiser (as defined below), to be selected as follows. As soon as practicable and in any event within thirty (30) days following the delivery of a Put Option Notice, the Managing Member and the Investor shall jointly select an Independent Appraiser. The appraisal shall take into account any legal provisions affecting the Interest (such as transfer restrictions) and such discounts as the Independent Appraiser deems appropriate (such as marketability and illiquidity discounts). The Managing Member and Investor shall share the cost of this appraisal.

If the Investor and Managing Member cannot agree on an Independent Appraiser, then the Investor and Managing Member shall each select an Independent Appraiser. Each such Appraiser shall, within thirty (30) days after being selected, deliver a report stating the appraised value of the Interest and reasons for arriving at such value, the cost of each appraisal to be borne by the selecting party. If such appraised values are within twenty percent (20%) of each other, the price to be paid for the Interest shall be the average of such two appraised values. If such appraised values are not within twenty percent (20%) of each other, and the parties hereto do not otherwise agree as to a price to be paid for the Interest within five (5) days of receipt of the two reports, the two aforementioned Appraisers shall jointly select a third Independent Appraiser who shall review the two appraisal reports, perform any additional work necessary and determine the fair market value of the Interest. The determination of the fair market value of the Interest shall be binding and conclusive on the parties and the costs of such final appraisal shall be borne equally by the Investor and the Managing Member.

(b) For purposes of this Agreement, the term "Independent Appraiser" means a person or firm that is generally qualified to render opinions as to the Fair Market Value of assets such as Interests in the Landlord, which satisfies the following criteria:

(i) Such firm is not a Member or an Affiliate of the Landlord or any Member;

(ii) Such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years;

(iii) Such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such firm;

(iv) One or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group that establishes and maintains professional standards for its members; and

(v) Such firm renders an appraisal only after entering into a contract that specifies the compensation payable for such appraisal.

3. Payment of Purchase Price. The entire Put Option Price shall be paid to the Investor at the closing in cash or immediately available funds, unless otherwise mutually agreed. The Investor shall be responsible for the costs of its own attorneys' fees incurred in connection with the closing. All other costs of the purchase of the Interest shall be paid by the Managing Member. Upon receipt of the Put Option Price, the Investor shall transfer the Interest without recourse, representation or warranty, free and clear of any liens, charges, encumbrances or interests of any third party, and shall execute or cause to be executed any documents required to fully transfer such Interest. As of the effective date of such closing, the Investor shall withdraw as a member from the Landlord and shall have no further interest in or obligation to the Landlord, and, if required by applicable law, the Managing Member shall cause the Landlord to promptly file an amendment to the Operating Agreement with the Secretary of State of West Virginia reflecting the withdrawal of the Investor. If the Put Option is exercised within the indicated time period, this Agreement shall terminate unless otherwise mutually agreed.

4. Impact of Other Agreements and Documents. The rights and obligations of the Managing Member hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by, (a) any amendment or modification of or addition or supplement to the Operating Agreement or any of the Development Documents, (b) any extension, indulgence or other action or inaction in respect of the Operating Agreement or the Development Documents, or any exercise or non-exercise of any right, remedy, power or privilege in respect of such documents or this Agreement, (c) any default by the Managing Member or the Landlord under, or any illegality or unenforceability of, or any irregularity or defect in, the Operating Agreement, the Development Documents or any provision of this Agreement, (d) any Bankruptcy, insolvency, reorganization or similar proceeding involving or affecting the Landlord or the Managing Member, or (e) any other circumstances whether or not the Managing Member or Investor shall have actual or constructive notice or knowledge thereof. If the Managing Member purchases the Interest of the Investor in accordance with the applicable provisions of this Agreement, the Managing Member shall have no further liabilities or obligations hereunder.

5. Representations and Warranties. Investor and Managing Member represent and warrant to each other as of the date of this Agreement as follows, all of which are material to the other party and the truth and accuracy of which have been relied upon by each such other party in executing and performing their obligations under this Agreement:

(a) Investor and Managing Member, respectively, each has authority to enter into this Agreement and carry out the transactions contemplated hereunder;

(b) the execution, delivery, and performance by Investor and Managing Member, respectively, of this Agreement has been duly authorized by all necessary corporate action, and are valid and binding upon, and enforceable against Investor and Managing Member, respectively, in accordance with the applicable terms hereof; and

(c) There is no agreement, present plan or intention by Investor to exercise its Put Option under this Agreement.

6. Notices and Demands. All notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given when the same are (a) sent by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or (b) sent by a nationally recognized courier service for next day delivery, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the other parties:

| | |
|---|---|
| If to Managing Member: | Charles Washington Hall Manager, LLC<br>P.O. Box 14<br>Charles Town, West Virginia 25414<br>Attn.: David Mills<br>e-mail: dmills@charlestownwv.us |
| With a copies to: | Brian Wishneff & Associates<br>30 W. Franklin Road, Suite 503<br>Roanoke, VA 24011<br>Attn: Erik Wishneff<br>e-mail: erik@wishneff.com<br><br>Spencer Fane, LLP<br>1 N. Brentwood Blvd., Suite 1000<br>St. Louis, MO 63105<br>Attn: Carl Desenberg, Esq.<br>e-mail: cdesenberg.spencerfane.com |
| If to Investor: | Sinclair Gillespie<br>4312 Foxcroft Road<br>Charlotte, NC 28211 |
| With copies to: | Frank T. Ellett<br>3752 Brandon Avenue<br>Roanoke, Virginia 24018<br><br>Woods Rogers PLC<br>10 South Jefferson Street<br>Roanoke, Virginia 24011<br>Attn: Neil V. Birkhoff<br>E-mail: Birkhoff@woodsrogers.com |

Notices delivered personally or by electronic mail will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by United States mail in accordance with the above paragraph will be effective three (3) Business Days after mailing; notices sent by a nationally recognized courier service for next day delivery will be effective on the next Business Day after delivered to such courier service.

7. General Provisions.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, personal representatives, successors and assigns. No party to this Agreement may assign the rights under this Agreement without the consent of each other party hereto, which consent shall not be unreasonably withheld. Any amendment(s) to this Agreement shall be effective only if set forth in writing and signed by each party hereto.

(b) Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

(c) No party hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

(d) This Agreement shall be construed and enforced in accordance with the laws of the State of West Virginia.

(e) All headings and captions in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision. Capitalized terms not defined herein shall have the meaning ascribed to them in the Operating Agreement.

(f) This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart. Signatures on this Agreement may be transmitted electronically in portable document format (".pdf") and each copy of this Agreement bearing the electronically transmitted signature of any party's authorized representative shall be deemed to be an original. Notwithstanding the validity of the electronically transmitted originals, it is intended that this Agreement be manually executed and then be delivered to the Investor. The Investor will then have the appropriate signature manually affixed to the Agreement and return fully executed copies to the appropriate parties.

(g) As the context may require, all personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa.

(h) Any reference contained in this Agreement to specific statutory or regulatory provisions or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

(i) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and any representation, inducement, promise or agreement between the parties with respect to the subject matter of this Agreement that is not embodied herein shall be null and void and of no further force or effect.

(j) Investor shall be entitled to assign its rights under this Agreement without the consent of the Managing Member. The Managing Member's rights under this Agreement may be assigned by it without Investor's consent.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.**

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be made effective as of the date and year first written above.

**INVESTOR:**

By: _____
SINCLAIR GILLESPIE, an individual residing in the State of North Carolina, by and through her attorney-in-fact, Frank T. Ellett

**GROUND LEASE**

**between**

**CITY OF CHARLES TOWN, as Landlord**

**and**

**CHARLES WASHINGTON HALL LANDLORD, LLC, as Tenant**

**Dated as of December 21, 2016**

# GROUND LEASE

between
CITY OF CHARLES TOWN, as Landlord
and
CHARLES WASHINGTON HALL LANDLORD, LLC, as Tenant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# GROUND LEASE

THIS GROUND LEASE (together with Exhibits hereto, which are incorporated herein by this reference, this "***Lease***") is made effective as of December 21, 2016, by and between CITY OF CHARLES TOWN, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia, having an address at 101 East Washington Street, Charles Town, WV 25414 ("***Landlord***"), and CHARLES WASHINGTON HALL LANDLORD, LLC, a West Virginia limited liability company, having an address at P.O. Box 14, Charles Town, West Virginia 25414 ("***Tenant***").

## RECITALS

**WHEREAS**, the City of Charles Town Building Commission, a public corporation and municipal building commission organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia (the "***Owner***") is the owner in fee simple title of Charles Washington Hall, together with all necessary appurtenant facilities (as further defined herein, the "***Project***") (the herein defined Premises, as more particularly described in Exhibit A hereto and incorporated herein, together with the Project, and all appurtenances thereto and all additions and improvements thereto, of every kind and nature, now or hereafter acquired or constructed, herein called the "***Facilities***");

**WHEREAS**, in order to finance the costs of the Project, the Owner has issued, sold, and delivered its Lease Revenue Bonds, Series 2015A (United States Department of Agriculture), dated March 4, 2015 issued in the original aggregate principal amount of $2,999,950, and its Lease Revenue Bonds, Series 2015B (United States Department of Agriculture), dated March 4, 2015, issued in the original principal amount of $894,000 (collectively, the "***Series 2015 Bonds***");

**WHEREAS**, the Series 2015 Bonds have been purchased and are being held by the United States of America, acting by the Rural Housing Service, United States Department of Agriculture (the "***Purchaser***");

**WHEREAS**, in order to provide for the payment of the principal of and interest on the Series 2015 Bonds, the Owner has leased the Facilities to the Landlord pursuant to that certain Lease Agreement dated as of March 2, 2015, and effective March 4, 2015, by and between the Owner and the Landlord, as amended by that certain First Amendment to Lease Agreement dated as of the date hereof (together, and as may be further amended and supplemented, the "***Landlord's Lease***"), which the Landlord has agreed to lease under the terms and conditions hereof to Tenant for Tenant's development, rehabilitation and construction; and

**WHEREAS**, the written consent of all of the Bondholders (as defined in the Landlord's Lease) to the execution of this Lease has been provided pursuant to Section 11.06 of the Landlord's Lease.

**NOW THEREFORE, IN CONSIDERATION** of the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Landlord hereby

leases to Tenant and Tenant hereby leases from Landlord the Facilities, but not including the Tenant's interests in the Improvements (as defined below) as set forth in Section 2.3,

**TO HAVE AND TO HOLD** the Facilities unto Tenant, its successors and permitted assigns, for and during the Term set forth herein,

**ON THE TERMS AND SUBJECT TO THE CONDITIONS** which are hereinafter set forth:

## Section 1. DEFINITIONS.

1.1. Specific. As used herein, the following terms have the following meanings:

"***Annual Rent***" has the meaning given it in Section 3.1.

"***Bankruptcy***" shall be deemed, for any person, to have occurred either

(a) if and when such person (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such person or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency law, or (v) files an answer admitting the material allegations of a petition filed against such person in any bankruptcy, reorganization or insolvency proceeding; or

(b) if (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating such person a bankrupt or an insolvent, approving a petition seeking such a reorganization, or appointing a receiver, trustee or liquidator of such person or of all or a substantial part of its assets, or (ii) there otherwise commences with respect to such person or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for any period of one hundred twenty (120) consecutive days after the expiration of any stay thereof.

"***Business Day***" means any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Charles Town, West Virginia.

"***Commencement Date***" has the meaning given it in Section 2.1.1.

"***Environmental Laws***" shall mean any and all Federal, State or local laws, pertaining to health, safety, or the environment now or at any time hereafter in effect and any judicial or administrative interpretation thereof (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or hazardous substances (as such term is defined in any such law), or exposure to hazardous substances) including, without

limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reorganization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, the federal Clean Water Act of 1977, all regulations and laws adopted by the Occupational Safety and Health Administration, and any other environmental or health conservation or protection laws.

"***Event of Default***" has the meaning given it in Section 13.1.

"***Facilities***" has the meaning given it in the preambles hereto.

"***Force Majeure***" means any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, (c) failure or shortage of materials, electrical power, gas, water, fuel oil, or other utility or service, (d) riot, war, insurrection or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather condition, (g) other act of God, or (h) other cause similar or dissimilar to any of the foregoing and beyond the reasonable control of the person in question.

"***Fee Estate***" means Owner's fee simple interest in all the Facilities and the appurtenances included with the Facilities.

"***Improvements***" mean the historic building located on the Premises, and all fixtures and personal property, all off-street parking areas on the Premises; all common areas at the Premises, and all replacements, additions and alterations thereto.

"***Institutional Lender***" means any commercial bank, savings bank, savings and loan institution or insurance company authorized to do business in West Virginia, or any governmental entity.

"***Landlord***" means the City of Charles Town, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia.

"***Land Records***" means the Land Records of the County of Jefferson, West Virginia.

"***Lease***" means this Ground Lease, including amendments thereto and extensions thereof, if any.

"***Lease Year***" means (a) the period commencing on the Commencement Date and terminating on the first ($1^{st}$) anniversary of the last day of the calendar month containing the Commencement Date, and (b) each successive period of twelve (12) calendar months thereafter during the Term.

"***Leasehold Estate***" means the leasehold estate in the Facilities held by Tenant under this Lease and its fee interest in the Improvements as set forth in Section 2.3 hereof and any other interest in the Facilities acquired by the Tenant hereafter.

**"*Leasehold Mortgage*"** means any mortgage encumbering Tenant's Leasehold Estate.

"***Legal Requirements***" has the meaning given it in Section 4.3.8.

"***Mortgage***" means any mortgage or deed of trust at any time encumbering any or all of the Facilities, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Facilities (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein.

"***Mortgagee***" means the Person secured by a Mortgage.

"***Owner***" means the City of Charles Town Building Commission, a public corporation and municipal building commission organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia.

"***Permitted Encumbrances***" means any and all encumbrances of record existing as of the date hereof and any Leasehold Mortgage.

"***Person***" means a natural person(s), a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity.

"***Premises***" means the real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference and all appurtenances, easements and rights of way related to such real property.

"***Project***" has the meaning set forth in the preambles hereof and consists of the construction, equipping, and renovation of the Charles Washington Hall and all necessary appurtenances.

"***Tenant***" means Charles Washington Hall Landlord, LLC, a West Virginia limited liability company, and its successors and assigns as holder of the Leasehold Estate.

"***Term***" has the meaning given it in Section 2.1.1.

"***Termination Date***" has the meaning given it in Section 2.1.1.

1.2. General. Any other term to which meaning is expressly given in this Lease shall have such meaning.

## Section 2. TERM.

2.1. Lease. Landlord agrees to lease the Facilities to Tenant on the terms and conditions set forth in this Lease.

2.1.1. Original Term. This Lease shall be for a term ("***Term***") commencing on the effective date hereon ("***Commencement Date***"), and (b) terminating on the fortieth ($40^{th}$) anniversary of the Commencement Date (the "***Termination Date***", except that if the date of such termination is hereafter advanced to an earlier date or postponed pursuant to Section 3.1.1 or any other provision of this Lease, or by express, written agreement of the parties hereto, or by operation of law, the date to which it is advanced or postponed shall thereafter be the "***Termination Date***" for all purposes of this Lease). Possession shall be delivered on the Commencement Date.

2.1.2. Surrender. Tenant shall, at its expense, at the expiration of the Term or any earlier termination of this Lease, promptly yield up to Landlord the Facilities in reasonable order and repair, ordinary wear and tear and damage by casualty, or condemnation excepted. Upon such expiration or termination (whether by reason of an Event of Default or otherwise), (a) Tenant shall thereafter have no right at law or in equity in or to all or any portion of the Facilities and shall be conclusively deemed to have abandoned same, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of Tenant (but subject to the rights of any person then holding any lien, right, title or interest in or to the Fee Estate and to the lien of all Permitted Encumbrances then outstanding, and (b) Tenant hereby waives any and all rights of redemption which it may otherwise hold under any applicable law.

2.2. Holding Over.

2.2.1. Nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Facilities after the expiration of the Term or any earlier termination of this Lease. If and only if Tenant continues to occupy the Facilities after such expiration or termination after obtaining Landlord's express, written consent thereto;

(a) such occupancy shall (unless the parties hereto otherwise agree in writing) be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, by at least thirty (30) days before the end of any calendar month, that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate; and

(b) subject to the provisions of Section 2.2.2, but anything in the remaining provisions of this Section to the contrary notwithstanding, the monthly rent payable with respect to each such monthly period shall equal one-twelfth (1/12) of the Annual Rent (such amount being the "***Monthly Rent***") for the Lease Year during which such expiration or termination occurred, as aforesaid.

2.2.2. If Tenant continues to occupy the Facilities after the expiration of the Term or any earlier termination of this Lease without having obtained Landlord's express, written consent thereto, then without altering or impairing any of Landlord's rights under this Lease or applicable law, (a) Tenant hereby agrees to pay to Landlord immediately on demand by Landlord as monthly rent for the Facilities, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease, as aforesaid, until Tenant surrenders possession of the Facilities to Landlord, a sum equaling One Hundred and 00/100 Dollars ($100.00) per each day of such holdover occupancy, and (b) Tenant shall surrender possession of the Facilities to Landlord immediately on Landlord's having demanded the same. Nothing in this Lease shall be deemed in any way to give Tenant any right to remain in possession of the Facilities after such expiration or termination, regardless of whether Tenant has paid any such Rent to Landlord.

2.3. Title to and Alterations of Improvements. Notwithstanding any provision in this Lease to the contrary, at all times during the Term of this Lease, the Improvements and all alterations and additions shall be owned by Tenant and Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the federal historic rehabilitation tax credits pursuant to Section 47 of the Internal Revenue Code of 1986, as amended (the "***Code***") and the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Improvements. At the expiration or earlier termination of the Term of this Lease, or any portion thereof, in accordance herewith, Tenant shall peaceably leave, quit and surrender the Facilities in the manner required under Section 2.1.2. Upon such expiration or termination, the Facilities and any Improvements remaining (other than personal property and equipment owned by tenants) shall become the sole property of Landlord at no cost to Landlord in "as is" condition, and subject to all matters of record.

## Section 3. RENT.

3.1. Amount. As rent for the Facilities, Tenant shall pay to Landlord:

3.1.1. Annual Rent. Annual rent ("***Annual Rent***") shall be paid in annual installments of One Dollar ($1.00) for a period of forty (40) years commencing on the Commencement Date.

3.2. Security Deposit. None.

3.3. Leasehold Obligations.

3.3.1. Net Lease. Other than as is expressly set forth in this Lease, all costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Facilities and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of Tenant's Leasehold Estate in the Facilities, or this Lease generally shall be the sole responsibility of and payable by Tenant, including, but not limited to any cost, expenses, liabilities, charges or other sums, in connection with the closing of the Leasehold Mortgage. Landlord shall be and remain

liable for all obligations respecting the Facilities incurred by Landlord as well as any property tax liability pursuant to Section 3.3.2.

3.3.2. Property Tax Exemption. The Tenant shall be solely responsible for, and shall pay, all general and special ad valorem property taxes, if any. If applicable, Landlord, at its expense, may attempt to obtain a lowering of the assessed valuation of the Facilities for any year for the purpose of reducing taxes thereon. In such event, upon Landlord's request, Tenant shall use its reasonable efforts to cooperate with Landlord in such endeavor, at Landlord's expense.

3.4. Assignment of Rents. In order to secure unto Landlord Tenant's prompt, faithful, full and complete payment and performance of the rents, additional rents, obligations, agreements and covenants to be paid, kept and performed by Tenant under this Lease, Tenant hereby assigns, transfers and sets over to Landlord all of the right, title and interest of Tenant in, to and under Tenant's right to rents under any subleases entered into pursuant to Section 12.1.1. If requested by Landlord, Tenant shall execute an Assignment of Rents (the "***Rent Assignment***") in favor of Landlord to further effectuate the foregoing assignment of such and rents. Notwithstanding the foregoing, Tenant shall have a license to receive, collect and enjoy the rents, income, profits and benefits accruing from any subleases until a default by Tenant has occurred under this Lease that is not cured within the applicable cure periods, and upon such default, such license shall cease automatically, without need of notice, possession, foreclosure, or any other act or procedure, and all rents, income, profits and benefits assigned hereby shall thereafter be payable directly to Landlord; except that such license shall be reinstated automatically by acceptance by Landlord of any cure of any such default by Tenant.

## Section 4. USE OF PROPERTY.

4.1. Nature of Use. Tenant shall throughout the Term continuously use and operate the Facilities and the Improvements for the following uses and such other uses as are reasonably and customarily attendant to such uses: rehabilitation, construction, development, marketing for lease and leasing of space in the Facilities as commercial space with and all other uses permitted by applicable law.

4.2. Compliance with Environmental Laws. Tenant, throughout the Term and at its sole expense, in its rehabilitation, possession and use of the Improvements, shall not (a) cause or permit the escape, disposal or release of any biologically or chemically active or other Hazardous Substances brought onto the Facilities by Tenant or its agents or contractors, or (b) allow the storage or use of such Hazardous Substances in any manner not sanctioned by law or by the standards prevailing in the industry for the storage and use of such substances or materials, or (c) allow any Hazardous Substances to be brought onto the Facilities except to use in the ordinary course of Tenant's business, and then only after written notice is given to Landlord of the identity and intended use of such substances or materials. For purposes of this Lease, "***Hazardous Substances***" shall include those substances and materials subject to regulation under any applicable Environmental Law. If any lender or governmental agency reasonably requires testing to ascertain whether or not there has been any release of hazardous materials on the Facilities for which Tenant is responsible hereunder while this Lease is in effect, then the costs thereof shall be paid by Tenant if such requirement applies to the Facilities. Tenant shall

execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Facilities.

4.3. Representations, Warranties and Covenants of Landlord. As an inducement to Tenant to enter into and proceed under this Lease, Landlord warrants and represents to Tenant as follows, which warranties, representations and covenants are true and correct as of the date of this Lease:

4.3.1. Landlord has good and marketable, leasehold interest in the Facilities pursuant to the Landlord's Lease, subject only to (i) matters of record as set forth on Tenant's title insurance commitment and (ii) such approximate amounts as evidenced by the certain line(s) of credit, if any, at Institutional Lender(s) and any of its successors or assigns, free and clear of all other liens and encumbrances, and has the right, power and authority to enter into this Lease, to lease the Facilities to Tenant in accordance with the terms, provisions and conditions contained in this Lease, and to convey leasehold interest in the Facilities, has received all applicable governmental consents and approvals in connection therewith, and, excepting the Owner, no other party has any right or option to or in connection with the Facilities;

4.3.2. There is no litigation proceeding, or other action pending or, to the best knowledge and belief of Landlord, threatened, affecting the Facilities or Landlord's estate therein;

4.3.3. Landlord has received no written notice, and has no knowledge, nor has Landlord been otherwise advised, of any pending or threatened condemnation, building or zoning code violation relating to all or any part of the Facilities;

4.3.4. Landlord has received no written notice and has no knowledge of the intention of any party holding an easement affecting the Facilities or any part thereof to expand the exercise of any such easement beyond the scope of the present exercise thereof (as by replacing or expanding existing facilities, conduits (including underground or overhead wires, cables or pipes) or systems for sewers, water, electric, gas, cable and other utilities);

4.3.5. The entry by Landlord into this Lease with Tenant and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreement relating to the Facilities to which Landlord is a party or by which it is bound;

4.3.6. The Facilities is unoccupied and vacant, and there is no tenant, lessee or other occupant of the Facilities having any right or claim to possession or use of the Facilities; and possession of the Facilities is hereby delivered free of the rights or claims of any tenants, occupants or other parties in possession of, or claiming any right to possession or use of the Facilities;

4.3.7. There are no unpaid special assessments of which Landlord has received notice for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Facilities;

4.3.8. There are no outstanding notices of, nor, to Landlord's knowledge, any violations of any applicable laws, ordinances, notices, orders, rules, regulations and requirements of applicable federal, state and municipal governments, public or quasi-public authorities and all departments, commissions, bureaus boards and officers thereof affecting any portion of the Facilities (collectively the "***Legal Requirements***");

4.3.9. Landlord is not obligated under any contract, lease or agreement, oral or written, with respect to the ownership, use, operation or maintenance of the Facilities;

4.3.10. To the best of Landlord's actual knowledge, neither the Facilities nor any part thereof has been used for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, transportation or disposal of any Hazardous Substances and no Hazardous Substances have been installed, used, stored, handled or located on or beneath the Facilities, which Hazardous Substances, if found on or beneath the Facilities, or improperly disposed of off of the Facilities, would subject Tenant, any subtenant, the owner or occupant of the Facilities to damages, penalties, liabilities or an obligation to perform any work, cleanup, removal, repair, construction, alteration, demolition, renovation or installation in or in connection with the Facilities ("***Environmental Cleanup Work***") in order to comply with any environmental law or Legal Requirements applicable to Hazardous Substances. No notice from any governmental authority or any Person has ever been served upon Landlord, its agents or employees, claiming any violation of any Legal Requirement pertaining to Hazardous Substances or any liability thereunder, or requiring or calling any attention to the need for any Environmental Cleanup Work on or in connection with the Facilities, and neither Landlord, its agents or employees has ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order; and

4.3.11. Landlord hereby consents to Tenant encumbering its interest in the Facilities with Leasehold Mortgages.

## Section 5. OPERATING EXPENSES.

5.1. Operating Expenses.

5.1.1. Tenant's Obligation. Tenant will pay (or cause to be paid) directly to the providers of such services all costs and expenses attributable to or incurred in connection with the development, construction, completion, marketing, leasing and occupancy of the Facilities and the Improvements (collectively, "***Operating Expenses***") including without limitation (a) all energy sources for the Improvements, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer and trash disposal services; (c) all rehabilitation, maintenance, repair, replacement and rebuilding of the Improvements including, without limitation, (d) all landscaping, maintenance, repair and striping of all parking areas; (c) all insurance premiums relating to the Facilities and the

Improvements, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; and (f) the cost and expenses of all capital improvements or repairs (whether structural or non-structural) required by any governmental or quasi-governmental authority having jurisdiction over the Facilities or the Improvements.

5.1.2. Permits and Licenses. Tenant shall procure, or cause to be procured, at Tenant's sole cost and expense, any and all necessary permits, licenses, or other authorizations required for the rehabilitation, construction and occupancy of the Improvements and the lawful and proper installation and maintenance upon the Facilities of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such service to the Improvements and upon the Facilities. Landlord agrees to use Landlord's best reasonable efforts, at Tenant's sole cost and expense, to cooperate with Tenant in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authority with respect to any construction or other work to be performed on the Facilities and grant (or cooperate in processing as regards third party providers), all permits, licenses, easements and other governmental authorizations that are necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Landlord shall use Landlord's reasonable efforts, at Tenant's sole cost and expense, to cooperate in the relocation or termination of easements currently encumbering the Facilities to the extent that same may be reasonably necessary or desirable in connection with the Improvements. Tenant shall be entitled, without payment to Landlord, for tap or connection fees, to tap into the existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Facilities. Landlord agrees to use Landlord's reasonable efforts to assist Tenant to obtain waiver, reduction or deferral, as applicable, of all fees and other charges otherwise payable in connection with obtaining any permits, licenses, easements and other authorizations required by any governmental authority with respect to any construction or other work to be performed on the Facilities in connection with the Improvements.

## Section 6. INSURANCE AND INDEMNIFICATION.

6.1. Insurance to be Maintained by Tenant. Tenant shall maintain at its expense throughout the Term casualty, commercial general liability, and other insurance as referenced under Tenant's Operating Agreement. The provisions of Tenant's Operating Agreement pertaining to insurance shall not be modified or amended without Landlord's prior written consent.

6.2. Insureds. Each such policy shall name Landlord as an additional insured thereon.

6.3. Insurer. All insurance required and all renewals of insurance shall be issued by companies of recognized responsibility licensed to issue such policies and otherwise transact business in the state of West Virginia. All insurance policies will expressly provide that such policies will not be cancelled or altered without thirty (30) days' prior written notice to Landlord.

## Section 7. IMPROVEMENTS TO PREMISES.

7.1. Rehabilitation of Improvements.

7.1.1. Alterations. Landlord agrees that Tenant owns the Improvements as provided in Section 2.3 and shall have the right to make such alterations, additions and changes thereto as Tenant deems necessary or appropriate, including, without limitation, replacement and disposal thereof.

7.1.2. Estoppel Certificates. Landlord and Tenant agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from a permitted assignee or other interested party, Landlord or Tenant will execute, acknowledge and deliver to the other party a statement in writing certifying: (a) that this Lease is unmodified (or if modified, stating such modifications) and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certified (if such be the case), there is no default, set-off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any such persons.

7.1.3. Mortgage of Landlord's Interest. Landlord shall not sell, transfer, assign, convey, or otherwise encumber all or any portion of its interest in the Facilities, without the prior written consent of the Tenant.

7.1.4. Leasehold Mortgages. Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Lease.

7.2. Joinder. Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals or certificates of dedication thereon, public works or other agreements and permits for sewer, water or other utility services, other instruments of dedication or other permits or approvals, the granting of or entry into which by any governmental or quasi-governmental authority having jurisdiction over the Facilities is necessary to permit (a) the development, rehabilitation, improvement, use and occupancy of the Facilities for the purposes permitted by this Lease, without violating applicable law; and (b) the dedication to the City of Charles Town and/or the state of West Virginia after the Commencement Date of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are, in Tenant's opinion, necessary or desirable in connection therewith.

## Section 8. REPAIRS AND MAINTENANCE.

8.1. Repairs. Tenant shall, throughout the Term and at its expense,

(a) keep the Facilities in good order and condition (ordinary wear and tear excepted) and in compliance with applicable building and health and safety codes; and

(b) promptly make any and all repairs, ordinary or extraordinary, foreseen or unforeseen, to the Facilities (including but not limited to the landscaping thereon) as are necessary to maintain it in good condition, subject, in the event of casualty or condemnation to receipt of applicable insurance and/or condemnation proceeds therefor, and Landlord shall have no obligation hereunder as to the same.

8.2. Maintenance. Tenant shall keep and maintain all of the Facilities in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice.

## Section 9. LANDLORD'S RIGHT OF ENTRY.

9.1. Inspection and Repair. Subject to the rights of any tenant under any lease of space in the Facilities, Landlord shall be entitled to enter the Facilities during Tenant's normal business hours to (a) inspect the Facilities at any time, upon forty-eight (48) hours' advance written notice and (b) make any repairs thereto and/or take any other action therein which is required by applicable law, or which Landlord is permitted to make by any provision of this Lease, after giving Tenant at least twenty (20) Business Days' prior written notice of Landlord's intention to take such action; provided that Tenant doesn't timely cure same. Landlord may, while taking any such action upon the Facilities, store therein any and all necessary materials, tools and equipment, and Tenant shall have no liability to Landlord for any damage to or destruction of any such materials, tools and equipment, except if and to the extent that such damage or destruction is proximately caused by the gross negligence of Tenant. Landlord shall use its best efforts to not disrupt the rights of tenants at the Facilities.

## Section 10. FIRE AND OTHER CASUALTIES.

10.1. Damages or Destruction to Facilities. Tenant shall give prompt notice to Landlord after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Facilities, the Improvements or any portion thereof (hereinafter sometimes referred to as a "***Casualty***"). Subject to Section 10.2 below, if during the Term the Improvements shall be damaged or destroyed by Casualty, Tenant shall repair or restore the Improvements, so long as Tenant reasonably determine that it is feasible to do so and provided that sufficient insurance proceeds are available to do so. In the event that Tenant shall determine by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Facilities to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice.

10.2. Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to Section 10.1 hereof, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, if the Facilities is subject to a deed of trust securing any obligation or guarantee of Landlord, to the Mortgagee thereof and (b) second, the balance, if any, of such insurance proceeds shall be paid to Landlord.

## Section 11. CONDEMNATION.

11.1. Notice of Taking. Forthwith upon receipt by either Landlord or Tenant of notice of the institution of any proceedings for the taking or condemnation of all or a portion of the Facilities or Improvements by the government of the United States, State of West Virginia, City of Charles Town, or any other governmental authority, or any corporation under the right of eminent domain (a "***Taking***"), the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

11.2. Special Account. If a Total Taking (as defined in Section 11.3), the full amount of any award for any Taking (the "***Award***"), shall, notwithstanding any allocation made by the awarding authority, be paid, and allocated as set forth below provided that there shall first be deducted from the Award in the order stated (A) first, any outstanding amounts secured by any deed of trust on the Facilities; (B) second, any outstanding amounts secured by Leasehold Mortgages, which shall be paid to the Mortgagees thereof in their respective recording order of priority, and (C) any Rent outstanding prior to the Taking owed by the Tenant, which shall be paid to the Landlord. If a Total Taking, or a Partial Taking (pursuant to Section 11.4), the remainder of the Award (the "***Remainder***") shall be allocated (x) to the Landlord, an amount equal to the product of the amount allocated to the Facilities multiplied by the Landlord's Percentage (hereafter defined), and (v) to the Tenant, an amount equal to the product of the amount allocated to the Facilities multiplied by the Tenant's Percentage (hereafter defined). The "***Landlord's Percentage***" shall equal the fair market value, at the time of the Taking of the Facilities encumbered by this Lease, plus the residual fair market value of the Improvements as of the expiration of the Term (the "***Land Value***") divided by the sum of the Land Value and the Improvements Value. The "***Improvements Value***" shall be the fair market value of the Improvements, as of the date of the Taking, taking into account the then remaining Term of this Lease. The "***Tenant's Percentage***" shall equal the Improvements Value divided by the sum of the Land Value and the Improvements Value. The portion of the Award so allocated to the Landlord shall be known herein as the "***Landlord's Award***," and the portion so allocated to the Tenant shall be known herein as the "***Tenant's Award***."

11.3. Total Taking. In the event of a permanent Taking of the fee title to or of control of the Facilities or of the entire Leasehold Estate hereunder (a "***Total Taking***"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any Rent payable or obligations owed by the Tenant to the Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full.

11.4. Partial Taking; Procedures and Criteria for Course of Action. In the event of a permanent Taking of all or less than all of the Facilities or of the Leasehold Estate hereunder (a "***Partial Taking***"),

(a) if Tenant reasonably determines that the continued use and occupancy of the remainder of the Facilities by the Tenant is or can reasonably be made to be economically viable, structurally sound, and otherwise feasible based upon the amount of eminent domain proceeds available for the purpose of paying for such restoration (the "***Restoration Criteria***"), then, upon receipt of the consent

of the Leasehold Mortgagees, the entire Award shall be applied to restoration of the Facilities and the Facilities shall be restored pursuant to Section 10.1; or

(b) if the continued use and occupancy of the remainder of the Facilities by the Tenant is not or cannot, in Tenant's reasonable judgment, be made to be economically viable, structurally sound, and otherwise feasible, then this Lease may be terminated by Tenant pursuant to Section 10.1 and the Award applied pursuant to Section 11.2.

11.5. Restoration. If a decision is made pursuant to Section 10.1 to restore the remainder of the Facilities following receipt of the Award, the Tenant shall promptly proceed, at its expense, to commence and complete the restoration pursuant to the provisions of Section 10. , using the Award for such restoration, with any excess remaining after the completion of the restoration being payable to Tenant and Landlord, using the calculation set forth in Section 11.2. If Tenant has decided pursuant to Section 10.1 to restore the remainder of the Facilities, and if the cost of the restoration shall exceed the amount of the entire Award, the deficiency shall be paid by the Tenant. Tenant's obligation hereunder shall be subject to receipt of the entire Award of funds and approval of all Leasehold Mortgagees.

11.6. Termination upon Non-Restoration. Following a Partial Taking, if a decision is made pursuant to Section 11.4(b) that the remaining portion of the Facilities is not to be restored, the Tenant shall surrender the Facilities to the Landlord and this Lease shall thereupon be terminated without liability or further recourse to the parties hereto.

11.7. No Waiver. No provisions in this Lease limit the rights of either the Landlord or Tenant to seek compensation from a condemning authority as provided by statute, common law, or the United States Constitution.

## Section 12. ASSIGNMENT AND SUBLETTING.

12.1. Transfer by Tenant.

12.1.1. Tenant shall have the right to assign, sublet and encumber its interest under this Lease, from time to time, in full or in part, subject to the approval of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant shall not enter into any sublease of any portion of the Facilities whose occupancy thereof would, singularly, or in the aggregate with other tenants or subtenants of the Facilities, cause the Facilities to be deemed to be "tax-exempt use property" under Sections 47(c)(2)(B)(v) or 168(h) of the Code (or any corresponding or related provision of the Code).

12.1.2. In order to secure its obligations under this Lease, Tenant hereby assigns to Landlord all of its right, title and interest in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of or from the Facilities, including, without limitation, sublease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all subleases, now or hereafter existing, of all or any part of the Facilities together with all guaranties of any of such subleases and all security deposits delivered by subtenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against subtenants arising out

of defaults under any such subleases, including rights to termination fees and compensation with respect to rejected leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement section thereof; and (iv) all subtenant improvements and fixtures located on the Facilities.

12.1.3. Tenant shall perform all of its obligations under all subleases entered into pursuant to Section 12.1.1, if any.

12.2. Transfer by Landlord.

12.2.1. Subject to the provisions of Section 12.2.2 below, Landlord may assign this Lease or Landlord's reversion hereunder without the necessity of obtaining Tenant's consent or permission.

12.2.2. Notwithstanding anything herein to the contrary, Landlord shall not assign or transfer this Lease to a person or entity that would cause a recapture or loss of all or any portion of the Historic Tax Credits.

## Section 13. DEFAULT.

13.1. Definition. As used in this Lease, each of the following events shall constitute an "***Event of Default***" by Tenant or Landlord, as applicable, unless such Event of Default is caused, in full or in part, by Force Majeure:

(a) if Tenant fails (a) to pay any Annual Rent or other sum which it is obligated to pay under this Lease, when and as it is due and payable hereunder, or (b) to perform any of its obligations under this Lease, in each case not cured within the grace period set forth below;

(b) if Landlord (a) fails to pay any sum which it is obligated to pay under this Lease when and as it is due and payable hereunder, or (b) if Landlord fails to perform any of its obligations under this Lease, in each case not cured within the grace period set forth below; or

(c) if a Bankruptcy of Landlord or Tenant occurs.

13.2. Notice; Grace Period. Anything in this Section to the contrary notwithstanding, if an Event of Default occurs neither Landlord nor Tenant shall exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until:

(a) The non-defaulting party gives written notice thereof to the defaulting party;

(b) If such Event of Default consists of a failure to pay money, within ten (10) days after the non-defaulting party gives such written notice, the defaulting party fails to pay all of such money, or if such Event of Default consists of something other than a failure to pay money, within sixty (60) days after the non-defaulting party gives such written notice such Event of Default is

not cured, or if such Event of Default is not reasonably curable within such period, the defaulting party has not commenced to proceed within such period actively, diligently and in good faith to begin to cure such Event of Default and to continue thereafter to do so until it is fully cured; and

(c) Following the grace periods set forth in this Section 13.2, the non-defaulting party shall be entitled, upon notice to the defaulting party, to pursue its available remedies at law or in equity; provided, that if the default is a default by Tenant and is caused, directly or indirectly, by a default by a subtenant of Tenant, Tenant shall be given such additional grace period as reasonably necessary to cause its subtenants to cure such default.

## Section 14. CONDITION OF TITLE AND PREMISES.

14.1. Quiet Enjoyment. Landlord hereby

(a) covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (i) is the owner of a leasehold interest in and to the Facilities pursuant to the Landlord's Lease, subject to the operation and effect of and only of the Permitted Encumbrances, and (ii) has the full right, power and authority to enter into this Lease and, thereby to lease the Facilities; and

(b) warrants that Tenant will have quiet and peaceful possession of the Facilities during the Term so long as all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to Section 10. , Section 11. , Section 13. or any other provision of this Lease.

## Section 15. NOTICES.

15.1. Provision of Notices.

(a) Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (1) forty-eight (48) hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (2) the next Business Day after having been deposited (in time for delivery by such service on such Business Day) with Federal Express or another national courier service, or (3) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telefax or another means of immediate electronic communication, in each case to the address of such party set forth hereinabove or to such other address in the United States of America as such party may designate from time to time by notice to each other party hereto, or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party.

(b) All notices required or permitted to be given under this Lease shall be deemed given in accordance with the foregoing paragraph of this Section 15. , and addressed as set forth in Exhibit B. Any party may change its address by timely notice to the other party.

**Section 16. GENERAL.**

16.1. Effectiveness. This Lease shall become effective on and only on its execution and delivery by each party hereto.

16.2. Complete understanding. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof.

16.3. Amendment. This Lease may be amended by and only by an instrument executed and delivered by each party hereto in accordance with Section 17.3 hereof. Notwithstanding the foregoing, any such amendment shall require the consent of Tenant's members.

16.4. Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

16.5. Applicable law. This Lease shall be given effect and construed by application of the law of the State of West Virginia, and any action or proceeding arising hereunder shall be brought in the courts of Jefferson County, West Virginia.

16.6. Time of essence. Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

16.7. Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

16.8. Construction. As used herein, all references made (a) in the neutral, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, subsection, paragraph or subparagraph of this Lease.

16.9. Exhibits. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby incorporated herein and made a part hereof.

16.10. Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

16.11. Disclaimer of Partnership Status. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

16.12. Commissions. Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Facilities hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Each party hereto shall defend, indemnify and hold harmless the other against and from any liability, claim of liability or expense arising out of any inaccuracy in such party's representation.

16.13. Prevailing Party. In the event either party hereunder initiates judicial action against the other in order to enforce the terms, covenants and provisions of this Lease, the non-prevailing party in such judicial action shall reimburse the prevailing party in such judicial action for all expenses, fees, costs, including reasonable attorneys' fees incurred by the prevailing party in connection with such judicial action.

16.14. Benefit and Burden. This Lease shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

## Section 17. PURCHASER'S PROVISIONS

17.1. Owner's Responsibilities. Notwithstanding any provisions hereof to the contrary, the Owner shall retain ultimate responsibility for operating, maintaining, and managing the Facilities and for the Facilities' continued availability and use at reasonable rates and terms as required under §1942.17(b)(4) of Subpart A of Part 1942 of FmHA Instruction 1951-E. In the event the Tenant shall fail to operate, maintain, and manage the Facilities or provide for the Facilities' continued availability and use at such reasonable rates and terms, the Owner shall remedy such default for the account of the Tenant and make advances for that purpose pursuant to Section 12.1 of the Landlord's Lease.

17.2. Nondiscrimination. The following notice is provided pursuant to §1942.204 of Subpart A of Part 1942 of FmHA Instruction 1951-E:

> "The property described herein was obtained or improved with Federal financial assistance and is subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal statutes, and the regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions

apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, for so long as the purchaser owns it, whichever is later."

17.3. Amendments and Modifications. Until such time as all the Series 2015 Bonds, the Issuer Ordinance (as defined in the Landlord's Lase), and the Assignment (as defined in the Landlord's Lase) are satisfied and discharged in accordance with their respective terms, this Lease may not be effectively amended, changed, modified, altered, or terminated, nor may any provision hereof be waived, except with the written consent of the Purchaser.

17.4. Purchaser's Lien. Pursuant to the Assignment and as further provided in Section 4.03 of the Landlord's Lease, the Purchaser is a lienholder of the Facilities and this Lease is subordinate to the rights and claims of the Purchaser as lienholder.

[SIGNATURES – NEXT PAGE]

**IN WITNESS WHEREOF**, the Landlord has caused this Lease to be executed on its behalf by its duly authorized representative, the day and year first above written.

**LANDLORD:** **CITY OF CHARLES TOWN**

By: _____
Name: P DAVID MILLS
Title: CITY MANAGER

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, TO WIT:

The foregoing instrument was acknowledged before me this 21st day of December, 2016 by Paul David Mills, City Manager of the City of Charles Town, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia, on behalf of said public corporation.

My commission expires: March 11, 2021.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Deborah F. Wilson
City of Charles Town
PO Box 14
Charles Town, WV 25414
My Commission Expires March 11, 2021

Deborah F. Wilson
Notary Public

# EXHIBIT A

## Premises

BEING all of the Charles Washington Hall which fronts approximately 68.3 feet on the North side of Washington Street and runs back between parallel lines in a northern direction approximately 80 feet to the Rouss Hall Building property line, said property being bounded on the north by Rouss Hall, the east by George Street, the south by Washington Street and the west by Paradise Alley.

AND BEING the same real estate conveyed to the Charles Town Building Commission, a public corporation, by the City of Charles Town, a municipal corporation, by deed dated September 1, 1998, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 921, at page 354, to which reference is hereby made.

AND BEING the same real estate previously conveyed to the City of Charles Town by Samuel Washington, et al., by deed dated August 31, 1801, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 1, at page 116, to which reference is hereby made.

## EXHIBIT B

### Notice Addresses

| | |
|---|---|
| To Landlord: | 101 East Washington Street<br>Charles Town, WV 25414 |
| To Tenant: | P.O. Box 14<br>Charles Town, West Virginia 25414 |
| With copies to: | Brian Wishneff & Associates<br>30 W. Franklin Road, Suite 503<br>Roanoke, VA 24011<br>Attn: Erik Wishneff |
| | Spencer Fane, LLP<br>1 N. Brentwood Blvd., Suite 1000<br>St. Louis, MO 63105<br>Attn: Carl Desenberg, Esq. |

**EXHIBIT C**

**Intentionally Omitted**

**DEVELOPMENT SERVICES AGREEMENT**

THIS DEVELOPMENT SERVICES AGREEMENT ("Agreement") is made effective as of December 21, 2016, by and between THE CITY OF CHARLES TOWN BUILDING COMMISSION, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia (together with its agents and consultants, collectively, the "Developer"), and CHARLES WASHINGTON HALL LANDLORD, LLC, a West Virginia Limited Liability Company (the "Landlord").

WHEREAS, the Landlord holds a leasehold interest in property located in Jefferson County, West Virginia, known as the Charles Washington Hall (the "Project"); and

WHEREAS, the Landlord was formed to construct, rehabilitate, improve, maintain, operate, lease, and otherwise deal with the renovation of the Project; and

WHEREAS, the Project, following the completion of construction, is expected to qualify for the federal historic rehabilitation tax credit provided in Section 47 of the Internal Revenue Code of 1986, as amended, as well as the West Virginia State Historic Tax Credits (collectively, the "Historic Rehabilitation Tax Credits"); and

WHEREAS, Developer was designated by Landlord as the developer for the Property and has been developing the Project for some time on behalf of Landlord; and

WHEREAS, the Developer has provided and will continue to provide certain services with respect to the Project during the leasehold acquisition, development, and construction phases thereof; and

WHEREAS, in consideration for such services, the Landlord has agreed to pay to the Developer certain fees computed in the manner stated herein; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Development Services.**

(a) The Developer has performed certain services relating to the development of the Project and shall oversee the continued development, rehabilitation and qualification of the building comprising the Project for the Historic Rehabilitation Tax Credits (the "Rehabilitation"), and shall perform the services and carry out the responsibilities with respect to the Rehabilitation as are set forth herein, and such additional duties and responsibilities as are reasonably within the general scope of such services and responsibilities and as are designated from time to time by the Landlord.

(b) The Developer's services shall be performed in the name and on behalf of the Landlord and shall consist of the duties set forth below in this Section 1(b) and as provided elsewhere in this Agreement; provided, however, that if the performance of any duty of the Developer set forth in this Agreement is beyond the reasonable control of the Developer, the Developer shall nonetheless be obligated to (i) use its best efforts to perform such duty and (ii) promptly notify the Landlord that the performance of such duty is beyond its reasonable control. Nothing contained herein shall prohibit the Developer from contracting with other

persons or entities for services to assist it in fulfilling its responsibilities hereunder. The Developer has performed or shall perform the following:

(i) Negotiate and cause to be executed in the name and on behalf of the Landlord any agreements for architectural, engineering, testing or consulting services for the Project, and any agreements for the construction of any improvements to be constructed or installed by the Landlord or the furnishing of any supplies, materials, machinery or equipment therefore, or any amendments thereof (or cause to be assigned any agreements previously entered into in the name of the Developer), provided that no agreement (or assignment) shall be executed nor binding commitment made until the terms and conditions thereof and the party with whom the agreement is made have been approved by the Landlord, unless the terms, conditions, and parties comply with guidelines issued by the Landlord concerning such agreements;

(ii) Assist the Landlord in identifying sources of construction and permanent financing for the Rehabilitation and assist in negotiating the terms of such financing with lenders;

(iii) Establish and implement appropriate administrative and financial controls for the Rehabilitation, including but not limited to:

A. furnish such consulting and advice relating to the rehabilitation and its qualification for the Historic Rehabilitation Tax Credits, as may be reasonably requested by the Landlord from time to time; and

B. oversee the preparation of a cost certification of the qualified expenditures incurred by the Landlord in order to establish the Historic Rehabilitation Tax Credit amount(s).

(iv) Establish and implement construction management procedures, including:

A. coordination and administration of the Project architect, the general contractor, and other contractors, professionals and consultants employed in connection with the Rehabilitation;

B. administration of any construction contracts on behalf of the Landlord;

C. participation in conferences and the rendering of such advice and assistance as will aid in developing economical, efficient and desirable design and construction procedures;

D. the rendering of advice and recommendations as to the selection of subcontractors and suppliers;

E. the review and submission to the Landlord for approval of all requests for payments under any architectural agreement, general contractor's agreement, or any loan agreements with any lending institutions providing funds for the benefit of the Landlord for the Rehabilitation;

F. the submission of any suggestions or requests for changes which could in any reasonable manner improve the design, efficiency or cost of the Rehabilitation;

G. assistance with the application for and maintenance of, in full force and effect, any and all governmental permits and approvals required for the Rehabilitation;

H. compliance with all terms and conditions applicable to the Landlord or the Project contained in any governmental permit or approval required or obtained for the Rehabilitation, or in any insurance policy affecting or covering the Project, or in any surety bond obtained in connection with the Project;

I. keeping the Landlord fully informed on a regular basis of the progress of the Rehabilitation, including the preparation of such reports as are provided for herein or as may reasonably be requested or expected of construction managers or similar owner's representatives on similar projects;

J. giving or making the Landlord's instructions, requirements, approvals and payments provided for in the agreements with the Project architect, general contractor, and other contractors, professionals and consultants retained for the Rehabilitation; and

K. at the Landlord's expense, filing on behalf of and as the attorney in fact for the Landlord any notices of completion required or permitted to be filed upon the completion of any improvement(s) and taking such actions as may be required to obtain any certificates of occupancy or equivalent documents required to permit the occupancy of the Project.

(v) Inspect the progress of the course of the Rehabilitation, including verification of the materials and labor being furnished to and on such construction so as to be fully competent to approve or disapprove requests for payment made by the Project architect and the general contractor, or by any other parties with respect to the design or construction of the Project, and in addition to verify that the construction is being carried out substantially in accordance with the plans and specifications approved by the Landlord or, in the event construction is not being so carried out, to promptly notify the Landlord;

(vi) If requested to do so by the Landlord, perform on behalf of the Landlord all obligations of the Landlord with respect to the Rehabilitation contained in any loan agreement or security agreement executed in connection with the Rehabilitation, or in any agreement entered into with any governmental body or agency relating to the terms and conditions of the Rehabilitation, provided that copies of such agreements have been provided by the Landlord to the Developer or the Landlord has otherwise notified the Developer in writing of such obligations;

(vii) Prepare and distribute to the Landlord a critical path schedule, and periodic updates thereto as necessary to reflect any material changes, other design or

construction costs estimates as required by the Landlord, and financial accounting reports, including progress reports on the progress of construction;

(viii) At the Landlord's expense, obtain and maintain insurance coverage for the Project, the Landlord, the property manager (the "Manager"), if any, and the Developer and its employees, at all times until final completion of the Rehabilitation, in accordance with an insurance schedule approved by the Landlord, which insurance shall include general public liability insurance covering claims for personal injury, including but not limited to bodily injury, or property damage, occurring in or upon the Property or the streets, passageways, curbs and vaults adjoining the Property. Such insurance shall be in a liability amount approved by the Landlord;

(ix) Comply with all applicable present and future laws, ordinances, orders, rules, regulations and requirements (hereinafter in this subparagraph called "laws") of all federal, state and municipal governments, courts, departments, commissions, boards and offices, any national or local Board of Fire Underwriters or Insurance Services, offices having jurisdiction in the county in which the Project is located or any other body exercising functions similar to those of any of the foregoing, or any insurance carriers providing any insurance coverage for the Landlord or the Project, which may be applicable to the Project or any part thereof. Any such compliance undertaken by the Developer on behalf of and in the name of the Landlord in accordance with the provisions of this Agreement shall be at the Landlord's expense. The Developer shall likewise ensure that all agreements between the Landlord and independent contractors performing work in connection with the Project shall include the agreement of said independent contractors to comply with all such applicable laws;

(x) Assemble and retain all contracts, agreements and other records and data as may be necessary to carry out the Developer's functions hereunder. Without limiting the foregoing, the Developer will prepare, accumulate and furnish to the Landlord and the appropriate governmental authorities, as necessary, data information sufficient to identify the market value of improvements in place as of each real property tax lien date, and will take application for appropriate exclusions from the capital costs of the Project for purposes of real property and valorem taxes;

(xi) Coordinate and administer the design and construction of all interior tenant improvements to the extent required under any leases or other occupancy agreements to be constructed or furnished by the Landlord with respect to the initial leasing of space in the Project, whether involving building standard or non building standard work;

(xii) Use its best efforts to accomplish the timely completion of the Rehabilitation in accordance with the approved plans and specifications and the time schedules for such completion approved by the Landlord, and implement any decisions of the Landlord made in connection with the Rehabilitation or any policies and procedures relating thereto, exclusive of leasing activities;

(xiii) Coordinate all aspects of the tax credit certification process, including:

A. assist the Landlord in obtaining final Certificates of Occupancy from appropriate local government authorities; and

B. coordinate with the CPA firm retained to prepare the cost certification.

(xiv) Coordinate with tax credit counsel to prepare all required documentation for the Landlord so as to qualify for the Rehabilitation Tax Credit; and

(xv) Secure capital contributions from one or more tax credit investors upon the completion of all obligations of the Landlord required for such contributions.

2. **Limitations and Restrictions**. Notwithstanding any provisions of this Agreement, the Developer shall not take any action, expend any sum, make any decision, give any consent, approval or authorization, or incur any obligation with respect to any of the following matters unless and until the same has been approved by the Landlord:

(a) Approval of all construction and architectural contracts and all architectural plans, specifications and drawings prior to the construction and/or alteration of any improvements contemplated thereby, except for such matters as may be expressly delegated in writing to the Developer by the Landlord;

(b) Any proposed change in the work of the Rehabilitation, or in the plans and specifications therefore as previously approved by the Landlord, or in the cost thereof, or any other change that would affect the design, costs, value or quality of the Rehabilitation, except for such matters as may be expressly delegated in writing to the Developer by the Landlord;

(c) Making any expenditure or incurring any obligation by or on behalf of the Landlord or the Project involving a sum in excess of $25,000 or involving a sum of less than $25,000 where the same relates to a component part of any work, the combined cost of which exceeds $25,000, except for expenditures made and obligations incurred pursuant to and specifically set forth in a construction budget approved by the Landlord (the "Construction Budget") or for such matters as may be otherwise expressly delegated to the Developer by the Landlord;

(d) Making any expenditure or incurring any obligation which, when added to any other expenditure, exceeds the Construction Budget or any line term specified in the Construction Budget, except for such matters as may be otherwise expressly delegated in writing to the Developer by the Landlord; or

(e) Expending more than what the Developer in good faith believes to be the fair and reasonable market value at the time and place of contracting for any goods purchased or leased or services engaged on behalf of the Landlord or otherwise in connection with the Project.

3. **Accounts and Records**.

(a) The Developer, on behalf of the Landlord, shall keep such books of account and other records as may be read and approved by the Landlord, including, but not limited to, records relating to the costs of construction and construction advances. The Developer shall keep vouchers, statements, receipted bills and invoices and all other records, in the form approved by the Landlord, covering all collections, if any, disbursements and other data in connection with the Project prior to final completion of the Rehabilitation. All accounts and records relating to the

Project, including all correspondence, shall be surrendered to the Landlord, upon demand without charge thereof; and

(b) All books and records prepared or maintained by the Developer shall be kept and maintained at all times at the place or places approved by the Landlord, and shall be available for and subject to audit, inspection and copying by the Landlord or any representative or auditor thereof or supervisory or regulatory Developer, at the times and in the manner set forth in the Operating Agreement of the Landlord dated as of the date hereof, between Charles Washington Hall Manager, LLC, and Sinclair Gillespie (the "Landlord Operating Agreement").

4. **Development Services Amount**.

(a) As a fee for those services set forth in Section 1 of this Agreement and for all other services performed hereunder in connection with or in support of the services set forth in Section 1 of this Agreement (collectively the "Development Services"), the Developer shall be paid an amount (the "Development Services Amount") equal to approximately eighteen percent (18%) of the qualified rehabilitation expenditures not including the Development Services Amount, but in no even more than $750,000. The Development Services Amount shall be deemed to have been earned upon the Placement in Service Date, as defined herein. "Placement in Service Date" shall mean date the Landlord receives a permanent certificate of occupancy for the Project including one hundred percent (100%) of the Project or a temporary certificate, containing conditions to issuance of a permanent certificate which are acceptable to the Landlord, in its discretion.

(b) The Developer shall be paid out of Cash Flow (as defined in the Landlord Operating Agreement) following payment of all expenses and costs of the Landlord (excluding the fee payable hereunder but including any debt service on loans made to the Landlord) to the extent of such remaining Cash Flow provided that in no event shall such payment be made later than the date which is ten (10) years from the date hereof.

5. **Applicable Law**. This Agreement, and the application or interpretation hereof, shall be governed by and construed in accordance with the laws of the State of West Virginia.

6. **Binding Agreement**. This Agreement shall be binding on the parties hereto, their heirs, executors, personal representatives, successors and assigns. As long as the Developer is not in default under this Agreement, the obligation of the Landlord to pay the Development Services Amount shall not be affected by any change in the identity of the partners of the Landlord.

7. **Headings**. All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

8. **Terminology**. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa and the context may require.

9. **Benefit of Agreement**. The obligations and undertakings of the Developer set forth in this Agreement are made for the benefit of the Landlord and its partners and shall not inure to the benefit of any creditor of the Landlord, notwithstanding any pledge or assignment by the Landlord of this Agreement of any rights hereunder.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered to be made effective as of the date first written above.

**LANDLORD:**

**CHARLES WASHINGTON HALL LANDLORD, LLC**

By: Charles Washington Hall Manager, LLC, its managing member

By: _____
Name: DAVID MILLS
Title: CITY MANAGER

**DEVELOPER:**

CITY OF CHARLES TOWN BUILDING COMMISSION

By: _____
Name: WILLIAM WARREN
Title: CHARLES TOWN BUILDING COMM'N

**UNCONDITIONAL GUARANTY**

THIS UNCONDITIONAL GUARANTY (this "***Guaranty***"), is made as of December 21, 2016, by the CITY OF CHARLES TOWN, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia ("***Guarantor***"), for the benefit of SINCLAIR GILLESPIE, an individual residing in the State of North Carolina ("***Federal Member***").

RECITALS

WHEREAS, the City of Charles Town Building Commission (the "***Owner***"), a public corporation and municipal building commission organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia (the "***State***") is the owner in fee simple title of Charles Washington Hall, together with all necessary appurtenant facilities (the "***Project***") (such real estate as more particularly described in the herein defined City's Lease, together with the Project, and all appurtenances thereto and all additions and improvements thereto, of every kind and nature, now or hereafter acquired or constructed, herein called the "***Facilities***");

WHEREAS, in order to finance the costs of the Project, the Owner has issued, sold, and delivered its Lease Revenue Bonds, Series 2015A (United States Department of Agriculture), dated March 4, 2015 issued in the original aggregate principal amount of $2,999,950, and its Lease Revenue Bonds, Series 2015B (United States Department of Agriculture), dated March 4, 2015, issued in the original principal amount of $894,000 (collectively, the "***Series 2015 Bonds***");

WHEREAS, in order to provide for the payment of the principal of and interest on the Series 2015 Bonds, the Owner has leased the Facilities to the Guarantor, and the Guarantor will pay lease rentals to the Owner, all as set forth and described in the herein defined City's Lease;

WHEREAS, the Owner has leased the Facilities to the Guarantor pursuant to that certain Lease Agreement dated as of March 2, 2015, and effective March 4, 2015, by and between the Owner and the Guarantor, as amended by that certain First Amendment to Lease Agreement dated as of the date hereof (together, and as may be further amended and supplemented, the "***City's Lease***");

WHEREAS, Charles Washington Hall Landlord, LLC, a West Virginia limited liability company (the "***Landlord***") was formed to develop, rehabilitate, and construct, and otherwise deal with the renovation of the Project;

WHEREAS, the City has leased the Facilities to the Landlord under the terms and conditions of that certain Ground Lease dated as of the date hereof to Landlord (the "***Ground Lease***") for Landlord's development, rehabilitation and construction;

WHEREAS, following the completion of construction, the Project is expected to qualify for the federal historic rehabilitation tax credit provided in Section 47 of the Internal Revenue Code of 1986, as amended, as well as the West Virginia State Historic Tax Credits.

WHEREAS, Charles Washington Hall Manager, LLC, a West Virginia limited liability company (the "***Manager***") is the manager of the Landlord with a 1% profits interest and Sinclair Gillespie, an individual residing in the State of North Carolina, is the investor member of the Landlord with a 99% profits interest.

WHEREAS, the Guarantor believes it shall substantially benefit, directly or indirectly, from Federal Member's acquisition of an interest in the Landlord; and

WHEREAS, as a condition of acquiring an interest in the Landlord, the Federal Member has required the Guarantor to provide the guaranties and indemnifications as herein set forth.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby covenants and agrees as follows:

1. The Guarantor irrevocably and unconditionally:

(a) fully guarantees the due, prompt, and complete performance of each and every one of the following obligations:

(i) the obligations of the Manager under the Operating Agreement of Charles Washington Hall Landlord, LLC (the "***Operating Agreement***"); and

(ii) the obligations of the Manager and the Landlord under all other agreements relating to the Property or the Project.

The documents listed in clauses (i) through (ii) above are collectively referred to herein as the "***Guaranteed Documents***", and the obligations listed in clauses (i) through (ii) above are collectively referred to herein as the "***Guaranteed Obligations***".

(b) fully guarantees the accuracy and completeness of the certifications, representations, and warranties of the Manager and the Landlord, as applicable, set forth in the Guaranteed Documents and in any certificates, instruments, or documents executed after the date hereof at any time and from time to time pursuant to, or otherwise relating to, the Guaranteed Documents (collectively, the "***Guaranteed Representations and Warranties***").

(c) fully indemnifies and holds the Federal Member harmless from and against any and all loss and/or damage suffered by the Federal Member in connection with or relating to (i) any default or breach, as applicable, of the Guaranteed Obligations and the Guaranteed Representations and Warranties, and (ii) any default by the Guarantor under this Guaranty (the indemnification and hold harmless obligations of the Guarantor under this subsection (c), collectively, the "***Guaranteed Indemnifications***").

(d) fully guarantees the due, prompt, and complete payment of all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Federal Member in collection of the enforcement of this Guaranty against the Guarantor.

Subject to the express limitations in the following paragraph, the Guarantor, irrevocably and unconditionally, agrees to pay directly to the Federal Member the amount of any Guaranteed Indemnifications recalculated on an After-Tax Basis (as that term is hereinafter defined) promptly upon demand. "***After-Tax Basis***" means, with respect to any payment to be received by the Federal Member, the amount of such payment, net of any offsetting direct or allocated deduction which the Federal Member claims as a result of the application of such payment, supplemented by a further payment or payments so that, after deducting from such payments the amount of all taxes imposed on the Federal Member by any governmental authority or other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment to be received; provided, however, for the purposes of this definition, and for purposes of any payment to be made to the Federal Member on an After-Tax Basis, it shall be assumed that taxes are payable by the Federal Member at the Applicable Tax Rate (as hereinafter defined), which rate shall be certified in writing by the Federal Member to the

Manager upon request. "***Applicable Tax Rate***" means the combined effective federal, state, and local income tax rate of a taxpayer applicable in any given fiscal year assuming in each case the maximum tax rate applicable to the taxpayer without regard to actual taxable income.

Section 4 of Revenue Procedure 2014-12 sets forth a "safe harbor" (the "***Safe Harbor***") that applies in the case of a partnership that validly claims Federal Historic Credits, as defined in the Operating Agreement (a "***Partnership***"). Pursuant to the Safe Harbor, the Internal Revenue Service ("***IRS***") will not challenge a Partnership's allocations of validly claimed Federal Historic Credits if the partnership and its partners satisfy the Safe Harbor. The Guarantor, Landlord, Manager, and Federal Member each intends to satisfy each of the requirements of the Safe Harbor, including, without limitation, the prohibition of "***Impermissible Guarantees***" (as defined in the Safe Harbor). Accordingly, this Guaranty is intended to be a "permissible guaranty" (as described in Section 4.05(1) of the Safe Harbor) and shall be interpreted and treated as such. In addition, in no event shall any provision of this Guaranty include for purposes hereof any direct or indirect indemnity, guaranty, or other insurance of: (i) the Federal Member's ability to claim Federal Historic Credits, the cash equivalent of the Federal Historic Credits, or the repayment of any portion of the Federal Member's contribution to the Landlord due to inability to claim Federal Historic Credits in the event the IRS challenges all or a portion of the transactional structure of the Landlord; (ii) the Federal Member receiving distributions or consideration in exchange for the member interest of the Federal Member; or (iii) payment of the Federal Member's costs if the IRS challenges the Federal Member's claim of Federal Historic Credits, which shall not be considered Guaranteed Indemnifications. The parties hereto affirm and direct that any ambiguity in the meaning of any provision of this Guaranty shall be resolved in favor of an interpretation that would comply with the requirements of the Safe Harbor, including without limitation, that this Guaranty and the provisions set forth herein do not constitute Impermissible Guarantees.

2. The Guarantor hereby grants to the Federal Member, in its absolute discretion and without notice to Guarantor, the power and authority to deal in any lawful manner with the Guaranteed Obligations and the other obligations guaranteed hereby. Without limiting the generality of the foregoing, the liability of the Guarantor hereunder shall not be affected, impaired, or reduced in any way by any action taken by the Federal Member involving any of the following powers or authorities or pursuant to any other provision hereof, or by any delay, failure, or refusal of the Federal Member to exercise any right or remedy it may have against the Manager or any other person, firm, or corporation, including other Guarantor, if any, liable for all or any part of the Guaranteed Obligations or any of the other obligations guaranteed hereby:

(a) to renew, compromise, extend, accelerate, or otherwise change the time or place of payment of or to otherwise change the terms of the Guaranteed Obligations;

(b) to (i) modify any of the terms of either of the Guaranteed Documents, and/or any other obligations guaranteed hereby (in the manner provided for in such agreements or as the parties thereto shall otherwise agree); or (ii) waive any of the terms thereof;

(c) to take and hold security for the payment of the Guaranteed Obligations and/or performance of the other obligations guaranteed hereby and to impair, exhaust, exchange, enforce, waive, or release any such security;

(d) to direct the order or manner of sale of any such security as the Federal Member, in its discretion, may determine;

(e) to grant any indulgence, forbearance, or waiver with respect to the Guaranteed Obligations or any of the other obligations guaranteed hereby;

(f) to release or waive rights against any one or more Guarantor without releasing or waiving any rights against any other Guarantor; and/or

(g) to agree to any valuation by the Federal Member of any collateral securing payment of any of the Guaranteed Obligations in any proceedings under the United States Bankruptcy Code, as amended from time to time, or any like provision of law (the "***Bankruptcy Code***") concerning the Federal Member or the Guarantor.

3. With respect to any Guaranteed Obligation which can be satisfied with the payment of money, the Guarantor agrees that if any of the Guaranteed Obligations is not fully and timely paid or performed in accordance with the terms of the document under which such Guaranteed Obligations arises, whether by acceleration or otherwise, the Guarantor shall immediately upon receipt of written demand therefor from the Federal Member pay all such Guaranteed Obligations not timely paid or performed and hereby guaranteed in like manner as if the Guaranteed Obligations constituted the direct and primary obligation of the Guarantor. The Guarantor shall not have any right of subrogation as a result of any payment made hereunder or any other payment made by Guarantor on account of the Guaranteed Obligations, and, until the Guaranteed Obligations are satisfied in full or the Federal Member is no longer a member of the Landlord, the Guarantor hereby waives, releases, and relinquishes any claim based on any right of subrogation, any claim for unjust enrichment or any other theory that would entitle Guarantor to a claim against the Manager or Landlord based on any payment made hereunder or otherwise on account of the Guaranteed Obligations.

4. This Guaranty and the Guaranteed Obligations of the Guarantor hereunder shall be continuing and irrevocable until the obligations have been satisfied in full. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by the Federal Member from the Guarantor under or with respect to this Guaranty is or must be rescinded or returned for any reason whatsoever (including, but not limited to, determination that said payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy, or reorganization laws), then the Guarantor's obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous receipt of payment by the Federal Member, and the Guarantor's obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to the Federal Member had never been made. The provisions of the foregoing sentence shall survive termination of this Guaranty, and shall remain a valid and binding obligation of the Guarantor until satisfied.

5. The Guarantor hereby waives notice of acceptance of this Guaranty by the Federal Member and this Guaranty shall immediately be binding upon the Guarantor. Guarantor who executes this Guaranty shall be fully bound hereby regardless of whether or not any other Guarantor subsequently executes this Guaranty.

6. The Guarantor hereby waives and agrees not to assert or take advantage of:

(a) any right to require the Manager or Landlord to proceed against any other person or to proceed against or exhaust any security held by the Manager or Landlord at any time or to pursue any other remedy in the Landlord's or Manager's power before proceeding against any one or more Guarantor hereunder;

(b) any right to require the Federal Member to proceed against the Manager or Landlord or any other person or to proceed against or exhaust any security held by the Federal Member at any time or to pursue any other remedy in the Federal Member's power before proceeding against any one or more Guarantor hereunder;

(c) any defense that may arise by reason of the incapacity, lack of authority, death, or disability of any other person or persons or the failure of the Federal Member to file or enforce a claim against the estate (in administration, bankruptcy, or any other proceeding) of any other person or persons;

(d) demand, presentment for payment, notice of non-payment, protest, notice of protest, and all other notices of any kind, including, without limitation, notice of the existence, creation, or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Federal Member or any endorser or creditor of the Federal Member or Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by the Federal Member or in connection with the Guaranteed Obligations;

(e) any defense based upon an election of remedies by the Federal Member, the right of the Guarantor to proceed against the Federal Member for reimbursement, or both, any rights or benefits under the bankruptcy and insolvency laws of the State or under Sections 364 and 1111 of the Bankruptcy Code as same may be amended or replaced from time to time;

(f) any election by the Federal Member to exercise any right or remedy it may have against the Landlord or any security held by the Federal Member, including, without limitation, the right to foreclose upon any such security by judicial or non-judicial sale, without affecting or impairing in any way the liability of Guarantor hereunder, except to the extent the Guaranteed Obligations have been paid, and the Guarantor waives any default arising out of the absence, impairment, or loss of any right of reimbursement, contribution, or subrogation or any other right or remedy of Guarantor against the Landlord or any such security whether resulting from such election by the Federal Member or otherwise. The Guarantor understands that if all or any part of the liability of the Landlord to the Federal Member for the Guaranteed Obligations is secured by real property the Guarantor shall be liable for the full amount of their liability hereunder, notwithstanding foreclosure on such real property by trustee sale or any other reason impairing the Guarantor's right to proceed against the Landlord; and

(g) all duty or obligation on the part of the Federal Member to perfect, protect, not impair, retain, or enforce any security for the payment of the Guaranteed Obligations or performance of any of the other obligations guaranteed hereby.

7. All existing and future obligations of the Manager or Landlord to Guarantor or to any person controlled or owned in whole or in part by Guarantor and, the right of Guarantor to withdraw or to cause or permit any person controlled or owned in whole or in part by Guarantor to withdraw any capital invested by such Guarantor or such person in the Manager or Landlord, is hereby subordinated to the Guaranteed Obligations at any time after a default exists under the Guaranteed Obligations. Furthermore, without the prior written consent of the Federal Member, such subordinated obligations shall not be paid and such capital shall not be withdrawn in whole or in part nor shall Guarantor accept or cause or permit any person controlled or owned in whole or in part by Guarantor to accept any payment of or on account of any such subordinated obligations or as a withdrawal of capital at any time after a default exists under the Guaranteed Obligations. Any payment received by Guarantor in violation of this Guaranty shall be received by the person to whom paid in trust for the Federal Member, and such Guarantor shall cause the same to be paid to the Federal Member immediately on account of the Guaranteed Obligations. No such payment shall reduce or affect in any manner the liability of Guarantor under this Guaranty.

8. The amount of the Guarantor's liability and all rights, powers, and remedies of the Federal Member hereunder shall be cumulative and not alternative and such rights, powers, and remedies

shall be in addition to all rights, powers, and remedies given to the Federal Member under the Operating Agreement, any document or agreement relating in any way to the terms and provisions thereof or otherwise by law. With respect to the Guarantor, this Guaranty is in addition to and exclusive of the guaranty of any other Guarantor executing this Guaranty or any other person or entity which guarantees the Guaranteed Obligations and/or the other obligations guaranteed hereby.

9. The liability of the Guarantor under this Guaranty shall be an absolute, direct, immediate, and unconditional guarantee of payment and not of collectability. The obligations of the Guarantor hereunder are independent of the obligations of the Manager or Landlord or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder guaranteed and each other Guarantor, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any one or more Guarantor, whether or not the Manager or Landlord is joined therein or a separate action or actions are brought against the Manager or Landlord. The Federal Member may maintain successive actions for other defaults. The Federal Member's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless the Guaranteed Obligations have been paid in full.

10. The parties to the Guaranteed Documents and any document or agreement relating in any way to the terms and provisions thereof may, in their sole discretion, at any time enter into agreements to amend, modify, or change such agreements in the manner provided for in such documents or as the parties thereto shall otherwise agree; or may at any time waive or release any provision or provisions thereof and, with reference thereto, may make and enter into all such agreements as they may deem proper or desirable, without any notice or further assent from Guarantor and without in any manner impairing or affecting this Guaranty or any of the rights of the Federal Member or the Guarantor's obligations hereunder.

11. The Guarantor hereby agrees to pay to the Federal Member, upon demand, reasonable attorneys' fees and all costs and other expenses which the Federal Member expends or incurs in collecting or compromising the Guaranteed Obligations or in enforcing this Guaranty against Guarantor whether or not suit is filed, including, without limitation, all costs, attorneys' fees, and expenses incurred by the Federal Member in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving a Guarantor which in any way affect the exercise by the Federal Member of its rights and remedies hereunder. Any and all such costs, attorneys' fees and expenses not so paid shall bear interest at an annual interest rate equal to 10%, from the date incurred by the Federal Member until paid by Guarantor.

12. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

13. No provision of this Guaranty or right of the Federal Member hereunder can be waived nor can Guarantor be released from such Guarantor's obligations hereunder except by a writing duly executed by the Federal Member. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by the Federal Member and the Guarantor.

14. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, limited liability company, corporation, trust, or other legal entity of any kind whatsoever.

15. If any or all of the Guaranteed Obligations is assigned by the Federal Member, this Guaranty shall automatically be assigned therewith in whole or in part, as applicable, without the need of any express assignment and when so assigned, the Guarantor shall be bound as set forth herein to the assignee(s) without in any manner affecting Guarantor's liability hereunder for any part of the Guaranteed Obligations retained by the Federal Member.

16. This Guaranty shall inure to the benefit of and bind the heirs, legal representatives, administrators, executors, successors, and assigns of the Federal Member and the Guarantor.

17. The Guarantor who is an individual agrees that in the event of his/her death, it shall be a default under this Agreement if his/her personal representative or trustee does not enter into a binding agreement with the Federal Member regarding the payment of all claims or obligations (whether such claims or obligations are absolute or contingent) which the Federal Member has or may in the future have against the estate of such Guarantor prior to disbursing any assets from his/her estate or revocable living trust, other than for a payment of fees and expenses having a higher priority under the laws of the jurisdiction in which the estate of the Guarantor is being administered.

18. This Guaranty shall be governed by and construed in accordance with the laws of the State of West Virginia without regard to principles of conflicts of law, except to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case, such Federal law shall so govern and be controlling. The Guarantor acknowledges that, inasmuch as Guarantor's principal offices are located in West Virginia, the State of West Virginia bears a reasonable relationship to this Guaranty and the underlying transaction. In any action brought under or arising out of this Guaranty, the Guarantor hereby consents to the jurisdiction of any competent court within the State of West Virginia and consents to service of process by any means authorized by the laws of such state. Except as provided in any other written agreement now or at any time hereafter in force between Federal Member and such Guarantor, this Guaranty shall constitute the entire agreement of such Guarantor with Federal Member with respect to the subject matter hereof, and no representation, understanding, promise, or condition concerning the subject matter hereof shall be binding upon Federal Member or such Guarantor unless expressed herein.

19. All notices, demands, requests, or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same with Federal Express for next business day delivery or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

**If to the Guarantor:**
City of Charles Town
101 East Washington Street
Charles Town, WV 25414
Attn: David Mills
E-mail: dmills@charlestownwv.us

**If to Federal Member:**
Sinclair Gillespie
4312 Foxcroft Road
Charlotte, NC 28211

**With Copies To:** Frank T. Ellett
3752 Brandon Avenue
Roanoke, Virginia 24018

Woods Rogers PLC
10 South Jefferson Street
Roanoke, Virginia 24011
Attn: Neil V. Birkhoff
E-mail: Birkhoff@woodsrogers.com

All notices, demands, and requests shall be effective upon such personal delivery or upon being deposited with Federal Express or in the United States mail as required above. However, with respect to notices, demands, or requests so deposited with Federal Express or in the United States mail, the time period in which a response to any such notice, demand, or request must be given shall commence to run from the next business day following any such deposit with Federal Express or, in the case of a deposit in the United States mail as provided above, the date on the return receipt of the notice, demand, or request reflecting the date of delivery or rejection of the same by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, or request sent. By giving to the other party hereto at least 30 days' written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

20. This Guaranty may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, with the same effect as if all parties hereto had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages. Execution by Guarantor shall bind such Guarantor regardless of whether any one or more other Guarantor execute this Guaranty. This Guaranty shall be governed by the laws of the State.

21. Capitalized terms used in this Guaranty and not specifically defined herein shall have the meanings assigned to them in the Operating Agreement.

22. The amount of the Guarantor's liability and all rights, powers, and remedies of the Federal Member hereunder shall be cumulative and not alternative and such rights, powers, and remedies shall be in addition to all rights, powers, and remedies available to the Federal Member under the Operating Agreement, any document or agreement relating in any way to the terms and provisions thereof, or otherwise by law. The liability of the Guarantor under this Guaranty is independent of the obligations of each of the other Guarantor or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any one or more Guarantor, whether or not any other Guarantor is joined therein or a separate action or actions are brought against any other Guarantor or any other party. The Federal Member may maintain successive actions for other defaults. The Federal Member's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless the obligations indemnified hereunder has been paid in full.

23. The Guarantor covenants, represents, and warrants to and for the benefit of the Federal Member as follows:

(a) the execution, delivery, and performance by it of this Guaranty does not and will not contravene or conflict with any law, order, rule, regulation, writ, injunction, or decree now in effect of any government, governmental instrumentality, or court or tribunal having jurisdiction over it, or any contractual restriction binding on or affecting it;

(b) there are no facts or circumstances of any kind or nature whatsoever of which it is aware that could in any way impair or prevent it from performing its obligations under this Guaranty;

(c) any and all financial information with respect to it that it has given to the Federal Member in connection with the transactions contemplated by this Guaranty fairly and accurately present its financial condition and results of operations as of the respective dates thereof and for the respective dates indicated therein, and, since the respective dates thereof, there has been no adverse change in the financial condition or results of its operations;

(d) with the assistance of counsel of its choice, it has read and reviewed this Guaranty and such other documents as it and its counsel deemed necessary or desirable to read;

(e) each representation made by it in any of the documents evidencing or security any operating document to which such Guarantor is a party is true and correct in all material respects and the Federal Member may rely thereon; and

(f) upon written request of the Federal Member, the Guarantor shall provide to the Federal Member any financial statements or other reports that it is obligated to provide. The Guarantor further covenants and agrees to immediately notify the Federal Member of any change in its financial condition that adversely and materially affects its ability to perform hereunder.

(The remainder of this page is intentionally left blank.)

**COUNTERPART SIGNATURE PAGE**
**UNCONDITIONAL GUARANTY**

**IN WITNESS WHEREOF**, the undersigned Guarantor have caused this Unconditional Guaranty to be duly executed as of the date first above written.

**CITY OF CHARLES TOWN**

By: _____
Name: P DAVID MILLS
Title: CITY MANAGER

**EXHIBIT A**

**LEGAL DESCRIPTION**

BEING all of the Charles Washington Hall which fronts approximately 68.3 feet on the North side of Washington Street and runs back between parallel lines in a northern direction approximately 80 feet to the Rouss Hall Building property line, said property being bounded on the north by Rouss Hall, the east by George Street, the south by Washington Street and the west by Paradise Alley.

AND BEING the same real estate conveyed to the Charles Town Building Commission, a public corporation, by the City of Charles Town, a municipal corporation, by deed dated September 1, 1998, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 921, at page 354, to which reference is hereby made.

AND BEING the same real estate previously conveyed to the City of Charles Town by Samuel Washington, et al., by deed dated August 31, 1801, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 1, at page 116, to which reference is hereby made.

## FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (the "***First Amendment***"), made and entered into as of December 21, 2016, by and between CITY OF CHARLES TOWN BUILDING COMMISSION, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia (the "***Issuer***" or "***Lessor***"), and CITY OF CHARLES TOWN, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia (the "***City***" or "***Lessee***"), amends the Lease Agreement, dated as of March 2, 2015 and effective on March 4, 2015, by and between the Lessor and the Lessee (the "***Original Lease***").

WITNESSETH:

WHEREAS, pursuant to the terms of the Original Lease, the Lessor leased the Facilities (as defined in the Original Lease), including the real property described in Exhibit A attached hereto and incorporated herein, to the Lessee for the payments and upon the terms and conditions therein set forth; and

WHEREAS, the Lessor and the Lessee desire to enter into this First Amendment for the purpose of extending the Lease Term (as defined in the Original Lease); and

WHEREAS, the written consent of all of the Bondholders (as defined in the Original Lease) to the execution of this First Amendment has been provided pursuant to Section 11.06 of the Original Lease.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Lessor and the Lessee do hereby covenant and agree as follows:

### ARTICLE I
### AMENDMENTS

**Section 1.1. Amendment of Section 1.01**. The definition of the term "Lease" as set forth in Section 1.01 of the Original Lease is hereby deleted in its entirety and replaced with the following:

> "***Lease***" means the Lease Agreement between the Lessor and the Lessee dated as of March 2, 2015 and effective on March 4, 2015, as amended by this First Amendment, and all further amendments thereof and supplements thereto and where applicable, also means any subsequent lease or leases of all or any portion of the Facilities.

**Section 1.2. Amendment of Section 5.01.** The second paragraph of Section 5.01 of the Original Lease is hereby deleted in its entirety and replaced with the following:

> The term of the demise and leasing of the Facilities by the Issuer to the City, subject to the provisions hereof (the "***Lease Term***"), shall commence immediately upon the Closing Date, and shall extend, unless sooner terminated in accordance with the provisions hereof, to December 21, 2056, provided, however, that the Lease Term shall expire on such earlier or later date as the principal of and interest on all the Series 2015 Bonds and all other expenses or amounts payable by the City hereunder or under the Issuer Ordinance or the Assignment shall have been paid or provisions for their payment shall have been made in accordance with this Lease, the Issuer Ordinance and the Assignment.

**Section 1.3. Amendment of Section 11.06**. Section 11.06 of the Original Lease is hereby deleted in its entirety and replaced with the following:

> Until such time as all the Series 2015 Bonds, the Issuer Ordinance, and the Assignment are satisfied and discharged in accordance with their respective terms, neither this Lease nor any sublease of the Facilities may be effectively amended, changed, modified, altered, or terminated, nor may any provision hereof or thereof be waived, except with the written consent of the Purchaser.

**Section 1.4. Addition of Article XII**. The Original Lase is hereby amended by the addition of the following Article XII.

**ARTICLE XII**
**PURCHASER'S PROVISIONS**

> Section 12.1 Lessor's Responsibilities. Notwithstanding the provisions of Article VI of the Lease, the Lessor shall retain legal authority and ultimate responsibility for operating, maintaining, and managing the Facilities and for the Facilities' continued availability and use at reasonable rates and terms as required under 7 CFR 1942.17(b)(4). In the event the City shall fail to operate, maintain, and manage the Facilities or provide for the Facilities continued availability and use at such reasonable rates and terms, the Lessor shall remedy such default for the account of the City and make advances for that purpose.
>
> Section 12.2 Nondiscrimination. The following notice is provided pursuant to 7 CFR 1951.204:
>
> Notwithstanding the provisions of Article VI of the Lease, the Lessor shall retain legal authority and ultimate responsibility for operating, maintaining, and managing the Facilities and for the Facilities' continued availability and use at reasonable rates and terms as required under 7 CFR 1942.17(b)(4). In the event the City shall fail to operate, maintain, and manage the Facilities or provide for the Facilities continued availability and use at such reasonable rates and terms, the Lessor shall remedy such default for the account of the City and make advances for that purpose.
>
> Section 12.3 Purchaser's Lien. Pursuant to the Assignment and as further provided in Section 4.03 of the Lease, the Purchaser is a lienholder of the Facilities and this Lease is subordinate to the rights and claims of the Purchaser as lienholder.

**ARTICLE II**
**MISCELLANEOUS**

**Section 2.1. Effect on Original Lease.** Except as expressly set forth herein, all of the terms and conditions of the Original Lease shall remain unmodified and in full force and effect.

**Section 2.2. Binding Effect**. The Lease shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns.

**Section 2.3. Severability**. In the event any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

**Section 2.4. Applicable Law.** This First Amendment shall be governed by and construed in accordance with the laws of the State of West Virginia.

**Section 2.5. Execution in Counterparts**. The Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Lessee has caused this First Amendment to Lease to be executed in its name by its duly authorized representative as of the date first above written.

**LESSEE:** **CITY OF CHARLES TOWN**

By: _____
Name: PAUL DAVID MILLS
Title: CITY MANAGER

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, TO WIT:

The foregoing instrument was acknowledged before me this 21st day of December, 2016, by PAUL DAVID MILLS, CITY MANAGER of the City of Charles Town, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia, on behalf of said public corporation.

My commission expires: March 11, 2021.

Deborah F. Wilson
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Deborah F. Wilson
City of Charles Town
PO Box 14
Charles Town, WV 25414
My Commission Expires March 11, 2021

IN WITNESS WHEREOF, the Lessor has caused this First Amendment to Lease to be executed in its name by its duly authorized representative as of the date first above written.

**LESSOR:**

**CITY OF CHARLES TOWN BUILDING COMMISSION**

By: WM Warren
Name: WILLIAM WARREN
Title: CHARLE TOWN BUILDING COMMISSION

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, TO WIT:

The foregoing instrument was acknowledged before me this 21st day of December, 2016, by William Warren, CHAIRMAN of the City of Charles Town Building Commission, a public corporation and municipal building commission, on behalf of said public corporation.

My commission expires: March 11, 2021.

Deborah F Wilson
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Deborah F. Wilson
City of Charles Town
PO Box 14
Charles Town, WV 25414
My Commission Expires March 11, 2021

## EXHIBIT A

## REAL PROPERTY

BEING all of the Charles Washington Hall which fronts approximately 68.3 feet on the North side of Washington Street and runs back between parallel lines in a northern direction approximately 80 feet to the Rouss Hall Building property line, said property being bounded on the north by Rouss Hall, the east by George Street, the south by Washington Street and the west by Paradise Alley.

AND BEING the same real estate conveyed to the Charles Town Building Commission, a public corporation, by the City of Charles Town, a municipal corporation, by deed dated September 1, 1998, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 921, at page 354, to which reference is hereby made.

AND BEING the same real estate previously conveyed to the City of Charles Town by Samuel Washington, et al., by deed dated August 31, 1801, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 1, at page 116, to which reference is hereby made.

# CONTRIBUTION AGREEMENT

This CONTRIBUTION AGREEMENT (this "***Agreement***") dated as of December 21, 2016, is by and among the CITY OF CHARLES TOWN, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia (the "***City***"), CHARLES WASHINGTON HALL MANAGER, LLC, a West Virginia limited liability company (the "***Manager***"), and CHARLES WASHINGTON HALL LANDLORD, LLC, a West Virginia limited liability company (the "***Landlord***").

RECITALS

A. The City of Charles Town Building Commission, a public corporation and municipal building commission organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia (the "***Owner***") is the owner in fee simple title of Charles Washington Hall, together with all necessary appurtenant facilities (the "***Project***") (such real estate as more particularly described in the herein defined City's Lease, together with the Project, and all appurtenances thereto and all additions and improvements thereto, of every kind and nature, now or hereafter acquired or constructed, herein called the "***Facilities***").

B. In order to finance the costs of the Project, the Owner has issued, sold, and delivered its Lease Revenue Bonds, Series 2015A (United States Department of Agriculture), dated March 4, 2015 issued in the original aggregate principal amount of $2,999,950, and its Lease Revenue Bonds, Series 2015B (United States Department of Agriculture), dated March 4, 2015, issued in the original principal amount of $894,000 (collectively, the "***Series 2015 Bonds***").

C. In order to provide for the payment of the principal of and interest on the Series 2015 Bonds, the Owner has leased the Facilities to the City, and the City will pay lease rentals to the Owner, all as set forth and described in the herein defined City's Lease.

D. The Owner has leased the Facilities to the City pursuant to that certain Lease Agreement dated as of March 2, 2015, and effective March 4, 2015, by and between the Owner and the Landlord, as amended by that certain First Amendment to Lease Agreement dated as of the date hereof (together, and as may be further amended and supplemented, the "***City's Lease***").

E. The Landlord was formed to develop, rehabilitate, and construct, and otherwise deal with the renovation of the Project.

F. The City has leased the Facilities to the Landlord under the terms and conditions of that certain Ground Lease dated as of the date hereof to Landlord (the "***Ground Lease***") for Landlord's development, rehabilitation and construction.

G. Following the completion of construction, the Project is expected to qualify for the federal historic rehabilitation tax credit provided in Section 47 of the

Internal Revenue Code of 1986, as amended, as well as the West Virginia State Historic Tax Credits.

H. The Manager is the manager of the Landlord with a 1% profits interest and Sinclair Gillespie, an individual residing in the State of North Carolina, is the investor member of the Landlord with a 99% profits interest.

I. Leasehold ownership of the Facilities is being transferred from the City to the Landlord pursuant to the terms of the Ground Lease for a term of forty (40) years, which is substantially in excess of the useful life of the Facilities. Accordingly, the parties are accounting for the Ground Lease as a transfer of the Facilities for Federal income tax purposes.

J. The value of the Facilities is estimated to be $4,819,927 and the present value of the scheduled rent payments under the Ground Lease is nominal ($1 per year). As a result, the parties intend to treat the Ground Lease as a capital contribution of the Project from the City to the Manager, and from the Manager to the Landlord.

K. Notwithstanding the foregoing, although the Facilities are and will continue to be subject to the lien of the Ground Lease and the Series 2015 Bonds, neither the Manager nor the Landlord will assume liability for the obligations secured by such lien.

NOW, THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Contribution. The parties hereto agree that the Ground Lease will be deemed to be a partial contribution of $4,819,927: (i) from the City to the Manager, and (ii) from the Manager to the Landlord, with the City receiving capital account credit of $4,819,927 on the books of the Landlord.

2. Governing Law. This Agreement is governed by and construed in accordance with the internal, substantive laws of the State of West Virginia applicable to agreements made and to be performed entirely within such State.

3. Severability. In the event that any covenant, condition, or other term herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same will be deemed to be severable from the remainder of this Agreement and will in no way affect, impair, or invalidate any other covenant, condition, or other term contained herein.

4. Further Assurances. From time to time on and after the date hereof, each party hereto will promptly execute and deliver all such further instruments and assurances, and will promptly take all such further actions, as the other parties hereto may reasonably request (but at the requesting party's expense) in order more effectively to effect or confirm the transactions hereby contemplated and to carry out the purposes of this Agreement.

5. Tax Treatment. All of the parties will treat and report the partial contribution contemplated by this Agreement as a nontaxable contribution of assets in exchange for an equity interest pursuant to Sections 351 and 721(a) of the Internal Revenue Code of 1986, as amended. The parties will not take any actions or positions inconsistent with the obligations set forth herein.

6. No Third-Party Beneficiaries. This Agreement binds and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to or does confer any rights or remedies on any person other than the parties hereto and their respective successors and permitted assigns.

7. Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be an original, but all of which together will constitute one and the same agreement. In pleading or proving this Agreement, it will not be necessary to produce or account for more than one copy of this Agreement executed (in counterparts or otherwise) by all of the parties.

[*Signatures on the following page.*]

**IN WITNESS WHEREOF,** the parties to this Agreement have caused it to be duly executed effective as of the date first above written.

**CITY:**

**CITY OF CHARLES TOWN**

By: _____
Name: DAVID MILLS
Title: CITY MANAGER

**MANAGER:**

**CHARLES WASHINGTON HALL MANAGER, LLC**

By: _____
Name: DAVID MILLS
Title: MANAGER

**LANDLORD:**

**CHARLES WASHINGTON HALL LANDLORD, LLC**

By: Charles Washington Hall Manager, LLC, its managing member

By: _____
Name: CITY MANAGER DAVID MILLS
Title: CITY MANAGER

# OPERATING AGREEMENT

# OF

# CHARLES WASHINGTON HALL LANDLORD, LLC

Membership Interests in Charles Washington Hall Landlord, LLC have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, or the state securities laws of any state. Without such registration, Interests may not be sold, pledged, hypothecated, or otherwise transferred by a Member at any time whatsoever except upon delivery to the Company of an opinion of counsel satisfactory to the Company that registration is not required for such transfer and/or the submission to the Company of such other evidence as may be satisfactory to the Company to the effect that any such transfer will not violate the Securities Act of 1933, as amended, and/or applicable state securities laws, and/or any rule or regulation promulgated thereunder. In addition, any sale or other transfer of Interests is subject to certain restrictions that are set forth in this Agreement.

**OPERATING AGREEMENT OF**

**CHARLES WASHINGTON HALL LANDLORD, LLC**

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# OPERATING AGREEMENT

# OF

# CHARLES WASHINGTON HALL LANDLORD, LLC

This Operating Agreement (***"Agreement"***) of CHARLES WASHINGTON HALL LANDLORD, LLC, dated and effective as of December 21, 2016 (the "***Closing Date***"), is made by and among:

**CHARLES WASHINGTON HALL MANAGER, LLC**,
a West Virginia limited liability company ("***Managing Member***")
as the Managing Member,

and

**SINCLAIR GILLESPIE**,
an individual residing in the State of North Carolina ("***Federal Member***"),

## RECITALS

**WHEREAS**, Charles Washington Hall Manager, LLC (the "***Organizer***") formed Charles Washington Hall Landlord, LLC (the "***Company***"), by filing the Articles of Organization (the "***Articles***") with the Office of the Secretary of State of the State of West Virginia (the "***Formation State***") on November 21, 2016, pursuant to the West Virginia Uniform Limited Liability Company Act of 1996 ("***Act***");

**WHEREAS**, the Company is the owner for tax purposes of a building (the "***Building***") and the tracts of land upon which the Building is located (the "***Land***"), pursuant to that certain Ground Lease of even date herewith; and

**WHEREAS**, the rehabilitation of the Building will help ensure the preservation and protection of a historic project through the rehabilitation of the Building for use as a market house with related ancillary uses such as a visitors center, a grocery, and a restaurant, which rehabilitation will qualify for the Credits (as hereinafter defined); and

**WHEREAS**, the parties hereto desire to adopt this Agreement as the Company's Operating Agreement, to admit the Federal Member, and to set forth more fully the rights, obligations, and duties of the Members.

**NOW, THEREFORE,** in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

## ARTICLE I.
## BUSINESS PURPOSE

### 1.01 Formation and Continuation of the Company

The Company has been formed as and shall be a limited liability company under the Act. The Federal Member is hereby admitted as an Investor Member of the Company and the undersigned hereby agree to continue the Company as a limited liability company under the Act. The Organizer has caused the Articles to be filed with the Office of the Secretary of State of the Formation State, and the Managing Member shall execute and file such documents as may be required to qualify the Company as a foreign limited liability company in any jurisdiction as the Managing Member may determine is appropriate. The Managing Member and Federal Member, constituting all of the Members of the Company, hereby enter into this Agreement to govern the Company and continue the Company under the Act. The Managing Member has filed, or shall cause to be filed with the Office of the Secretary of State of the Formation State, any amendments to the Articles as may be required under the Act.

### 1.02 Company Name

The name of the Company is "Charles Washington Hall Landlord, LLC".

### 1.03 Principal Place of Business

The location of the principal place of business of the Company shall be at such place as the Managing Member may from time to time determine (the "***Principal Office***"), which shall initially be at P.O. Box 14, Charles Town, West Virginia 25414. The Company may maintain offices and places of business at such other place or places within or outside the State of West Virginia as the Managing Member deems advisable. The Managing Member is authorized and directed to execute and deliver or file such documents and to take such actions as it may consider advisable to permit the Company to conduct its business in such other states.

### 1.04 Registered or Resident Agent

The name and address of the registered or resident agent of the Company for service of process are: P.O. Box 14, Charles Town, West Virginia 25414.

### 1.05 Title to Property

Legal leasehold title to the herein defined Property shall be in the name of the Company, and no Member, individually, shall have any ownership of such interest in and to the Property.

### 1.06 Purposes of the Company

The exclusive purposes, nature, and general character of the business of the Company shall consist of:

(a) managing, operating, and, if appropriate or desirable, selling or otherwise disposing of its interest in and to the Property, or any substantial part thereof;

(b) during the HTC Compliance Period (as defined below), operating, or causing the operation of, the Property in compliance with the provisions of Section 47 and Section 50(d) of the Code (as defined below);

(c) carrying on any and all activities ancillary or otherwise related to the foregoing in accordance with this Agreement; and

(d) the Company shall have all powers necessary to accomplish such purposes.

The purposes of this Company and the nature and character of its business shall not be extended, by implication or otherwise, except by Consent of the Investor Member(s) (if more than one, then pursuant to the Consent of the Investor Members).

### 1.07 Company Term

The term of the Company commenced on November 21, 2016, and shall continue perpetually, unless sooner terminated in accordance with Article XII. Upon dissolution of the Company, the Managing Member shall take all actions necessary to terminate the Company in accordance with requirements of the Act.

## ARTICLE II.
## CERTAIN DEFINITIONS

### 2.01 General Terms

The following defined terms used in this Agreement shall have the meanings specified below:

*Accountants*: Initially (through and including the preparation and delivery of the Cost Certification), such firm of independent certified public accountants selected by Investor Member, or such other firm of independent certified public accountants selected in accordance with Section 5.14 below.

*Act*: The West Virginia Uniform Limited Liability Company Act or any corresponding provision or provisions of succeeding law, as it or they may be amended from time to time during the term of the Company.

*Admission Date*: The date on which Federal Member is admitted to the Company, which shall be deemed to be the date of execution of this Agreement by all parties hereto on the Closing Date.

*Affiliate*: As to any Member: (i) any such Member or member of his or her Immediate Family, respectively; (ii) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of, any such Member or member of his or her Immediate Family, respectively; (iii) any entity of which a majority of the voting interests is owned by any one or more of the Persons referred to in the preceding clauses (i) and (ii); (iv) any officer, director, trustee, employee, stockholder or member (ten percent (10%) or more) or partner or member of any Person referred to in the preceding clauses (i), (ii) and (iii); and (v) any Person directly or

indirectly controlling (ten percent (10%) or more), or under direct or indirect common control with, any Person referred to in the preceding clauses (i), (ii), (iii), or (iv).

*Agency:* any government agency having jurisdiction over the particular matter to which reference is being made.

*Agreement*: This Operating Agreement of Charles Washington Hall Landlord, LLC, including all of the exhibits attached hereto and made a part hereof, as amended (in accordance with the terms and provisions of this Agreement) and in effect from time to time.

*Annual Operating Budget*: A budget prepared in accordance with the terms of this Agreement for the ownership and operation of the Company, reflecting the reasonably projected income and expenses for the following Fiscal Year and payments budgeted into, and disbursements budgeted from, the Reserves for such year, which has been reviewed and approved in writing by the Investor Member(s).

*Annual Return* shall mean a cumulative annual distribution, to be paid in equal quarterly installments, to the Investor Member in the amount of the sum of one percent (1.0%) of its paid-in Capital Contribution. Such return shall be computed on the basis of a thirty (30) calendar-day month and a three hundred sixty (360) calendar-day year, and shall be payable as set forth on Exhibit A-3. Any Annual Return not distributed for any calendar year shall accrue and remain payable until paid.

*Architect*: The architect(s) licensed in the State as the Company may engage in connection with the rehabilitation of the Property.

*Articles*: As defined in the Recitals to this Agreement.

*Business Day*: A day during which commercial banks in the State of West Virginia are open for business of the nature required for the implementation or administration of this Agreement, other than any legal state holiday observed in the State of West Virginia.

*Capital Account*: The capital account maintained by the Company for each Member, determined in accordance with Article VII.

*Capital Contribution*: The total amount of cash or any cash equivalents and the fair market value of any property (net of liabilities thereon) contributed or agreed to be contributed to the Company by each Member, including all adjustments thereto, as provided in this Agreement and Exhibit A. Any reference in this Agreement to the Capital Contribution of a substituted Member shall include all Capital Contributions previously made by any predecessor or former Member of the Interest acquired by the substituted Member, and shall be subject to all adjustments thereto pursuant to this Agreement.

*Capital Installment*: Each installment of Capital Contribution as set forth on Exhibit A-1.

*Capital Installment Due Date*: The date on which any Capital Installment (or portion thereof) is due and payable pursuant to Section 3.02(d).

*Capital Installment Notice*: The Notice to be delivered to each Investor Member by the Managing Member set forth on Exhibit A-6.

*Capital Percentage*: Each Member's Interest in Capital Proceeds, as set forth in Section 8.02 and Exhibit A-2.

*Capital Proceeds*: The proceeds from (i) any sale or exchange of any of the assets of the Company, (ii) any casualty, condemnation, or other loss affecting the Property or any portion thereof resulting in the receipt of insurance proceeds (other than rent loss or business interruption insurance) or condemnation payments, except where the proceeds thereof are applied to the restoration, reconstruction, or replacement of the Property, (iii) any financing or refinancing of the Property (including the disbursement of any proceeds of any such loan, whenever made, that are available to be distributed to the Members), or (iv) any other transaction the proceeds of which are deemed attributable to capital under generally accepted accounting principles less (a) costs and expenses incurred by the Company in connection with the transaction giving rise to such proceeds; (b) all principal and interest payments and other sums paid on or with respect to any indebtedness of the Company then payable because of such event, other than a Member Loan; and (c) any Company Expenses then due and payable and for which there are insufficient Company gross revenues to pay; provided, that in no event shall the making of any Capital Contribution or Member Loan give rise to any Capital Proceeds.

*Cash Flow*: The amount, determined for any Fiscal Year or portion thereof, equal to the excess, if any, of all gross revenue collected directly or indirectly from the operations of the Property (excluding loans, condemnation and casualty proceeds, Capital Proceeds, and tenant security deposits, and interest thereon, unless forfeited to the Company) and of the Company (excluding Capital Contributions), as reduced, dollar for dollar, by Company Expenses.

*Certificate*: The Certificate of Formation for the Company that is prepared and filed in accordance with the Act, as such Certificate of Formation may be amended from time to time.

*Certification Application:* The Historic Preservation Certification Application for the Building, provided for in Title 36 of the Code of Federal Regulations, Part 67.

*Code*: The Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

*Company*: Charles Washington Hall Landlord, LLC, a West Virginia limited liability company formed under and pursuant to the Act.

*Company Assets*: The Company's leasehold interest in and to the Property, all personal property owned by the Company and any and all interests in limited partnerships, limited liability companies and/or other investments approved by the Investor Member, cash and all cash and non-cash proceeds of the above.

*Company Expenses*: All costs, debt service payments and expenses of any type incurred by the Company, incident to the equipping, financing, ownership and operation of the Property and the Company, including, without limitation, payments of taxes (including without limitation any franchise tax or similar tax imposed on the Company by the State), state and federal tax

return preparation expenses, audit expenses and any other debt service obligations on Company loans or obligations not paid out of Cash Flow and costs of capital improvements to the Property incurred after the Completion Date, to the extent such Company Expenses are not funded or approved in a Budget for funding from the Company's Reserves (described on Exhibit A-5), from insurance or condemnation proceeds, or from a loan or Capital Contribution proceeds, from Capital Proceeds. By way of clarification, Company Expenses shall not include any non-cash expenses such as depreciation and amortization taken into account for federal income tax purposes.

*Completion* or *Completion Date*: The last to occur of the following:

(i) The date, which is expected to occur on or prior to the Target Completion Date (as defined below) on which the Company has "Placed in Service" (as defined for purposes of Section 47 of the Code) the entire Property, achieved full completion of rehabilitation of all of the Property and delivered to the Company all of the Property, which has been completed in a good and workmanlike manner, defect-free and free from mechanic's and materialmen's liens, that have not been released or bonded against so as to preclude the holder of such lien from having any recourse to the Property (or any portion thereof) or the Company for the debt secured thereby and in substantial accordance with the relevant Development Documents and in all respects in accordance with all applicable historic rehabilitation and environmental remediation laws and requirements, including, but not limited to, all Historic Approvals necessary for the Property to qualify for the Credit, as evidenced by an AIA certificate of completion prepared and executed by the Architect (and concurrence therewith by the Investor Member's independent inspection and disbursement advisor), indicating that rehabilitation of the Property has been completed in substantial accordance with the relevant Development Documents and in strict compliance with the Part 2 Approval (including all conditions set forth therein), except for any non-material punch list items that do not impede the operation and use of the Property as a commercial and residential rental project, provided funds have been placed in escrow to provide for the completion of such punch list items in form, substance and amount reasonably acceptable to the Investor Member; and

(ii) Certification by the Architect that the Development has been completed in all respects in accordance with the Part 2 Approval, the Plans and Specifications and applicable law; and

(iii) The receipt of unqualified certificates of occupancy (or certificates of occupancy which contain conditions or qualifications which receive the Consent of the Investor Members, and if more than one, then pursuant to a Consent of the Investor Members for the Property (other than any commercial space not then leased; provided, that such unleased commercial space is in "white-box" condition) or a temporary certificate permitting the lawful operation, use and occupancy of the entire Property as a residential development, containing conditions to issuance of a permanent certificate which receives the Consent of the Investor Member(s), in its reasonable discretion (if more than one, then pursuant to a Consent of the Investor Members).

*Consent*: The prior written consent or approval of the Investor Member (if more than one, then pursuant to a Consent of the Investor Members), the Managing Member and/or any other Member, or as the context may require, to do the act or thing for which the consent is solicited, which consent will not be unreasonably conditioned, withheld or delayed except as expressly provided in this Agreement.

*Construction Consultant*: Any third party architectural or engineering firm who is not the architect for the Project and who is designated and/or engaged by the Investor Member.

*Controlled Affiliate*: A member of the "affiliated group" (as defined in Section 1504(a) of the Code).

*Cost Certification*: The written certification of the Accountants, as soon as practicable after the Completion Date, of the costs of the Property and/or the Development (as applicable) and the amount of the applicable Credit, based on the qualified rehabilitation expenditures (as such term is defined in Section 47(c)(2) of the Code), each based on the Accountant's audit of the Company's accounting records and any other documentation deemed appropriate by the Accountants, that is acceptable to the Investor Member.

*Credit* or *Credits*: The Federal Historic Credits and/or State Tax Credits.

*Credit Adjuster Payment*: A payment made by the Managing Member pursuant to Section 3.03, which payment shall not affect its Interest or any component thereof.

*Credit Agency*: West Virginia State Historic Preservation Office.

*Credit Deficiency*: As defined in Section 3.03(d) of this Agreement.

*Credits at Completion*: The aggregate amount of Credits to be received by the Federal Member following Cost Certification, based on projections or calculations prepared in accordance with Section 3.03(a).

*Default Rate*: The Prime Rate plus two percent (2%) per annum.

*Developer*: The City of Charles Town Building Commission, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia.

*Developer Entities*: The Company, the Managing Member, the Developer, as well as each of the foregoing Person's Affiliates, owners, members, principals, officers, directors, spouses and children, as applicable.

*Development*: The Property.

*Development Agreement*: That certain Development Agreement between the Company and Developer, dated of even date herewith, with respect to the rehabilitation and development of the Development.

*Development Documents*: The construction and/or rehabilitation contracts, Plans and Specifications, agreements with architects, engineers, environmental abatement consultants and contractors and other third party contractors with the Company, the Guaranty, the Development Agreement, the Mortgage Loan Documents, agreements with the Management Agent, and any other document or instrument executed in connection with any of the aforesaid documents.

*Development Fee*: The fee payable by the Company to the Developer pursuant to the Development Agreement.

*Disallowance Event*: Receipt of notice from an Agency after the payment of the Second Installment that the Historic Certification has or will be revoked or otherwise giving notice that all or any part of the State Tax Credits is or will be unavailable, reduced, lost, recaptured or otherwise disallowed.

*Environmental Hazard*: Any hazardous or toxic substance, waste or material, or any other substance, pollutant, or condition regulated by federal, state, or local law, rule, regulation or ordinance that poses a risk to human health or the environment, including, but not limited to: (i) any "hazardous substance" as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq.* as amended; (ii) petroleum in any form, lead-based paint, asbestos, urea formaldehyde insulation, methane gas, polychlorinated biphenyls ("***PCBs***"), fluorescent lamps, radon, mold or lead in drinking water, except for ordinary and necessary quantities of office supplies, cleaning materials and pest control supplies and materials used in the rehabilitation or maintenance of the Property stored in a safe and lawful manner and petroleum products contained in motor vehicles; (iii) any underground storage tanks; (iv) accumulations of debris, mining debris or spent batteries, except for ordinary garbage stored in receptacles for regular removal; or (v) any other condition that could result in liability for an owner or operator of the Property under any federal, state, or local law, rule, regulation or ordinance.

*Environmental Laws*: (i) The Clean Air Act; (ii) the Clean Water Act; (iii) the Resource Conservation and Recovery Act; (iv) the Toxic Substance Control Act; (v) the Safe Drinking Water Control Act; (vi) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, *et seq.* as amended; (vii) the Occupational Safety and Health Act; (viii) the Residential Lead-Based Paint Hazard Reduction Act of 1992; and (ix) any other federal, state, or local law, regulation, rule, or ordinance pertaining to public health or employee health and safety.

*Event of Bankruptcy*: With respect to any Person:

(i) The commencement by such Person of a voluntary case under applicable federal bankruptcy laws, or any other applicable federal or state bankruptcy, insolvency or similar law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such person or for any substantial part of his or its property, or the making by such Person of any assignment for the benefit of creditors, or the taking of action by such Person in furtherance of any of the foregoing;

(ii) The commencement against such Person of an involuntary case under applicable federal bankruptcy laws, or any other applicable federal or state bankruptcy insolvency or similar laws which has not been vacated or discharged within ninety (90) days or the entry of a decree or order for relief by a court having jurisdiction in respect of such person or the appointment of a receiver, liquidator, trustee (or other similar official) for such person and the continuance of such decree, order or appointment unstayed for a period of ninety (90) days;

(iii) The written admission by such Person of his or its inability to pay his or its debts as they become due; or

(iv) Such Person becoming "insolvent" as insolvency is or may be defined pursuant to the federal bankruptcy laws, the Uniform Fraudulent Conveyances Act, any state or federal act or law, or the ruling of any court.

*Event of Default*: Has the meaning set forth in Section 9.02(a) of this Agreement.

*Fee Agreements*: Any agreements entered into pursuant to Section 5.06(t).

*Federal Historic Credits*: The federal credits for certified historic structures, as set forth in Section 47(a)(2) of the Code.

*Final Determination*: With respect to any issue, the earliest to occur of: (i) a decision, judgment, decree, or other order being issued by any court of competent jurisdiction, which decision, judgment, decree, or other order has become final (*i.e.*, all allowable appeals requested by the parties to the action have been exhausted or the time for such appeals has expired); (ii) the IRS having entered into a binding agreement with the Company or any partner or member thereof, as applicable, or having reached a final administrative or judicial determination which, whether by law or agreement, is not subject to appeal (or for which the period of appeal has expired without appeal); (iii) the date that the applicable statute of limitations for raising an issue regarding a Federal (or, if applicable, state or local) income tax matter with respect to the Company has expired with such issue not having been raised; (iv) the filing of a federal information return or an amended federal information return by the Company; or (v) the date on which the time for instituting a claim for a refund has expired, or if a claim was filed the time for instituting a suit with respect thereto has expired with no such suit having been filed.

*Fiscal Year*: The calendar year or such other year that the Company is required by the Code to use as its taxable year, which currently ends December 31.

*Formation State*: The State of West Virginia.

*General Contractor*: The general contractor licensed in the State as the Company may engage in connection with the rehabilitation of the Property.

*Ground Lease*: Long-term lease between the Company, as lessee, and Ground Lessor, as lessor, dated of even date herewith.

*Ground Lessor*: City of Charles Town, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia.

*Guarantor*: City of Charles Town, a public corporation and governing body of the City of Charles Town, a political subdivision of the State of West Virginia, whose obligations as a guarantor is set forth in the Guaranty.

*Guaranty*: That certain Unconditional Guaranty of Certain Obligations of the Guarantor of even date herewith.

*Guaranteed Outside Completion Date:* December 31, 2016.

*Historic Approvals*: Collectively, (i) the application for the Building to be a "certified historic structure" as defined in Section 47(c)(3) of the Code, as approved by the United States Department of Interior-National Park Service (the "***Part 1 Approval***"); (ii) Part 2 of the historic preservation application and plans for rehabilitation of the Building, which has been submitted to the U.S. Department of Interior-National Park Service (the "***Part 2 Approval***"); and (iii) Request for Certification of Completed Work (Form 10-168c), which will be submitted to and approved by the U.S. Department of Interior-National Park Service pursuant to Part 3 of the historic preservation application whereby the rehabilitation of the Building has been determined to constitute the "certified rehabilitation" of a "certified historic structure" (the "***Part 3 Approval***").

*Historic Certification*: The first date on which both the following have occurred: (i) the Project shall have been placed in service and (ii) the issuance of a final certification of rehabilitation of the historic building(s) of the Project by the Credit Agency which designates each such building as a "Certified Historic Structure" and that the rehabilitation performed, or to be performed, on the Project is a "Certified Rehabilitation" pursuant to the West Virginia Statute and the Regulations.

*Historic Preservation Certification Application*: The Historic Preservation Certification Application promulgated by the Credit Agency, as may be amended from time to time.

*HTC Compliance Period*: The recapture period specified in Section 50(a)(1) of the Code.

*Immediate Family*: With respect to any Person, his or her spouse, children, including adopted children, stepchildren, parents, parents-in-law, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, each whether by birth, marriage, or adoption, as well as any *inter vivos* trusts treated for the benefit of such Person or any of the foregoing.

*Initial Managing Member*: Charles Washington Hall Manager, LLC, a West Virginia limited liability company.

*Interest*: As to any Member, such Member's right, title, and interest in and to any and all assets, distributions, losses, profits and shares of the Company, whether cash or otherwise, and any other interests and economic incidents of ownership whatsoever of such Member in the Company.

*Interest Shift Date*: The date that is the later of: (i) the fifth ($5^{th}$) anniversary of the Project being Placed in Service or (ii) the date upon which the Investor has received a return equal to or greater than its Capital Contributions.

*Investor Members*: Collectively, the Federal Member and its successors and permitted assigns, and any Person who becomes a Substitute Investor Member as provided herein, in each such person's capacity as an Investor Member. If there is more than one Investor Member of the Company, the term "*Investor Member*" shall refer to each and every of such Investor Member.

*IRS*: The Internal Revenue Service and its successors.

*Loan Documents*: The Mortgage Loan Documents.

*Loans*: The Mortgage Loan.

*Lender Appointed MM*: Any successor Managing Member unanimously appointed by Mortgage Lender.

*LP Loans*: Any loans to the Company that an Investor Member, in its sole discretion, may elect to make.

*Management Agent*: Any management agent retained by the Company to manage the Property.

*Management Agreement*: Has the meaning set forth in Section 11.01 hereof.

*Managing Member*: Initial Managing Member and any additional or substitute Managing Member of the Company named in any duly adopted amendment to this Agreement. If there is more than one Managing Member, the term "***Managing Member***" shall refer individually, collectively, jointly and severally, to all such Managing Members. The Managing Member shall constitute the "manager" of the Company for purposes of the Act.

*Material Default*: The occurrence of any of the following events:

(i) any intentional misconduct, gross negligence, fraud or acts outside the scope of its authority by the Managing Member that constitute a breach of its fiduciary duty (provided the same has a material, adverse impact on the Company, the Investor Member or the Property);

(ii) a violation by the Managing Member in the performance of its obligations under this Agreement or any provision of applicable law, provided the same has a material, adverse impact on the Company, the Investor Member or the Property;

(iii) the Managing Member shall have caused any of the Loans to go into default past the expiration of any applicable notice and cure periods;

(iv) the Managing Member shall have conducted its own affairs or the affairs of the Company in such manner as would: (a) cause the Company to fail to qualify as a limited liability

company under the Act; or (b) cause the Company to be treated for federal income tax purposes as an association, taxable as a corporation; or

(v) an event of Bankruptcy shall have occurred with respect to the Company or any Managing Member.

*Member* or *Members*: Any or each Member as the context shall require, including the Managing Member and Investor Member(s).

*Member Loan*: A loan to the Company by a Member as permitted or required by this Agreement, including, without limitation, an Operating Deficit Advance and Credit Adjuster Payment.

*Mortgage*: The Credit Line Leasehold Deed of Trust, Security Agreement, and Fixture Filing, dated March 4, 2015, executed by the Developer in favor of Mortgage Lender.

*Mortgage Lender*: The United States of America, acting by the Rural Housing Service, United States Department of Agriculture.

*Mortgage Loan*: That certain loan made by the Mortgage Lender to finance the Project in the aggregate principal amount of $3,893,950, and the refinance of any Mortgage Loan.

*Mortgage Loan Documents*: The Mortgage Note, Mortgage and any other documents evidencing the Mortgage Loan.

*Mortgage Note*: Those certain Lease Revenue Bonds, Series 2015A (United States Department of Agriculture), dated March 4, 2015 issued by the Owner in the original aggregate principal amount of $2,999,950, and those certain Lease Revenue Bonds, Series 2015B (United States Department of Agriculture), dated March 4, 2015, issued by the Owner in the original principal amount of $894,000 and purchased and held by the Mortgage Lender.

*Notice*: A writing containing the information required by this Agreement and sent by registered or certified mail, postage prepaid, return receipt requested, or sent by commercial delivery service, by hand delivery, or by telecopy (with electronic confirmation thereof), paid for by the sender, to the Member at the last address or addresses designated for such purpose by such Member pursuant to Section 17.02.

*Operating Deficit*: For any period, the amount by which Company Expenses exceed the sum of gross receipts collected by the Company from the Property (but excluding loans, casualty and condemnation proceeds, Capital Contributions and Capital Proceeds plus any Reserves).

*Operating Deficit Advance*: A loan to the Company by the Managing Member, which shall be required under the circumstances described in Section 3.04 and which shall not affect its Interest, or any component thereof.

*Part 1 Approval*: Has the meaning set forth in the definition of Historic Approvals.

*Part 2 Approval*: Has the meaning set forth in the definition of Historic Approvals.

*Part 3 Approval*: Has the meaning set forth in the definition of Historic Approvals.

*PCBs*: As defined in Environmental Hazard.

*Percentage Interest*: As to any Member, the percentage in the Company shown opposite the name of such Member in Exhibit A, as it may be amended from time to time in accordance with this Agreement.

*Permitted Liens*: The Mortgage and all exceptions set forth on the Title Policy which are not objected to by the Investor Member(s).

*Person*: An individual or entity, including, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, cooperative, or association and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so requires.

*Placed in Service or Placement in Service*: As such terms are defined for purposes of Section 47 of the Code and the Treasury Regulations thereunder.

*Plans and Specifications*: The Plans and Specifications for the Building prepared by the Architect, together with any change orders approved in accordance with the terms and provisions of the Development Documents.

*Price per Credit:* Eighty-seven Cents ($0.87) per Federal Historic Credit.

*Prime Rate*: The from time to time prime rate of interest published in the Wall Street Journal.

*Projected Credit Amount*: The aggregate or annual, as the context requires, Credits anticipated to be generated by the Property and as specified on Exhibit A-2 and adjusted pursuant to Section 3.03(a).

*Projections*: The financial projections attached hereto as Exhibit C, as the same may be adjusted and updated in accordance with Section 3.03 hereof.

*Property*: The Building located in Charles Town, West Virginia and commonly known as Charles Washington Hall, together with all appurtenant rights (including without limitation all common areas and limited common elements appurtenant thereto) and the Land, the legal description of which is set forth on Exhibit B attached hereto and made a part hereof, as well as all easements, servitudes and other rights and benefits appurtenant thereto, to be rehabilitated in accordance with the Development Documents and applicable Historic Approvals into a market house with related ancillary uses such as a visitors center, a grocery, and a restaurant.

*QREs*: "Qualified rehabilitation expenditures" as such term is defined in Section 47(c)(2) of the Code, as determined by the Accountants.

*Reserves*: The Reserves funded pursuant to Exhibit A-5.

*Regulations*: The rules and regulations of any Agency which are applicable to the Project or the Company, including, but not limited to the regulations promulgated by the Credit Agency.

*Secretary*: The Secretary of the U.S. Department of the Interior or any authorized representative thereof, including the National Park Service.

*Secretary's Standards*: The Secretary's Standards for Rehabilitation, codified in 36 CFR 67.

*SHPO*: The State Historic Preservation Officer (as such term is defined in 36 C.F.R. Part 67) for the State of West Virginia.

*SNDA*: A Subordination, Nondisturbance and Attornment Agreement substantially in the form attached hereto as Exhibit E.

*Special Tax Distribution:* As defined in Section 8.04 of this Agreement.

*State*: The State of West Virginia.

*State Historic Tax Credits* or *State Tax Credits:* West Virginia State Historic Rehabilitation Tax Credits.

*Substitute Investor Member*: Any Person admitted from time to time to the Company as a Member in accordance with the provisions of Article X hereof and so reflected on Exhibit A, as such Exhibit A may be amended from time to time in accordance with this Agreement.

*Target Completion Date*: December 31, 2016.

*Tax Credit Recapture Event*: The occurrence of any of the following: (i) the filing of a tax return by the Company or an amendment to a tax return of the Company evidencing a disallowance of Credit previously allocated to the Investor Member(s), (ii) a Final Determination resulting in a deficiency with respect to, or recapture of, Credits previously allocated to Investor Member(s) in connection with the Property, or (iii) any other event which causes a recapture, reallocation or disallowance of a Credit allocated to the Investor Member(s) under applicable law. Notwithstanding the foregoing, no Tax Credit Recapture Event shall result from a loss or reduction in the Credits allocated to the Investor Member(s) with respect to the Property to the extent such loss or reduction results solely from a change in the Code or Treasury Regulations after the Admission Date or solely from any action or inaction by the Investor Member including, but not limited to, a transfer by the Investor Member of its Interest.

*Tax Matters Partner*: The Managing Member.

*Term*: The period of time the Company shall continue in existence as stated in Section 1.07.

*Terminating Event*: The Bankruptcy or dissolution of a Managing Member, the transfer of its Company Interest by a Managing Member, or the voluntary or involuntary withdrawal of a Managing Member from the Company. Involuntary withdrawal shall occur whenever a

Managing Member may no longer continue as a Managing Member by law or pursuant to any terms of this Agreement.

*Title Policy*: The ALTA extended coverage owner's policy of title insurance issued to the Company in an amount equal to the Title Policy Amount listed on Exhibit A-2.

*Treasury Regulations*: The temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

*West Virginia Statute*: Section 11-21-8g, West Virginia Code, as amended.

**2.02 General Rules of Document Interpretation**

(a) Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

(i) words importing the singular number include the plural number and/or words importing the plural number include the singular number;

(ii) words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;

(iii) the table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;

(iv) words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, or government or agency or political subdivision thereof;

(v) any reference in this Agreement to a particular "*Article*," "*Section*," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;

(vi) each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and

(vii) when any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

(b) In the event there is more than one Member, the following additional rules of construction shall apply unless otherwise provided:

(i) allocations to the Members of Gain, Net Profits, Net Losses, Loss and credits under Article VII, and distributions of Cash Flow and Capital Proceeds under

Article VIII shall be further allocated and/or distributed between or among the Members in proportion to each Member's respective Percentage Interest or Capital Percentage, as applicable, as set forth on Exhibit A. Unless otherwise provided herein, no Member shall have a superior right to receive distributions than any other Member; and

(ii) With respect to any matter on which the approval or ratification of the Members is required or may be given, such approval or ratification shall not be deemed to have been given unless given by Consent of the Members.

(c) In the event there is more than one Managing Member, all of the Managing Member's obligations hereunder shall be joint and several.

## ARTICLE III.
## COMPANY INTERESTS AND SOURCES OF FUNDS

### 3.01 Identity of Members and Percentage Interests

The names and business addresses of the Managing Member and the Federal Member are as identified on Exhibit A-4, as such exhibit may be amended from time to time in accordance with this Agreement and each such Member has the Percentage Interest indicated on Exhibit A.

### 3.02 Capital Contributions

(a) *Managing Member*. The Managing Member shall be obligated to, and does hereby covenant and agree to contribute to the capital of the Company, by wire transfer or other form of immediately available funds, the aggregate amount set forth after the Managing Member's name on Exhibit A in the amounts and at the times set forth in Exhibit A-1.

(b) *Investor Member*. Subject to the provisions of this Section 3.02, Section 3.03 and Exhibit A-1, and provided that no Event of Default has occurred and is then continuing and that all conditions precedent thereto have been met, the Investor Member shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Company, by wire transfer, letter of credit or other form of immediately available funds, its Capital Contribution in the aggregate amount set forth after the Investor Member's name on Exhibit A, but subject to adjustment as set forth in this Agreement. The Capital Contribution shall be payable in Capital Installments, in the amounts, and upon, and subject to, satisfaction of the conditions precedent thereto set forth on Exhibit A-1. Pending receipt of confirmation of Part 2 Approval, the Federal Member's initial Capital Contribution shall be held in escrow pursuant to the terms of the Escrow Agreement by and between the Company and the Federal Member dated as of the date of this Agreement. Except as provided in this Section 3.02(b), the Investor Member shall not be obligated to make any Capital Contributions to the Company. All Capital Contributions shall be subject to any applicable adjustments pursuant to this Agreement.

(c) *Capital Installment Notices*. The Managing Member shall deliver a Capital Installment Notice to the Investor Member(s) in the form attached as Exhibit A-6 not more than forty-five (45) calendar days and not less than ten (10) Business Days in advance of the applicable Capital Installment Due Date, accompanied by all documentation needed to evidence achievement of the conditions precedent to payment thereof.

(d) *Capital Installment Due Date*. The date on which payment of any Capital Installment (or portion of Capital Installment) (the "***Capital Installment Due Date***") is due is the later of:

(i) Achievement of all of the conditions precedent to funding of the applicable Capital Installment (or any portion thereof) in accordance with Section 3.02 and Exhibit A-1; and

(ii) Ten (10) Business Days after receipt by the Investor Member of a Capital Installment Notice (Exhibit A-6), subject to deferral as set forth in Section 3.02(e) below, accompanied by all documentation acceptable to the Investor Member to evidence achievement of the conditions to payment thereof.

(e) *Deferral or Adjustment of Capital Installment*. If any of the following occurs: (i) should the Managing Member fail to certify that each of the certifications set forth in the Capital Installment Notice set forth in Exhibit A-6 is true and correct as of any Capital Installment Due Date, or (ii) should any of the certifications set forth in the Capital Installment Notice be in fact untrue (as determined by the Investor Member in its reasonable judgment), or (iii) should any of the conditions precedent to payment of a Capital Installment (or portion thereof) have not then occurred, or (iv) should an Event of Default have occurred and be continuing past the expiration of applicable notice and cure periods, or (v) should Investor Member have delivered written notice to the Managing Member that it reasonably believes the Guaranteed Outside Completion Date will not be timely achieved, the applicable Capital Installment Due Date shall be deferred and extended until ten (10) Business Days after such time as any or all of the events described in subsections (i) through (v) no longer exist. Failure to pay any Capital Installment or any portion thereof prior to such time shall not constitute a default of the Federal Member.

Further, any Capital Installment is subject to adjustment as set forth in Section 3.03 to reflect Credit Deficiencies, which will include, without limitation, Credit Deficiencies reasonably anticipated, based upon information from the Accountants, the Federal Member's advisors, actual Schedule K-1's received or other Capital Installment or documentation received regarding the Development. Also, any Capital Installment is subject to reduction for unpaid obligations to the Investor Member, Credit Adjuster Payments, LP Loans, Special Tax Distribution and any other outstanding amounts owed by the Company to the Investor Member.

(f) *Discretion to Waive Preconditions*. The Investor Member, in its sole and absolute discretion, may waive, in whole or in part, any one or more preconditions to the payment of any Capital Installment, or portion thereof, and may accelerate or otherwise pay all or a portion of the amount of such Capital Installment that would have been due had all of the preconditions been satisfied. The waiver of any precondition, in whole or in part, shall not prevent the Investor Member from asserting the failure of the precondition as a defense against the requirement of paying the remainder of a Capital Installment or any other Capital Installment. Upon request from the Investor Member, the Managing Member, with the assistance of the Accountants, shall provide the information necessary for the Investor Member to determine the necessity and amount of an acceleration of any Capital Installment.

(g) *Default*. In the event that an Investor Member fails to pay any portion of any Capital Installment (as such Capital Installment may be adjusted in accordance with Sections 3.03) by the applicable Capital Installment Due Date (as defined in Section 3.02(d) above), and any such failure is not cured within thirty (30) calendar days after written Notice of such failure, the Investor Member shall be deemed to be in default of its obligations under this Agreement and the Managing Member shall be entitled to institute a suit at law or in equity to enforce payment thereof; provided, however, in the event of a Final Determination (pursuant to subsection (i) of such defined term) in favor of the Company, the Investor Member shall pay to the Company all Capital Installments then due, and accrued interest thereon at the Default Rate. Such payment shall constitute the sole remedy of the Company for such default. Notwithstanding any provisions of Section 3.02 to the contrary, payment of all amounts owed pursuant to the terms of this Section 3.02(g) shall constitute full cure thereof, as though a default under this Section 3.02(g) had not occurred.

(h) *Disputes*. In the event of a dispute between an Investor Member and the Managing Member and/or the Company as to the obligation to make, or the amount of, any Capital Installment, such Investor Member may (but shall not be obligated to) deposit such Capital Installment in an escrow account at a bank or a title company acceptable to the Investor Member (which bank or title company is disinterested and unrelated to Investor Member), pending a resolution of such dispute. Upon resolution of such dispute (whether pursuant to a Final Determination (pursuant to subsection (i) of such defined term) or pursuant to written agreement between the Investor Member and the Managing Member and/or the Company), interest earned on such Capital Installment shall be paid to the Company, if such Capital Installment is determined to be payable to the Company, or shall be returned to the Investor Member, together with the escrowed amount, if determined not to be payable. In the event that Investor Member so deposits a Capital Installment, or any disputed portion thereof, in such an escrow account, such Investor Member shall not be in default under Section 3.02(g).

**3.03 Credit Adjustments to Capital Contributions of Investor Member(s)**

(a) *Adjustment at Cost Certification and Part 3 Approval*. If the Credits at Completion, as established by the Cost Certification are less than the Projected Credit Amount for such Credit, as set forth on Exhibit A-2 (such difference being referred to as the "***Completion Differential***"), the Capital Contributions of the Investor Member(s) shall be reduced by the amount equal to the product of (i) the amount of such Completion Differential with respect to the Credits, multiplied by (ii) the Investor Member's Percentage Interest, multiplied by (iii) the applicable Price per Credit for such Credits set forth on Exhibit A-2 to this Agreement.

(b) *Recapture*. Upon the occurrence of a Tax Credit Recapture Event, the Capital Contributions of the Investor Member(s) shall be reduced by the sum (the "***Recapture Adjustment Amount***") of (i) the amount of such recaptured and/or disallowed Credits multiplied by the projected Price per Credit for such Credits set forth on Exhibit A-2 to this Agreement, plus (ii) applicable interest, penalties and Special Tax Distribution resulting from such Tax Credit Recapture Event. Any reduction in an Investor Member's Capital Contribution caused by the Recapture Adjustment Amount shall first be applied to reduce any unfunded Capital Contributions of the Investor Member (in the chronological order of such unfunded Capital Contributions). However, if the Recapture Adjustment Amount is greater than the amount of the

unfunded Investor Member's Capital Contribution, then the Managing Member shall immediately make a Credit Adjuster Payment, in the aggregate amount set forth in, and pursuant to Section 3.03(e) hereof.

(c) *Limit on Credit Adjustments to Capital Contributions.* Notwithstanding any provision to the contrary contained herein, reduction in the Federal Member's Capital Contributions as a result of the Completion Differential or Recapture shall not exceed twenty-five percent (25%) of the Federal Member's Capital Contribution as set forth on Exhibit A.

(d) *Credit Deficiencies.* All of the adjustments in Credit pursuant to this Section 3.03 (other than pursuant to Section 3.03(f) below) shall constitute Credit Deficiencies. In calculating Credit Deficiencies, the Investor Member shall be considered to have received Credit in the amount allocated to the Investor Member on the Company's federal and state income tax returns reduced by: (i) any adjustment of the Credit reported on the Company's tax return that is made by the Accountants, or by the IRS or applicable State authority pursuant to notice to the Company, or by a court in a Final Determination; and (ii) the amount of any recapture, reallocation or disallowance, or claimed recapture, reallocation or disallowance, of such Credit, other than recapture caused solely by the action or inaction of the Investor Member including, but not limited to, the transfer by the Investor Member of its Interest, and, in each of subsections (i) and (ii) above, interest and penalties thereon.

(e) *Credit Adjuster Payment.* The Managing Member shall make a Credit Adjuster Payment to the extent that any Credit adjustment amount or the Recapture Adjustment Amount exceeds the then unfunded Capital Contributions of the Investor Member(s) under this Agreement. The Credit Adjuster Payment shall be paid to the Company as an interest-free loan, repayable solely pursuant to Sections 8.01, 8.02(b), and 12.02(a)(iv) and Exhibit A-3, and the Company shall immediately make a special distribution to the Investor Member(s) in such amount, without regard to Cash Flow or Article VIII hereof. Alternatively, at the sole election of the Investor Member, the Credit Adjuster Payment shall be made directly to the Investor Member. All Credit Adjuster Payments shall be increased by interest, penalties, costs of enforcement and by any Special Tax Distribution. All Credit Adjuster Payments shall be due within ten (10) Business Days of receipt of Notice by the Investor Member and shall be treated as a return of capital to the Investor Member. Any Credit Adjuster Payments not promptly paid when due shall bear interest at the Default Rate until paid in full. Credit Adjuster Payments are recourse obligations of the Managing Member, jointly and severally, and are guaranteed by the Guarantor pursuant to the Guaranty.

(f) *Upward Adjustment.* Upon the issuance of the Cost Certification and Part 3 Approval, if the Credits at Completion exceed the Projected Credit Amount to be allocated to the Investor Member with respect to any Credit (the "***Upward Allocation Differential***"), then the Managing Member will give written Notice to the Investor Member(s). Subject to the terms of this paragraph, the Investor Member(s) shall increase their Capital Contribution by an amount equal to the product of (A) the amount of such Upward Allocation Differential with respect to such Credit, multiplied by (B) the Investor Member's Percentage Interest, multiplied by (C) the Price per Credit (collectively, the "***Upward Adjustment Amount***"); provided, however, in no event shall the total amount of the aggregate Investor Member Capital Contributions, including the Upward Adjustment Amount, exceed one hundred ten percent (110%) of such Investor

Member's Capital Contribution. Such Upward Adjustment Amount shall be payable with the Investor Member's Second Capital Installment, and the Projected Credit Amount and annual Credit allocation set forth on Exhibit A-2 shall be correspondingly recalculated and increased to reflect such Upward Allocation Differential. With respect to any Upward Allocation Differential that would cause the aggregate Investor Member Capital Contributions to exceed one hundred ten percent (110%) of such Investor Member's Capital Contribution (the "***ROR Surplus***"), the Investor Member is hereby granted a right of first refusal to acquire such additional Credits for an increase in its Capital Contribution calculated and payable on the same terms as set forth above in this paragraph. The Investor Member shall have a period of forty-five (45) days following delivery of notice and all documentation required by the Managing Member (accompanied by such backup documentation as the Investor Member may require) of the Upward Allocation Differential (including the amount thereof) in which to exercise the foregoing right of refusal with respect to all or part of the ROR Surplus. In the event an Investor Member fails to timely exercise its right of refusal with respect to the ROR Surplus (by delivery of notice of exercise thereof), or if an Investor Member exercises such right with respect to only a portion of such ROR Surplus, then and in that event the Managing Member shall have the right to admit an additional investor member reasonably acceptable to the Investor Member(s) to receive an allocation of Credits equal to the ROR Surplus (or such portion thereof as the Investor Member elects not to purchase), effective upon full execution by all Members of an Amendment to this Agreement, on terms and conditions acceptable to the Investor Member(s) and Managing Member, in their respective reasonable discretion, which additional Investor Member shall be required to make a Capital Contribution to the Company in an amount and at a time acceptable to the Investor Member(s), with corresponding adjustment of Percentage Interests of the Investor Member(s) and such additional Investor Member, based upon the percentage that the amount of the ROR Surplus acquired by such additional investor member bears to the aggregate Projected Credit Amount plus the Upward Allocation Differential amount. In the event of an Upward Allocation Differential, the Projected Credit Amount set forth on Exhibit A-2 shall be correspondingly re-calculated and increased to include such Upward Allocation Differential.

(g) *Offset for Any Unpaid Special Tax Distribution*. To the extent that within twenty (20) calendar days following the end of the Fiscal Year the Company has not paid the Investor Member the full amount of any required Special Tax Distribution, such unpaid amounts shall bear interest at ten percent (10%) per annum, from the date payable (without regard to the availability of Cash Flow to pay such amount(s)), until paid in full. At the Investor Member's election, if Investor Member has not been paid its full amount of any required Special Tax Distribution for a Fiscal Year by the end of such Fiscal Year, the Investor Member may reduce any unfunded Capital Contributions of the Investor Member in chronological order by the amount of any such unpaid required Special Tax Distribution plus any interest due as calculated under this Section 3.03(g).

### 3.04 Operating Deficit Advances

In the event an Operating Deficit exists, the Managing Member shall make a loan to the Company to cover such Operating Deficit. The Operating Deficit Advance shall be made to the Company as an interest-free loan, repayable solely pursuant to Article VIII. The Operating Deficit Advance shall not be considered as contribution of capital to the Company.

### 3.05 No Interest on Capital Contributions

No interest shall accrue or be payable to any Member by reason of its Capital Contribution or its Capital Account.

### 3.06 Right to Require Repayment of Capital

A Member shall not have the right to withdraw from the Company all or any part of its Capital Contribution. No Member shall have any right to demand and receive property of the Company in return for its Capital Contribution or in respect of its Interest, except as provided in this Agreement. Except as provided in this Agreement, no Member shall have priority over any other Member as to any return of Capital Contributions or as to any distributions made by the Company under Article VIII.

### 3.07 No Third-Party Beneficiary

None of the provisions of this Agreement shall be construed as existing for the benefit of any creditor of the Company or for the benefit of any creditor of the Members, and no provision shall be enforceable by a party not a signatory to this Agreement.

## ARTICLE IV.
## RIGHT TO MORTGAGE;
## MANAGING MEMBER BOUND BY LOAN DOCUMENTS

### 4.01 Right to Mortgage

(a) The Company shall not have any right to borrow or guaranty loans without the Consent of all of the Members, which Consent may be granted in their sole and absolute discretion.

(b) The Company's principal asset is its interest in the Property.

## ARTICLE V.
## RIGHTS, POWERS AND OBLIGATIONS OF THE MANAGING MEMBER

### 5.01 Authority of the Managing Member

(a) Subject to the terms of this Agreement, including, without limitation, the limitations on Managing Member's authority set forth in Section 5.02 of this Agreement, the Managing Member shall have the right, power, and authority, acting for and on behalf of and in the name of the Company, to: (i) to acquire, sell, exchange or dispose of, in the ordinary course of business, any Company property or assets, or any interest therein; (ii) execute and deliver on behalf of the Company any contract, agreement, or other instrument or document required or otherwise appropriate to dispose of Company property; (iii) to open accounts and deposit and maintain funds in the name of the Company in banks or savings and loan associations; (iv) bring, compromise, settle, and defend actions at law or in equity; (v) to enter into the Ground Lease; and (vi) to execute, acknowledge and deliver any and all instruments to effectuate the foregoing, and to take all such action in connection therewith as the Managing Member shall deem

necessary or appropriate. Any action required or permitted to be taken by the Managing Member hereunder may be taken by such of its proper officers or agents as it shall validly designate and duly authorize for such purpose. The Managing Member may delegate certain of its authority, power, and right to manage the Property to the Management Agent; provided, however, that any such delegation shall not relieve the Managing Member of its obligations and responsibilities to ensure the proper management of the Property.

(b) Except for items for which Consent of the Investor Member(s) is required, all decisions made for and on behalf of the Company by the Managing Member shall be binding upon the Company. Except as expressly otherwise set forth in this Agreement, the Managing Member (acting for and on behalf of and in the name of the Company), in extension and not in limitation of the rights and powers given it by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority, in the management of the Company's day-to-day business, to do any and all acts and things necessary, proper, ordinary, customary or advisable to effectuate the purposes of the Company. In so doing, the Managing Member shall take all actions necessary or appropriate to protect the interests of the Investor Member(s) and of the Company.

(c) The Managing Member shall maintain the books and records of the Company, and shall be responsible, on a timely basis, for (i) making all tax elections, if appropriate, (ii) preparing all required tax returns and related information, and (iii) preparing all financial information, all in accordance with Sections 5.03, 13.02 and 13.03 hereof.

**5.02 Limitations on the Authority of the Managing Member**

Notwithstanding any other provision of this Agreement, the Managing Member shall have no authority to perform any act in violation of any applicable law or regulations, or the Development Documents; to do any act required to be approved, consented to, voted on, or ratified by the Investor Member(s) under the Act or under this Agreement unless such approval, vote, consent, or ratification has been obtained. The Managing Member shall have no authority to engage in the following activities without the prior Consent of the Investor Member(s):

(a) except for the pledges discussed in Section 5.02(t), below, effect a sale, transfer, assignment, pledge, hypothecation or other disposition of all or any substantial portion of the Company's assets including, without limitation, the Company's interest in and to the Property (including, without limitation, any rental space and/or common area space);

(b) following the Completion Date, construct any new capital improvements or replace any existing capital improvements other than (i) those contemplated in the Plans and Specifications, (ii) as approved in an Annual Operating Budget or (iii) in the event of an emergency or casualty provided that such new capital improvement or replacements (A) would not impair or result in a recapture, reallocation or disallowance of the Credits and are financed solely with insurance proceeds and/or loans from Managing Member or (B) do not exceed Fifty Thousand Dollars ($50,000) in the aggregate at any point in time;

(c) acquire any interest in real property on behalf of the Company in addition to the Property (other than easements or similar rights necessary or convenient for the operation of the Property);

(d) except as expressly provided in this Agreement, incur any liability, obligation or debt other than any loans and/or debt approved by the Investor Member(s) in an Annual Operating Budget, or obligations incurred in the ordinary course of the Company's business in an amount not to exceed Twenty Five Thousand Dollars ($25,000) in the aggregate at any point in time;

(e) change the nature of the Company's business;

(f) do any act which would make it impossible to carry on the ordinary business of the Company;

(g) assign rights in assets of the Company for other than a Company purpose;

(h) voluntarily file a bankruptcy petition on behalf of the Company or execute or deliver an assignment for the benefit of Creditors;

(i) dissolve or wind up the Company;

(j) confess any judgment against the Company, or commence litigation on behalf of the Company, except for tenant eviction matters in the normal course of business or compromise any claim or liability in excess of Twenty Five Thousand Dollars ($25,000) owed by the Company or consent to a settlement in excess of Twenty Five Thousand Dollars ($25,000) with respect to any claim, lawsuit or other legal or administrative proceeding involving the Company as a party;

(k) modify or amend this Agreement or any of the Development Documents; provided, however, prior to Completion the Consent of the Investor Member(s) shall not be required for construction change orders unless such change order would (1) change the number of units, unit mix, or number of bedrooms/bathrooms in any unit, or (2) result in a change that is inconsistent with the Part 2 Approval or would require NPS approval.

(l) admit any Person as a Member, except as otherwise provided in this Agreement;

(m) borrow from the Company or commingle Company funds with the funds of any Person or loan any money on behalf of the Company or guarantee on behalf of the Company the indebtedness of any other Person;

(n) permit the Company to pay directly or indirectly to the Managing Member a commission or fee in connection with the reinvestment or distribution of Capital Proceeds or liquidating distributions belonging to the Company, except as provided for herein;

(o) receive any rebates or give-ups or participate in any reciprocal business relationships in circumvention of this Agreement;

(p) cause the Company to be merged or consolidated with or acquired by any other Person;

(q) contract with, dismiss, or replace the Management Agent, except as otherwise provided in this Agreement;

(r) transfer, assign, pledge or hypothecate the Managing Member's Interest or obligations as a Managing Member in the Company;

(s) except as otherwise set forth in Section 5.09 herein, engage in transactions in which the Managing Member or an Affiliate of the Managing Member has an actual or potential conflict of interest with either the Investor Member(s) or the Company and which could have a material adverse effect on the Company or its interest in and to the Property;

(t) except as otherwise set forth in Section 5.09 herein or as set forth on Exhibit A-7 attached hereto, cause or permit the Company to enter into any material contract or agreement with the Managing Member or any Affiliate of any Managing Member which relates to the Company's interest in and to the Property, or any other Company business;

(u) make any unbudgeted expenditure (or series of unbudgeted expenditures) except as permitted hereunder;

(v) exercise, or fail to exercise, any rights under any Management Agreement which could reasonably have a material adverse effect on the Company or the Investor Member(s) and, at the written direction of the Investor Member (if more than one, then pursuant to a Consent of the Investor Members), the Managing Member shall exercise the Company's rights and remedies under any such documents and agreements; provided, that Investor Member shall exercise its written direction rights in a commercially reasonable manner;

(w) exercise, or fail to exercise, any rights under the Ground Lease which could have the effect of impairing or otherwise affecting the Company's title to the Property, and, at the written direction of the Investor Member (if more than one, then pursuant to a Consent of the Investor Members), the Managing Member shall exercise the Company's rights and/or remedies under any such documents and/or agreements; provided, that Investor Member shall exercise its written direction rights in a commercially reasonable manner;

(x) exercise, or fail to exercise, any rights or remedies under the Development Documents, and, at the written direction of the Investor Member (if more than one, then pursuant to a Consent of the Investor Members), the Managing Member shall exercise the Company's rights and/or remedies under any such documents and/or agreements; provided, that Investor Member shall exercise its written direction rights in a commercially reasonable manner;

(y) materially amend, modify, terminate or otherwise change the terms of the Ground Lease or any Management Agreement;

(z) materially change any accounting method or practice of the Company in any manner that would adversely impact the Investor Member or the Company or replace the Accountants;

(aa) take any action which would cause the termination of the Company for federal income tax purposes or dissolution of the Company for state law purposes;

(bb) take any action for which the Consent of the Investor Member(s) is required under any other provision of this Agreement without obtaining such Consent in each such instance.

**5.03 Outside Activities**

The Managing Member shall devote to the management of the business of the Company so much of its time as it deems reasonably necessary to the efficient operation of the Property and in order to comply with this Agreement.

**5.04 Liability to the Company and the Investor Member**

The Managing Member shall not be liable, responsible, or accountable in damages or otherwise to the Investor Member or to the Company for any acts performed in good faith and within the scope of authority of the Managing Member pursuant to this Agreement; provided, however, that the Managing Member shall be liable for, and shall indemnify, defend, and hold harmless the Company and the Investor Member from and against any loss, liability, damage, cost or expense (including reasonable attorneys' fees) arising out of, its actions and/or omissions to the extent they are attributable to gross negligence, fraud, willful misconduct, malfeasance, material breach of any material representation, warranty, covenant or agreement under this Agreement, breach of its fiduciary duty as defined by West Virginia law for purposes of the Act, or actions performed outside the scope of its authority, and further provided that this will not affect the Managing Member's guaranties and obligations hereunder, which remain in full force and effect, unaffected by this provision.

**5.05 Indemnification of Managing Member**

(a) The Company shall indemnify, defend, and hold harmless the Managing Member from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) arising out of any demands, claims, suits, actions, or proceedings against the Managing Member, by reason of any act or omission performed by it (including its employees and agents) while acting in good faith on behalf of the Company and within the scope of the authority of the Managing Member pursuant to this Agreement, and any amount expended in any settlement of any such claim of liability, loss, or damage; provided, however, that: (i) the Managing Member must have in good faith believed that such action was in the best interests of the Company and in accordance with applicable law, and such course of action or inaction must not have constituted gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement set forth in this Agreement, or breach of its fiduciary duty as defined by West Virginia law for purposes of the Act; and (ii) any such indemnification shall be recoverable solely from the assets of the Company (other than any Company assets which would cause a recapture, reallocation or disallowance of Credit under applicable law) and not from the assets of the Investor Member, and no Investor Member shall be personally liable therefor. This indemnity shall be operative only in the context of third-party suits, and not in connection with demands, claims, suits, actions or proceedings initiated by any Member or any Affiliate thereof

against another Member, nor in connection with any violation by the Managing Member of its obligations hereunder.

(b) The Company shall not pay for any insurance covering liability of the Managing Member for actions or omissions for which indemnification is not permitted hereunder, without the Consent of the Investor Member(s).

(c) Notwithstanding anything contained in this Section 5.05, the Managing Member shall not be indemnified or saved harmless from any liability, loss, damage, cost, or expense incurred by it in connection with: (i) any civil or criminal fines or penalties imposed by law; (ii) any claim or settlement involving the violation of federal or state securities laws by the Managing Member or the Company; or (iii) any claim involving gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement set forth in this Agreement, or breach of a fiduciary duty as defined by West Virginia law for purposes of the Act, unless (A) the Managing Member is successful in defending such action on the merits, (B) such claims have been finally dismissed in favor of the Managing Member with prejudice on the merits by a court of competent jurisdiction, or (C) a court of competent jurisdiction approves a settlement and finally determines that the Managing Member is entitled to out of pocket costs.

(d) The indemnification rights contained in this Section 5.05 shall be limited to actual out-of-pocket losses or expenses (including reasonable attorneys' fees) of the Managing Member and the payment of indemnification amounts shall be limited to the assets of the Company. There shall be no recourse to the Investor Member and nothing contained herein shall constitute a waiver by the Investor Member or its Affiliates of any right that it may have against any party under federal, state, or common law principles.

**5.06 Representations, Warranties and Covenants of the Managing Member and Environmental Matters**

The Managing Member hereby represents, warrants and covenants to the Investor Member that the following are true and correct as of the date hereof and shall be true and correct for the Term, unless, with respect to the representations and warranties contained in this Section 5.06 (and not with respect to any covenants contained in this Section 5.06), specifically updated in writing and delivered to the Investor Member, from time to time.

(a) The Company is a duly organized limited liability company validly existing under the laws of the State of West Virginia, and has undertaken all acts, including without limitation, the filing of all certificates and the payment of all fees, taxes, and other sums necessary for the Company to engage in its business and operate the Company's property and its interests in the Property in accordance with this Agreement.

(b) No event has occurred that has caused, and the Managing Member has not acted in any manner that will cause: (i) the Company to be treated for federal income tax purposes as an association taxable as a corporation; (ii) the Company to fail to qualify as a limited liability company under the Act; (iii) the Company to fail to be duly qualified to conduct its business the State of West Virginia; or (iv) the Investor Member to be liable for Company obligations.

(c) All consents or approvals of any governmental authority, or any other Person, necessary in connection with the transactions contemplated by this Agreement or necessary to admit the Investor Member to the Company, have been obtained by the Managing Member and the Company has taken all action under the laws of the State of West Virginia and any other applicable jurisdiction and has complied with all filing requirements necessary under the Act for the preservation of the limited liability of the Investor Member.

(d) The Managing Member has delivered to the Investor Member true copies of all documents material to the Investor Member's investment in the Company and true copies of all amendments to such documents and all other material information relevant to the Development or to the admission of the Investor Member to the Company. To the best of the Managing Member's knowledge, all such information provided to the Investor Member is accurate and complete in all material respects and the Managing Member has not failed to provide the Investor Member with any information necessary to make the information provided by the Managing Member complete and accurate in all material respects.

(e) The Company is under no obligation, and neither the Managing Member nor any of its Affiliates have taken any action that would cause the Company to be obligated, under any federal or State law, rule, or regulation to register the Interests and the Company and the Managing Member have fully complied with any and all federal and state securities laws, as well as all applicable exemptions available for the sale of Interests without registration.

(f) The Managing Member (A) is a limited liability company validly existing under the laws of the State of West Virginia, and (B) has full power to enter into and consummate this Agreement and all instruments pertaining hereto and to perform all acts related thereto. The consummation of all transactions contemplated herein and the Development Documents to be performed by the Managing Member and/or its Affiliates does not and will not result in any material breach or violation of, or default under, the organizational documents and authorizing resolutions of the Managing Member and/or its Affiliates or any agreements by which the Managing Member and/or its Affiliates or any of their respective property is bound, or under any applicable law, administrative regulation, or court decree. Except as disclosed in writing to the Investor Member, from and after the date of formation of the Company, the Managing Member has not pledged or otherwise encumbered its Interest in the Company and no third party has any interest therein. The organizational documents and authorizing resolutions of the Managing Member submitted to the Investor Member on or prior to the date hereof are true, correct and complete and have not been amended.

(g) No Event of Bankruptcy has occurred with respect to the Company, Managing Member, or any Guarantor.

(h) Except as set forth in the UCC, lien and judgment searches provided by Managing Member to Investor Member prior to the Admission Date, no litigation, action, investigation, event, or proceeding is pending against the Company, the Managing Member, any Guarantor and/or the Development. Further, to the best of its knowledge (after due inquiry) no such litigation, action, investigation, event or proceeding is threatened, that, if adversely resolved, would: (i) have a material adverse effect on the Company, the Managing Member, any Guarantor or the Development; (ii) have a material adverse effect on the ability of the Managing

Member, any of the Managing Member's Affiliates or any Guarantor to perform their respective obligations under this Agreement, the Loan Documents, the Ground Lease and/or the Development Documents, as applicable; (iii) have a material adverse effect on the financial condition of the Managing Member, the Company, or any Guarantor; or (iv) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement, the Loan Documents, the Ground Lease and/or the Development Documents, as applicable.

(i) The Managing Member has provided the Investor Member with true and correct copies of all Loan Documents, the Ground Lease and other Development Documents and neither the Company nor the Managing Member has any obligations to any third parties, except for matters previously disclosed to the Investor Member in writing that have received the Consent of the Investor Member(s) (if more than one, then pursuant to a Consent of the Investor Members).

(j) To the best of Managing Member's knowledge, all Loan Documents and Development Documents are in accordance with applicable laws, codes and regulations and the construction of the Property will be completed in accordance therewith.

(k) To the best of Managing Member's knowledge, no default (or event that, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any of the Loan Documents, the Development Documents, the Ground Lease, or any other contract, agreement, or instrument to which the Company or the Managing Member is subject, and the Loan Documents and Development Documents are in full force and effect and the Company is entitled to the benefit of the Loan Documents, the Ground Lease, and the Development Documents.

(l) None of the Managing Member, any of its Affiliates, or the Company have entered into any agreement or contract for the payment or offset of any rehabilitation loan or loan discounts, additional interest, yield maintenance or other charges or financing fees or any agreement to incur any financial responsibility with respect to the Development or providing for the guaranty of payment of any such interest charges or financing fees relating to the Loan Documents or for any kickback or rebate of fees under any Loan Document or Development Documents other than those disclosed in this Agreement; and in no event have they or the Company entered into any such agreement or guaranty of any kind whatsoever (such as an escrow arrangement or letter of credit arrangement) that may in any way affect allocation of the anticipated Credit to the Investor Member.

(m) Neither the Company, nor the Managing Member, nor the Guarantor is presently under any commitment to any real estate broker, rental agent, finder, syndicator or other intermediary with respect to the Development, or any portion thereof, except for any arrangements specifically described in this Agreement and the arrangements previously disclosed in writing to the Investor Member.

(n) As of the date hereof, there are no outstanding loans or advances from the Managing Member to the Company, and the Company has no unsatisfied obligation to make any

payments of any kind to the Managing Member or its Affiliates, except for the fees described in Section 5.09 of this Agreement.

(o) There are no restrictions on the sale or refinancing of the Property, other than the restrictions set forth in the Loan Documents, reflected in the Company's owner title policy, the Development Documents, Section 47 of the Code or under other applicable state or federal law respecting the Credits.

(p) The Company holds a leasehold estate in and to the Property and all rental space therein (and the tangible and intangible personal property thereof), free and clear of any liens, charges, or encumbrances other than the Mortgage, the matters set forth in the Title Policy, Permitted Liens and mechanics' or other liens that have been disclosed to the Investor Member in writing and bonded against or other security provided in such a manner as to preclude the holder of such lien from having any recourse to the Property or the Company for payment of any debt secured thereby. As of the date hereof, neither the Managing Member nor the Company has received notice of any such liens, charges or encumbrances.

(q) All applicable building, zoning, and other applicable certificates, permits, and licenses necessary to permit the rehabilitation, use, occupancy, and operation of the Property have been issued and remain in full force and effect, or if the present stage of construction and rehabilitation does not allow such issuance, such certificates, permits and licenses will be issued when the Property or any specified portion thereof, reaches such stage, all improvements rehabilitated or to be rehabilitated on the Property have been or will be constructed and equipped in full compliance with the requirements of all governmental authorities having jurisdiction over the Property, the Development Documents and, as applicable, all requirements and approvals of the United States Department of Interior and the State in connection with the historic rehabilitation and environmental remediation of the Building; and neither the Company nor the Managing Member has received any notice, or has any knowledge, of any violation with respect to the Property of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction that would have a material adverse effect on the Property or the rehabilitation, use, occupancy or operation thereof. The completion of any improvements, alteration or rehabilitation on or of the Property or any portion thereof will not require the dedication of any portion of the Property to any applicable governmental entities.

(r) The Property has and shall continue to have permanent unrestricted access to appropriate public roadways. All public or private utilities necessary to the operation of the Property, including, but not limited to, sanitary and storm sewers, water, gas (if applicable), telephone and electricity, are or shall by the date any and each portion of the Property is Placed in Service be, and will remain available to and connected to, the Property and each portion thereof. The Company, directly or indirectly, has or shall have prior to the commencement of operating the Property as a market house with related ancillary uses such as a visitors center, a grocery, and a restaurant, the right to use all amenities, easements, public or private utilities, parking, access routes or other items necessary for the rehabilitation, use or operation of the Property. The Building is either (i) contiguous to, or (ii) benefit from an irrevocable unsubordinated easement permitting access from the Property to, a physically open, dedicated public street, and has all necessary permits for ingress and egress and adequate public water, sewer systems and utilities are available to the Property.

(s) The Managing Member represents, warrants and covenants as follows:

(i) To the best of the Managing Member's knowledge, after due inquiry, there presently is not in, on or under the Development, and upon Completion, there will not be, any Environmental Hazard subject to regulation under applicable Environmental Laws, other than any lead-based paint, mold or asbestos which shall be fully encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with all applicable Environmental Laws and other federal, state, and local environmental and health and safety laws, and any requirements in the Loan Documents and Development Documents prior to the Completion Date.

(ii) To the best of the Managing Member's knowledge, after due inquiry, the Property is in compliance with all applicable Environmental Laws and neither the Managing Member, nor the Company has received notice of any violations of the Environmental Laws. The Managing Member covenants and agrees to take all necessary action within its control to ensure that the Property is in compliance with the Environmental Laws at all times. The Managing Member shall promptly deliver any notice it may receive, of any violation of the Environmental Laws to the Company and the Investor Member.

(iii) During each inspection of the Property conducted by the Managing Member, the Managing Member shall determine whether the Property has or has the potential for mold or moisture problems. If the Managing Member determines that such problems do or potentially could exist, the Managing Member shall cause the prompt (a) remediation of all existing mold and moisture problems; and (b) implementation of a moisture management and control program for the Property. Such moisture management program shall comply with all Environmental Laws and with any then-current industry best practices and shall be subject to the Consent of the Investor Member(s).

(iv) The Managing Member covenants that it shall take all actions necessary to ensure that the Property contains no, and is not affected by the presence of, any Environmental Hazard, and to ensure that the Property is not in violation of any federal, state, or local statute, law, regulation, rule, or ordinance, including any Environmental Law. The Managing Member covenants that it shall promptly deliver to the Investor Member any notice received from any source whatsoever of the existence of any Environmental Hazard on the Property or of a violation of any federal, state, or local statute, law, regulation, rule or ordinance, including any Environmental Law with respect to the Property. If any Environmental Hazard (including lead-based paint and asbestos) is found to exist or be present, the Managing Member covenants that it shall commence promptly the taking of action to assure it will be either removed from the Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state and local statutes, laws (including any Environmental Laws), regulations, rules and ordinances, and any requirements in the Loan Documents.

(v) The Company and the Managing Member covenant that they shall jointly and severally indemnify and hold harmless the Investor Member (the "***Indemnified***

***Party***") from and against all claims, actions, causes of action, damages, costs, liability and expense (including, without limitation, reasonable attorneys' fees and expenses, court costs and remedial response costs) incurred or suffered by, or asserted by any Person, entity or governmental agency against the Indemnified Party, based upon a violation of any Environmental Laws, or respecting the presence of Environmental Hazards, subject to regulation by the Environmental Laws in, on or under the Property. The foregoing indemnification shall be a recourse obligation of the Managing Member and the Company, and shall survive the dissolution of the Company, the death, retirement, incompetency, insolvency, bankruptcy, dissolution, removal or withdrawal of the Managing Member and/or transfer of the Managing Member's Interest. The indemnification authorized by this Section shall include, but not be limited to, out of pocket expenses incurred by the Investor Member (including reasonable attorneys' fees and expenses), including, without limitation, the removal of any liens affecting any property of the indemnitee as a result of such legal action and any Credit Deficiency. Any successor Managing Member, except a Lender Appointed MM, shall indemnify and hold harmless the Indemnified Party from and against all claims, actions, causes of action, damages, costs, liability and expense (including, without limitation, reasonable attorneys' fees and expenses, court costs and remedial response costs) incurred or suffered by, or asserted by any Person, entity or governmental agency against the Indemnified Party, based upon a violation of any Environmental Laws, or respecting the presence of Environmental Hazards, subject to regulation by the Environmental Laws in, on or under the Property

(vi) If, at any time during the term of the Company, the Investor Member reasonably determines that the foregoing representations were not true when made, may have become untrue, or will become untrue, the Managing Member shall promptly obtain an environmental audit of the Property. The scope of such audit and the company performing it shall be reasonably acceptable to the Investor Member.

(t) Amounts paid to the Managing Member and/or its Affiliates for services in accordance with such agreements as may be entered into from time to time in accordance with the terms of this Agreement are reasonable in relation to the value of services provided and relate solely to the services actually rendered to the Company pursuant to the applicable agreements.

(u) The Company has not made any elections under the Code without the Consent of the Investor Member(s) that would affect the amount, timing, availability, or allocation of Credits.

(v) [Intentionally Omitted].

(w) The Managing Member shall report the Company's income annually for federal income tax purposes using the accrual method of accounting. The Managing Member may maintain the books and records of the Company on the cash basis during the interim months. On behalf of the Company, the Managing Member has filed, and covenants that it will continue to file, any and all certifications and other documents on a timely basis with the IRS, any appropriate state taxing authorities and any other federal, state or local governmental agency or political subdivision as have been and may be required to support the allocation of Credits, all of

which certifications and other documents (including without limitation Part 3 of the historic preservation application and the Cost Certification) shall be in all respects reasonably acceptable to the Investor Member as to form and substance and in full accordance with applicable law.

(x) The Company maintains or shall cause to be maintained and covenants that it shall continue to maintain or cause to be maintained insurance on all Company activities and the Property, which insurance complies with the terms specified in this Agreement, and applicable Loan Documents.

(y) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against the Property, the Company, or the Managing Member or, to the best of the Managing Member's knowledge, against the Ground Lessor, any Guarantor or the Development.

(z) To the best of the Managing Member's knowledge, after due inquiry, there is not any plan, study or effort of any applicable governmental entities, which in any way would materially adversely affect the use of the Property or the Building for its intended uses or any intended public improvements which will result in any material charge being levied against, or any material lien assessed upon, the Property or the Building. To the best of Managing Member's knowledge, there is not any existing, proposed or contemplated plan to widen, modify or realign any street or highway contiguous to the Development, which would adversely affect the use of or access to the Development. The Property is unoccupied as of the date hereof and none of the prior tenants or occupants thereof is eligible for relocation and/or moving payments or benefits under applicable Federal, State and/or local law.

(aa) To the best of the Managing Member's knowledge, after due inquiry, there are no defects or conditions of the soil which will materially adversely affect the use, occupancy and operation of the Building, and no need for unusual or new subsurface excavations, fill, footings, caissons or other installations. The Managing Member shall take commercial reasonable steps to cause the Building, as built, to be constructed in a manner compatible with the soil condition at the time of construction and all necessary excavations, fills, footings, caissons and other installations will then have been provided.

(bb) Neither the Managing Member nor the Company has received any notice from any insurance company or any applicable governmental entity, nor has any knowledge, of any violation of applicable codes or insurance requirements or any defect in, on or about the Development.

(cc) The Company has not entered into any contracts for the sale of the Property, nor does there exist any rights of first refusal or options to purchase the Property, except as provided herein.

(dd) The Managing Member has complied (based in part on the Investor Member's representations set forth in this Agreement) with all applicable federal and state securities laws in connection with the offer and sale of interests in the Company to the Investor Member.

(ee) The rehabilitation of the Property and Building will be completed by the Company in strict compliance with the Historic Approvals, including all conditions set forth therein

(ff) No portion of the Property constituting QREs was placed in service by the Company prior to the Admission Date and the QREs incurred in connection with the rehabilitation of the Property would under the Code constitute "new section 38 property" to the Company if the Company had actually purchased such QREs.

(gg) The development sources and uses set forth in the Projections contain all development costs of which Managing Member is aware and all operating income and expenses set forth therein are consistent with Managing Member's operating information and assumptions, and such income, expenses and development uses do not omit to state items known to Managing Member.

(hh) To the best knowledge and belief of the Managing Member, no circumstances now exist that would materially and adversely affect the reasonable likelihood of achieving the objectives and the benefits set forth in the Projections attached hereto as Exhibit C. All of the Property information and assumptions in the Projections, including, without limitation, Property budget costs, rents, utility costs and other operating and maintenance expenses, and depreciation are accurate and achievable.

(ii) The Development will meet all requirements to qualify for the Credits as a "certified historic structure," as set forth in Section 47(a)(2) of the Code, the Company will be entitled to claim such Credits, and the rehabilitation of the Development will be in strict accordance with all of the requirements imposed by the Historic Approvals, the historic standards and guidelines of the U.S. Department of Interior-National Park Service, or pursuant to applicable state law and all such requirements are contained within the Development Documents.

Legal counsel to Investor Member is hereby permitted to rely on the foregoing representations in the issuance of a federal income tax opinion to Investor Member with respect to the transactions contemplated by this Agreement.

**5.07 Additional Covenants of the Managing Member**

The Managing Member covenants to the Investor Member that for the Term:

(a) The Managing Member shall cause the Company to do all things necessary to maintain its status as a limited liability company in existence and had, has, and shall continue to have full power and authority to acquire and own its interest in and to the Property, and to develop, operate and maintain the Property in accordance with the terms of this Agreement and to enable the Company to engage in its business.

(b) The Managing Member shall not act in any manner that will cause (i) the Company to be other than a partnership for federal income tax purposes, including, but not limited to, treated as an association taxable as a corporation, (ii) the Company to fail to qualify as a limited liability company under the Act, (iii) the Company to fail to be duly qualified to conduct its business in the State of West Virginia, or (iv) the Investor Member to be liable for

Company obligations. The Managing Member shall not change its organizational structure and shall not make any changes or amendments to its organizational documents and authorizing resolutions which would impair its ability to act as Managing Member in accordance with this Agreement without the Consent of the Investor Member(s).

(c) The Company shall continue to take all action under the laws of the State and any other applicable jurisdiction that is necessary to protect the limited liability of the Investor Member.

(d) The Managing Member shall, during and after the period in which it is Managing Member of the Company, provide the Company with such information and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns.

(e) The Managing Member shall furnish to counsel for the Investor Member promptly as and when requested in connection with the rendering of any legal opinion concerning federal income tax relating to the Investor Member's investment in the Company, all documents reasonably requested by counsel for the Investor Member.

(f) The Managing Member shall promptly inform the Company and Investor Member of any litigation, action, investigation, event, or proceeding that is pending respecting the Company, the Managing Member, any portion of the Development, the Development Documents and/or any Guarantor and, further, upon receipt of any notice or knowledge shall promptly inform the Company of any such matter which is threatened which, if adversely resolved, would (i) have a material adverse effect on the Company, its assets or any portion of the Development, (ii) have a material adverse effect on the ability of the Managing Member, a Guarantor or any of their respective Affiliates to perform their respective obligations under this Agreement or the Development Documents (including the Loan Documents), (iii) have an adverse effect on any adjacent property, which would have a material adverse effect on any portion of the Development or the Company's interest in the Property, (iv) have a material adverse effect on the financial condition of the Managing Member, or any Guarantor, or (v) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement.

(g) The Managing Member shall promptly inform the Company and the Investor Member upon receiving any notice of or having any knowledge of, any violation with respect to any portion of the Development of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction, which would have a material adverse effect on the Property (including the Company's ability to transfer its interest in and to the Property in accordance with the terms of this Agreement) or the rehabilitation, use, occupancy, or operation thereof.

(h) The Managing Member shall furnish to the Investor Member, within three (3) Business Days of receipt thereof, a copy of any notice of default that it receives under any of the Development Documents or any of the Loan Documents.

(i) The Managing Member shall not sell or refinance the Property, other than pursuant to the terms of this Agreement. In the event any Mortgage Loan is refinanced, the Managing Member shall condition such refinancing on the Lender executing and delivering an SNDA substantially in the form attached hereto as Exhibit E and the Investor Member agrees to allow for changes to such form in its reasonable discretion and review any such proposed changes in a timely manner.

(j) The Managing Member shall cause all of (i) all personal property, fixtures, maintenance supplies, tools, equipment and like, if any, owned or to be owned by the Company or to be appurtenant to, or to be used in the operation of the Property as well as the Company's interest in any and all rents, revenues and profits earned from the operation of the Property, to be free and clear of all security interests and encumbrances except for the liens described herein, if any.

(k) The Managing Member shall cause the rehabilitation of the Property (including, without limitation, all common areas that, if not completed, would impede the operation and use of the Development, including without limitation the shell of the Building to be completed substantially in accordance with the relevant Development Documents, Historic Approvals and applicable law, and thereafter operated, in accordance with all applicable federal, state and local historic rehabilitation requirements (including without limitation the Part 2 Approval) in order to qualify for and maintain the Credit and other tax benefits anticipated in connection therewith. In addition, the Managing Member shall use its best efforts to obtain all applicable permanent certificates of occupancy for the Property no later than the Target Completion Date. The Managing Member or its Affiliates shall obtain all applicable building, zoning, environmental, wetland and other applicable certificates, permits, and licenses necessary to permit the rehabilitation, use, occupancy, and operation of the Property that are obtainable only after completion of the Property or a specified portion thereof. All improvements constructed or to be constructed on the Property shall be constructed and equipped in full compliance with the requirements of all governmental authorities having jurisdiction over the Property.

(l) The Managing Member shall not cause or allow, or permit the Company to cause or allow the transfer, sale, conveyance, pledge or encumbrance of its Interest without the Consent of the Investor Member(s).

(m) The Managing Member shall cause the Company to and keep all public utilities necessary to the operation of the Property, including, but not limited to, sanitary and storm sewers, water, gas (if applicable), and electricity, operating in working condition.

(n) The Managing Member shall cause the Property to be operated in compliance with all applicable zoning regulations, ordinances, and subdivision laws, rules, and regulations.

(o) The Managing Member shall use all commercially reasonable efforts to enforce the Ground Lease.

(p) The Managing Member shall take all commercially reasonable actions necessary to ensure that the Property contains no, and is not affected by the presence of, any Environmental Hazard, and to ensure that the Property is not in violation of any federal, state, or local statute,

law, regulation, rule, or ordinance, including any Environmental Law. The Managing Member shall promptly deliver to the Investor Member any notice received from any source whatsoever of the existence of any Environmental Hazard on the Property or of a violation of any federal, state, or local statute, law, regulation, rule or ordinance, including any Environmental Law with respect to the Property. If any Environmental Hazard (including lead-based paint, mold and asbestos) is found to exist or be present, the Managing Member shall commence promptly the taking of action to assure such Environmental Hazard will be either removed from the Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state and local statutes, laws (including any Environmental Laws), regulations, rules and ordinances, and any requirements in the Loan Documents.

(q) The Managing Member shall investigate and report to the Investor Member any proposal or offer of any Person, including the Managing Member, to acquire the Property, the Company's interest in and to the Property, or the Interest of the Investor Member.

(r) The Managing Member shall cause the Company to comply in all material respects with all of the terms and conditions of all leases to which it is a party of rental space in the Property.

(s) The Managing Member shall not employ any Person as an employee of the Company.

(t) The Managing Member shall not cause the Company to accept any grant of funds after the Admission Date without the Consent of the Investor Member(s), which Consent may be granted in its sole and absolute discretion.

(u) Managing Member shall not enter into any agreement or guaranty of any kind whatsoever (such as an escrow arrangement or letter of credit arrangement) that may in any way affect allocation of the anticipated Credit to the Investor Member without obtaining the Investor Member's prior written consent thereto.

(v) The Managing Member shall not permit its stockholders, members or partners to convey or transfer stock, membership or partnership interests outstanding at any time without obtaining (I) an agreement and acknowledgement from the Guarantor reaffirming their respective obligations under the Guaranty and stating that said conveyance or transfer shall not release them from any existing or future obligations under the Guaranty, (II) a tax opinion from the conveying or transferring party to the Investor Member, in form and substance acceptable to Investor Member, stating that such transfer or conveyance would not impair or result in a recapture, reallocation or disallowance of the Credits, and (III) the Consent of the Investor Member(s), which may be withheld, conditioned or delayed in the Investor Member's commercially reasonable discretion. Investor Member shall consider the following factors, in addition to any other factors that Investor Member determines are relevant in its sole discretion, in making its Consent determination:

(1) whether the conveyance or transfer would not have a materially adverse effect on the ability of the Managing Member to perform its obligations under this Agreement and the Development Documents;

(2) whether the proposed transferee will be added as an additional Guarantor to the Guaranty; and

(3) the results of an internal background check on the proposed transferee by the Investor Member.

The Managing Member acknowledges and agrees that it shall be commercially reasonable for Investor Member to withhold its Consent to a proposed conveyance or transfer pursuant to this Section 5.07(v) if after giving effect to the conveyance or transfer, the Guarantors, on an aggregate basis, would no longer control more than fifty percent (50%) of the membership interests and voting rights in the Managing Member.

Notwithstanding the foregoing, Investor Member consent shall not be required for conveyances or transfers by a stockholder, member or partner of the Managing Member who has less than a fifteen percent (15%) interest in the Managing Member unless said transfer would cause (I) the Guarantors to no longer control more than fifty percent (50%) of the membership interests and voting rights in the Managing Member or (II) any member of the Managing Member to control more than fifty percent (50%) of the membership interests and voting rights in the Managing Member.

(w) Other than those loans disclosed to, and approved by, the Investor Member in writing, neither the Managing Member nor any of its Affiliates nor the Company shall enter into any agreement or contract for the payment or offset of any rehabilitation loan or loan discounts, additional interest, yield maintenance or other interest charges or financing fees or any agreement to incur any financial responsibility with respect to the Development or providing for the guaranty of payment of any such interest charges or financing fees relating to any loan or enter into any such agreement or guaranty of any kind whatsoever (such as an escrow arrangement or letter of credit arrangement) that would subject the Company or any of its Members, to personal liability or, in the opinion of counsel to the Investor Member, economic risk of loss as to a loan, nor shall the Managing Member make any loan that shall be personally enforceable by any lender of a loan or that may in any way affect allocation of Credit to the Investor Member.

(x) The Managing Member agrees that it shall not cause the Investor Member to become, and it shall take all steps necessary to prevent the Investor Member at any time from becoming, personally liable for payment or performance under any obligations of the Company.

(y) The Company shall not make any elections under the Code without the Consent of the Investor Member(s) that would affect the amount, timing, availability, or allocation of Credits.

(z) [Intentionally Omitted].

(aa) It shall cause the Company to timely apply for and obtain the Part 3 Approval.

(bb) The Company and Managing Member shall take all necessary actions to complete the Project and prevent a recapture of any State Tax Credits that the Investor Member may become subject to for any reason, including, but not limited to, failure of the Project to be designated as a "certified rehabilitation".

Legal counsel to Investor Member is hereby permitted to rely on the foregoing covenants in the issuance of a federal income tax opinion to Investor Member with respect to the transactions contemplated by this Agreement.

**5.08 Tax Credit Deliveries.**

Upon completion of the Project, but in any case on or before April 1, 2017, the Company shall promptly deliver to the Investor Member(s) all of the following (collectively, the "*Tax Credit Deliveries*"): (i) a copy of the certificate(s) of occupancy for the Project; (ii) a copy of the Certificate of Substantial Completion for the Project; (iii) a copy of the Certification Application; (iv) the Part 3 Approval; (v) evidence of insurance as required by this Agreement acceptable to the Investor Member(s); (vi) the Title Policy, together with an endorsement bringing the date of the Title Policy current through the date of the Second Installment; (vii) a copy of the cost certification with respect to the Project by the Accountants, which cost certification will be an audit of the eligible rehabilitation expenses of the Project; (viii) copies of all Project Documents not previously received by the Investor Member(s) (including without limitation any amendments to the same since the Admission Date) and current certificates of fact for the Company and all Members other than the Investor Member(s), if requested by the Investor Member(s); (ix) an original opinion of counsel from an attorney licensed to practice in the State of West Virginia reasonably acceptable to the Investor Member(s), its members and their respective counsel in their reasonable discretion; (x) a fully executed unconditional lien waiver from each contractor and, upon request, from any subcontractor that has performed work on the Project, stating that such contractor or subcontractor, as applicable, has been fully paid for all work performed on the Project, and waiving such contractor's or subcontractor's, as applicable, right to file a mechanic's or materialman's lien against the Project; and (xi) any other documentation reasonably required by the Credit Agency or any other Agency in order for the Managing Member or its members to be eligible to claim the State Historic Tax Credits.

**5.09 Dealing with Affiliates; Fees**

(a) The Managing Member may, for, in the name of, and on behalf of, the Company, enter into agreements or contracts for performance of services for the Company with an Affiliate thereof, and may authorize the Management Agent to enter into such agreements and contracts, and the Managing Member may obligate the Company to pay compensation for and on account of any such services and may authorize the Management Agent to so obligate the Company; provided, however, such compensation and services shall be at costs to the Company not in excess of those that would be incurred in making arms-length purchases of comparable services on the open market and such agreements shall be reasonably acceptable to the Investor Member.

(b) The Company shall pay fees to the Members and their Affiliates, which fees, and the agreements governing them, are described on Exhibit A-7.

### 5.10 Adjustment following Outside Credit Date

If any Federal Historic Credits projected in the Financial Projections are not available for any reason by the Guaranteed Outside Completion Date, the Price per Credit shall be reduced by seven percent (7.00%) each quarter, commencing January 1, 2017 and continuing until December 31, 2017 ("***Outside Credit Date***"). Following the Outside Credit Date, the Federal Member's obligation to make any further Capital Contributions shall be extinguished.

### 5.11 Reserves

The Managing Member shall cause the Company to establish the Reserves described on Exhibit A-5.

### 5.12 Action for Breach

(a) The representations, warranties and covenants in this Agreement are being made by the Managing Member to the Investor Member in consideration for the investment in the Company by the Investor Member. Upon the occurrence of any material breach of any representation, warranty, covenant or agreement contained herein, the Managing Member shall diligently attempt to cure such breach. If such breach is not susceptible to cure, or if the Managing Member fails to pursue a cure diligently and within the cure period therefor, if any, set forth in Section 9.02 hereof, then the Investor Member may, pursue any remedy available hereunder or other legal or equitable remedy against the Managing Member, without being required to dissolve the Company and notwithstanding the availability of any other remedy.

(b) In addition, and not in substitution for any other remedies hereunder, upon any failure by the Managing Member and/or any Guarantor to fully and timely satisfy their respective obligations under this Agreement and/or in the Guaranty, in addition to all of the Investor Member's remedies hereunder, in the Guaranty, at law or in equity, there will be priority Cash Flow distributions as directed by the Investor Member (the "***Default Cash Flow Priority***"), having that priority set forth in Exhibit A-3 of one hundred percent (100%) of Cash Flow remaining, if any, after prior payment of unpaid Credit Adjuster Payments and Special Tax Distributions then due, together with interest thereon, if any, to be applied to the payment of the applicable default, until such default has been fully cured; provided, however, in the event the applicable default relates to the payment of Annual Returns, a Default Cash Flow Priority shall not result in the duplicate payment of such priority payments.

### 5.13 Proposed Budget

(a) Annually, by no later than November 1, the Managing Member shall prepare a proposed Annual Operating Budget for the next Fiscal Year which shall be submitted to the Investor Member and the Investor Member's asset manager (at the respective addresses set forth in Exhibit A-4 of this Agreement) for Investor Member's review. The Investor Member shall have thirty (30) calendar days to notify the Managing Member that it does not approve part or all of the proposed Annual Operating Budget and the reasons therefor, and in such event the Managing Member and the Investor Member shall negotiate in good faith to reach agreement on a new Annual Operating Budget, provided that until such issues are resolved the current year's Annual Operating Budget shall be used for the following year, increased annually by the

percentage increase in the Consumer Price Index for All Urban Consumers, U.S. City Average for All Items (1982-84 = 100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the Investor Member does not provide such notification of its disapproval within sixty (60) days of receipt, the Annual Operating Budget shall be deemed approved. If during the term of this Agreement said Index shall not be published, such other available index as shall be designated by the Investor Member which is comparable in effect to that Index presently published by the Bureau of Labor Statistics shall be used in lieu thereof. The Annual Operating Budget shall specify all amounts required to be expended from the Reserves, if any, and shall list all work to be effected from the amounts removed from said Reserves, as appropriate.

(b) Except where specified to the contrary in this Agreement, all funds of the Company shall be invested in the name of the Company by the Managing Member, under such terms and conditions (including signatories) as the Managing Member shall approve, provided that such investments are insured by an agency of the U.S. Government (such as the Federal Deposit Insurance Corporation) and where the instrument's or account's maturity does not exceed the lesser of one year or the time period within which the funds are anticipated to be needed by the Company; or (b) with the Consent of the Investor Member(s), direct obligations of the U.S. Government (such as U.S. Treasury Bills) where the instrument's maturity does not exceed the lesser of one year or the time period within which the funds are anticipated to be needed by the Company or other investments approved by the Consent of the Investor Member(s).

### 5.14 Accountants

Upon a commercially reasonable request, the Investor Member shall have the right, upon written notice to the Managing Member, to require the Managing Member to replace the Accountants with alternate independent certified public accountants reasonably acceptable to the Investor Member.

### 5.15 No Compensation

Except for fees specifically provided for herein, the Managing Member shall not be entitled to receive any compensation in connection with its performance of its duties as Managing Member.

## ARTICLE VI.
## RIGHTS AND OBLIGATIONS OF THE INVESTOR MEMBER

### 6.01 Management of the Company

The Investor Member shall not take part in the management or control of the business of the Company or transact any business in the name of the Company. The Investor Member shall not have the power or authority to bind the Company or to sign any agreement or document in the name of the Company.

### 6.02 Limitation on Liability of the Investor Member

Notwithstanding any other provision of this Agreement, the liability of the Investor Member shall be limited to its Capital Contributions (together with applicable interest thereon, if any) at any given time as and when payable under the provisions of this Agreement. The Investor Member shall not have any other liability to contribute money to, or in respect of the liabilities, obligations, debts or contracts of the Company, nor shall the Investor Member be personally liable for any liabilities, obligations, debts or contracts of the Company. The Investor Member shall not be obligated to make loans to the Company. No vote, Consent or other action of the Investor Member shall ever be construed to make the Investor Member liable as a Managing Member or cause the Investor Member to be liable for Company obligations.

### 6.03 Indemnification of the Investor Member

(a) The Managing Member and the Company shall, jointly and severally, indemnify and hold the Investor Member harmless from any claims, demands, losses, damages, liabilities, lawsuits and other proceedings, judgment, awards, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Investor Member as a result of actions against the Investor Member in its capacity as the Investor Member of the Company, except to the extent a court of competent jurisdiction determines the same were incurred by the Investor Member while not acting in accordance with the terms of this Agreement applicable to the Investor Member or for the material breach of any representation, warranty, covenant or agreement set forth in this Agreement by the Investor Member or for the gross negligence, fraud, willful misconduct, or malfeasance by the Investor Member. In addition, the Managing Member and the Company, jointly and severally, shall defend, indemnify and save harmless the Investor Member from, and be liable to the Investor Member for: (i) any loss, liability, claim, damage, cost, expense, or other obligation (including reasonable attorneys' fees and expenses) arising out of the Managing Member's gross negligence, fraud, willful misconduct, malfeasance, breach of fiduciary duties, material breach of, or material non-compliance with, any covenant, or agreement set forth in this Agreement, or, as updated in accordance with this Agreement, any representation or warranty set forth in this Agreement, and/or actions performed outside the scope of the authority of the Managing Member pursuant to this Agreement. The foregoing indemnifications shall be a recourse obligation of the Managing Member and the Company, and shall survive the dissolution of the Company and/or the death, retirement, incompetency, insolvency, bankruptcy, dissolution, or withdrawal of the Managing Member. The indemnifications authorized by this Section shall include, but not be limited to, out of pocket costs and expenses incurred by the Investor Member (including reasonable attorneys' and accountants' fees and expenses), including, without limitation, costs respecting the removal of any liens affecting any property of the indemnitee as a result of such legal action and any Credit Deficiency. The indemnifications provided herein are in addition to and not a limit on any other right of contribution or indemnity by the Company which otherwise might exist in favor of the Investor Member.

### 6.04 Outside Activities

Nothing herein contained in this Agreement shall be construed to constitute the Investor Member hereof the agent of any other Member hereof or to limit in any manner the Investor

Member in the carrying on of its own businesses or activities. The Investor Member and Managing Member may engage in and possess any interest in other business ventures (including limited partnerships and limited liability companies) of every kind, nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, including, without limitation, acting as member, manager, Managing Member or Investor Member of other limited liability companies and/or partnerships which own, directly or through interests in other partnerships and/or limited liability companies, projects similar to, or in competition with, the Property. Neither the Company nor any of the Members shall have any rights by virtue of this Agreement in or to any such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business ventures.

**6.05 Inspection of the Property and Compliance Audits**

The Investor Member and/or its agent or designee shall have the right to inspect the Property from time to time and to conduct compliance audits which shall be at Investor Member's own cost and expense unless there has been a default or Event of Default under this Agreement, the Ground Lease or the Management Agreement, and the Managing Member shall provide, and use all reasonable efforts to cause the Management Agent to provide all reasonable assistance to the Investor Member in such effort.

**6.06 Investor Member Authority**

Any and all approvals, rights, notices delivered or other actions required or permitted to be taken by the Investor Member, or any of them, hereunder or under applicable law, shall be taken by Investor Member, acting singly.

**6.07 Investor Member's Legal Fees; Administration Fee**

The Company and the Investor Member(s) shall be responsible for paying their own legal fees and expenses incurred in connection with review and negotiation of the Development Documents. Additionally, the Company and Investor Member(s) shall be responsible for paying their own legal fees and out of pocket costs and expenses respecting any and all amendments to this Agreement (other than amendments requested by the Company).

**6.08 Investor Member's Representations and Warranties**

The Investor Member hereby represents and warrants to the Managing Member that the following are true and correct as of the date hereof:

(a) No litigation, action, investigation, event, or proceeding is pending or, to its actual knowledge, is threatened in writing which, if adversely resolved, would have an adverse effect on the Investor Member to perform its material obligations under this Agreement.

(b) No Event of Bankruptcy has occurred with respect to the Investor Member.

(c) The Investor Member has full power to enter into this Agreement and to the best of its knowledge the consummation of all transactions contemplated herein does not and will not,

result in any material breach or violation of, or default under, any governing instrument of the Investor Member or any agreements by which the Investor Member or any of its property is bound, or under any applicable law, administrative regulation, or court decree.

(d) The Investor Member is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "***Securities Act***").

(e) The Investor Member's Interest was not offered to it by means of any general solicitation or advertising.

(f) The Investor Member has participated in the negotiation of, has reviewed and understands, and has approved this Agreement.

(g) The Investor Member understands that (i) its Interest has not been registered under the Securities Act or applicable state securities laws, and is being offered and sold under an exemption from registration provided by such laws and the rules and regulations thereunder; (ii) the Company has represented that it is under no obligation to register such Interest or to comply with any applicable exemption under any applicable securities laws with respect to such Interest; (iii) subject to the provisions of this agreement, it must bear the economic risks of its investment in the Company for an indefinite period of time because it is not anticipated that there will be any market for such Interest and because such Interest cannot be resold unless subsequently registered under applicable securities laws or unless an exemption from such registration is available.

## ARTICLE VII.
## ALLOCATIONS OF PROFITS AND LOSSES

### 7.01 Tax Definitions

The following terms used in Articles VII and VIII of this Agreement shall have the meanings set forth below:

*Adjusted Capital Account*: With respect to any Member, such Member's Capital Account as of the end of the relevant Fiscal Year, after crediting to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the Code and applicable Treasury Regulations. The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

*Gain* or *Loss*: The income and gain, or loss, as the case may be, of the Company for federal income tax purposes arising from a sale or other disposition of all or any portion of the Property. If the value at which an asset is carried on the books of the Company pursuant to the capital account maintenance rules of Treasury Regulation Section 1.704-1(b) differs from its adjusted tax basis and gain is recognized from a disposition of such asset, the gain shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

*Member Nonrecourse Debt*: Any Company liability to the extent the liability is nonrecourse for purposes of Treasury Regulation Section 1.1001-2 and a Member (or related person (within the meaning of Treasury Regulation Section 1.752-4(b)) bears the economic risk of loss under Treasury Regulation Section 1.752-2.

*Minimum Gain*: The amount determined by computing for each Nonrecourse Liability and Member Nonrecourse Debt, the amount of Gain, if any, that would be realized by the Company if it disposed of the asset securing such liability for no consideration other than full satisfaction of the liability, and by then aggregating the separately computed Gains. For purposes of determining the amount of such Gain with respect to a particular Nonrecourse Liability or Member Nonrecourse Debt, the adjusted basis for federal income tax purposes (or its adjusted book value if it is carried on the Company's books, maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv), at a value different from its adjusted tax basis) of the asset securing the liability shall be allocated among all the liabilities that the asset secures in the manner set forth in Treasury Regulation Section 1.704-2(d)(2)(ii) (or successor provisions). It is the intent that Minimum Gain shall be computed in accordance with Treasury Regulation Section 1.704-2.

*Net Losses* or *Net Profits*: The net loss, or net profit, as the case may be, of the Company for federal income tax purposes for each Fiscal Year, calculated without regard to Gain or Loss and without regard to those items that are specially allocated in accordance with Regulatory Allocations or otherwise pursuant to Section 7.04; provided, however, that in determining net loss: (i) any tax-exempt income received by the Company shall be included as an item of gross income, (ii) any expenditure of the Company described (or treated under Treasury Regulation Section 1.704-1(b)(2)(iv)(b) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible expense, (iii) if the fair market value on the date that the asset is contributed to the Company (or if the basis of such asset for book purposes is adjusted under the Treasury Regulations, such adjusted book basis) differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the amount for depreciation, amortization and other cost recovery deductions shall be equal to an amount which bears the same ratio to such beginning fair market value (or adjusted book basis) as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis, and (iv) if the value at which an asset is carried on the books of the Company differs from its adjusted tax basis and gain or loss is recognized from a disposition of such asset, the gain or loss shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

*Nonrecourse Liability*: Any liability to the extent that no Member or related person bears (or is deemed to bear) the economic risk of loss within the meaning of Treasury Regulation Section 1.752-2.

*Regulatory Allocations*: Those special allocations set forth in Sections 7.04(a), (b), (c) and (e), which are intended to comply with certain requirements of Treasury Regulation Sections 1.704-1(b) and 1.704-2.

### 7.02 Profits and Losses

After giving effect to the special allocations set forth in Section 7.04, and except as provided in Section 7.03 with respect to Gains or Losses from dispositions of Company property, the Net Profits, Net Losses and Credits of the Company for each Fiscal Year shall be allocated in accordance with the Members' respective Percentage Interests. Notwithstanding anything contained herein to the contrary, in no event shall the Managing Member hold more than a 1.00% interest in any Gains or Losses from dispositions of Company property, the Net Profits, Net Losses and Credits of the Company, excluding the allocation of the State Historic Tax Credits to the Managing Member.

### 7.03 Gains and Losses from Disposition of Company Property

After giving effect to the special allocations set forth in Section 7.04, Gains and Losses recognized by the Company upon the sale, exchange or other disposition of all or substantially all of the property owned by the Company shall be allocated in the following manner:

(a) Gains shall be allocated (i) first, to the Members with negative Adjusted Capital Account balances, that portion of Gains (including any Gains treated as ordinary income for federal income tax purposes) which is equal in amount to, and in proportion to, such Members' respective negative Adjusted Capital Accounts in the Company; provided, that no Gain shall be allocated under this Section 7.03(a)(i) to a Member once such Member's Adjusted Capital Account is brought to zero; and (ii) second, Gain in excess of the amount allocated under (i) shall be allocated to the Members in the amount and to the extent necessary to increase the Members' respective Adjusted Capital Accounts so that the proceeds distributed in accordance with the Members' respective Adjusted Capital Account balances would equal the amounts distributable under Section 8.02 (other than any fees payable or loans repaid).

(b) Losses shall be allocated (i) first, to the Members in the amounts and to the extent necessary so that the proceeds distributed in accordance with the Members' respective Adjusted Capital Account balances would equal the amounts distributable under Section 8.02 (other than any fees payable or loans repaid), and (ii) second, any remaining Loss to the Members in accordance with the manner in which they bear the economic risk of loss associated with such Loss or, if none, to the Members in accordance with their Capital Percentages.

(c) Any portion of the Gains treated as ordinary income for federal income tax purposes under Sections 1245 and 1250 of the Code ("***Recapture Amount***") shall be allocated on a dollar for dollar basis to those Members to whom the items of Company deduction or Loss giving rise to the Recapture Amount had been previously allocated.

### 7.04 Special Allocations and Limitations

The following provisions shall apply notwithstanding the provisions of Section 7.03. In the event that there is a conflict between any of the following provisions, the earlier listed provision shall govern.

(a) If there is a net decrease in Minimum Gain attributable to Nonrecourse Liabilities or Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the

Minimum Gain attributable to such Nonrecourse Liabilities or such Member Nonrecourse Debt, as applicable, (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)) shall be specially allocated items of Company income and Gain for such year (and, if necessary, for succeeding years) equal to each Member's share of the net decrease in such Minimum Gain (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)(2)). Notwithstanding the preceding sentence, a Member shall not be specially allocated items of Company income and Gain to the extent:

(i) Such Member's share of the net decrease in the Minimum Gain attributable to Nonrecourse Liabilities is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or Member Nonrecourse Debt, and such Member bears the economic risk of loss (within the meaning of Treasury Regulation Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability;

(ii) Such Member contributes capital to the Company that is used to repay the Nonrecourse Liability and such Member's share of the net decrease in Minimum Gain results from the repayment; or

(iii) If the Department of the Treasury waives or excepts such an allocation pursuant to Treasury Regulation Sections 1.704-2(f)(4) or (5).

It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the minimum gain chargeback requirement of Treasury Regulation Section 1.704-2(f), and this Section 7.04(a) shall be interpreted consistently therewith.

(b) If there is a net decrease in Minimum Gain attributable to Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Minimum Gain attributable to such Member Nonrecourse Debt (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)) shall be specially allocated items of Company income and Gain for such year (and, if necessary, for succeeding years) equal to such Member's share of the net decrease in such Minimum Gain (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)(2)). Notwithstanding the preceding sentence, a Member shall not be specially allocated items of Company income and Gain to the extent:

(i) The net decrease in such Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Nonrecourse Liability; or

(ii) Treasury Regulation Section 1.704-2(i) otherwise so provides.

It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the Minimum Gain chargeback requirement of Treasury Regulation Section 1.704-2(i) and this Section 7.4(b) shall be interpreted consistently therewith.

(c) In the event a Member unexpectedly receives in any Fiscal Year any adjustments, allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6) that cause or increase an Adjusted Capital Account Deficit of such Member, items of

Company income and Gain shall be specially allocated to such Member in such Fiscal Year (and, if necessary, in succeeding Fiscal Years) in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the qualified income offset provision of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and this Section 7.4(c) shall be interpreted consistently therewith.

(d) No Net Losses, Losses or Company deductions for any Fiscal Year shall be allocated to the Investor Member to the extent such allocation would cause or increase an Adjusted Capital Account Deficit with respect to such Investor Member, and such Net Losses, Losses or Company deductions shall instead be allocated to the Managing Member.

(e) If in any Fiscal Year there is a net increase during such year in the amount of Minimum Gain attributable to a Member Nonrecourse Debt, any Member bearing the economic risk of loss with respect to such debt (within the meaning of Treasury Regulation Section 1.752-2) shall be specially allocated items of Company Loss or deduction in an amount equal to the excess of (i) such Member's share of the amount of such net increase, over (ii) the aggregate amount of any distributions during such year to such Member of the proceeds of such debt that are allocable to such increase in Minimum Gain. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the required allocation of "*Member nonrecourse deductions*" pursuant to Treasury Regulation Section 1.704-2(i), and this Section 7.04(e) shall be interpreted consistently therewith.

(f) The special allocations set forth in Section 7.04(a), (b), (c) and (e) (the "***Regulatory Allocations***") are intended to comply with certain requirements of Treasury Regulation Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations shall be taken into account in allocating other profits, Losses and other items of income, Gain, Loss and deduction to the Members so that, to the extent possible, the net amount of such allocations of profits and Losses and other items shall be equal to the amount that would have been allocated to each Member had the Regulatory Allocation not occurred. In the event that in any year the Regulatory Allocations alter the allocations of tax items to the Members, to the extent possible, depreciation deductions shall nevertheless be allocated to the Investor Member and the Managing Member in accordance with their Percentage Interest.

Furthermore, notwithstanding the other provisions of this Article VII, allocations of income (including gross income), Gain, Loss and deductions made in the year that substantially all of the Company's assets are sold and in the year that the Company terminates and winds up shall be made in such a manner that when the Company liquidates in accordance with the positive balances in the Members' Capital Accounts each Member will receive the amount the Member would have received had the Company's assets been distributed in accordance with the priorities set forth in Section 8.02 hereof.

(g) The respective interest of the Members in the Net Profits, Net Losses, Gain, and Loss or items thereof shall remain as set forth above unless changed by amendment to this Agreement or by an assignment of a Company Interest authorized by the terms of this Agreement. Except as otherwise provided herein, for tax purposes, all items of income, Gain,

Loss, deduction, or credit shall be allocated to the Members in the same manner as are Net Profits from operations; provided, however, that with respect to property contributed to the Company by a Member, such items shall be shared among the Members so as to take into account the variation between the basis of such property and its fair market value at the time of contribution in accordance with Section 704(c) of the Code.

(h) In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, Gain, Loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial fair market value (as used as book value of the property by the Company). In the event the book value of any Company property is adjusted upon: (i) acquisition of a Company interest by any Person in exchange for a capital contribution; or (ii) any non-pro rata distribution to Members of Company property other than cash, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its book value in the same manner as under Section 704(c) of the Code. Allocations pursuant to this Section 7.04 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits or Net Losses, other items, or distributions pursuant to any provision of this Agreement.

(i) For purposes of determining a Member's proportionate share of the "*excess nonrecourse liabilities*" of the Company within the meaning of Treasury Regulation Section 1.752-3(a)(3), the interest of each of the Managing Member's and the Investor Member in Company profits shall equal its respective Percentage Interest.

(j) If any Member's Capital Contribution is used to fund any syndication fees or expenses referred to in Section 709 of the Code, such Member shall be specially allocated such fees or expenses. If a deduction for any fee paid in accordance with this Agreement is denied by the IRS after a Final Determination on the basis that such fee was a distribution to a Member by the Company, the Member who received such fee shall be specially allocated an amount of gross income equal to the amount of the disallowed deduction.

(k) If the Managing Member funds any Operating Deficit Advance and/or Credit Adjuster Payment as other than a loan or capital contribution, in any year in which the Company repays all or a portion of any such Advance, the Managing Member shall be specially allocated an item of gross income equal to the amount of such repayment.

(l) Any increase or decrease in the amount of any item of income, Gain, Loss, deduction or credit attributable to an adjustment to the basis of Company assets made pursuant to Sections 734 or 743 of the Code, as a result of a valid election under Section 754 of the Code, and pursuant to corresponding provisions of applicable state and local income tax laws, shall be charged or credited, as the case may be, and any increase or decrease in the amount of any item of credit or tax preference attributable to any such adjustment shall be allocated to those Members entitled thereto under such laws.

(m) Income, Gains, Losses, deductions and Credit (except as set forth below) allocated to a Company Interest assigned or reissued during a Fiscal Year of the Company shall be allocated to the Person who was the holder of such Interest during such Fiscal Year, in proportion to the number of days that each such holder was recognized as the owner of such Interest during such Fiscal Year or in any other manner permitted by the Code and selected by the Managing Member in accordance with this Agreement, with the Consent of the Investor Member(s), without regard to the results of Company operations during the period in which each such holder was recognized as the owner of such Interest during such Fiscal Year, and without regard to the date, amount or recipient of any distributions which may have been made with respect to such Interest; provided that the Credits shall be allocated to the applicable Members in the Company as of placement of the Property in service, pursuant to Section 47 of the Code. Also, for purposes of this Section, any change in the Percentage Interest of any Member will also be treated as an assignment from that Member whose Percentage Interest declined to that Member whose Percentage Interest increased and to those Persons who became Members and acquired a Percentage Interest.

(n) In the event that there is a determination that there is any original issue discount or imputed interest attributable to the Capital Contribution of any Member or to any loan between a Member or Affiliate and the Company, any income or deduction of the Company attributable to such imputed interest or original issue discount respecting such Capital Contribution or loan (whether stated or unstated) shall be allocated solely to such Member. Any income recognized as a result of any receipt of grants or taxable Capital Contributions, if any, by the Company, shall be allocated one hundred percent (100%) to the Managing Member. To the extent that any fees payable by the Company to the Managing Member are fully or partially disallowed by the IRS, the amount so disallowed shall be deemed to be a distribution of cash to the Managing Member and will cause an adjustment to its Capital Account Balances, pursuant to, and in accordance with, Section 7.05. To the extent that any of the above adjustments creates a deficit Capital Account Balance for the Managing Member, the Managing Member shall be obligated to restore such deficit to the Company in accordance with Section 12.02(c).

(o) Any income recognized by the Company as a result of the forgiveness of a Company obligation shall be allocated to the Member that, prior to such time, had the economic risk of loss with respect to the obligation within the hearing of Treasury Regulation Section 1.752-2, or any successor provision.

(p) In the event that the deduction of all or a portion of any fee paid or incurred by the Company to a Member or an Affiliate of a Member is disallowed for federal income tax purposes by the IRS with respect to a Fiscal Year of the Company, the Company shall then allocate to such Member an amount of gross income of the Company for such year equal to the amount of such fee as to which the deduction is disallowed.

(q) If at any time during which, in the opinion of counsel to the Investor Member, the Managing Member has any economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2 or any successor provision) respecting any Company obligations, losses and/or Credits otherwise allocable to the Investor Member hereunder, such that such items would commence to be allocable to the Managing Member because of such economic risk of loss respecting such obligation(s), all outstanding advances and loans from the Managing Member or

any Affiliate (which shall not include any then unpaid Development Fee payable to an Affiliate) shall thereupon be deemed to be forgiven, and any future advances thereafter shall not be repayable by the Company and shall constitute non-repayable, interest-free fees to the Company, and not Capital Contributions, with any taxable income resulting from any of the foregoing allocated to the Members as follows: (i) for advances used to make distributions to a Member, to such Member in the amount of such distribution; (ii) for advances used to pay Company deductions specially allocated to a Member, to such Member; and (iii) otherwise, in accordance with Percentage Interests. Any deductions paid with such future loans and advances shall be specially allocated to the Managing Member.

### 7.05 Maintenance of Capital Accounts

The Company shall maintain a Capital Account for each Member. Such Capital Account shall be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). To each Member's Capital Account there shall be credited such Member's Capital Contributions, and its distributive share of Net Profits and Gains and any item in the nature of income or gain allocated to such Member under Sections 7.02 and 7.03. To each Member's Capital Account there shall be debited the amount of cash and the fair market value (as of the date of distribution) of any Company property (net of liabilities securing the distributed property that such Member assumes or subject to which such Member takes the distributed property) distributed to such Member pursuant to any provision of this Agreement and such Member's distributive share of Net Losses and Loss and any items in the nature of expenses or deductions that are allocated to such Member pursuant to Sections 7.02 and 7.03.

### 7.06 Tax Matters Partner

(a) The Managing Member is designated the "***Tax Matters Partner***" (as defined in Section 6231 of the Code), and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings, and to expend the Company funds for professional services and costs associated therewith. The Members agree to cooperate in good faith with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

(b) Notwithstanding any other provision of this Agreement, in the event that the Managing Member fails to perform its obligations as Tax Matters Partner as provided herein, which failure has a material adverse impact on the Investor Member(s), the Federal Member hereby is granted authority at any time to act as the Tax Matters Partner with all the authority and powers given to the Managing Member as Tax Matters Partner of the Company under the Code and under this Agreement. Unless otherwise specifically provided or agreed, the new Tax Matters Partner in these circumstances will not be responsible for or have the right to conduct any operational or managerial functions of the Company not otherwise delegated to it besides those required to discharge its responsibilities as Tax Matters Partner. The Federal Member may exercise its right to assume the Tax Matters Partner responsibilities for the Company, as provided herein, upon ten (10) Business Days' notice to the then existing Tax Matters Partner and may continue as Tax Matters Partner indefinitely. In the event that the Federal Member exercises its right to assume duties of the Tax Matters Partner, the pre-existing Tax Matters

Partner will resign in accordance with Treas. Reg. Section 301.6231(a)(7)-1(i) and will re-designate the Federal Member as Tax Matters Partner in accordance with Treas. Reg. Section 301.6231(a)(7)-1(e). Each Member, by its execution of this Agreement, consents to such designation and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. The Investor Member shall, upon such designation, replace the Managing Member as Tax Matters Partner and shall have thereafter all the authority and powers given to the Managing Member as Tax Matters Partner of the Company under the Code and under this Agreement.

(c) The Tax Matters Partner shall have and perform all of the duties required under the Code, including the following duties:

(i) furnish the name, address, profits interest, and taxpayer identification number of each Member of the Company to the IRS; and

(ii) within ten (10) calendar days after the receipt of any correspondence or communication relating to the Company or a Member from the IRS, the Tax Matters Partner shall forward to each Member a photocopy of all such correspondence or communication(s). The Tax Matters Partner shall, within five (5) calendar days thereafter, advise each Member in writing of the substance and form of any conversation or communication held with any representative of the IRS.

(d) The Tax Matters Partner shall, upon request by the Investor Member, permit Investor Member to include its attorney in the power of attorney (Form 2848) for the Company for any taxable years under a tax audit or in a tax administrative appeals process.

(e) The Tax Matters Partner shall not have the authority, unless such action has been approved in writing by Investor Member and the Managing Member:

(i) to extend the statute of limitations for assessing or computing any tax liability against the Company (or the amount or character of any Company tax item) or select the forum for judicial review;

(ii) to settle any audit or enter into any settlement agreement with the IRS or other taxing authority;

(iii) to file a request for an administrative adjustment with the IRS or other taxing authority at any time or file a petition for judicial review;

(iv) to initiate or settle any judicial review or action concerning the amount or character of any partnership item (within the meaning of Section 6231(a)(3) of the Code) with respect to any such request;

(v) to intervene in any action brought by any other Member for judicial review of a final adjustment of any Company tax item;

(vi) to take any other action which would have the effect of finally resolving a tax matter affecting the rights of the Company and/or the Members;

(vii) to take any action or fail to take any action which adversely affects the amount or timing of recognition of the Credits; or

(viii) take any other action not expressly permitted by this Section on behalf of the Members or the Company in connection with any administrative or judicial tax proceeding.

(f) The Managing Member shall keep the other Members advised of any dispute the Company may have with any federal, state or local taxing authority (a "***Tax Dispute***"), and shall afford the other Members the opportunity to participate directly in the negotiation of the Tax Dispute, to the extent permitted by law. Reasonable legal fees incurred in connection with any Tax Dispute (including any Tax Dispute arising at the Investor Member level, to the extent that such Tax Dispute is the result of a Tax Dispute of the Company) shall be paid solely from the assets of the Company, except that if the Company lacks sufficient funds to undertake or prosecute any litigation relating to such Tax Dispute (including, without limitation, any appeal) and either the Managing Member or Investor Member does not consent to a settlement or resolution of such tax dispute, then the legal fees and other costs and expenses associated with such litigation shall be funded by the Member(s) refusing to consent to such settlement or resolution, through one or more Member Loans to the Company.

(g) In the event of any partnership level proceeding instituted by the IRS pursuant to Sections 6221 through 6233 of the Code, the Tax Matters Partner shall consult with the Members regarding the nature and content of all actions to be taken and defenses to be raised by the Company in response to such proceeding. The Tax Matters Partner also shall consult with the Members regarding the nature and content of any proceeding pursuant to Sections 6221 through 6233 of the Code instituted by or on behalf of the Company (including the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous IRS proceeding against the Company or otherwise).

(h) The Company shall indemnify and reimburse the Tax Matters Partner and Investor Member for all out of pocket expenses, including reasonable legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding in which at issue were the tax liabilities of the Members arising out of the transactions contemplated in this Agreement. The taking of any action and the incurring of any expense by the Tax Matters Partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Tax Matters Partner and the provisions on limitations of liability of the Managing Member and indemnification set forth in this Agreement shall be fully applicable to the Tax Matters Partner in its capacity as such.

(i) Any Member who enters into a settlement agreement with respect to any Company items (within the meaning of Section 6231(a) (3) of the Code)) shall notify the other Members of such settlement agreement and its terms within thirty (30) calendar days from the date of settlement.

### 7.07 Allocation of Credits

Notwithstanding anything herein to the contrary:

(a) The State Tax Credits shall be allocated 100% to the Managing Member.

(b) The Federal Historic Credits shall be allocated 99% to the Federal Member.

## ARTICLE VIII.
## CASH DISTRIBUTIONS

### 8.01 Distributions of Cash Flow

Cash Flow, to the extent available, shall be distributed as set forth in Exhibit A-3.

### 8.02 Distributions of Capital Proceeds

Any Capital Proceeds other than net proceeds upon liquidation of the Company resulting from the sale of the Property, which shall be governed by Article XII, shall be distributed in the following amounts and order of priority:

(a) To the Investor Member(s), proceeds equal to the Special Tax Distribution due with respect to the Company's receipt of such Capital Proceeds, plus an amount equal to all accrued and unpaid Special Tax Distributions, accrued and unpaid Annual Returns, Credit Adjuster Payments, and other amounts payable to, the Investor Member(s), together with applicable interest thereon;

(b) To the Managing Member the amount of any unpaid Operating Deficit Advance, Credit Adjustor Payment, and any other loans of the Managing Member; and

(c) The balance to the Members in accordance with their Capital Percentages as set forth on Exhibit A-2.

### 8.03 Allocation of Distributions

Distributions of Cash Flow and Capital Proceeds shall be made to the Member of record date for the distribution without regard to the length of time the record holder has been such and without regard to the period to which the distribution relates.

### 8.04 Special Tax Distributions

(a) In any Fiscal Year when the Company allocates any taxable income or gain to the Investor Member(s) (on the Company's tax return or after audit by the IRS), the Company shall make a cash distribution to each Investor Member equal to the product of (i) the taxable income and taxable gain allocated to the Investor Member for such year, and (ii) the highest percentage tax rate applicable to taxation of the taxable income or gain (***"Applicable Tax Rate"***) of the Person subject to tax on the income or gain.

(b) In the event the Company has insufficient funds to pay such amount, the Managing Member shall have the obligation to make a capital contribution to the Company from its own funds in an amount sufficient for the Company to pay such amount. No additional

Managing Member capital contributions shall alter the percentage interest of the Managing Member in the Company.

(c) Special Tax Distributions shall be offset against other distributions otherwise due to an Investor Member.

(d) If not paid when due, any Special Tax Distribution shall accrue interest at the Prime Rate from the date due until paid.

## ARTICLE IX.
## ADMISSION OF SUCCESSOR AND ADDITIONAL MANAGING MEMBERS; REMOVAL AND WITHDRAWAL OF MANAGING MEMBER

### 9.01 Admission of Successor or Additional Managing Members

(a) The Managing Member shall not have any right to retire or withdraw voluntarily from the Company as Managing Member, or, except as expressly set forth in this Agreement, sell, transfer, pledge, encumber or assign all or any portion of its Interest, without the Consent of the Investor Member(s), which consent may be withheld at the sole discretion of the Investor Member. In the event that the Consent of the Investor Member(s) has been obtained by the Managing Member, the Managing Member shall designate one or more persons to be its successor. In no event shall the Interest of the Investor Member be affected thereby. The designated successor Managing Member shall be admitted as such to the Company upon approval by the Investor Member of such successor Managing Member, and all documentation respecting such transfer and applicable amendments to this Agreement, which approval may be withheld in its sole discretion, and upon satisfying the conditions of this Article IX and Section 17.01. Any voluntary withdrawal by the Managing Member from the Company or except as otherwise expressly set forth in this Agreement, any sale, transfer or assignment by the Managing Member of its Interest shall be effective only upon the admission in accordance with this Section 9.01(a) and Section 17.01 of a successor Managing Member. Upon request of the Investor Member from which consent has been requested, the transferee shall submit financial statements of the transferee to such Investor Member, evidencing sufficient financial ability to undertake the obligations which would be imposed on the transferee, and any document of assignment must be in a form reasonably acceptable to the Investor Member whose consent has been requested, and the transferor shall deliver an opinion of counsel (or such other evidence as an Investor Member may reasonably require) that such transfer (1) will not result in the Company being treated as an association taxable as a corporation for federal income tax purposes, (2) will not cause a termination of the Company for federal income tax purposes, and (3) may be effected without registration or qualification under any applicable federal or state securities laws, or confirming that any such registration or qualification, and any other required actions, have been taken in connection therewith.

(b) The successor Managing Member shall pay to the Company all out of pocket costs and expenses incurred in connection with such substitution, including, without limitation, legal and other costs incurred in the review and processing of the assignment, in amending this Agreement, and in filing the amended Certificate (if necessary).

(c) The successor Managing Member shall by its execution of this Agreement (or amendment hereto) and as a condition precedent to receiving any interest as the Managing Member of the Company agree to be bound by this Agreement to the same extent and on the same terms as the predecessor Managing Member, including, without limitation, agreeing to indemnify and hold harmless the Indemnified Party from and against all claims, actions, causes of action, damages, costs, liability and expense (including, without limitation, reasonable attorneys' fees and expenses, court costs and remedial response costs) incurred or suffered by, or asserted by any Person, entity or governmental agency against the Indemnified Party, based upon a violation of any Environmental Laws, or respecting the presence of Environmental Hazards, subject to regulation by the Environmental Laws in, on or under the Property that arise after the execution of the amendment set forth in Section 9.01(a) admitting the successor Managing Member to the Company.

(d) Upon the designation of the successor Managing Member, an amendment to this Agreement reflecting such admission, and stating the agreement set forth in Section 9.01(a) and in all respects in compliance with the requirements of the Act shall be executed and, if necessary, an amendment to the Certificate shall be executed and filed in accordance with the Act.

**9.02 Disqualification of a Managing Member**

(a) In the event of a continuing Material Default that remains uncured past the expiration of any notice and cure periods (such Material Default being referred to herein as an "***Event of Default***"), the Federal Member may, at its election, proceed to exercise its rights under this Section 9.02(a) by giving written notice of such Event of Default to the Managing Member (except in the case of a Terminating Event with respect to a sole Managing Member, in which case no such notice shall be required and the rights of the Investor Member set forth in this Section shall be immediately exercisable). If such Event of Default is capable of being cured, and is not cured within thirty (30) days following Managing Member's receipt of such notice (or not cured within ninety (90) days of receipt of such notice in the event that it is not reasonably possible to cure such default within a thirty (30)-day period, provided that the Managing Member is diligently and in good faith seeking to cure such default and there has been no assignment of or institution of proceedings to foreclose the Mortgage), the Federal Member thereafter may elect to become, or have its designee become, an additional Managing Member with any or all of the rights and privileges of the Managing Member, including, without limitation, the right to directly enforce the Company's rights under this Agreement or the Ground Lease, and to give any notices or file any objections permitted or required to be given or filed by the Company. If the Federal Member or such other Person shall become an additional Managing Member as herein stated, its interest in the Company shall not be increased as a result thereof. In the event of the admission of the Federal Member or such Person as a Managing Member pursuant to this Section 9.02, and if there are then any other Managing Members, including Initial Managing Member, the Federal Member or such other Person shall have managerial rights, authority and voting rights of fifty one percent (51%) on any matters to be decided or voted upon by the Managing Members or the Managing Member, as the case may be, and the rights and authority of the remaining Members or the Managing Member, as the case may be, shall be deemed to be equally divided among them. In such case, however, the original Managing Member shall continue to be liable for all its obligations under this Agreement,

provided that the Managing Member shall have no liability for actions of the Federal Member that are not permitted under this Agreement.

(b) Each Member hereby irrevocably appoints the Federal Member (with full power of substitution) as the attorney-in-fact of such Member for the purpose of executing, acknowledging, swearing to, recording and/or filing any amendment to this Agreement and the Company's Articles of Organization necessary or appropriate to effectuate the provisions of this Section 9.02.

**9.03 Event of Bankruptcy of a Managing Member**

(a) A Managing Member shall cease to be a Managing Member upon an Event of Bankruptcy with respect to such Managing Member. Upon such an Event of Bankruptcy, such Managing Member shall immediately cease to be a Managing Member of the Company, the remaining or successor Managing Member shall cause the Company to redeem the bankrupt Managing Member's Interest for One Hundred Dollars ($100) and such Managing Member shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Company, and all agreements between the Company and any Affiliates of such Managing Member may, at the election of the Investor Member, be terminated without penalty to the Company, whereupon the Company shall have no further obligation under any such agreements. Each Managing Member hereby grants the Member its power-of-attorney to execute any amendments to this Agreement on its behalf and in its place and stead to evidence the redemption of its Interest of record. This power of attorney is coupled with an interest and is irrevocable.

(b) If, at the time of an Event of Bankruptcy with respect to a Managing Member, such Managing Member was the sole Managing Member, the Investor Member shall have the right, in its sole discretion, to designate the successor Managing Member.

**9.04 Liability of a Removed or Withdrawn Managing Member**

Any Managing Member who for any reason voluntarily or involuntarily withdraws or is removed from the Company or sells, transfers, or assigns its Interest (except as expressly permitted under this Agreement) shall be and remain liable for all obligations, liabilities, and guarantees incurred by it as a Managing Member prior to the time when the withdrawal or removal becomes effective, including but not limited to the obligations and liabilities of the Managing Member set forth in Sections 3.03 and 3.04 of this Agreement with regard to Credit Adjuster Payment and Operating Deficit Advances then payable, and for any obligation or liability to the Investor Member that may arise at any time under Section 5.06. Such removed or withdrawn Managing Member shall continue to be liable pursuant to the provisions of Section 5.06(s) except to the extent the violation of the Environmental Laws or the presence of the Environmental Hazards is conclusively shown by factual evidence to have arisen solely after the occurrence of the effective date of said Managing Member's removal or following any withdrawal or transfer of its entire Interest. Such Managing Member shall continue to be liable pursuant to the provisions of Section 5.04 with respect to its acts and omissions occurring on or prior to the effective date of such withdrawal or removal. Removal of the Managing Member shall not limit or affect the obligations of the Guarantor under the Guaranty. If a Managing

Member is removed, such removed Managing Member shall be entitled to its share of Cash Flow and the repayment of any Operating Deficit Advances or any other amounts due and owing from the Company that had accrued on or prior to the effective date of such removal, which amounts shall be paid in accordance with the Cash Flow Payment Priorities set forth on Exhibit A-3.

## ARTICLE X.
## ASSIGNABILITY OF INTERESTS OF MEMBER

### 10.01 Purchase for Investment

(a) Investor Member hereby represents and warrants to the Managing Member and to the Company that the acquisition of its Interest is made as principal for its account for investment purposes only and not with a view to the resale or distribution of such Interest, except insofar as the Securities Act of 1933 and any applicable securities law of any state or other jurisdiction permit such acquisitions to be made for the account of others or with a view to the resale or distribution of such Interest without requiring that such Interest, or the acquisition, resale or distribution thereof, be registered under the Securities Act of 1933 or any applicable securities law of any state or other jurisdiction.

(b) Investor Member agrees that it will not offer, sell, transfer, assign, hypothecate, pledge or otherwise transfer its Interest or any fraction thereof to any Person who does not similarly represent and warrant and similarly agree not to sell, assign or transfer such Interest or fraction thereof to any Person who does not similarly represent and warrant and agree.

### 10.02 Restrictions on Transfer of Investor Member's Interest

(a) The offer, sale, transfer, assignment, hypothecation or pledge of any Interest of an Investor Member to any Affiliate of the Investor Member shall be permitted without the Managing Member's Consent or the consent of any other Investor Member. Any other offer, sale, transfer, assignment, by hypothecation or pledge of any Interest of the Investor Member, or any offer, sale, transfer, assignment, hypothecation or pledge of any Interest by any other Investor Member shall be subject to the Consent of the Managing Member in its reasonable discretion. For purposes of this Section, the term Affiliate shall include any Person directly or indirectly Controlled by, or under direct or indirect common Control with, Investor Member, and the term "Control" or "Controlled" means either ten percent (10%) or more common ownership with Investor Member or, with respect to any entity that is a limited liability company, such entity has Investor Member as its member, as its manager or managing member, or with respect to a general or limited partnership, such entity has Investor Member as its partner.

(b) The Investor Member whose Interest is being transferred shall pay such reasonable expenses (including reasonable attorneys' fees) as may be incurred by the Company and Managing Member in connection with such transfer.

(c) Nothing in this Section 10.02 shall limit the authority of any member of the Investor Member to offer, sell, transfer or assign any interests within such member of the Investor Member in such member's sole discretion.

### 10.03 Admission of Substitute Investor Member

(a) Subject to the other provisions of this Article X, an assignee of the Interest of an Investor Member (which shall be understood to include any purchaser, transferee, donee, or other recipient of any disposition of such Interest) shall be deemed admitted as a Substitute Investor Member of the Company only upon the satisfactory completion of the following:

(i) the assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement by executing a counterpart thereof or an appropriate amendment hereto, and such other documents or instruments as the Managing Member may require in order to effect the admission of such Person as an Investor Member;

(ii) an amended Agreement and/or Articles evidencing the admission, if necessary, of such Person as an Investor Member shall have been filed for recording, if necessary, pursuant to the requirements to the Act;

(iii) the assignee shall have represented and agreed in writing as required by Section 10.01;

(iv) if the assignee is a corporation or other entity, the assignee shall have provided the Managing Member with evidence satisfactory to counsel of its authority to become an Investor Member under the terms and provisions of this Agreement;

(v) the assignee or the assignor shall have reimbursed the Company and Managing Member for all reasonable expenses, including all reasonable legal fees and recording charges, incurred by the Company in connection with such assignment;

(vi) the Consent, not to be unreasonably withheld, conditioned or delayed, of the Managing Member shall have been obtained if required pursuant to Section 10.02; and

(vii) the Investor Member has paid any amounts due and owning hereunder, unless the assignee pays such due and owing amounts.

(b) For the purpose of allocation of profits or losses and Credits, and for the purpose of distributing Cash Flow of the Company, a Substitute Investor Member shall be treated as having become, and as appearing in, the records of the Company as a Member upon its signing of an amendment to this Agreement, agreeing to be bound hereby.

(c) The Managing Member shall cooperate with the Person seeking to become a Substitute Investor Member by preparing the documentation required by this Section and making any official filings and publications. The Company shall take all such commercially reasonable action, including the filing of any amended Agreement and/or Articles evidencing the admission of any Person as an Investor Member, if required, and the making of any other official filings and publications, if required, as promptly as practicable after the satisfaction by the assignee of the Interest of an Investor Member of the conditions contained in this Article X to the admission of such Person as an Investor Member of the Company. Any cost or expense incurred in connection with such admission shall be borne by the Substitute Investor Member.

### 10.04 Rights of Assignee of a Company Interest

(a) Following any transfer of its entire interest in the Company by an Investor Member, if the Assignee(s) shall become a Substitute Investor Member(s), the assignor, in respect of the interest assigned, shall no longer be deemed to be an Investor Member hereunder (in all other situations, the Investor Member shall continue to exercise the rights of an Investor Member hereunder until such time as such Assignee(s) are duly admitted as Investor Member(s)).

(b) Except as provided in this Article X and as required by operation of law, the Company shall not be obligated for any purpose whatsoever to recognize the assignment by any Investor Member of its Interest until the Company has received actual Notice thereof.

(c) Any Person who is the assignee of all or any portion of an Investor Member's Interest, but does not become a Substitute Investor Member and desires to make a further assignment of such Interest, shall be subject to all the provisions of this Article X to the same extent and in the same manner as any Investor Member desiring to make an assignment of its Interest.

(d) The Company and the Managing Member shall be entitled to treat each Person set forth on Exhibit A as the absolute owner of its Interest in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such Person until such time as a written assignment of such Interest has been executed in accordance with this Article X and the Company has received actual Notice thereof.

## ARTICLE XI.MANAGEMENT AGENT

### 11.01 Managing Member May Engage Management Agent

(a) Except as approved prior to the date hereof, the Managing Member shall not enter into any agreement with any Management Agent without the prior written Consent of the Investor Member(s).

(b) Any Management Agreement entered into with respect to the Property shall be in form and substance acceptable to the Investor Member and shall expressly include the following terms:

(i) the Management Agent (and any and all successor management agents) shall manage and operate the Property in accordance with the requirements of Section 47 of the Code, the Secretary's Standards, the Historic Approvals, and all other applicable requirements respecting the Credits, the Ground Lease, the Loans, and the applicable requirements of the Mortgage Lender, any other lenders, and any other governmental authority having jurisdiction with respect thereto;

(ii) the Management Agent shall be terminable by the Company upon thirty (30) days' prior written notice, with or without cause;

(iii) the Management Agent shall not advance its own money for Property expenses, except in an emergency, in which event the Management Agent shall be required to notify the Company and the Investor Member within thirty (30) days thereafter. The Managing Member shall notify the Investor Member in writing whenever it has knowledge that the Management Agent is advancing its own money to pay Property expenses; the failure of the Managing Member to so notify the Investor Member shall constitute substantial mismanagement of the Property for purposes of Section 9.02(a); and

(iv) whenever, and so long as the Management Agent is (1) a Managing Member, or (2) an Affiliate of the Managing Member, the Management Agreement shall provide that such Management Agreement shall automatically terminate, upon the removal of the Managing Member pursuant to Section 9.02 of this Agreement.

(c) The Managing Member shall not authorize or permit any deviation from any Management Agreement which could impair the Credits or the operation of the Property and shall not remove such Management Agent without the prior written approval of the Investor Member (which approval may not be given until the Managing Member has identified a replacement management agent acceptable to the Investor Member).

(d) Upon the reasonable request of the Investor Member, the Managing Member shall terminate the applicable management agreement, subject to, and in accordance with, it's terms. Any removal of the Management Agent or hiring of a new Management Agent shall be made only upon obtaining the consents or approvals, if any, required by the Loan Documents and/or Development Documents, as well as the Consent of the Investor Member(s). The Management Agent shall be entitled to receive such management fees as are included in the Annual Operating Budget and that are acceptable to the Mortgage Lender. Any successor Management Agent shall be entitled to receive such management fees as may be agreed upon between the Managing Member and such agent consistent with the applicable Annual Operating Budget, and which shall be acceptable to the Mortgage Lender if their consent is required and the Investor Member.

## ARTICLE XII.
## DISSOLUTION OF COMPANY

### 12.01 Dissolution

The Company shall be dissolved, and the business of the Company shall be terminated in accordance with the Act, upon the occurrence of any of the following events:

(a) An election to dissolve the Company made in writing by the Members;

(b) The sale or other disposition of all or substantially all of the Company's assets;

(c) The expiration of the Term; or

(d) The occurrence of any other event causing the dissolution of a limited liability company under the laws of the State.

### 12.02 Distribution of Company Assets

(a) Upon the dissolution of the Company, the Company's business shall be wound up and its assets liquidated; and the net proceeds of such liquidation shall be distributed in the following order of priority (but in all events in accordance with the Act):

(i) To the payment of the debts and liabilities of the Company (excluding any amounts that may be owed with respect to any Member Loan) and the expenses of liquidation;

(ii) To the applicable Investor Member to pay any outstanding Credit Adjuster Payments, Default Cash Flow Priority, Special Tax Distributions, LP Loans, and any other loans or advances made by the Investor Member;

(iii) To establishing any reserves that the Managing Member or liquidator, in accordance with sound business judgment, deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, which reserves may be paid over to an escrow agent to be held by such agent for the purpose of (A) distributing such reserves in payment of the aforementioned contingencies, and (B) upon the expiration of such period as the Managing Member or such liquidator may deem advisable, distributing the balance thereof in the manner provided in this Section 12.02;

(iv) To the Managing Member or its applicable Affiliate, the amount of any outstanding Operating Deficit Advance, Credit Adjuster Payment or other loans or obligations payable to the Managing Member or Affiliates; and

(v) To the Members with positive capital account balances, in accordance with their respective positive Capital Account balances.

(b) If any assets of the Company are to be distributed in kind, they shall be distributed on the basis of their fair market value, and any Member entitled to any interest in such assets shall receive it as a tenant-in-common with all other Members so entitled. If assets are to be distributed in kind, the Members' Capital Accounts shall be appropriately adjusted before any such distribution to reflect the increases or decreases to the Capital Accounts that would have occurred if the property distributed in kind had been sold for its fair market value by the Company prior to distribution.

(c) If, upon the dissolution and liquidation of a Member's Interest (whether or not in connection with the liquidation of the Company), such Member has a negative balance in its Capital Account, the Member shall have no obligation to make any contribution to the capital of the Company and the negative balance of the Member's Capital Account shall not be considered a debt owed by the Member to the Company or any other Person for any reason whatsoever.

### 12.03 Termination of the Company

The Company shall terminate when all of the Company's assets, including without limitation the Company's interest in and to the Property, shall each have been disposed of

(except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any other liquid assets of the Company, have been distributed to the Members as provided in this Article XII and in accordance with the Act.

## ARTICLE XIII.
## ACCOUNTING AND REPORTS

### 13.01 Bank Accounts

Except where specified to the contrary in this Agreement, all funds of the Company shall be invested in the name of the Company by the Managing Member, under such terms and conditions (including signatories) as the Managing Member shall approve, provided that such investments shall be limited to (a) Mortgage Lender or, with the Consent of the Investor Member(s), such other financial institutions whose deposits are insured by an agency of the U.S. Government (such as the Federal Deposit Insurance Corporation), and where the instrument's or account's maturity does not exceed the lesser of one year or the time period within which the funds are anticipated to be needed by the Company; or (b) direct obligations of the U.S. Government (such as U.S. Treasury Bills) where the instrument's maturity does not exceed the lesser of one year or the time period within which the funds are anticipated to be needed by the Company or other investments subject to the Consent of the Investor Member(s).

### 13.02 Books of Account

The Managing Member shall keep or cause to be kept a complete and accurate set of books and supporting documentation of transactions with respect to the conduct of the Company's business. The books of the Company shall be kept on an accrual basis for each calendar year. The books and records of the Company (including all records required to be maintained under the Act) shall at all times be maintained at the principal office of the Company. The Investor Member(s), their members, and their duly authorized representatives shall have the right to examine the books of the Company and all other records and information concerning the operation of the Project at reasonable times and may copy any of them. In the event of any audit, proceeding, or controversy regarding the IRS, the Managing Member and the Company agree to elect TEFRA procedures if requested by the Investor Member(s) or any of the members of the Investor Member(s), and the Company agrees to pay or reimburse the Investor Member(s) or their respective members for any costs incurred by such Investor Member(s) or any of their respective members with respect to any such audit, proceeding, or controversy.

### 13.03 Reports

The Managing Member shall send all of the reports set forth below to the Investor Member(s), at the addresses set forth on Exhibit A-4 attached hereto.

(a) The Managing Member shall cause to be prepared and delivered to the Investor Member(s) and, when required, shall cause the Company to file with relevant governmental agencies, each of the documents set forth below prepared by a certified public accountant experienced with historic tax credits. Time is of the essence respecting the requirements set forth herein. Managing Member shall cause the following reports and information to be delivered to the Investor Member(s) in compliance with the following schedule:

(i) *Part 3 Approval*. Within thirty (30) days of receipt thereof, the Part 3 Approval.

(ii) *Quarterly Financial Statements of the Company*. As soon as available and in any event not later than quarterly (delivered on or before the 15th of each January, April, July, and October commencing with the quarter ending March 31, 2017, for the prior calendar quarter), unaudited financial statements of the Company, including: (1) a balance sheet as of the end of such month, statements of changes in Members' capital accounts during such month, statements of profit and loss for such month, statement of any compensation paid to or for the benefit of the Managing Member or its Affiliates; (2) if requested, an unaudited comparison of the actual results of the operations of the Company during the applicable month with the budget for such month pursuant to the Annual Operating Budget; (3) a statement indicating if there are any development deficits and/or operating deficits or anticipated development deficits and/or operating deficits, and if so, the manner in which it is anticipated such development deficits and/or operating deficits will be funded; (4) copies of any reports, notices and/or other communications received by the Company from any governmental authority; (5) a report indicating any defaults, or conditions that, with the passage of time or giving of notice, would constitute a default under, the Ground Lease or a Loan; (6) any other information regarding the Company and its operations during the prior fiscal month reasonably deemed by the Managing Member to be material to the Investor Member(s), for example, any lawsuits involving the Company or any portion of the Development; and (7) any other information regarding the Company and its operations during the prior fiscal month reasonably deemed by the Investor Member(s) to be material to the Members, including, without limitation, evidence of insurance coverage, all certified by the Managing Member as presenting fairly the financial condition of the Company at the date of such statements. Each such statement shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis.

(iii) *Annual Financial Statements of the Company*. By March 1 after the end of each calendar year, financial statements of the Company, as of the end of such year, including balance sheet, statement of changes in Members' capital accounts, statement of sources and uses of funds, statements summarizing the amount of Credits, and depreciation, number of tenants served and the cost of such services, statement of any compensation paid to or for the benefit of the Managing Member or its Affiliates prepared in accordance with generally accepted accounting standards and compiled by the Accountants. Further, as of such date the Managing Member will send the following upon request by the Investor Member(s):

(1) a certificate from an officer of the Managing Member to the effect that, as of the end of the preceding year, (A) all required payments under the Ground Lease have been made (together with copies of paid receipts for taxes and insurance), and (B) if applicable, to the best knowledge of such officer, no material default has occurred and is continuing with respect to the Ground Lease or any mortgage financing relating to any portion of the Development, or, to the extent that such officer is unable to certify to any of the foregoing, stating the reason for such inability and the action, if any, taken or proposed to be taken by

the Managing Member relating thereto, accompanied by proof of payment of property taxes and insurance for such Fiscal Year, and, upon reasonable request of the Investor Member(s), confirmation from the Ground Lessor that no payment default or other default of which Ground Lessor is aware under the Ground Lease and/or confirmation from the Mortgage Lender that no payment default or other default of which such Mortgagee is aware under the applicable Loan Documents;

(2) a detailed statement of any transactions between the Company and the Managing Member or its Affiliates, and of fees, commissions, compensation and other benefits paid, or accrued, to the Managing Member or its Affiliates for the prior fiscal year of the Company, showing the amount paid or accrued to each recipient and a general indication of the services performed; and

(3) if requested, a management report on the Property containing such information as is reasonably necessary to advise the Investor Member(s) about their investment in the Company and the development or operation of the Property, including the issues addressed in the monthly reports described above.

(iv) *Annual Company Return and Guarantor Return*. By March 1 of each year, the Managing Member shall provide to Investor Member(s) a draft of the federal and State "Partnership Return", including a federal and State Schedule K-1. As soon as available and in any event not later than ninety (90) days after the end of each year, all information necessary for the preparation of each Investor Member's federal and State income tax returns for each year in respect of income, gains, losses, deductions, or credits and the allocation thereof to the Investor Member, including a Form K-1 (or other comparable form subsequently required by the IRS) and a copy of the federal "*Partnership Return*" and any state or local partnership tax return required to be filed by the Company as well as an annual capital account calculation, 704(b) calculation and analysis (and, at an Investor Member's request, if losses are in excess of the projected losses in the Projections, proforma 704(b) analysis for the remainder of the HTC Compliance Period), and minimum gain analysis prepared by the Accountants, Accountant-prepared analysis of Company debt (and debt worksheet). The Managing Member shall not file such Company return without providing the Investor Member(s) at least thirty (30) days to review and approve such return. To the extent that, for any reason, the Managing Member has not provided such information by June 1 of any taxable year, the Investor Member(s) may, at any time thereafter, by written notice to the Managing Member, require the Managing Member to replace the Accountants with accountants designated by the Investor Member(s) (or otherwise acceptable to the Investor Member, at its option), and to the extent that such late receipt of information results in the Credits for such taxable year not being used by an Investor Member because it elects not to amend its tax returns for such Year, then such unused Credits shall constitute additional Credit Deficiency payable hereunder.

(v) *Periodic Reports Requiring Investor Member Approval*. Any and all periodic reports required to be provided to an Investor Member by any federal, state, or local government agency having jurisdiction over the Property, or the Company.

(vi) *Notice of Defaults, IRS Proceedings*. No more than five (5) Business Days after receipt thereof (A) notice of any default under any Loan or any of the Project Documents given to the Company, (B) notice of any IRS proceeding involving the Company, or (C) any payment or draw made under any operating deficit guaranty, rehabilitation completion guaranty, performance bond or letter of credit, and any other significant Property affecting the Company, its business or assets or the Development, or (D) notice of any default under the Ground Lease.

(vii) *SHPO Information*. Within ten (10) Business Days of filing or receipt, copies of all reports or other filings submitted to the SHPO and copies of all correspondence with the SHPO with respect to the Company or the Property.

(viii) *Taxes, Insurance, Lease and Loan Payments*. Annually, and more frequently, if reasonably requested by an Investor Member, the Managing Member shall provide evidence that all Loan payments, Ground Lease payments, taxes and insurance payments, with respect to the Property are current and documentation evidencing same.

(ix) *Reserves*. Annually, and more frequently, if requested by an Investor Member, from time to time, the Managing Member shall provide bank statements documenting the then current balances in the Reserves, if any.

(x) *Notices of Non-Compliance*. Promptly upon being informed thereof, written notice of any IRS, Credit Agency, taxing authority or local municipality audits, investigations, official inquiries, or notices relating to, or arising from, alleged non-compliance or alleged violations of law, regulations, rules or codes, including, but not limited to, the West Virginia Statute or the Regulations.

(xi) *Notices Regarding Credits*. Within five (5) business days of the receipt thereof, copies of all correspondence between the Company and either the Credit Agency or the IRS relating to the availability of the Credits, including, but not limited to, the Historic Certification and any attachments thereto, and any application or supporting materials therefor, and upon request by the Investor Member or its member, copies of all other correspondence between the Company and either the Credit Agency or the IRS.

The following items (xii) through (xviii) shall be delivered solely upon the request of Investor Member:

(xii) *Estimate of Taxable Income, Loss and Credits*. On or before sixty (60) days prior to the end of any Fiscal Year, an estimate of the Company's taxable income or loss and applicable Credits for such Fiscal Year and each Member's share thereof.

(xiii) *Deficits: Draws on Bonds, Guarantees or Reserves.* Within five (5) Business Days of the exercise thereof, notice of any draw, call or demand for payment of any Operating Deficit, contractor payment or performance bonds or construction completion guarantee, and any draw of any reserves of the Company.

(xiv) *SHPO Information*. Within ten (10) Business Days of filing or receipt, copies of all reports or other filings submitted to the SHPO and copies of all correspondence with the SHPO with respect to the Company or the Property.

(xv) *Lender Information*. Thirty (30) calendar days prior to submission to any Mortgage Lender of any cost certifications for purposes of calculating available cash flow in connection with the Mortgage Loan, the Managing Member shall submit the same to the Investor Member for review.

(xvi) *Cash Flow*. Except for Annual Return distributions, thirty (30) calendar days prior to any allocation or distribution of Cash Flow, the Managing Member shall submit to the Investor Member(s) for approval an accounting of available Cash Flow and the proposed allocation or distribution, in a form acceptable to the Investor Member(s).

(xvii) *Change Orders and Draw Requests*. As and when submitted to the Mortgage Lender by or on behalf of the Company, any and all change orders for the Property and draw requests with respect to the Loan.

(xviii) *Information Requested by the Investor Member*. Such other information regarding the state of the business, financial condition and affairs of the Company and/or Property as the Investor Member(s), from time to time, may reasonably request, including, but not limited to, a certification by the Managing Member that to the best of the Managing Member's knowledge after due inquiry (A) there is no default under any provision of the Loan or Development Documents or this Agreement, or if there is any default, a description thereof, and (B) there is no building, health or fire code violation or, to the best of its knowledge, similar violation of a governmental law, ordinance or regulation against the Property or, if there is such violation, a description thereof.

(b) The Managing Member shall promptly respond to all reasonable requests for information made by an Investor Member.

(c) The Managing Member shall deliver to the Investor Member(s) from time to time, and within ten (10) calendar days after request therefor, all such further statements and information as the Investor Member(s) may reasonably request in order to enable the Investor Member(s) to determine or verify the amounts of all payments that the Managing Member shall be required to make to the Members and the amounts of credits, and all such statements and information needed by the Investor Member(s) in connection with reports and forms required to be filed by the Investor Member(s) pursuant to federal or state securities law. Further, upon the material failure of the Property to perform in accordance with the Projections, the frequency of the required reporting under this Section 13.03 may be increased, from time to time, upon written notice from the Member.

(d) Each party hereby agrees and acknowledges that the Investor Member(s) may share with any of its Controlled Affiliates any information provided to the Investor Member(s) relating to the Company, the Property, the Managing Member or the Guarantor (or any Affiliates thereof), but only to the extent commercially reasonable and necessary with respect to its investment in the Company. The Investor Member(s) are also authorized to disclose the terms

and nature of its investment in the Company to the Investor Member(s)' auditors, attorneys, accountants and regulators, but only to the extent commercially reasonable and necessary, and as otherwise required by applicable law.

## ARTICLE XIV.
## REPRESENTATIONS AND WARRANTIES

### 14.01 Representations and Warranties

The Managing Member hereby represents and warrants to each Investor Member that the following are true and accurate as of the Admission Date (or, as applicable, as of the date(s) on which the representations are restated as being true and accurate as required by the Second Installment Payment Certificate):

(a) The execution and delivery by the Managing Member of this Agreement and the transactions contemplated hereby have been duly authorized by all necessary action, and the consummation of any such transactions contemplated hereby with or on behalf of the Company does not constitute a breach or violation of, or a default under, the statutes, regulations, bylaws or other governing instruments of the Managing Member or any agreement by which it or any of its property is bound, nor a violation of any law, administrative regulation or court decree, any of which would have a material adverse effect on the Company.

(b) The Company is a West Virginia limited liability company, validly existing and in good standing under the laws of the State, is authorized to transact business in the State and has the requisite company power to carry on its business, to enter into and perform its obligations under this Agreement and all other agreements in connection with the Project, and to carry out the transactions contemplated hereunder, and the Company has complied with all filing requirements necessary to preserve the limited liability of the Members.

(c) No Events of Bankruptcy (or events which, in the course of time, would result in Bankruptcy) have occurred with respect to the Managing Member or the Company.

(d) No litigation, action, investigation, or proceeding is pending or has occurred or, to the best of the Managing Member's knowledge, is threatened, which would (i) have a material adverse effect on the Company or the Members or the Project; (ii) have a material adverse effect on the ability of the Managing Member to perform its obligations hereunder; (iii) have a material adverse effect on the financial condition of the Managing Member or any Guarantor; or (iv) which would constitute or result in, if true, in a material breach of any warranty, representation or agreement set forth herein.

(e) The Company is and shall be treated as a partnership for federal tax purposes, and the Managing Member is and shall be treated as a partner for federal tax purposes.

(f) The Project Documents are in full force and effect and no default (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred thereunder.

(g) The State Tax Credits shall be allocated 100% to the Managing Member.

(h) The amount of the projected Federal Historic Credits expected to be allocated in 2016 by the Company to the Federal Member is $875,000.

(i) All material documents relating to the Company and the Project have been made available to the Investor Member.

(j) The Company has good and marketable title to the Project free and clear of all material liens, charges, encumbrances, security interests or statutory liens (other than the mortgage(s) previously identified by the Managing Member), except (A) for those easements, reservations, restrictions or other matters that (i) would not materially adversely affect the Project or its contemplated use or (ii) have been bonded against in such a manner as to preclude the holder of the lien or claimant from having any recourse to the Company's property and (B) for liens for taxes and assessments which are not yet due and payable, and (C) conveyances or contracts to convey title to such portions of the Project which are to be sold in the ordinary course of business after completion of the rehabilitation thereof. Title to the Project shall be insured at all times by a reputable title insurance company in an amount equal to at least the lesser of (A) the fair market value of the Project or (B) the sum of the then outstanding debt secured by the Project plus the amount of the capital contributions of all Members.

(k) The Managing Member is not in default in the observance or performance of any provision of the Operating Agreement or any other Project Document to be observed or performed by the Managing Member which would have a material adverse effect on the Company, the Members, or the Project.

(l) To the best of the Managing Member's knowledge, the execution and delivery by the Managing Member of this Agreement and the performance of any of the actions of the Managing Member contemplated hereby has not constituted and will not constitute a violation in any material respect of (i) the Operating Agreement, (ii) any other agreement by which the Managing Member is bound or to which any of its property or assets is subject, or (iii) any law, administrative regulation, or court decree.

(m) To the best of its knowledge, no event has occurred which has caused, and neither the Managing Member nor the Company has acted in any manner which will cause (i) the Company to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Company to fail to qualify as a limited liability company under the laws of the State, or (iii) the Members to be liable for Company obligations, except as provided in the Act.

(n) The land upon which the Project is located is zoned in a manner that provides for operation of the Project as a permitted use, and neither the Company nor the Managing Member has received any notice of any violation with respect to the Project of any law, rule, regulation, order, or judgment of any governmental authority having jurisdiction over the Project which would have a material adverse effect on the Project or the use, operation, or occupancy thereof.

(o) The Project is being rehabilitated in a timely manner in conformity with the Project Documents and the Managing Member will use its best efforts to ensure that the portion of the Project consisting of the Building and structural components of the Building qualifies as a certified historic structure as described in the West Virginia Statute and the Regulations. To the

best of the Managing Member's knowledge, there is no violation by the Company or the Managing Member of any zoning, environmental, or similar regulation applicable to the Project which could have a material adverse effect thereon, and the Company has complied with all applicable municipal and other laws, ordinances and regulations relating to such rehabilitation and use of the Project and has obtained (or will obtain when necessary) all permits and licenses necessary for the construction, use, occupancy, and operation of the Project. All appropriate public roadways, public utilities, including sanitary and storm sewers, water, gas, and electricity are or will be available and operating properly for the Project at the time of the first use of the Project.

(p) There is and shall be no personal liability of any Investor Member for the repayment of the principal of or interest on any debt of the Company.

(q) Neither the Company nor the Project is in violation of Clean Air Act, Clean Water Act, Resources Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Response, Compensation and Liability Act and Occupational Safety and Health Act or any other federal, state, or local law relating to hazardous substances. Neither the Managing Member nor the Company has received any notice from any governmental agency that the Company, the Project, or land upon which it is located is in violation of any such law.

## ARTICLE XV.
## COVENANTS RELATING TO THE PROJECT AND COMPANY

### 15.01 Duties and Obligations of Managing Member

The Managing Member shall have the following duties and obligations with respect to the Project and the Company, and covenants to the Investor Member(s) that:

(a) The Managing Member shall cause the Company to complete the rehabilitation of the Project substantially in accordance with the Project Documents and all requirements necessary to obtain the required permits or certificates of use, or cause the same to be completed, in a good and workmanlike manner, free and clear of all mechanics', materialmen's or similar liens, and shall equip the Project or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, and shall cause all necessary certificates or permits of use to be obtained, all in accordance with the Project Documents and the requirements necessary for Historic Certification.

(b) While conducting the business of the Company, the Managing Member shall not act in any manner which it knows or should have known after due inquiry would (i) cause or permit the termination of the Company for federal income tax purposes without the Consent of the Investor Member(s), (ii) cause or permit the Company to be treated for federal income tax purposes as an association taxable as a corporation, (iii) cause or permit the Company to fail to qualify as a limited liability company under the Act or (iv) cause or permit the Investor Member(s) to be liable for Company obligations except as provided in the Act, provided that the Managing Member shall not be in breach of this Paragraph (b) if such liability is caused by an action of the Investor Member(s).

(c) The Managing Member shall exercise good faith in all activities relating to the conduct of the business of the Company, including the acquisition, operation, and maintenance of the Project, and shall take no action with respect to the business and property of the Company which is not reasonably related to the achievement of the purpose of the Company.

(d) The Managing Member is exclusively responsible for negotiating and performing all services incident to (i) the Company's acquisition of the land underlying the Project, (ii) the arranging of appropriate zoning and equity and permanent financing with respect to the Project and (iii) the organization and formation of the Company.

(e) The Managing Member shall cause the Company to take all actions necessary in order to (i) rehabilitate the Project in accordance with the "Standards for Rehabilitation" set forth in the Regulations and the terms of the approvals by the Credit Agency of the Historic Preservation Certification Application, (ii) receive all necessary approvals from the Credit Agency after the rehabilitation is completed, (iii) ensure that the qualified rehabilitation expenditures incurred by the Company through the date that the Project is placed in service will equal or the adjusted cost basis of the Building for federal tax purposes determined before the start of the rehabilitation, and (v) receive a Historic Certification of the Project from the Credit Agency.

(f) The Managing Member will take all actions necessary to keep in full force and effect the Project Documents and it will not intentionally take any action or intentionally fail to take an action which would result in (i) acceleration of payments owed under any Company loan or (ii) a default under the Project Documents that would cause material adverse harm to the Company, provided, however, that this paragraph (f) shall not be construed to obligate the Managing Member to make payments on any Company loan.

(g) The Managing Member will use best efforts to cause the Project to be kept in compliance with all applicable zoning regulations, ordinances, and subdivision laws, rules, and regulations.

(h) The Managing Member shall use best efforts to maintain the Project and the land upon which it is located so that there is no discharge, release, spillage, uncontrolled loss or seepage of any oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (as such terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980) which causes a genuine risk to the health or safety of the residents or employees of the Project. The Managing Member shall use all reasonable efforts to maintain the Project and the land upon which it is located so as not to violate the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Response, Compensation and Liability Act and Occupational Safety and Health Act and other federal, state and local laws governing hazardous substances. In the event that the Investor Member(s) becomes personally liable for Company violations with respect to the Project under any federal, state or local hazardous substance law, the Managing Member shall indemnify and hold harmless the Investor Member(s) and their members, managers and affiliates (except to the extent attributable to direct actions of an Investor Member) for any and all costs, expenses (including reasonable attorneys' fees necessarily incurred), damages, or liabilities to the extent

that the Investor Member(s) are required personally to discharge such costs, expenses, damages, or liabilities in whole or in part from any source other than Company resources. The foregoing indemnification shall be a recourse obligation of the Managing Member, and shall survive the dissolution of the Company or the insolvency, Bankruptcy or withdrawal of the Managing Member.

(i) The Managing Member shall cause the Company to maintain in full force and effect with reputable licensed insurers (each insurer must have a Standard & Poor's rating of "A" or better or a rating from A. M. Best Co. of A-V or better), such insurance policies, including fire and extended coverage insurance, as may be required by any lender; provided that in all events, the Company shall obtain and maintain in favor of the Company, the Investor Member(s) and their members (as "***Loss Payees***" or as "***Additional Insureds***" for each coverage type) and any lender as named insureds as their interests appear, such insurance coverage as required under the terms of the Ground Lease.

(j) No drywall (also known as, without limitation, plasterboard, gypsum board and Sheetrock) has or will be used in the construction and/or rehabilitation of the Project that was manufactured in or imported from China.

## ARTICLE XVI.
## INDEMNIFICATION OF MEMBERS

### 16.01 Indemnification of Members

(a) The Company, its receiver or its trustee, shall indemnify and hold harmless the Members from any liability, loss or damage incurred by them by reason of any act performed or omitted to be performed on behalf of the Company, including costs and reasonable attorneys' fees and any amount expended in the settlement of any claim of liability, loss or damage; provided, however, that (i) such party(ies) must have reasonably determined, in good faith, that such course of conduct was in the best interests of the Company, and such party(ies) must have been acting on behalf of or performing services for the Company, and (ii) such course of conduct must not have constituted fraud, gross negligence, misrepresentation, breach of any material provision of this Agreement or misconduct by such party(ies); and (iii) any such indemnification shall be recoverable only from the assets of the Company and not from the assets of any Member. Notwithstanding the foregoing, in no event shall the indemnification and hold harmless provisions of this paragraph (a) be applicable to any liability, loss or damage resulting from a Disallowance Event, or an obligation of the Managing Member to the Federal Member under this Agreement.

(b) The Managing Member shall indemnify, defend and hold harmless each Investor Member (and the Company shall indemnify, defend and hold harmless each Investor Member) from and against any loss, liability, damage, cost or expense (including reasonable attorney's fees) to the extent that (i) any Managing Member's acts or omissions constitute fraud, willful misconduct or gross negligence, (ii) any Managing Member or any officers or managers of the Company breached its/his/their fiduciary duty to the Company or the Investor Member and such breach, in the Investor Member's reasonable determination, has a materially adverse effect on the Investor Member; (iii) any of the representations or warranties of the Managing Member set

forth this Amendment are untrue or inaccurate in any material respect; (iv) any of the duties, obligations or covenants of the Managing Member set forth this Agreement are breached or not duly performed as provided therein and such breach or non-performance, in the Investor Member's reasonable determination, has a materially adverse effect on the Investor Member, or (iv) a Disallowance Event has occurred that was caused by or arose from the negligence or will misconduct of the Managing Member or its agents.

(c) The indemnification rights contained in this Section shall survive dissolution, Bankruptcy or insolvency of the Company and the withdrawal, dissolution, Bankruptcy or insolvency of the Managing Member and shall be cumulative of, and in addition to, any and all rights, remedies and recourses to which each Investor Member shall be entitled, whether pursuant to the provisions of the Operating Agreement, at law, or in equity. All sums due under this Section shall be payable to each Investor Member within ten (10) days after notice from the Investor Member to the Managing Member.

(d) All rights of an Investor Member to indemnification shall survive the withdrawal, dissolution, Bankruptcy or insolvency of the Investor Member.

## ARTICLE XVII.
## MISCELLANEOUS PROVISIONS

### 17.01 Amendments to Agreement

No amendment of the Operating Agreement or other Company organizational documents shall occur without the written consent of all Investor Member(s) or their members.

### 17.02 Notices

All Notices to be given under this Agreement shall be sent to the Persons shown on Exhibit A-4 at the addresses for such Persons set forth on Exhibit A-4; provided, that any Person may change its Notice address or attention by providing Notice thereof to all other Members. Any Notice, demand or request required or permitted to be given or made hereunder shall be deemed given or made (i) three (3) Business Days after the date sent by certified or registered mail, postage prepaid; (ii) when actually received if delivered by hand or by a nationally reputable overnight courier; or (iii) when confirmed by receipt if transmitted by telecopy or other form of rapid transmission if Notices given by such means of communication are capable of being confirmed upon delivery by electronic means.

### 17.03 Meetings of the Company

Meetings of the Company may be called by the Managing Member or by the Investor Member for any matters upon which the Members may vote, as set forth in this Agreement. The calling of a meeting shall be made:

(a) By the Managing Member, which shall give Notice to the Investor Member, which Notice shall include (i) a statement of the purposes of the meeting, and (ii) the date of the meeting which shall be a date no fewer than fifteen (15) calendar days and no more than thirty (30) calendar days after the date of the Notice;

(b) By the Investor Member, which shall give Notice to the Managing Member, which Notice shall include a statement of the purposes of the meeting. No more than fifteen (15) calendar days after receipt of such Notice, the Managing Member shall provide Notice of the meeting to the Member in accordance with Section 17.03(a).

Any meeting called pursuant to this Section 17.03 may be held by conference call in lieu of an in-person meeting.

**17.04 Action for Breach**

The representations, warranties, covenants, agreements, and duties of the Managing Member contained in this Agreement are being made in order to induce, and in consideration of, the Investor Member's acquisition of its Interest. Upon the breach of any representation, warranty, covenant, agreement, or duty, the Investor Member, if decided by Consent of the Investor Member(s), may pursue any available legal or equitable remedy against the Managing Member without being required to dissolve the Company and notwithstanding the availability of any other remedy, and shall be entitled to payment of its reasonable attorneys' fees, expenses and other costs, regardless of whether litigation is commenced.

**17.05 Consent and Voting**

No vote or Consent of the Investor Member(s) shall ever be construed to make the Investor Member liable as a manager or cause the Investor Member to be liable for Company obligations.

**17.06 Survival of Representations**

All representations, warranties, and indemnifications contained herein shall survive the dissolution and final liquidation of the Company.

**17.07 Entire Agreement**

This Agreement, including without limitation, all Exhibits attached hereto and incorporated herein by this reference, contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Agreement.

**17.08 Applicable Law**

It is the intention of the parties hereto that all questions with respect to the construction, enforcement, and interpretation of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State, without regard to principles of conflicts of laws.

**17.09 Severability**

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable statutes, laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law. In the event that any provision of this Agreement or the application thereof shall be invalid or unenforceable, the Members agree to negotiate (on a reasonable basis) a substitute valid or enforceable provision providing for substantially the same effect as the invalid or unenforceable provision.

### 17.10 Binding Effect

When entered into by the parties hereto, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors and administrators, personal and legal representatives, successors and assigns.

### 17.11 Counterparts

This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

### 17.12 Successor Statutes and Agencies

Any reference contained in this Agreement to specific statutory or regulatory provisions or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

### 17.13 No Implied Waiver

No failure on the part of any Member to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

### 17.14 Attorney's Fees

In the event of litigation, upon a Final Determination, the prevailing party shall be entitled to receive its reasonable attorney's fees and out of pocket expenses.

## ARTICLE XVIII

## IMPERMISSIBLE GUARANTIES

**18.01 Impermissible Guaranties.**

Section 4 of Revenue Procedure 2014-12 sets forth a "safe harbor" (the "Safe Harbor") that applies in the case of a partnership that validly claims Federal Historic Credits (a "Partnership"). Pursuant to the Safe Harbor, the Internal Revenue Service ("IRS") will not challenge a Partnership's allocations of validly claimed Federal Historic Credits if the partnership and its partners satisfy the Safe Harbor. The parties hereto intend to satisfy each of the requirements of the Safe Harbor, including, without limitation, the prohibition of "Impermissible Guarantees" (as defined in the Safe Harbor). Accordingly, any obligations hereunder of the Managing Member are is intended to be a "permissible guaranty" (as described in Section 4.05(1) of the Safe Harbor) and shall be interpreted and treated as such. In addition, in no event shall any provision of this Agreement include for purposes hereof any direct or indirect indemnity, guaranty, or other insurance of: (i) the Investor Member's ability to claim Federal Historic Credits, the cash equivalent of the Federal Historic Credits, or the repayment of any portion of the Investor Member contribution to the Company due to inability to claim Federal Historic Credits in the event the IRS challenges all or a portion of the transactional structure of the Company; (ii) the Investor Member receiving distributions or consideration in exchange for the member interest of the Investor Member; or (iii) payment of the Investor Member's costs if the IRS challenges the Investor Member's claim of Federal Historic Credits, which shall not be considered obligations hereunder. The parties hereto affirm and direct that any ambiguity in the meaning of any provision of this Agreement shall be resolved in favor of an interpretation that would comply with the requirements of the Safe Harbor, including without limitation, that this Agreement and the provisions set forth herein do not constitute Impermissible Guarantees.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

**CHARLES WASHINGTON HALL LANDLORD, LLC**

**OPERATING AGREEMENT**
**Signature Page**

**MANAGING MEMBER**: CHARLES WASHINGTON HALL MANGER, LLC, a West Virginia limited liability company

By: _____
P DAVID MILLS, MANAGER

STATE OF WEST VIRGINIA )
) §
COUNTY OF Jefferson )

On this day of 21st day of December, 2016, before me personally appeared David DAVID MILLS, the MANAGER of CHARLES WASHINGTON HALL MANGER, LLC, a West Virginia limited liability company, who provided satisfactory evidence of his or her identification to the person whose name is subscribed to this instrument and he or she acknowledged that he or she executed the foregoing instrument by his or her signature here.

Sworn to (or affirmed) and subscribed before me this the 21st day of December, 2016.

Deborah F Wilson
*Official Signature of Notary*

(Official Seal)
OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Deborah F. Wilson
City of Charles Town
PO Box 14
Charles Town, WV 25414
My Commission Expires March 11, 2021

Deborah F. Wilson, Notary Public
*Notary's printed or typed name*

Jefferson County, West Virginia

My commission expires: March 11, 2021

# EXHIBIT A

## Members; Percentage Interests; Capital Contribution Commitments

Company:

Charles Washington Hall Landlord, LLC

| | Percentage Interests** | Capital Contributions* |
|---|---|---|
| Managing Member: | | |
| Charles Washington Hall Manager, LLC | 1.00% | $4,321,040 |
| Investor Member(s): | | |
| Sinclair Gillespie | 99.00% | $753,400 |
| TOTALS | 100% | $5,074,440 |

*The Capital Contributions of each Investor Member will be payable as described on Exhibit A-1. Each installment of an Investor Member's Capital Contribution, as described on Exhibit A-1, except for the first installment, is due on the later of the scheduled due date or ten (10) Business Days after the Manager gives the Notice Certifications, accompanied by all documentation required in connection therewith, pursuant to Section 3.02(c) of this Agreement. In addition, the Investor Member's Capital Contributions are subject to reduction as provided in this Agreement.

** Upon and after the Interest Shift Date, the Percentage Interests and Capital Percentages of Managing Member and Investor Members shall be revised to:

| | |
|---|---|
| Managing Member: | 95.00% |
| Federal Member: | 5.00% |

**EXHIBIT A-1**

**Capital Contribution Installments**

| Managing Member Capital Installment | Amount of Capital Installment | Capital Installment Due Date |
|---|---|---|
| First Capital Installment | $4,321,040 | Admission Date |
| Federal Member Capital Installments: | | |
| First Capital Installment | $150,700, which amount shall be payable upon the Admission Date; | |
| Second Capital Installment | $602,700, which amount shall be payable upon the latest to occur of the following: | |

(a) receipt of Federal Historic Credits;

(b) Placement in Service of the Development;

(c) receipt of an updated endorsement to the Title Policy, with an effective date after the date of Managing Member's request for the Second Capital installment, setting forth no exceptions to title (including, without limitation, any mechanic's or materialmen's liens (other than liens which are insured over pursuant to affirmative insurance acceptable to the Investor Member)), other than matters set forth in the Title Policy or which are otherwise reasonably acceptable to the Federal Member;

(d) completion of the entire Development;

(e) receipt by Federal Member of the final certificate of occupancy (or certificates of occupancy which contain conditions or qualifications which receive the Consent of the Investor Member(s)) for the Property or a temporary certificate permitting the lawful operation, use and occupancy of the entire Property as a market house with related ancillary uses such as a visitors center, a grocery, and a restaurant, containing conditions to issuance of a permanent certificate which receives the Consent of the Federal Member, in its reasonable discretion;

(f) receipt of estoppel certificates from the Ground Lessor, confirming that there are no defaults under the Ground Lease, and such other matters respecting the Ground Lease, Mortgage Loan, the Loans, and/or Development as the Federal Member may reasonably require;

(g) bring down certificate;

(h) delivery to the Federal Member of a copy of the Certification Application for Part 3 Approval filed with the U.S. Department of Interior and receipt of Part 3 Approval;

(i) receipt and approval by the Federal Member of the final Cost Certification for the Property, prepared by the Accountants, of all QREs Placed in Service at the Property;

(j) receipt of federal and State income tax returns, including a Form K 1, if applicable.

All of the above Capital Installments of the Federal Member will not be payable in any event, until the Managing Member Capital Installment has been paid in full. Each Capital Installment hereunder shall not be payable until (i) receipt by Federal Member of the Capital Installment Notice and (ii) all conditions to payment of all prior Capital Installments have been satisfied.

As of the date of this Agreement, the anticipated aggregate Federal Member Capital Contribution is $753,400 (see Exhibit A-2); provided however, that said amount shall be subject to redetermination pursuant to the provisions of Section 3.03 and other applicable provisions of this Agreement.

## EXHIBIT A-2

## Dollar Amounts

| Reference Term | Section Reference | Amount |
|---|---|---|
| Projected Historic Tax Credit Amount | 3.03(a) | $875,000 of Federal Historic Credits in 2016 |
| Price per Projected Historic Tax Credit: | | $0.87 per $1.00 of Federal Historic Credit for all Capital Installments |
| State Tax Credits | 3.03(a) | 100% allocated to Managing Member |
| Price per Projected State Tax Credit: | | N/A |
| Title Policy Amount | 2.01 | The lessor of the fair market value of the Project or the sum of debt secured against the Project plus the capital contributions of all Members |
| Percentage Interest** | Exhibit A | 99.00% for the Federal Member<br>1.00% for the Managing Member |
| Cash Flow Percentages** | Exhibit A-3 | 99.00% for the Federal Member<br>1.00% for the Managing Member |
| Capital Percentages** | 2.01 | 99.00% for the Federal Member<br>1.00% for the Managing Member |

** Upon and after the Interest Shift Date, the Percentage Interests and Capital Percentages of Managing Member and Investor Member(s) shall be revised to:

| | |
|---|---|
| Managing Member: | 95.00% |
| Federal Member: | 5.00% |

**EXHIBIT A-3**
**Cash Flow Payment Priorities**

Payment of fees and other expenses contingent on Cash Flow shall be made in the following order of priority:

First, to pay Company Expenses, including debt service, ground lease payments, and any management fees payable to any Management Agent and required Reserves.

Second, to pay Credit Adjuster Payments and Special Tax Distributions then due to the Investor Member(s), and all accrued and unpaid Annual Returns, together with interest thereon, if any.

Third, to repay any Member Loans (including any Credit Adjuster Payment made by the Managing Member pursuant to Section 3.03(e)).

Fourth, 95% to payment of any deferred Development Fee and 5% distributed to the Members in accordance with their Cash Flow Percentage Interests, and, following payment in full of the Development Fee, the balance shall be distributed to the Members in accordance with their Cash Flow Percentage Interests.

To the extent that insufficient Cash Flow is available to pay any of the amounts set forth in Sections First through Third when due, such amount shall accrue and be payable in the future when there is available Cash Flow.

**EXHIBIT A-4**

**Notice Addresses**

| Managing Member | Federal Member |
|---|---|
| Charles Washington Hall Manager, LLC<br>P.O. Box 14<br>Charles Town, West Virginia 25414<br>Attn.: David Mills<br>e-mail: dmills@charlestownwv.us<br><br>*with copies to*:<br><br>Brian Wishneff & Associates<br>30 W. Franklin Road, Suite 503<br>Roanoke, VA 24011<br>Attn: Erik Wishneff<br>e-mail: erik@wishneff.com<br><br>Spencer Fane, LLP<br>1 N. Brentwood Blvd., Suite 1000<br>St. Louis, MO 63105<br>Attn: Carl Desenberg, Esq.<br>e-mail: cdesenberg.spencerfane.com | Sinclair Gillespie<br>4312 Foxcroft Road<br>Charlotte, NC 28211<br><br>*with copies to*:<br><br>Frank T. Ellett<br>3752 Brandon Avenue<br>Roanoke, Virginia 24018<br><br>Woods Rogers PLC<br>10 South Jefferson Street<br>Roanoke, Virginia 24011<br>Attn: Neil V. Birkhoff<br>E-mail: Birkhoff@woodsrogers.com |

**EXHIBIT A-5**

**Company Reserves**

$25,000

**EXHIBIT A-6**

**Notice Certifications**

_____, 20___

Federal Member:

Dear Sir or Madam:

The Managing Member hereby certifies that the following representations and warranties remain true, correct, and not misleading on and as of the due date for the Second Capital Installment of the Investor Member's Capital Contribution pursuant to Section 3.02(c) and Exhibit A-1.

(i) *No Defaults; Documents in Force; No Jeopardizing Events*. No default (or event that, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any Development Documents or the Agreement; the Development Documents, and the Agreement are in full force and effect; and no event has occurred and is continuing that materially jeopardizes or is likely to materially jeopardize the ability of the Company to continue to operate the Property as a project eligible for the Credit.

(ii) *No Liens*. The Company owns a leasehold interest in and to the Property and the Property is free and clear of any liens (including mechanics' liens), charges, or encumbrances other than matters set forth in the Title Policy.

(iii) *No Bankruptcies*. No Event of Bankruptcy has occurred and is continuing, and no event has occurred that, with the passage of time, could become an Event of Bankruptcy, with respect to the Managing Member, any Guarantor, the Developer or any of their respective partners or members.

(iv) *No Breach*. The Managing Member is not in breach in any material respect of any provision of the Agreement to be observed or performed by it including, but not limited to, all representations, warranties, and covenants given by the Managing Member, pursuant to this Agreement and all representations and warranties herein remain true and correct in all material respects.

(v) *Advances Paid*. All Credit Adjuster Payments, Operating Deficit Advances and any other deposits, advances, or contributions required to be made by the Managing Member or its Affiliates pursuant to the Agreement (and any exhibits attached hereto) have been made.

(vi) *Environmental*. To the best knowledge of the Managing Member after due inquiry, the Property contains no, and is not adversely affected by the presence of, any

Environmental Hazard, nor is it in violation of any federal, state, or local law, regulation, rule, or ordinance relating to Environmental Hazards, and no violation of any Environmental Law has occurred or is continuing. The Managing Member has not received any notice from any source whatsoever of the existence of any Environmental Hazard or of a violation of any federal, state, or local law, regulation, rule or ordinance with respect to the Property. If any Environmental Hazard (including lead-based paint and asbestos) was found to exist or be present, it has been either removed from the Property and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state, and local statutes, laws, rules and regulations.

(vii) *Document Compliance*. True, correct and complete copies of all documents required by Section 13.03 of the Agreement to be provided to the Investor Member as of such date have been delivered to the Investor Member.

(viii) *No Audit*. There is no Notice from, or ongoing audit by, the IRS in which the IRS is asserting, by means of a notice, thirty day letter, or otherwise, that the Credit available to the Company for any taxable year is less than the amount of Credit claimed by the Company for that year or that all or any portion of the Credit claimed with respect to any prior taxable year(s) must be recaptured pursuant to Section 47 or other relevant sections of the Code, or is unavailable to the Company.

(ix) *Conformity with Laws*. The Property conforms in all material respects with applicable law.

(x) *Prior Qualification*. The Company qualified for, and subject to adjustment as provided in the Agreement, has received all prior Capital Contributions.

(xi) *All Prerequisites Satisfied*. The preconditions to payment of the Capital Contribution described on Exhibit A-1 to the Agreement have occurred.

(xii) *Insurance*. The insurance on the Property meets all requirements of the Members in the Agreement, and is in full force and effect.

(xiii) *Credit Deficiencies*. Respecting all Capital Contributions payable after the occurrence of the Completion Date, there are no existing Credit Deficiencies (and no Credit Deficiencies are anticipated).

(xiv) *Definitions*. All terms not otherwise defined herein shall have the meanings therefor set forth in the Operating Agreement of the Company, dated as of December 21, 2016.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the undersigned has executed this Notice as of the date first set forth above.

CHARLES WASHINGTON HALL LANDLORD, LLC, a West Virginia Limited Liability Company

By: Charles Washington Manager Hall, LLC, its managing member

By: _____
Name: _____
Title: _____

## EXHIBIT A-7

## FEE AGREEMENTS

1. Work orders or other requests for services as may be requested by the Company from time to time. If such work orders or requests for services are given to an Affiliate of Company, then payments for such work or services shall not exceed payments that would be made in comparable arm's-length transaction; and

2. Development Agreement.

## EXHIBIT B

## LEGAL DESCRIPTION

BEING all of the Charles Washington Hall which fronts approximately 68.3 feet on the North side of Washington Street and runs back between parallel lines in a northern direction approximately 80 feet to the Rouss Hall Building property line, said property being bounded on the north by Rouss Hall, the east by George Street, the south by Washington Street and the west by Paradise Alley.

AND BEING the same real estate conveyed to the Charles Town Building Commission, a public corporation, by the City of Charles Town, a municipal corporation, by deed dated September 1, 1998, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 921, at page 354, to which reference is hereby made.

AND BEING the same real estate previously conveyed to the City of Charles Town by Samuel Washington, et al., by deed dated August 31, 1801, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 1, at page 116, to which reference is hereby made.

**EXHIBIT C**

**PROJECTIONS**

[Not Applicable]

**EXHIBIT D**

**POST-CLOSING CHECKLIST**

[Not Applicable]

**EXHIBIT E**

**SNDA**

[Not Applicable]

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1047: B&O Tax Waiver Request - Alvarez

**ATTACHMENTS:**
- Alvarez BO Tax Summary.pdf

# Charles Town Utility Board

## R&R Project

## Alvarez B&O Tax Request

Background:

Alvarez Contractors, Inc. (ACI) is the current construction contractor on the R&R project. The total awarded contract price was $10,151,000.00. The City's B&O tax is currently 2% which corresponds to $203,020.00. Addendum No. 1 clearly stated that all bidders would be required to pay the associated project B&O tax. Shortly after the contract was awarded, CTUB requested a credit from ACI for eliminating the B&O tax. ACI responded and said that B&O tax was inadvertently unaccounted for during the bid price.

It should be noted that ACI was the contractor on the 2015 Denitrification Filter project at the Charles Town WWTP. During the project, ACI paid a 0.75% B&O tax. The City had decided to reduce the required B&O tax from 2% to 0.75% on the $1.25 million project. ACI provided the backup paperwork to indicate this.

Alvarez's Proposed Options:

> Option 1 – Split the B&O tax between ACI and CTUB. ACI would be required to execute a change order to provide a credit of $101,510.00 to CTUB which could be used for any upcoming change orders or additional improvements.
>
> Option 2 – Pay the City the 0.75% B&O tax in the amount of $76,134.00. ACI and CTUB can split the remaining balance and ACI to execute a change order to provide a credit of $63,443.00 to CTUB which could be used for any upcoming change orders or additional improvements.

GD&F's Assessment:

This was Alvarez's fault and Alvarez clearly owes the City and/or CTUB something for the B&O tax. The City has all the right to make Alvarez pay the required 2% B&O tax and ignore their proposed options and previous experience. GD&F's fear is that if the City and/or CTUB do not bargain with Alvarez, that they will try to recuperate this lost money somewhere along the project. This typically comes via change orders, whether from high cost proposals to make certain changes or in a manner where every small change leads to a change order which increases the overall contract price. We have also seen this happen in terms of work quality, in which contractors will hire small, inexperienced, subcontractors and vendors to save money and the overall quality of the work suffers. GD&F recommends that the City and CTUB compromise with Alvarez in some fashion to minimize cost implications among both parties while still obtaining a quality project.

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Report
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1053: Sidewalk Repair Discussion

**ATTACHMENTS:**

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Ordinance
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1025: Light Pollution as a nuisance - Refer to Ordinance Committee per Councilmember Rodd

**ATTACHMENTS:**

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Ordinance
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1042: Article 365 - Charles Town Parking District - refer to Ordinance Committee

**ATTACHMENTS:**

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Referral
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1052: Article 361 - Parking Generally - Refer to Ordinance Committee

**ATTACHMENTS:**

- Letter about Article 361.pdf

**From:** aaron 9454 <aaron9454@hotmail.com>
**Sent:** Friday, October 27, 2023 3:40 PM
**To:** John Nissel <jnissel@charlestownwv.us>; Jeni Sales <jsales@charlestownwv.us>
**Subject:** Article 361codified ordinance 361.99 penalties and appeals

I would like to file a formal complaint against ordinance 361.99 penalties and appeals. I would like to cite that under (a) (1) it states that "The following violations will result in a fine of ten dollars ($10.00) if paid within five (5) days; if paid after five (5) days but before thirty (30) days an additional twenty dollars ($20.00) will apply for a total fine amount of thirty dollars ($30.00)". Having most all deadlines revolve around a business week, 5 business days would be up by 10/27/2023 @0337 PM local time. Looking at the ticket and the published ordinance, there was nothing to say otherwise. I received a parking ticket (322010726) on 10/20/2023 @ 0337PM local time and paid my ticket in person 10/27/2023 @ 1104 AM local time. At that time, I was informed of the additional fee which I dispute but paid anyway. The ordinance as written is unclear and confusing as it does not state either way if it is a calendar five (5) days or business days or otherwise. If it had been clearly written in the ordinance that it had been a calendar five (5) days, the bill would have been paid within that time frame. However, due to the vagueness of the ordinance, I was led to believe I could pay it on my next scheduled day off from work. I would also like to cite that in the ordinance it states that "To appeal a ticket, the person must notify the Charles Town Municipal Court within five (5) **calendar** days of the date and time the parking ticket was originally issued." This of course is an issue because it leaves no time once becoming aware of the additional fee to dispute the charge. The ordinance does not even give room for redress of incorrectly assessed penalties. Furthermore, It is clearly specified that I would have" 5 calendar days "to contact the municipal court"; however, it fails to be clear about the timeline I have to pay the ticket, be it calendar or business. This ordinance is not only vague and misleading, but, on the surface, appears to be negligently written. I do not dispute that I was parked in front of an expired parking meter and was correctly assessed a ten (10) dollar fine. What I am asking for is the return of my twenty (20) dollar penalty and for this ordinance to be rewritten to ensure its clarity.

**361.99 PENALTIES AND APPEALS.**

(a) General Article Penalty. Whoever violates any provision of this article shall be assessed fines and penalties. according to the following:

(1) The following violations will result in a fine of ten dollars ($10.00) if paid within five (5) days; if paid after five (5) days but before thirty (30) days an additional twenty dollars ($20.00) penalty will apply for a total fine amount of thirty dollars ($30.00); if paid after thirty (30) days an additional thirty dollars ($30.00) penalty will apply for a total fine and penalty amount of sixty dollars ($60.00):

A. Expired meter;

B. Failure to display a valid parking permit or pay via an applicable mobile pay app at the Liberty Street Parking Lot;

C. Parking permit violation;

D. Exceeding the two (2) hour free parking;

E. Improper manner of parking;

F. Exceeding time in a ten minute take away parking space.

(2) Accessible parking violations (WV Code 17C-13-6): first conviction is two hundred dollars ($200.00); second conviction is three hundred dollars ($300.00); and subsequent convictions are five hundred dollars ($500.00).

(3) Violation of Section 361.04(a) is sixty dollars ($60.00).

(4) Abandoned or junked motor vehicles: not more than five hundred dollars ($500.00) or imprisonment of not more than thirty (30) days, or both.

(5) Other violations not otherwise listed in this section will result in a fine of sixty dollars ($60.00).

(b) To appeal a ticket, a person must notify the Charles Town Municipal Court within five (5) calendar days of the date and time the parking ticket was originally issued. At the time an appeal is made, the required fines and/or penalties will be fixed until a resolution is reached by a municipal judge. If the ticket is upheld as valid, the owner/operator will satisfy the fixed cost of the citation and may be subject to additional court costs.
(Ord. 2021-007. Passed 10-12-21.)

I trust you will consider my complaint, and in light of the circumstances, clarify the ordinance and refund my 20 dollars. Thank you.

Sincerely,
Mr. Aaron Fox

Beware - This email comes from outside the City of Charles Town.

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1056: Payment of Bills - November 20, 2023

**ATTACHMENTS:**

- CAPITAL RESERVE COUNCIL REPORT 2023 11 20.pdf
- GENERAL FUND COUNCIL REPORT 2023 11 20.pdf
- PARKS & REC COUNCIL REPORT 2023 11 20.pdf

| VENDOR SORT KEY | DATE | DESCRIPTION | FUND | DEPARTMENT | AMOUNT |
|---|---|---|---|---|---|
| GRANICUS | 11/17/23 | AGENDA MANAGE 8/1/23-7/31/ | CAPITAL RESERVE | GENERAL GOVERNMENT | 1,605.00 |
| | 11/17/23 | AGENDA MANAGE 8/1/23-7/31/ | CAPITAL RESERVE | GENERAL GOVERNMENT | 0.00 |
| | 11/17/23 | AGENDA MANAGE 8/1/23-7/31/ | CAPITAL RESERVE | GENERAL GOVERNMENT | 2,854.64 |
| | 11/17/23 | AGENDA MANAGE 8/1/23-7/31/ | CAPITAL RESERVE | GENERAL GOVERNMENT | 0.00 |
| | 11/17/23 | AGENDA MANAGE 8/1/23-7/31/ | CAPITAL RESERVE | GENERAL GOVERNMENT | 0.00 |
| | 11/17/23 | AGENDA MANAGE 8/1/23-7/31/ | CAPITAL RESERVE | GENERAL GOVERNMENT | 4,458.69 |
| | | | | TOTAL: | 8,918.33 |
| KIMLEY-HORN AND ASSOCIATES, INC. | 11/17/23 | LAWRENCE&CONGRESS-INTX | CAPITAL RESERVE | STREETS & TRANSPORTATI | 8,745.90 |
| | 11/17/23 | WAYFINDING SERV SEP 2023 | CAPITAL RESERVE | CULTURE & RECREATION | 300.00 |
| | | | | TOTAL: | 9,045.90 |

========== FUND TOTALS ==========

| | | |
|---|---|---|
| 200 | CAPITAL RESERVE | 17,964.23 |
| | GRAND TOTAL: | 17,964.23 |

TOTAL PAGES: 1

APPROVED BY: _____

APPROVED BY: _____

SELECTION CRITERIA

SELECTION OPTIONS

| | |
|---|---|
| VENDOR SET: | 01-City of Charles Town |
| VENDOR: | All |
| CLASSIFICATION: | All |
| BANK CODE: | Include: CAP1 |
| ITEM DATE: | 0/00/0000 THRU 99/99/9999 |
| ITEM AMOUNT: | 99,999,999.00CR THRU 99,999,999.00 |
| GL POST DATE: | 0/00/0000 THRU 99/99/9999 |
| CHECK DATE: | 11/17/2023 THRU 11/17/2023 |

PAYROLL SELECTION

| | |
|---|---|
| PAYROLL EXPENSES: | NO |
| EXPENSE TYPE: | N/A |
| CHECK DATE: | 0/00/0000 THRU 99/99/9999 |

PRINT OPTIONS

| | |
|---|---|
| PRINT DATE: | Check Date |
| SEQUENCE: | By Vendor Sort |
| DESCRIPTION: | Item |
| GL ACCTS: | NO |
| REPORT TITLE: | COUNCIL REPORT |
| SIGNATURE LINES: | 2 |

PACKET OPTIONS

| | |
|---|---|
| INCLUDE REFUNDS: | YES |
| INCLUDE OPEN ITEM: | NO |

| VENDOR SORT KEY | DATE | DESCRIPTION | FUND | DEPARTMENT | AMOUNT |
|---|---|---|---|---|---|
| BOLAND TRANE SERVICES INC | 11/17/23 | NOV23 HVAC SER 661 GEORGE | GENERAL FUND | POLICE DEPARTMENT | 457.00 |
| | | | | TOTAL: | 457.00 |
| CINTAS | 11/17/23 | LAUNDRY BAGS | GENERAL FUND | STREETS & HIGHWAYS | 207.54 |
| | | | | TOTAL: | 207.54 |
| COMCAST CORPORATION | 11/17/23 | CITY HALL INTERNET 11/9-12 | GENERAL FUND | CITY HALL | 250.39 |
| | 11/17/23 | 661 INTERNET SERV 11/3-12/ | GENERAL FUND | POLICE DEPARTMENT | 305.35 |
| | | | | TOTAL: | 555.74 |
| CREAMERS AUTO SERVICE CENTER, LLC | 11/17/23 | CAR#27 OIL CHANGE | GENERAL FUND | POLICE DEPARTMENT | 86.83 |
| | | | | TOTAL: | 86.83 |
| CHARLES TOWN UTILITY BOARD | 11/17/23 | 661S GEORGE ST SER 9/15-10 | GENERAL FUND | NON-DEPARTMENTAL | 86.37 |
| | 11/17/23 | 108N GEORGE ST 9/15-10/15 | GENERAL FUND | CITY HALL | 100.13 |
| | 11/17/23 | 105S GEORGE ST 9/15-10/15 | GENERAL FUND | CITY HALL | 77.50 |
| | 11/17/23 | 661 WATER DELIVERY 10/13/2 | GENERAL FUND | POLICE DEPARTMENT | 97.74 |
| | 11/17/23 | 661 WATER DELIVERY 10/13/2 | GENERAL FUND | POLICE DEPARTMENT | 39.49 |
| | 11/17/23 | 661S GEORGE ST SER 9/15-10 | GENERAL FUND | POLICE DEPARTMENT | 175.37 |
| | 11/17/23 | 34N WATER ST 9/15-10/15 | GENERAL FUND | STREETS & HIGHWAYS | 124.62 |
| | 11/17/23 | LABOR FOR DOWNTOWN HALLOWE | GENERAL FUND | FAIR ASSOC/FESTIVAL | 145.77 |
| | | | | TOTAL: | 846.99 |
| DELTA DENTAL OF PENNSYLVANIA | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | NON-DEPARTMENTAL | 551.36 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | ECONOMIC DEVELOPMENT | 22.18 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | TREASURER'S OFFICE | 44.36 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | CITY CLERK'S OFFICE | 22.18 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | ENFORCEMENT AGENCY | 22.18 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | BUILDING INSPECTION | 22.18 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | PLANNING & ZONING | 66.54 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | CITY HALL | 66.54 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | PARKING | 22.18 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | POLICE DEPARTMENT | 354.88 |
| | 11/17/23 | DEC 2023 DENTAL PREMIUMS | GENERAL FUND | STREETS & HIGHWAYS | 66.54 |
| | | | | TOTAL: | 1,261.12 |
| ENVIRO-TECH PEST SERVICES | 11/17/23 | 661 PD PEST SERV FY24 | GENERAL FUND | NON-DEPARTMENTAL | 484.50 |
| | 11/17/23 | CITY HALL PEST SERV FY24 | GENERAL FUND | CITY HALL | 775.20 |
| | 11/17/23 | 661 PD PEST SERV FY24 | GENERAL FUND | POLICE DEPARTMENT | 484.50 |
| | | | | TOTAL: | 1,744.20 |
| FIRST-CITIZENS BANK & TRUST CO | 11/17/23 | 3RD FLOOR COPIER RENTAL NO | GENERAL FUND | CITY HALL | 110.00 |
| | | | | TOTAL: | 110.00 |
| FRONTIER, INC. | 11/17/23 | RH-108N GEORGE 10/25-11/24 | GENERAL FUND | CITY HALL | 48.37 |
| | 11/17/23 | CITY&PD PHONE SERV 11/4-12 | GENERAL FUND | CITY HALL | 1,516.04 |
| | 11/17/23 | PD FAXLINE 11/7/23-12/6/23 | GENERAL FUND | POLICE DEPARTMENT | 162.56 |
| | 11/17/23 | CITY&PD PHONE SERV 11/4-12 | GENERAL FUND | POLICE DEPARTMENT | 1,516.03 |
| | | | | TOTAL: | 3,243.00 |
| FRONTIER COMMUNICATIONS CORP | 11/17/23 | 661 PD PHONE SERV 11/10-12 | GENERAL FUND | POLICE DEPARTMENT | 1,207.82 |
| | | | | TOTAL: | 1,207.82 |
| GALLS, LLC | 11/17/23 | BOUND-BOOTS | GENERAL FUND | POLICE DEPARTMENT | 122.71 |
| | 11/17/23 | BOUND/LIPSCOMB NAME PLATES | GENERAL FUND | POLICE DEPARTMENT | 42.00 |
| | | | | TOTAL: | 164.71 |

| VENDOR SORT KEY | DATE | DESCRIPTION | FUND | DEPARTMENT | AMOUNT |
|---|---|---|---|---|---|
| GRIFFITH ENERGY SERVICES, INC | 11/17/23 | CITY HALL OIL 10/30/23 | GENERAL FUND | CITY HALL | 870.49 |
| | | | | TOTAL: | 870.49 |
| JEFFERSON PUBLISHING COMPANY, INC. | 11/17/23 | 10/4 NPH SLD 2023-09 MEAD | GENERAL FUND | PLANNING & ZONING | 45.22 |
| | 11/17/23 | 10/18 NPH ZMA2023-01 ELM S | GENERAL FUND | PLANNING & ZONING | 36.02 |
| | 11/17/23 | 10/25 NPH COA 2023-13 MARR | GENERAL FUND | PLANNING & ZONING | 50.74 |
| | 11/17/23 | 10/11 WEEKLY EVENT CALENDA | GENERAL FUND | CITY HALL | 69.50 |
| | 11/17/23 | 10/18 WEEKLY EVENT CALENDA | GENERAL FUND | CITY HALL | 69.50 |
| | 11/17/23 | 10/25 WEEKLY EVENT CALENDA | GENERAL FUND | CITY HALL | 69.50 |
| | 11/17/23 | 10/4 WEEKLY EVENT CALENDAR | GENERAL FUND | CITY HALL | 69.50 |
| | | | | TOTAL: | 409.98 |
| KIMLEY-HORN AND ASSOCIATES, INC. | 11/17/23 | SERVICES THROUGH SEPT 2023 | GENERAL FUND | PLANNING & ZONING | 1,780.70 |
| | | | | TOTAL: | 1,780.70 |
| MARKL SUPPLY COMPANY, INC. | 11/17/23 | KERNS- 2 BELOT LOOPS | GENERAL FUND | POLICE DEPARTMENT | 42.50 |
| | | | | TOTAL: | 42.50 |
| MCKINNEY'S AUTO REPAIR & TOWING | 11/17/23 | CAR#28 OIL CHANGE/TIRE ROT | GENERAL FUND | POLICE DEPARTMENT | 137.98 |
| | | | | TOTAL: | 137.98 |
| POTOMAC EDISON COMPANY, INC. | 11/17/23 | 661 ELECTRIC SERV 10/7-11/ | GENERAL FUND | NON-DEPARTMENTAL | 917.64 |
| | 11/17/23 | RH 108N GEORGE SER 10/4-10 | GENERAL FUND | CITY HALL | 158.38 |
| | 11/17/23 | 661 ELECTRIC SERV 10/7-11/ | GENERAL FUND | POLICE DEPARTMENT | 1,863.09 |
| | | | | TOTAL: | 2,939.11 |
| PURCHASE POWER | 11/17/23 | POSTAGE REFILL 10/17/23 | GENERAL FUND | CITY HALL | 200.00 |
| | | | | TOTAL: | 200.00 |
| SOUTH CENTRAL PLANNING & DEVELOPMENT C | 11/17/23 | MYPERMITNOW FEES OCTOBER20 | GENERAL FUND | CITY HALL | 730.00 |
| | | | | TOTAL: | 730.00 |
| STAPLES ADVANTAGE | 11/17/23 | PEN/LABEL/BUSINESS CARD HO | GENERAL FUND | MAYOR'S OFFICE | 7.05 |
| | 11/17/23 | PENS/FOLDERS | GENERAL FUND | MAYOR'S OFFICE | 99.23 |
| | 11/17/23 | PEN/LABEL/BUSINESS CARD HO | GENERAL FUND | CITY CLERK'S OFFICE | 29.78 |
| | 11/17/23 | TOILET PAPER/PAPER TOWELS | GENERAL FUND | CITY HALL | 791.41 |
| | 11/17/23 | 2 BOXES COPY PAPER | GENERAL FUND | CITY HALL | 114.86 |
| | 11/17/23 | PEN/LABEL/BUSINESS CARD HO | GENERAL FUND | CITY HALL | 21.03 |
| | 11/17/23 | MOP/MOP REFILLS/REFLECTION | GENERAL FUND | CITY HALL | 52.13 |
| | | | | TOTAL: | 1,115.49 |
| STAR CHAPMAN GROUP INC. | 11/17/23 | ACCTING SERVICES 11/1-11/1 | GENERAL FUND | TREASURER'S OFFICE | 5,500.00 |
| | | | | TOTAL: | 5,500.00 |
| SUSTAINABLE STRATEGIES DC | 11/17/23 | OCTOBER23 BASE RETAINER FE | GENERAL FUND | CITY HALL | 2,400.00 |
| | | | | TOTAL: | 2,400.00 |
| T-MOBILE | 11/17/23 | CELL SERV 8/21/23-9/20/23 | GENERAL FUND | CITY MANAGER'S OFFICE | 42.07 |
| | 11/17/23 | CELL SERV 9/21/23-10/20/23 | GENERAL FUND | CITY MANAGER'S OFFICE | 42.09 |
| | 11/17/23 | CELL SERV 9/21/23-10/20/23 | GENERAL FUND | TREASURER'S OFFICE | 31.99 |
| | 11/17/23 | CELL SERV 8/21/23-9/20/23 | GENERAL FUND | ENFORCEMENT AGENCY | 20.62 |
| | 11/17/23 | CELL SERV 9/21/23-10/20/23 | GENERAL FUND | ENFORCEMENT AGENCY | 39.85 |
| | 11/17/23 | CELL SERV 8/21/23-9/20/23 | GENERAL FUND | BUILDING INSPECTION | 54.70 |
| | 11/17/23 | CELL SERV 9/21/23-10/20/23 | GENERAL FUND | BUILDING INSPECTION | 106.18 |
| | 11/17/23 | CELL SERV 8/21/23-9/20/23 | GENERAL FUND | PLANNING & ZONING | 17.85 |
| | 11/17/23 | CELL SERV 9/21/23-10/20/23 | GENERAL FUND | PLANNING & ZONING | 17.85 |

| VENDOR SORT KEY | DATE | DESCRIPTION | FUND | DEPARTMENT | AMOUNT |
|---|---|---|---|---|---|
| | 11/17/23 | CELL SERV 8/21/23-9/20/23 | GENERAL FUND | CITY HALL | 26.91 |
| | 11/17/23 | CELL SERV 9/21/23-10/20/23 | GENERAL FUND | CITY HALL | 70.05 |
| | 11/17/23 | CELL SERV 8/21/23-9/20/23 | GENERAL FUND | POLICE DEPARTMENT | 35.70 |
| | 11/17/23 | CELL SERV 9/21/23-10/20/23 | GENERAL FUND | POLICE DEPARTMENT | 35.70 |
| | 11/17/23 | CELL SERV 8/21/23-9/20/23 | GENERAL FUND | STREETS & HIGHWAYS | 53.55 |
| | 11/17/23 | CELL SERV 9/21/23-10/20/23 | GENERAL FUND | STREETS & HIGHWAYS | 53.55 |
| | | | | TOTAL: | 648.66 |
| LYLE C TABB & SONS, INC. | 11/17/23 | BOX RENTAL FEES OCTOBER 20 | GENERAL FUND | STREETS & HIGHWAYS | 675.00 |
| | | | | TOTAL: | 675.00 |
| THE JOURNAL,MARTINSBURG | 11/17/23 | CITY SUBSCR 11/30/23-11/29 | GENERAL FUND | CITY HALL | 208.00 |
| | | | | TOTAL: | 208.00 |
| U.S. BANK | 11/17/23 | OCT2023 GAS P-CARD PURCHAS | GENERAL FUND | NON-DEPARTMENTAL | 4,869.62 |
| | 11/17/23 | OCT2023 AP P-CARD PURCHASE | GENERAL FUND | NON-DEPARTMENTAL | 53.72 |
| | 11/17/23 | OCT2023 CORP P-CARD PURCHA | GENERAL FUND | NON-DEPARTMENTAL | 10,517.62 |
| | | | | TOTAL: | 15,440.96 |
| UNITED WAY OF THE EASTERN PANHANDLE, I | 11/17/23 | TEEN COURT FEES OCTOBER 20 | GENERAL FUND | NON-DEPARTMENTAL | 485.02 |
| | | | | TOTAL: | 485.02 |
| WASTE MANAGEMENT | 11/17/23 | 34N WATER ST TRASH SER 11/ | GENERAL FUND | STREETS & HIGHWAYS | 302.87 |
| | | | | TOTAL: | 302.87 |
| WINCHESTER PSYCHOLOGICAL ASSESSMENT LL | 11/17/23 | PRE-EMPLOYMENT EVAL 11/13/ | GENERAL FUND | POLICE DEPARTMENT | 415.00 |
| | | | | TOTAL: | 415.00 |

| ========== FUND TOTALS ========== | |
|---|---|
| 001 GENERAL FUND | 44,186.71 |
| GRAND TOTAL: | 44,186.71 |

TOTAL PAGES: 3

APPROVED BY: _____

APPROVED BY: _____

SELECTION CRITERIA

SELECTION OPTIONS

| | |
|---|---|
| VENDOR SET: | 01-City of Charles Town |
| VENDOR: | All |
| CLASSIFICATION: | All |
| BANK CODE: | Include: AP1 |
| ITEM DATE: | 0/00/0000 THRU 99/99/9999 |
| ITEM AMOUNT: | 99,999,999.00CR THRU 99,999,999.00 |
| GL POST DATE: | 0/00/0000 THRU 99/99/9999 |
| CHECK DATE: | 11/17/2023 THRU 11/17/2023 |

PAYROLL SELECTION

| | |
|---|---|
| PAYROLL EXPENSES: | NO |
| EXPENSE TYPE: | N/A |
| CHECK DATE: | 0/00/0000 THRU 99/99/9999 |

PRINT OPTIONS

| | |
|---|---|
| PRINT DATE: | Check Date |
| SEQUENCE: | By Vendor Sort |
| DESCRIPTION: | Item |
| GL ACCTS: | NO |
| REPORT TITLE: | COUNCIL REPORT |
| SIGNATURE LINES: | 2 |

PACKET OPTIONS

| | |
|---|---|
| INCLUDE REFUNDS: | YES |
| INCLUDE OPEN ITEM: | NO |

| VENDOR SORT KEY | DATE | DESCRIPTION | FUND | DEPARTMENT | | AMOUNT |
|---|---|---|---|---|---|---|
| AC & T CO., INC | 11/17/23 | JMP PORTA POTTY SERV | PARKS & REC | PARKS & REC | | 265.00 |
| | | | | | TOTAL: | 265.00 |
| CBP ENTERPRISES | 11/17/23 | OCT23 MOWING EVITTS RUN | PARKS & REC | PARKS & REC | | 720.00 |
| | 11/17/23 | OCT23 MOWING HAPPY RETREAT | PARKS & REC | PARKS & REC | | 690.00 |
| | 11/17/23 | OCT23 MOWING CRAIG HILL | PARKS & REC | PARKS & REC | | 705.00 |
| | 11/17/23 | OCT23 MOWING JEFF MEM PARK | PARKS & REC | PARKS & REC | | 1,185.00 |
| | 11/17/23 | OCT23 MOWING WILLINGHAM KN | PARKS & REC | PARKS & REC | | 885.00 |
| | | | | | TOTAL: | 4,185.00 |
| CHARLES TOWN UTILITY BOARD | 11/17/23 | 22 WATER ST SERV 9/15-10/1 | PARKS & REC | PARKS & REC | | 57.20 |
| | 11/17/23 | JMP WATER SER 9/15-10/12 | PARKS & REC | PARKS & REC | | 213.34 |
| | | | | | TOTAL: | 270.54 |
| ENVIRO-TECH PEST SERVICES | 11/17/23 | JMP ANNUAL PEST SERV FY24 | PARKS & REC | PARKS & REC | | 273.60 |
| | | | | | TOTAL: | 273.60 |
| FRONTIER, INC | 11/17/23 | JMP PHONE SERV NOVEMBER 20 | PARKS & REC | PARKS & REC | | 73.91 |
| | | | | | TOTAL: | 73.91 |
| POTOMAC EDISON COMPANY, INC | 11/17/23 | JMP ELECTRIC SERV SEPTEMBE | PARKS & REC | PARKS & REC | | 27.27 |
| | 11/17/23 | JMP ELECTRIC SERV SEPTEMBE | PARKS & REC | PARKS & REC | | 241.61 |
| | 11/17/23 | JMP ELECTRIC SERV SEPTEMBE | PARKS & REC | PARKS & REC | | 5.15 |
| | 11/17/23 | JMP ELECTRIC SERV SEPTEMBE | PARKS & REC | PARKS & REC | | 5.21 |
| | 11/17/23 | JMP ELECTRIC SERV SEPTEMBE | PARKS & REC | PARKS & REC | | 20.25 |
| | 11/17/23 | JMP MEMORIAL 10/5-11/2/23 | PARKS & REC | PARKS & REC | | 7.19 |
| | | | | | TOTAL: | 306.68 |

========== FUND TOTALS ==========

| | | |
|---|---|---|
| 207 | PARKS & REC | 5,374.73 |
| | GRAND TOTAL: | 5,374.73 |

TOTAL PAGES: 1

APPROVED BY: _____

APPROVED BY: _____

SELECTION CRITERIA

SELECTION OPTIONS

| | |
|---|---|
| VENDOR SET: | 03-CT BOARD OF P&R |
| VENDOR: | All |
| CLASSIFICATION: | All |
| BANK CODE: | Include: PARK1 |
| ITEM DATE: | 0/00/0000 THRU 99/99/9999 |
| ITEM AMOUNT: | 99,999,999.00CR THRU 99,999,999.00 |
| GL POST DATE: | 0/00/0000 THRU 99/99/9999 |
| CHECK DATE: | 11/17/2023 THRU 11/17/2023 |

PAYROLL SELECTION

| | |
|---|---|
| PAYROLL EXPENSES: | NO |
| EXPENSE TYPE: | N/A |
| CHECK DATE: | 0/00/0000 THRU 99/99/9999 |

PRINT OPTIONS

| | |
|---|---|
| PRINT DATE: | Check Date |
| SEQUENCE: | By Vendor Sort |
| DESCRIPTION: | Item |
| GL ACCTS: | NO |
| REPORT TITLE: | COUNCIL REPORT |
| SIGNATURE LINES: | 2 |

PACKET OPTIONS

| | |
|---|---|
| INCLUDE REFUNDS: | YES |
| INCLUDE OPEN ITEM: | NO |

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Report
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1028: Infrastructure Committee Report - October 23, 2023, meeting

**ATTACHMENTS:**

- Report_ Infrastructure Committee 10_23_23.pdf

**City of Charles Town**
**Infrastructure Committee**
**Report from October 23, 2023**

**I. CALL TO ORDER:** Monday, October 23, 2023 at 4:30 PM - City Hall

**II. UNFINISHED BUSINESS**

**941: Liberty Street Storm Water Project**

The committee received updates from staff and discussed next steps. The City received a G3 grant with an expenditure deadline of September 2024. Staff will plan a walk of the site and follow up with additional information.

**942: Augustine Ave Trail**

The committee received updates from staff and discussed next steps. Councilmember Kratovil suggests providing property owners impacted by construction easements with documentation for tax right offs. Next monthly update with Alpha Engineering and WVDOH: 11/7/2023 (virtual)

**943: Liberty Street Traffic Calming**

Councilmember Rodd surveyed residents of E. Liberty Street for feedback on possible issues and traffic calming measures that could be implemented. The speed data device will be placed on East Liberty Street in the coming weeks to collect data. Staff will plan a walk of the site and prepare recommendations.

**944: Lawrence/Congress Intersection Project - HEPMPO grant**

The grant for federally sub-allocated funds through HEPMPO will be submitted by the November 1 deadline. The grant is for an 80/20 match on the project.

**945: Street Improvement Fee**

The committee was waiting on more guidance from the Finance Committee but the discussion had been tabled at their October meeting. The fee has been the same since 1999.

**949: East Academy Street drainage and improvement - Design CTUB sewer inlet**

Mayor Trainor requested staff include this topic again on the committee agenda. New information has come up that CTUB has planned work on a sewer line at the intersection. No known flooding issues have been reported since Maintenance staff took action by replacing storm drain grates in the area. The committee discussed possible short- and intermediate-term solutions to stormwater issues, such as planting trees and native grasses, installing bio swells, and cutting small trenches into the asphalt.

**Recommendations to Council:** *The committee maintains that the various issues of stormwater management need to be dealt with strategically and equitably. The committee has asked staff and the City Manager as Chair of CTUB to get more information on timing and scope of their planned work.*

**950: Update on Damaged Light Pole Replacement on Washington Street**

Maintenance Director Jim Wysong provided a show and tell of the existing pole heads and light bulbs as well as options that are available for replacement. There are around 70 of these light poles downtown. The current heads are no longer available for purchase, but the new version fits the current globes. Mr. Wysong demonstrated LED bulb options and the committee would like some information on anticipated cost savings if all streetlights were to be switched out to LEDs. The city would buy the parts and the bulbs, but Potomac Edison does the physical replacement. Staff will coordinate with Potomac Edison.

## III. NEW BUSINESS

**2023-946: Wayfinding Signage Placement**

Liz Cook provided maps to the committee for "homework" to help determine placement of future wayfinding signage. A workshop will be held as part of the next infrastructure committee meeting.

**2023-947: Staff Updates**

Maintenance Director Jim Wysong provided the committee with a comprehensive update of the excellent work his team has completed around Charles Town in the past month.

**Recommendations to Council:** *Listen to the first part of the Infrastructure Committee meeting recording from 10/23 for Mr. Wysong's updates.*

**2023-948: Sheetz/Augustine Avenue Traffic Light Timeline**

Staff has been reaching out to various parties on the situation unfolding. Earlier this month, staff received response from WVDOH that Sheetz is anticipated to open their new store in mid-November of this year, but WVDOH has not even begun engineering the traffic light and pedestrian crossing that was agreed to at the new intersection on Augustine Avenue at Washington High School. DOH is saying it will be 4-6 months at best, and up to a year at worst, before the traffic light is properly installed. The Jefferson County Board of Education is willing to join the city in efforts to press for a delayed opening of the store as this situation could pose a danger to students and all roadway users. Letters and emails have gone out to county and state officials.

**Recommendations to Council:** *Continue reaching out to connections at County and State levels of government urging them to delay the issuance of an occupancy permit for the Sheetz on Augustine Avenue until the agreed to safety features are implemented.*

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Report
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1029: Board of Parks and Recreation Report - October 26, 2023, meeting

**ATTACHMENTS:**

- P&R Report_ October 26, 2023.pdf

# City of Charles Town
# Parks and Recreation Commission

## I. CALL TO ORDER: Thursday October 26, 2023 at 6 PM - City Hall

**Persons Present:** *Commissioners:* Nick Zaglifa, James Kratovil, Elizabeth Ricketts, Mike Slover (*Zoom*), Nathan Hartman, Trudy Roth; *Staff:* Alissa Meeks; *Guests:* Thrasher Engineering representatives

## II. UNFINISHED BUSINESS

### 2023-956: Pickleball and Pints Update - Cancellation / Reschedule

This event was canceled by Jefferson County Parks and Rec after learning of a Shepherd University-hosted event to be held the same date. The event will be reassessed for a Spring date.

***Recommendation to Council:*** *Information only.*

### 2023-960: Parks and Recreation Goals and Objectives

The commissioners continue to discuss goals and objectives for the coming 6 months.

***Recommendation to Council:*** *Information only*

## III. NEW BUSINESS

### 2023-955: Pool Engineering Contract

The commissioners heard from Zach and Sam from Thrasher in a presentation of the Jefferson Memorial Park Pool Contract. The item was tabled to give staff and the commissioners more time to review.

Motion: Hartman / 2nd: Roth

***Recommendation to Council:*** *Information only*

### 2023-957: Land and Water Conservation Fund Grant Update

Sustainable Strategies will submit a LWCF grant application for up to $500,000 for the Jefferson Memorial Park pool project.

***Recommendation to Council:*** *Pass resolution for inclusion in the grant application.*

### 2023-958: Tree Board Requests: Tree plantings and pollinator's garden

The commissioners had no objection to the Charles Town Tree Board pursuing a grant with Potomac Edison to install a pollinator's garden near the entrance to the Skate Park.

***Recommendation to Council:*** *Information only*

### 2023-959: Trash Clean Up - November 4th

*Information only*

### 2023-961: City Park Updates:

Jefferson Memorial Park basketball courts were repaired by City maintenance team.

Evitts Run Park was cited in a presentation to City Council by the Blue Ridge Watershed Coalition. The commissioners requested this presentation be given at the next Parks and Rec meeting (November).

***Recommendation to Council:*** *Information only*

## IV. ADJOURNMENT at 7:14 PM - Next meeting: Thursday, November 30 at 6PM

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Resolution
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1048: Resolution in Support of Charels Town for a Land & Water Conservation Fund Grant Application for the "Jefferson Memorial Pool Upgrade" Project

**ATTACHMENTS:**

- 2023-012 - Resolution in Support of Charls Town for a Land & Water Conservation Fund Grant Application.pdf

City of Charles Town
101 East Washington Street, P.O. Box 14, Charles Town, WV 25414
Phone: (304) 725-2311 ♦ Web: www.charlestownwv.us

## RESOLUTION IN SUPPORT OF CHARLES TOWN FOR A LAND & WATER CONSERVATION FUND GRANT APPLICATION FOR THE "JEFFERSON MEMORIAL POOL UPGRADE" PROJECT

**WHEREAS,** the City of Charles Town, WV seeks to create enhanced opportunities for citizens and families to utilize and enjoy outdoor park and recreational areas; and

**WHEREAS,** the City of Charles Town owns the 11.6-acre "Jefferson Memorial Park" including a one-acre outdoor public swimming pool facility known as "Jefferson Memorial Pool"; and

**WHEREAS,** Jefferson Memorial Pool is an outdated and deteriorating facility that has severe equipment deterioration, inadequate capacity to handle public use and demand, inadequate ADA and accessibility facilities and features, and other poor conditions that have led to recent entire-season pool closures, significant repair costs, and other challenges; and

**WHEREAS,** Jefferson Memorial Pool is the only public pool facility of any kind in Charles Town and the only public pool facility in Jefferson County (a locality with nearly 58,000 in population); and

**WHEREAS,** the City of Charles Town and its Charles Town Board of Parks & Recreation have conducted extensive public outreach, public input sessions, public surveys, consideration of various pool upgrade options, and other public engagement approaches which have led to very strong consensus and support in the community for a pool facility upgrade project; and

**WHEREAS,** the City of Charles Town has worked with expert contracting firms to develop preliminary designs and plans, and cost estimations, for the expansion of the swimming pool and pool deck, creation of a children's splash pad, upgrades to the existing Poolhouse, creation of a beach volleyball court, creation of an accessible picnicking area, upgrades to parking facilities including new handicapped parking spaces, and associated hardscaping and walkway facilities, fencing, lighting, landscaping, and equipment; and

**WHEREAS,** the City of Charles Town had applied and received a Land & Water Conservation Fund grant from the National Park Service through the WV Community Advancement & Development Division of the WV Department of Economic Development in the amount of $250,000 to renovate the poolhouse, repave the parking lot, and add a new concession area.

**WHEREAS,** the City of Charles Town is enthusiastic about and ready to proceed in advancing the overall vision for the Jefferson Memorial Pool and has budgeted substantial resources to support

the next phase of this project, which will include expansion and updates to the pool, extension of the pool deck, and replacement of the kiddie pool with a splash pad.

**NOW, THEREFORE LET IT BE RESOLVED,** that the City of Charles Town, with the backing and recommendation of the Charles Town Board of Parks & Recreation, authorize an application by the City for a Land & Water Conservation Fund grant from the National Park Service through the WV Community Advancement & Development Division of the WV Department of Economic Development, in the amount of $500,000; and

**LET IT BE FURTHER RESOLVED,** that the City of Charles Town authorizes a match in the amount of $500,000.00 to provide the required 50% match necessary to meet the terms and obligations of any grant awarded pursuant to a Grant Agreement with LCWF. The source of this funding will be City of Charles Town general revenues and reserves.

Adopted the 6th day of NOVEMBER, 2023.

Robert M. Trainor
Mayor

Attest:

Alissa Meeks
Acting City Manager

**City Council**
101 East Washington Street
Charles Town, WV 25414

Meeting: 11/20/23
Department: City Council
Category: Information Only
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1054: Charles Town Utility Board Meeting Minutes - October 26, 2023

**ATTACHMENTS:**
- 2023.10.26 UB MINUTES.pdf

**Charles Town Utility Board**
**Special Board Meeting**
**October 26, 2023**

The Charles Town Utility Board held a special meeting on October 26, 2023 at 4:00 P.M. Members of the Board present were John Nissel, Chairman; Duke Pierson, Vice Chairman; Tommy Stocks, Treasurer, Jeff Whitten, Board Member; and Heidi Parker, Board Member. Also present were Kristen Stolipher, Utility Manager; Ashley Stottlemyer, Secretary; Robert Rodecker, Legal Counsel; and Tricia Jackson; County Commission Liaison (via Zoom).

## CALL TO ORDER

The Chairman called the meeting to order at 4:00 P.M.

## APPROVAL OF MINUTES

Approval of October 11, 2023 Regular Meeting Minutes

The Chairman called for changes or corrections to the October 11, 2023 regular meeting minutes.

**Action:** **Motion made by Mr. Whitten, second by Mr. Pierson, the Board unanimously approved the minutes as presented.**

## PUBLIC COMMENT

No public comment was received.

## UNFINISHED BUSINESS

Class Cost of Service Study Update

Mrs. Stolipher briefed the Board on the Class Cost of Service presentation she made at the October 16th City Council meeting. The Council approved the Board recommended sewer adjustments which will move forward to the Ordinance Committee. She mentioned that Council had questions on the water rate Board recommendations, specifically the Race Track contract rate. Mrs. Stolipher suggested the Board move forward with revised option A1, which includes a 25% contract rate rather than 20% for the Race Track. The Board held discussions.

**Action:** **Motion made by Mr. Pierson, second by Mrs. Parker, the Board unanimously approved the revised contract rate of 25% as presented.**

License Agreement Termination

Mrs. Stolipher provided the previous license agreement with Horus West Virginia 1, LLC for temporary access near the water plant is no longer needed and can be terminated. Mr. Rodecker has reviewed the agreement and found no issues.

**Action:** **Motion made by Mr. Pierson, second by Mr. Whitten, the Board unanimously approved the termination of the License Agreement as presented.**

CTUB Water Plant Transportation Agreement with King's Crossing

Mrs. Stolipher mentioned that in preparation of moving forward with the 4" sewer line from the water plant to the King's Crossing wastewater system currently under construction, a Transportation Agreement was prepared. This line will pump from the water plant to the King's Crossing line and then pumped to the wastewater treatment plant. Once complete, the hauling from plant to plant will be eliminated and a major

cost savings to the Utility. Mrs. Stolipher mentioned CTUB will be responsible for the construction of the 4" forcemain from the water plant to the King's Crossing system. The Board provided discussions.

**Action:** **Motion made by Mr. Pierson, second by Mr. Whitten, the Board unanimously approved the draft Transportation Agreement with King's Crossing as submitted.**

## NEW BUSINESS

Sawgrass Verizon 2nd Lease Agreement

Mrs. Stolipher provided the 2nd lease amendment with Verizon for the Sawgrass tank with no rent increase. Mr. Rodecker and Mr. Hofe reviewed the agreement finding no issues.

**Action:** **Motion made by Mr. Whitten, second by Mr. Stocks, the Board unanimously approved the Verizon 2nd Lease Amendment.**

CTUB Water Plant Forcemain to King's Crossing

Mrs. Stolipher included the quote from the contractor to install the 4" sewer line from the water plant to King's Crossing totaling $111,950.00.

**Action:** **Motion made by Mr. Whitten, second by Mr. Pierson, with discussions from the Board, the Board unanimously approved the quote.**

## MANAGER REPORTS

Utility Manager Report

Mrs. Stolipher provided in the packet an update from Gwin, Dobson & Foreman, Inc. on the Renewal & Replacement Project and mentioned she will be providing an update on the various CTUB projects and the revised water rates approved earlier in the meeting at the November 6th City Council meeting.

**Action:** **No action required by the Board.**

Chairman Report

The Chairman mentioned he will not be at the next board meeting.

**Action:** **No action required by the Board.**

## APPROVAL OF BILLS

October 26, 2023

**Action:** **Motion made by Mr. Stocks, second by Mr. Pierson, the Board unanimously approved the payment of the bills.**

## ADJOURNMENT

There being no further business at this time, the Board adjourned the meeting.

**Action:** **Motion by Mr. Whitten, second by Mr. Pierson, the Board unanimously adjourned the meeting at 4:27 P.M.**

## INFORMATION ONLY

The next meeting is scheduled for Wednesday, November 15, 2023 at 4:00 P.M. at 661 S. George Street.

Duke Pierson
Vice Chairman

Ashley Stottlemyer
Secretary