

CHARLESTON CITY COUNCIL

Regular Meeting

May 1, 2023

at 7:00 PM



THIS MEETING WILL TAKE PLACE IN PERSON AND CAN BE VIEWED LIVE VIA

<https://charlestonwv.civicclerk.com/web/home.aspx>

Council Chambers, Third Floor
City Hall, 501 Virginia St. E.
Charleston, WV

AGENDA

CALL TO ORDER BY THE MAYOR

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS AND CLAIMS

1. **INTERESTED PUBLIC SPEAKERS MUST REGISTER AT THE CLERK'S TABLE IN PERSON NO EARLIER THAN 15 MINUTES BEFORE THE MEETING STARTS. FIVE (5) SPEAKERS WILL BE PERMITTED (RULE NO. 22 (B)).**
2. Claims 5-1-2023

PROCLAMATIONS

1. 5-1-2023

COMMUNICATIONS

1. 5-1-2023

PUBLIC HEARINGS

1. Resolution No. 798-23 – Authorizing the Mayor or City Manager to execute the Stadium License, Lease and Service Agreement First Amendment between the City of Charleston and Charleston Professional Baseball Company, LLC relating to the lease of the baseball stadium located at 601 Morris Street.

REPORTS OF STANDING COMMITTEES

PLANNING, STREETS AND TRAFFIC

1. Resolution No. 783-23 - A Resolution adopting the protection of the brick pavement on portions of Valley Road, Chester Road, Maple Road, Springdale Road, Poplar Road, Somerset Drive, Pine Road, and several alleyways within the City of Charleston.

FINANCE

1. Resolution No. 798-23 – Authorizing the Mayor or City Manager to execute the Stadium License, Lease and Service Agreement First Amendment between the City of Charleston and Charleston Professional Baseball Company, LLC relating to the lease of the baseball stadium located at 601 Morris Street.
2. Resolution No. 799-23 - Authorizing approval of Amendment No. 6 of the FY 2022-2023 General Fund Budget as indicated on the attached list of accounts.
3. Resolution No. 800-23 - Authorizing the Mayor or City Manager to purchase Pulsar swimming pool chemicals from Main Line Commercial Pools to be used in City-operated pools.
4. Resolution No. 801-23 - Authorizing the Mayor or City Manager to enter into a contract with Specialty groups, Inc. for the 5-Corners Intersection Construction Project.

REPORTS OF OFFICERS

1. 5-1-2023

NEW BILLS

1. 5-1-2023

UNFINISHED BUSINESS AND/OR MISCELLANEOUS BUSINESS

REMARKS BY MEMBERS

ROLL CALL

ADJOURNMENT

THE NEXT REGULAR MEETING OF COUNCIL WILL BE MAY 15, 2023 AT 7:00 PM.

***Meetings may be recorded and broadcast via internet <https://charlestonwv.civicclerk.com>**

Amy Shuler Goodwin
Office of the Mayor
City of Charleston



P.O. Box 2749
Charleston, WV 25330
(304) 348-8174 Office

**TO: MILES CARY
CITY CLERK**

**FROM: AMY SHULER GOODWIN
MAYOR**

RE: SPRING HILL CEMETERY PARK COMMISSION

DATE: MAY 1, 2022

RECEIVED

APR 27 2023

OFFICE OF CITY CLERK

I recommend Bobby Reishman be appointed to the Spring Hill Cemetery Park Commission. Mr. Reishman is filling a vacancy on the Commission and his term expiration date will be April 6, 2025

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

ASG/mls



PLANNING, STREETS AND TRAFFIC COMMITTEE

Mary Beth Hoover, Chair

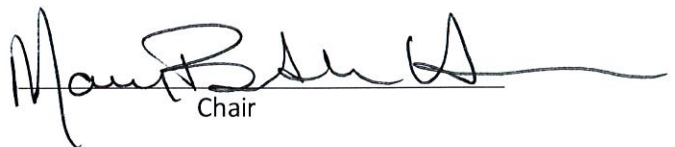
COMMITTEE REPORT

To: Miles Carey, City Clerk
From: Council's Committee on Planning, Streets and Traffic
Date: April 24, 2023
Subject: Resolution No. 783-23

The Committee on Planning, Streets and Traffic has had under consideration:

Resolution No. 783-23 - A Resolution adopting the protection of the brick pavement on portions of Valley Road, Chester Road, Maple Road, Springdale Road, Poplar Road, Somerset Drive, Pine Road, and several alleyways within the City of Charleston.

and reports the same to Council with the recommendation that the resolution do pass.


Chair



John Giandola - on phone

Jennifer Phan

Tamela G. Barba

Resolution No. 783-23

Introduced in Council:

Adopted by Council:

April 3, 2023

Introduced by:

Referred to:

Emmett Pepper and Jeanine Faegre

Planning, Streets and Traffic

1 Resolution No. 783-23 - A Resolution adopting the protection of the brick pavement on portions of
2 Valley Road, Chester Road, Maple Road, Springdale Road, Poplar Road, Somerset Drive, Pine Road,
3 and several alleyways within the City of Charleston.

4
5 WHEREAS, Mordicai Levi of Charleston, West Virginia constructed the first brick paved street in the
6 United States on Summers Street in downtown Charleston between 1870-1873; and

7
8 WHEREAS, on April 23, 1889, Mordicai Levi of Charleston, West Virginia was granted the first
9 patent (#401,52) by the United States Patent Office for the process of constructing brick pavement
10 in the United States; and

11
12 WHEREAS, the brick paved streets located within the City of Charleston are therefore of special
13 historical significance; and

14
15 WHEREAS, there are only a limited number of brick paved streets remaining within the City of
16 Charleston; and

17
18 WHEREAS, brick streets help define the historic nature of neighborhoods and improve property
19 values; and

20
21 WHEREAS, brick streets help maintain slower driving speeds in residential areas; and

22
23 WHEREAS, brick streets last longer and have long-term cost benefits compared to asphalt or
24 cement-paved streets; and

25
26 WHEREAS, brick streets can be pervious, allowing groundwater replenishment, reducing runoff
27 pollution, and the decreasing the likelihood of flooding events; and

28
29 WHEREAS, Valley Road was constructed around 1915 using brick pavers; and

30
31 WHEREAS, a number of the brick pavers in Charleston were manufactured by brickyards that no
32 longer exist such as Athens Block, Trimble Brick Manufacturing, South Webster Block, Nelsonville
33 Block, and Middleport Block, and are no longer available; and

1
2 WHEREAS, in 2003, the City of Charleston, in concert with Valley Road residents, repaired a
3 significant portion of the brick pavers on Valley Road, which had been damaged by flooding and
4 prior utility repairs, resulting in the complete restoration of the street; and
5

6 WHEREAS, paving brick streets forever damages the historic nature of the brick pavement located
7 there; and
8

9 NOW, THEREFORE, BE IT RESOLVED, that the existing brick pavement streets of Charleston be
10 preserved and that any portion disturbed for whatever reason be replaced in a manner consistent
11 with the original construction of brick pavers.

Resolution No. 798-23

Introduced in Council:

May 1, 2023

Adopted by Council:

Introduced by:

Joseph Jenkins

Referred to:

Finance

Resolution No. 798-23 - Authorizing the Mayor or City Manager to execute the Stadium License, Lease and Service Agreement First Amendment between the City of Charleston and Charleston Professional Baseball Company, LLC, as contained in the attached exhibit, relating to the lease of the baseball stadium located at 601 Morris Street.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to execute the Stadium License, Lease and Service Agreement First Amendment between the City of Charleston and Charleston Professional Baseball Company, LLC, as contained in the attached exhibit, relating to the lease of the baseball stadium located at 601 Morris Street.



STADIUM LICENSE, LEASE AND SERVICE AGREEMENT FIRST AMENDMENT

This FIRST AMENDMENT TO STADIUM LICENSE, LEASE AND SERVICE AGREEMENT (“First Amendment”) constitutes the first amendment by the Charleston Professional Baseball Company, LLC d/b/a The Charleston Dirty Birds (“CPBC”) and the City of Charleston (“City”) who are the only parties to that certain Stadium License, Lease and Service Agreement (the “Agreement”) dated as of May 17, 2021. CPBC and the City may be referred to in the Agreement and herein collectively as the “Parties,” or singularly as “Party.”

WHEREAS, the City has invested in the Stadium with the installation of a new playing surface that CPBC will maintain; and

WHEREAS, CPBC has invested in the Club, including but not limited to, a rebranding from West Virginia Power to the Charleston Dirty Birds; and

WHEREAS, the Agreement refers to the stadium as Appalachian Power Park, but CPBC has since obtained a new naming agreement to rename the stadium as Gomart Ballpark; and

WHEREAS, the Parties are mutually interested in extending the term of the Agreement and making certain modifications to the Agreement that are to their mutual benefit; and

NOW THEREFORE, the Parties hereby agree to modify and amend the Agreement as follows

1. **Terms.** Capitalized terms set-forth herein that are not otherwise defined in this First Amendment shall have the meanings assigned in the Agreement. Any reference in the Agreement to “West Virginia Power” shall be deemed to instead refer to “Charleston Dirty Birds.” Any reference in the Agreement to “Appalachian Power Park” shall be deemed to instead refer to “Gomart Ballpark.”
2. **ARTICLE II.** The definition of “Minimum Guaranteed Payment” in Article II, Section L of the Agreement shall be deleted in its entirety and replaced with “Intentionally Omitted.”

The definition of “Stadium Services” in Article II, Section T of the Agreement shall be amended such that subsections b and c are deleted in their entirety and replaced with the following:

- b. **Field Preparation.** Field preparation in advance of baseball games which shall include, but not be limited to, completing the requirements set forth in the Turf Alliance Gameday Manual, which is incorporated herein and made a part hereof by reference, and reviewing the playing surface, restoration of the field surface as required, and such other services needed to fully prepare the field for baseball games and any other events, as necessary.
- c. **Field and Grounds Maintenance.** Shall include, but not be limited to, maintenance of the playing field and interior landscaped areas of the Stadium, which maintenance shall include following all of the requirements set forth in the Turf

Alliance Care & Maintenance Manual and Field Safety Manual, which are incorporated herein and made a part hereof by reference, including specifically that the field is brushed every 80 hours of use, that the GMAX of the field surface is tested pursuant to the standard operating procedure, and that the field is observed before and after each use for hard spots, soft spots, seam issues, and debris.

The remainder of Article II shall remain unchanged.

3. **ARTICLE III.** Article III, Section A of the Agreement shall be amended by deleting the last sentence of Article III, Section A and replacing it with: “The term of this Agreement, as modified by the First Amendment shall commence immediately after the First Amendment has been executed by both Parties, but all terms contained in the First Amendment shall retroactively apply to begin on January 1, 2023 and the Agreement shall terminate at midnight January 1, 2033, unless further agreed upon by the Parties.”

Article III, Section C of the Agreement shall be amended such that Section C (including all subsections and subdivisions) is deleted in its entirety and replaced with the following:

- C. **Termination of Agreement.** The City shall have the right to terminate this Agreement by providing written notice to CPBC at any time if:
 - a. CPBC fails to maintain membership with the Atlantic League of Professional Baseball or an Equivalent Professional Baseball League and does not within one hundred eighty (180) days acquire or reacquire membership with the Atlantic League of Professional Baseball or an Equivalent Professional Baseball League.
 - b. CPBC fails to remit the payments required by the Agreement, as amended by the First Amendment, and said failure continues for thirty (30) days following notice from the City.

The remainder of Article III shall remain unchanged.

4. **ARTICLE IV.** Article IV, Section B of the Agreement shall be amended such that subsection b is deleted in its entirety and replaced with the following:
 - b. **Baseball Team Parking.** The City shall provide and make available to CPBC parking located on Smith Street or Morris Street consisting of up to thirty-six (36) spaces for use by CPBC upon request at no additional cost to CPBC.

The remainder of Article IV shall remain unchanged.

5. **ARTICLE XI.** Article XI, Sections A and B of the Agreement shall be amended such that the phrase “two hundred fifty thousand dollars (\$250,000.00)” is amended to instead state “two hundred thousand dollars (\$200,000.00)” with respect to the maximum amount of utilities owed by the City in both Sections.

The remainder of Article XI shall remain unchanged.

6. **ARTICLE XII.** Article XII, Section A of the Agreement shall be amended such that subsection a (including all subdivisions) is deleted in its entirety and replaced with the following:

- a. License Fee. In consideration for the License granted to it by the City pursuant to this Agreement, the City and CPBC agree that all quarterly payments under the previous terms of the Agreement have been paid in full and beginning with calendar year 2023, within thirty (30) days of the end of each calendar quarter of each year, notwithstanding any other provision of this Agreement, CPBC shall pay to the City a quarterly fee equal to the following, as received in the previous quarter and shown in an itemized schedule:
 - i. A \$1.00 surcharge on all baseball game ticket sales and admissions during the quarter. The surcharge shall apply per individual per entry, regardless of whether a ticket is required for admission or if a ticket is given free of charge to the attendee.
 - ii. A \$1.00 surcharge on each beer sold during all baseball games during the quarter.
 - iii. A 5% surcharge on all merchandise sales, Novelties and Souvenirs, sold by CPBC, whether sold on site or online during the quarter.
 - iv. An amount equal to 5% of all gross advertising sales, including stadium naming rights, received during the quarter.
 - v. A 4% share of the net profit of all CPBC Special Events during the quarter.
- b. Review of License Fee. In the event that the total License Fee for a calendar year is below \$200,000.00 or above \$300,000.00, the Parties agree that either Party may request a review of the License Fee formula contained in this Section in order to propose amendment to the Agreement. The Parties agree that if either Party requests a review of the License Fee formula, then the Parties will engage in good faith negotiations to review the License Fee formula and work together to approve an amendment to the Agreement. Should the Parties fail to reach agreement through good faith negotiations, the Parties agree to jointly retain a neutral mediator to assist in reaching a negotiated amendment to the Agreement.

Article XII of the Agreement shall be amended such that a new Section C is added to read as follows:

- C. Audit and Records Retention. An annual audit may be performed by an independent auditor upon a request by the City. The audit shall reflect all fees to be paid under this Agreement, with copies to be made available to the City and the CPBC. The audit shall be paid for in equal shares (50% each) by CPBC and the City. For purposes of recordkeeping for the audit, CPBC shall keep its records for at least three years.

The remainder of Article XII shall remain unchanged.

7. **ARTICLE XXI.** Article XXI, Section G of the Agreement shall be amended such that the notice address for CPBC is deleted in its entirety and replaced with the following: Mr. Andrew Shea, Charleston Professional Baseball Company, LLC, 601 Morris Street, Suite 201, Charleston, West Virginia 25301.

The remainder of Article XXI shall remain unchanged.

8. **No Further Amendments.** The foregoing amendments shall be the only amendments to the Agreement and the Agreement, as amended by this First Amendment, shall remain in place according to its terms.

IN WITNESS WHEREOF, the Parties have, by the duly-authorized signatures below, agreed to and accepted the terms set forth in this First Amendment, and acknowledge that they are freely signing this First Amendment after reading and understanding the entire First Amendment and the Stadium License, Lease and Service Agreement for which it amends. This First Amendment shall take effect retroactively on the 1st day of January, 2023.

WITNESS the following signatures:

CITY OF CHARLESTON

**CHARLESTON PROFESSIONAL
BASEBALL COMPANY, LLC**

Signature

Signature

Title

Title

Date

Date



STADIUM LICENSE, LEASE AND SERVICE AGREEMENT
APPALACHIAN POWER PARK

By and Between

CHARLESTON PROFESSIONAL BASEBALL COMPANY, LLC
[A Kentucky Limited Liability Company]

and

CITY OF CHARLESTON
[A West Virginia Municipal Corporation]

Dated as of May 17, 2021

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STADIUM LICENSE, LEASE AND SERVICE AGREEMENT

This Stadium License, Lease and Service Agreement (hereinafter "Agreement") is made and entered into on this _____ day of _____, 2021, by and between the **CHARLESTON PROFESSIONAL BASEBALL COMPANY, LLC** (hereinafter "CPBC"), limited liability company organized and existing under the laws of the State of Kentucky, and the **CITY OF CHARLESTON** (hereinafter "City"), a municipal corporation organized and existing under the laws of the State of West Virginia. The CPBC and the City may be referred to collectively as the "Parties," or singularly as "Party".

ARTICLE I.

RECITALS

WHEREAS, West Virginia Baseball, LLC, a limited liability company organized and existing under the laws of the State of West Virginia has sold and transferred all of its interest in a formerly classified Single "A" baseball club (hereinafter the "Club"), currently known as the West Virginia Power, to CPBC; and

WHEREAS, the CPBC has developed an expertise for the operation of independent professional league baseball franchises; and

WHEREAS, the CPBC has established and aligned the Club to be affiliated with the Atlantic League of Professional Baseball; and

WHEREAS, the City and CPBC desire that the CPBC cause the Club to play its home baseball games in the City pursuant to the terms and conditions of this Agreement; and

WHEREAS, the City and CPBC desire that CPBC manage and maintain the Stadium associated herein in a manner to promote economic growth and communal support within the City.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt of which is mutually acknowledged, the CPBC and the City hereby agree as follows:

ARTICLE II.

DEFINITIONS

As used in this Agreement, the following terms shall mean:

- A. "*Broadcast Rights*" shall mean the exclusive worldwide right, on a live or delayed basis, to produce and distribute programming by means of the transmission or retransmission of electronic signals by any manner or means now known or hereafter devised including, without limitation, over-the-air VHF and UHF signals, cable (basic, premium and pay-per-view), multi-channel distribution systems, wire, fiber, microwave, satellite, master

- antenna, internet and direct broadcast satellite, as well as recorded visual images with or without sound, including, but not limited to, photographs, films, videotapes and cartridges.
- B. “*City Events*” shall mean any event, activity or program held at the Stadium that is not a: i) CPBC Baseball Game or ii) CPBC Special Event.
- C. “*Commencement Date*” shall refer to the execution date of this agreement. This is the date by which the Parties agree CPBC shall be permitted access to the Stadium to prepare the Stadium for the 2021 baseball season as circumstances allow.
- D. “*Complimentary Admission(s)*” shall mean the right granted to any person to enter the Stadium on the day of a CPBC Baseball Game for which no monetary remuneration is given. Complimentary Admission(s) shall include, but not be limited to, press passes, staff passes, league passes, player passes and complimentary tickets, as well as the right of access granted to CPBC employees and personnel. Complimentary Admission(s) shall not include the right to enter the Stadium on the day of a CPBC Baseball Game pursuant to a Paid Admission Ticket.
- E. “*CPBC Baseball Game*” shall mean home games of the Club, as the phrase is used throughout this Agreement, and shall mean all other baseball games at which the Club as a participant, including pre-season, exhibition, regular season, post-season and play-off, and postponed or rescheduled games and other games arranged, approved and regularly scheduled by an Independent Professional Baseball League, its successors or assigns, excluding any such game or games the playing of which in the Stadium is excused under other provisions of this Agreement.
- F. “*CPBC Special Event*” shall mean any event that is not a CPBC Baseball Game or City Event and is conducted at the Stadium.
- G. “*CPBC Special Event Novelties and Souvenirs*” shall mean any product, item, device, souvenir, novelty, supply or other property directly related to any CPBC Special Event.
- H. “*Equivalent Professional Baseball League*” shall mean a league associated with the National Association of Professional Baseball Leagues, Inc. or affiliated with any Major League Baseball club.
- I. “*Food and Beverage Concessions*” shall mean all food and beverage (both alcoholic and non-alcoholic) products and services required or appropriate for, and sold or provided at, any and all Stadium Events, whether through fixed or portable stands, machines or vendors including but not limited to, dining, Luxury Suite waitperson service, catering, concessions vending, vending machines, roving vendors, snack bars and any other food or beverages served at the Stadium.
- J. “*Food and Beverage Concessions Equipment*” shall mean equipment required or appropriate to store, prepare, display, service, distribute and sell Food and Beverage Concessions at the Stadium. Food and Beverage Concessions Equipment does not include the build-out of the concession stands or picnic stands, or their permanent components (doors, counters, windows, electrical and plumbing components, etc.). The Parties understand and agree that the Food and Beverage Concessions Equipment shall include equipment similar to that found in Independent Professional League baseball facilities similar in quality to the Stadium. *Exhibit A* attached for reference hereto.

- K. “*Luxury Suites*” shall mean those suites each having seating capacity of at least ten (10) persons outdoors which may or may not contain a wet bar and/or mini refrigerator.
- L. “*Minimum Guaranteed Payment*” shall mean and be equal to TWO HUNDRED AND FORTY THOUSAND DOLLARS (\$240,000.00) annually for years 1-5 of this Agreement. The Minimum Guaranteed Payment shall reflect and be construed as the annual lease payment pursuant to this Agreement.
- M. “*Novelties and Souvenirs*” shall mean any product, item, device, souvenir, novelty, supply or other personal property. Novelties and Souvenirs shall include, but not be limited to, baseball caps and hats, bats, baseball shirts, baseballs, baseball cards, baseball gloves, baseball scorecards, programs, souvenir books and other related products which bear, contain or display the logo, trademark, tradename or design of the CPBC, any Atlantic League of Professional Baseball club, any Major League Baseball club, any team of any league which is a member of the National Association or any other professional baseball club.
- N. “*Paid Admission Tickets*” shall mean the right granted in consideration for monetary remuneration to any person to enter the Stadium through the Stadium’s gates on the day of a CPBC Baseball Game, whether or not that right is exercised.
- O. “*Professional Baseball Agreement*” shall mean and refer to any agreement, and all of attachments therein, entered into by and between any Independent Professional Baseball League or Association and CPBC.
- P. “*Regular Season*” shall mean all professional baseball games that are played in any calendar year by the CPBC excluding pre-season, spring-training, exhibition, all-star, post-season or playoff games.
- Q. “*Scoreboard Advertising*” shall mean any and all advertising affixed to or displayed on the Stadium scoreboard, including video and message center advertising.
- R. “*Stadium*” shall mean the Professional baseball stadium commonly described as Appalachian Power Park located in the City of Charleston on the parcel more particularly described herein, and its playing field. Stadium shall include only the structure within the perimeter of the walls of the Stadium and field or berm fences and shall not include contiguous parking and/or real property upon which the Stadium does not sit. The Stadium does not include the warehouse at 601 Morris Street other than approximately 18,000 square feet which shall embody clubhouse space for the home and visiting teams, team souvenir retail space, ticket and box offices, administrative offices, first aid and family restroom space, batting tunnel, and maintenance and storage spaces. *Exhibit B* attached for reference.
- S. “*Stadium Event*” shall mean any CPBC Baseball Game, CPBC Special Event and/or City Event.
- T. “*Stadium Services*” shall mean and consist of the following:
- a. Facility Service. The operation and staffing of the Stadium scoreboard, the public address system, the box office, security within the Stadium necessary to assure the reasonable safety of attendees, emergency response and/or medical services provided in aide to personnel and spectators, all ticket booths and ushering services, first-aid room,

and the opening and closing of the Stadium, and the operation of all Stadium facilities at all Stadium Events.

- b. Field Preparation. Field preparation in advance of baseball games which shall include, but not be limited to, lining the field, replacement of playing surface, preparation of the unsodded areas of the field, installation of bases, restoration of the field surface as required, and such other services needed to fully prepare the field for baseball games and any other events, as necessary.
 - c. Field and Grounds Maintenance. Shall include, but not be limited to, maintenance of the playing field and interior landscaped areas of the Stadium, which maintenance shall include periodic mowing, watering, fertilizing and other chemical treatments required to maintain the field at professional stadium quality, specialized turf care as required, such as aeration and other treatments which are required to maintain the quality of the field as defined herein, recycling requirements, and the maintenance of all unsodded areas of the field.
 - d. Janitorial Services. The cleaning and maintenance of the interior portions of the Stadium during and after all Stadium Events, including the stocking of all restrooms with paper products as required prior to such Stadium Events, the pick-up and disposal of all trash collected from such areas immediately after such events, and any necessary clean-up of trash and debris from public areas immediately surrounding the Stadium related to Stadium Events by no later than 8:00 A.M. on the morning following such events. All janitorial services provided to the Stadium shall include all action necessary to maintain the areas in a clean and attractive manner and in compliance with all legal requirements, including those related to recycling.
 - e. Pre-Stadium Event Preparation. The preparation of the Stadium for any Stadium Event as may be required, including, but not limited to, conversion of the playing field for other athletic events, installation of any supplemental seating equipment, installation of stage or platform equipment and/or temporary lighting that may be required for the event.
 - f. Suite Maintenance. Shall include, but not limited to, all maintenance, repairs and staffing in any and all ways related to the operation of the Luxury Suites.
- U. “*Stadium Signage*” shall mean all interior advertising signs licensed or leased to third parties by CPBC whose primary purpose is to promote commercial products or services excluding the initial permanently affixed panels located on scoreboard.
- V. “*Stadium Souvenir Store*” shall mean those store(s) located within the Stadium that have public access from inside and/or outside the Stadium.
- W. “*Suite holder*” shall mean that third-party patron that leases, licenses or rents the use of a Luxury Suite.
- X. “*Utilities*” shall include, but not be limited to, all electric, gas, sewage, and water used at the Stadium, unless otherwise specified herein.
- Y. “*Warehouse*” shall mean all of that structure at 601 Morris Street which is not included in the definition of Stadium above.

ARTICLE III.

TERM AND TERMINATION

- A. Term of Agreement. This Agreement is effective and enforceable immediately upon execution by the Parties. The term of this Agreement shall commence immediately after it has been executed by both Parties and shall terminate at midnight five (5) years after said execution, unless further agreed upon by the Parties.
- B. Binding Agreements. CPBC shall not enter into any contract for which the duration of said contract will bind the City for any period beyond the expiration of the term in this Agreement.
- C. Termination of Agreement.
 - a. Termination by the City. The City shall have the right to terminate this Agreement by providing written notice to CPBC at any time if:
 - i. CPBC fails to maintain an affiliate with the Atlantic League of Professional Baseball and does not within one hundred eighty (180) days either reacquire membership with the Atlantic League of Professional Baseball or obtain membership with an Equivalent Professional Baseball League.
 - ii. The Atlantic League of Professional Baseball dissolves and CPBC does not either, within one hundred eighty (180) days of the dissolution, acquire an affiliated baseball membership as described in subsection (i) herein.
 - iii. CPBC fails to remit the Minimum Guaranteed Payment in the manner and method described herein and said failure continues for thirty (30) days; provided that in the event of a civil shutdown related to a state of emergency for which halts CPBC operations, said payments shall be suspended and the amount owed for that year shall be adjusted pro rata for the suspension period.

ARTICLE IV.

CITY OBLIGATIONS

- A. Stadium. The City hereby agrees to lease and make available the Stadium to CPBC for unrestricted legal use for CPBC Baseball Games and CPBC Special Events. It shall be the City's responsibility to deliver the Stadium to CPBC in a condition that satisfies all applicable federal, state, and local zoning, fire codes, building and health department statutes, ordinances, rules and regulations.
- B. Parking.
 - a. Smith Street and Morris Street Parking Lots. The City shall provide and make available the Parking Lots located on Smith Street (north side) and Morris Street for all CPBC Baseball Games and CPBC Special Events. *Exhibit C* attached for reference. The City shall operate and maintain these parking lots and shall retain without offset all revenue generated from such parking fees.

- b. Smith Street Baseball Team Parking Lot. The City shall provide and make available to CPBC a parking lot located on Smith Street (south side) consisting of thirty-six (36) spaces for exclusive use by CPBC at no additional cost to CPBC.
- c. Lewis Street Parking Lot. The City shall provide and make available the Parking Lot along Lewis Street, behind the First Base Concession and Suite Building for exclusive use and license to CPBC during all CPBC Baseball Games and CPBC Special Events, beginning one (1) hour before the scheduled game/event and ending one (1) hour after the conclusion of the game/event. CPBC shall be responsible for cleaning the lot after each CPBC Baseball Game or CPBC Special Event. At all other times, this Lot shall be maintained and operated by the City, primarily as short term parking, it being the intent that the short term parking shall inure to the benefit of the tenants of the 601 Morris Street Warehouse (including the Team ticket office and souvenir store). Nothing herein shall preclude the City from setting reasonable time restrictions on parking and reasonable enforcement thereof, and any revenues generated by parking meters or other enforcement methods may be retained without offset by the City.

C. Stadium Maintenance.

- a. Major Maintenance. The City, with notice provided by CPBC, shall perform all major maintenance, restoration, replacement and repairs of the Stadium and all components thereof, of whatever kind and nature, foreseen or unforeseen, as may be necessary to keep the Stadium in good condition and repair, reasonable wear and tear excepted, including but not limited to the major maintenance, restoration, repair and replacement of all structural and concrete components, replacement of all carpeted areas, including the locker rooms, (provided, however, that carpeting shall not be required to be replaced more frequently than every six years), all heating, air conditioning, major painting, ventilating, plumbing, and electrical systems, field drainage systems, field lighting system (including field lighting installation, reinstallation, and the cost of replacement of field lighting bulbs), stadium lighting, grandstands, sound system, seating, bleachers, elevators, entry way area, glass, walls, roof, parking area, sidewalks and exterior landscaping maintenance, excluding therefrom the following, all of which shall be the responsibility of CPBC: i) damages or repairs necessitated by the negligence of CPBC; ii) all ordinary maintenance including, but not limited to, replacing the light bulbs in the administrative offices, Stadium Souvenir Stores, Food and Beverage Concession areas, and Club locker room, as well as field maintenance undertaken by CPBC pursuant to Article V below; and iii) maintenance of Stadium scoreboard and concession equipment. Except as to Stadium matters described as Field Preparation and Field Maintenance, the City shall conduct all necessary preventative and long-term repairs, replacements and maintenance of such systems as may be required with proper notice.
- b. Maintenance Fund. In order to fulfill its responsibilities for major maintenance, restoration, replacements and repairs to the Stadium as described above, the City shall, on an annual basis, pay the sum of Twenty-Five Thousand Dollars

(\$25,000.00) into a separate, non-reverting “maintenance fund”. This maintenance fund shall be used in conjunction with other City funds as needed to keep the Stadium, Warehouse, and parking lots reference herein in good condition and repair as well as to make other capital improvements to enhance the Stadium and Warehouse, as mutually agreed upon between the City and CPBC.

ARTICLE V.

CPBC OBLIGATIONS

- A. CPBC Baseball Games. For the term of this Agreement, CPBC shall cause the Club to play all of its home baseball games at the Stadium.
- B. Stadium Services.
 - a. CPBC Baseball Games and CPBC Special Events. At CPBC’s sole cost and expense, CPBC shall provide all Stadium Services throughout the Stadium at CPBC Baseball Games and CPBC Special Events. CPBC will retain, employ, compensate, train, and manage sufficient numbers of personnel to provide such services in a high quality and professional manner.
 - b. Security Service. At CPBC’s sole cost and expense, CPBC shall provide all Security Services throughout the Stadium at CPBC Baseball Games and CPBC Special Events necessary to assure the reasonable safety of attendees. Any and all contracting, or employment of Charleston Police Department officers shall be the sole obligation of CPBC. The City will not provide on-duty uniformed Charleston Police Officers for CPBC Baseball Games and CPBC Special Events. In the event CPBC requests street closure, said request must be submitted to the Charleston Police Department in accordance with the City of Charleston’s Municipal Code.
 - c. Emergency Medical Services. At CPBC’s sole cost and expense, CPBC shall provide all Emergency Medical Services throughout the Stadium at CPBC Baseball Games and CPBC Special Events necessary to provide first response aide to personnel and spectators.
 - d. Field Preparation and Field Maintenance. Notwithstanding anything in this Agreement to the contrary, at all times during the term of this Agreement, CPBC shall be solely responsible for the Stadium Services described as Field Preparation and Field and Grounds Maintenance for all events held at the Stadium at no additional cost to the City.
 - e. Exterior Grounds Maintenance. For the term of this Agreement, CPBC shall be responsible for the maintenance of the exterior grounds, specifically limited to any designated smoking area and all areas of ingress and egress to the Stadium, including but not limited to all entrances. The City will be responsible for maintaining all other grounds of the exterior of the Stadium.
 - f. Dumpster Maintenance. At CPBC’s sole cost and expense, CPBC shall be responsible for any maintenance, cleaning and collection in any and all ways associated with all Dumpster(s) located within the Stadium or located upon the Lewis Street parking lot.

C. Concessions.

- a. Concessions Operations. At CPBC's sole cost and expense, CPBC shall develop, market, maintain, and operate Food and Beverage Concessions services and Food and Beverage Concessions Equipment throughout the Stadium at CPBC Baseball Games and CPBC Special Events.
- b. Novelties and Souvenir Operations. At CPBC's sole cost and expense, CPBC shall develop, market, maintain, operate and sell all Novelties and Souvenirs and CPBC Special Event Novelties and Souvenirs at the Stadium and the Stadium Souvenir Stores at CPBC Baseball Games and CPBC Special Events.
- c. Exclusivity. Nothing contained in this Agreement shall be construed to limit the City from selling or authorizing a third party to sell Food and Beverage Concessions and Novelties or Souvenirs at City Events, provided the City will not at any time sell or authorize the sale of any professional baseball-related souvenirs, devices, items or other professional baseball related personal property at the Stadium. The City agrees to provide CPBC the right of first refusal to provide Food and Beverage Concessions at all City Events; provided that, upon refusal by CPBC, the City may use a third party or its employees to sell Food and Beverage Concessions without CPBC approval with the reserved usage of all Food and Beverage Concessions Equipment. Notwithstanding anything herein to the contrary, the City shall solely retain without offset all revenue from the sale of City Event related Novelties and Souvenirs and, if CPBC refuses to provide such services, all Food and Beverage Concessions at the Stadium during City Events. Said exclusivity shall at no time apply to sales made from the Stadium retail store. If CPBC accepts the responsibility for providing Food and Beverage Concessions at City Events, CPBC will be responsible for all necessary preparation including but not limited to, ordering the required food and beverage and all staffing associated with said operation, with the understanding that CPBC will retain, without offset, all revenue generated by the sale of any and all such Food and Beverage Concessions. In order to allow CPBC to arrange adequate staffing or informed refusal, the City will arrange all City Events with CPBC not less than thirty (30) days prior to such proposed City Event.
- d. Compliance. CPBC and any third party vendor, selected by CPBC or the City, shall comply with all federal, state and local laws, statutes, rules, regulations and requirements (including licenses, permits, and taxes) pertaining to the sale of food, beverages (including alcoholic beverages), novelties and souvenirs.
- e. Grease Trap Maintenance. At CPBC's sole cost and expense, CPBC shall be responsible for the operation and maintenance of the grease traps located within and around the Stadium. Said grease traps shall be maintained in compliance with all applicable federal, state and local laws, statutes, rules, regulations and requirements, including but not limited to environmental compliance with the Department of Environmental Protection and the Charleston Sanitary Board's Environmental Compliance Division. In the event of an overflow or if an emergency clean-up is necessitated, CPBC will be responsible for any liability

created by such event, all cost associated with such event, and shall pay the City the amount of one thousand dollars (\$1,000.00) for liquidated damages owed to the City for the breach of this known duty, per occurrence.

ARTICLE VI.

STADIUM USAGE

A. Rights and Obligations. The City and CPBC agree to the following rights and obligations related to the use of the Stadium:

a. CPBC Baseball Games and CPBC Special Events.

- i. Scope. CPBC shall have exclusive priority use of the Stadium for the conduct of CPBC Baseball Games and CPBC Special Events. Such use shall include the period of time from 7:00 a.m. on the date scheduled until 12:00 a.m. (midnight), or three (3) hours subsequent to the conclusion of CPBC Baseball Games and CPBC Special Events, whichever shall be later on said date. Except as limited herein, said usage shall encompass the entire Stadium. Without prior approval of CPBC, which approval shall not be unreasonably withheld, the City shall not conduct or authorize or permit any other individual or entity to conduct any City Event or athletic event at the Stadium. **CPBC hereby acknowledges the previous usage of the Stadium for local high school and college athletic competitions and hereby agrees to facilitate the scheduling and any request pertaining to said usage as reasonably practical under certain scheduling restraints. Notwithstanding the foregoing or any other provision of this Agreement, CPBC agrees that it will assist the Charleston Convention & Visitors Bureau ("CVB") in any bids for the West Virginia High School State Baseball Tournament and, if awarded, CPBC agrees to coordinate with the CVB on the scheduling of the Tournament and all requirements for appropriately hosting the Tournament. For the avoidance of doubt, the CVB previously bid on and currently holds the rights to host the Tournament in Charleston and CPBC hereby agrees to coordinate with the CVB to appropriately host the Tournament.**
- ii. Ticketing. CPBC shall be exclusively responsible for all ticket printing, sales and distribution related to CPBC Baseball Games and CPBC Special Events. In satisfaction of this obligation, CPBC shall have the right to designate the identification of seating at the Stadium and to conduct such ticket sales at the Stadium box office at all times it deems proper. CPBC shall not have the right to sell or allow the sale of tickets at the Stadium box office for events other than CPBC Home Baseball Games and CPBC Special Events without the express written approval of the City. CPBC shall have the right to charge any amount it deems appropriate for Paid Admission Tickets to CPBC Baseball Games and tickets to CPBC Special Events. Notwithstanding anything in this Agreement to the contrary, CPBC

shall retain the reasonable and lawful right to deny and/or eject individuals from the Stadium.

- iii. Suites. CPBC shall have the right to effectuate the lease, license or rental for the use of the CPBC Luxury Suites upon terms, conditions and in a form of agreement as CPBC declares to be prudent. CPBC shall be the sole contracting entity for such CPBC Luxury Suites and shall have the right to enforce and prosecute all obligations, duties and rights under such agreements. Every agreement with a Suite holder shall contain a provision allowing an option to be held by the Suite holder allowing such Suite holder to sublease or sublicense to the City and/or CPBC, upon terms agreed to between such Suite holder and the CPBC, the use of such Suite holder's Luxury Suite at City Events and/or CPBC Special Events. As contained herein, CPBC shall be responsible for any and all maintenance, staffing, and repairs associated with the operation of the Luxury Suites.
- b. Access for CPBC training. CPBC shall have the right of access to and use of the Stadium, playing field and concourse, in order to conduct baseball-related and operational training, unless said action interferes with a City Event or other agreed upon activity. All CPBC trainings shall be conducted at CPBC's sole cost and expense.
- c. Administrative Offices. In order to facilitate the satisfaction of its obligations undertaken pursuant to this Agreement, CPBC shall at all times during the term of this Agreement have the right of access to and use of at least Two Thousand Five Hundred (2,500) square feet of administrative office space in the Stadium. CPBC shall be responsible for all furniture, interior decorating, and office equipment to be housed and used in the administrative offices.
- d. Stadium Souvenir Stores and Box Offices. During the term of this Agreement, CPBC shall have the exclusive right to occupy and operate, at any time CPBC deems appropriate, the Stadium Souvenir Stores and Stadium box office connected to the concourse and to administrative offices that are used by CPBC.
- e. Naming Rights. CPBC shall have complete control over the sale of naming rights for the Stadium during the term of this Agreement. CPBC agrees to utilize its best efforts to sell naming rights to a local individual or entity. The City also agrees that there will be no restrictions as to the sale of the naming rights, subject to standards of good taste and any Independent Professional Baseball League restrictions. City shall have the right to approve the sale of naming rights, which approval shall not be unreasonably withheld or delayed. In the process of selling naming rights, CPBC agrees to consult with the City regarding possible naming right sponsors and keep City apprised of its progress. **For the avoidance of doubt, CPBC is prohibited from selling naming rights for the Stadium that extend beyond the expiration or termination of this Agreement.**
- f. The City's Rights and Obligations. Notwithstanding Paragraph A of this Article, the City does not relinquish and does herein and hereby retain all ownership rights and control associated with the Stadium. Therefore, all duly authorized

representatives of the City shall have access to all areas of the Stadium at any time and on any occasion, provided that any such representative, other than any City operating personnel assigned to the Stadium must have either a Complimentary Admission or Paid Admission Ticket in order to observe a CPBC Baseball Game or CPBC Special Event. The City does hereby retain the right to enforce all necessary and proper rules for the management, operation and control of the Stadium.

Consistent with its ownership of the Stadium and with CPBC's rights as granted in this Agreement, the City and CPBC agree that the City shall have the following rights and obligations related to the use of the Stadium:

i. City Events.

1. Scope. Subject to the restrictions and exceptions contained in this Agreement, CPBC shall have exclusive use and control of the Stadium for any and all events, including but not limited to CPBC Baseball Games, CPBC Special Events and City Events. CPBC possesses the right to use exclusively the Stadium administrative offices, box office, team locker rooms and the Stadium Souvenir Stores as contained herein. Associated with such exclusivity, CPBC shall be responsible for all maintenance, repairs and staffing associated with the aforementioned areas. In exercising such use and control, the CPBC shall give due consideration to the City's requested use of the Stadium for City Events. Subject to scheduling concerns and potential deterioration and restoration of the Stadium's playing surface, CPBC's approval of City Events shall not be unreasonably withheld. All clean-up required post-City Events shall be at the sole cost and expense of the City; therefore any funds expended by CPBC as it pertains to the assisted production and/or post-event clean-up associated with a City Event shall be subject to reimbursement by the City.
2. Ticketing. The City shall be exclusively responsible for all ticket printing, sale and distribution related to City Events. The City shall have the right to charge any amount it deems appropriate for tickets to City Events and such proceeds from said events shall be retained by the City without offset to CPBC.

ARTICLE VII.

SCHEDULING

The City and CPBC agree that there is a need for scheduling of events at the Stadium. As such, the Parties have adopted, for implementation each year of this Agreement, the following scheduling procedure:

- A. Control. At CPBC's sole cost and expense, CPBC shall have exclusive control of scheduling CPBC Baseball Games, CPBC Special Events, and City Events. CPBC and the

City agree to cooperate and accommodate, in good-faith, any scheduling requests made for City Events. CPBC shall provide a yearly list of all events scheduled at the Stadium to the City as soon as practical. CPBC shall supplement this event list with the City of any subsequently scheduled events as soon as reasonably practical.

- B. Priority. It is understood by the parties that CPBC shall be granted absolute priority to conduct all CPBC Baseball Games and CPBC Special Events at the Stadium, including practice and rain dates. CPBC agrees that it will co-operate and coordinate in scheduling so as to permit the Stadium to be used for the Secondary Schools Activities Commission state and regional high school baseball tournaments and University of Charleston home baseball games, as necessary.
- C. City Events. The City shall have the opportunity to select dates for City Events, so long as the dates do not contradict the priority schedule within this Article. Any request for a City Event shall be submitted to CPBC at least thirty (30) days before said event is to occur at the Stadium, provided that CPBC shall not unreasonably withhold approval of a City Event submitted less than thirty (30) days before said event is to occur at the Stadium where the event will not create a hardship upon CPBC.

ARTICLE VIII.

MARKETING

Each Party shall be responsible for its own marketing. CPBC shall be responsible for and have the exclusive right of marketing CPBC Baseball Games and CPBC Special Events. The City shall be exclusively responsible for marketing City Events. The Parties will be jointly responsible for marketing the Stadium in a manner consistent to promote economic growth and reputation.

ARTICLE IX.

ADVERTISING

- A. CPBC's Advertising Rights and Responsibilities.
 - a. Stadium Signage and Scoreboard Advertising. CPBC shall have the exclusive right to sell all Stadium Signage and Scoreboard Advertising.
 - i. The parties agree that the Stadium shall include space and surfaces for signage consistent with applicable zoning law and other legal restrictions. It is further agreed that it is the intention of CPBC that the Stadium shall maximize advertising including signage that would be visible from nearby roadways, as well as concourse signage, and such other fixed sign areas as CPBC may determine consistent with other professional league baseball facilities. The installation of such Stadium Signage shall be the sole cost and exclusive responsibility of CPBC. All Stadium Signage and Scoreboard Advertising content shall be of good taste and appropriate for all patrons. CPBC shall be liable for any damages resulting from or directly or indirectly related to Stadium Signage and Scoreboard Advertising.

b. 601 Morris Street Warehouse Signage.

- i. The Warehouse at 601 Morris Street has historically donned two bands of signage around its exterior perimeter. The upper band extends from the bottom of the fourth-floor windows to the top of the third-floor windows. The lower band extends from the bottom of the third-floor windows to the top of the second-floor windows. The parties have agreed, to the extent permissible- by zoning or other laws, and consistent with good taste and the historic ambiance, to reproduce and maintain these signage bands.
 1. CPBC shall have the exclusive right to sell signage on the upper and lower bands of the North facing exterior wall of the Warehouse. In addition, CPBC shall have the exclusive right to sell signage on the roof of the building to the extent permissible by zoning or other laws.
 2. The City shall have the exclusive right to sell or otherwise control the signage on the upper and lower bands of the East (Morris Street) and South (Lewis Street) facing walls.
 3. Space is hereby reserved for a tenant on the first floor of the Warehouse structure. The occupant of that space shall be offered the option, to be consistent with the terms set forth herein, of putting signage on one of the two bands located on the West (Brooks Street) facing exterior wall. If the tenant fails to exercise this option, the City shall elect which band shall be reserved for other or future tenant use and until such time as another or future tenant negotiates the right to the signage, shall control the same.
 4. CPBC shall have the exclusive right to sell signage on the West (Brooks Street) facing wall band which is not elected as set forth in subsection 3 above.
 5. The placement of all Warehouse Signage shall be subject to the prior approval of the City, with such approval not to be unreasonably withheld, and of consistent color, font, and size, unless otherwise mutually agreed upon with consideration being given to the historic nature of such signage on the building, and subject to all zoning and other laws. No warranty or waiver is being made as to the legality of such signage, the content thereof, or the approval process for placing signage on buildings within the City. The installation and cost of such Warehouse Signage shall be the sole and exclusive responsibility of the party to whom the right belongs. If for any reason CPBC fails to exercise the assigned rights in relation to signage as set forth in this section, the City may, at its election and cost, extinguish and assume those rights for the purpose of balance and aesthetics.

B. The City's Advertising Rights and Responsibilities.

- a. Permanently Affixed Stadium Signage. The City will sell no Permanently Affixed Stadium Signage. Warehouse signage is separate and apart from Stadium signage and is addressed above exclusively.
- b. Advertising at City Events. Subject to the limitations contained in this Agreement, the City shall have the right to sell and retain without offset all revenue generated from the sale of advertising associated with City Events, including but not limited to, advertising on the scoreboard message center and video display, print media and broadcast media, provided that such advertising without the prior consent of CPBC, shall in no way materially interfere with CPBC's Stadium Signage or any right related to CPBC's exclusive license to provide Food and Beverage Concessions at all Stadium Events, including but not limited to pouring rights at the Stadium.

ARTICLE X.

BROADCAST RIGHTS

- A. CPBC's Broadcast Rights. CPBC shall have exclusive ownership and control over Broadcast Rights associated with CPBC Baseball Games and CPBC Special Events. In the exercise of such ownership and control, however, CPBC shall take all steps reasonably necessary to protect from diminution the sale of Paid Admission tickets to CPBC Baseball Games. All revenue generated by CPBC relating to such Broadcast Rights shall be retained, without offset, exclusively by CPBC.
- B. City's Broadcast Rights. The City shall have exclusive ownership and control over Broadcast Rights associated with City Events and all other events and matters associated with the Stadium that do not involve the conduct of CPBC Baseball Games or CPBC Special Events. All revenue generated by the City relating to such Broadcast Rights shall be retained, without offset, exclusively by the City.

ARTICLE XI.

UTILITIES

- A. City Obligations. During the term of this Agreement, the City shall be obligated to pay for the cost of all utilities, including but not limited to electric, gas, sewage, and water used at the Stadium; provided that, said obligation shall not result in an amount owed by the City in excess of two hundred fifty thousand dollars (\$250,000.00) annually and CPBC shall exercise such use in a reasonable and non-abusive manner.
- B. CPBC Obligations. CPBC shall be responsible for trash removal, cable, telephone, wireless, and any other service not defined or allocated by this Agreement. In the event that the amount for the City obligated utilities exceeds two hundred fifty thousand dollars (\$250,000.00), CPBC shall be responsible for all excess amounts, however denominated and from whatsoever utility source. The City shall provide reasonable notice of such excessive amounts on an annual basis by January 31 of the following year and CPBC shall pay said utility excess obligation on a reimbursement basis by March 1 of that year following the excess amounts.

ARTICLE XII.

FINANCIAL TERMS

A. CPBC's Rights and Obligations.

- a. License Fee. In consideration for the License granted to it by the City pursuant to this Agreement, CPBC shall pay the minimum guaranteed payment as follows:
 - i. CPBC shall pay to the City annually TWO HUNDRED AND FORTY THOUSAND DOLLARS (\$240,000.00) per year each year commencing year one (1) and ending for year five (5) of the license period. CPBC shall make quarterly payments to the City, four (4) installments of sixty thousand dollars (\$60,000.00), with the first installment (March 31, 2021 installment) due within ten (10) days from execution of this Agreement, and continuing on the following dates: March 31, June 30, September 30 and December 31 of each year of the license period.
- b. CPBC's obligation to perform. Subject to all of the provisions of this Agreement to the contrary, CPBC's obligation to pay the license payment is absolute and unconditional and is not subject to set-off or deduction for any reason. If CPBC is in default of its license payment obligation, all revenues of CPBC and the Stadium shall be automatically deposited with a trustee in a "lock-box" account. "Default" shall not be deemed to occur until CPBC has received written notice of such event and default and CPBC shall have been given thirty (30) days to cure such default or such additional time reasonably required to cure such default in the event it cannot be cured within the thirty (30) day cure period. The City will retain a first security interest in such account for purposes of payment of all sums owed and proof of CPBC's ability to timely fund the license payment.
- c. Interest. Upon default and proper notice thereof, the unpaid balance owed to the City shall begin accruing interest at a rate of four (4%) percent compounding per annum.
- d. Remainder. CPBC shall retain exclusive ownership of all revenue that is generated from the Club from any source or through any means specified within this Agreement, whether or not now known, directly related to CPBC Baseball Games and CPBC Special Events.

- B. City's Rights and Obligations. The City shall retain ownership of all income and sources of income that are related to City Events or Stadium usage, whether or not now known, and that are not specifically granted to CPBC herein.

ARTICLE XIII.

EQUIPMENT

- A. CPBC's Obligations. At no cost to the City, CPBC will provide all baseball related equipment that is typically provided by a Professional Baseball Club, including but not limited to batting cages, pitching machines, and batting practice equipment. In addition,

CPBC shall provide certain items of equipment necessary to fulfill its Stadium Services and Food and Beverage Concessions Services. Any items currently located in the Stadium that are property of the City shall remain in place for use by CPBC. All property herein referenced shall be maintained and replaced by CPBC, at CPBC's sole cost and expense, as need during the term of this Agreement. All City owned equipment shall constitute for treatment as property of CPBC until the expiration of this Agreement, or upon termination of this Agreement by the City pursuant to the provisions of this Agreement, at which time it shall become the property of City.

- B. City's Obligations. The City, upon reasonable notice, will provide the use of certain heavy equipment and operators thereof to assist CPBC in certain activities related to the Stadium usage, at no cost to CPBC. CPBC hereby acknowledges the presence of certain City owned heavy equipment currently located in the Stadium which shall remain for use by CPBC as listed on *Exhibit D*. However, CPBC shall, in all respects, indemnify the City from all liabilities arising from such use provided that such liabilities are not the results of intentional or reckless acts or omissions on the part of the City or the equipment operator. All such equipment provided for such use shall remain the property of the City.

ARTICLE XIV.

COVENANTS

A. CPBC's Covenants.

- a. Taxes and Encumbrances. CPBC shall pay promptly when due any and all personal property taxes imposed on its personal property located in the Stadium and any and all taxes which are the responsibility of CPBC under the laws of the United States of America, the State of West Virginia and the City of Charleston. CPBC shall register as a business with the Office of the City Collector in the City of Charleston and timely remit all taxes due, including but not limited to, Business License Tax, Business and Occupation Tax, City Service Fee, and Admission Tax, as applicable. CPBC shall not permit any mechanics liens or other encumbrances or liens to exist against the Stadium and shall within thirty (30) days of any such lien or encumbrance being asserted against the Stadium as a result of action or inaction by CPBC either cause the same to be released of record or obtain title insurance coverage satisfactory to the City over such lien and proceed diligently to contest the same in good faith.
- b. CPBC Baseball Games. CPBC covenants and agrees that it will play all of its home baseball games at the Stadium whether such games be designated preseason, regular season, post-season, or exhibition games, unless otherwise agreed to by City.
- c. Membership in the Atlantic League of Professional Baseball or equivalent. CPBC shall, during the term of this Agreement, abide by all rules and regulations of the Atlantic League of Professional Baseball. CPBC agrees and covenants to the City that it will maintain membership in good standing with the Atlantic League of Professional Baseball or an Equivalent Professional Baseball League, and that it

will not seek, authorize, or consent to the transfer of its franchise to an area outside Charleston, West Virginia, without the prior written consent of the City or unless this Agreement is terminated or expired pursuant to the terms herein.

- d. Franchise Nontransferable. CPBC hereby agrees and covenants not to relocate the playing site of its home games without the prior written consent of the City, which may be withheld in the sole and absolute discretion of the City. In the event of a breach of the non-relocation covenant, the City shall have the right to enforce this covenant by any and all legal means, including but not limited to, injunctive relief from the Circuit Court of Kanawha County.
- e. Equal Employment Opportunity. CPBC agrees and covenants to the City that it is presently and will continue to be an equal opportunity employer and at all times shall comply with the laws and regulations that prohibit discrimination and that CPBC explicitly states that it will not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, sexual orientation, gender identity, or national origin.
- f. Use of Matters Subject to Copyright. Should CPBC, its agents, employees, invitees or guests use or allow the use of any composition, work or material, CPBC agrees to indemnify and save the City harmless from loss, damage or expenses arising from any claim of infringement of such copyright or the use of unlicensed composition, work, or material.
- g. Prohibition Against Dangerous Materials and Substances. CPBC agrees not to bring into the Stadium any material, substance, equipment or object that is likely to endanger the life or to cause bodily injury to any person within the Stadium, or which is likely to constitute a hazard to property therein without the approval of the City. The City shall have the right to refuse to allow any such materials, substances or equipment to be brought into the Stadium and the further right to require its immediate removal therefrom if found thereon.

B. City Covenants.

- a. Stadium Compliance. The City represents, covenants and warrants that throughout the term of this Agreement, the Stadium has been constructed and shall be maintained in compliance with (i) all applicable building, health, safety, bidding, procurement, traffic and zoning ordinances, applicable standards for streets and roadways (if any are constructed by the City in connection with the Stadium), and covenants and restrictions, if any, which apply to the Stadium property upon which the Stadium is located, and (ii) all applicable Environmental Law.

ARTICLE XV.

INDEMNIFICATION AND INSURANCE

A. Indemnification.

- a. Indemnification of the City by CPBC. CPBC agrees to indemnify and hold harmless the City and its respective officers, directors, duly authorized agents and employees from any and all claims brought for personal injury, death, property damage and

any other losses, damages, charges or expenses, including reasonable attorney fees, which is in any way in connection with the operation of the Stadium, any Stadium Event, or the general operations of CPBC or its duly authorized agents, including but not limited to the conduct of any patrons or players at the Stadium, at any Stadium Event, or involved in the general operations of CPBC, or any breach of this Agreement, in connection with CPBC's activities pursuant to this Agreement.

- b. Indemnification of CPBD by City. The City agrees to indemnify and hold harmless CPBD and its respective officers, directors, duly authorized agents and employees from any and all claims brought for personal injury, death, property damage and any other losses, damages, charges or expenses, including reasonable attorney fees, which are a direct result of action or inaction by City employees during a City event. The City's indemnification amount shall not exceed the amount of insurance coverage as specified in an event specific policy.

B. Insurance Policies.

- a. Insurance Required of CPBC. CPBC shall, effective as of the date that CPBC is permitted to occupy the Stadium pursuant to the terms herein, obtain and maintain throughout the term of this Agreement, public liability coverage including personal injury liability and contractual liability; if on a commercial general liability form, the limit per occurrence shall be not less than One Million Dollars (\$1,000,000.00) and an aggregate of not less than Three Million Dollars (\$3,000,000.00) combined single limit (CSL) per occurrence and include bodily injury and property damage liability; automobile coverage with liability limits of not less than One Million Dollars (\$1,000,000.00) combined single limits (CSL) bodily injury and property damage per accident; workers compensation coverage to protect CPBC's permanent and temporary employees; employers liability insurance (including broad form *Mandolidis* coverage) with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence; and excess or umbrella liability insurance (covering over commercial general liability, auto liability, and employers liability) with minimum limits of no less than Four Million Dollars (\$4,000,000.00) per occurrence. CPBC shall also obtain and maintain personal property insurance on its personal property located at and within the Stadium. CPBC will name the City as additional insured on the public liability policy and provide certificates of all insurance or original policies as they shall be on file prior to the beginning of the term of this Agreement. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State of West Virginia.
- b. Insurance Required by the City. Throughout the term of this Agreement, the City shall procure and pay for insurance for the full replacement value of the Stadium, at its cost and expense, against damage destruction, from whatever cause. The Parties acknowledge that the City may use its self-insurance program to provide this insurance. Notwithstanding anything contained herein to the contrary, CPBC's liability insurance shall be and remain the primary insurance for all occurrences.

ARTICLE XVI.

CONDEMNATION

In the event that any portion of the Stadium is taken from the City pursuant to any right of eminent domain exercised by any governmental entity or pursuant to any governmental order and such taking renders the Stadium unfit for its intended purpose, CPBC shall receive no portion of the award granted with respect to such taking.

ARTICLE XVII.

FORCE MAJEURE

CPBC and the City agree that with respect to any services to be provided, payments to be made, or action to be taken by either Party during the term of this Agreement, upon reasonable notice, the Party required to furnish or perform the same shall in no event be liable for failure to do so when prevented by any cause beyond the reasonable control of such Party such as strike, lock-out, suspension of play of baseball, breakdown, accident, order or regulation of or by any governmental authority, the Atlantic League of Professional Baseball or any entity controlling the Atlantic League of Professional Baseball (or the Equivalent Professional Baseball League to which CPBC is a member, if applicable), or failure of supply, or inability, by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to furnish such services, or because of war or other emergency. The time within which such services, payments, or actions shall be performed or rendered shall be extended for a period of time equivalent to the delay of such cause. If a Force Majeure event results in CPBC not being able to play home baseball games at the Stadium then obligations of either party to make payments, as herein provided, shall be suspended for the duration of such event and the term of this lease shall be extended for an equal period of time and said party's obligations to make payments shall continue.

ARTICLE XVIII.

ASSIGNABILITY AND TRANSFERABILITY

In the event CPBC is sold or ownership is transferred, as a condition precedent to such sale or transfer, the purchaser or transferee shall agree in writing to comply, without qualification, with all of the terms, covenants and restrictions of this Agreement. Further, CPBC acknowledges the desire of the City that local individuals or entities have an opportunity to purchase the interest in the baseball club owned by CPBC should CPBC determine to sell such interest. Consistent with such desire of the City, CPBC agrees to take reasonable actions as may be appropriate to offer such a sale of such interest to local individuals should CPBC determine to sell such interest. The City agrees and acknowledges that the terms of any sale of the interest in the baseball club owned by CPBC and CPBC's ability to accept or reject offers to purchase such interest are within the sole discretion of CPBC. The City may assign this Agreement at any time and for any reason. The Parties agree that the assignee of the City, if such an assignment should be made, shall be able to enforce the provisions of this Agreement pursuant to such assignment without the further consent of the City. Any entity assuming this agreement from the City shall be able to fully comply with

the terms and conditions of this agreement, or City shall continue to be fully liable for all obligations under this Agreement.

ARTICLE XIX.

TERMINATION UPON DEFAULT

In addition to the termination provisions above, the following events of default may result in termination of this Agreement by the non-breeching party:

- A. Failure by CPBC to pay the License Fee and other fees in the manner and at the times provided for in Article XIII of this Agreement. In the event CPBC shall default in the payment of the License Fees or any other fees as aforesaid and such default shall not be remedied within thirty (30) days after receipt by CPBC of written notice of such default from the City, this Agreement may be subject to immediate termination by the City upon giving CPBC prior written notice of such termination. CPBC shall be entitled to receive the aforesaid thirty (30) day notice only once within any twelve (12) month period and any subsequent failure to pay the License Fee or any other fees described above shall be deemed an immediate default by CPBC and the City shall have the right to terminate this Agreement upon giving CPBC prior written notice of such termination.
- B. If either Party hereto shall otherwise materially breach, violate or fail to fully perform any obligation, covenant or representation contained in this Agreement, including, but not limited to, Articles XII ("UTILITIES"), XIV ("EQUIPMENT") or XV ("COVENANTS") of this Agreement, the non-breaching Party may upon ninety (90) days written notice thereof, terminate this Agreement; provided, however, that the defaulting Party shall have the right and opportunity to cure the default within said ninety' (90) day period or if such breach, violation or non-performance cannot be cured within a ninety (90) day period, to continue diligently and in good faith to effect such cure within such period, provided that, in no event shall such opportunity to cure exceed one hundred eighty (180) days after receipt of such notice. In the event that such breach, violation or non-performance is not cured within said ninety (90) day period or any authorized extension thereof, then, this Agreement shall terminate upon the expiration of such period and the non-breaching Party shall thereupon have the right to exercise such additional rights or remedies as they may have by law.

ARTICLE XX.

PERMITS

The City acknowledges the need of CPBC to obtain necessary permits for the operation of the Stadium. These permits include (but are not limited to) alcohol permits, fireworks permits, signage permits and other permits consistent with the operation of a Atlantic League of Professional Baseball club. City agrees to cooperate in any reasonable way possible to assist CPBC in successfully obtaining these permits.

ARTICLE XXI.

MISCELLANEOUS

- A. Anti-Discrimination. CPBC shall not discriminate in any manner on the basis of age, ancestry, citizenship, color, creed, disability, handicap ethnic origin, family status, marital status, height, weight, national origin, race, sex, and sexual orientation with respect to any applicant or employee, and shall conform in all respects to the pertinent provisions of federal, state or local laws, ordinances, rules and regulations of employment practices. CPBC further agrees that in serving the public, its employees shall not, on the grounds of age, ancestry, citizenship, color, creed, disability, handicap ethnic origin, family status, marital status, height, weight, national origin, race, sex, and sexual orientation, discriminate or permit discrimination or refuse to serve a person or group of persons in any manner prohibited by federal, state or local laws, rules, ordinances and regulations.
- B. Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of West Virginia. The Parties agree that any action arising from or relating to this Agreement shall be instituted in the Circuit Court of Kanawha County, West Virginia. The Parties agree to participate in good-faith negotiation and mediation to resolve any potential issues arising out of this Agreement before initiating any judicial proceedings.
- C. Entire Agreement. This Agreement constitutes the final, complete, and exclusive written expression of the intent of the Parties with respect to the subject matter hereof which will supersede all previous verbal and written communications, representations, agreements, promises or statements.
- D. Authority. CPBC and the City, respectively, each represent that the individuals acting as signatories to this Agreement have the authority to bind the CPBC and the City and that this Agreement, when properly executed by both Parties, will constitute a valid and binding agreement, enforceable in accordance with this terms.
- E. Cost and Attorney Fees. The Parties hereto agree that each party shall bear their own reasonable expenses and cost incurred in enforcing any of the provisions of this Agreement, this shall include but is not limited to attorney fees, costs and expenses.
- F. Dependency and Severability. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independent of another, provided that if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability of CPB to perform and have access to the Stadium as provided for herein, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.
- G. Notice and Addresses. All notices required to be given under this Agreement shall be given by certified or registered mail, addressed to the proper Party to the following addresses, or

at such other address as may be subsequently given pursuant to this Section and shall be deemed given when deposited in the U.S. mails, postage prepaid:

IF TO CPBC: Mr. Andrew Shea, Charleston Professional Baseball Company, LLC, 917 Belmore Drive, Lexington, Kentucky 40509.

IF TO THE CITY: The City of Charleston, City Manager, 501 Virginia Street, East, Charleston, West Virginia 25301.

- H. Amendment, Modification, or Alteration. No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the Parties herein.
- I. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either Party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.
- J. Essence. Time is of the essence for this Agreement.
- K. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
- L. Headings. The titles of articles and sections of this Agreement are for reference purposes only and shall be of no binding effect.
- M. Valid Limited Liability Company. CPBC represents that as of the date of the execution of this Agreement it is organized and in good standing under the laws of the State of West Virginia, that it is duly authorized to enter into this Agreement and has taken all requisite corporate action to obtain such authorization and that no consent of or notice to any other individual, private or public entity or governmental authority is required in connection with the execution, delivery and performance of the Agreement.
- N. Prohibition Against Food and Beverage Being Brought into the Stadium. Signs shall be posted in appropriate locations in the Stadium which shall prohibit patrons from bringing any food, beverages, beverage containers or alcoholic beverages into the Stadium.
- O. Status of Parties. Parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes and nothing contained in this Agreement shall be determined to be created a partnership or joint venture between CPBC and the City with respect to CPBC's activities conducted at the Stadium pursuant to the terms of this Agreement.
- P. Waiver. The waiver by either the CPBC or the City of any default or breach by the other Party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other Party of the same or another provision of this Agreement.

- Q. Improvements. CPBC shall make no improvements in the Stadium without the prior approval of the City. Any improvements made that shall be thereby affixed to the Stadium shall become the absolute property of the City upon termination or expiration of this Agreement.
- R. Waste or Nuisance. CPBC shall not commit or permit any waste on or about the Stadium during the term of this Agreement nor shall it maintain, commit or permit the maintenance or commission of any nuisance on or about the Stadium or use the Stadium for any unlawful purposes or in violation of Municipal Code.
- S. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.
- T. References to the City. All references to the City in this Agreement shall be deemed to also be references to such officers or employees or other designees of the City as may be appropriate to implement the terms of this Agreement.
- U. Exhibits. All exhibits attached hereto are incorporated into and are a part of this Agreement as if fully set out herein.
- V. CPBC's Property Damage and Loss. Nothing herein shall be construed to create a bailment relationship between the City and CPBC or the Club concerning any property brought on the premises of the Stadium by CPBC or the Club unless such property is delivered into the possession of the City.
- W. Employee Status. It is understood and agreed that no agent, servant or employee of CPBC or the Club or any of its subcontractors shall under any circumstances be deemed an agent, servant or employee of the City, and that no agent, servant or employee of the City shall be under any circumstances deemed an agent, servant or employee of CPBC or the Club.
- X. Judicial Relief in the Event of Termination. Anything in this Agreement to the contrary notwithstanding, neither Party shall have the right to terminate this Agreement before the expiration of the period required for the giving of notice before termination, if the defaulting party in good faith commences a judicial proceeding to contest the existence of any such plain default and uses reasonable diligence in prosecuting such action and complies with the final judgment of the court in such action; but nothing herein shall prevent a court from granting such protective orders, injunctions and interlocutory judgments as might otherwise be appropriate.
- Y. Property Remaining in the Stadium Post-Termination or Expiration. Any and all property belonging to CPBC, or anyone claiming through or under CPBC, which may be found on the premises after termination or expiration of the Agreement may be handled, removed or stored by the City at the risk and expense of CPBC and the City shall be responsible for the preservation or the safe-keeping thereof. CPBC shall pay to the City any and all expenses incurred for such removal and all storage charges. After 30 days notice from City to CPBC to remove such property, City may remove such property and dispose of such property in any manner determined by City without liability to CPBC.

- Z. Limited Obligation. Notwithstanding anything in this Agreement to the contrary, in no event shall any financial obligation of the City to CPBC or any other third party described in this Agreement be payable by the City or otherwise enforceable against the City as a remedy unless the City has provided within its budget for the payment of such financial obligations in the fiscal year during which such financial obligation is incurred. In no event is this Agreement to be construed to create nor shall there be available to CPBC or any other third party a remedy for any financial obligation of the City which is in violation of the Constitution of the State of West Virginia or any of the laws of the State of West Virginia. However, it is the intention of the City to provide for the obligations created herein consistent with the laws of the State of West Virginia and the Constitution of the State of West Virginia so as to prevent any default in the terms of this Agreement.
- AA. Nature of Interest in the Stadium. The Parties hereto agree and declare that any leasehold interest of CPBC or any other third party in and to the Stadium and this Agreement created under this Agreement shall have no separate, ascertainable taxable value, it being the intent of the parties hereto that so long as the Stadium is owned by the City, the State of West Virginia, any agency thereof, or any county, municipality or political subdivision or agency thereof, the real and personal property comprising the Stadium shall be entered by the Assessor of Kanawha County, West Virginia as exempt from ad valorem taxes upon the land and personal property books (or such other documents or media upon which the assessment of real and personal property appears), and none of the parties shall request the Assessor of Kanawha County, West Virginia to separately assess or list the leasehold interest separately from the freehold interests. Notwithstanding the foregoing, if the Assessor of Kanawha County, West Virginia assess ad valorem taxes upon the property of the Stadium, it shall be the sole and exclusive responsibility of CPBC to satisfy any such assessment.
- BB. Financial Statements. CPBC agrees to provide the City access to yearly financial statements and information within 30 days upon request by the City.

IN WITNESS WHEREOF, by the duly authorized signatures below, the City and CPBC hereby agree and accept the terms set forth in this Agreement and acknowledge that they are freely signing this Agreement after reading and understanding the entire Agreement.

CITY OF CHARLESTON

Signature

Title

CHARLESTON PROFESSIONAL
BASEBALL COMPANY, LLC

Signature

Title

EXHIBIT A.
FOOD AND BEVERAGE CONCESSIONS EQUIPMENT

Ice makers
Hot dog rollers
Stand up refrigerators
Walk-in cooler
Wall-in freezer
Soda Fountains
Portable concessions stands
Popcorn makers
Condiment carts
Smallwares
Hot boxes
Serving carts
Linens
Pretzel warmers
Pizza makers
Beer systems
Dishwashers
Ovens
Stoves
Grilles
Storage racks
Coffee/hot chocolate makers
Fryers
Steamer
Boilers
Broilers
Pizza Tables
3-compartment sinks
Chafers
Speed racks

[CPBC confirm the receipt of the above equipment]

AMS
Initials

May 19, 2021
Date

EXHIBIT B.

DESCRIPTION OF STADIUM REAL ESTATE

ALL THAT TRACT OR PARCEL OF LAND with the buildings and improvements thereon, situate in the City of Charleston, County of Kanawha, State of West Virginia, sometimes known as the "Morris Square Block" which is approximately 278,443 square feet (6.39 acres) and including the buildings located on the parcel at 601 Morris Street and 603 Morris Street.

EXHIBIT C.
MAP OF PARKING LOTS

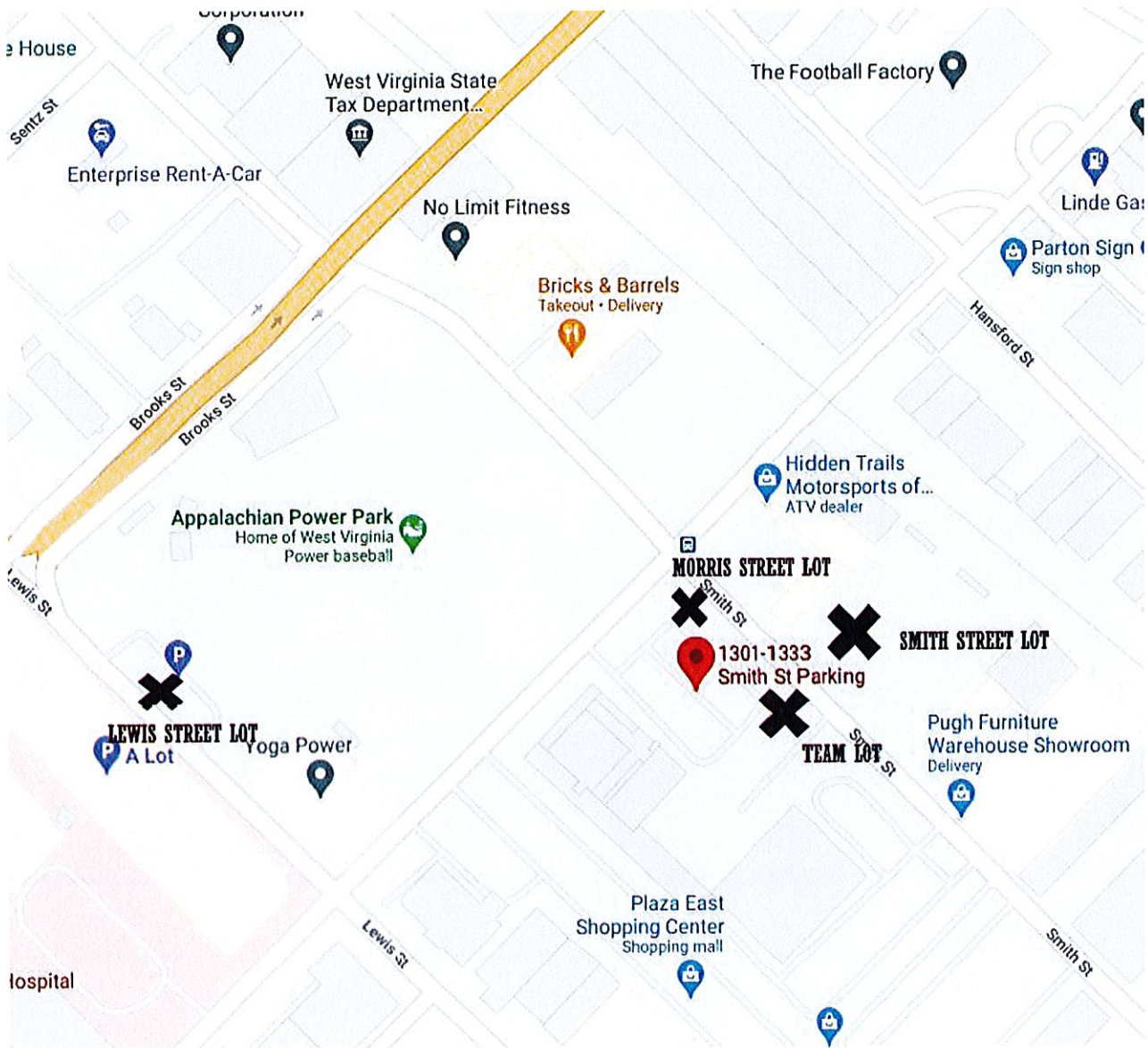


EXHIBIT D.
CITY OWNED EQUIPMENT LIST

~~Sod cutter
Rototiller
Cherry picker
Air compressor
Palate jack
Fork lift
Aerator
Roller for field
Pin spiker
Top dresser~~

[CPBC confirm the receipt of the above equipment]

AMS
Initials

May 19, 2021
Date

Resolution No. 799-23

Introduced in Council:

Adopted by Council:

May 1, 2023

Introduced by:

Referred to:

Joseph Jenkins

Finance

- 1 Resolution No. 799-23 - Authorizing approval of Amendment No. 6 of the FY 2022-2023 General
- 2 Fund Budget as indicated on the attached list of accounts.
- 3
- 4 Be it Resolved by the Council of the City of Charleston, West Virginia:
- 5
- 6 That Amendment No. 6 of the FY 2022-2023 General Fund Budget as indicated on the attached
- 7 list of accounts is approved.

General Fund FY 2022-2023 Budget Amendment No. 6 - May 1, 2023

Revenues and Fund Balances

Account No.	Department	Account Description	Current Amount	Increase/ (Decrease)	Amended Amount
001 380 00 0000	Revenue	Interest	30,000	465,000	495,000
Net Increase/(Decrease) to Revenues				465,000	

Expenditures

Account No.	Department	Account Description	Current Amount	Increase/ (Decrease)	Amended Amount
001 436 00 000 2 230 Building Commission		Contracted Services	1,044,494	465,000	1,509,494
Net Increase/(Decrease) to Expenditures				465,000	

Description:

To increase the estimated interest revenue in the General Fund and increase the expenditure line for Building Commission contracted services to fund dilapidated building demolitions.

Reportable: To maintain compliance with the budgetary guidelines of the State of West Virginia.

Resolution No. 800-23

Introduced in Council:

May 1, 2023

Adopted by Council:

Introduced by:

Joseph Jenkins

Referred to:

Finance

Resolution No. 800-23 – Authorizing the Mayor or City Manager to purchase Pulsar swimming pool chemicals from Main Line Commercial Pools in the amount of \$56,370 for the Parks and Recreation Department to be used in City-operated pools with Pulsar equipment. The vendor is a sole source provider.

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

That the Mayor or City Manager is authorized to purchase Pulsar swimming pool chemicals from Main Line Commercial Pools in the amount of \$56,370 for the Parks and Recreation Department to be used in City-operated pools with Pulsar equipment.



INSTRUCTIONS: This form must be submitted to the City Manager's Office for any purchase of materials or supplies costing **\$2,500 or more**. A minimum of **3** quotes is required for this form.

CITY OF CHARLESTON
Purchase Request

Date: 4/14/23

To: CITY MANAGER,

I request permission to purchase the following materials and/or supplies: _____

Pulsar Swimming Pool Chemicals

Purchase justification: Pools chemicals are required to run the swimming pools.

If approved, the total purchase price will be: \$56,370

(Check One)

- ☐ The price is less than the \$25,000 permitted for purchases without advertising for bids and needing approval from City Council. I have not purposefully split the purchase request to keep the purchase under the \$25,000 threshold and have not favored a particular vendor. I have not shared competitive information with any vendor(s).
- ☒ The proposed vendor is a sole source provider for the materials/supplies requested. (Skip to **ITEM A** on page 2.)

I have contacted the following responsible vendors and have attached their written quotes for the requested item(s): (Minimum of 3 Quotes Required)

- | | | |
|----|-----------------------------------|-------------------------------|
| 1. | <u>Main Line Commercial Pools</u> | Price Quote: \$ <u>56,370</u> |
| 2. | <u></u> | Price Quote: \$ <u></u> |
| 3. | <u></u> | Price Quote: \$ <u></u> |
| 4. | <u></u> | Price Quote: \$ <u></u> |
| 5. | <u></u> | Price Quote: \$ <u></u> |

The apparent low-bid vendor *meeting specifications* is: Main Line Commercial Pools

AND

☒ The low-bid vendor is not delinquent on any financial obligations owed to the City of Charleston according to the City Collector's records, and I recommend authorizing the purchase through the low-bid vendor.

OR

☐ I recommend not contracting with the lowest bidder meeting specifications and instead recommend contracting with because:

Additionally, the recommended vendor is not delinquent on any financial obligations owed to the City of Charleston according to the City Collector's records.

ITEM A (For Sole Source Procurements ONLY)

Explain what is unique about this vendor/brand and why your department must purchase this product:

The pulsar chemicals are to be used in pools with Pulsar equipment. Three out of four of the
City pools have Pulsar chlorinators and Pulsar dry acid pumps.

Identify at least 1 independent third party who has verified the vendor is a sole source for the item(s) requested to be purchased, and submit his/her written opinion regarding the vendor's sole source status:

(Name & Phone Number) Mike McGraff

REQUESTOR'S DECLARATION

I declare that I have fully complied with the letter and intent of the City Code as it pertains to procurement and have exercised reasonable precaution to procure the item(s) requested above at the lowest price, consistent with good service and quality.

I also declare that I have no personal or business relationship with the listed vendor(s) that would be considered a conflict of interest, except as follows:

(List Actual, Potential, or Perceived Conflicts of Interest) _____

Request Submitted By: Rashaun Poore Department: Parks and Recreation

Is this purchase being paid with grant funds? ☐ Yes ☒ No

Funds Approval:  Date: 4/25/2023
Authorized Financial Officer

Account Number: 001-900-00-000-3-341 (Council approval needed)

City Manager Approval: _____ Date: _____



441 Feheley Drive
King of Prussia, PA 19406
(610) 279-9285
(610) 277-4276 fax

QUOTE

QUOTE NUMBER: 0103655
QUOTE DATE: 4/13/2023
EXPIRATION DATE: 5/13/2023
SALESPERSON: Gary E. Grimes
CUSTOMER NO.: 20-MISC.
CUSTOMER PHONE:

SOLD TO:

Misc Sales&Quotes to 11/11/19

SHIP TO:

Misc Sales&Quotes to 11/11/19

CONFIRM TO: Rashaun Poore

CUSTOMER P.O. City of Charleston - Pulsar

COMMENTS:

SHIP VIA

TERMS

C.O.D.

ITEM NO.	UNIT	ORDERED	SHIPPED	BACKORDER	PRICE	AMOUNT
P30170	EACH	288.000	0.000	0.000	170.00	48,960.00
PULSAR PLUS BRIQUETTES - 50LBS						
P30557	EACH	72.000	0.000	0.000	80.00	5,760.00
PULSAR pH DOWN +4						
/FT		1.000	0.000	0.000	1,650.00	1,650.00
SHIPPING CHARGES						

Estiamted Shipping of 15 Skids/Pallets to 1 Location in Charleston WV.

PLEASE SIGN BELOW AND RETURN TO SALES@MAINLINEPOOLS.COM

SIGNATURE: _____ DATE: _____

PRINT NAME: _____ PO# : _____

NET ORDER: 56,370.00

SALES TAX IS NOT INCLUDED IN TOTAL AND IS CHARGED WHERE APPLICABLE.
ESTIMATES DO NOT INCLUDE INSTALL, ELECTRICAL WORK, PERMITS, OR FREIGHT
UNLESS OTHERWISE NOTED. 20% RESTOCKING FEE FOR RETURNED ITEMS.
LABOR RATES ARE PORTAL TO PORTAL.

Effective as of October 1st, a 3% of convenience fee will be charged for any transaction over \$2,000 paid via credit card.

Resolution No. 801-23

Introduced in Council:

May 1, 2023

Adopted by Council:

Introduced by:

Joseph Jenkins

Referred to:

Finance

1 Resolution No. 801-23 – Authorizing the Mayor or City Manager to enter into a contract with
2 Specialty groups, Inc. in the amount of \$650,945 for the 5-Corners Intersection Construction
3 Project to include lighting and paving as a result of a competitive bidding process.

4
5 Be it Resolved by the Council of the City of Charleston, West Virginia:

6
7 That the Mayor or City Manager is authorized to enter into a contract with Specialty groups,
8 Inc. in the amount of \$650,945 for the 5-Corners Intersection Construction Project to include
9 lighting and paving as a result of a competitive bidding process.

Solicitation Information

Agency:

Number:

Description:

Deadline:

City of Charleston, WV

T5-03/23-148 5-Corners Intersection

Summary: The City of Charleston is soliciting bids for The 5-Corners Intersection project shall consist c

2023-04-11 14:00:00 UTC

of the installation of new signal pole foundations, underground conduit, signal masts, signal arms, sign:

al heads, signal cabinet, preemption equipment, detection equipment, roadway signs, curb painting, ro

oadway painting, preformed thermoplastic roadway markings, field wiring, asphalt resurfacing and side

walk improvements. This work shall include all materials, labor, tools, and equipment necessary to cor

nplete and protect all phases of the work performed as shown upon the attached drawings and in acco

ordance with these specifications. The work shall consist of the Vendor furnishing all materials, equipr

ment and labor necessary for the satisfactory completion of this project. All materials, equipment, and

workmanship shall be in accordance with the West Virginia Department of Transportation, Division of

Highways, Standard Specifications for Roads and Bridges, 2023, as amended. The details contained in

n th

Bidders

Business Name	Address	Phone
Specialty Groups, Inc.	PO Box 96, Bridgeport, WV 26330-0096	(304) 623-3844
Stealth Ltd.	PO Box 7617, Charleston, WV 25356-0617	(304) 776-0047

Item

BID AND PROPOSAL FORM (2 OF 3)

201001-000 - CLEARING AND GRUBBING - LS
 204001-000 - MOBILIZATION - LS
 207001-001 - UNCLASSIFIED EXCAVATION - CY
 408002-001 - ASPHALT MATERIAL - GA
 415005-001 - STANDARD MILLING - SY
 609001-001 - CONCRETE SIDEWALK - SY
 609002-001 - BED COURSE MATERIAL - CY
 609005-001 - CURB RAMP, TYPE I - EA
 609006-001 - DETECTABLE WARNING SURFACE - EA
 610001-003 - PLAIN CONCRETE CURBING, TYPE III - LF
 636011-001 - TRAFFIC CONTROL DEVICE - UN
 636014-001 - FLAGGER - HR
 636021-001 - ELECTRIC ARROW - DA
 636025-001 - WARNING LIGHTS, TYPE B - DA
 639001-001 - CONSTRUCTION LAYOUT STAKE - LS
 642040-001 - INLET PROTECTION - EA
 AA 1- 402001-026 - ROADWAY ALTERNATES-MARSHALL ASPHALT SKID PVT, SG, TY IV -
 AA 2- 402001-027 - ROADWAY ALTERNATES-MARSHALL ASPHALT SKID PVT, S, TY IV - TN
 657008-001 - 2.00 LB CHANNEL POST - LF
 657018-001 - SUPPORT OR BRACKET REMOVAL - EA
 661001-001 - 0.080 IN FLAT SHEET SIGN - SF
 663001-026 - EDGE LINE, TYPE II- 6 IN - YELLOW - LF
 663002-010 - LANE LINE, TYPE V - 4 IN - YELLOW - LF
 663002-010 - LANE LINE, TYPE V - 4 IN - WHITE - LF
 663002-040 - CENTERLINE, TYPE II - 4 IN - LF
 663004-011 - CHANNELIZING LINE, TYPE V - 6 IN - LF
 663005-011 - STOP LINE, TYPE V - 24 IN - LF
 663006-010 - CROSSWALK LINE, TYPE V - 12 IN X 6 FT - LF
 663010-010 - ONE DIRECTION LANE ASSIGNMENT ARROW, TYPE V - EA
 663010-011 - MULTIDIRECTIONAL LANE ASSIGNMENT ARROW, TYPE V - EA
 663011-010 - LANE LETTER, TYPE V - EA
 660001-001 - SIGNAL CONTROLLER 01 - LS
 660002-030 - TRAFFIC DETECTOR, RADO 01 - LS
 660003-001 - SIGNAL SECTION, G-16 - EA
 660003-006 - SIGNAL SECTION, V-12 - EA
 660004-030 - SIGNAL SUPPORT, All, PAINTED - EA
 660004-050 - SIGNAL SUPPORT, EI, PAINTED - EA
 660007-001 - MISCELLANEOUS SIGNAL, 01 - LS
 660010-001 - PRIORITY CONTROL SYSTEM DETECTOR, D4 - EA
 660010-010 - PRIORITY CONTROL SYSTEM EMITTER, OE - EA
 661001-001 - 0.080 IN FLAT SHEET SIGN - SF
 661030-001 - INTERNALLY ILLUMINATED SIGN, 72" X 18", SS - EA
 661030-001 - INTERNALLY ILLUMINATED SIGN, 72" X 18", DS - EA
 662002-001 - GALVANIZED STEEL CONDUIT, 01 - LS

662006-001 - JUNCTION BOX, TYPE H, 18" x18" - EA
662006-001 - JUNCTION BOX, TYPE H, 24"x24" - EA
662007-001 - LUMINAIRE, TYPE LED - EA
662014-001 - INCIDENT AL ELECTRICAL WORK, LCI - LS

48 Items

Local Vendor Preference

Specialty Groups, Inc.			
Quantity	Price	Extension	Price
1.0000	\$299.73	\$299.73	\$8,000.00
1.0000	\$32,532.97	\$32,532.97	\$38,000.00
30.8000	\$199.82	\$6,154.46	\$225.00
219.0000	\$5.00	\$1,095.00	\$265.00
1,907.0000	\$14.99	\$28,585.93	\$18.00
140.0000	\$109.90	\$15,386.00	\$120.00
26.2000	\$319.72	\$8,376.66	\$340.00
5.0000	\$6,094.60	\$30,473.00	\$6,900.00
5.0000	\$289.74	\$1,448.70	\$325.00
227.0000	\$94.92	\$21,546.84	\$110.00
5,945.0000	\$1.50	\$8,917.50	\$1.50
100.0000	\$67.94	\$6,794.00	\$150.00
20.0000	\$28.97	\$579.40	\$34.00
240.0000	\$3.00	\$720.00	\$3.85
1.0000	\$499.56	\$499.56	\$3,500.00
3.0000	\$139.88	\$419.64	\$550.00
210.0000	\$229.80	\$48,258.00	\$290.50
200.0000	\$0.00	\$0.00	\$0.00
56.0000	\$45.96	\$2,573.76	\$75.00
2.0000	\$199.82	\$399.64	\$200.00
23.0000	\$95.91	\$2,205.93	\$65.00
378.0000	\$0.85	\$321.30	\$2.75
30.0000	\$6.99	\$209.70	\$12.50
35.0000	\$6.99	\$244.65	\$12.50
994.0000	\$0.85	\$844.90	\$1.35
390.0000	\$7.99	\$3,116.10	\$16.50
85.0000	\$28.97	\$2,462.45	\$24.50
408.0000	\$17.98	\$7,335.84	\$15.50
4.0000	\$399.64	\$1,598.56	\$357.50
6.0000	\$429.62	\$2,577.72	\$440.00
8.0000	\$149.87	\$1,198.96	\$160.00
1.0000	\$40,663.95	\$40,663.95	\$22,000.00
1.0000	\$58,448.19	\$58,448.19	\$41,000.00
8.0000	\$2,597.70	\$20,781.60	\$572.50
26.0000	\$559.50	\$14,547.00	\$405.00
2.0000	\$81,227.99	\$162,455.98	\$54,000.00
6.0000	\$3,896.54	\$23,379.24	\$2,530.00
1.0000	\$12,788.66	\$12,788.66	\$48,000.00
1.0000	\$13,088.40	\$13,088.40	\$9,250.00
1.0000	\$2,897.43	\$2,897.43	\$3,000.00
40.0000	\$12.99	\$519.60	\$45.00
2.0000	\$4,695.83	\$9,391.66	\$3,500.00
1.0000	\$4,695.84	\$4,695.84	\$3,500.00
1.0000	\$27,275.82	\$27,275.82	\$45,000.00

3.0000	\$3,796.63	\$11,389.89	\$3,750.00
1.0000	\$4,895.66	\$4,895.66	\$3,300.00
2.0000	\$929.17	\$1,858.34	\$700.00
1.0000	\$4,695.84	\$4,695.84	\$2,500.00

Totals		\$650,950.00	
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		(\$5,000)= \$650,945.00	
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Stealth Ltd.
Extension

\$8,000.00
 \$38,000.00
 \$6,930.00
 \$58,035.00
 \$34,326.00
 \$16,800.00
 \$8,908.00
 \$34,500.00
 \$1,625.00
 \$24,970.00
 \$8,917.50
 \$15,000.00
 \$680.00
 \$924.00
 \$3,500.00
 \$1,650.00
 \$61,005.00
 \$0.00
 \$4,200.00
 \$400.00
 \$1,495.00
 \$1,039.50
 \$375.00
 \$437.50
 \$1,341.90
 \$6,435.00
 \$2,082.50
 \$6,324.00
 \$1,430.00
 \$2,640.00
 \$1,280.00
 \$22,000.00
 \$41,000.00
 \$4,580.00
 \$10,530.00
 \$108,000.00
 \$15,180.00
 \$48,000.00
 \$9,250.00
 \$3,000.00
 \$1,800.00
 \$7,000.00
 \$3,500.00
 \$45,000.00

\$11,250.00
\$3,300.00
\$1,400.00
\$2,500.00
\$690,540.90

(-5,000)= \$690,535.90

Submitted Bids

Business	Opened at	Status	Bid Total
Specialty Groups, Inc.	2023-04-11 14:02:28 UTC	Responsive	\$650,950.00
	Local Vendor Preference		(\$5,000.00)
			\$650,945.00

Stealth Ltd.	2023-04-11 14:02:31 UTC	Responsive	\$690,540.90
	Local Vendor Preference		(\$5,000.00)
			\$690,535.90

Submitted at	Signed by
2023-04-11 13:29:44 UTC	Robert S. Hamilton

2023-04-11 13:37:19 UTC	Brett Mondy
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Bill No. 7986

Introduced in Council:

May 1, 2023

Introduced by:

Mary Beth Hoover

Adopted by Council:

Referred to:

**Municipal Planning Commission
Planning, Streets and Traffic**

Bill No. 7986 - A BILL to amend the Zoning Ordinance of the City of Charleston, as amended, by adding Section 24-100-11 relating to off-premise electronic message boards.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Section 24-100-11 of the Zoning Ordinance for the City of Charleston, as amended, is hereby added to read as follows:

Sec. 24-100-11 Off-Premise Electronic Message Board

Off-premise electronic message boards may only be erected if the applicant for the proposed new sign removes and/or uninstalls other active nonconforming off-premise signs in their possession whose square footage equals at least double the square footage of the proposed new sign's total square footage.

Existing off-premise signs may be converted to an off-premise electronic message board only if an amount equaling the square footage of the converted sign's total square footage is removed from other active nonconforming off-premise signs in the applicant's possession. The conversion to an off-premise electronic message board may include structural changes but shall not increase the degree of nonconformity beyond that of the original sign.

For the purpose of this section, an active nonconforming off-premise sign is one that meets the following criteria within the past twelve (12) months:

1. has not been abandoned,
2. has had its copy face changed, or
3. has received income on the copy face.

Electronic message boards shall be static and nonanimated and shall remain fixed for a minimum of 8 seconds. Messages must transition instantly, with no transition graphics. The luminance may not exceed 5,000 nits (candela per square meter) between sunrise and sunset or 250 nits during nighttime hours.

Bill No. 7988

Introduced in Council:

May 1, 2023

Introduced by:

Becky Ceperley

Adopted by Council:

Referred to:

**Municipal Planning Commission
Planning, Streets and Traffic**

Bill No. 7988 – A bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an R-4 district to a PMC district, that certain parcel of land identified as 3115 Virginia Ave in Kanawha City, in the City of Charleston, Kanawha County, State of West Virginia, purchased by Charleston Area Medical Center, Inc., a West Virginia nonprofit, nonstock corporation.

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

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, is hereby amended by rezoning from a R-4 district to a PMC district the whole of the following described lot or parcel of land:

All of that certain lot or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging, situate in what is known as “Kanawha City”, in the City of Charleston, Loudon (now Kanawha City) District, Kanawha County, West Virginia, more particularly described as follows:

Being Lot No. Eight (8) in Block No. Nine (9) of said Kanawha City, as show upon the revised map of same, filed and recorded in the office of the Clerk of the County Court of Kanawha County, West Virginia, in Map Book 2, pages 148 and 149, said property having a frontage of fifty feet on the southerly side of Virginia Ave and extending back therefrom between parallel sidelines a distance of one hundred twenty (120) feet to an alley.

Being Tax Parcel 15 as shown on Kanawha City Tax Map No. 19. Said tax map is of record in, and used as zoning map sectionals by, the City Planning Office.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Section 1 of this Ordinance.

3. All prior ordinances, or parts of ordinances, inconsistent with this Ordinance, are hereby repealed to the extent of said inconsistency.

Bill No. 7989

Introduced in Council

Passed by Council

May 1, 2023

Introduced by

Referred to

Pam Burka

**Municipal Planning
Commission
Planning, Streets, and Traffic**

Bill No. 7989 – A bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an R-O district to a C-8 district, that certain parcel of land identified as 4415 MacCorkle Ave SE, Charleston, WV, 25304

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

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, is hereby amended by rezoning from an R-O district to a C-8 district the whole of the following described parcel of land:

a) Parcel No. 123 as shown on Kanawha City Tax Map No. 16. Subject parcel legally described as "LTS 13-14-15-16 BK 98 MCCORKLE AVE 4417". Said tax map is of record in the Planning Office.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Article 27 of this ordinance.

3. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

**PETITION TO REZONE FROM R-4 TO C-10
THE LAND AT
1801 BIGLEY AVENUE
320 ALETHA STREET
1804 ODELL AVENUE
1803 BIGLEY AVENUE
1805 BIGLEY AVENUE

CHARLESTON, WEST VIRGINIA**

TO THE MAYOR AND COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

I

Petitioner is the contract/purchaser of the property situate at 1801 Bigley Avenue, 320 Aletha Street, 1804 ODell Avenue, 1803 Bigley Avenue and, 1805 Bigley Avenue, Charleston, Kanawha County, West Virginia (collectively "the property").

II

Petitioner proposes to remove the blighted structures on the property and develop additional fenced storage for Sunbelt Rentals currently located at 1717 Bigley Avenue.

III

Petitioner wishes to have the property rezoned from an R-4 use to a C-10 use, said property described as follows: All of Parcel Nos. 25, 26, 27, 28 and, 29 as shown upon Charleston West Tax Map No. 30. Said property being commonly known as 1801 Bigley Avenue, 320 Aletha Street, 1804 ODell Avenue, 1803 Bigley Avenue and, 1805 Bigley Avenue, Charleston, West Virginia. The above-mentioned tax map is as of record in the Charleston Planning Department.

IV

The property is located between Bigley Avenue and I-64, across Aletha Street from Sunbelt Rentals. The entire area between Bigley Avenue and I-64 has experienced a gradual and steady decline in residential population over the years, being replaced by businesses which benefit from interstate exposure and accessibility. The development of the property for Sunbelt Rentals would be a continuation of this natural transition. Further, the development of the property would enhance the ability of Sunbelt Rentals to generate additional B & O tax revenue for the City while also eliminating non-productive and blighted structures. Sunbelt Rentals is a low-impact, neighbor-friendly, commercial business perfectly suited for this location.

V

Attached hereto is a Bill to accomplish the requested rezoning, a list of property owners who own property within 250 feet of the subject property, a map of the subject property, and a \$125.00 filing fee.

Respectfully submitted this _____ day of
December, 2022.

By: _____

George M. Smith, Attorney

On Behalf of,
O.V. Smith & Sons of Big Chimney, Inc.
4510 Pennsylvania Avenue
Charleston, WV 25302

Phone: (304) 965 3481

Bill No. 7990

Introduced in Council:

May 1, 2023

Introduced by:

Mary Beth Hoover

Adopted by Council:

Referred to:

**Municipal Planning Committee
Planning, Streets and Traffic**

Bill No. 7990 - A Bill to repeal and replace Chapter 91, Article II of the Code of the City of Charleston, as amended, relating to updating the floodplain regulations.

Now, therefore, be it Ordained by the Council of the City of Charleston:

That Chapter 91, Article II of the Code of the City of Charleston, West Virginia, be repealed and replaced, all to read as follows:

CHAPTER 91. - ZONING

ARTICLE II. - Floodplain Ordinance

DIVISION 1. - IN GENERAL

Sec. 91-11 Intent.

The intent of this Ordinance is to:

- (a) Promote the general health, welfare, and safety of the Community.
- (b) Encourage the utilization of appropriate minimum construction practices to prevent or minimize flooding damage.
- (c) Minimize danger to public health and safety by protecting the water supply and sanitary sewage disposal in cooperation with the City Sanitarian, and to protect natural drainage.
- (d) Assure the County Assessor obtains information concerning improvement of real property as required by WV Code §11-3-3a.
- (e) Assure all E-911 addresses are obtained and kept current to maintain the established emergency response dispatch systems.
- (f) Reduce financial burdens imposed on the residents, real property owners and its governmental units by preventing the unwise design and construction of development in areas subject to flooding.

36 **Sec. 91-12 Abrogation and Greater Restrictions.**

37
38 This ordinance supersedes any other conflicting provisions which may be in effect
39 in identified floodplain areas. However, any other ordinance provisions shall remain in
40 full force and effect to the extent that those provisions are more restrictive. If there is
41 any conflict between any of the provisions of this Ordinance, the more restrictive shall
42 apply.

43
44 **Sec. 91-13 Applicability.**

45
46 It shall be unlawful for any contractor, person, partnership, business, or corporation
47 to undertake or cause to be undertaken, any development, new construction,
48 substantial improvement, repair of substantial damage, other repairs, or the placement
49 or relocation of any structure (including manufactured homes) in the Special Flood
50 Hazard Area within the City of Charleston unless a floodplain determination has been
51 made from the Floodplain Administrator, a floodplain permit application has been
52 completed, and a permit has been issued by the Floodplain Administrator. In addition,
53 where land is partially or fully in the Floodplain is to be developed, subdivided, utilized
54 for a manufactured home park or subdivision, or otherwise developed, a site plan with
55 elevation data must be submitted to, and approved by, the Floodplain Administrator
56 prior to any development.

57
58 Provision of all other codes, ordinances, and regulations shall be applicable insofar
59 as they are consistent with the provisions of this Ordinance and the City's need to
60 minimize the hazards and damage resulting from flooding.

61
62 **Sec. 91-14 Matters not provided for specifically.**

63
64 Where conditions are encountered that are not specifically provided for herein, the
65 Floodplain Administrator shall determine the applicability of the provisions of this
66 Ordinance in accordance with its intent and shall require the applicant to take
67 appropriate measures pursuant to such determination.

68
69 **DIVISION 2. - INTERPRETATIONS AND DEFINITIONS**

70
71 **Sec. 91-21 Definitions**

72
73 Unless specifically defined below, words and phrases used in this Ordinance shall
74 be interpreted to give this Ordinance its most reasonable application.

75
76 *Adjacent property* includes any surface tract, regardless of whether such surface
77 tract is entirely within the City of Charleston, so long as a portion of said surface tract is
78 located within the City of Charleston, which shares an immediate and common
79 boundary up or down stream to the property that is the subject of the application for
80 Floodplain Permit. Adjacent property also includes all other property that may be
81 affected by flooding.

82
83 *Advisory flood height* means the water surface elevation (WSEL), in feet, of the 1%
84 annual chance (100-year) flood at a given location, as determined using hydrology and
85 hydraulics (H&H) analysis and the best available elevation data.

86
87 *Adversely affect adjacent properties* means to adversely affect a property the
88 increase in the elevation of the 100-year base flood elevation must be more than 1 foot
89 at any point. Stated conversely, if the effect is that the 100-year flood base flood
90 elevation rises 1 foot or less the property is not “affected”. This standard does not apply
91 to the Floodway. If prior permit(s) has/have been approved in the same area of the
92 Floodplain, the above definition would include the cumulative impact to the base flood
93 elevation.

94
95 *Appurtenant structure* means a secondary structure on the same parcel of property
96 as the principal structure, the use of which is incidental and shall not be habitable but
97 shall be used only for storage in association with the principal structure on said
98 property. This does not include a gas or liquid storage tank.

99
100 *Base flood* means the flood having a one percent (1%) chance of being equaled or
101 exceeded in any given year.

102
103 *Base Flood Elevation (BFE)* means the water surface elevation of the base flood in
104 relation to the datum specified on the City’s Flood Insurance Rate Map. For the
105 purposes of this Ordinance, the one hundred (100) year flood or 1% or greater chance
106 of flooding in any given year. (See 100-year flood also)

107
108 *Basement* means any area of the building having its floor sub grade (below ground
109 level) on all sides.

110
111 *Certificate of Floodplain Compliance* means a certification that the entire
112 development, including the elevation of fill or the lowest floor of a structure is in
113 compliance with all the provisions of this Ordinance.

114
115 *Compensatory storage* means an artificially excavated, hydraulically equivalent
116 volume of storage within the special flood hazard area used to balance the loss of
117 natural flood storage when artificial fill or structures are placed within the special flood
118 hazard area.

119
120 *Contractor* means a person who in any capacity for compensation, other than as an
121 employee of another, undertakes, offers to undertake, purports to have the capacity to
122 undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve,
123 move, wreck or demolish any building, highway, road, railroad, structure or excavation
124 associated with a project, development or improvement, or to do any part thereof,
125 including the erection of scaffolding or other structures or works in connection therewith,
126 where the cost of undertaking is two thousand five hundred dollars or more. Contractor

includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

- (1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;
- (2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
- (3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;
- (4) A pest control operator licensed under the provisions of W.Va. Code §19-16A-7(a) to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or
- (5) A corporation, limited liability corporation, partnership, or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs a full-time registered architect licensed to practice in this State or a registered professional engineer licensed to practice in this State. Contractor also does not include employees of such corporation, partnership, or sole proprietorship.

Critical facility means any facility in which even a slight chance of flooding is too great a threat.

Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a special flood hazard area if at all possible. If a critical facility must be located in a special flood hazard area it should be provided a higher level of protection so that it can continue to function and provide services during a flood.

Development means any man-made change to improved or unimproved real property, including but not limited to buildings or other structure, mining, dredging, filling, grading, paving, excavation or drilling operations, oil/gas well sites, pads, pits, retention ponds or storage of equipment or materials.

Flood means a general and temporary inundation of water in an area of normally dry land.

Flood Insurance Rate Map (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Charleston. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) means the official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.

Floodplain means a relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation. An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain Administrator means the person charged with enforcing the provisions of this ordinance. The Floodplain Administrator may also be identified as the Floodplain Manager. Pursuant to W.Va. Code §15-5-20(a) the Floodplain Administrator is required to complete six hours of training in floodplain management annually to maintain good standing with the West Virginia Division of Emergency Management.

Floodway means the channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood proofing (NON-RESIDENTIAL ONLY) means any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real property or improved real property, water and sanitary facilities, structures, and its contents.

Freeboard means a factor of safety usually expressed in feet above a flood level or BFE for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway condition, such as wave action, blockage at stream crossings, and increased runoff from urbanization of the watershed.

Highest Adjacent Grade (HAG) means the highest natural elevation of the ground surface immediately adjacent to the development or structure foundation. This is primarily used for purposes of insurance rating in approximated floodplains.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the

Secretary of the Interior as meeting the requirements for individual listing in the National Register;

(2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

a. By an approved state program as determined by the Secretary of the Interior; or,

b. Directly by the Secretary of Interior in states without approved programs.

Interested person or party includes (1) the applicant; (2) the owner(s) of the subject property; (3) at least one adult residing in any residence on the subject property at the time the Floodplain Permit Application is filed; (4) owners of any adjacent property; and (5) at least one adult residing in any residence on the adjacent property at the time the Floodplain Permit Application is filed.

Licensed manufactured home dealer means a business licensed to sell manufactured homes in the State of West Virginia as set forth in the West Virginia Code.

Licensed manufactured home installer means a contractor licensed to install manufactured homes in the State of West Virginia as set forth in the West Virginia Code.

Licensed professional surveyor means any person licensed by the West Virginia State Board of Examiners of Land Surveyors to engage in the practice of land surveying as defined in the West Virginia Code.

Lowest Adjacent Grade (LAG) means the lowest natural elevation of the ground surface immediately adjacent to the proposed development or structure foundation. The primary use of the LAG is to determine whether the structure is located within a special flood hazard area by comparing it to the base flood elevation.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in FEMA Technical Bulletin 2-93 (FIA-TB-2) and usable solely for parking of

vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure has proper flood openings and is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New construction means structures for which the start of construction as herein defined commenced on or after June 15, 1983, and including any subsequent improvements to such structures.

One-Hundred (100) Year Flood means a flood that has one chance in one-hundred or a one percent or greater chance of being equaled or exceeded in any given year. (See Base Flood Elevation also)

Person means any individual or group of individuals, corporation, limited liability corporation, partnership, association, or other entity, including State and Local governments and agencies.

Practice of engineering means any service or creative work, as described in West Virginia Code §30-13-1 et seq., the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects.

Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself to be a Registered Professional Engineer, or by using another title implies that he is a Registered Professional Engineer or that he is registered under West Virginia Code, §30-13-1 et seq. or who holds himself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering

within the meaning and intent of West Virginia Code §30-13-1 et seq.

Principally above ground means where at least 51 percent of the Actual Cash Value of a structure, less land value, is above ground. [44 Code of Federal Regulations §59.1]

Professional means any “professional” including but not limited to a “contractor”, “developer”, “engineer”, “architect”, “hydrologist”, “land surveyor”, etc., acting in any capacity with respect to this Ordinance, must be licensed by the State of West Virginia, when certification or licensure from the State of West Virginia is so required.

Reasonably safe from flooding means that during the base flood, or any other known flooding by the Floodplain Administrator, water should not damage structures and any subsurface waters related to the base flood and should not damage existing or proposed structures. Ways of determining Reasonably Safe from Flooding may be 3 feet above Highest Adjacent Grade, above high water marks from historic flooding, using topographic extrapolation from contour lines or utilizing the advisory flood height data on the WV Flood Tool.

Recreational Vehicle means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designated to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Registered professional engineer means a person who has been duly registered or licensed as a registered professional engineer by the West Virginia State Board of Registration for Professional Engineers as required by W.Va. Code §30-13-13 et seq.

Remedy a violation means to bring a structure or other development into compliance with the requirements of this Ordinance, or if full compliance is not possible, to reduce the adverse impact of the non-compliance to the greatest extent feasible.

Special Flood Hazard Area (SFHA) means the land in the Floodplain Area subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in this Ordinance.

357 *Start of construction* means the date the Floodplain Permit was issued, including
358 Floodplain Permit for substantial improvement or repair of substantial damage provided
359 the actual start of construction, repair, reconstruction, rehabilitation, addition,
360 placement, or other improvement was within 180 days of the Floodplain Permit date.
361 The actual start means either the first placement of permanent construction on a site,
362 such as the pouring of slabs or footings, the installation of piles, the construction of
363 columns, or any work beyond initial excavation, or the placement of a manufactured
364 home on a foundation. Although a Floodplain Permit must be obtained prior to
365 beginning, permanent construction does not include land preparation, such as clearing,
366 grading and filling, nor does it include the installation of streets and/or walkways, nor
367 does it include excavation for a basement, footings, piers or foundations or the erection
368 of temporary forms, nor does it include the installation on the property of accessory
369 buildings, such as garages or sheds not occupied as dwelling units or not part of the
370 main structure. For an alteration, the actual start of construction means the first
371 alteration of any wall, ceiling, floor, or other structural part of a building, whether or not
372 that alteration affects the external dimensions of the building.

373
374 *State Coordinating Office* means the West Virginia Division of Homeland Security
375 and Emergency Management.

376
377 *Stream* means as defined in West Virginia Code §7-1-3u, any watercourse, whether
378 natural or man-made, distinguishable by banks and a bed, regardless of its size,
379 through which water flows continually or intermittently, regardless of its volume.

380
381 *Structure* means a walled and roofed building, including a gas or liquid storage tank
382 that is principally above ground, as well as a manufactured home.

383
384 *Subdivision means* development that includes a creation of individual land parcels
385 for future sale. It does not include development where rights-of-way or easements are
386 obtained and recorded.

387
388 *Subject property* includes the surface tract(s) upon which the proposed
389 development is planned and for which the Floodplain Permit Application is submitted.

390
391 *Substantial damage* means damage of any origin sustained by a structure whereby
392 the cost of restoring the structure to its before damage condition would equal or exceed
393 50 percent of the fair market value of the structure before the damage occurred.

394
395 *Substantial improvement* means any repair, reconstruction, rehabilitation, addition,
396 or other improvement of a structure, the cost of which equals or exceeds 50 percent of
397 the fair market value of the structure before the start of construction of the improvement.

398
399 This term includes structures, which have incurred “substantial damage”, as defined
400 herein regardless of the actual repair work performed. The term does not, however,
401 include any project for improvement of a structure to correct existing violation(s) of State
402 or Local Health, Sanitary or Safety Code Specifications which have been identified by

the Local Code Enforcement Official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all Ordinance requirements that do not preclude the structure's continued designation as a historic structure.

Documentation that a specific Ordinance requirement will cause removal of the structure from the National Register of Historic Places, or the State Inventory of Historic Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from Ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

Improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences whether or not the alteration affects the external dimensions of the structure.

Top of bank means the lines depicted on the FIRM maps delineating each side of a stream indicate the top of the bank. In the field a professional familiar with fluvial geomorphology should document the top of the bank. When a professional is not employed, the top of the bank will be considered to be the top of the first significant slope landward of the water's edge when it is followed by at least 50 feet of relatively flat land.

Variance means a grant of relief by a community from the terms of a floodplain management regulation.

Violation means the failure of any structure or development to be fully compliant with all requirements of this Ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this Ordinance is presumed to be in violation until such time as the documentation is provided. No future improvements or developments can be made to structures found to be in violation unless the development is to bring the structure into compliance with the current ordinance.

DIVISION 3. – ESTABLISHMENT OF THE SPECIAL FLOOD HAZARD AREA

Sec. 91-31 Identification.

- (a) The identified special flood hazard area shall be those areas of the City of Charleston which are subject to a one percent or greater chance of flooding in any given year as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the City of Charleston by the Federal Emergency Management Agency (FEMA) dated August 1, 2023 or the most recent revision thereof including all digital data developed as part of the FIS.

- (b) The identified special flood hazard area shall also be those special flood hazard areas which have been identified as flood hazard areas by the City of Charleston by use of historic or other technical data and shown on an officially recognized “FIRM or the West Virginia Flood Hazard Determination Tool Specifically Advisory Flood Height data”. These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

Sec. 91-32 Descriptions of Special Flood Hazard Areas.

The identified special flood hazard area shall consist of the following four specific areas:

- (a) The Floodway Area shall be those areas of AE zone identified as Floodways in the FIS and as shown on the FIRM. The term shall also include any floodway areas delineated by developers in the approximated floodplain and designated as such by the community.
- (b) The AE Area Without Floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
- (c) The Approximated floodplain shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided.
- (d) Advisory Flood Heights
This information is displayed on the WV Flood Hazard Determination Tool. This data may be used (when available) by the Floodplain Administrator to determine if a property is in the Special Flood Hazard Area, and to assist in determining the height in which to elevate the structure as a permitting tool and is acceptable data to FEMA for a Letter of Map Amendment (LOMA).

The AO and AH floodplain those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by 1-percent-annual-chance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.

Sec. 91-33 Changes in Designation of Area.

- (a) Where natural or man-made changes have occurred and/or where more detailed studies have been completed by a qualified government agency, private entity, or qualified individual who can sufficiently document the necessity for such changes; the process to revise the delineation of the identified special flood hazard area may be recommended by the Floodplain Administrator and executed by the City of

Charleston. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency.

- (b) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practical but, not later than six months from the date such information becomes available, the City shall notify FEMA of the changes by submitting technical or scientific data.

- (c) The City of Charleston may identify and regulate new flood hazard or ponding areas. These areas shall be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high-water marks and/or approximate study methodologies.

Sec. 91-34 Elevations Prevail.

- (a) If the lowest natural grade adjacent to proposed development is *above* the Base Flood Elevation, and the following is provided to the Floodplain Administrator:
 - (1) elevation information certified by a Licensed Professional Surveyor or Engineer and a site plan demonstrating that all proposed development will occur above the Base Flood Elevation or,
 - (2) a Letter of Map Amendment (LOMA) from FEMA removing the site from the SHFA then the site shall be considered to be outside the Floodplain Area and shall not be required to conform to the provisions of this Ordinance at the discretion of the Floodplain Administrator.
- (b) If the lowest natural grade adjacent to proposed development is *below* the Base Flood Elevation, the site shall be considered to be within the Floodplain Area and the proposed structure shall be required to conform to all appropriate provisions of this Ordinance.

Sec. 91-35 Boundary Disputes.

Should a dispute concerning any Floodplain boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the Board of Zoning Appeals sitting as the "Floodplain Appeals Board". The burden of proof shall be on the appellant/applicant.

DIVISION 4. – UTILIZATION OF THE SPECIAL FLOOD HAZARD AREA

Sec. 91-41 Floodway.

Within any Floodway Area (F1), no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with

standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge. The resultant engineering study shall include a cover letter, signed, and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

Because Floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodways shall be preserved to the greatest extent possible.

- (a) New development shall not be permitted in the Floodway where reasonable alternatives exist elsewhere as determined by Floodplain Administrator. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the Floodway encroachment before a permit is issued.
- (b) When the Floodway is the only reasonable alternative the applicant shall demonstrate that the Floodway encroachment is the minimum necessary to accomplish the project.
- (c) All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable Federal and State Law, Ordinances and Regulations.
- (d) When small, single lot development (not incorporating significant amounts of fill) is proposed in a special flood hazard areas for which no regulatory floodway has been designated, a regulatory floodway may, at the discretion of the Floodplain Administrator, be determined to be a width equal to the channel of the stream and the adjacent land areas to a distance of one-half the width of the special flood hazard area as measured from the top of the bank nearest the site to the upland limit of the 1% annual chance special flood hazard area boundary.

Sec. 91-42 AE Zone Without Floodway Area.

Within any AE Zone Without Floodway Area, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point.

Sec. 91-43 Approximated Floodplain (Zone A).

Within any Approximated Floodplain Area:

- 583 (a) The Floodplain Administrator shall use elevation and floodway information from
584 Federal, State, or other acceptable sources when available to determine the
585 elevation above which development will be reasonably safe from flooding.
586
- 587 (b) When data from an acceptable source is not available, the Floodplain Administrator
588 shall review, or shall cause to be reviewed; all proposed development to determine
589 (1) the amount being invested and (2) the specific flood risk at the site. The
590 Floodplain Administrator shall then require the applicant to determine the elevation
591 above which the development and adjacent properties including but not limited to
592 existing buildings will be reasonably safe from flooding using hydrologic and
593 hydraulic analyses or other techniques. When hydrologic and hydraulic analyses
594 are required, they shall only be prepared by a registered professional engineer who
595 shall certify that the methods used correctly reflect currently accepted technical
596 concepts. The resulting study shall include a cover letter, signed by the responsible
597 professional, providing a statement of findings in basic terms. In addition, studies,
598 analyses, computations, etc. shall be submitted in sufficient detail to allow a
599 thorough technical review by the Floodplain Administrator.
600
- 601 (c) Any development and/or use of land shall be permitted provided that all such uses,
602 activities and/or development shall be undertaken in strict compliance with this
603 floodplain ordinance and related provisions contained herein and in all other
604 applicable Federal and State Laws, Ordinances and Regulations.
605
- 606 (d) Within any approximated Floodplain Zone (Zone A) without Floodway Area, no new
607 construction or development shall be allowed unless it is demonstrated that the
608 cumulative impact of the proposed development, when combined with all other
609 existing and anticipated development, will not increase the elevation of the 100-
610 year flood more than one (1) foot at any point.
611
- 612 (e) When Advisory Flood Height Data is available, this data will be utilized to assist in
613 permitting and regulating development within the Special Flood Hazard Area.
614

615 **Sec. 91-44 Alteration or relocation of a stream.**
616

- 617 (a) Whenever a developer intends to alter or relocate a stream within the special flood
618 hazard area the developer shall notify in writing, by certified mail, the City of
619 Charleston's Floodplain Administrator, the State Coordinating Office, any adjacent
620 communities, and any adjacent property owners of all such intended activities prior
621 to the alteration or relocation of the stream. Copies of all required notifications must
622 be submitted to the Federal Emergency Management Agency. In addition, prior to
623 issuing the local permit the Floodplain Administrator shall require copies of all
624 necessary permits from those governmental agencies from which Federal or State
625 Law requires approval.
626
- 627 (b) The developer shall also assure the City of Charleston in writing that the flood
628 carrying capacity within the altered or relocated portion of the stream will be

maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resulting study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, and computations shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

- (c) Alteration of a stream includes placement of temporary or permanent culverts, bridges, or other stream crossings. The Floodplain Administrator may require the use of certain "best practice" techniques in the construction of bridges, culverts, or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- (d) All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this Ordinance.
- (e) The developer is required to provide the City a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges, and other stream crossings. It shall be the responsibility of the applicant to transfer the agreement to the purchaser when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 91-84 of this Ordinance.
- (f) When any watercourse alteration has occurred, the applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study (FIS) and/or Flood Insurance Rate Maps (FIRM), when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

DIVISION 5. – CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Sec. 91-51 General.

A Permit is required to determine whether all new construction or substantial improvements are:

- (a) Located in an identified Floodplain, Floodway, or other special flood hazard area.

- (b) Designated (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (c) Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
- (d) Constructed by methods and practices that minimize flood damage.
- (e) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding.
- (f) To comply with West Virginia Code §11-3-3a concerning County Assessor "Building or Real Property Improvement Notice".
- (g) Approved by County Health Department for Well, Septic, and other permits to assure facilities are designed and located in compliance with the flood damage reduction requirements of this Ordinance.

Sec. 91-52 Basic Format.

The basic format of the permit shall include the following:

- (a) Name and address of applicant.
- (b) Name and address of owner of land on which proposed development is to occur.
- (c) Applicant shall provide names, addresses, and valid West Virginia license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9(b) of the West Virginia Code of State Regulations or the most recent revision thereof, if known at the time the Permit Application is submitted. If not known, applicant shall provide the information within 14 days of execution of a contract with its contractor(s) prior to beginning construction.
- (d) A description of site location sufficient to locate the proposed development including district, tax map and parcel numbers and most recent deed book and page number.
- (e) A standard site plan showing size and location of the proposed development as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow, the lowest adjacent grade to the proposed foundation and/or toe of fill, the Base Flood Elevation, and the location of the Floodway boundary when applicable.

- 720
- 721 (f) An acknowledgement that the applicant agrees to pay any and all fees associated
- 722 with the permitting process as set forth in Division 7, Sections 91-73 and 91-79 of
- 723 this Ordinance.
- 724
- 725 (g) An acknowledgement that the applicant agrees to allow The Floodplain Administrator
- 726 and authorized representatives of floodplain management programs access to the
- 727 development to inspect for compliance.
- 728

729 **Sec. 91-53 Elevation and Flood Proofing Information.**

730

731 All applicants are encouraged to exceed the minimum elevation requirements

732 contained herein. Flood insurance rates can be lowered significantly by increasing the

733 elevation of the lowest floor above the freeboard height required by this Ordinance.

734

735 Depending on the type of structure involved, the following information shall also be

736 included in the application for work within the Special flood hazard area:

737

- 738 (a) All structures, ductwork and electrical connections shall be elevated two feet above
- 739 the Base Flood Elevation and:
- 740
- 741 (1) A plan showing the size of the proposed structure and its relation to the lot
- 742 where it is to be constructed.
- 743
- 744 (2) A determination of elevations of the Base Flood, existing ground, proposed
- 745 finished ground and lowest floor, certified by a registered professional engineer
- 746 or licensed professional surveyor.
- 747
- 748 (3) Plans showing the methods of elevating the proposed structure including
- 749 details of proposed fills, pile structures, retaining walls, foundations, erosion
- 750 protection measures, etc. When required by the Floodplain Administrator, a
- 751 registered professional engineer or architect shall prepare the plans.
- 752
- 753 (4) Plans showing the methods used to protect utilities (including sewer, water,
- 754 telephone, electric, gas, etc.) from flooding to two feet above the Base Flood
- 755 Elevation at the building site.
- 756
- 757 (5) During construction, as soon as the basic elements of the lowest floor are in
- 758 place and before further vertical construction, it is highly recommended that the
- 759 applicant check for error by obtaining elevation data completed by a registered
- 760 professional engineer or licensed professional surveyor certifying the height of
- 761 the lowest floor. If a mistake in elevation has been made this is the best time to
- 762 correct the error.
- 763
- 764 (6) A finished construction elevation certificate must be prepared by a licensed
- 765 professional surveyor or others of demonstrated qualification. The elevation

certificate must confirm the structure in question together with attendant utilities are elevated in compliance with permit conditions.

(7) A Non-Conversion Agreement shall be signed by the applicant whenever the Floodplain Administrator determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:

a. The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this Ordinance.

b. The applicant agrees to notify prospective purchasers of the existence of the Non-Conversion Agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the purchaser through notarized signature, a copy of all new Non-Conversion Agreements shall be provided to the Floodplain Administrator. Failure to transfer the Non-Conversion Agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 91-84 of this Ordinance.

(b) All structures shall be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):

All applicants shall meet or exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this Ordinance. To obtain an "elevation credited" flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.

(1) Plans showing details of all flood proofing measures, prepared by a registered professional engineer, showing the size of the proposed structure and its relation to the lot where it is to be constructed.

(2) A determination of elevations of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits, certified by a registered professional engineer or licensed professional surveyor.

(3) A Flood Proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the registered professional engineer who prepared the plans in (1) above, stating the structure in question, together with attendant utility and sanitary facilities are designed so that:

a. The structure is watertight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.

- 812
- 813 b. The structure will withstand the hydrostatic, hydrodynamic, buoyant,
- 814 impact, and other forces resulting from the flood depths, velocities,
- 815 pressures, and other factors associated with the Base Flood.
- 816
- 817 (c) For Appurtenant structures constructed of flood resistant materials – used solely for
- 818 parking of vehicles, or limited storage (Appurtenant Structures only)
- 819
- 820 (1) A site plan prepared by a licensed professional surveyor or others of
- 821 demonstrated qualifications showing elevation of existing ground, proposed
- 822 finished ground and lowest floor. The plan shall also show details of proposed
- 823 flood resistant materials usage and the size of the proposed structure and its
- 824 relation to the lot where it is to be constructed. The location of the Floodway
- 825 boundary shall be represented on the plan when a Floodway is present on the
- 826 site.
- 827
- 828 (2) An Elevation Certificate, based on finished construction, must be prepared by a
- 829 licensed professional surveyor or others of demonstrated qualifications. This
- 830 certificate or report must confirm that the structure in question, together with
- 831 attendant utilities is designed so that:
- 832
- 833 a. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-
- 834 TB-2) are used in the construction of the structure from the lowest
- 835 structural element to two feet above the Base Flood Elevation and that all
- 836 utilities are located at least two feet above the Base Flood Elevation.
- 837
- 838 b. Hydrostatic flood forces on exterior walls are equalized by allowing for
- 839 automatic entry and exit of floodwaters. Designs for meeting this
- 840 requirement must either be certified by a registered professional engineer
- 841 or architect or meet or exceed the following minimum criteria:
- 842
- 843 1. A minimum of two openings having a total net area of not less than
- 844 one square inch for every square foot of enclosed area subject to
- 845 flooding shall be provided.
- 846
- 847 2. The bottom of all openings shall be no higher than one foot above
- 848 grade.
- 849
- 850 3. Openings may be equipped with screens, louvers, valves or other
- 851 coverings or devices provided that they permit the automatic entry
- 852 and exit of floodwaters.
- 853
- 854 (3) In addition, the applicant shall sign a Non-Conversion Agreement and notify
- 855 prospective purchasers of the existence of the Non-Conversion Agreement. It
- 856 shall be the responsibility of the applicant to transfer the Non-Conversion
- 857 Agreement to any purchaser at closing through notarized signature. A signed

copy of the transferred Non-Conversion Agreement shall be provided to the Floodplain Administrator. Failure to transfer the Non-Conversion Agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 91-84 of this Ordinance.

Sec. 91-54 Site Plan Criteria.

Site plans are required for all development, new construction and substantial improvements determined to be in a special flood hazard area and all proposed subdivisions and manufactured home parks. These proposals shall be reviewed by the Floodplain Administrator to assure that they are consistent with the need to minimize flood damage.

The owner or developer shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:

- (a) Name of registered professional engineer, licensed professional surveyor, or other qualified person responsible for providing the information required in this section.
- (b) A map showing the location of the proposed subdivision and/or development with respect to Floodplain Areas, proposed lot sites, and fill areas.
- (c) Where the subdivision or manufactured home park lie partially or completely in the special flood hazard areas, the plan map shall include detailed information giving the location and elevation of proposed roads, utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the special flood hazard areas. A registered professional engineer or licensed professional surveyor must certify the site plan.
- (d) All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain Area (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include Base Flood Elevation data and shall delineate the Floodway.
 - (1) When a Flood Insurance Study (FIS) is available from FEMA, the data contained in that study must be used to substantiate the Base Flood Elevation.
 - (2) If a FEMA Flood Insurance Study is not available the required data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or State and Local Water Resource Department.
 - (3) If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified

by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.

Where the subdivision or other development site lies partially in the special flood hazard area and all proposed development including fill will take place on natural grade a significant vertical distance above the Approximated Floodplain Area (Zone A) boundary depicted on the map, development of detailed Base Flood Elevation data may not be necessary. In these cases, the site plan for the proposed development must show contours at intervals of two (2) or five (5) feet depending on the slope, and clearly delineate the area to be developed and the location of the special flood hazard boundary as scaled from the FEMA map. A registered professional engineer, licensed professional surveyor, or others of demonstrated qualifications must certify the site plan.

Sec. 91-55 – Restrictions to Subdivision of land in special flood hazard areas.

Subdivision of land in the special flood hazard area shall result in lots that include a buildable portion outside of the special flood hazard area and be served by streets within the proposed subdivision having surfaces at or above the base flood elevation of the line defining the special flood hazard area limits. All new structures shall be sited on the portion of the subdivided lot that is located outside of the special flood hazard area.

DIVISION 6. – SPECIFIC REQUIREMENTS

Sec. 91-61 Design and Construction Standards.

To prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements, and the repair of substantial damage, to existing structures occurring in the Special flood hazard area.

(a) Basements and Lowest Floors

- (1) Residential Structures – All new construction, relocation, substantial improvements, including repair of substantial damage, of residential structures must have the lowest floor, including basement, ductwork, and utilities, elevated to two feet above the Base Flood Elevation.
- (2) Non-residential Structures – All new construction, relocation, substantial improvements, including repair of substantial damage, of non-residential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.

(3) Openings – For all new construction, relocation, substantial improvements, and repair of substantial damage, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, shall be provided;
- b. The bottom of all openings shall be no higher than one foot above grade;
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices if they permit the automatic entry and exit of floodwaters.

(4) A Non-Conversion Agreement shall be signed by the applicant on all flood-proofed structures and any elevated structures when the Floodplain Administrator determines that the area below the first floor could be converted to a non-conforming use (generally applies to the enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:

- a. The area below the Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this Ordinance;
- b. The applicant agrees to notify prospective purchasers of the existence of the Non-Conversion Agreement. It shall be the responsibility of the applicant to transfer the Non-Conversion Agreement at closing to the purchaser through notarized signature. A copy of a Non-Conversion Agreement shall be provided to the Floodplain Administrator. Failure to transfer the Non-Conversion Agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 91-84 of this Ordinance.

(b) Manufactured Home Placement

Certain unique characteristics of manufactured homes installed in special flood hazard areas pose an elevated risk of substantial damage to property. Therefore, it is required that:

All manufactured homes to be installed within the special flood hazard areas of the City of Charleston shall be installed by a contractor possessing a valid West

Virginia Manufactured Home Installer's License. The installer shall use an installation design engineered to withstand flood hazards specific to the particular home site. Manufactured homes to be installed or substantially improved within the special flood hazard areas shall be installed in accordance with the following standards:

- (1) The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated two feet above the Base Flood Elevation.
- (2) Elevation shall be on reinforced piers on a permanent foundation or other foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in special flood hazard areas.
- (3) All manufactured homes shall be securely anchored to an adequately anchored foundation system in accordance with the Code of Federal Regulations, Title 44 Chapter (1) Subpart (B) Section 60.3(b)(8). All manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- (4) Permanently attached rigid skirts and perimeter wall skirts of brick or block must have openings to prevent collapse and damage to supporting piers. The openings must be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
- (5) Openings may be equipped with screens, louvers, valves, or other coverings or devices if they permit the automatic entry and exit of floodwaters.
- (6) Any additions to a manufactured home shall be similarly anchored and vented.
- (7) Flexible Skirting and rigid skirting not attached to frame or foundation of a manufactured home are not required to have openings.

- (8) The licensed West Virginia manufactured home installer installing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth in this Ordinance.

(c) Appurtenant Structures

- (1) When possible, appurtenant structures shall be located out of the special flood hazard area.
- (2) Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - a. Use of the structure shall be restricted to parking or limited storage.
 1. Structures shall be no more than 600 square feet in size and valued at less than \$10,000 (Ten thousand dollars).
 2. Floors shall be at or above grade on at least one side.
 3. Structures shall be located, oriented, and constructed to minimize flood damage.
 4. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 5. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation.
 6. Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.
 7. Opening requirements:

Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

 - (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(ii) The bottom of all openings shall be no higher than one foot above grade.

(iii) Openings may be equipped with screens, louvers, valves or other coverings or devices if they permit the automatic entry and exit of floodwaters.

b. In addition, a Non-Conversion Agreement shall be signed by the applicant stating that the use of the appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this Ordinance. The applicant agrees to notify prospective purchasers of the existence of the Non-Conversion Agreement. It shall be the responsibility of the applicant to transfer the Non-Conversion Agreement at closing to the purchaser through notarized signature. A copy of the Non-Conversion Agreement shall be provided to the Floodplain Administrator. Failure to transfer the Non-Conversion Agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 91-84 of this Ordinance.

(d) Recreational Vehicle Placement

Recreational vehicles to be placed within any special flood hazard area shall either:

(1) Be installed in accordance with the manufactured home placement requirements and all other flood reduction requirements contained in this Ordinance; or

(2) Both:

i. Be on site for fewer than 180 consecutive days; and

ii. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnected utilities, security devices, and has no permanently attached additions.

(e) Fill

The City of Charleston officially recognizes the beneficial functions the Floodplain Area serves in storage and transportation of water during floods. Placement of fill in the special flood hazard area is discouraged and should be minimized.

1134 Placement of fill in other areas of the special flood hazard area shall be restricted to
1135 functional purposes such as elevating a structure. Fill shall only be permitted in the
1136 same permit with the related structure or other functional purpose. Placement of fill
1137 to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not
1138 generally be considered a functional purpose. The Floodplain Administrator may
1139 require the developer to provide compensatory storage before permitting fill.

1140
1141 No fill shall be permitted in the Floodway unless it has been demonstrated through
1142 hydrologic and hydraulic analyses performed in accordance with currently accepted
1143 technical standards that the proposed fill will not result in any increase in the Base
1144 Flood Elevation.

1145
1146 All fill placed in the special flood hazard area shall meet or exceed the following
1147 standards:

- 1148
1149 (1) Fill shall be used only to the extent to which it does not adversely affect the
1150 subject property and adjacent properties. The Floodplain Administrator may
1151 require the applicant to demonstrate through engineering reports that proposed
1152 fill would not adversely affect the subject property and adjacent properties.
1153 When required, hydrologic and hydraulic analyses shall be undertaken only by
1154 a professional engineer who shall certify that the technical methods used
1155 correctly reflect currently accepted technical concepts. The resulting study
1156 shall include a cover letter, signed, and sealed by the responsible professional,
1157 providing a statement of findings in basic terms. In addition, studies, analyses,
1158 computations, etc., shall be submitted in sufficient detail to allow a thorough
1159 technical review by the Floodplain Administrator. During permit review the
1160 Floodplain Administrator shall consider the following issues that have the
1161 potential to cause adverse impact to the subject property and adjacent
1162 properties:
- 1163
1164 a. Unacceptable increases in flood heights.
 - 1165
1166 b. Blocking drainage from the subject property and adjacent properties.
 - 1167
1168 c. Deflection of floodwaters onto adjacent existing structures.
 - 1169
1170 d. Increases to stream velocity initiating or exacerbating erosion problems.
 - 1171
1172 e. Other unique site conditions may be considered when determining
1173 whether fill will cause adverse impact to the subject property and adjacent
1174 properties including, but not limited to, subsidence areas, karst
1175 topography, stream blockages, and steep topography adjacent to the
1176 channel.
 - 1177

- (2) Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
- (3) A Fill Site must be contoured to drain properly (avoid ponding) consistent with pre-construction conditions. This provision does not apply to properly constructed impoundments which comply with the remainder of this Ordinance, and which are properly permitted by the West Virginia Department of Environmental Protection.
- (4) Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in subsection 5 below. For non-residential structures, fill shall be placed to provide access acceptable for intended use.
- (5) At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a non-residential structure.
- (6) Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted; no trash or woody debris shall be buried on site.
- (7) Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
- (8) Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
- (9) Fill site and fill must be protected from erosion.
- a. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less will be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
- b. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second will be protected from erosion by armoring them with stone or rock slope protection.
- (10) All applicants placing fill in a special flood hazard area shall obtain a Conditional Letter of Map Revision (CLOMR-F) from FEMA when directed to

do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant shall convert the CLOMR-F to a Letter of Map Revision based on Fill (LOMR-F) before a Certificate of Floodplain Compliance/Occupancy can be issued. The Floodplain Administrator is hereby appointed as the designated official to approve a request for a (CLOMR-F) or (LOMR-F), and shall cooperate with the applicant with respect to any requirements of FEMA for requesting a (CLOMR-F) or (LOMR-F), which includes, but is not necessarily limited to, approving said request and executing Form 1, "Overview & Concurrence Form" or other form as may be required by FEMA.

- (11) The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study (FIS) and/or Flood Insurance Rate Maps (FIRM), when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose.

(f) Placement of Structures and other development

All structures and other development shall be constructed and placed on the property to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.

- (1) Whenever possible, structures and other development shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
- (2) In so far as practicable, structures and other development shall be placed approximately on the same flood-flow lines as those of adjoining structures or development.

(g) Anchoring

- (1) All structures and other development including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
- (2) All air ducts, large pipes, swimming pools, above ground gas and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation or lateral movement.

(h) Flood Protection Setback

- (1) A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank of

50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. Specifically, as for oil and gas wells and well pads, no well pad may be prepared or well drilled within 100 feet from any perennial stream, natural or artificial lake, pond, reservoir, or wetland. [See W.Va. Code §22-6A-12(b)]. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks and enhance aquatic resources.

(2) Necessary public works and temporary construction may be exempted from this subsection at the discretion of the Floodplain Administrator.

(3) At the discretion of the Floodplain Administrator the Flood Protection Setback requirement can be waived in whole or part if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback Area. The conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front, and back lot line setbacks.

(i) Storage

(1) No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal, or plant life, shall be stored below Base Flood Elevation except for mineral storage properly and wholly within the ground in compliance with other State environmental agency(ies) requirements.

(2) Storage of other material or equipment may be allowed if not subject to substantial damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.

(3) Due to the potential of masking the natural elevation and making it more difficult to enforce this Ordinance, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.

(j) Utility and Facility Requirements

(1) All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

(2) All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(3) All other new or replacement public or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.

(4) Onsite waste disposal systems shall be located to avoid impairment to the system or contamination from the system during flooding.

(k) Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard areas as well as around structures on slopes within zones AH and AO to guide floodwaters around and away from proposed structures.

(l) Backflow Preventers

Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the special flood hazard area Floodplain Area.

DIVISION 7. – ADMINISTRATION

Sec. 91-71 Designation of Floodplain Administrator.

The Floodplain Administrator is vested with the responsibility, authority and means to implement the commitments made herein. Upon appointment of a new Floodplain Administrator, the City shall give notice to The State Coordinating Office and FEMA. Within one year of his or her appointment, the new Floodplain Administrator shall attend the State/FEMA sponsored NFIP Class 273 entitled “Managing Floodplain Development” and remain current with State required continuing education annual training per W.Va. Code §15-5-20a. In the absence of a formally appointed Floodplain Administrator, the duties set forth in this Ordinance for the Floodplain Administrator shall be temporarily fulfilled by the Planning Director or his or her designee.

The Floodplain Administrator shall administer and implement this Ordinance by granting or denying floodplain development permits in accordance with its provisions. The Floodplain Administrator shall also be responsible for submitting all required reports to FEMA concerning participation in the National Flood Insurance Program.

Sec. 91-72 Development Permits and Site Plan Approvals Required.

It shall be unlawful for any contractor, person, individual, partnership, estate, trust, association, business, limited liability company, joint venture, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, repair of substantial damage, the placement or relocation of any structure (including manufactured homes) within the City of Charleston unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision, or otherwise developed, a detailed site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

1362
1363 **Sec. 91-73 Approval of Permits and Plans.**
1364

- 1365 (a) The Floodplain Administrator shall review, or shall cause to be reviewed, all permit
1366 applications and plans within 90 days (from the Permit Application submission date)
1367 to determine whether the proposed development is reasonably safe from flooding.
1368 Further, the Floodplain Administrator shall review all objections, comments, protest
1369 letters and other writings submitted in opposition of said Floodplain Permit
1370 Application and give due consideration to the same before granting or denying said
1371 Permit.
1372
- 1373 (b) All permits and plans shall be approved only after it has been determined that the
1374 proposed work to be undertaken will be in conformance with the requirements of
1375 this Ordinance, State and Federal Laws, Ordinances and Regulations.
1376
- 1377 (c) The City of Charleston shall not issue a permit to any person who does not possess
1378 a valid contractor's license when a contractor's license is required by West Virginia
1379 Code.
1380
- 1381 (d) The City of Charleston, before issuance of the permit, shall require the applicant to
1382 furnish satisfactory proof that such person is duly licensed as a contractor under the
1383 provisions of West Virginia State Code.
1384
- 1385 (e) The Floodplain Administrator shall require and keep on file copies of any
1386 documentation pertaining to the permit from any other governmental agencies.
1387

1388 After the filing of an Application for a Floodplain Permit and receiving a properly
1389 and timely filed objection to the issuance of a Floodplain Permit Application, but prior to
1390 the Floodplain Administrator's decision to grant or deny the same, the Floodplain
1391 Administrator may, in his or her sole discretion, hold a public meeting wherein evidence
1392 can be taken or given by interested persons or parties. Said meeting shall record all
1393 testimony and receive all exhibits and evidence. Said meeting notice shall be mailed by
1394 certified mail return receipt requested to the Permit Applicant and the objecting person
1395 or entity and placed upon the agenda of a regularly scheduled Board of Zoning Appeals
1396 meeting announcing the date, time, and place of said meeting not prior to 10 calendar
1397 days from official announcement. The meeting transcript and exhibits presented shall be
1398 filed in the official Floodplain Application Permit File.
1399

1400 **Sec. 91-74 Application Procedures.**
1401

1402 Application for a permit and/or site plan approvals shall be filed, in writing, in
1403 duplicate, on the forms supplied by the City of Charleston and shall include all
1404 information stipulated under Division 5 of this Ordinance.
1405

1406 **Sec. 91-75 Changes.**
1407

After the issuance of a Floodplain Permit or site plan approval by the Floodplain Administrator or Floodplain Appeals Board, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent and approval of the Floodplain Administrator.

Sec. 91-76 Permit Placards.

The City of Charleston shall issue a permit placard, which shall be prominently displayed on the subject property during the time development is in progress. This placard shall show the number of the permit and the date of its issuance.

Sec. 91-77 Start of Construction.

Work on the proposed development shall begin within 180 days after the date of issuance of the Floodplain Permit or the Floodplain Permit shall expire unless a time extension request made in writing to the Floodplain Administrator and filed in the official Floodplain Permit Application File by the Floodplain Administrator is granted, in writing, by the Floodplain Administrator after a showing by the applicant of "justifiable delay" not caused by the negligence or lack of due diligence of the applicant. Any extension of the 180 day Start of Construction timeframe shall only be granted if the permit holder can demonstrate compliance with this Floodplain Ordinance, FIRM and/or FIS in effect at the time the extension is granted. All work on the proposed development must be completed within 18 months of permit issuance, at which time the permit shall expire, unless a time extension made in writing to the Floodplain Administrator and filed in the official Floodplain Permit File by the Floodplain Administrator is granted in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension. When considering an extension, the Floodplain Administrator shall consider the following criteria:

- (a) Has the applicant diligently pursued the completion of the proposed development during the 18 months?
- (b) Will the granting of the extension be detrimental to public safety, health, or welfare or injurious to other property?

Sec. 91-78 Stop Work Orders, Inspections and Revocations.

(a) Stop-Work Orders

- (1) The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found ongoing without having obtained a Floodplain Permit. Disregard of a Stop Work Order Notice shall subject the violator to the penalties described in Section 91-84 of this Ordinance.
- (2) The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found non-compliant with the provisions of

1454 this Ordinance and/or the conditions of the Floodplain Permit. Disregard of a
1455 Stop Work Order notice shall subject the violator to the penalties described in
1456 Section 91-84 of this Ordinance.

1457
1458 (3) If the Floodplain Administrator issues a Stop Work Order Notice, the Floodplain
1459 Permit shall be stayed pending a determination of whether a violation actually
1460 occurred and/or abatement of the alleged violation, whichever occurs first.

1461
1462 (4) In the event of an Appeal on a Floodplain Permit, the Floodplain Administrator
1463 shall immediately issue a Stop Work Order Notice that shall remain in effect
1464 until a resolution of said Appeal.

1465
1466 (b) Inspections and Revocations

1467
1468 (1) During the development period, the Floodplain Administrator or other
1469 authorized City, State or Federal Government Officials may inspect the
1470 premises to determine that the work is progressing in compliance with the
1471 information provided on the Floodplain Permit Application, this Ordinance and
1472 with all applicable Federal, State and City laws, Regulations and Ordinances.

1473
1474 (2) If the Floodplain Administrator discovers that the work does not comply with
1475 the Floodplain Permit Application, this Ordinance, or that there has been one
1476 or more false statements or misrepresentations by any applicant in the
1477 permitting process, the Floodplain Administrator shall issue a "Stop Work
1478 Order Notice", revoke the permit, and request a temporary injunction in the
1479 Circuit or Magistrate Court of Kanawha County. The Floodplain Administrator
1480 shall notify any appropriate agency or authority if the Floodplain Administrator
1481 finds a violation of any non-Floodplain Law, Regulation or Ordinance.

1482
1483 (3) The Floodplain Administrator or other authorized City, State or Federal
1484 Government Officials may inspect any development covered by this or
1485 previous Floodplain Ordinances to determine whether any portion of the
1486 development has been altered to be non-compliant with the requirements of
1487 this or other Ordinances.

1488
1489 **Sec. 91-79 Certificate of Floodplain Compliance.**

1490
1491 (a) In the special flood hazard area it shall be unlawful to occupy, or to permit the
1492 occupancy, of any building or premises, or both, or any part thereof hereafter
1493 created, erected, installed, changed, converted or wholly or partly altered or
1494 enlarged in its use or structure until a Certificate of Floodplain Compliance has
1495 been issued by the Floodplain Administrator stating that the building or land
1496 conforms to the requirements of this Ordinance. Occupying or using a building or
1497 premises in violation of this section shall subject the violator to the penalties
1498 described in Section 91-84 of this Ordinance.

- (b) In the special flood hazard area, it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or any part thereof hereafter created, erected, installed, or rebuilt until the utility inspector is in possession of a copy of the Certificate of Floodplain Compliance issued by the Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this Ordinance. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 91-84 of this Ordinance.
- (c) In the special flood hazard area, it shall be unlawful to install a permanent utility connection to any building or premises, or both, or any part thereof hereafter created, erected, installed, or rebuilt until a Certificate of Floodplain Compliance has been issued by the Floodplain Administrator stating that the development conforms to the requirements of this Ordinance. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 91-84 of this Ordinance.
- (d) A Certificate of Floodplain Compliance shall be issued by the Floodplain Administrator upon satisfactory completion of all development in the special flood hazard.
- (e) Issuance of the Certificate of Floodplain Compliance shall be based upon the inspection conducted as prescribed in this Ordinance and any finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses which may have been required as a condition of the Floodplain Permit approval process.

DIVISION 8. – APPEALS AND PENALTIES

Sec. 91-81 Appeals.

Whenever a person or entity is aggrieved by a decision of the Floodplain Administrator with respect to the provisions of this Ordinance, it is the right of that person or entity to appeal to the Board of Zoning Appeals sitting as the Floodplain Appeals Board. Such appeal must be filed with the Floodplain Administrator in writing, within thirty (30) days. Said Appeal shall be served by the aggrieved person by regular mail on all interested parties on the date that said Appeal is filed. Upon receipt of such appeal, the Floodplain Appeals Board shall set a time, date, and place not less than ten (10) nor more than sixty (60) calendar days for the purpose of hearing the appeal. Notice of the time, date and place of the hearing shall be given to all interested parties by placing an announcement of said hearing date, time, and place on the agenda of the next regularly scheduled Board of Zoning Appeals meeting notice and to announce the date, time and place of the appeal hearing not sooner than 10 calendar days from said announcement date, at which time all may appear and be heard. The determination by the Floodplain Appeals Board shall be final in all cases, subject to any Appeal to the Circuit or Magistrate Court of Kanawha County, West Virginia, or any other Court of

competent jurisdiction.

In the event an Appeal is filed wherein a Floodplain Permit grant has been ruled by the Floodplain Administrator, the Floodplain Administrator shall immediately issue a Stop Work Order Notice that shall remain in effect until a resolution of said appeal.

Sec. 91-82 Appeal Review Criteria.

Only appeals contesting the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Floodplain Appeals Board.

Sec. 91-83 Variances.

If compliance with any of the requirements of this Ordinance would result in an exceptional hardship to a prospective builder, developer or landowner, the City of Charleston may, upon request, grant relief from the strict application of the requirements.

Considerations for the issuance of Variances to this Ordinance shall adhere to the following criteria:

- (a) A decision granting or denying the variance request shall only be issued by the Floodplain Appeals Board upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the permit would result in exceptional hardship to the applicant, and (iii) a determination that granting the permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws, regulations or ordinances;
- (b) An affirmative decision granting a variance shall be issued only upon determination that it is the minimum necessary, considering the Special Flood Hazard Area, to afford relief. Financial hardship, used as sole criteria, shall not be considered sufficient justification to grant a variance;
- (c) An affirmative decision granting a Floodplain variance shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure; and
- (d) The Floodplain Appeals Board shall notify the applicant in writing and signed by a majority of the Floodplain Appeals Board that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, and (ii) such construction below the Base Flood

Elevation increases risk to life and property. Such notification shall be maintained with a record of all decisions as required in this Ordinance.

The Floodplain Appeals Board shall (i) maintain a record of all decisions including justification for the decisions, and (ii) report such decisions issued in its biannual report to the Federal Emergency Management Agency.

An affirmative decision shall not be granted for issuance of a Floodplain variance for any construction, development use or activity within any Floodway Area that would cause any increase in the Base Flood Elevation.

Sec. 91-84 Penalties.

Any violation of this ordinance shall constitute a zoning violation and is subject to Article 37 of the Zoning Ordinance of the City of Charleston, as amended.

DIVISION 9. – GOVERNMENT ACTIONS

Sec. 91-91 Annexation.

- (a) Upon annexation, the provisions of this ordinance shall immediately go into effect.
- (b) All plats or maps of annexation shall show the Floodplain boundaries, Base Flood Elevation and location of the Floodway where determined.
- (c) In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22(a)(9)(v) all Federal Emergency Management Agency participating governments must notify the State Coordinating Office and Federal Insurance Administration in writing whenever the boundaries of the governments have been modified by annexation or the governments has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. A detailed map showing the boundary change shall accompany the notice.
- (d) NFIP participating governments must notify the State Coordinating Office in writing whenever the boundaries of the governments have been modified by annexation or the government has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. A copy of a map of the government boundaries suitable for reproduction, clearly delineating the new boundaries or new area for which the government has assumed or relinquished floodplain management regulatory authority must be included with the notification.

Sec. 91-92 Permits for Governmental Entities.

Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this Ordinance and obtain all necessary

permits. Any entity claiming to be exempt from the requirements of this Ordinance must provide a written statement setting forth the rationale for exemption and file the same with FEMA. In addition, the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

DIVISION 10. – SEVERABILITY AND MUNICIPAL LIABILITY

Sec. 91-101 Liability.

The granting of a permit or approval of a subdivision, development plan in an identified Special Flood hazard Area, shall not constitute a representation, guarantee, or warranty of any kind by the City of Charleston or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Charleston. This Ordinance does not create a private cause of action. All applicants proposing construction in or near a Floodplain Area are urged to locate construction as far away from, and as high above, all flooding sources as possible.

Bill No. 7992

Introduced in Council:

May 1, 2023

Adopted by Council:

Introduced by:

**Joseph Jenkins, Frank Annie
and Joe Solomon**

Referred to:

Finance Committee

Bill No. 7992 - A BILL to amend and reenact Sections 2-377, 54-51, 54-103, and 66-37, of the Municipal Code of the City of Charleston, all relating to updating provisions to reflect the policy changes made by City Council with respect to ending the self-insured workers compensation program and adjusting certain sick leave accruals beginning with the fiscal year 2024 budget.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Sections 2-377, 54-51, 54-103, and 66-37, of the Municipal Code of the City of Charleston are hereby amended and reenacted, all to read as follows:

CHAPTER 2. – ADMINISTRATION.

ARTICLE VI. – FINANCE.

DIVISION 1. – GENERALLY.

Sec. 2-377. - Self-insured status for Workers' compensation.

(a) The city council, as long as the city has elected to pay compensation and expenses directly under the provisions of W. Va. Code § 23-2-9, shall appropriate each year sufficient funds in an amount to pay into the state workers' compensation fund the city's proper proportion of the expenses of the workers' compensation commissioner, in administering the fund, the required amounts into the surplus fund for the coverage of catastrophe and second injury liability, and to pay all workers' compensation benefits anticipated to be payable that year. In addition to the appropriation of such moneys, the city council shall authorize all other necessary procedures to ensure that all workers' compensation payments shall be paid promptly to its employees or fatally injured employees' dependents and shall direct the purchase of excess insurance for the purpose of indemnifying the city against losses per accident in excess of a specific retention level to be determined by the mayor and, for the purpose of indemnifying the city against annual losses in the aggregate, in excess of a retention level to be determined by the mayor.

(b) If at any time the city determines that it is no longer in the best interest of the city, its employees or its citizens to continue to pay compensation and expenses directly under the provisions of W. Va. Code § 23-2-9, the city shall immediately advise the state workers' compensation commissioner that it has elected to discontinue paying

such compensation and expenses directly as to future claims and shall immediately begin paying into the workers' compensation fund the premiums required to comply with the provisions of W. Va. Code §§ 23-2-1 and 23-2-5. If the city shall elect to discontinue paying such compensation and expenses directly, it shall, nevertheless, remain liable to and shall pay such compensation and expenses directly in claims arising prior to the election to resume payment of such premiums into the workers' compensation fund.

(c) The city council, having determined that it is no longer in the best interest of the city, its employees or its citizens to continue to be in a self-insured status for workers' compensation, certifies that the city has complied with subsection (b) of this section. The city council shall annually approve a workers' compensation policy maintained in conformity with W. Va. Code § 23-2-1, et seq. to provide workers' compensation coverage to its employees. If the city council fails to approve an annual workers' compensation policy, the city manager is hereby vested with the authority to procure a workers' compensation policy that the city manager deems to be in the best interest of the city, its employees, and its citizens.

CHAPTER 54. – FIRE PREVENTION AND PROTECTION

ARTICLE II. – FIRE DEPARTMENT.

DIVISION 1. – GENERALLY.

Sec. 54-51. - Workers' compensation; pay of firefighters/EMS injured in performance of duty.

~~(a) The city shall subscribe to the workers' compensation fund of the compensation commission of the state~~ a workers' compensation policy maintained in conformity with W. Va. Code § 23-2-1, et seq. to provide workers' compensation coverage for the protection of members of the city fire department and any member of the fire department injured while acting in the performance of his official duty as a member of the fire department shall be entitled to receive temporary compensation from the state compensation fund workers' compensation benefits, as provided in the policy, as a result of such injury. All workers' compensation benefits and any necessary disability pension benefits shall be provided in accordance with the City's workers' compensation policy and West Virginia law. A member may not receive workers' compensation benefits at the same time as they are receiving sick leave benefits.

~~—— (b) In addition to the workers' compensation benefits such member is receiving, such member shall receive such supplemental pay from the city, for a period not to exceed one year, that will bring the amount paid to such member by the workers' compensation fund and/or any pension fund benefits such member is receiving to an amount equaling 100 percent of the net compensation which is paid to such member while working in his position with the city.~~

~~—— (c) Benefits paid under this section, including supplemental pay, shall not be received under this section if such member is receiving benefits under the sick leave provisions of this article.~~

DIVISION 3. – VACATION, OTHER LEAVE, DUTY HOURS, AND CALCULATION OF OVERTIME PAY.

Sec. 54-103. Sick leave.

(a) Beginning January 1, 2015, each uniformed member shall be entitled to and granted sick leave with full pay. Such leave shall accrue at the rate of eight hours credited on the last day of each month during which the member has worked or has had leave credited for one or more tours of duty: Provided, That beginning July 1, 2023, such leave shall accrue at the rate of twelve hours credited on the last day of each month during which the member has worked or has had leave credited for one or more tours of duty.

(b) When a member hired before July 1, 2020, retires, the member will have the privilege of converting up to 144 hours of sick leave accrued under subsection 54-103(a) on or after January 1, 2012, or any remaining unused sick leave accrued prior to January 1, 2012, whichever is greater, to insurance benefits based on the formula of 24 hours for one month single coverage insurance premium or 36 hours for one month family coverage insurance premium. Any sick leave accrued by a member under subsection 54-103(a) on or after January 1, 2012, that is not converted to insurance benefits to the extent permitted by this section shall be forfeited effective as of the date of the member's retirement or separation from employment.

(c) Sick leave shall be granted for the following reasons:

(1) Illness on the part of or injury to the member, incapacitating him or her for duty.

(2) Illness in the immediate family, i.e. spouse, child, father, mother, sister, brother, father-in-law and mother-in-law, of such a critical nature as to require the presence of the member. This provision shall not be construed to cover absences for the purpose of nursing or caring for members of the immediate family not declared by the attending physician to be critically ill.

(3) Exposure to contagious diseases and subsequent determination by competent medical authority that such member's presence on duty might jeopardize the health of others.

(d) After the equivalent of half of the annual sick leave has been used by the member, the member shall provide the fire chief with a certificate from the attending physician setting forth the nature and duration of any of the conditions which would entitle him to sick leave as provided in subsection (c) of this section. Failure to provide such certificate satisfactory to the fire chief shall result in the member's not being granted sick leave with pay, and may subject the member to discipline for an unexcused absence.

(e) The city manager may, in his or her discretion and at the request of the fire chief, advance additional leave necessary to avoid substantial hardship to any member, provided that all other accrued vacation, sick and personal contingency leave shall have first been exhausted.

128
129 (f) The fire chief shall also have the right to investigate or cause to be
130 investigated the alleged illness of any member and, for good cause shown, not only to
131 deny sick leave but also to take proper disciplinary action against any feigner or abuser.
132

133 (g) In the event of an emergency, as declared by the mayor, an attending
134 physician's excuse may be required for any days missed; and during the emergency,
135 the mayor may suspend, in whole or in part, any sick leave or personal contingency
136 leave as permitted by subsections (a) and (c) of this section.
137

138 (h) For purposes of this section, a medical provider shall include a licensed
139 physician, surgeon, chiropractor, psychologist, or dentist.
140

141 **CHAPTER 66. – LAW ENFORCEMENT.**

142 **ARTICLE II. – POLICE DEPARTMENT.**

143 **DIVISION 1. – GENERALLY.**

144 **Sec. 66-37. - Workers' compensation; pay of police officers injured in**
145 **performance of duty.**
146

147 (a) ~~The city shall subscribe to the workers' compensation fund of the~~
148 ~~compensation commission of the state a workers' compensation policy maintained in~~
149 ~~conformity with W. Va. Code § 23-2-1, et seq. to provide workers' compensation~~
150 ~~coverage for the protection of members of the city police department, and any member~~
151 ~~of the police department injured while acting in the performance of his official duty as a~~
152 ~~member of the police department shall be entitled to receive temporary compensation~~
153 ~~from the state compensation fund workers' compensation benefits, as provided in the~~
154 ~~policy, as a result of such injury. All workers' compensation benefits and any necessary~~
155 ~~disability pension benefits shall be provided in accordance with the City's workers'~~
156 ~~compensation policy and West Virginia law. A member may not receive workers'~~
157 ~~compensation benefits at the same time as they are receiving sick leave benefits.~~
158

159 ~~— (b) In addition to the workers' compensation benefits, such member is receiving,~~
160 ~~such member shall receive such supplemental pay from the city, for a period not to~~
161 ~~exceed one year, that will bring the amount paid to such member by the workers'~~
162 ~~compensation fund and/or any pension fund benefits such member is receiving to an~~
163 ~~amount equaling 100 percent of the net compensation which is paid to such member~~
164 ~~while working in his position with the city. Benefits paid under this section, including~~
165 ~~supplemental pay, shall not be received under this section if such member is receiving~~
166 ~~benefits under the sick leave provisions of this article.~~
167

1 **Bill No. 7993**

2 Passed by Council:

3 Introduced in Council

4 **May 1, 2023**

5 Introduced by:

Referred to:

6 **Beth Kerns**

Planning, Streets and Traffic

7
8 **Bill No. 7993** - A Bill to Amend and reenact Ordinance 7371 by establishing two-hour
9 parking from 8:00am to 5:00pm, Monday through Saturday on the northerly side of
10 Bigley Avenue from a point 43 feet west of Cora Street to a point 165 feet west of Cora
11 Street and amending the Traffic Control Map and Traffic Control File, established by the
12 code of the City of Charleston, West Virginia, two thousand and three, as amended,
13 Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

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

15 Section 1. A Bill to Amend and reenact Ordinance 7371 by establishing two-hour
16 parking from 8:00am to 5:00pm, Monday through Saturday on the northerly side of
17 Bigley Avenue from a point 43 feet west of Cora Street to a point 165 feet west of Cora
18 Street

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

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